

OTS 9.1

Prepared by the Real Property Law Section of the Ohio State Bar Association

9.1 OHIO RULES OF CIVIL PROCEDURE- RETURN RECEIPT UNDER RULE 4

Problem A:

Is it a requirement that the return receipt be signed by the addressee himself?

Standard A:

No.

Comment A:

Certified mail service as provided under the Ohio Rules of Civil Procedure does *not* require "actual service" upon the defendant, but is effective upon a "certified delivery." Due process is effectively met by the standard delineated in *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, and *In re Foreclosure of Liens*, 62 Ohio St. 2d 333. The standard provides that for certified mail service to be valid, such service "...must be *reasonably calculated under all the circumstances*, to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objection." (Emphasis added.) *Mitchell v. Mitchell*, 64 Ohio St. 2d 49, 51, 413 N.E.2d 1182 51, 18 003d 254 (1980).

(Standard A originally effective April 29, 1971. Amended November 11, 1972, and further amended effective November 7, 1981)

Problem B:

When the return receipt is signed by someone other than the addressee, is it a requirement that the addressee's name appear on the return receipt as the post office provides?

Standard B:

No.

Comment B:

However, in multiple-defendant cases each return receipt should show data sufficient to enable the examiner to identify the addressee to whom the receipt pertains. If the name of the addressee does not appear on the receipt or is illegible, the examiner should attempt to identify the

addressee by comparing the certified number, the address where delivered, the postmark or other data shown on the receipt with the clerk's records concerning the mailing and with the other return receipts in the file.

"Certified mail service ... is valid where the envelope containing the documents to be served is delivered to a person other than the defendant at the defendant's address." *Mitchell v. Mitchell*, 64 Ohio St. 2d 49, 51, 413 N.E.2d 1182, 18 003d 254 (1980).

Further, both Rule 4.1 and 4.3 of the Ohio Rules of Civil Procedure provide that once the clerk has properly addressed the envelope to the person to be served at their last known address, affixed postage and sealed the envelope as certified mail, return receipt requested, the clerk must instruct the delivering postal employee to show to whom delivered, date of delivery, and address where delivered.

(Standard B originally effective April 29, 1971. Amended November 11, 1972, and further amended effective November 7, 1981.)

Problem C:

Is it a requirement that signatures on the return receipt be legible?

Standard C:

No.

Comment C:

The illegibility of a signature should be considered objectionable only when the identity of the signatory would be especially significant (as in Title Standard 9.4 for example) and such identity is not otherwise ascertainable from the record.

Problem D:

Is it a requirement that the return receipt bear the certified number?

Standard D:

No.

Comment D:

But see Comment B, above.

Problem E:

Is it a requirement that the return receipt show: (1) to whom delivered, (2) the date of delivery, and (3) the address where delivered, as the post office form provides?

Standard E:

No.

Comment E:

The receipt should ordinarily be considered sufficient if it appears to show that delivery was made by the postal authorities either to the addressee or to another for the addressee, notwithstanding the fact that it is incompletely or improperly filled out. See Comment B, above.

(Standards C, D, and E originally effective April 29, 1971. Amended effective November 11, 1972)

Problem F:

Is it a requirement that the return receipt be a part of the file?

Standard F:

Yes.

Comment F:

If the receipt is missing from the file, the examiner, in an appropriate case, may wish to rely upon the docket entry made by the clerk in accordance with Rule 4.1(1) or Rule 4.3 (B)(1) with respect to the fact of notification.

Rules 4.1(1) and 4.3(B)(1) of the Ohio Rules specifically provide that "the clerk shall file the return receipt or returned envelope in this action."

(Standard F originally effective April 29, 1971. Amended November 11, 1972, and further amended effective November 7, 1981)

Problem G:

When the return receipt is not signed by the addressee himself, is it necessary that inquiry be made concerning the identity of the recipient, his relationship to the addressee or his connection with the place of delivery?

Standard G:

No, unless there are other factors which would be sufficient to create a reasonable doubt in the mind of the examiner concerning the propriety of the delivery.

Comment G:

The fact that the record fails to reveal any apparent relationship between the recipient and the addressee or the place of delivery is not of itself sufficient ground for questioning the propriety of the delivery. In the absence of other circumstances which would create a reasonable doubt in the mind of the examiner, it should ordinarily be presumed that delivery was made by the postal authorities to an appropriate person at a proper address. If the circumstances as a whole are sufficient to create such a doubt, satisfactory proof of ultimate delivery to the addressee himself should be required. If furnished, such proof should be made a matter of record. (See Comment A, above.)

(Amended effective November 11, 1972; originally effective April 29, 1971)