

THE SUPREME COURT OF OHIO COMMISSION ON RULES OF PRACTICE AND PROCEDURE

An Open Letter to Clerks of Court, the Bench, and the Bar of Ohio:

For decades, Ohio courts have relied upon service of process by Certified Mail. Service by Certified Mail is intended as a means reasonably calculated to give actual notice in legal matters, a basic constitutional requirement.

Unfortunately, a year ago with the onset of the COVID-19 pandemic the United States Postal Service modified procedures for recipient signatures and Certified Mail. The modified procedures allow USPS employees to sign an electronic “green card” with the name of the person to whom the mail is delivered from a distance, or when the name is not known to simply use the notation of “COVID” on the return receipt. The modified procedures also call for postal service employees to follow the normal “Notice Left” process should no one respond at the point of delivery.

In theory, the modified policy of the USPS may still allow service of process substantially in compliance with Ohio Civ. R. 4.1, which contemplates that a return receipt will “show to whom delivered, date of delivery, and address where delivered.” In practice, though, the modified procedure of the USPS is not always followed. Some Certified Mail has been documented for courts with notations limited to “COVID – 19,” “COVID,” “C,” or nothing more than illegible writing. Changes recently proposed by the USPS may further degrade the reliability of service by Certified Mail. Further complicating matters, Ohio courts have not consistently evaluated Certified Mail service under the modified procedure.

Through this correspondence, the Commission intends solely to raise awareness of the concerns surrounding the present practices of the USPS related to Certified Mail. After a review of Civ. R. 4.1, Commission members do not believe that proposing to the Ohio Supreme Court any amendment to the rule is necessary, particularly if the electronic “green card” is fully and accurately completed by USPS carriers. The Commission urges all Ohio courts and counsel in all matters to carefully evaluate notices of service before taking any action to enter default judgment or other action, in order to ensure that the constitutional right to notice is respected.

The Commission urges Clerks of Court across the state to closely examine Certified Mail receipts, and consider in every case whether service has been properly effectuated. Clerks should not hesitate to alert the court and counsel to illegible or apparently incomplete return receipts. The Commission encourages counsel to consider whether a new effort at obtaining “good” service with Certified Mail, using a process server, or using the Waiver of Service provision in new Civ. R. 4.7 is prudent. Finally, the Commission recognizes that effectuating “good” service not only reduces the potential for litigation involving Civ. R. 60(B) but also assures intended recipients the fair notice to which all litigants are entitled.

Judge Mary Katherine Huffman
Chair, Commission on the Rules of Practice and Procedure, on
behalf of said Commission