

4. Facsimile filing costs shall be One Dollar (\$1.00) per transmission plus One Dollar (\$1.00) per page plus applicable filing fees. (Court costs additional.)
5. It is the obligation of the filing party to insure that pleadings were received by the Court.

### **RULE 3. CONTINUANCES.**

All motions for continuance shall be submitted to the Court in writing at least seven (7) days prior to a scheduled hearing, and must contain a brief in support setting forth the reasons requiring the continuance, along with a proposed order for the Court's review and approval. A continuance that has not been ruled on by the date of any hearing shall be considered to be denied.

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

Motions for continuance, when submitted within the required seven (7) days, will be granted only upon the showing of good cause constituting extreme hardship, unforeseen circumstances, or other unavoidable conditions.

### **RULE 4. FILING FEES.**

The schedule of filing fees in civil and criminal cases has been adopted by the Court (Appendix B), and may be amended from time-to-time by Court Order. Copies of such schedules are available from the Court website at [www.willoughbycourt.com](http://www.willoughbycourt.com).

## **LOCAL RULES IN CIVIL CASES**

### **RULE 5. DEFAULT DISMISSAL BY COURT.**

In all civil cases where the defendant(s) have failed to answer or further plead within sixty (60) days after the service of summons, the Court shall serve notice upon the plaintiff, with a copy to the defendant(s), pursuant to Civil Rule 41 that the Court will dismiss the case for want of prosecution unless good cause is shown. If the plaintiff fails to move the Court for an Order granting judgment by default pursuant to Rule 55(A) within thirty (30) days from the date of mailing the Rule 41 notice, the court shall dismiss the action for the want of prosecution.

### **RULE 6. MOTION PRACTICE.**

- A. **General Motion Practice.** All motions shall have appended a brief in support of the motion containing a short, concise, factual statement of the basis of the motion, the relief sought, and the appropriate authorities supporting such motions.

In all motions directed to the Court, unless otherwise provided in these rules or in the Ohio Rules of Civil Procedure, the failure of a party against whom a motion is made to file a brief in opposition within fourteen (14) days from the date of service of such

motion may be construed by the Court as an admission that the motion may be granted. Motions to extend the time for filing of briefs in opposition shall be requested prior to the expiration of the fourteen (14) day period.

All motions shall be accompanied by a proposed journal entry for the Court's review and consideration.

- B. Motion for Summary Judgment.** Unless otherwise ordered by the Court, motions for summary judgment shall be heard on briefs and supporting documentation authorized by Civil Rule 56(C) without oral hearing. Adverse parties shall serve and file opposing briefs and documentation within fourteen (14) days of the filing of the motion.
- C. Motion for Default Judgment.** Unless otherwise ordered by the Court, motions for default judgment must be accompanied by an affidavit on personal knowledge current within thirty (30) days of the Motion, showing affirmatively that the affiant is competent to testify to the matters stated therein and setting forth such facts as would be admissible in evidence in support of the allegations contained in plaintiff's complaint, and delineating the amount of damages to be considered by the court without oral hearing.

The Court will not accept affidavits of the plaintiff's attorney in support of a motion for default judgment unless the attorney is also the plaintiff.

Motions for default judgment which are not accompanied by an affidavit shall be set down for an evidentiary hearing pursuant to Civil Rule 55(A) to establish the truth of the averments in the complaint and to determine the amount of damages to which plaintiff is entitled. Failure of movant to appear and present evidence at the scheduled motion hearing will result in the dismissal of plaintiff's complaint, without prejudice for want of prosecution.

## **RULE 7. WITHDRAWAL OF COUNSEL.**

Only attorneys of record shall be considered as representatives of any party in a case. Withdrawal of such counsel shall be only upon a timely application submitted to the Judge with a journal entry prior to trial. Said request shall be served upon the client and counsel for all parties. Upon allowance of withdrawal by the Court, such withdrawn counsel shall serve copies of said journal entry upon the client together with a forwarding letter, a copy of which shall be filed with the Clerk's office. The letter shall provide the current address of the client and will be used for future service.

## **RULE 8. EXECUTION ON JUDGMENTS.**

In addition to the requirements of the Ohio Revised Code, all post-judgment pleadings shall be dealt with promptly. In the event such pleadings include court costs, the costs shall only include costs incurred in this court and/or costs included in a judgment transferred to this Court.

When the execution requests the attachment of funds at a financial institution, the party may include up to four (4) financial institutions per motion for order of attachment.

## **RULE 9. MAGISTRATES.**

- A.** Pursuant to Civil Rule 53 and the Rules of Superintendence, certain types of cases, as set forth below, shall be referred to a duly-appointed Magistrate of the Court and the reference of each such case shall be deemed to be journalized:
  - 1.** Civil matters in which the parties are not entitled to, or have waived their right to, a trial by jury;
  - 2.** Small claims;
  - 3.** Judgment debtor and garnishment proceedings;

4. Any other matter in which the parties agree, in writing, to hearing or trial by a Magistrate.
  5. Such other matters as the Court may assign.
- B.** Magistrates shall file their reports and recommendations with the Clerk within fifteen (15) days after conclusion of the trial or hearing before them, except in rare and unusual cases in which the complexity of the facts or of the law requires additional time for consideration by the Magistrate, in which case the Magistrate shall file an interim report setting forth the reasons for the delay. In cases where such a report is filed with the Clerk, the Magistrate shall file the completed reports and recommendations not later than thirty (30) days after the conclusion of the trial or hearing, unless the court, by Order, approves an extension of time.

## **RULE 10. CASE MANAGEMENT PROGRAM.**

- A. Pretrial.** All civil cases, except forcible entry and detainer, replevin, and small claims, shall be set for a combined pretrial and case management conference, if the case is at issue.

Counsel who will be trial counsel and who is fully authorized to act and negotiate on behalf of the party must be present at the pretrial. All parties in interest must be present at the pretrial unless such presence is excused by the trial judge. Insurance adjusters may substitute for their insured if they have authority to settle the case on behalf of their insured. Counsel will be encouraged at the pretrial by the Judge or Magistrate to review the possibility of settlement of the action, 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 action, including any appropriate and available alternative dispute resolution programs.

Counsel should be prepared at the pretrial to enter into a joint pretrial statement and binding case management schedule setting forth the possibility or probability of settlement, facts which can be stipulated and those remaining in contention, special legal issues, if any, and a timetable for the amendment of pleadings, the filing of motions, the exchange of expert witness reports and medical and hospital records, the termination of discovery, and the trial of the action. Such statement and hearing schedule shall thereafter be adopted as an Order by the Court.

At the time of the pretrial, the Judge or Magistrate may consider other appropriate pretrial matters in accordance with Civil Rule 16, including the imposition of sanctions as authorized by Civil Rule 37 and other such matters as may aid in the disposition of the case.

At any pretrial conference or trial, the Judge or Magistrate shall have authority:

1. To dismiss an action for want of prosecution **upon its own Motion or** Motion of the Defendant for failure of the Plaintiff or Plaintiff's counsel to appear at any pretrial conference or trial.
  2. To order the Plaintiff to proceed with the case and to decide and determine all matters ex parte upon failure of the Defendant or Defendant's counsel to appear in person at any pretrial conference or trial.
  3. To make such order as the Court may deem appropriate under all the circumstances, including the imposition of other sanctions.
- B. Trials.** All trials shall be scheduled before the court unless a party to the action files a timely jury demand or otherwise is accorded a right to a jury pursuant to law.
- C. Jury Trials.** All jury trials shall be conducted consistent with the proceedings adopted in this court's Jury Use & Management Standards. Such demand must be in writing and filed with the clerk of court no less than ten days prior to the date set for trial, or on or before the third day following receipt of notice of the date set for trial, whichever is later.

In cases other than Small Claims, the final pretrial shall be scheduled in the week prior to the trial in a final attempt to resolve the case without trial. The parties and attorneys (if represented) shall attend the final pretrial.

- D. Settlement or Dismissal.** In cases of settlement or dismissal, the Court will accept a telephone call or notice of same by telephone call from the appropriate parties. An entry must be submitted by the responsible party within seven (7) days of telephone notification, unless otherwise authorized by the Court.

If no entry is received within the time allowed, the Court will prepare an entry for dismissal at the plaintiff's cost.

## **RULE 11. FORCIBLE ENTRY & DETAINER ACTIONS.**

- A.** Claims for forcible entry and detainer and claims for past due rent and money damages in the same case shall be heard separately by the court.
- B.** In cases in which the court has issued a writ of restitution in actions in forcible entry and detainer, it shall be the responsibility of the plaintiff or his agents to provide for the actual moving out of the defendant from the residence premises, including the post move-out storage of any personal property of the defendant. The bailiff's office shall schedule the move-out and shall be in attendance at the time of the execution of the writ of restitution, but shall not make advanced arrangements for movers or conduct the move-out. Nothing in this rule shall prevent a party from recovering the costs of restitution of premises as damages in an appropriate case pursuant to law.
- C.** Notice of Dismissals will be allowed by telephone pursuant to the provisions of Local Rule 10 D.
- D.** Writs of Restitution will be issued only upon the written request and the payment of the journalized filing fee by the prevailing party. Requests to issue Writs of Restitution shall be filed only after the Judgment for Restitution has been journalized by the Clerk.

## **RULE 12. JUDGMENT ENTRIES - NOTICE TO PARTIES & COUNSEL.**

- A. Notice.** Within three (3) days of the journalization of any judgment entry or order, the Clerk of Court shall serve the entry or order upon every party who is not in default for failure to appear. Service shall be made in the manner provided in Civil Rule 5. In general, this will mean service via ordinary U.S. Mail upon the party's attorney or, if the party is a *pro se* litigant, upon the party.
- B. Docket Notation.** The Clerk shall make a notation in the case docket indicating that the required service has been made.
- C. Notice Deemed to Be Served.** Once the Clerk has served the notice of the entry and entered the appropriate notation in the docket, the notice shall be deemed to have been served. The failure of any party to receive such notice shall not effect the validity of the judgment or the running of the time for appeal.
- D. Final Appealable Order.** The obligation to distinguish between interlocutory orders and final appealable orders is with the parties and their counsel and not with the Clerk or Deputy Clerks of this Court.

## **RULE 13. SERVICE BY PUBLICATION.**

In cases where there is a request for service by publication pursuant to Civil Rule 4.4, the Clerk shall cause service of notice to be made by publication in a newspaper of general circulation in the County. The Clerk shall notify the publisher that the payment of the cost of the publication shall be the responsibility of the plaintiff. Payment arrangements shall be made directly by the plaintiff with the publisher without the court assessing the publication costs as costs of suit or without the

requirement of an advanced deposit by the plaintiff to the court for payment of the publication costs. Nothing in this rule shall prevent a party from recovering the costs of publication as damages or court costs in an appropriate case pursuant to law.

#### **RULE 14. SMALL CLAIMS COURT.**

- A. A small claims action is commenced by filing a small claims complaint pursuant to O.R.C. Section 1925.04. No defendant is required to file an answer or statement of defense. However, should the defendant, after being duly served, fail to appear for the hearing, a default judgment may be entered against said defendant. All pleadings will be construed to accomplish substantial justice.
- B. Upon filing of motion and affidavit, as required by O.R.C. Section 1925.10, payment of the required cost and upon Court approval, a small claims action may be transferred to the regular docket. No transfer will be considered until the filing costs are paid.
- C. The hearing shall be conducted by the Judge or Magistrate who shall place all parties planning to offer evidence under oath and, thereafter, allow the plaintiff and defendant to state their cases. 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 may be modified in small claims hearings to permit hearing consistent with the intent of O.R.C. Chapter 1925.
- D. The Magistrate shall thereafter submit a copy of the decision to the Judge for consideration. The Court will adopt or modify the decision by Judgment Entry, forward its judgment and decision to the plaintiff and defendant, and inform the parties that they may file objections, in writing, to the decision within fourteen (14) days. In such instances, the judgment will be stayed pending a determination by the Court on the objections.
- E. All parties are required to be present at the time of hearing. Failure to appear may result in dismissal of the action for want of prosecution or a judgment by default.
- F. Employees of the Court shall assist the prevailing parties in collecting their judgments pursuant to O.R.C. Section 1925.13.
- G. Dismissals by telephone will be allowed pursuant to Local Rule 10 D.
- H. Corporations may commence a small claims action and proceed with the same only in accordance with O.R.C. 1925.17 which reads: A corporation which is a real party in interest in any action in a small claims division may commence such action and appear therein through an attorney at law. Such corporation may, through any bona fide officer or salaried employee, file and present its claim or defense in any action in a small claims division arising from a claim based on a contract to which the corporation is an original party or any other claim to which the corporation is an original claimant, provided such corporation does not, in the absence of representation by an attorney at law, engage in cross-examination, argument, or other acts of advocacy.
- I. Corporate judgment creditors shall only be permitted to commence attachment of personal earnings and other than personal earnings through an attorney at law.

#### **RULE 15. TRUSTEESHIP.**

In order to enter into a trusteeship pursuant to O.R.C. Section 2329.70, an applicant must be qualified by having received a demand for garnishment of personal earnings.

At the time of application, the applicant shall submit to the court a legal fifteen (15) day notice received from a creditor listed in his application within thirty (30) days prior to filing of trusteeship application.

At the time of application, the debtor shall disclose to the clerk his or her pay day, and whether it is weekly, bi-weekly, semi-monthly or monthly. At the time of filing, the debtor must pay the filing fee. At every pay day after the trusteeship is established, the debtor shall appear and show his or her pay stub to a deputy clerk, as trustee, and make payment in accordance with O.R.C. Section 2329.70 in an amount equal to 17.5% of the debtors gross earnings less deductions allowed by law. Failure to make regular payments as set forth above will be cause for termination of the trusteeship.

The Court shall cause notice to be forwarded to each creditor by certified mail with request to verify the account with election to participate or not to participate in the trusteeship. Failure to elect within ten (10) days after receipt of notice shall cause trustee to declare creditor a participant in the trusteeship under O.R.C. Section 2329.71. The election to participate shall constitute a waiver of all interest, penalties, and late charges as may be provided in the security agreement, or any other indebtedness.

If the debtor desires to make payments to creditors out of exempt pay, such payments may be made as follows:

1. Paying direct to any secured creditor (holder of mortgage on any property) such amounts as desired, provided payment of the amount required has been made to the Clerk, as trustee, but only if such creditor is not listed as a creditor in the schedule, or such creditor has refused to participate in the trusteeship, or an agreement has been filed with and approved by the court.
2. Making payment of such amount to the Clerk for distribution to the creditors. In no event shall the debtor make any payment directly to a listed creditor who is participating in proceeds of the trusteeship without approval of the court.

Any payment made in violation of this rule shall be grounds for termination of the trusteeship and the Clerk, on final distribution, shall omit the amount of such preferred creditor in calculating the distribution.

The Clerk, as Trustee, shall deduct two percent (2%) of amount collected as a poundage fee which shall be forwarded to the City of Willoughby monthly.

In the event a debtor fails to make any scheduled payment within ten (10) days after the payment is due, the Clerk shall forward a letter by ordinary mail to the debtor at the address listed by the debtor, requiring the debtor to appear at a date not less than five (5) days nor more than ten (10) days from the date of the letter to show cause why the trusteeship shall not be terminated. If the debtor appears, hearing may be had before a Judge or Magistrate at debtor's request. If the debtor fails to appear, the Clerk shall forthwith prepare an entry terminating the trusteeship for cause.

The Clerk shall not be required to make distribution to creditors more often than once every ninety (90) days except that she shall disburse all funds including a the two percent (2%) fee to the City of Willoughby, at the end of the month in which the termination of any trusteeship occurs.

## **RULE 16. GENERAL PROVISIONS.**

- A. In all instances wherein a party requests a copy of a time-stamped pleading or entry be returned by mail, a return self-addressed stamped envelope shall accompany the request.
- B. Pleadings that do not conform to the Rules set forth herein are subject to being rejected and returned to the filing party.
- C. Costs associated with any filing are to be paid at the time of filing unless prior arrangements have been made with the Clerk's office.