

# AVON LAKE MUNICIPAL COURT LOCAL RULES OF COURT

## GENERAL PROVISIONS

### **Rule 1. Scope and effective date**

(A) These Local Rules of Court are adopted for the governance of the practice and procedures in the Avon Lake Municipal Court until otherwise provided, pursuant to Article IV, Section 5(B) of the Ohio Constitution, Rule 83 of the Ohio Rules of Civil Procedure and Rule 5 of the Rules of Superintendence for the Courts of Ohio and are intended to supplement the Ohio Rules of Procedure and the Ohio Rules of Superintendence. Whenever any Local Rule is inconsistent with any rule promulgated by the Ohio Supreme Court the rule promulgated by the Ohio Supreme Court shall govern.

(B) The purpose of these rules is to facilitate the expeditious disposition of cases that come before the court.

(C) These rules are effective as of February 1, 2016, and shall supersede and replace any local rules previously entered by this court.

### **Rule 2. Hours of regular operation**

The offices of the court shall be open for the transaction of business between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday and at such other times as the court may from time to time determine is necessary.

### **Rule 3. File management**

(A) Court files may be examined at the office of the Clerk of Court under the supervision of the clerk or deputy clerk. Upon request, copies of documents will be provided at a cost as may be determined by the Clerk as permitted by law.

(B) No document may be removed from a court file.

(C) No file may be removed from the clerk's office without the written consent of the judge or clerk. Any person seeking to remove a file shall set forth in writing the case name and number, the reason for removal and the destination where the file is being taken. Files must be promptly returned to the clerk's office and may not be removed from the court building.

(D) The Clerk shall not provide a copy of any document, except as required by law and except as may be necessary for the prosecution or defense of a case, without redacting the following information: (i) Social Security Number (ii) Name of any victim or alleged victim (iii) Information regarding any victim including but not limited to the address and telephone number of any victim (iv) Operator's license number.

#### **Rule 4. Costs and filing fees**

The court has adopted a schedule of costs and filing fees in civil and criminal cases and may order amendment of the same from time to time.

#### **Rule 5. Records Retention-Disposition of Case Files**

Section 1901.41 of the Ohio Revised Code and the record retention schedules in Rules 26.01 to 26.05 of the Rules of Superintendence shall be followed. In the event of a conflict between Section 1901.41 and the Superintendence Rules then the provisions of Section 1901.41 shall govern. Case files that have been finally disposed of for at least five years may be destroyed by order of the court pursuant to Section 1901.41.

#### **Rule 6. Facsimile filing**

(A) All pleadings, motions, or other documents other than the original complaint or any other pleading that joins or adds a new party, may be transmitted to the court by facsimile transmission provided that the original of the document is filed with the court within three business days of the receipt of the facsimile. The court may, in its sole discretion, strike a document in the event of failure to timely file the original.

(B) A document filed under this rule must be transmitted directly through the clerk of court's facsimile machine at **(440) 930-4128**. It shall be deemed filed when received and time-stamped by the clerk. Any document received outside of the regular business hours of the court shall be deemed filed as of the next business day.

(C) A document filed with the court by facsimile transmission must be legible when received by the clerk. The clerk may reject any document which is illegible, either in whole or in part, and shall notify the sender of the same as soon as practicable.

(D) A party filing a pleading, motion, or other document by facsimile transmission shall be responsible for the cost of transmission. Further, the party is responsible for payment of all court costs associated with the filing of the document. Such costs shall be paid within three days of the receipt of the document by facsimile transmission. Failure to timely pay the costs will result in the document being stricken from the file.

#### **Rule 7. Appearance and withdrawal of counsel**

(A) All entries of appearance of counsel in an action shall be in writing and shall include the name, mailing address, facsimile, e-mail address and attorney registration number.

(B) Upon the entry of appearance of counsel, all documents filed with the court and entries of the court shall be served upon the designated counsel.

(C) Once counsel has entered an appearance counsel may withdraw from a case only by written leave of court for good cause shown. A copy of the written Motion to Withdraw shall be served upon the client and counsel shall comply with Prof. Cond. Rule 1.16.

(D) All documents filed with the Court by an Attorney shall include the attorney registration number issued by the Supreme Court. Any document that does not include the registration number may be refused by the Clerk for filing or stricken by the Court.

### **Rule 8. Continuances**

(A) All motions for continuances shall be submitted to the court in writing and shall include a brief in support setting forth the reasons requiring the continuance. No continuance shall be granted without reasonable notice or consent of the other party(s) or their counsel.

(B) When a continuance is sought for the reason that counsel is scheduled to appear in another case assigned for hearing on the same date in another court, counsel shall attach a copy of the notice received from the other court. Motions for continuance sought due to a conflict in hearing or trial schedules shall be ruled upon in accordance with Rule 41(B) of the Rules of Superintendence for the Courts of Ohio.

(C) Motions for continuance, when submitted in accordance with the above, will be granted in the discretion of the court for good cause shown. A continuance that has not been ruled on by the date of the hearing shall be considered denied.

### **Rule 9. Recording of proceedings**

(A) A record shall be made of traffic and criminal proceedings and all civil division trials before the court by audio electronic recording device. In the event a party desires recording by stenographic means, such party must arrange for the presence and payment of a court reporter and file a written motion requesting that such individual be named as the official reporter for the hearing.

(B) The court shall maintain exclusive custody and control of the electronic recording of proceedings. The court will maintain all recordings for any period required by law. At the expiration of such period the recordings may be destroyed at the discretion of the court except in the instance of an appeal in which event the subject recording will be retained while the appeal is pending.

(C) A party may obtain a full or partial transcript from a recording by:

1. Arranging for the presence and payment of a court reporter to prepare the same.
2. Purchasing a copy of the recording from the Clerk on a Compact Disk.

### **Rule 10. Reserved for future use**

### **Rule 11. Conditions for recording and/or broadcasting proceedings.**

Recording and broadcasting of proceedings shall be in accordance with Sup R 12.

**Rule 12. Decorum and conduct**

(A) Upon the opening of any court session, all persons in the courtroom shall stand except for those physically unable to do so. All persons in the courtroom shall conduct themselves with decorum and in such manner as to not interfere with the proper administration of the court's business.

(B) All persons appearing before the court shall, to the extent practicable, appear in appropriate dress.

(C) Small children are not permitted in the courtroom while the court is in session without the prior permission of the judge.

(D) No smoking, eating or drinking is permitted in the courtroom except as provided in this Rule. Attorneys and litigants involved in a trial or hearing may have water at the trial table. Witnesses shall be provided water when necessary. Jurors may have water in the jury box. The judge, magistrate and bailiff may have water on the bench.

(E) No person shall loiter or behave in a disorderly manner in the courtroom or in any halls, entryway, or stairways, or otherwise interfere with or obstruct judicial activities or proceedings.

(F) Failure to comply with any aspect of this rule may result in appropriate sanction by the court, including continuance or dismissal of the matter before the court, or a charge for contempt of court.

**Rule 13. Notification of Witnesses**

In the event of the cancellation of any hearing or trial it shall be the responsibility of the parties to notify the witnesses of the cancellation of the trial or hearing. Neither the court nor the clerk's office will notify the witnesses.

## **CRIMINAL/TRAFFIC DIVISION**

### **Rule 14. Appearance of the defendant**

Persons charged with traffic and/or criminal offenses must be present at the initial appearance as well as all subsequent hearings except as set forth herein. In lieu of the initial appearance, and except as otherwise provided in this Rule, an attorney may enter a plea in writing provided the attorney waives the time for speedy trial, and requests that a pretrial be scheduled. A person charged with a traffic offense that may be waived may enter a not guilty plea in writing and request a trial or a pretrial.. Such writing must be filed with the court prior to the date of the initial appearance.

### **Rule 15. Video hearings**

(A) At the court's discretion, hearings on criminal or traffic matters may be held by means of closed circuit video transmission to the court from the correctional facility where the defendant is being held.

(B) Video hearings will be scheduled at times mutually convenient to the court and correctional facility involved.

(C) In the event the defendant personally or through counsel in writing objects to the matter being held by video transmission, the proceedings shall take place in person in the courtroom.

### **Rule 16. Motion practice**

Motion practice shall be governed by Local Rule 17(H)-(L).

### **Rule 17. Case management**

#### ARRAIGNMENTS

(A) **ARRAIGNMENT SCHEDULE:** Arraignments will be held Tuesday, Wednesday, and Thursday at 8:30 A.M. except for those Defendants who are confined, in which case, video arraignments from the jail will be held Tuesday, Wednesday, and Thursday at times mutually convenient to the court and correctional facility. Arraignment sessions shall include initial appearances of all persons charged with felonies, criminal misdemeanors, and/or traffic offenses.

(B) **PLEAS:** At arraignment, the Defendant or his/her counsel may enter one of the following pleas: (1) guilty; (2) no contest; (3) not guilty; or (4) not guilty by reason of insanity. Prior to arraignment, Defendant's counsel may file a written appearance and a plea of not guilty pursuant to Crim. R. 10(B), except for those offenses listed in Local Rule 17(D) below. No plea or appearance will be accepted by telephone.

(C) **CONTINUANCES:** In cases where a continuance is necessary, the arraignment may be continued for no longer than one (1) week, unless the Judge approves a longer period.

(D) MANDATORY APPEARANCES: Unless approved by the Court, all persons, regardless of residence and regardless of whether an attorney has entered an appearance must appear in court for arraignment if cited for the following offenses:

1. Felony offenses
2. Operation of a motor vehicle while under the influence of alcohol or drugs, if the person was previously convicted of this offense within six years.
3. Domestic Violence
4. Probation violation
5. Any other offense where the law requires a Judge to consider information in setting a bond
6. Any offense where the law permits an alleged victim to request a protection order

**Failure to appear when required by this Rule may result in the issuance of an arrest warrant.**

#### PRETRIAL CONFERENCES

(E) All misdemeanor criminal and traffic cases, where the defendant enters a plea of not guilty and waives the right to speedy trial at the initial appearance, may be set for pretrial hearing at the request of the defendant or in the court's discretion. Written notice of the pretrial hearing date shall be provided to the defendant and counsel, if present, prior to leaving court.

(F) Defendant and counsel shall be required to personally attend the pretrial hearing as well as all other hearings unless excused by the Judge in writing. **Failure of the defendant to appear may result in the issuance of an arrest warrant.**

#### DISCOVERY

(G) Discovery shall be in conformity with Crim. R 16 and Local Rule 17. With the exception of felony cases, and unless the court is notified in writing by the Prosecutor prior to the arraignment, counsel for the Defendant shall be provided discovery by the Prosecutor on or before the first pretrial hearing. Discovery shall include:

1. Any written or recorded statement of the defendant or co-defendant or a summary of any such oral statement;
2. Any prior criminal record of the defendant, and in a traffic case, the prior traffic record of the defendant.
3. Documents or tangible objects which may be material to the defense or used at the trial, or which were obtained from or belong to the defendant.
4. Reports of tests or examinations made in connection with the case; accident reports, and in OVI cases, calibration information and alcohol influence reports.
5. A written list of the names and addresses of all known witnesses intended to be called at trial.

6. A written statement of all known evidence favorable to the defendant and material either to guilt or punishment.
7. A copy of the investigating agency's reports and a copy of written witness statements.

Defendant may refuse to accept the discovery set forth in this Rule from the Prosecutor. But in the event the Defendant does not refuse then the Prosecutor may move for disclosure of evidence from the Defendant pursuant to Crim. R. 16. In the event the Defendant refuses discovery as set forth in this Rule the Defendant shall file a statement with the court that the Defendant has refused discovery.

### MOTION PRACTICE

(H) All motions shall be made in conformity with Crim. R 12. All motions shall set forth clearly and specifically the grounds for the Motion and supporting citations (copies of foreign, federal and unreported decisions to be attached). In Motions to Suppress, the items of evidence shall be specified. Any motions filed, which are not in compliance with this Rule, or with the applicable Rules of Criminal procedure, or are untimely filed, may be summarily overruled.

(I) Any motion that is capable of being determined without a hearing may be ruled on without hearing.

(J) All motions not heard or decided prior to trial will be disposed of at the time of trial.

(K) In any case where a party or counsel anticipates that a motion hearing will require more than one hour, it is the responsibility of the party or counsel to notify the court so that adequate time can be scheduled.

(L) A Motion to Suppress shall be filed no later than fourteen days after the first pretrial, unless leave to file is granted by the court.

### TRIALS

(M) In any case where a time waiver has not been signed the case shall be set for Trial or Pretrial at the discretion of the court. Cases that are not disposed of at the conclusion of a Pretrial conference will be set for trial unless specifically indicated otherwise by the court.

(N) All trials will be scheduled before the court unless the defendant files a timely written jury demand or is otherwise afforded a right to trial by jury pursuant to law.

### **Rule 18. Sentencing**

(A) Upon a finding of guilty, sentencing shall occur immediately unless otherwise permitted by the court.

(B) Prior to sentencing and in its discretion, the court may refer the defendant to the Community Control Department for a pre-sentence investigation. Upon completion of its investigation, the

probation department shall prepare a written report. Such report shall be made available for review by the prosecution and defense prior to sentencing.

(C) Costs, fines, and monies for restitution shall be paid immediately after sentencing unless otherwise permitted by the court.

### **Rule 19. Probation/Community Control**

(A) The court will determine eligibility for any community control sanction including but not limited to intensive probation supervision, basic probation supervision, monitored time, or any other sanction provided by law. Any defendant who is referred to probation shall meet with the probation officer immediately after sentencing. In the event the probation officer is unavailable to meet with the defendant, it shall be the defendant's affirmative duty to schedule an appointment by contacting the probation officer.

(B) The probation officer shall provide a copy of the Standard Rules of Probation to each defendant referred for intensive probation supervision and secure the defendant's signature upon the same.

(C) The probation officer shall inform each defendant referred to probation of the specific terms of probation.

(D) A determination by the probation officer that the defendant has failed to agree to or comply with the Standard Rules of Probation, or with the terms of community control, shall result in the scheduling of a probation violation hearing and may result in the imposition of the original sentence in whole or in part.

### **Rule 20. Plea Bargains**

All recommendations for withdrawal, reduction or dismissal of charges and the reasons therefore shall be made in open court by the Prosecuting Attorney, or shall be specifically set forth in writing in the case file or in the Judgment Entry setting forth the plea. No such recommendation shall be binding until and if approved by the Court.

### **Rule 21. Violations Bureau**

(A) Pursuant to Traffic Rule 13 and Criminal Rule 4.1, there is hereby established a Violations Bureau and the Clerk of Court is hereby appointed as clerk thereof. The court may appoint law enforcement officer(s) to act as violations clerk when the Violations Clerk is not available.

(B) The Clerk may accept waivers pursuant to Traffic Rule 13. There is hereby established a waiver schedule of fines and costs for waiver offenses. Such schedule shall be distributed to the law enforcement agencies operating within the jurisdiction of the court and shall be prominently displayed at the cashier's office of the court. The following offenses shall not be processed by the Traffic Violations Bureau:



1. Felony offenses
2. Operation of a motor vehicle while under the influence of alcohol or drugs
3. Leaving the scene of an accident
4. Driving under suspension or revocation of driver's license
5. Driving without being licensed to drive
6. A third (or more) moving traffic offense within a twelve (12) month period
7. Failing to stop for a school bus
8. Willfully eluding or fleeing a police officer
9. Drag racing
10. Domestic Violence
11. Probation violation
12. Any offense that has a possible sanction of jail, suspension of a person's operator's license or any vehicle sanction that is not listed on the Waiver Schedule
13. Any other offense requiring mandatory appearance in Local Rule 17.

## **Rule 22. Court-Appointed Counsel**

Pursuant to Sup R 8(B) the following procedure for selecting attorneys to represent indigent persons shall be followed:

(A) Appointments will be made on a rotating basis subject to the following considerations:

1. Consideration shall be given to the attorney's areas of expertise and current caseload.
2. Whenever possible, a pretrial hearing shall be set on a date when the attorney is already scheduled for another case.
3. Consideration shall be given to whether the cases presently being handled by the attorney are being timely completed and whether the attorney is otherwise complying with these Local Rules.
4. Appointments will be reviewed periodically to ensure equal distribution of pending cases subject to (i), (ii) and (iii).

(B) The Court will make changes to the appointed counsel list based on its current needs, counsel's credentials, and current standing with the Ohio Supreme Court.

(C) Appointed counsel shall be compensated upon approval of an application for fees. In fixing the amount of compensation, the Court shall be guided by the resolution of the Lorain County Commissioners and by any resolution of the City or Village Council in the case of a City or Village Ordinance violation.

## **Rule 23. Use of electronically produced ticket**

(A) Authorization. The use and filing of a ticket that is produced by computer or other electronic means is hereby authorized in the Avon Lake Municipal Court. The electronically produced

ticket shall conform in all substantive respects to the "Ohio Uniform Traffic Ticket" set forth in the Ohio Traffic Rules' Appendix of Forms. If an electronically produced ticket is issued at the scene of an alleged offense, the issuing officer shall serve the defendant with the defendant's paper copy of the ticket as required by Rule 3 (E) of the Ohio Traffic Rules.

(B) Form of Affidavit. Each ticket shall conform with the Ohio Uniform Traffic Ticket (UTT) in the Appendix of Forms to the Ohio Traffic Rules including the court record, abstract of court record, defendant's copy and agency record.

(C) Applicability and Scope. This rule is limited to the use and filing of an electronically generated paper ticket only and is not intended to authorize an e-ticket or paperless ticket.

## CIVIL DIVISION

### **Rule 24. Security for costs/deposit for jury trial**

(A) Except as hereinafter provided no action or proceeding shall be accepted for filing by the Clerk of Court unless there is first deposited the filing fee set forth in the schedule of costs established from time to time by the court. The court in its discretion may waive the deposit otherwise required for filings made by a public entity, provided that in the event costs are assessed against the entity upon conclusion of the case that the entity shall promptly pay any costs so assessed.

(B) Upon representation that a party is indigent, such party shall file a written motion and affidavit setting forth his or her income and expenses, and the court shall rule upon the same.

(C) When a judgment for costs against a party appears unsatisfied, the clerk may refuse to accept for filing any new action or proceeding instituted by or on behalf of such party, unless otherwise ordered by the court, without such party first making payment to the clerk of such unpaid costs.

(D) When a jury trial is demanded, the party requesting the same shall make an advance deposit within 60 days after the filing of the pleading that contains the jury demand. If the deposit is not timely made, the jury demand will be waived and the case will proceed as a trial before the court.

### **Rule 25. Leave to move or plead**

(A) Except in actions for forcible entry and detainer, when a party is not prepared to move or plead on the answer day, one extension of time may be had upon application to the court and without notice to the opposing party or counsel for a period not exceeding thirty days.

(B) Any leave to move or plead thereafter may be had only with the approval of the court, with notice to the opposing party or counsel, and for good cause shown. Consent of counsel may be filed as a journal entry in the case and shall be evidence of good cause shown. Consent of the opposing party or counsel shall not, in and of itself, constitute good cause.

(C) Applications for extensions of time, regardless of consent of opposing counsel must be filed at least one day prior to the due date.

### **Rule 26. Motion practice**

(A) All motions shall be made in conformity with the Ohio Rules of Civil Procedure.

(B) Each motion shall include a certificate of service attesting to service upon the opposing party or, if represented by counsel, upon counsel for such party.

(C) Motions shall be supported by a brief citing applicable case and statutory law.

(D) Any motion, which is capable of being determined without a hearing, shall be ruled upon without hearing.

### **Rule 27. Disposition of motions**

(A) Unless otherwise provided in the Ohio Rules of Civil Procedure, these Local Rules or order of court a party opposing a motion shall have fourteen days from the date of service to file a brief in opposition citing applicable case and statutory law brief.

(B) A motion to extend the time for filing the brief in opposition may be requested prior to the expiration of the fourteen days.

(C) The failure of a party to file a brief in opposition may be construed by the court as an admission that the motion may be granted.

(D) All motions not heard or decided prior to trial will be disposed of at the time of trial.

### **Rule 28. Case management**

(A) All contested matters, except forcible entry and detainer and small claims, shall be set for a telephone case management conference where all parties are represented by counsel. Thereafter, the matter will be set for pretrial if further hearing is necessary.

(B) When one or more parties are not represented, contested matters will be set for pretrial.

(C) Counsel and parties must appear at the pretrial. Insurance adjusters may substitute for their insured provided they have full authority to settle the case on behalf of the insured. No appearances by telephone will be allowed unless specifically permitted by the judge.

(D) Parties will be encouraged at the pretrial to review the possibility of settlement, to simplify and narrow the issues for trial, to reach stipulations of fact not in controversy, to shorten the time and expense of trial and to consider such other matters as may aid in the disposition of the case.

(E) Parties should be prepared at the pretrial to enter into a binding case management schedule setting forth a timetable for the amendment of the pleadings, the filing of motions, the exchange of witness reports and medical and hospital records, the termination of discovery, and the trial of the action. Such schedule shall thereafter be adopted as an order of the court.

(F) At the time of the pretrial, the judge may consider other appropriate matters in accordance with Civil Rule 16 as well as the imposition of sanctions as authorized by Ohio Civil Rule 37, and such other matters as will aid in the disposition of the case

### **Rule 29. Trials**

(A) All trials shall be set before the court unless a party to the action files a timely jury demand and makes the required advance deposit as required by Local Rule 23(D) or is otherwise entitled to a jury pursuant to law.

(B) Notice to the court of the withdrawal of a jury demand shall be made no later than seven days prior to the date of trial. In the event a panel of jurors appears for service and the trial is

continued or postponed due to the failure of a party or his counsel to comply with this rule or to appear, such party shall be assessed the per diem costs of the panel unless such failure to comply or appear is a result of extreme emergency, or conditions beyond the control of the party or his counsel, as the same may be determined by the court.

### **Rule 30. Trial briefs and jury instructions**

(A) Where a trial brief is required by order of court, counsel for each party shall file a copy with the court and serve the same and all other counsel at least seven days prior to the commencement of trial.

(B) The briefs shall state the issues involved in the case, authorities upon which counsel intends to rely at trial, a list of witnesses the party intends to call and a list of all exhibits the party intends to introduce at trial.

(C) In all jury cases, attorneys for all parties desiring specific jury instructions shall, at least seven days prior to trial, file proposed jury instructions with the court, and serve the same upon opposing counsel.

### **Rule 31. Notification of settlements**

(A) In cases of settlement or voluntary dismissal, the court will accept notice of the same by telephone from the person pursuing each claim. The plaintiff must submit an entry within fourteen days of such telephone notification, unless otherwise ordered by the court.

(B) It shall be the responsibility of the plaintiff to notify the opposing party of the cancellation of any scheduled hearing due to voluntary dismissal unless otherwise ordered by the court.

(C) If no entry is received within the time allowed, the court will issue an entry of dismissal at the cost of the plaintiff or other party notifying the court of the dismissal.

### **Rule 32. Default judgment**

(A) Motions for default judgment shall be in writing and clearly state the date the complaint was filed, the manner in which service was perfected, proof of service and the answer date.

(B) In the event the motion is accompanied by an affidavit setting forth the claim for relief and amount of damages, it will be ruled upon without oral hearing.

(C) In the event the motion is not accompanied by an affidavit, the motion will be set for oral hearing. In the event an affidavit is filed prior to the hearing date, the motion may be ruled upon without oral hearing. In the event an affidavit is not filed and the movant fails to appear or produce evidence at the hearing in support of the claim and amount of damages, the matter will be dismissed without prejudice.

(D) In the event the defendant fails to appear or otherwise answer and no motion for default is filed, the court will set the matter for oral hearing. In the event the plaintiff files an affidavit setting forth the claim for relief and amount of damages prior to the hearing, the matter may be ruled upon on the basis of the affidavit. In the event an affidavit is not filed and the plaintiff fails to appear or produce evidence at the hearing in support of the claim and amount of damages, the matter will be dismissed without prejudice.

### **Rule 33. Satisfaction of judgment**

(A) A Satisfaction of Judgment shall not be entered unless all court costs have been paid.

(B) No person other than the Clerk of Court or a Deputy Clerk may enter satisfaction of judgment upon the records of the court.

### **Rule 34. Forcible Entry and Detainer actions**

Forcible Entry and Detainer actions shall be in accordance with Ohio Revised Code Chapter 1923. A manager of an apartment or other rental unit cannot sign and file an eviction action or appear by themselves in court on behalf of the landlord or owner of the property unless they are licensed to practice law.<sup>1</sup>

### **Rule 35. Garnishment of personal earnings or property**

(A) A party seeking a garnishment of personal earnings or property must comply with the provisions of Ohio Revised Code Sec. 2716.01, et seq.

(B) Sufficient copies of the affidavit shall be filed for service upon the garnishee and such parties as are required to be served, and the garnishee fee shall accompany the affidavit.

### **Rule 36. Proceedings in aid of execution**

(A) All proceedings in aid of execution shall comply with the provisions of Revised Code Secs. 2333.01, et seq.

(B) Sufficient copies of the order shall be filed for service upon such parties as are required to be served, and the applicable fees shall accompany the order.

### **Rule 37. License Suspension Appeals/Petitions for Driving Privileges**

All appeals filed from suspensions imposed by the Bureau of Motor Vehicles or petitions for driving privilege from suspensions imposed by the Bureau of Motor Vehicles shall contain the following information:

1. Copy of BMV Suspension Notice; or

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<sup>1</sup> See *Cleveland Bar Association v. Picklo*, 96 Ohio St.3d 195, 2002-Ohio-3995.

2. Information sufficient to identify the person and the suspension which the person is appealing or requesting driving privileges.

Appeals from Twelve (12) Point Suspensions will be set for pretrial conference and assigned a Civil Case number.

Petitions for driving privileges from suspensions imposed by the Bureau of Motor Vehicles, other than Administrative License Suspensions resulting from an OVI arrest, will be assigned a Civil Case number.

Appeals from Administrative License Suspensions resulting from an OVI arrest will be set for hearing in accordance with the law.

Petitions for limited driving privileges or a stay of a suspension under Administrative License Suspensions resulting from an OVI arrest will be set for hearing or may be granted by the court without hearing unless an objection to the petition has been filed in writing by the prosecuting attorney. Said appeals and petitions are to be requested under the underlying traffic case number and the person filing the request shall pay the established court cost for filing the same at the time of filing the Appeal or Petition.

## **JURY MANAGEMENT PLAN**

### **Rule 38. Jury Management Plan**

The Supreme Court adopted as guidelines the Ohio Trial Court Jury Use and Management Standards on August 16, 1993. This Jury Management Plan is intended to further the goals and objectives of the Ohio Trial Court Jury Use and Management Standards considering the needs of the jurisdiction of the Avon Lake Municipal Court. The Ohio Trial Court Jury Use and Management Standards found in Appendix B to the Ohio Rules of Superintendence are incorporated herein by reference.

#### Certified Poll List

The Jury Commissioner shall notify the Administrative Judge whenever the remaining names from the most recent certified poll list is less than 200. The Administrative Judge shall then notify the Lorain County Board of Elections to provide the names of not less than 1000 electors who reside in the jurisdiction of the Avon Lake Municipal Court to the Jury Commissioner. This jury list shall be compiled by utilizing the Board's automation data processing system. The Board shall randomly select the list by a key number to be fixed by order of this Court. The list shall be accompanied by mailing labels and shall be certified to the Jury Commissioner.

The Clerk shall provide a jury container, approved by the Judge of the Court, and shall be the custodian thereof. Upon receipt of the certified names the Jury Commissioner shall separate and deposit the ballots into the jury container and shall secure the container. Any names remaining from the prior list shall first be removed from the container and destroyed.

#### Jury Commissioner

The Administrative Judge shall designate some other suitable person(s) as Jury Commissioner for the purpose of selecting jury panels. The person may be any staff member of the Judge or the Clerk of Court or may be a person not in the employ of the Court or the Clerk.

#### Selection of Jury Panels

Upon request of the Administrative Judge the Jury Commissioner shall convene with the Clerk of Court and draw the names of 100 jurors (or such other number as the Judge shall order) to serve as jurors for a period not to exceed four consecutive Mondays or as otherwise directed by the Administrative Judge. Whenever possible, after notification and response from the 100 jurors, the Jury Commissioner shall divide the qualified and unexcused jurors into no less than two groups to serve alternating Mondays. The Jury Commissioner, in his or her discretion, may otherwise separate the groups for the convenience of the jurors.



## SMALL CLAIMS DIVISION

### **Rule 39. Authority**

The Small Claims Division is established and operated pursuant to Ohio Revised Code Chapter 1925.

### **Rule 40. Purpose**

(A) The purpose of the Small Claims Division is to allow parties to resolve minor disputes quickly, inexpensively and fairly without requiring the services of an attorney. However, litigants are free to use an attorney if desired.

(B) The Small Claims Division of the court is for monetary judgments only. Complaints seeking the return of property or an order requiring a party to perform a certain act must be filed in the Civil Division.

### **Rule 41. Corporation or Limited Liability Company as a party**

The rules for filing Small Claims Complaints on behalf of a corporation, partnership, Limited Liability Company or other business are as follows:

(A) If the business is incorporated or is a limited liability company then an officer must sign the Small Claims Petition.

(B) Anyone can physically file a Small Claims Petition that has been properly signed by an officer or owner (or a properly completed Small Claims Petition can be mailed with the appropriate filing fee).

(C) The business may send any person it wishes to be a witness at the Small Claims Hearing (e.g. officer, owner, office manager, accounts receivable clerk etc.) The person can be a fact witness and testify to facts and present exhibits in support of the claim but cannot ask questions of any other witness.<sup>2</sup> Any pleading not filed in accordance with this rule may be dismissed.

### **Rule 42. Jurisdiction**

Jurisdiction shall be in accordance with Ohio Revised Code Chapter 1925.

### **Rule 43. Pleadings**

(A) The plaintiff may begin a small claims action by filing a complaint and paying the required costs. The complaint should be written in plain, concise language. All pleadings will be construed to accomplish substantial justice.

(B) No party is required to file a responsive pleading such as an answer to the complaint, counterclaim, cross-claim, or third party complaint.

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<sup>2</sup> See *Cleveland Bar Association v. Pearlman*, 106 Ohio St.3d 136, 2005-Ohio-4107.

(C) Upon the filing of the complaint, the case will be set for trial.

**Rule 44. Counterclaims, cross-claims**

(A) All counterclaims and cross-claims must be served upon the opposing parties and file with the court at least seven days before the scheduled trial.

(B) Any party filing such pleadings shall send copies to all opposing parties by regular U.S. mail.

(C) Any pleading that is not timely filed shall be stricken from the file. If the claim is timely filed, the clerk shall issue a notice of trial date to all parties.

**Rule 45. Third party claims**

(A) Any party seeking to join a new party to a pending case must file a third party complaint at least ten days before the scheduled trial date.

(B) The Clerk shall serve the new party defendant with the third party complaint in the same manner as the original complaint.

(C) Any pleading that is not timely filed shall be stricken from the file. If the claim is timely filed the clerk shall issue a notice of trial date to all parties.

**Rule 46. Continuances**

(A) A request for a continuance of a case set for trial shall be filed in writing at least seven days prior to the trial date.

(B) The request shall be in writing and shall include:

1. The case caption and case number;
2. The reason for the request;
3. The date and time of the scheduled trial;
4. A statement signed by the moving party that he or she has notified the other parties in writing by ordinary United States mail of the request; and
5. The signature of the party requesting the continuance, or of his or her attorney.

**Rule 47. Dismissals**

A person asserting a claim may dismiss the claim by contacting the office of the Clerk of Court in person, by mail, or by telephone. In the event the contact is by telephone the person shall immediately send confirmation of the dismissal in writing.

**Rule 48. Subpoenas**

All subpoenas must be filed seven days prior to the scheduled trial date with the filing fee and witness fees paid at the time of filing.

#### **Rule 49. Motions to transfer to the regular civil docket**

- (A) A motion to transfer a small claims matter to the regular civil docket shall be filed at least seven days before the scheduled trial date.
- (B) When a counterclaim, cross-claim or third party claim exceeds the jurisdiction of the Small Claims Division, a motion to transfer must accompany it.
- (C) An untimely motion to transfer shall be stricken from the file.
- (D) In the event the motion is not filed or is stricken from the file, the damage recovery will be limited to the monetary jurisdiction of the Small Claims Division.

#### **Rule 50. Other pretrial motions**

All pretrial motions shall be filed and served upon the opposing parties at least seven days before the scheduled trial date. Motions that are not timely filed shall be stricken from the file.

#### **Rule 51. Trial**

- (A) The Magistrate or the Judge shall preside at the trial. The parties shall be placed under oath and shall be given the opportunity to state their cases.
- (B) At the conclusion of the trial, the magistrate shall prepare a magistrate's decision or in cases heard by the Judge, the Judge shall render a decision. Findings of fact and conclusions of law are required only if requested by a party.

#### **Rule 52. Evidence at trial**

- (A) The Ohio Rules of Evidence do not apply to the Small Claims Division.
- (B) Any documents and witnesses that a party desires to be considered must be produced at the time of trial and cannot be produced afterwards. No continuances will be granted on the date of trial to submit additional documents or witnesses. A party desiring to present a document shall present 3 copies of each document at the time of introducing the document at trial.
- (C) In cases involving a motor vehicle collision, the party seeking damages must submit at trial a certificate of title for the subject vehicle demonstrating his or her ownership. Vehicle registration will not be accepted as evidence. Failure to comply with this rule may result in dismissal of the claim and denial of damages.

#### **Rule 53. Objections to the magistrate's decision**

- (A) Any party may, within fourteen days of the filing of a decision by the Magistrate, file objections. Thereafter, the other party shall have a period of ten days to file objections.
- (B) Objections must be in writing and shall contain a statement signed by the filing party that copies have been served on all other parties by regular mail.

(C) Objections shall summarize the evidence presented at trial and shall state with particularity the grounds for the objection. They shall be signed by the objecting party and be sworn before a notary public.

(D) The filing of an objection shall result in an automatic stay of the judgment entered by the court on the magistrate's decision.

(E) In the event the court grants an objection, the matter will be set for a new trial before the judge. All parties and witnesses must appear for the new trial date.

(F) In the event the court denies all objections, final judgment will be entered.