

IN THE SUPREME COURT

STATE OF OHIO

APPEAL FROM THE BOARD OF TAX APPEALS

KNICKERBOCKER PROPERTIES, INC. XLII,)	SUPREME COURT CASE
)	NUMBER 07-0896
)	
Appellant,)	
)	BOARD OF TAX APPEALS
vs.)	CASE NUMBER 2005-B-730
)	
DELAWARE COUNTY BOARD OF)	
REVISION, DELAWARE COUNTY)	
AUDITOR, OLENTANGY LOCAL SCHOOLS)	
BOARD OF EDUCATION AND TAX)	
COMMISSIONER OF THE STATE OF OHIO,)	
)	
Appellees.)	

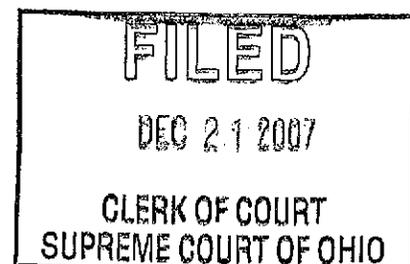
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INTRODUCTION

The Appellees Board of Education of the Olentangy Local School District (hereinafter Board of Education) and Delaware County Board of Revision and Delaware County Auditor (hereinafter County Appellees) have filed a joint merit brief in this appeal. The Appellees do not cite to any case law to support their position in this appeal. This reply brief of the Appellant Kickerbocker Properties, Inc. XLII will address the issues and arguments raised by the Appellees' in their brief.

LAW AND ARGUMENT

The issue in this appeal is whether tax entities (in this case a local board of education, county auditor and board of revision) are required to ensure that notice is given to property owners when they seek to initiate proceedings under Revised Code 5715.19 to increase a property owner's real estate taxes. Although thousands of litigants every day (through court clerks) serve notice of their complaints on parties to litigation the Board of Education and County Appellees argue that they should not be held to such a standard. The Appellees reach this conclusion by suggesting that the "street address" of the owner of real property is too difficult an item of information for them to ascertain and list in their complaint. Although it is not specifically addressed in their brief, the Appellees' repeated reference to the term "street address" appears to be based on the appearance of the term in DTE Form No. 1 (the complaint form) at the top of the page above line 1 which specifies that "NOTICES WILL BE SENT ONLY TO THOSE NAMED BELOW". See Supp. at page 1. In line 1 of the complaint form a complainant is required to list the name, street address, city, state, and zip code of the property owner. The Appellees argue that "street address" is not the same as the "tax mailing address" as that term is used in the statutes at issue in this appeal. The record in this appeal shows that the "street address" and "tax mailing address" of the property owner are the same. Supp. at page 9. The

conveyance fee statement filed with the Appellee County Auditor shows the Grantees' address in line 2.a. as "c/o Sentinel Real Estate Corp., 1251 Avenue of the Americas, New York, New York, 10020". Supp. at page 9. This is the same address as the "Tax Billing address" shown on line 4 of the conveyance fee statement and the "tax mailing address" listed in the deed conveying title in the property to the Appellant. Supp. at pages 9 and 3. These two documents provided the basis for the Board of Education's complaint and constitute the evidence submitted to the County Appellees in support of the Board of Education's requests to increase the assessment of the Appellant's property. Whether the Court holds that "tax mailing address" means something other than "street address" is irrelevant based on the facts in this appeal. The Appellant's "tax mailing address", "tax billing address", and "street address" as evidenced in the record in this appeal were all the same, the Board of Education did not use any of them in their complaint and the County Appellees did not use them in sending out notices of the filing of the Board of Education's complaint and the hearing on the complaint. Supp. at pages 3, 9, 1, 10 and 14. There is no evidence in the record that any of these addresses have ever been changed, under Revised Code 323.13 or otherwise.

The Appellees' suggestion at the top of page 2 in their brief that "[t]he New York City address does not, in fact, appear to be the Appellant's "street address" as requested by the complaint form" is not supported by the record and the deed and conveyance fee statement referenced above contradict any claim that the address is anything other than the "street address", "tax mailing address" and "tax billing address" of the Appellant. There is no evidence in the record that the deed and conveyance fee statement were attached to the Board of Education's complaint, the complaint makes no reference to the attachment of any documents that would draw the reader's attention away from the erroneous address for the property owner listed by the Board of Education on line 1 of the complaint form. Supp. at page 1. There is no evidence in the record

that notice of the complaint and board of revision hearing on the complaint was ever sent to the Appellant. The Appellees at the bottom of page 2 in their brief, the last sentence, completely miss this point. There is no evidence in the record that the County Appellees sent out any of the required notices under Revised Code 5715.19 and 5715.12 in this case. The Appellees' suggestion at page 10 in their brief that the Appellant is somehow responsible for these errors is absurd. It is clear based on their brief that the Board of Education and County Appellees feel that they have no responsibility when it comes to notifying the Appellant of the filing of their complaint or any hearings in this matter, but to suggest that the Appellant should somehow be able to ascertain that a jurisdictionally defective complaint has been filed when it has never been served with a copy of that complaint is unconscionable.

The Appellee's failure to list the property owner's address on their complaint form goes to the core of procedural efficiency in this matter since the Delaware County Auditor could not (and did not) fulfill its statutory obligation to provide notice under Revised Code Section 5715.19 (B) of the filing of the complaint (in order to allow the property owner an opportunity to file a counter-complaint) and timely notice of the scheduled hearings under Revised Code 5715.12 on the Appellee's complaint. The County Auditor never succeeded in giving notice to the Appellant under Revised Code 5715.19 (B) and 5715.12. As a result, the Appellee was unopposed in prosecuting their complaint before the Delaware County Board of Revision. The Board of Education never discovered the error in their complaint even though the deed and conveyance fee statement showed that the county website information that they claim to have relied upon was wrong (many websites contain disclaimers about the reliability of information contained on the site). The County Auditor and Board of Revision did not discover the error even though they were contacted by the property owner after the first erroneous notice was sent out. Supp. at page 13. None of these errors are the fault of the Appellant, and neither the Complainant (the Board of

Education) nor the County Appellees (the County Auditor and Board of Revision) acknowledge any responsibility for providing notice of the proceeding to the owner of the property in this case. They characterize the Appellant's claim in this appeal as "frivolous". There is no evidence that the Appellant received notice of the Board of Revision hearing and an opportunity to be heard in that proceeding and yet the Appellees' characterize the Appellant's claim as "frivolous". There are no certified mail receipts or green cards in the record, the County Appellees apparently view ensuring notice to an affected party as "frivolous". The Board of Education deemed the deed and conveyance fee statement as sufficient evidence of a transaction to serve as the sole basis for their complaint (they even claim to have attached the documents to their complaint), but chose not to use the address for the property owner contained in that same documentation for purposes of filing their complaint, and they argue that the Appellant's claim in this appeal in "frivolous". This Court should not condone such a cavalier attitude with respect the basic principles of notice and an opportunity to be heard. The status the Board of Education and the Appellees in this appeal is no different than that of a plaintiff and court clerk under Civil Rule 4 and rights of the Appellant in this appeal are just as important as the rights of any other civil litigant. The record in this appeal, the Board of Tax Appeals decision and order, and the stance taken by the Appellees in this case does not show any respect for the basic principles of due process.

PROPOSITION OF LAW NO. I

ENSURING PROPER SERVICE IS THE RESPONSIBILITY OF A COMPLAINANT. ERRORS IN SERVICE RUN TO THE CORE OF PROCEDURAL EFFICIENCY AND ARE THEREFORE JURISDICTIONAL.

The defect in the Board of Education's complaint (failure to list the correct address for service of notice) and the County Appellees' failure to provide notice to the property owner (a party affected by this proceeding) goes to the core of procedural efficiency and is jurisdictional.

See Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision (1998), 80 Ohio St.3d 591; See also The Stanjim Co. v. Bd. of Revision (1974), 38 Ohio St.2d 233; and Public Square Tower One v. Cuyahoga Cty. Bd. of Revision (1986), 34 Ohio App. 3d 49. The errors in the service of notices in this proceeding are the direct result of the error in the Board of Education's complaint and none of the Appellees in this appeal took any steps (See Revised Code 5715.12 for alternative means of service) to correct this error. The Board of Tax Appeals decision and order finding jurisdiction in this appeal is unreasonable and unlawful and should be reversed. The Board of Tax Appeals should be directed on remand to return the case to the Delaware County Board of Revision with instructions to dismiss the Board of Education's complaint.

CONCLUSION

For the foregoing reasons the Appellant, Knickerbocker Properties, Inc. XLII, respectfully requests that this Court reverse the decision and order of the Ohio Board of Tax Appeals and issue an order remanding the appeal to the Board of Tax Appeals with directions to the Board to remand the case to the Delaware County Board of Revision with instructions to dismiss the complaint filed by the Olentangy Local Schools Board of Education and reinstate the County Auditor's value for the property.

Respectfully submitted,

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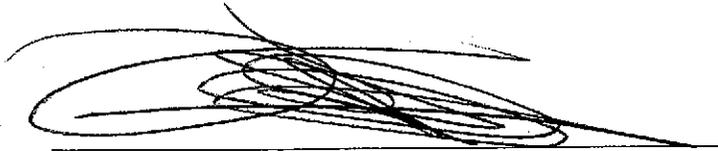
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ATTORNEY FOR APPELLANT

KNICKERBOCKER PROPERTIES, INC., XLII

CERTIFICATE OF SERVICE

A copy of the foregoing Reply Brief of Appellant Knickerbocker Properties, Inc., XLII was mailed via regular U.S. mail postage prepaid, the 20th day of December, 2007 to the following: Jeffrey A. Rich and Mark H. Gillis, Rich, Crites & Dittmer, LLC, 300 East Broad Street, Suite 300, Columbus, Ohio 43215, Attorney for the Appellee Olentangy Local Schools Board of Education; David Yost, County Prosecutor, 140 N. Sandusky Street, Delaware, Ohio 43015-1733, Attorney for the Appellees Delaware County Board of Revision and Delaware County Auditor, and Marc Dann, Ohio Attorney General, State Office Tower, 17th Floor; 30 East Broad Street, Columbus, Ohio 43215, Attorney for the Appellee Tax Commissioner of the State of Ohio.



Todd W. Sleggs, Esq. (0040921)

the member at least half of the dependent parent's support, including food, shelter, clothing, and medical and dental care.

(B) This section applies to any real property or manufactured or mobile home that is:

(1) Owned by a member of the national guard or a member of a reserve component of the armed forces of the United States who is called to active duty;

(2) Owned by the spouse of such a member;

(3) Owned jointly by such a member and that member's spouse or dependent parent; or

(4) Owned by the dependent parent of such a member who dies during such duty or, as the result of wounds or illness incurred during such duty.

(C) The member, the member's spouse, or the member's parent, as applicable, may apply to the county treasurer for an extension for the payment of taxes and assessments charged against the real property or manufactured or mobile home and payable during the period of the member's duty service and the six months ensuing termination thereof. Additionally, application may be made on behalf of a member under a power of attorney granted by the member. Application shall be made not later than the last day of the sixth month after the month in which the member's duty terminates. The applicant shall provide evidence satisfactory to the county treasurer to demonstrate eligibility for the extension as described in division (B) of this section.

If the county treasurer determines that the applicant qualifies for an extension under this section, the county treasurer shall enter into a contract with the applicant for payment of the taxes and assessments in installments in the same manner as, and subject to the same terms and conditions of, contracts for the payment of delinquent taxes pursuant to section 323.31 of the Revised Code, except that the contract shall specify that payments shall begin in the seventh month after the member's duty terminates. Notwithstanding sections 319.49, 323.01, 323.121, 323.132, 4503.06, 5721.01, and 5721.011 of the Revised Code, taxes and assessments, payment of which has been extended under this section, do not constitute delinquent taxes and shall not be placed on the delinquent land list or delinquent manufactured home tax list unless the contract becomes void, and a new contract is not entered into, pursuant to section 323.31 of the Revised Code.

(D) If a member, a member's spouse, or a member's parent qualifies for the extension provided in this section, and that member, spouse, or parent has designated an agent for the payment of taxes and assessments the payment of which is so extended, that agent shall not require the member, spouse, or parent to pay to the agent any such taxes and assessments for the period for which payment is extended under division (C) of this section. If such taxes or assessments are paid by the member, spouse, or parent to an agent as part of a mortgage

loan installment payment, the agent shall deduct the portion of the payment that represents such taxes and assessments from the amount of each such payment payable during the period of extension prescribed by division (C) of this section.

(E) If the member, the member's spouse, or the member's parent has entered into a contract pursuant to this section before the first day of the seventh month after the month in which the member's duty terminates, the county auditor and treasurer shall remove from the tax list and duplicate, respectively, any penalties and interest that were charged under section 323.121 or 4503.06 of the Revised Code during the member's duty and before the first day of the seventh month after the month in which the member's duty terminates.

(F) Notwithstanding section 323.131 of the Revised Code, a county treasurer shall include a notice of, and information about, the extension provided in this section on or with tax bills mailed or delivered under section 323.13 or 4503.06 of the Revised Code or by providing such notice and information to a newspaper of general circulation in the county when tax bills are mailed or delivered under those sections.

(As enacted by S.B. 47, Laws 2003, effective June 12, 2003)

Sec. 323.13. Tax bill mailed or delivered; failure to receive bill.—Except as provided in section 323.134 of the Revised Code, immediately upon receipt of any tax duplicate from the county auditor, but not less than twenty days prior to the last date on which the first one-half taxes may be paid without penalty as prescribed in section 323.12 or 323.17 of the Revised Code, the county treasurer shall cause to be prepared and mailed or delivered to each person charged on such duplicate with taxes or to an agent designated by such person, the tax bill prescribed by the commissioner of tax equalization under section 323.131 of the Revised Code. When taxes are paid by installments, the county treasurer shall mail or deliver to each person charged on such duplicate or the agent designated by such person, a second tax bill showing the amount due at the time of the second tax collection. The second half tax bill shall be mailed or delivered at least twenty days prior to the close of the second half tax collection period.

After delivery of the delinquent land duplicate as prescribed in section 5721.011 of the Revised Code, the county treasurer may prepare and mail to each person in whose name property therein is listed an additional tax bill showing the total amount of delinquent taxes, appearing on such duplicate against such property. The tax bill shall include a notice that the interest charge prescribed by division (B) of section 323.121 of the Revised Code has begun to accrue.

A change in the mailing address of any tax bill shall be made in writing to the county treasurer.

Upon certification by the county auditor of the apportionment of taxes following the transfer of a part of a tract or lot of real estate, and upon request by the owner of any transferred or remaining part of such tract or parcel, the treasurer shall cause to be prepared and mailed or delivered to such owner a tax bill for the taxes allocated to the owner's part, together with the penalties, interest, and other charges.

Failure to receive any bill required by this section does not excuse failure or delay to pay any taxes shown on such bill or, except as provided in division (B)(1) of section 5715.39 of the Revised Code, avoid any penalty, interest, or charge for such delay.

(As amended by H.B. 445, Laws 1957; S.B. 305, Laws 1969; S.B. 519, Laws 1970; H.B. 413, Laws 1980; H.B. 379, Laws 1982; H.B. 95, Laws 2003, effective June 26, 2003.)

[§ 99-075]

Sec. 323.131. Contents of tax bill.— Each tax bill prepared and mailed or delivered under section 323.13 of the Revised Code shall be in the form and contain the information required by the tax commissioner. The commissioner may prescribe different forms for each county and may authorize the county auditor to make up tax bills and tax receipts to be used by the county treasurer. For any county in which the board of county commissioners has granted a partial property tax exemption on homesteads under section 323.158 of the Revised Code, the commissioner shall require that the tax bills for those homesteads include a notice of the amount of the tax reduction that results from the partial exemption. In addition to the information required by the commissioner, each tax bill shall contain the following information:

(A) The taxes levied and the taxes charged and payable against the property;

(B) The effective tax rate: The words "effective tax rate" shall appear in boldface type.

(C) The following notices:

(1) "Notice: If the taxes are not paid within one year from the date they are due, the property is subject to foreclosure for tax delinquency." Failure to provide such notice has no effect upon the validity of any tax foreclosure to which a property is subjected.

Note: Sec. 4, H.B. 177, Laws 1998, effective September 16, 1998, applicable to reductions in taxes under division (B) at section 323.152 of the Revised Code for tax years 1998 and thereafter, provides:

Sec. 4. Not later than February following the effective date of this act, each county auditor, by ordinary mail, shall send a notice substantially in the form of the notice prescribed by division (C)(2) of section 323.131 of the Revised Code, as amended by this act, to each owner of residential real property if all of the following apply:

(1) The property was conveyed during tax years 1995 through December 31 following the effective date of this act;

(2) "Notice: If the taxes charged against this parcel have been reduced by the 2 1/2 per cent tax reduction for residences occupied by the owner but the property is not a residence occupied by the owner, the owner must notify the county auditor's office not later than March 31 of the year following the year for which the taxes are due. Failure to do so may result in the owner being convicted of a fourth degree misdemeanor, which is punishable by imprisonment up to 30 days, a fine up to \$250, or both, and in the owner having to repay the amount by which the taxes were erroneously or illegally reduced, plus any interest that may apply.

If the taxes charged against this parcel have not been reduced by the 2-1/2 per cent tax reduction and the parcel includes a residence occupied by the owner, the parcel may qualify for the tax reduction. To obtain an application for the tax reduction or further information, the owner may contact the county auditor's office at (insert the address and telephone number of the county auditor's office).

(D) For a tract or lot on the real property tax suspension list under section 319.48 of the Revised Code, the following notice: "Notice: the taxes shown due on this bill are for the current year only. Delinquent taxes, penalties, and interest also are due on this property. Contact the county treasurer to learn the total amount due."

The tax bill shall not contain or be mailed or delivered with any information or material that is not required by this section or that is not authorized by section 321.45 of the Revised Code or by the tax commissioner.

(As enacted by H.B. 475, Laws 1971, as amended by H.B.'s 413 and 1238, Laws 1980; H.B. 379, Laws 1982; H.B. 260, Laws 1983; H.B.'s 20 and 618, Laws 1988; H.B. 207, Laws 1993; H.B. 404, Laws 1994; H.B. 462, Laws 1996; H.B. 177, Laws 1998, effective September 16, 1998, applicable to reductions in taxes under division (B) at section 323.152 of the Revised Code for tax years 1998 and thereafter; S.B. 201, Laws 1998, effective December 21, 1998.)

[§ 99-105]

Sec. 323.132. Payment of delinquent taxes only; partial or erroneous payment.— If one-half of the current taxes charged against an entry of real estate is not paid on or before the thirty-first day of

(2) Such property is not receiving the two and one-half per cent tax reduction.

(3) The owner does not receive a tax bill for the property because the bill is mailed or delivered to an agent of the owner or taxes are billed through an information exchange agreement under section 323.134 of the Revised Code.

(4) The county auditor has not previously mailed to the owner a notice substantially in the form of the notice prescribed by division (C)(2) of section 323.131 of the Revised Code, as amended by this act.

§ 99-075 § 323.131

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[§ 133-860]

Sec. 5715.07. Public inspection of documents relating to assessments.—All files, statements, returns, reports, papers, or documents of any kind relating to the assessment of real property which are in the office of a county auditor or county board of revision or in the official custody or possession of such officer or board shall be open to public inspection.

[§ 133-880]

Sec. 5715.08. Minutes of meetings; preservation of minutes and evidence.—The county board of revision shall take full minutes of all evidence given before the board, and it may cause the same to be taken in shorthand and extended in typewritten form. The secretary of the board shall preserve in his office separate records of all minutes and documentary evidence offered on each complaint.

[§ 133-900]

Sec. 5715.09. Organization of county board of revision; meetings; record.—Each county board of revision shall organize annually on the second Monday in January by the election of a chairman for the ensuing year. The county auditor shall be the secretary of the board. He shall call the board together as often as necessary during any year, keep an accurate record of the proceedings of the board in a book kept for the purpose, and perform such other duties as are incidental to the position.

[§ 133-925]

Sec. 5715.10. Valuation of real property; county board of revision may summon and examine persons as to property.—The county board of revision shall be governed by the laws concerning the valuation of real property and shall make no change of any valuation except in accordance with such laws.

The board may call persons before it and examine them under oath as to their own or another's real property to be placed on the tax list and duplicate for taxation, or the value thereof. If a person notified to appear before the board refuses or neglects to appear at the time required, or appearing, refuses to be sworn or answer any question put to him by the board or by its order, the chairman of the board shall make a complaint thereof in writing to the probate judge of the county, who shall proceed against such person in the same manner as provided in section 5711.37 of the Revised Code.

(As amended by S.B. 361, Laws 1953, effective October 1, 1953.)

[§ 133-945]

Sec. 5715.11. Duty of county board of revision to hear complaints.—The county board of revision shall hear complaints relating to the valuation or assessment of real property as the same appears upon the tax duplicate of the then current year. The board shall investigate all such complaints and may

increase or decrease any such valuation or correct any assessment complained of, or it may order a reassessment by the original assessing officer.

[§ 133-965]

Sec. 5715.12. Duty to give notice before increasing valuation; service.—The county board of revision shall not increase any valuation without giving notice to the person in whose name the property affected thereby is listed and affording him an opportunity to be heard. Such notice shall describe the real property, the tax value of which is to be acted upon, by the description thereof as carried on the tax list of the current year, and shall state the name in which it is listed; such notice shall be served by delivering a copy thereof to the person interested, by leaving a copy at the usual place of residence or business of such person, or by sending the same by registered letter mailed to the address of such person. If no such place of residence or business is found in the county, then such copies shall be delivered or mailed to the agent in charge of such property. If no such agent is found in the county, such notice shall be served by an advertisement thereof inserted once in a newspaper of general circulation in the county in which the property is situated. Notices to the respective persons interested in different properties may be united in one advertisement under the same general heading. Notices served in accordance with this section shall be sufficient.

[§ 133-985]

⚠ *Caution: The Ohio Supreme Court determined in Cincinnati School Dist. Bd. of Edu. v. Hamilton Cty. Bd. of Revision (2001), ¶ 403-001 and Rubbermaid, Inc. v. Wayne Cty. Auditor et al. (2002), ¶ 403-118 that R.C. 5715.13 and R.C. 5715.19, as amended by Sub. H.B. No. 694, violate Sec. 28, Article II of the Ohio Constitution. CCH.*

Sec. 5715.13. Application for decrease in valuation.—The county board of revision shall not decrease any valuation unless a party affected thereby or who is authorized to file a complaint under section 5715.19 of the Revised Code makes and files with the board a written application therefor, verified by oath, showing the facts upon which it is claimed such decrease should be made.

(As amended by H.B. 694, Laws 1998, effective December 21, 1998, applicable to any complaint that was timely filed under either of those sections [5715.13 or 5715.19] respecting valuations for tax year 1994, 1995, 1996, or 1997, and to complaints filed for tax years 1998 and thereafter.)

[§ 134-005]

Sec. 5715.14. Action certified to auditor; correction of tax lists.—The county board of revision shall certify its action to the county auditor, who shall correct the tax list and duplicate according to the deductions and additions ordered by the board in

the manner provided by law for making corrections thereof. If the tax duplicate has been delivered to the county treasurer, the auditor shall certify such corrections to the treasurer, who shall enter such corrections on his tax duplicate.

¶ 134-025]

Sec. 5715.15. Reporting of omissions and corrections in property valuations.—When the county board of revision discovers that any taxable land, building, structure, improvement, minerals, or mineral rights have escaped taxation or been listed for taxation at less than their taxable value in a current year or in any year during the five years next preceding, the board may investigate the same and report to the county auditor all the facts and information in its possession which relate to the same. The auditor shall make the inquiries and corrections which he is authorized and required by law to make in other cases in which real property has escaped taxation or has been improperly listed or valued for taxation.

(As amended by S.B. 109, Laws 1957; S.B. 370, Laws 1959; H.B. 337, Laws 1965, effective November 5, 1965.)

¶ 134-045]

Sec. 5715.16. Corrections and assessments.—On the second Monday of June, annually, the county auditor shall lay before the county board of revision the returns of his assessment of real property for the current year, and such board shall forthwith proceed to revise the assessment and returns of such real property. If the board finds that any tract, lot, or parcel of land, or any buildings, structures, or improvements thereon, or any minerals therein, or rights thereto have been improperly listed either as to the name of the owner or the description or quantity thereof, or have been incorrectly valued, or have been omitted and not yet valued, it shall make the necessary corrections and give to each such incorrectly valued or omitted tract, lot, or parcel of land, or any buildings, structures, or improvements thereon, or any minerals therein or rights thereto, their corrected taxable value.

The auditor shall not make up his tax list and duplicate nor advertise as provided in section 5715.17 of the Revised Code until the board has completed its work under this section and returned to the auditor all the returns laid before it with the revisions thereof.

(As amended by S.B. 109, Laws 1957; S.B. 370, Laws 1959; H.B. 337, Laws 1965, effective November 5, 1965.)

¶ 134-065]

Sec. 5715.17. Notice of completion of work of equalization; county auditor to furnish certificates and notice.—When the county board of revision has completed its work of equalization and transmitted the returns to him, the county auditor

shall give notice by advertising in two newspapers of opposite politics published in and of general circulation throughout the county that the tax returns for the current year have been revised and the valuation completed and are open for public inspection in his office, and that complaints against any valuation or assessment, except the valuations fixed and assessments made by the department of taxation will be heard by the board, stating in the notice the time and place of the meeting of such board. Such advertisement shall be inserted in a conspicuous place in each such newspaper and be published daily for ten days, unless there is no daily newspaper published in and of general circulation throughout such county, in which event such advertisement shall be so published once each week for two weeks.

The auditor shall, upon request, furnish to any person a certificate setting forth the assessment and valuation of any tract, lot, or parcel of real estate or any specific personal property, and mail the same when requested to do so upon receipt of sufficient postage.

The auditor shall furnish notice to boards of education of school districts within the county of all hearings, and the results of such hearings, held in regard to the reduction or increasing of tax valuations in excess of one hundred thousand dollars directly affecting the revenue of such district.

(As amended by S.B. 361, Laws 1953; S.B. 115, Laws 1965, effective September 6, 1965.)

¶ 134-085]

Sec. 5715.18. Additional notice of change in assessment.—In addition to the printed notice prescribed in section 5715.17 of the Revised Code, the tax commissioner may provide such additional notice of any change made in the assessment of any tract, lot, or parcel of real estate, or improvement thereon or minerals or mineral rights therein in such form and at such times as the commissioner deems advisable. Such additional notices shall be delivered to the parties interested by the method the commissioner orders.

(As amended by H.B. 920, Laws 1976; H.B. 260, Laws 1983, effective September 27, 1983.)

¶ 134-100]

[*** Caution: The Ohio Supreme Court determined in *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (2001), ¶ 403-001 and *Rubbermaid, Inc. v. Wayne Cty. Auditor et al.* (2002), ¶ 403-118 that R.C. 5715.13 and R.C. 5715.19, as amended by Sub. H.B. No. 694, violate Sec. 28, Article II of the Ohio Constitution. CCH.]

Sec. 5715.19. Complaints; tender of tax; determination of common level of assessment.—(A) As used in this section, "member" has the same meaning as in section 1705.01 of the Revised Code.

¶ 134-025 § 5715.15

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(d) Subject to division (A)(2) of this section, a complaint against any of the following determinations for the current tax year shall be filed with the county auditor on or before the thirty-first day of March of the ensuing tax year or the date of closing of the collection for the first half of real and public utility property taxes for the current tax year, whichever is later:

(a) Any classification made under section 5713.041 of the Revised Code;

(b) Any determination made under section 5713.32 or 5713.35 of the Revised Code;

(c) Any recoupment charge levied under section 5713.35 of the Revised Code;

(d) The determination of the total valuation or assessment of any parcel that appears on the tax list, except parcels assessed by the tax commissioner pursuant to section 5727.06 of the Revised Code;

(e) The determination of the total valuation of any parcel that appears on the agricultural land tax list, except parcels assessed by the tax commissioner pursuant to section 5727.06 of the Revised Code.

Any person owning taxable real property in the county or in a taxing district with territory in the county; such a person's spouse; an individual who is retained by such a person and who holds a designation from a professional assessment organization, such as the institute for professionals in taxation, the national council of property taxation, or the international association of assessing officers; a public accountant who holds a permit under section 4701.10 of the Revised Code; a general or residential real estate appraiser licensed or certified under Chapter 4763 of the Revised Code; or a real estate broker licensed under Chapter 4735 of the Revised Code, who is retained by such a person, if the person is a firm, company, association, partnership, limited liability company, or corporation, an officer, a salaried employee, a partner, or a member of that person; if the person is a trust, a trustee of the trust; the board of county commissioners; the prosecuting attorney or treasurer of the county; the board of township trustees of any township with territory within the county; the board of education of any school district with any territory in the county; or the mayor or legislative authority of any municipal corporation with any territory in the county may file such a complaint regarding any such determination affecting any real property in the county, except that a person owning taxable real property in another county may file such a complaint only with regard to any such determination affecting real property in the county that is located in the same taxing district as that person's real property is located. The county auditor shall present to the county board of revision all complaints filed with the auditor.

(2) As used in division (A)(2) of this section, "interim period" means, for each county, the tax year to which section 5715.2# of the Revised Code

applies and each subsequent tax year until the tax year in which that section applies again.

No person, board, or officer shall file a complaint against the valuation or assessment of any parcel that appears on the tax list if it filed a complaint against the valuation or assessment of that parcel for any prior tax year in the same interim period, unless the person, board, or officer alleges that the valuation or assessment should be changed due to one or more of the following circumstances that occurred after the tax lien date for the tax year for which the prior complaint was filed and that the circumstances were not taken into consideration with respect to the prior complaint:

(a) The property was sold in an arm's length transaction as described in section 5713.03 of the Revised Code;

(b) The property lost value due to some casualty;

(c) Substantial improvement was added to the property;

(d) An increase or decrease of at least fifteen percent in the property's occupancy has had a substantial economic impact on the property;

(3) If a county board of revision, the board of tax appeals, or any court dismisses a complaint filed under this section or section 5715.13 of the Revised Code for the reason that the act of filing the complaint was the unauthorized practice of law of the person filing the complaint or the party affected by a decrease in valuation or the party's agent, or the person owning taxable real property in the county or in a taxing district with territory in the county, may refile the complaint, notwithstanding division (A)(2) of this section.

(B) Within thirty days after the last date such complaints may be filed, the auditor shall give notice of each complaint in which the stated amount of overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination is at least seventeen thousand five hundred dollars to each property owner whose property is the subject of the complaint, if the complaint was not filed by the owner or the owner's spouse, and to each board of education whose school district may be affected by the complaint. Within thirty days after receiving such notice, a board of education, a property owner, the owner's spouse, an individual who is retained by such an owner and who holds a designation from a professional assessment organization, such as the institute for professionals in taxation, the national council of property taxation, or the international association of assessing officers; a public accountant who holds a permit under section 4701.10 of the Revised Code; a general or residential real estate appraiser licensed or certified under Chapter 4763 of the Revised Code; or a real estate broker licensed under chapter 4735 of the Revised Code, who is retained by such a person, or, if the property owner is a firm, company, association, partnership, limited

liability company, corporation, or trust, an officer, a salaried employee, a partner, a member, or trustee of that property owner, may file a complaint in support of or objecting to the amount of alleged overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination stated in a previously filed complaint or objecting to the current valuation. Upon the filing of a complaint under this division, the board of education or the property owner shall be made a party to the action.

(C) Each board of revision shall notify any complainant and also the property owner, if the property owner's address is known, when a complaint is filed by one other than the property owner, by certified mail, not less than ten days prior to the hearing, of the time and place, the same will be heard. The board of revision shall hear and render its decision on a complaint within ninety days after the filing thereof with the board, except that if a complaint is filed within thirty days after receiving notice from the auditor as provided in division (B) of this section, the board shall hear and render its decision within ninety days after such filing.

(D) The determination of any such complaint shall relate back to the date when the lien for taxes or recoupment charges for the current year attached or the date as of which liability for such year was determined. Liability for taxes and recoupment charges for such year and each succeeding year until the complaint is finally determined and for any penalty and interest for nonpayment thereof within the time required by law shall be based upon the determination, valuation, or assessment as finally determined. Each complaint shall state the amount of overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect classification or determination upon which the complaint is based. The treasurer shall accept any amount tendered as taxes or recoupment charge upon property concerning which a complaint is then pending, computed upon the claimed valuation as set forth in the complaint. If a complaint filed under this section for the current year is not determined by the board within the time prescribed for such determination, the complaint and any proceedings in relation thereto shall be continued by the board as a valid complaint for any ensuing year until such complaint is finally determined by the board or upon any appeal from a decision of the board. In such case, the original complaint shall continue in effect without further filing by the original taxpayer, the original taxpayer's assignee, or any other person or entity authorized to file a complaint under this section.

(E) If a taxpayer files a complaint as to the classification, valuation, assessment, or any determination affecting the taxpayer's own property and tenders less than the full amount of taxes or recoupment charges as finally determined, an interest charge shall accrue as follows:

(1) If the amount finally determined is less than the amount billed but more than the amount ten-

dered, the taxpayer shall pay interest at the rate per annum prescribed by section 5703.47 of the Revised Code, computed from the date that the taxes were due on the difference between the amount finally determined and the amount tendered. This interest charge shall be in lieu of any penalty or interest charge under section 323.121 of the Revised Code unless the taxpayer failed to file a complaint and tender an amount as taxes or recoupment charges within the time required by this section, in which case section 323.121 of the Revised Code applies.

(2) If the amount of taxes finally determined is equal to or greater than the amount billed and more than the amount tendered, the taxpayer shall pay interest at the rate prescribed by section 5703.47 of the Revised Code from the date the taxes were due on the difference between the amount finally determined and the amount tendered, such interest to be in lieu of any interest charge but in addition to any penalty prescribed by section 323.121 of the Revised Code.

(F) Upon request of a complainant, the tax commissioner shall determine the common level of assessment of real property in the county for the year stated in the request that is not valued under section 5713.31 of the Revised Code, which common level of assessment shall be expressed as a percentage of true value and the common level of assessment of lands valued under such section, which common level of assessment shall also be expressed as a percentage of the current agricultural use value of such lands. Such determination shall be made on the basis of the most recent available sales ratio studies of the commissioner and such other factual data as the commissioner deems pertinent.

(G) A complainant shall provide to the board of revision all information or evidence within the complainant's knowledge or possession that affects the real property that is the subject of the complaint. A complainant who fails to provide such information or evidence is precluded from introducing it on appeal to the board of tax appeals or the court of common pleas, except that the board of tax appeals or court may admit and consider the evidence if the complainant shows good cause for the complainant's failure to provide the information or evidence to the board of revision.

(H) In case of the pendency of any proceeding in court based upon an alleged excessive, discriminatory, or illegal valuation or incorrect classification or determination, the taxpayer may tender to the treasurer an amount as taxes upon property computed upon the claimed valuation as set forth in the complaint to the court. The treasurer may accept the tender. If the tender is not accepted, no penalty shall be assessed because of the nonpayment of the full taxes assessed.

(As amended by S.B. 109, Laws 1957; S.B. 370, Laws 1959; H.B. 1, Laws 1961; H.B. 337, Laws 1965; S.B. 428 and H.B. 931, Laws 1971; S.B. 423,

Laws, 1974; H.B. 920, Laws, 1976; H.B. 1, Laws 1977; H.B. 648, Laws 1978; H.B.'s 736 and 1238, Laws 1980; S.B. 6, Laws 1981; H.B. 379, Laws 1982; H.B. 260, Laws 1983; H.B. 379, Laws 1984; H.B. 603, Laws 1988; H.B. 694, Laws 1998, effective December 21, 1998, applicable to any complaint that was timely filed under either of those sections (5715.13 or 5715.19) respecting valuations for tax year 1994, 1995, 1996, or 1997, and to complaints filed for tax years 1998 and thereafter; H.B. 390, Laws 2002, effective March 4, 2002.)

§ 134-140

Sec. 5715.20. Certification of action; time for appeal. Tax commissioner may request decisions.—(A) Whenever a county board of revision renders a decision on a complaint filed under section 5715.19 of the Revised Code, it shall certify its action by certified mail to the person in whose name the property is listed or sought to be listed and to the complainant if the complainant is not the person in whose name the property is listed or sought to be listed. A person's time to file an appeal under section 5717.01 of the Revised Code commences with the mailing of notice of the decision to that person as provided in this section. The tax commissioner's time to file an appeal under section 5717.01 of the Revised Code commences with the last mailing to a person required to be mailed notice of the decision as provided in this division.

(B) The tax commissioner may order the county auditor to send to the commissioner the decisions of the board of revision rendered on complaints filed under section 5715.19 of the Revised Code in the manner and for the time period that the commissioner prescribes. Nothing in this division extends the commissioner's time to file an appeal under section 5717.01 of the Revised Code.

(As amended by (H.B. 675), Laws 2002, effective March 14, 2003.)

§ 134-160

Sec. 5715.21. Payment of tax shall not abate complaint or appeal.—Payment of the whole or any part of any real property tax or assessment for any year or any recoupment charge as to which a complaint or appeal is pending shall not abate the complaint or appeal or in any way affect the hearing and determination thereof.

(As amended by S.B. 423, Laws 1974, effective July 26, 1974.)

§ 134-180

Sec. 5715.22. Credit and repayment of overpaid taxes.—If upon consideration of any complaint against the valuation or assessment of real property filed under section 5715.19 of the Revised Code, or any appeal from the determination on such complaint, it is found that the amount of taxes, assessments, or recoupment charges paid for the year to which the complaint relates was in excess of the

amount due, then, whether or not the payment of said taxes, assessments, or charges was made under protest or duress, the county auditor shall, within thirty days after the certification to him of the final action upon such complaint or appeal, credit the amount of such overpayment upon the amount of any taxes, assessments, or charges then due from the person having made such overpayment, and at the next or any succeeding settlement the amount of any such credit shall be deducted from the amounts of any taxes, assessments, or charges distributable to the county or any taxing unit therein which has received the benefit of the taxes, assessments, or charges previously overpaid, in proportion to the benefits previously received. If after such credit has been made, there remains any balance of such overpayment, or if there are no taxes, assessments, or charges due from such person, upon application of the person overpaying such taxes the auditor shall forthwith draw a warrant on the county treasurer in favor of the person who has made such overpayment for the amount of such balance. The treasurer shall pay such warrant from the general revenue fund of the county. If there is insufficient money in said general revenue fund to make such payment, the treasurer shall pay such warrant out of any undivided tax funds thereafter received by him for distribution to any county or any taxing unit therein which has received the benefit of the taxes, assessments, or charges overpaid, in proportion to the benefits previously received, and the amount paid from the undivided tax funds shall be deducted from the money otherwise distributable to such county or other taxing unit of the county at the next or any succeeding settlement. At the next or any succeeding settlement after the refunding of such taxes, assessments, or charges, the treasurer shall reimburse the general revenue fund of the county for any payment made from such fund by deducting the amount of such payment from the money otherwise distributable to the county or other taxing unit in the county which has received the benefit of the taxes, assessments, or charges overpaid, in proportion to the benefits previously received.

(As amended by S.B. 423, Laws 1974, effective July 26, 1974.)

APPEALS TO BOARD OF TAX APPEALS

§ 134-200

Sec. 5715.23. Abstract of real property transmitted to tax commissioner.—Annually, immediately after the county board of revision has acted upon the assessments for the current year as required under section 5715.16 of the Revised Code and the county auditor has given notice by advertisement in two newspapers that the valuations have been revised and are open for public inspection as provided in section 5715.17 of the Revised Code, each auditor shall make out and transmit to the tax commissioner an abstract of the real property of each taxing district in his county, in which he shall set forth the aggregate amount and valuation of

notice by affidavit that plaintiff has recommenced the action in the out-of-state forum within sixty days after the effective date of the order staying the original action. If the plaintiff fails to recommence the action in the out-of-state forum within the sixty day period, the court shall dismiss the action without prejudice. If all defendants do not agree to or comply with the conditions, the court shall hear the action.

If the court determines that a proper forum does not exist in another jurisdiction, it shall hear the action.

(E) Venue: multiple defendants and multiple claims for relief

In any action, brought by one or more plaintiffs against one or more defendants involving one or more claims for relief, the forum shall be deemed a proper forum, and venue therein shall be proper, if the venue is proper as to any one party other than a nominal party, or as to any one claim for relief.

Neither the dismissal of any claim nor of any party except an indispensable party shall affect the jurisdiction of the court over the remaining parties.

(F) Venue: notice of pending litigation; transfer of judgments

(1) When an action affecting the title to or possession of real property or tangible personal property is commenced in a county other than the county in which all of the real property or tangible personal property is situated, the plaintiff must cause a certified copy of the complaint to be filed with the clerk of the court of common pleas in each county or additional county in which the real property or tangible personal property affected by the action is situated. If the plaintiff fails to file such certified copy of the complaint, third persons will not be charged with notice of the pendency of the action.

To the extent authorized by the laws of the United States, this subsection also applies to actions, other than proceedings in bankruptcy, affecting title to or possession of real property in this state commenced in a United States District Court whenever such real property is situated wholly or partly in a county other than the county in which the permanent records of such court are kept.

(2) After final judgment, or upon dismissal of the action, the clerk of the court that issued the judgment shall transmit a certified copy of the judgment or dismissal to the clerk of the court of common pleas in each county or additional county in which real or tangible personal property affected by the action is situated.

(3) When the clerk has transmitted a certified copy of the judgment to another county in accordance with subsection (2) above, and such judgment is later appealed, vacated or modified, the appellant or the party at whose instance the judgment was vacated or modified must cause a certified copy of the notice of appeal or order of vacation or modification to be filed with the clerk of the court of common pleas of each county or additional county in which the real property or tangible personal property is situated. Unless a certified copy of the notice of appeal or order of vacation or modification is so filed, third persons will not be charged with notice of the appeal, vacation or modification.

(4) The clerk of the court receiving a certified copy filed or transmitted in accordance with the provisions of this subdivision shall number, index, docket and file it in the records of the receiving court. He shall index the first such certified copy he receives in connection with a particular action in the indices to the records of actions commenced in his own court, but he may number, docket and file it in either the regular records of his own court or in a separate set of records. When he subsequently receives a certified copy in connection with that same action, he need not index it, but he shall docket and file it in the same set of records under the same case number he previously assigned to the action.

(5) When an action affecting title to registered land commenced in a county other than the county in which all such land is situated, any certified copy required or permitted by this subdivision shall be filed with or transmitted to the county recorder, rather than the clerk of the court of common pleas, of each county or additional county in which such land situated.

(G) Venue: collateral attack; appeal

The provisions of this rule relate to venue and are not jurisdictional. No order, judgment, or decree shall be void or subject to collateral attack solely on the ground that there was improper venue; however, nothing here shall affect the right to appeal an error of court concerning venue.

HISTORY: Adopted eff. 7-1-70; amended eff. 7-1-71, 7-1-80, 7-1-91

Civ R 4 Process: summons

(A) Summons: issuance

Upon the filing of the complaint the clerk shall forthwith issue a summons for service upon each defendant listed in the caption. Upon request of the plaintiff separate or additional summons shall issue at any time against any defendant.

(B) Summons: form; copy of complaint

The summons shall be signed by the clerk, contain the name and address of the court and the names and addresses of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the times within which these rules or any statutory provision require the defendant to appear and defend, and shall notify him that in case of his failure to do so, judgment by default will be rendered against him for the relief demanded in the complaint. Where there are multiple plaintiffs or multiple defendants, or both, the summons may contain, in lieu of the names and addresses of all parties, the name of the first party on each side and the name and address of the party to be served.

A copy of the complaint shall be attached to each summons. The plaintiff shall furnish the clerk with sufficient copies.

(C) Summons: plaintiff and defendant defined

For the purpose of issuance and service of summons "plaintiff" shall include any party seeking the issuance and service of summons, and "defendant" shall include any party upon whom service of summons is sought.

(D) Waiver of service of summons

Service of summons may be waived in writing by any person entitled thereto under Rule 4.2 who is at least eighteen years of age and not under disability.

(E) Summons: time limit for service

If a service of the summons and complaint is not made upon a defendant within six months after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion. This division shall not apply to out-of-state service pursuant to Rule 4.3 or to service in a foreign country pursuant to Rule 4.5.

HISTORY: Adopted eff. 7-1-70; amended eff. 7-1-71, 7-1-73, 7-1-75, 7-1-84

HISTORICAL AND STATUTORY NOTES

Note: Civ R. 4 contains provisions analogous to former 3105.05, repealed by 1970 H 1201, eff. 7-1-71.

Civ R. 4.1 Process: methods of service

All methods of service within this state, except service by publication as provided in Rule 4.4(A) are described herein. Methods of out-of-state service and for service in a foreign country are described in Rule 4.3 and Rule 4.5.

(1) Service by certified mail

Evidenced by return receipt signed by any person, service of any process shall be by certified mail unless otherwise permitted by these rules. The clerk shall place a copy of the process and complaint or other document to be served in an envelope. He shall address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished to the clerk with instructions to forward. He shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered.

The clerk shall forthwith enter the fact of mailing on the appearance docket and make a similar entry when the return receipt is received by him. If the envelope is returned with an endorsement showing failure of delivery, the clerk shall forthwith notify, by mail, the attorney of record or if there is no attorney of record, the party at whose instance process was issued. He shall enter the fact of notification on the appearance docket. The clerk shall file the return receipt or returned envelope in the records of the action.

All postage shall be charged to costs. If the parties to be served by certified mail are numerous and the clerk determines there is insufficient security for costs, he may require the party requesting service to advance an amount estimated by the clerk to be sufficient to pay the postage.

(2) Personal service

When the plaintiff files a written request with the clerk for personal service, service of process shall be made by that method.

When process issued from the supreme court, a court of appeals, a court of common pleas or a county court is to be served personally, the clerk of the court shall deliver the process and sufficient copies of the process and complaint, or other document to be served, to the sheriff of the county in which the party to be served resides or may be found. When process issues from the municipal court, delivery shall be to the bailiff of the court for service on all defendants who reside or may be found within the county or counties in which that court has territorial jurisdiction and to the sheriff of any other county in this state for service upon a defendant who resides in or may be found in that other county. In the alternative, process issuing from any of these courts may be delivered by the clerk to any person not less than eighteen years of age, who is not a party and who has been designated by order of the court to make service of process. Such person serving process shall locate the person to be served and shall tender a copy of the process and accompanying documents to the person to be served. When the copy of the process has been served, the person serving process shall endorse that fact on the process and return it to the clerk who shall make the appropriate entry on the appearance docket.

When the person serving process is unable to serve a copy of the process within twenty-eight days, he shall endorse that fact and the reasons therefor on the process and return the

process and copies to the clerk who shall make the appropriate entry on the appearance docket. In the event of failure of service, the clerk shall follow the notification procedure set forth in subsection (1) of this rule. Failure to make service within the twenty-eight day period and failure to make proof of service do not affect the validity of the service.

(3) Residence service

When the plaintiff files a written request with the clerk for residence service, service of process shall be made by that method.

Residence service shall be effected by leaving a copy of the process and the complaint, or other document to be served, at the usual place of residence of the person to be served with some person of suitable age and discretion then residing therein. The clerk of the court shall issue the process, and the process server shall return it, in the same manner as prescribed in subsection (2) of this rule. When the person serving process is unable to serve a copy of the process within twenty-eight days, he shall endorse that fact and the reasons therefor on the process and return the process and copies to the clerk who shall make the appropriate entry on the appearance docket. In the event of failure of service, the clerk shall follow the notification procedure set forth in subsection (1) of this rule. Failure to make service within the twenty-eight day period and failure to make proof of service do not affect the validity of service.

HISTORY: Adopted eff. 7-1-70; amended eff. 7-1-71, 7-1-80

Civ R. 4.2 Process: who may be served

Service of process, except service by publication as provided in Civ.R. 4.4(A), pursuant to Civ.R. 4 through Civ.R. 4.6 shall be made as follows:

(1) Upon an individual, other than a person under sixteen years of age or an incompetent person, by serving the individual;

(2) Upon a person under sixteen years of age by serving either his guardian or any one of the following persons with whom he lives or resides: the father, mother, or the individual having the care of such person; or by serving such person if he neither has a guardian nor lives or resides with a parent or a person having his care;

(3) Upon an incompetent person by serving either the incompetent's guardian or the person designated in subdivision (5) of this rule, but if no guardian has been appointed and the incompetent is not under confinement or commitment, by serving the incompetent;

(4) Upon an individual, confined to a penal institution of this state or of a subdivision of this state, by serving the individual, except that when the individual to be served is a person under sixteen years of age, the provisions of subdivision (2) of this rule shall be applicable;

(5) Upon an incompetent person who is confined in any institution for the mentally ill or mentally deficient or committed by order of court to the custody of some other institution or person by serving the superintendent or similar official of the institution to which the incompetent is confined or committed or the person to whose custody the incompetent is committed;

(6) Upon a corporation either domestic or foreign: by serving the agent authorized by appointment or by law to receive service of process; or by serving the corporation by certified mail at any of its usual places of business; or by serving an officer or a managing or general agent of the corporation;

(7) Upon a partnership, a limited partnership, or a limited partnership association by serving the entity by certified mail at any of its usual places of business or by serving a partner, limited partner, or manager or member;

(8) Upon an unincorporated association by serving it in its entity name by certified mail at any of its usual places of business or by serving an officer of the unincorporated association;

(9) Upon a professional association by serving the association in its corporate name by certified mail at the place where the corporate offices are maintained or by serving a shareholder;

(10) Upon this state or any one of its departments, offices and institutions as defined in Section 121.01(C), Revised Code, by serving the officer responsible for the administration of the department, office or institution or by serving the attorney general of this state;

(11) Upon a county or upon any of its offices, agencies, districts, departments, institutions or administrative units, by serving the officer responsible for the administration of the office, agency, district, department, institution or unit or by serving the prosecuting attorney of the county;

(12) Upon a township by serving one or more of the township trustees or the township clerk or by serving the prosecuting attorney of the county in which the township is located, unless the township is organized under Chapter 504 of the Revised Code, in which case service may be made upon the township law director;

(13) Upon a municipal corporation or upon any of its offices, departments, agencies, authorities, institutions or administrative units by serving the officer responsible for the administration of the office, department, agency, authority, institution or unit or by serving the city solicitor or comparable legal officer;

(14) Upon any governmental entity not mentioned above by serving the person, officer, group or body responsible for the administration of that entity or by serving the appropriate legal officer, if any, representing the entity. Service upon any person who is a member of the "group" or "body" responsible for the administration of the entity shall be sufficient.

HISTORY: Adopted eff. 7-1-70; amended eff. 7-1-71, 7-1-96

HISTORICAL AND STATUTORY NOTES

Note: The 7-1-96 amendment substituted "Civ.R." for "Rule" throughout the first paragraph; and inserted ", unless the township is organized under chapter 504 of the Revised Code, in which case service may be made upon the township law director" in division (12).

Civ R 4.3 Process: out-of-state service

(A) When service permitted

Service of process may be made outside of this state, as provided in this rule, in any action in this state, upon a person who, at the time of service of process, is a nonresident of this state or is a resident of this state who is absent from this state. "Person" includes an individual, his executor, administrator, or other personal representative, or a corporation, partnership, association, or any other legal or commercial entity, who, acting directly or by an agent, has caused an event to occur out of which the claim that is the subject of the complaint arose, from the person's:

- (1) Transacting any business in this state;
- (2) Contracting to supply services or goods in this state;
- (3) Causing tortious injury by an act or omission in this state, including, but not limited to, actions arising out of the

ownership, operation, or use of a motor vehicle or aircraft in this state;

(4) Causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

(5) Causing injury in this state to any person by breach of warranty expressly or impliedly made in the sale of goods outside this state when he might reasonably have expected the person to use, consume, or be affected by the goods in this state, provided that he also regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

(6) Having an interest in, using, or possessing real property in this state;

(7) Contracting to insure any person, property, or risk located within this state at the time of contracting;

(8) Living in the marital relationship within this state notwithstanding subsequent departure from this state, as to all obligations arising for spousal support, custody, child support, or property settlement, if the other party to the marital relationship continues to reside in this state;

(9) Causing tortious injury in this state to any person by an act outside this state committed with the purpose of injuring persons, when he might reasonably have expected that some person would be injured by the act in this state;

(10) Causing tortious injury to any person by a criminal act, any element of which takes place in this state, that he commits or in the commission of which he is guilty of complicity.

(B) Methods of service

(1) *Service by certified mail.* Evidenced by return receipt signed by any person, service of any process shall be by certified mail unless otherwise permitted by these rules. The clerk shall place a copy of the process and complaint or other document to be served in an envelope. He shall address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished to the clerk with instructions to forward. He shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered.

The clerk shall forthwith enter the fact of mailing on the appearance docket and make a similar entry when the return receipt is received by him. If the envelope is returned with an endorsement showing failure of delivery, the clerk shall forthwith notify, by mail, the attorney of record, or if there is no attorney of record, the party at whose instance process was issued. He shall enter the fact of notification on the appearance docket. The clerk shall file the return receipt or returned envelope in the records of the action. If the envelope is returned with an endorsement showing failure of delivery, service is complete when the attorney or serving party, after notification by the clerk, files with the clerk an affidavit setting forth facts indicating the reasonable diligence utilized to ascertain the whereabouts of the party to be served.

All postage shall be charged to costs. If the parties to be served by certified mail are numerous and the clerk determines there is insufficient security for costs, he may require the party requesting service to advance an amount estimated by the clerk to be sufficient to pay the postage.

(2) *Personal service.* When ordered by the court a "person" as defined in subdivision (A) of this rule may be personally served with a copy of the process and complaint or other document to be served. Service herein may be made by any

person not less than eighteen years of age who is not a party and who has been designated by order of the court. On request, the clerk shall deliver the summons to the plaintiff for transmission to the person who will make the service.

Proof of service may be made as prescribed by Rule 4.1(2) or by order of the court.

HISTORY: Adopted eff. 7-1-70; amended eff. 7-1-71, 7-1-80, 7-1-88, 7-1-91

Civ R 4.4 Process: service by publication

(A) Residence unknown

(1) Except in an action governed by division (A)(2) of this rule, if the residence of a defendant is unknown, service shall be made by publication in actions where such service is authorized by law. Before service by publication can be made, an affidavit of a party or his counsel shall be filed with the court. The affidavit shall aver that service of summons cannot be made because the residence of the defendant is unknown to the affiant, all of the efforts made on behalf of the party to ascertain the residence of the defendant, and that the residence of the defendant cannot be ascertained with reasonable diligence.

Upon the filing of the affidavit, the clerk shall cause service of notice to be made by publication in a newspaper of general circulation in the county in which the complaint is filed. If no newspaper is published in that county, then publication shall be in a newspaper published in an adjoining county. The publication shall contain the name and address of the court, the case number, the name of the first party on each side, and the name and last known address, if any, of the person or persons whose residence is unknown. The publication also shall contain a summary statement of the object of the complaint and demand for relief, and shall notify the person to be served that he or she is required to answer within twenty-eight days after the publication. The publication shall be published at least once a week for six successive weeks unless publication for a lesser number of weeks is specifically provided by law. Service shall be complete at the date of the last publication.

After the last publication, the publisher or its agent shall file with the court an affidavit showing the fact of publication together with a copy of the notice of publication. The affidavit and copy of the notice shall constitute proof of service.

(2) In a divorce, annulment, or legal separation action, if the plaintiff is proceeding in forma pauperis and if the residence of the defendant is unknown, service by publication shall be made by posting and mail. Before service by posting and mail can be made, an affidavit of a party or the party's counsel shall be filed with the court. The affidavit shall contain the same averments required by division (A)(1) of this rule and, in addition, shall set forth the defendant's last known address.

Upon the filing of the affidavit, the clerk shall cause service of notice to be made by posting in a conspicuous place in the courthouse or courthouses in which the general and domestic relations divisions of the court of common pleas for the county are located and in two additional public places in the county that have been designated by local rule for the posting of notices pursuant to this rule. The notice shall contain the same information required by division (A)(1) of this rule to be contained in a newspaper publication. The notice shall be posted in the required locations for six successive weeks.

The clerk shall also cause the complaint and summons to be mailed by ordinary mail, address correction requested, to

the defendant's last known address. The clerk shall obtain a certificate of mailing from the United States Postal Service. If the clerk is notified of a corrected or forwarding address of the defendant within the six-week period that notice is posted pursuant to division (A)(2) of this rule, the clerk shall cause the complaint and summons to be mailed to the corrected or forwarding address. The clerk shall note the name, address, and date of each mailing in the docket.

After the last week of posting, the clerk shall note on the docket where and when notice was posted. Service shall be complete upon the entry of posting.

(B) Residence known

If the residence of a defendant is known, and the action is one in which service by publication is authorized by law, service of process shall be effected by a method other than by publication as provided by:

- (1) Rule 4.1, if the defendant is a resident of this state,
- (2) Rule 4.3(B) if defendant is not a resident of this state, or
- (3) Rule 4.5, in the alternative, if service on defendant is to be effected in a foreign country.

If service of process cannot be effected under the provisions of this subdivision or Rule 4.6(C) or Rule 4.6(D), service of process shall proceed by publication.

HISTORY: Adopted eff. 7-1-70; amended eff. 7-1-71, 7-1-91

Civ R 4.5 Process: alternative provisions for service in a foreign country

(A) Manner

When Rule 4.3 or Rule 4.4 or both allow service upon a person outside this state and service is to be effected in a foreign country, service of the summons and complaint may also be made:

- (1) In the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction when service is calculated to give actual notice;
- (2) As directed by the foreign authority in response to a letter rogatory when service is calculated to give actual notice;
- (3) Upon an individual by delivery to him personally;
- (4) Upon a corporation or partnership or association by delivery to an officer, a managing or general agent;
- (5) By any form of mail requiring a signed receipt, when the clerk of the court addresses and dispatches this mail to the party to be served;
- (6) As directed by order of the court.

Service under subdivision (3) or (6) above may be made by any person not less than eighteen years of age who is not a party and who has been designated by order of the court, or by the foreign court. On request the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service.

(B) Return

Proof of service may be made as prescribed by Rule 4.1(2), or by the law of the foreign country, or by order of the court. When mail service is made pursuant to subdivision (A)(5) of this rule, proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

HISTORY: Adopted eff. 7-1-70

HISTORICAL AND STATUTORY NOTES

Note: Civ R 4.5 contains provisions analogous to former 3105.07, repealed by 1970 H 1201, eff. 7-1-71.

Civ R 4.6 Process: limits; amendment; service refused; service unclaimed

(A) Limits of effective service

All process may be served anywhere in this state and, when authorized by law or these rules, may be served outside this state.

(B) Amendment

The court within its discretion and upon such terms as are just, may at any time allow the amendment of any process or proof of service thereof, unless the amendment would cause material prejudice to the substantial rights of the party against whom the process was issued.

(C) Service refused

If service of process is refused, and the certified mail envelope is returned with an endorsement showing such refusal, or the return of the person serving process states that service of process has been refused, the clerk shall forthwith notify, by mail, the attorney of record or if there is no attorney of record, the party at whose instance process was issued. If the attorney, or serving party, after notification by the clerk, files with the clerk a written request for ordinary mail service, the clerk shall send by ordinary mail a copy of the summons and complaint or other document to be served to the defendant at the address set forth in the caption, or at the address set forth in written instructions furnished to the clerk. The mailing shall be evidenced by a certificate of mailing which shall be completed and filed by the clerk. Answer day shall be twenty-eight days after the date of mailing as evidenced by the certificate of mailing. The clerk shall endorse this answer date upon the summons which is sent by ordinary mail. Service shall be deemed complete when the fact of mailing is entered of record. Failure to claim certified mail service is not refusal of service within the meaning of this subdivision.

(D) Service unclaimed

If a certified mail envelope is returned with an endorsement showing that the envelope was unclaimed, the clerk shall forthwith notify, by mail, the attorney of record or if there is no attorney of record, the party at whose instance process was issued. If the attorney, or serving party, after notification by the clerk, files with the clerk a written request for ordinary mail service, the clerk shall send by ordinary mail a copy of the summons and complaint or other document to be served to the defendant at the address set forth in the caption, or at the address set forth in written instructions furnished to the clerk. The mailing shall be evidenced by a certificate of mailing which shall be completed and filed by the clerk. Answer day shall be twenty-eight days after the date of mailing as evidenced by the certificate of mailing. The clerk shall endorse this answer date upon the summons which is sent by ordinary mail. Service shall be deemed complete when the fact of mailing is entered of record, provided that the ordinary mail envelope is not returned by the postal authorities with an endorsement showing failure of delivery. If the ordinary mail envelope is returned undelivered, the clerk shall forthwith notify the attorney, or serving party, by mail.

(E) Duty of attorney of record or serving party

The attorney of record or the serving party shall be responsible for determining if service has been made and shall timely file written instructions with the clerk regarding completion of service notwithstanding the provisions in Rules 4.1 through 4.6

which instruct a clerk to notify the attorney of record or the serving party of failure of service of process.

HISTORY: Adopted eff. 7-1-70; amended eff. 7-1-71, 7-1-78

Civ R 5 Service and filing of pleadings and other papers subsequent to the original complaint

(A) Service: when required

Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties. Service is not required on parties in default for failure to appear except that pleadings asserting new or additional claims for relief or for additional damages against them shall be served upon them in the manner provided for service of summons in Civ. R. 4 through Civ. R. 4.6.

(B) Service: how made

Whenever under these rules service is required or permitted to be made upon a party who is represented by an attorney of record in the proceedings, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or party shall be made by delivering a copy to the person to be served, transmitting it to the office of the person to be served by facsimile transmission, mailing it to the last known address of the person to be served or, if no address is known, leaving it with the clerk of the court. The served copy shall be accompanied by a completed copy of the proof of service required by division (D) of this rule. "Delivering a copy" within this rule means: handing it to the attorney or party; leaving it at the office of the person to be served with a clerk or other person in charge; if there is no one in charge, leaving it in a conspicuous place in the office; or, if the office is closed or the person to be served has no office, leaving it at the dwelling house or usual place of abode of the person to be served with some person of suitable age and discretion then residing in the dwelling house or usual place of abode. Service by mail is complete upon mailing. Service by facsimile transmission is complete upon transmission.

(C) Service: numerous defendants

In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(D) Filing

All papers, after the complaint, required to be served upon a party shall be filed with the court within three days after service, but depositions upon oral examination, interrogatories, requests for documents, requests for admission, and answers and responses thereto shall not be filed unless on order of the court or for use as evidence or for consideration of a motion in the proceeding. Papers filed with the court shall not be considered until proof of service is endorsed thereon or