

Lakewood Municipal Court

Rules of Court

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LOCAL RULES OF COURT

These Local Rules of Court are being promulgated pursuant to Rule 18 of the Ohio Supreme Court Rules of Superintendence for Municipal Courts and County Courts and are effective July 1, 1991. The purpose of these local rules is to supplement the procedures set out in the Ohio Rules of Civil Procedure, The Ohio Rules of Criminal Procedure and the Ohio Revised Code to assist counsel and parties with cases pending in the Lakewood Municipal Court.

RULE 1 - HOURS OF COURT SESSIONS, GENERAL PROCEDURES

(A) The Clerk of Court's office shall be open between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Sessions in the Civil and Criminal branches of the Court shall be conducted Monday through Friday. These times may be extended or diminished by special order of the Court. Notwithstanding the hours for Clerk of Court, Court sessions may also be conducted during evening hours by order of the Court.

(B) For the purpose of Night Court proceedings the Court will accept documents for filing only in those cases that are scheduled for hearing. All traffic and criminal proceedings, except pretrial conferences, shall be held in open court, or in the case of a scheduling conflict, in other rooms in the court area that are generally accessible to the public.

RULE 2 - EXAMINATION OF FILES

No person except authorized court personnel, parties or their attorneys shall be permitted to examine the complaint filed in any case until after service of summons. Thereafter, such files are available to any person upon reasonable request during regular business hours. Subject to the limitation of Criminal Rule 16 full disclosure of all public record information shall be made available upon reasonable request.

RULE 3 - WITHDRAWAL OF FILES

No files, whether civil or criminal, may be removed from the office of the Clerk of Court without the written consent of the Judge, Clerk of Court or Assignment Commissioner. Any person seeking to remove a file from the Clerk's office must set out in writing the case name and number, the destination or office where the file is being taken, the reason for removal of the file, and the date and time the file is taken from the office. A file taken from the Clerk of Court's office pursuant to this rule must be returned to the Clerk of Court within twenty-four (24) hours of removal.

RULE 4 - PLEADINGS AND MOTIONS

(A) All Pleadings and Motions shall be legibly typewritten or printed on paper sized 8 1/2 inches by 11 inches. The caption of the complaint shall state the name and address, if known, of each party. Subsequent pleadings and motions shall state the case number, the name of the first party plaintiff and the first party defendant on each side. For all subsequent pleadings in which new parties are joined, the name and the address, if known, of each new party shall be stated in the caption of such pleading. Every pleading, motion, brief or other paper filed in a case shall be identified by title, and shall bear the name of the individual attorney, the firm, if any, office address and telephone number of the attorney filing the same, or if there be no attorney, then the party filing the same.

(B) Failure to comply with the formal requirements as set out above may be grounds for striking the non-complying document from the Court's files. For good cause shown, the Clerk of Court is authorized to waive this requirement for cases involving small claims, forcible entry and detainer or other types of cases or proceedings in the interest of justice when the party is not represented by counsel. The Clerk may also receive requests by letter in traffic and criminal cases regarding continuance, reinstatement of driving privileges, and other similar proceedings.

(C) Notwithstanding the exceptions to formalities of documents filed with the Clerk of Court, all documents must be served on the prosecutor or opposing party in accordance with Civil Rule 5 and Criminal Rule 49. Failure to show proof of service on the document filed shall be grounds for striking the document from the Court's record.

RULE 5 - APPEARANCE AND WITHDRAWAL OF COUNSEL

(A) Upon the entry appearance of counsel, all documents filed with the Court and all Court orders and motions shall be served upon the designated counsel or the party's representative. Once an appearance is made, an attorney may only withdraw from a case by leave of Court.

(B) No person who is not admitted to the practice of law before the Ohio Supreme Court may appear on behalf of another individual or entity in Court, except as provided by Section 1925.17 of the Ohio Revised Code or Rule II of the Supreme Court Rules for the Government of the Bar of Ohio. An executed power of attorney does not confer upon a person who is not an attorney the right or ability to represent some other person in Court. Nothing in this Rule shall prohibit an employee or agent of a party from appearance in a civil action to provide testimony on behalf of his or her employer, regarding information within that employee's or agent's personal knowledge, regardless of the presence or absence of the party.

RULE 6 - SECURITY OF COSTS

No action or proceeding shall be accepted for filing by the Clerk of this Court unless there first shall be deposited the filing fee required by this Court in its schedule of costs, except that upon representation of indigency, the Clerk of this Court shall investigate the accuracy of such representation and upon finding that such indigency does exist, the security for cost shall be waived.

Deposits and advance payments of fees and costs shall be returned only by order of court and only when the same have been paid by the party against whom they are assessed by the court.

RULE 7 - LEAVE TO MOVE OR PLEAD

Except in actions for forcible entry and detainer or in replevin, when a party in any case 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 for a period not exceeding thirty (30) days. Consent of counsel may be filed as a Journal Entry in the case and shall be evidence of "good cause shown." Any leave to move or plead thereafter may be had only with the approval of the Court, with notice to opposing party or counsel, and for good cause shown. Consent of opposing party or counsel shall not, in and of itself, constitute good cause. Applications for extensions of time, regardless of consent of opposing counsel, must be filed at least one (1) day prior to the due date.

RULE 8 - HEARING AND SUBMISSION OF MOTIONS; OBJECTIONS TO INTERROGATORIES

(A) Motions, in general, shall be submitted and determined upon the motion papers hereinafter designated. Oral arguments of motions will be permitted only on written application and proper showing to the Court.

(B) The moving party shall serve and file with his or her motion a brief written statement of reasons in support of the motion and a list of citations of the authorities on which he or she relies. If the motion requires the consideration of facts not appearing in the record, he or she shall also serve and file copies of all affidavits, depositions, photographs or other documentary evidence which he or she desires to submit in opposition to the motion.

(C) Each party opposing the motion shall serve and file within fourteen (14) days thereafter a brief written statement of reasons in opposition to the motion and a list of citations of the authorities on which he or she relies. If the motion requires the consideration of facts not appearing of record, he or she shall also serve and file copies of all affidavits, depositions, photographs or other documentary evidence which he or she desires to submit in opposition to the motion.

(D) Reply or additional briefs upon motions and submissions may be filed with leave of the Court only upon a showing of the necessity therefor.

(E) Counsel are encouraged to participate in pretrial discovery conferences to reduce, in every way possible, the filing of unnecessary discovery procedures. To curtail undue delay in the administration of justice, no discovery procedure filed under Rule 26 through 37 of the Rules of Civil Procedure to which objection or opposition is made by the responding party shall be taken under consideration by the Court, unless the party seeking discovery shall first advise the Court in writing that after personal consultation and sincere attempts to resolve differences they are unable to reach an accord. This statement shall recite those matters which remain in dispute, and in addition, the date, time and place of such conference, and the names of all parties participating therein. It shall be the responsibility of counsel for the party seeking discovery to initiate such personal consultation.

(F) Sanctions. The presentation to the Court of unnecessary motions, and the unwarranted opposition of motions, which in either case unduly delay the course of action through the courts, subject an offender to appropriate discipline including the imposition of costs.

(G) All motions and briefs containing references to statutes or regulations other than the Ohio Revised Code or the Ohio Rules of Court shall have attached to the motion or brief a copy of the statute or regulation. Copies of unreported court decisions cited or referred to in a motion or brief shall also be attached to the motion or brief.

(H) Summary Judgment. Unless otherwise ordered by the Court, Motions for Summary judgment shall be heard on briefs and other materials authorized by Civil Rule 56(C) without oral arguments thirty (30) days after service of the Motion upon the opposing party. The adverse party prior to the day of the hearing may serve and file opposing party affidavits. In the event the adverse party also files a Motion for Summary Judgment, the hearing date shall be extended to thirty (30) days from the service upon the opposing party of the latter Motion.

RULE 9 - FAILURE TO FILE ANSWER BRIEF

Unless otherwise provided in Ohio Civil Rules of Procedure, failure to file an answer memorandum or brief in accordance with these rules may be construed by the Court as an admission that the motion or exception should be granted.

RULE 10 - TRIAL BRIEFS

(A) When a trial brief is required by order of Court, counsel for each party shall deliver a copy to the Court and all other counsel at least one (1) weekday prior to commencement of trial unless otherwise ordered by Court. The briefs shall relate to the issues referred to in the order and contain authorities supporting the propositions which counsel intends asserting during trial. Delivery may be made by ordinary mail with a proof of service appended to each brief.

(B) In all civil jury cases, attorneys for all parties to the action shall, at least five (5) days before date of trial, furnish to the Court a brief of the issues and the law they expect the Judge to present to and charge the jury. All trial briefs and proposed jury instructions are required to be exchanged with opposing counsel at the time of filing.

RULE 11 - ASSIGNMENT OF CIVIL CASES

(A) Actions for replevin shall be set for hearing in accordance with the provisions of Chapter 2737 of the Ohio Revised Code. No continuance will be granted unless by order of Court and written stipulation of all parties.

(B) All other actions shall be assigned for trial after they are at issue, in their numerical order of filing as far as possible, in accordance with Local Rule 12, except that actions involving the liberty of the person, wages, possession of property, and cases carried over from previous days or specially set by the Court shall be referred.

(C) Notice of any proceeding requiring personal appearance of parties or counsel except as noted herein, shall be mailed, communicated by facsimile transmission or as otherwise provided to the parties or counsel not less than ten (10) days prior to the date of the appearance.

(D) Motions for advancement of proceedings shall be submitted to the Court in writing and copies of the same shall be served upon opposing parties or counsel. The Court, in its discretion, may advance a pending case for trial or pretrial, upon motion of a party or on the Court's own motion.

(E) Night Court Proceedings: Trials or hearings in civil cases may be set for hearing in the Court's night session at the request of either party or by court order. The party is required to make the request at the time of either (1) the filing of a complaint or claim; or (2) within ten (10) days of receipt of the complaint or claim, regardless of whether a responsive pleading is required. Upon such request, the case will be scheduled for hearing at the night court session unless a timely objection is made by the opposing party within five (5) days of receipt of the request. Upon objection by the party or upon the Court's own motion, the request for hearing during night court may be overruled.

RULE 12 - CASE MANAGEMENT

The purpose of this rule is to establish, pursuant to M.C. Sup. R. 18, a system for case management which will provide the expeditious, fair and impartial administration of cases. These rules shall be construed and applied to eliminate unnecessary delay and expense for all parties involved in the Court justice system.

(A) Traffic and Criminal Cases

(1) Pretrial Conferences: After initial appearance, all first degree, second degree and third degree misdemeanors shall be set for pretrial by the assignment commissioner within thirty (30) days at the request of the defendant, prosecutor, or by the Court's own motion. All other misdemeanors shall be set for trial unless the Judge orders a pretrial in said case.

The pretrial shall be conducted in accordance with Criminal Rule 17.1 and, if necessary or ordered, a memorandum of the matters agreed upon should be filed in the case. Any attorney who fails to appear for pretrial without just cause being shown may be subject to contempt of Court. Failure of the defendant to appear for pretrial conference may result in the issuance of a writ of habeas corpus for the defendant's arrest. If the parties cannot resolve the case, then the case should be set for trial before the Court unless a jury is timely demanded.

(2) Motions: All motions shall be made in writing and accompanied by a written memorandum containing the arguments of counsel. Motions must be filed within the time limits established by the Ohio Rules of Criminal Procedure. All motions shall be set for oral hearing, unless otherwise ordered by the Court.

(3) Trials: Each case not resolved at pretrial shall be set for trial to Court. If a jury demand is timely filed, then the case will be moved to the jury trial schedule. All attorneys shall notify the Court by 1:00 p.m. of the day preceding their trial of any change in plea or jury cost will be assessed to their case.

(4) Sentencing: Sentencing hearings shall be set within seven (7) days from trial if no pre-sentence report is requested. If the Court requests the pre-sentence report, the Court will set the hearing for sentencing within fifteen (15) days of receipt of that report unless additional time is warranted or required.

(B) General Civil Cases

(1) The summons shall be served in accordance with the Ohio Rules of Civil Procedure. In the event there is a failure of service, the Clerk of Court shall notify counsel immediately. If counsel fails to obtain service of summons within six (6) months from the date the case has been filed, then the Clerk of Court shall notify counsel that the case will be dismissed in ten (10) days unless good cause is shown to the contrary.

(2) Upon perfection of service, the Clerk of Court shall notify counsel of the default and that a failure to submit a motion for default within thirty (30) days may result in the case being dismissed. See Local Rule 16.

(3) After any responsive pleading is filed, the Clerk of Court shall immediately forward said pleading and file to the Judge so the matter may be set for a hearing.

(4) If no action has been taken on a file for a six (6) month period and the case is not set for trial, then the Clerk shall notify the party that the matter will be dismissed within seven (7) days unless good cause is shown.

(5) The avoidance of trial by settlement shall be allowed without the filing of a journal entry provided, however, that notice has been received by the Court prior to the trial or hearing that the case has been settled and the settlement agreement and/or judgment entry is forthcoming. When a file has been marked to be held for settlement entry and the judgment entry has not been received within twenty (20) days, the Clerk of Court shall notify the party that his or her case will be dismissed unless the entry is received within ten (10) days. See Local Rule 17.

(6) Status Hearing: After an answer is filed, the Clerk will forward the file to the Judge. The Court will then set a status hearing which may be heard in Court or by phone. The purpose of the status hearing is to set discovery and motion deadlines so a formal pretrial can be set. The status call shall be scheduled within forty-five (45) days of the closing pleading.

(7) Motions: All motions must be in writing and accompanied by a written memorandum containing citations or the arguments of counsel. Opposing counsel shall respond in writing within fourteen (14) days of service of the motion. All motions will be considered submitted at the end of the said fourteen (14) day period unless time is extended by the Court, in accordance with Local Rule 8.

(8) Pretrial Conferences: For the purpose of this rule, “pretrial conference” shall mean a Court supervised conference chiefly designed to produce an amicable settlement. The term “party” or “parties” used hereinafter shall mean the party or parties to the action, and/or, his, hers, or their attorney of record. Any attorney for a party to the action who fails to attend at a scheduled pretrial conference, without just cause being shown, may be subject to contempt of Court. Notice of pretrial conference shall be given to all counsel on record by mail, facsimile transmission, or by telephone from the assignment commissioner not less than ten (10) days prior to the conference. Counsel attending the pretrial conference must have complete authority to stipulate on items of evidence and must have full settlement authority, or have their clients available to do so. The primary purpose of the pretrial conference shall be to discuss settlement and trial preparation. Pretrial conferences may be in person or by telephone, as ordered by the Court. The Court shall attempt to narrow legal issues, to reach stipulations as to facts in controversy and, in general, to shorten the time and expense of the trial. The Court may file a pretrial statement to become part of the record and the case embracing all stipulations, admissions, and other matters which have come before it in the pretrial. The Court shall, at that time, determine whether or not trial briefs should be submitted and shall fix a date when they are to be filed. See Local Rule 10.

(9) Failure to Appear: The Judge presiding at pretrial conference or trial shall have the authority to dismiss the action for want of prosecution on motion of defendant upon failure of plaintiff, and/or his or her counsel to appear in person at any pretrial conference or trial; or order the plaintiff to proceed with the case and to decide and determine all matters ex parte upon failure of the defendant to appear in person or by counsel at any pretrial conference or trial as required; or to make such other order as the Court may deem appropriate under all the circumstances. If the case cannot be settled at pretrial, then the case will be set for trial at a time agreeable to all parties.

(10) Continuances: No party shall be granted a continuance of a trial or hearing without a written motion from the party or his counsel stating the reason for the continuance. See Local Rule 13. When a continuance is requested for the reason that counsel is scheduled to appear in another case assigned for trial on the same date in the same or another trial court of this state, the case which was first set for trial shall have priority and shall be tried on the date assigned. Criminal cases assigned for trial have priority over civil cases assigned for trial. The granting of any other request for continuance of a scheduled trial is a matter within the discretion of the trial court. If a designated trial attorney has such a number of cases assigned for trial in courts of this state so as to cause undue delay in the disposition of such cases, the administrative judge may require the trial attorney to provide a substitute trial attorney. If the trial attorney was appointed by the Court, the Court shall appoint a substitute trial attorney.

(C) Forcible Entry & Detainer Proceedings

(1) Hearing: All claims for forcible entry and detainer shall be set for hearing before the Judge or referee, pursuant to the time limits set forth in chapters 1923 and 5321 of the Ohio Revised Code. At that hearing, the Ohio Rules of Evidence and the applicable Ohio Rules of Civil Procedure will be applied. The Judge or referee shall, at the conclusion of the hearing, on the first cause of action file written findings within seven (7) days and cause a copy to be served on the plaintiff and defendant. If the plaintiff also files a second cause of action for money damages in the complaint, the hearing for that second cause shall be continued, and scheduled for hearing at a later date within sixty (60) days of the hearing on the first cause for eviction.

(2) Judgment Entries: The Court shall review the findings of the referee weekly and enter the appropriate judgment entry.

(3) Objections to Referee’s Findings: The referee shall, at the conclusion of each case, serve a copy of his or her findings upon the plaintiff and defendant and inform the parties that they may file objections to

the referee's findings within fourteen (14) days, in writing. The objections to the referee's findings should state, with specificity, the reason a new hearing is requested. No oral hearing will be granted on the objections except by order of the Court. The Court shall, after consideration of the reasons in the objections to the referee's findings, rule on said objections to referee's findings within fourteen (14) days of the filing of the objections.

(4) If an answer or jury demand is filed in a forcible entry and detainer case, then the Clerk shall forward the case to a Judge so the case can be scheduled for trial. As a condition for jury trial, the defendant shall be required to post a sufficient bond in accordance with the provisions of Section 1923.08 of the Ohio Revised Code.

(5) With respect to a claim for money damages, the defendant is required to provide the Court with a current address. Notwithstanding the defendant's compliance with this rule, the plaintiff is required to make a good faith attempt to serve the defendant as his or her last known address. Failure to do so may be grounds for vacating a prior judgment.

(D) Small Claims Cases

(1) A small claim action is commenced by filing a small claims complaint pursuant to Ohio Revised Code Section 1925.04. No defendant is required to file an answer or statement of defense. Should the defendant fail to appear for the hearing, however, after being duly served, then a default judgment will be entered against said defendant. All pleadings will be construed to accomplish substantial justice.

(2) Upon filing of motion and affidavit, as required by Ohio Revised Section 1925.10, and upon payment of the required cost, the small claim will be transferred to the regular docket. No transfer will be granted until the filing costs are paid. Requests to transfer which are made solely for the purpose of delay may result in sanctions, including dismissal and/or default judgment, as well as attorneys fee.

(3) Hearing: The hearing in Small Claims Court may be conducted by the Judge or referee. The Judge or referee shall place all parties who plan to offer evidence under oath and then allow the plaintiff and defendant to state their case. The plaintiff and defendant may subpoena and call witnesses if they desire to do so. The Ohio Rules of Evidence and the Ohio Rules of Civil Procedure will not apply to a hearing in Small Claims Court, unless provided by the Court. The referee shall issue a report and recommendation within ten (10) days of the hearing.

(4) Appeal from Hearing: The Judge or referee shall, at the conclusion of each case, serve a copy of his or her finding upon the plaintiff and defendant and inform the parties that they may file objections to the referee's findings within fourteen (14) days, in writing. The objections to the referee's findings should state, with specificity, the reason a new hearing is requested. No oral hearing will be granted on the objections unless specifically requested in writing and supported by sufficient grounds. The Court shall, after consideration of the reasons in the objections to referee's finding, rule on the objections to the referee's findings.

(5) When no objections are filed, the Judge shall review the findings of the referee, and enter the appropriate judgment.

(6) The Court has prepared information sheets for both plaintiff and defendant in small claims. These documents are available from the Clerk of Court. Failure to comply with directives of the information sheets may result in a default or dismissal of the case.

(7) Collection of Judgments: The employees of the Court shall assist the prevailing parties in collecting their judgments pursuant to Ohio Revised Code Section 1925.13.

RULE 13 - CONTINUANCE FOR TRIAL OR HEARING

No case assigned for trial or hearing may be continued except on written motion and for good cause shown. Such motion shall be presented to the Judge not less than two (2) days prior to the date of trial or hearing, except that in the case of unforeseen emergency, this time requirement may be waived. In the event the motion is filed within two (2) days of the trial or hearing, the moving party is required to first discuss the continuance with all opposing counsel, or opposing parties if there is no counsel, and state specifically why the

motion could not have been filed prior to the two (2) day time limit set out herein.

RULE 14 - FILING BY FACSIMILE TRANSMISSION

(A) Civil Cases

(1) Use in general: Pursuant to Civil Rule 5(B) & (E), all pleadings, motions and other documents other than the original complaint, third party complaint or any other pleading that joins or adds a new party, may be transmitted to the Court by facsimile transmission. Prior permission of the Court, Clerk or opposing party is not required to file a document by facsimile transmission.

(2) Filing: A pleading, motion, or other document filed with the Court by facsimile transmission shall be deemed filed when received by the Clerk of Court and will have the same force and effect as the original of the document being transmitted. All such documents, filed with the Court by facsimile transmission must be done directly through the Lakewood Court's facsimile machine at 529-7687, or some other telephone number and facsimile machine specifically ordered by the Court. Documents indirectly transmitted through some other facsimile machine and indirectly presented to the Clerk of Court may not be accepted in lieu of the original, unless specifically ordered by the Court.

(B) Criminal Cases

In criminal cases the Clerk of Court will accept for filing documents by facsimile transmission, provided however, that the original of that document is filed with the Court within three (3) business days of the receipt of the facsimile. The documents shall be deemed filed when received by the Clerk of Court by facsimile transmission on condition that the original of that document is timely filed. Failure to timely file the original document may result in the Clerk's striking the document from the record.

(C) Cost

The party filing a document by facsimile transmission shall be responsible for all costs of the transmission. There is no separate charge for filing a document by facsimile transmission. The party is still responsible, however, for all filing fees associated with the filing of the document. The filing fee is required to be paid within five (5) days of the receipt of the document filed by facsimile transmission. Failure to timely pay the filing fees may result in the Clerk's striking the document from the record.

(D) All documents filed with the Clerk of Court by facsimile transmission must be legible when received by the Clerk. The Clerk may reject any document which is illegible, in whole or part and upon doing so, shall promptly notify the sender of the condition or quality of the document.

(E) All documents which are submitted to the Court must be received by the Clerk of Court during the regular office hours of the Clerk of Court (Local Rule 1). Any document received after 5:00 p.m. Monday through Friday, shall be deemed received and/or filed of the next business day. For the purpose of this Local Rule, 5:00 p.m. shall be determined by the notation on the Court's facsimile machine unless otherwise ordered by the Court.

RULE 15 - JOURNAL ENTRIES TO BE FURNISHED

(A) When ordered or directed by the Court, counsel for the party in whose favor an entry, order, judgment or decree is entered shall, within ten (10) days unless the time is extended by the Court, prepare a proper journal entry and submit it to opposing counsel who shall approve or reject it within five (5) days after its receipt and may file objections in writing with the Court. The Court shall approve a journal entry deemed by it to be proper, sign it and cause it to be filed with the Clerk, with notice to the parties.

(B) (1) When a request for findings of fact and conclusions of law is made, the Judge may direct the party making the written request to prepare, within ten (10) days, proposed findings of fact and conclusions of law and submit them to the opposing counsel. Within ten (10) days after receipt by the opposing counsel, the proposed findings shall be submitted to the Court with objections and counter proposals, if any, in writing; however, only those findings of fact and conclusions of law made by the Court shall form part of the record.

(2) Upon motion of a party made within ten (10) days after the filing of the findings, the Court may amend the findings, make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial. When findings of fact are made in actions tried by the Court without a jury, the question of the sufficiency of the evidence to support the findings may be raised whether or not the party raising the question has made an objection in the trial Court to such findings or has made a motion to amend or a motion for judgment.

RULE 16 - DEFAULTS - DISMISSAL BY COURT

(A) In all cases in which default judgment is available to a party by reason of failure of defendant to answer or appear, failure, thereafter, of such party to make demand for judgment by default under Rule 55(A) of Ohio Rules of Civil Procedure within thirty (30) days from the time that plaintiff has notice of defendant's default, shall constitute cause for dismissal of the complaint by the Court for want of prosecution.

(B) A default by a defending party is an admission of all allegations in the complaints except damages. Civil Rule 8(D). For cases based on an account, the plaintiff is required to show, in the complaint or otherwise, that there have been no subsequent payments or credits on the account. For all other motions for default, proof of damages is required. Depending upon the specific nature of the case, proof may be provided to the Court by testimony or affidavit. Uncertified documents, not accompanied by an affidavit or testimony, may not be considered proof of damages. The affidavit must be executed by a person with personal knowledge of the contents of the affidavit. An attorney for the moving party may not be the affiant for an affidavit for proof of damages. If there are multiple damages, a listing of all damages and credits, if any, should be filed with the Court to expedite the default proceeding, either as part of the motion for default, exhibit, or by separate document.

RULE 17 - SETTLEMENTS - NOTIFICATION TO COURT

After a case has been set for pre-trial, trial or other proceedings requiring personal appearance, a request for dismissal by the plaintiff or by agreement of the parties due to settlement or some other reason shall be submitted in writing to the Court within twenty (20) days of the scheduled court appearance, after prompt notification of the settlement or dismissal by telephone to the Clerk of Court. Failure to give such written notice of settlement and non-appearance of the parties, shall subject the action to dismissal by the Court at plaintiff's costs.

RULE 18 - RECORD OF PROCEEDINGS

All traffic and criminal proceedings, except traffic arraignments, shall be recorded. Civil trials, hearings and other proceedings will only be recorded at the request of either counsel or party, if there is no counsel. Unless otherwise noted, the proceedings will be recorded by electric audio tape recording means. Upon order of Court, a party in any case may have a court reporter present to record the proceedings. No fees for court reporters will be taxed as cost or otherwise paid by anyone other than the party providing the court reporter, unless that party makes a timely motion prior to trial or hearing for the appointment of an official court reporter and requests in advance that such fees be taxed as costs. See Civil Rule 54(D) and Ohio Revised Code Section 1901.33.

RULE 19 - SATISFACTIONS - PAYMENTS OF COSTS

(A) No satisfaction of judgment shall be entered by the Clerk of Court unless and until 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 20 - UNPAID COSTS - NEW CASES NOT TO BE FILED

When a judgment for costs appears against a party unsatisfied, the Clerk may refuse to accept for filing any new action or proceeding instituted by such party, unless otherwise ordered by the Court, without first making payments to the Clerk of such unpaid costs.

RULE 21 - STATUTORY DEMANDS

(A) A person seeking an order of attachment against personal earnings or an order in aid of execution against personal earnings in an action shall comply with the provisions of Section 2716.02 of the Revised Code of Ohio. A failure to comply with this provision will render the proceedings voidable.

(B) Where the statutory demand is served personally, or by leaving it at the debtor's usual place of residence, proof of such service shall be made by the affidavit of the person serving same.

(C) When such demand is served, or attempted to be served, by registered or certified mail, proof of such service shall be made by the affidavit of the person sending the demand by registered or certified mail, and shall be accompanied by the signed registered or certified mail receipt, or proof of refusal of service, or by a photocopy thereof, or the certified mail envelope endorsed "unclaimed."

(D) A copy of the statutory demand made on defendant, together with proof by affidavit of service of the statutory demand, shall be filed with the affidavit.

(E) Failure to comply with the requirements of subdivision (D) hereof shall not render the proceeding void; but shall effect the taxing of the cost only. Said cost shall be assessed against the party failing to comply with this Rule.

RULE 22 - PROCEEDINGS IN AID OF EXECUTION

The order in aid of execution shall provide for the attendance of the parties named therein on a date not less than fourteen (14) days from the date of such order. The deposit required by the Court schedule of fees and deposits, shall be made with the Clerk at the time of the filing of the affidavit. No alias order shall be allowed unless there has been failure of service on the writ and only after an additional deposit is made with the Clerk.

Affidavits and orders in aid of execution proceedings shall be typed and sufficient copies of the affidavit and order shall be furnished for service upon the garnishee and such defendants as are required to be served. The garnishee fee as required by statute per garnishee shall accompany the affidavit. Service will be instituted in accordance with civil procedure.

RULE 23 - FEES FOR ADDITIONAL SERVICES

In cases where it becomes necessary for the bailiff to perform services in connection with property, the bailiff shall require a deposit sufficient to secure the probable charge in each case.

Any reasonable charge when approved by the Court shall be taxed as part of the costs of the action and any property seized under any writ or process of the Court need not to be released until said charges are approved and paid.

RULE 24 - EMPLOYEES OF THE COURT

No employee of the Court shall at any time, whether by request or otherwise, refer or direct any person to an attorney or to a bail bondsman or bail bond company or agent. Nor shall any Court employee give legal advice to a litigant, witness, or other person. Assistance by court personnel shall be limited to supplying such persons with the necessary forms and any explanation only to the portions thereof to be completed by the party on his or her own initiative.

RULE 25 - PRETRIAL DIVERSION PROGRAM FOR ADULT OFFENDERS

(A) Pursuant to the Ohio Supreme Court Rules of Superintendence for Municipal Courts, Rule 18, and in accordance with Ohio Revised Code 2935.36, a pretrial diversion program for adult offenders is hereby established. The Court on its own motion, on the motion of the Prosecutor or at the request of a defendant, may initiate an investigation into an alleged offenders eligibility to participate in the Court's pretrial diversion program (hereinafter referred to as "PDP").

(B) The investigation of candidates for pretrial diversion shall be conducted by the Prosecutor's Office or the Court's Probation Department, with the assistance of the Prosecutor. To be eligible for the program, a defendant must meet all the following criteria:

- (1) No prior felony convictions;
- (2) No prior misdemeanor convictions within the last ten years, excluding minor traffic offenses;
- (3) No present criminal involvement or activity other than the charges in the current case for which Diversion is requested;
- (4) No pending criminal charge other than those for which the Diversion is requested;
- (5) No prior participation in any "Diversion" program;
- (6) No current or previous probation status;
- (7) The charge for which Diversion is requested is not a traffic offense, including DWUI; and
- (8) The charge is one currently considered for Diversion by the Court and does not include serious physical harm.

(C) Following completion of its investigation, the Prosecutor's Office or Court's Probation Department shall report its finding to the Judge or referee concerning the defendant's participation in the program. The recommendation shall address the following concerns, where appropriate:

- (1) Whether the offense caused or threatened serious physical harm to persons or property;
- (2) Whether the offense was a result of circumstances unlikely to recur;
- (3) Whether the victim of the offense induced or facilitated it;
- (4) Whether there are substantial grounds tending to excuse or justify the offense, through failing to establish a defense;
- (5) Whether the defendant acted under strong provocation;
- (6) Whether the defendant is likely to respond quickly to rehabilitative treatment;
- (7) Whether the defendant's life-style and attitudes suggest that recidivism is unlikely.

(D) The report shall be delivered to the Judge within fourteen (14) days of referral, unless the Court orders a greater or lesser time for such report.

(E) If the Court orders or accepts a recommendation to place a defendant in the Program, the minimum period of participation shall be ninety (90) days or as ordered by the Court. The Court may require additional conditions for participation and establish a time of participation up to the maximum time of probation that could be given for the offense charged for which Diversion is requested.

(F) The administration of this program shall be the responsibility of the Prosecutor's Office and/or Court's Probation Department in cooperation with the Clerk of Court.

(G) In order to be considered for the Program, a defendant must enter no plea. If a plea has been entered, it must be withdrawn.

(H) A release/contract drawn by the Law Department and approved in form by the Court must be signed by each participant for acceptance into the Program. The Release will include a waiver of speedy trial time, waiver of arraignment, preliminary hearing, the time period within which the Court or a grand jury may consider an indictment or arraignment, and agreement the tolling while in the program of all periods of limitations established by statute or rules of Court and such other provisions as are necessary to accomplish the objectives of the Program.

(I) All persons referred to this program will be assessed a fee of Twenty-Five (\$25) Dollars which may be refunded if it is determined that the defendant is not eligible. The Court, upon motion, may waive such administrative fee for any individual defendant who is indigent and unable to pay and waive the administrative fee.

(J) The administrative fee hereunder shall be paid to the Clerk of Court who shall account for such funds and process them in accordance with the Charter of the City of Lakewood, the Codified Ordinances and any applicable provisions of state law.

(K) Each defendant accepted into this program shall sign an agreed resolution or conditions of participation in the Program. The Program shall be considered successfully completed when all those conditions contained therein are met. The case may be advanced and a capias issued in the event of failure to comply with the contract or the conditions of participation. If the defendant violates the agreement or conditions of participation, the defendant may be brought to trial upon the charges in the manner provided by law and the waiver executed pursuant to this Rule shall be void on the date the accused is removed from the Program for the violation.

(L) If the defendant successfully completes the Program, the Prosecuting Attorney shall recommend to the Court that all charges against the defendant be dismissed, and the Court shall upon such recommendation dismiss the charges.

RULE 26 - MEDIA

(A) Definitions, Applications

(1) For the purpose of these rules, the term "media recording" shall be understood to encompass broadcasting, televising, recording, or photographs. The term "trial" shall be understood to apply to any public hearing held by the Court.

(2) Application for media recording shall be made in writing to the assigned judge in the case prior to

the commencement of the trial. No special form of application will be required, but the application must specify the type of equipment to be used, and must identify and be signed by the applicant. The “pooling” required by Superintendence Rule 9 for Municipal Courts and County Courts shall be accomplished prior to submission of the application. The positioning of the cameras shall be at a location to be determined by the trial judge.

(3) In the event the Judge approves the application, a journal entry or written agreement setting forth the conditions of media recording shall be made a part of the record of the case. Before preparing the journal entry, the Judge or his/her designee shall confer with media representatives regarding the positioning of the operators and equipment.

(4) The journal entry or agreement shall state whatever portions of the trial shall not be open to media recording. In the event that any time subsequent to the signing and filing of the journal entry the Judge shall decide to withhold media recording of any part of the trial, such decision and order shall be entered into the record of the case.

(5) In the event of a continuance of the trial for a period of more than thirty (30) days, a new application shall be required.

(6) At any arraignment room session, application in writing may be made anytime before the session. The Court may give permission for the reporting or recording of any portion of the session without a formal journal entry. Positioning of any equipment shall be at the complete discretion of the arraignment room Judge.

(B) Limitations

(1) Any equipment which is nonportable shall be set up and ready for operation prior to the commencement of court sessions. In no event will persons be permitted to bring equipment into the courtroom during trial unless such equipment can be easily carried by a single person and without causing a distraction or disturbance.

(2) No media recording of proceedings in the Judge’s chambers or accesses shall be permitted except with the express permission of the Judge. No media recording shall be permitted in jury deliberation rooms at any time during the course of the trial or after the case has been submitted to the jury. No pictures of jurors may be taken at any time.

(3) Audio equipment shall be so controlled that it will not pick up conferences or conversations between counsel and client, between counsel and the Judge at the bench, or between counsel and official court reporter as in the case of a proffer.

(4) The Judge, counsel, and witness shall not address any remark to the media when the Court is in session. In all respects, the trial shall proceed in exactly the same manner as though there was no media recording in process.

(5) No media recording shall be made of any document or exhibit before or after such document or exhibit is admitted into evidence, except those which are clearly visible to spectators, e.g., maps, charts, blackboards, etc.

(6) The Judge shall inform victims and witnesses of their right to object to being filmed, videotaped, recorded or photographed. Upon objection the media are prohibited from employing any means to record the victim or witness.

(7) No photographic or electronic equipment may be used in the courtroom which causes distracting sound or light.

(C) Sanctions

(1) Upon failure to comply with the orders of the Judge or with the Superintendence Rules for Municipal Courts and County Courts, the Judge may revoke any permission previously granted.

RULE 27 - JURY STANDARDS

(A) Eligibility for Jury Service

To ensure that the jury pool is representative of the adult population of Cuyahoga County, Ohio, all persons are eligible to serve on a jury, except as follows:

1. Persons less than 18 years of age.
2. Persons who are not residents of the City of Lakewood, Cuyahoga County, Ohio.
3. Persons who are not citizens of the United States.
4. Persons who are not able to communicate in the English language.
5. Persons who have been convicted of a felony and have not had their civil rights restored.

All reasonable efforts shall be made to accommodate physically handicapped prospective jurors who have special needs.

(B) Jury Commissioners

Three Jury Commissioners shall be appointed by the Court. The Jury Commissioners shall serve for a period of two (2) years. In the event a Jury Commissioner is unable to serve out his or her term, the Court shall appoint a replacement commissioner to complete the balance of the term.

Jury Commissioners shall convene when summoned by the Court for the purpose of selecting a jury source list. The Jury Commissioners shall be compensated for their services by an amount determined by Court order. All Jury Commissioners shall be duly registered electors in the City of Lakewood.

(C) Procedure for Jury Selection

Potential jurors shall be drawn from a jury source list which shall constitute a list of all registered voters in the City of Lakewood, Cuyahoga County, by the use of random selection procedures using automated data processing equipment in accordance with the provisions of Sections 2313.08 and 2313.21 of the Ohio Revised Code.

The Jury Commissioners shall convene and select at least one thousand (1,000) names to cover potential jury trials for the year. In the event the number of prospective jurors drawn are insufficient to meet the needs of the Court, the Jury Commissioners shall reconvene as necessary to select additional names.

The Jury Commissioners shall select the names of prospective jurors at random, by designation of page and line location in poll books as the jury source list supplied by the Board of Elections without prior knowledge of the names being selected. The jury source list shall be representative and should be as inclusive of the adult population in the jurisdiction as is feasible. The Court shall annually review the jury source list for its representativeness and inclusiveness of the adult population in the jurisdiction as is feasible. Should the Court determine that improvement is needed in the representativeness or inclusiveness of the jury source list, appropriate corrective action shall be taken.

Random selection processes shall also be utilized to assign prospective jurors to specific panels also for assignment during voir dire. Departures from random selection shall be permitted only as follows:

1. To exclude persons ineligible for service.
2. To excuse or defer prospective jurors.
3. To remove prospective jurors for cause or if challenged peremptorily.
4. To provide all prospective jurors with an opportunity to be called for jury service and to be assigned to a panel.

All prospective jurors shall be notified by regular mail of their requirement of service by the issuance of a summons directing them to appear on the date assigned. Further, all prospective jurors shall be required to complete a jury questionnaire and, if appropriate, a request for excuse, exemption or a deferral. The summons shall be phrased so as to be readily understood by an individual unfamiliar with the legal process, and shall be delivered by ordinary mail. The summons shall also clearly explain how and when the recipient must respond and the consequences of his failure to respond. Any person who fails to respond to a duly served summons shall be served with a citation for contempt of court, and must appear to answer on said summons or, if appropriate, shall be arrested and detained for examination as to why they failed to attend.

(D) Summoning Prospective Jurors

Prospective jurors shall be summoned for trial dates determined by the Court. For jury trials in civil cases, a deposit, as set out in the Court's cost schedule, shall be made at the time the jury demand is filed with the Court, unless otherwise ordered by the Court. The failure to make the deposit as required by court order or Rules of Court shall be deemed a waiver of the right to a trial by jury. A person determined to be indigent may petition the Court for a waiver of the jury deposit requirement.

In criminal cases, no deposit shall be required.

Prospective jurors shall be summoned to appear in sufficient numbers to accommodate trial activity. Panels of thirty (30) persons per trial shall be summoned for service unless the Court determines that a lesser or greater number is necessary for a particular trial.

The Court and counsel and/or parties are required to make efforts to resolve case scheduled for jury trial prior to the day of trial. At least two (2), but no more than seven (7) days prior to trial, the Court shall conduct a final pretrial conference unless otherwise ordered by the Court.

In cases where multiple trials are set for the same date, jury costs shall be assessed to the last trial settled on that date. If a trial is settled on the day of trial, all lawful jury costs shall be assessed against the party who requested the jury unless otherwise agreed to by the parties or ordered by the Court.

Persons summoned for jury service shall receive compensation in an amount determined by Court order. Such fees shall be promptly paid from the City or County Treasury, as appropriate.

Any juror wishing to waive his fee for service shall be permitted to do so in writing in the Clerk's office. All waived fees shall be returned to the City or County Treasury, as appropriate.

The term of service for any prospective panel shall be one day or the completion of one trial, whichever is longer.

(E) Exemption, Excuse, and Deferral

All persons except those who exercise their right to exemption are subject to service. Eligible persons who are summoned may be excused from service only if it is determined that their ability to receive and evaluate information is so impaired that they are unable to perform their duties as jurors, or that service upon a jury would constitute a significant hardship to them or members of the public. Persons excused from service shall be deferred and may be subject to jury service at a later time. Unless in the case of exigent circumstances or for good cause showing, all requests for excuse, exemption or deferral must be made on the form provided, and shall be accompanied by appropriate documentation. These documents shall be retained by the Court.

The following factors constitute a partial, although not exclusive, list of excuses for which a person may be excused or deferred from jury service:

1. Any person who suffers from a substantial physiological or psychological impairment.
2. Any person who has a scheduled vacation or business trip during potential jury service.
3. Any person for whom jury service would constitute a substantial economic hardship.
4. Any person for whom service on a jury would constitute a substantial hardship on their family, clients, or members of the public affected by the prospective juror's occupation.
5. Any person who has served on a jury within the last year.
6. Any person for whom it may be readily determined is unfit for jury service.
7. Any person for whom it is readily apparent would be unable to perform their duty as a juror.
8. Other valid excuse.

No person shall be excused from jury service, except by the Judge or an individual specifically authorized to excuse jurors. No person who does not complete the jury excuse deferral or exemption form shall be excused from service. Once a prospective juror has submitted his request for excuse, the prospective juror must report for service unless otherwise notified by the Court.

(F) Examination of Prospective Jurors

1. Voir dire examination shall be limited to matters relevant to determining whether to remove a juror for cause and to determine the juror's fairness and impartiality.
2. The trial judge shall conduct a preliminary voir dire examination. Counsel shall then be permitted to question panel members for a reasonable period of time.
3. The Judge should ensure that the privacy of prospective jurors is reasonably protected, and their questioning is consistent with the purpose of the voir dire process.
4. In criminal cases, the voir dire process shall be held on the record. In civil cases, the voir dire process shall be held on the record unless waived by the parties.
5. Rules on Voir Dire:

1. The case may not be argued in any way while questioning by jurors.
2. Counsel may not engage in efforts to indoctrinate jurors.
3. Jurors may not be questioned concerning anticipated instructions or theories of law. This does not prevent general questions concerning the validity and philosophy of reasonable doubt or the presumption of innocence.

4. Jurors may not be asked⁶ what kind of verdict they might return under any circumstance.
5. Questions are to be asked collectively of the entire panel whenever possible.

(G) Removal From Jury Panel

1. For Cause

If the judge determines during the voir dire process that any individual is unable or unwilling to hear the particular case at issue fairly and impartially, that individual shall be removed from the panel. Such a determination may be made on motion of counsel or by the Judge.

2. Peremptory Challenges

Rules determining procedure for exercising peremptory challenges shall be in accordance with the Ohio Civil and Criminal Rules adopted by the Supreme Court of Ohio and applicable statutory authority.

(H) Administration of Jury System

The responsibility for administration of the jury system shall be vested exclusively in the Lakewood Municipal Court. All procedures concerning jury selection and service are covered by the Ohio Revised Code, Ohio Rules of Court and the local Rules of this Court.

RULE 28 - COURT SECURITY

The Lakewood Police Department shall be primarily responsible for providing security to the Lakewood Municipal Court. The specific policies and procedures for Court security are contained in the Policy and Procedures Manual of the Lakewood Police Department. The policies and procedures for Court security shall be reviewed by the Court with the Police Department on an annual basis and at any other time as the need arises or the Court deems appropriate.

STATE OF OHIO)
)
COUNTY OF CUYAHOGA)

LAKESWOOD MUNICIPAL COURT
JOURNAL ENTRY

IN RE: COST SCHEDULE REVISION FOR GARNISHMENT ACTION
(personal earnings)

Effective March 30, 1999 and in accordance with revision in Section 2716 of the Ohio Revised Code, garnishment action (personal earnings) costs are increased as follows:

- \$75.00 per filing (civil case judgment)
- \$50.00 per filing (small claims judgment)
- \$10.00 additional per filing (employer/garnishee)

It is hereby ordered, adjudged and decreed that the aforementioned cost schedule revision be adopted and effective this 30th day of March, 1999.

Judge Patrick Carroll
Lakewood Municipal Court

Spread on the Journal this 30th day of March, 1999.
Journal Vol. 99 Page 0330

Richard L. Gray, Clerk
Lakewood Municipal Court

STATE OF OHIO)
)
COUNTY OF CUYAHOGA)

**LAKWOOD MUNICIPAL COURT
JOURNAL ENTRY**

IN RE: COST SCHEDULE REVISION FOR JUROR COMPENSATION

Effective immediately and in accordance with the Ohio Revised Code and Board of County Commissioners juror compensation resolution, the Lakewood Municipal Court daily juror compensation will be twenty-five dollars (\$25.00) and payable as required by statute.

It is hereby ordered, adjudged and decreed that the aforementioned cost schedule revision for juror compensation be adopted and effective this 10th day of February 1999.

**Judge Patrick Carroll
Lakewood Municipal Court**

Spread on the Journal this 10th day of February 1999.
Journal Vol. 99 Page 0210

**Richard L. Gray, Clerk
Lakewood Municipal Court**