

MIAMISBURG MUNICIPAL COURT
LOCAL RULES OF COURT
(Effective January 1, 2015)

<http://goo.gl/RnEIP7>

1.00 COURT SESSION:

- A. HOURS: Hours of court are Monday through Friday, 8:00 am to 12:00 noon and 1:00 pm to 4:30 pm, except court holidays, or as otherwise ordered by the trial judge.
- B. This court utilizes a digital, electronic recording system to maintain a record of all courtroom proceedings.

1.01 CLERK OF COURT:

- A. HOURS: The Clerk of Court's office hours are Monday through Friday, 8:00 am to 4:30 pm, except court holidays, or as otherwise ordered by the administrative judge.
- B. HOLIDAYS: New Year's Day, Martin Luther King Day, President's Day, Good Friday, Memorial Day, Fourth of July, Labor Day, Veteran's Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, and Christmas Day. If a holiday falls on a Saturday or Sunday, recognition will be either the following Monday or the preceding Friday.
- C. EFFECT OF A HOLIDAY: When the day on which any act is required to be performed falls on a court holiday or a day the court is declared closed, then the act shall be performed the following day the court is in session. The time within which an act is required to be done shall be computed by excluding the first day and including the last, except when the last day falls on a Sunday or on a holiday.
- D. The officers or employees of this court shall not prepare or assist in the preparation of any pleading, affidavit, entry, or order in any Civil or Criminal matter, except as provided under O.R.C. § 1925.04.
- E. The Clerk shall permit any person to make a copy of any papers on record, but original papers filed in any case shall not be removed from the office without the judge's approval. Reproduction costs of any material shall be at a rate established by the Clerk.

2.00 DOCKETS:

The Clerk shall maintain such dockets, records and indices as required by law or as practical necessity as a public record, including:

- A. CIVIL DOCKET; containing all civil actions together with all proceedings filed therein, properly dated. This docket is a complete and final record of each civil action.
- B. SMALL CLAIMS DOCKET; containing all civil actions filed in the Small Claims Division established under O.R.C. § 1925.01 together with all proceedings filed therein, properly dated. This docket is a complete and final record of each small claims action.
- C. FELONY CRIMINAL DOCKET; containing all felony criminal cases together with all proceedings filed therein, properly dated. This docket is a final and complete record of each felony criminal case.
- D. MISDEMEANOR CRIMINAL DOCKET; containing all misdemeanor criminal cases together with all proceedings filed therein, properly dated. This is a final and complete record of each misdemeanor criminal case.
- E. TRAFFIC DOCKET; containing all traffic cases together with all proceedings filed therein, properly dated. This docket is a final record of each traffic case.

The digital traffic case records and backup copy shall be maintained for the applicable retention period as set forth in the Rules of Superintendence of the Courts of Ohio, Sup. R. 26.01 to 26.05, and shall be regarded as the Court's Local Retention Rule.

- F. JOURNAL; is a separate volume reserved for the purpose of containing all rules and orders regulating the business of the court.

3.00 JURY MANAGEMENT:

Jurors are selected at random from a computerized list of legal voters from the Board of Elections. At least seventy-five (75) subpoenas are mailed for each criminal and civil jury. These subpoenas are mailed one week before the trial date by ordinary mail. A list of the jury is made for the Judge, Clerk, Bailiff and each attorney involved in the case. If a jury is canceled after it has been ordered into court and the Clerk of Court is unable to notify all the prospective jurors of said cancellation, the Court must assess the costs incurred to the party canceling the jury demand.

- A. OPPORTUNITY FOR SERVICE: The selection of jurors should not be denied or limited on basis of race, national origin, gender, age, religious belief, income, occupation, disability or any other factor that discriminates against a cognizable group in the jurisdiction.
- B. JURY SOURCE LIST: The method for the selection of jurors is outlined by the laws of the State. Actual jurors are drawn under those laws by a jury commission under the supervision of the Court.

Choice of individuals is by lot or chance. This means that some may never be called upon to exercise the privilege of serving, while others may be called several times.

C. REQUESTS TO BE EXCUSED: A request to be excused from jury duty must be filed in writing with the Court. A juror may be excused for any of the reasons enumerated under §2313.16 of the Ohio Revised Code, including:

1. Juror is absent from the county and will not return in time to serve
2. The juror is physically or mentally unable to serve (doctor's written verification may be required)
3. Jury service would cause undue or extreme physical or financial hardship to the juror or a person under the care or supervision of the juror.

D. ELIGIBILITY FOR JURY SERVICE: All persons who reside within the jurisdiction of the Court should be eligible for jury service except those:

1. Less than 18 years of age
2. Not a U.S. Citizen
3. Not able to communicate in English
4. Having been convicted of a felony and not had their civil rights restored.

E. VOIR DIRE

1. Voir dire examination should 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 should 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 the 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.

F. REMOVAL FROM THE JURY PANEL 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 should be removed from the panel. Such a determination may be made on motion of counsel or by the Judge.

G. PEREMPTORY CHALLENGES:

1. Peremptory challenges should be limited to a number no larger than necessary to provide reasonable assurance of obtaining an unbiased jury.
2. In civil cases, the number of peremptory challenges should not exceed three (3) for each side. If the Court finds that there is a conflict of interest

between parties on the same side, the Court may allow each conflicting party up to three (3) peremptory challenges.

3. In criminal cases, the number of peremptory challenges should not exceed three (3) for each side and one (1) additional peremptory challenge for the impaneling of one (1) alternate juror.
4. In criminal and civil proceedings each side should be allowed one (1) peremptory challenge if an alternate juror is impaneled.

H. ADMINISTRATION OF THE JURY SYSTEM:

1. All procedures concerning jury selection will be governed by Ohio Rules of Court and responsibility for administering the jury system will be vested in a single administrator.
2. The notice summoning a person to jury service will explain how and when the recipient must respond and the consequences for failure to respond.
3. The Court will evaluate its jury performance on a regular basis.
4. The Court will employ the services of prospective jurors so as to achieve optimum use with a minimum of inconvenience to jurors.
5. The Court will determine the minimally sufficient number of jurors needed to accommodate trial activity. This information and appropriate management techniques should be used to adjust the number of individuals summoned for jury panels.

I. JURY FACILITIES:

1. The Court will provide an adequate and suitable environment for jurors with the entrance and registration area clearly identified and pleasant waiting facilities furnished with suitable amenities.
2. The jury deliberation room will include space, furnishings, and facilities conducive to reaching a fair verdict. The safety and security of the deliberation rooms should be ensured and the facilities arranged to minimize contact between jurors, parties, counsel, and the public.

J. JURY COMPENSATION:

1. Pursuant to §1901.25 of the Ohio Revised Code, persons called for jury service will receive a reasonable fee for their service. Jurors shall receive vouchers for the statutory rate of compensation on the day of their jury service or as soon thereafter as may be practicable.
2. Employers shall be prohibited from discharging, laying-off, denying advancement opportunities to, or otherwise penalizing employees who miss work because of jury service.

K. JUROR ORIENTATION AND INSTRUCTIONS

1. The Court will provide orientation and instructions to persons called for jury service:
 - a. Upon initial contact prior to service;
 - b. Upon first appearance at the court; and

- c. Upon reporting to a courtroom for voir dire.
2. The Trial Judge will:
 - a. Give preliminary instructions to all prospective jurors.
 - b. Give instructions directly following impanelment of the jury to explain the jury's role, the trial procedures, the nature of evidence and its evaluation, the issues to be addressed, and the basic relevant legal principles.
 - c. Prior to the commencement of deliberations, instruct the jury on the law, on the appropriate procedures to be followed during deliberations, and on the appropriate method for reporting the results of its deliberations. Such instructions should be made available to the jurors during deliberations;
 - d. Prepare and deliver instructions which are readily understood by individuals unfamiliar with the legal system; and
 - e. Recognize utilization of written instructions if preferable.
 - f. Before dismissing jurors at the conclusion of a case:
 - (1) Release the jurors from their duty of confidentiality;
 - (2) Explain their rights regarding inquiries from counsel or the press;
 - (3) Either advise them that they are discharged from service or specify where they must report; and
 - (4) Express appreciation to the jurors for their service, but not express approval or disapproval of the result of the deliberation.
 3. All communications between the Judge and members of the jury panel, from the time of reporting to the courtroom for voir dire until dismissal, shall be in writing or on the record in open court. Counsel for each party shall be informed of such communication and given the opportunity to be heard.

L. JURY SIZE, UNANIMITY OF VERDICT, AND DELIBERATIONS.

1. Jury size and unanimity in civil and criminal cases shall conform with existing Ohio law.
2. Jury deliberations will take place under conditions and pursuant to procedure that are designed to ensure impartiality and to enhance rational decision-making.
3. The Judge will instruct the jury concerning appropriate procedures to be followed during deliberations in accordance with Local Rule 3.00(K)(3).
4. The deliberation room should conform to the recommendations set forth in Local Rule 3.00(I)(2).
5. A jury should not be required to deliberate after a reasonable hour unless the Trial Judge determines that evening or weekend deliberations would not impose an undue hardship upon the jurors and are required in the interest of justice.
6. Training will be provided to personnel who escort and assist jurors during deliberation.

4.00 CIVIL PROCEDURE:

- A. COMPLAINT: The complaint shall contain the full name and residence of each plaintiff and defendant and the name and attorney registration number of the attorney for the plaintiff. The original filing shall have a sufficient number of copies for all defendants who have separate interests.
- B. SUMMONS AND RETURN: Upon the filing of a complaint and praecipe, Summons shall be forthwith issued, signed by the Clerk or Deputy and shall bear the seal of the Court.
- C. SERVICE OF SUMMONS BY CERTIFIED MAIL: When it is not requested that a summons be served by the Bailiff, it is then sent via certified mail, to the address submitted on the complaint. When certified mail is returned marked "Unclaimed," "Unable to Serve," or "Moved," a notification is sent to the attorney advising service was not obtained by certified mail, personal service, or residence service. The attorney completes the form "Request for Ordinary Mail" and the summons is then sent ordinary mail. The above provision shall not apply to praecipes or proceedings after judgment to enforce collections.
- D. EXTENSIONS: For good cause shown, the time for filing a pleading may be extended for such reasonable time that the court may provide by written order.
- E. UNUSED DEPOSITS: Unused deposits still on hand with the Clerk of Courts at the end of one (1) year will be returned to the respective attorneys filing those cases upon motion of said attorneys.
- F. JURY TRIAL DEMAND AND DEPOSIT – CIVIL: A party desiring a jury shall file a demand in writing in accordance with the Civil Rules. The party making a demand for a jury shall make a deposit as set forth in Schedule "A". The jury shall not be drawn unless there is available in a fund, subject to the control of the Clerk, sufficient money to pay the fees of jurors related costs.
- G. PROCEEDINGS IN AID OF EXECUTION: Orders in Aid of Execution shall be served and scheduled in the same manner as appearance cases. No Order in Aid of Execution shall be accepted by the Clerk unless the name of the attorney filing same appears at the bottom of each copy. The Clerk shall not accept such orders unless one copy is furnished for each party to be served and one copy for the Clerk. In the event the plaintiff or his attorney fails to appear for the examination of the debtor, the presence of the party shall be noted on the docket and the debtor excused.
- I. 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 without oral argument fourteen (14) days after service of the Motion upon opposing party. The adverse party, prior to the date of hearing, may serve and file opposing affidavits. In the absence of a Motion for an

extension of time, or request for oral argument, the Motion shall be deemed submitted for the decision as of the fourteenth (14th) day.

5.00 SMALL CLAIMS DIVISION:

The costs and filing fee for a Small Claims complaint will be as set forth in Schedule "A". This filing fee includes cost of serving the notice and summons. Fees for service other than those set forth above shall be the same as the fees set by the regular Civil Court Division. The defendant's address must be full, complete and current. The Small Claims Division will not accept a partial address. If the defendant cannot be located at the address given to the court by the plaintiff, the court will notify the plaintiff by mail of its inability to serve the defendant and the claim will be dismissed unless proper address is provided within ten (10) days. In instances where the plaintiff is a corporation, the signatory of the plaintiff's complaint may be an attorney representing the plaintiff, an officer of the corporation, or a salaried employee of the corporation. In instances of partnership, the affiant must be one of the partners. Upon the filing of the complaint, the complaint will be set for one-half (1/2) hour of trial unless notified by the plaintiff that more time is required.

6.00 TRUSTEESHIP DIVISION:

A. APPLICATION: The application for the appointment of a trustee shall include a complete and accurate statement, under oath, of:

1. The debtor's name, address, and marital status;
2. The name and address of the debtor's employer or employers;
3. The amount of the debtor's gross earnings for a period of 30 days; and
4. A statement indicating the name of the creditor from whom the fifteen (15) day written notice of proceeding against the debtor's earning was received.

Upon filing of an application, the Clerk shall become the trustee without formal order of the court. Objections of interested parties to the application shall be heard at the appearance call set by court. The filing of the application shall stay all proceedings against personal earnings of the applicant, provided that, if the order of attachment, or the Order in Aid of Execution, is served upon the employer or garnishee prior to the time of filing of the application, the personal earnings subject to the order of the court shall be paid to the Clerk of Court for distribution in the case of which said order was made. In the event the application is filed, prior to the time the order of attachment, or Order in Aid of Execution, is served upon the employer or garnishee, the personal earnings subject to the order of the court shall be ordered paid to the trustee.

B. NOTICES: At the time of filing the application, the attorney for the debtor shall deliver to the Clerk two (2) copies of a notice of the appointment for each creditor listed in the application, together with a stamped envelope properly addressed to each creditor. The Clerk shall deposit such notice in the mail within twenty-four (24) hours, and indicate on the docket that notices were

mailed to the listed creditors. Each notice shall contain the name of the applicant, the sum applicant claims is owing the creditor, the time and place objections to said applications shall be heard, and a place for the verification or objection of the creditor. Additional creditors may be listed in the trusteeship upon the application and service of a notice to each additional creditor as heretofore provided. If such application is made by a creditor, a similar notice must be given to the debtor, unless the creditor has obtained judgment in a court of record.

- C. DISTRIBUTION: The trustee shall make no distribution to anyone except a creditor or an attorney for the creditor. Credit Bureaus or Credit Collection Services are not to receive a distribution unless it is a valid claim of the Collection Service and not that of an agent. The Clerk or deputy appointed shall supervise payments of debts and distribute the funds in each case at least every six months unless the amount available does not equal twenty-five percent (25%) of the claims listed. When a debtor pays directly, the Clerk shall require the debtor to produce payroll stubs or similar records and the Clerk may refuse to accept payments, or installments thereof which do not equal the amount required by law. If the payments are not made for thirty days, the trusteeship shall be dismissed and the proceeds distributed. The Clerk may not accept payments into a trusteeship where the debtor pays direct unless the tender of payments is made by the debtor, his agent, or attorney within four (4) days after the receipt of the personal earnings by the debtor. This requirement can be waived only by the judge of the Court.

- D. DISMISSAL: The dismissal of a trusteeship by rule of court, or upon motion of counsel for one of the creditors listed therein, shall make the debtor filing of said trusteeship ineligible for reinstatement or re-filing an application for another trusteeship for a period of six (6) months from the date of the dismissal; provided, however, that such trusteeship be reinstated upon the tender and payment to the Clerk of Court as trustee the amount of money required by law to make such trusteeship current to the date of such tender, if the approval of the judge of the court is first obtained.

7.00 SALES AND CONFIRMATION:

A copy of a notice of the sale of personal property shall be mailed by the bailiff to the parties and to attorneys of record in the case. However, a failure to mail such notice shall not invalidate a sale. Entries of confirmation in distribution shall be prepared by the party who requested the sale and shall contain a statement that the sale was regular and proper in every respect unless otherwise directed by the court and also a statement of the balance, if any, still due on the judgment.

8.00 DEPOSITS:

- A. WITNESS: No subpoena for a witness in a Civil proceeding shall be issued until a witness fee cost and estimated mileage is deposited with the clerk. A witness who testifies or is available for the purpose shall receive this fee upon presentation of the subpoena to the Clerk of Court.

B. EXECUTION, REPLEVIN, ATTACHMENT: Before any writ may be issued in an execution, replevin, attachment, or any other process against chattel property other than personal earnings, a sum of money sufficient to pay the cost of moving, storage, advertising and the care of any custody of property must be deposited with the Clerk to secure such expenses. The amount of such deposit shall not be less than one hundred dollars (\$100.00).

9.0 CRIMINAL DIVISION:

A. BAILIFF: The bailiff or deputy selected by the judge shall formally open sessions of Traffic and Criminal Court and shall enforce and maintain order.

B. CONTINUANCES: The court is opposed to delay in the handling of its business. Every request for a continuance shall be by written motion, unless made on the record in open court. The motion shall set forth the date from which a continuance is requested and the reasons for a continuance. Continuance because of a scheduling conflict with another court of record will be considered only if a motion thereof is filed in conformity with the Rules of Superintendence of the Courts of Ohio, accompanied by a copy of the conflicting court notice and the motion is filed not less than two working days prior to trial. The granting of a continuance of a scheduled trial is a matter within the sound discretion of the trial court.

C. BAIL: Officers in charge shall release any person arrested or charged with any misdemeanors, who give bail or execute a bond according to law and satisfaction of the Clerk in the amount indicated in the bail or bond schedule. The Court shall set bond in all felony cases.

D. REGISTRATION OF BAIL BOND AGENTS:

1. The Miamisburg Municipal Court requires a bail bond agent to register with the Clerk of the Miamisburg Municipal Court before a bond may be filed in this Court. (§3905.87 of the Ohio Revised Code).
2. To register, a bail bond agent shall file with the Clerk of Court, Criminal Division, a certified copy of the surety bail bond agent's appointment by power of attorney from each insurer that the bail bond agent represents.
3. The bail bond agent shall keep his or her registration current by filing a certified copy of a renewed power of attorney by the first day of August of each odd-numbered year.
4. A bail bond agent must produce a current state bail license each time a bond is filed in the Miamisburg Municipal Court (§3905.84 and §3905.85 of the Ohio Revised Code).

E. BOND FORFEITURE: Where bond or bail has been posted by a bondsman and the Defendant fails to appear as scheduled, the Clerk shall give notice to the accused and each surety in writing within fifteen (15) days of the forfeiture declaration. The notice shall be sent by ordinary mail to the bondsman advising said bondsman that he has forty five (45) days within which to show cause, or present the Defendant before the Court. In the event the bondsman has failed to show cause, or bring the Defendant before the Court within the required forty five (45) days, said bondsman shall remit the forfeited sum to the Court on or before the sixtieth (60th) day after the original notice of forfeiture. Failure to remit the bond on or before the sixtieth (60th) day shall result in the bondsman's privileges being revoked forthwith, and shall remain such until reinstated by the Judge of this Court after hearing.

Where the defendant has bond money on file with the court and fails to make a scheduled appearance, the bond may be forfeited by the court and a warrant may be issued for the arrest of the defendant.

F. ARRAIGNMENTS: Misdemeanor arraignments will be held at 9:30 am on each Monday and Wednesday for all criminal cases, and first through fourth degree traffic cases. Arraignments for minor misdemeanor traffic and criminal cases will be held every Tuesday at 3:00 pm. Video arraignments for Montgomery County Jail inmates will be conducted Monday at 9:30 am, and Tuesday through Friday at 10:00 am.

G. TRIAL BY JURY: A demand for a trial by jury must be in writing and filed with the Clerk of Court not less than ten (10) days prior to the date set for trial, or on or before the third (3rd) day following receipt of notice of the date set for trial, whichever is earlier. Failure to demand a jury trial as provided herein is a complete waiver of the right thereto.

H. MANDATORY COURT APPEARANCES: All persons regardless of residence, must appear in court if cited for the following offenses:

1. Indictable offenses and misdemeanors.
2. Operation of a motor vehicle while under the influence of intoxicating beverage or drugs, or permitting another person under the influence of intoxicating beverage or drugs to drive.
3. Reckless operation.
4. Driving under suspension or revocation of driver's license.
5. Driving without being licensed.
6. A second moving traffic offense within a twelve (12) month period.
7. Any violation otherwise eligible for processing by waiver in connection with which the officer, by reason of unusual circumstances, marked the notice

to appear as “Personal Appearance Required,” drug offenses that are minor misdemeanors, school zone violations, no proof of financial responsibility insurance, driving upon a street closed during school hours, any speeding violation wherein defendant’s speed exceeds the posted limit by 36 mph or more, and all school bus violations.

8. Probation violation.

I. PROBATION DEPARTMENT: The probation department shall perform such duties as designated by the judge of this Court.

10.00 CASE MANAGEMENT IN CIVIL CASES:

A. PURPOSE: The purpose of this rule is to establish a system for civil case management, pursuant to Rule 5 of the Rules of Superintendence of the Courts of Ohio, which will achieve the prompt and fair disposal of civil cases.

B. SCHEDULING OF EVENTS: The scheduling of a case begins when a civil case is filed. Thereafter, the case is managed in four (4) clerical steps and four (4) judicial steps.

C. CLERICAL STEPS:

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

2. After any responsive pleading is filed, the clerk shall immediately forward said pleading, with the file, to the judge so the matter may be set for a hearing.

3. 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 unless good cause is shown.

4. When a file has been marked “settlement entry to come” and the entry has not been received within twenty-one (21) days, then the clerk shall notify the party that the case will be dismissed unless the entry is received within ten (10) days.

D. JUDICIAL STEPS:

1. Pre-trial Hearings: After an answer is filed, the court will then set a pre-trial hearing which may be heard in court or by telephone.

For the purpose of this rule, “pre-trial” 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 pre-trial conference, without just cause being shown, may be punished as for contempt of this court.

Notice of pre-trial conference shall be given to all counsel of record by mail, email, and/or telephone from the assignment commissioner not less than fourteen (14) days prior to the conference. Any application for continuance of the conference shall be addressed to the judge.

Counsel attending the pre-trial conference must have complete authority to stipulate on items of evidence and must have full settlement authority.

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 trial. The court will file a pre-trial statement to become part of the record and the case embracing all stipulations, admissions, and other matters which have come before it in the pre-trial. 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.

The judge/magistrate presiding at the pre-trial 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 counsel to appear in person or by phone at any pre-trial conference or trial; to 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 pre-trial conference or trial as required; to make such other orders as the court may deem appropriate under all the circumstances. If the case cannot be settled at pre-trial, then the case will be set for trial.

2. Motions: All motions should be in writing and accompanied by a written memorandum containing citations and the arguments of counsel. The Court may rule on said motion immediately, or grant opposing counsel fourteen (14) days to respond. There will be no oral hearings granted on said motions unless the party requests an oral hearing in writing and the court deems it necessary.
3. Continuances: Every request for a continuance shall be by written motion, unless made on the record in open court. The motion shall set forth the date from which a continuance is requested and the reasons for a continuance. Continuance because of a scheduling conflict with another court of record will be considered only if a motion thereof is filed in conformity with the Rules of Superintendence of the Courts of Ohio, accompanied by a copy of the conflicting court notice and the motion is

filed not less than two working days prior to trial. The granting of a continuance of a scheduled trial is a matter within the sound discretion of the trial court.

4. Judgment Entries: Counsel for the party in whose favor an order or judgment is rendered shall prepare a journal entry. That entry shall be submitted to opposing counsel within five (5) days of the decision. Opposing counsel shall approve or reject the entry within ten (10) days of the decision. Within fifteen (15) days of the decision, the journal entry shall be submitted to the judge or magistrate.

An entry of settlement may be filed at any time. The avoidance of trial by settlement shall be allowed without the filing of an entry, but such entry shall be filed within thirty (30) days or the case will be dismissed for want of prosecution. The journal entry shall state which party will pay the court costs.

11.00 CASE MANAGEMENT IN CRIMINAL CASES:

- A. The purpose of this rule is to establish, pursuant to Rule 5 of the Rules of Superintendence of the Courts of Ohio, a system for criminal case management which will provide the fair and impartial administration of criminal cases. These rules shall be construed and applied to eliminate unnecessary delay and expense for all parties involved in the court justice system.
- B. Scheduling of Events: The scheduling begins after arraignment. Thereafter, the case is managed in three (3) judicial steps:
 1. Pre-trials: After arraignment, if requested, all first, second, third and fourth degree misdemeanors shall be set for pre-trial by the assignment commissioner within thirty (30) days. If no such request is made, said misdemeanors and all minor misdemeanors shall be set for trial.

The pre-trial shall be conducted in accordance with Criminal Rule 17.1 and a memorandum of the matters agreed upon should be filed in said case. If the parties cannot resolve the case, then the case shall be set for trial to the court unless a jury is demanded.

2. Motions: All motions should 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. The motion may be set for oral hearing.
3. Trials: Each case not resolved at pre-trial shall be set for trial to the court. If a jury demand is timely filed, then the case will be moved to the jury trial schedule.

12.00 CASE MANAGEMENT IN FORCIBLE ENTRY AND DETAINER CASES:

- A. Hearing: All forcible entry and detainer cases shall be set for hearing before the judge or magistrate pursuant to the time limits set forth in the Ohio Revised Code. At that hearing, the Ohio Rules of Evidence and the applicable Ohio Rules of Civil Procedure will be applied.
- B. Judgment Entries: The court shall review the findings of the magistrate and enter the appropriate judgment entry.
- C. Upon the granting of restitution, if the tenant fails to vacate the premises and remove his property therefrom, the landlord shall file a writ of restitution with the Clerk of Court and pay the applicable fee.
- D. Upon receipt of the writ of restitution, a representative of the Court shall contact the landlord or the landlord's attorney to set a specific date for the move-out. The Bailiff's Office shall supervise every move-out conducted through the Court.
- E. Once a specific date for the move-out has been set, the tenant must vacate and remove all personal belongings prior to that date, or the Bailiff may proceed by court order to forcibly eject the tenant and restore the premises to the owners.
- F. Scheduling Hearing: If an answer or jury demand is filed in a forcible entry and detainer case, the clerk shall set the case for hearing. The jury deposit shall be eight hundred dollars (\$800.00) and shall be deposited at the time of filing of the jury demand.
- G. Appeal from Hearing on Second Cause of Action for Damages/Counterclaim: The magistrate 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 magistrate's findings within fourteen (14) days, in writing.

The objections to the magistrate's findings should state, with specificity, the reason a new hearing is requested. No oral hearing will be granted on said motion. The court shall, after consideration of the reasons in the objections to the magistrate's findings, rule on said objections to the magistrate's findings.

The judge shall review the findings of the magistrate, and enter the appropriate judgment.

- H. The **LANDLORD OR ATTORNEY FOR LANDLORD** shall, **prior to 11:00 a.m.** on the day of the scheduled move-out, contact the Bailiff at 866-2203, Ext. 6486, **ONLY** if the move-out is to go forward. If the Bailiff is not notified that the move-out is to go forward by the landlord or attorney for landlord prior to 11:00 a.m. on the day of the scheduled move-out, the Bailiff will not appear and the **MOVE-OUT WILL NOT PROCEED**.

- I. Any personal property that is not removed by the date of the move-out will be considered abandoned, and will be subject to removal and disposal by the owner of the premises. The tenant may not remove his or her property subsequent to 1:30 p.m. on the day of the eviction or after eviction without the written consent of the owner or landlord, who may refuse the request.

13.00 CASE MANAGEMENT IN SMALL CLAIMS CASES:

- A. A small claims action is commenced by filing a small claims petition, pursuant to §1925.04 of the Ohio Revised Code. No defendant is required to file an answer or statement of defense. However, should the defendant fail to appear for the hearing, after being duly served, then a default judgment will be entered against said defendant. All pleadings will be construed to accomplish substantial justice.
- B. Upon filing of motion and affidavit, as required by §1925.10 of the Ohio Revised Code, and upon payment of the required cost, the small claims matter will be transferred to the regular docket. No transfer will be granted until the filing costs are paid.
- C. Hearing: The hearing in small claims court shall be conducted by the judge or magistrate. The judge or magistrate 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.
- D. Appeal from Hearing: The magistrate 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 magistrate's findings within fourteen (14) days, in writing.

The objections to the magistrate's findings should state, with specificity, the reason a new hearing is requested. No oral hearing will be granted on said motion. The court shall, after consideration of the reasons in the objections to the magistrate's findings, rule on said objections to the magistrate's findings.

The judge shall review the findings of the magistrate, and enter the appropriate judgment.

- E. Collection of Judgments: Pursuant to §1925.13 of the Ohio Revised Code, if a party is not represented by counsel, the court, upon payment of court costs, shall explain to the parties and assist the parties in the preparation and filing of, and supply the parties with any necessary forms for, proceedings in aid of execution to collect and enforce judgments.

14.00 SPECIAL PROCEEDINGS:

- A. Purpose: The purpose of this rule is to establish a case management system for special proceedings to achieve a prompt and fair disposition of these matters, pursuant to Rule 5 of the Rules of Superintendence of the Courts of Ohio. The following civil matters are considered special proceedings and may be heard by a judge or magistrate, to wit: small claims, forcible entry and detainer, default hearings, rent escrow, replevin, motion to cite, garnishment hearings, and debtor's exams. The following criminal matters are considered special proceedings and they are to be heard by a judge, to wit: preliminary hearings, extradition hearings, and Bureau of Motor Vehicle hearings.
- B. Schedule of Events: Cases that have time limits established by the Ohio Revised Code shall be set within those time limits for hearing. In all other special proceedings, the case shall be set for hearing within a reasonable time not to exceed ninety (90) days.
- C. Clerical steps: In all new cases, if counsel fails to obtain service of summons within six (6) months, the clerk shall notify counsel that the case will be dismissed in ten (10) days unless good cause is shown to the contrary.
- D. After any responsive pleading is filed, the clerk shall immediately forward said pleading and file to the judge so that the matter may be set for a hearing.
- E. 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 unless good cause is shown.
- F. When a file has been marked "settlement to come", the clerk shall notify the parties that their case will be dismissed unless the entry is received within fourteen (14) days.

15.00 MAGISTRATE:

- A. Pursuant to Civil Rule 53, Traffic Rule 14, Criminal Rule 19, and Rule 19 of the Rules of Superintendence for the Courts of Ohio, the magistrate of this court is empowered to hear and report in the following cases:
 - 1. Default proceedings.
 - 2. Forcible entry and detainer actions.
 - 3. Small Claims.
 - 4. Traffic proceedings in which a guilty plea is entered, or in which the defendant executes a written waiver of the right to a trial by judge.
 - 5. Judgment debtor proceedings.
 - 6. Rent escrow hearings.
 - 7. Conduct arraignments, initial appearances and preliminary hearings.
 - 8. Conduct the trial of any case that will not be tried to a jury.
 - 9. Such other matters as may properly be referred by a judge.
 - 10. Exercise any other authority specifically available to magistrates by statute, or rule of procedure.

- B. Objections to Magistrate's Report: In all cases other than restitution of premises in forcible entry and detainer matters, the party objecting to the report of the magistrate shall file his objections within fourteen (14) days of the service of the magistrate's report on said party. The objecting party must state with specificity his objections to said report and the relief requested. It will be the duty of the attorney filing said objections to obtain a hearing date from the assignment clerk and to notify opposing counsel of said date within three (3) days. If counsel objecting should fail to obtain a hearing date, no oral hearing will be granted.

If no objections are filed to said report, the judge shall review the magistrate's decision and issue the appropriate order in said case.

16.0 FACSIMILE FILING RULES:

Pleadings and other papers may be filed with the Clerk of Courts by facsimile transmission to (937)866-0135 subject to the following conditions:

- A. APPLICABILITY: These rules apply to criminal and civil proceedings in the Miamisburg Municipal Court. These rules do not apply to small claims. For small claims proceedings, no facsimile transmission of documents will be accepted. Criminal and civil documents requiring a filing fee will not be accepted for fax filing.

B. ORIGINAL FILING:

1. A document filed by fax shall be accepted as the effective original filing. The person making a fax filing need not file any source document with the Clerk of Court but must, however, maintain in his or her records and have available for production on request by the court the source document filed by fax, with original signatures as otherwise required under the applicable rules, together with the source copy of the facsimile cover sheet used for the subject filing.
2. The source document filed by fax shall be maintained by the person making the filing until the case is closed and all opportunities for post judgment relief are exhausted.

C. COVER PAGE

1. The person filing a document by fax shall also provide therewith a cover page containing the following information: [See appendix for sample cover page form.]
 - (a) name of the court;
 - (b) title of the case;
 - (c) case number;
 - (d) assigned judge;

- (e) title of the document being filed;
 - (f) date of transmission;
 - (g) transmitting fax number;
 - (h) an indication of the number of pages included in the transmission, including the cover page;
 - (i) if a judge or case number has not been assigned, state that fact on the cover page; and
 - (j) name, address, telephone number, fax number, Supreme Court registration number, if applicable, and e-mail address of the person filing the fax document if available.
2. If a document is sent by fax to the Clerk of Court without the cover page information listed above, the Clerk may, at his/her discretion;
- (a) Enter the document in the Case Docket and file the document; or
 - (b) deposit the document in a file of failed faxed documents with a notation of the reason for the failure; in this instance, the document *shall not* be considered filed with the Clerk of Courts.
3. The Clerk of Court is not required to send any form of notice to the sending party of a failed fax filing. However, if practicable, the Clerk of Court may inform the sending party of a failed fax filing.

D. SIGNATURE

1. A party who wishes to file a signed source document by fax shall either:
- (a) fax a copy of the signed source document; or
 - (b) fax a copy of the document without the signature but with the notation “/s/” followed by the name of the signing person where the signature appears in the signed source document.
2. A party who files a signed document by fax represents that they physically signed the source document and the same is in his/her possession or control.

E. EXHIBITS

1. Each exhibit to a facsimile produced document that cannot be accurately transmitted via facsimile transmission for any reason must be replaced by an insert page describing the exhibit and why it is missing. Unless the court otherwise orders, the missing exhibit shall be filed with the court, as a separate document, not later than five (5) court days following the filing of the facsimile document. Failure to file the missing exhibits as required by this paragraph may result in the court striking the document and/or exhibit.
2. Any exhibit filed in this manner shall be attached to a cover sheet containing the caption of the case which sets forth the name of the court,

title of the case, the case number, name of the judge and the title of the exhibit being filed (e.g. Plaintiff Smith's Notice of Filing Exhibit "G" to Plaintiff Smith's Response to Defendants' Motion to Dismiss), and shall be signed and served in conformance with the rules governing the signing and service of pleadings in this court. [See appendix for sample exhibit cover sheet.]

F. TIME OF FILING

1. Subject to the provisions of these rules, all documents sent by fax and accepted by the Clerk shall be considered filed with the Clerk of Courts as of the date and time the Clerk time-stamps the document received, as opposed to the date and time of the fax transmission. The office of the Clerk of Court will be deemed open to receive facsimile transmissions of documents on the same days and at the same time the court is regularly open for business.
2. The Clerk of Court may, but need not, acknowledge receipt of a facsimile transmission.
3. The risks of transmitting a document by fax to the Clerk of Courts shall be borne entirely by the sending party. Anyone using facsimile filing is urged to verify receipt of such filing by the Clerk of Court through whatever technological means are available.

G. FEES AND COSTS: No document filed by facsimile that requires a filing fee shall be accepted by the Clerk. Documents tendered to the Clerk which require payment of court costs and fees will not be filed. No additional fee shall be assessed for facsimile filings.

H. LENGTH OF DOCUMENT: Facsimile filings shall not exceed ten (10) pages in length. The filer shall not transmit service copies by facsimile.

17.0 EMAIL NOTIFICATION:

When any traffic or criminal case is scheduled for a court appearance, either in the courtroom or by the assignment clerk, notification of said court appearance date and time shall be sent by electronic mail, "email", to the Defendant's attorney of record and the prosecuting attorney. The email notification is the only notification the attorney will receive. Email notifications will be sent for all court appearances, including but not limited to pre-trials, hearings, and trials.

Attorneys representing defendants in criminal and traffic matters shall provide the court with an email address to which these notifications shall be sent. If the attorney's email address changes, it is the attorney's responsibility to inform the court of that change. Notifications can be emailed to up to three email addresses per attorney, but the court is only required to send to one address. It is the attorney's responsibility to provide a primary email address, and up to two additional email addresses, if desired. If

the attorney cannot receive email notifications, he or she must contact the Court to make special arrangements to continue receiving notifications by regular mail.

The Montgomery County Office of the Public Defender, and the Court's three (3) prosecuting attorney's offices, shall receive one email at the end of every business day, between 4:00 p.m. and 4:30 p.m., which will include notifications for all future court appearances which were scheduled that day.

Defendants and Pro se litigants shall continue to receive all court appearance notifications conventionally in paper form by regular U.S. Mail.

18.0 ELECTRONICALLY PRODUCED TICKETS

The use and filing of a ticket that is produced by a computer, or other electronic means, is hereby authorized in the Miamisburg Municipal Court. The electronically produced ticket shall conform in all substantive respects to the Ohio Uniform Traffic Ticket required by Traffic Rule 3. If an electronically produced ticket is issued at the scene of an alleged offense, the issuing officer shall provide the defendant with a paper copy of the ticket. For the purposes of the Miamisburg Municipal Court serving as a testing-site for the Ohio State Highway Patrol, the Court shall accept electronically produced tickets that are submitted either by electronic transmission or submitted as a paper copy of the ticket.

19.0 EFFECTIVE DATE

In accordance with Rule 5 of the Rules of Superintendence for the Courts of Ohio, the above rules of local practice in this Court were filed with the Supreme Court of the State of Ohio on January 28, 2015.

SAMPLE FACSIMILE FILING COVER PAGE

RECIPIENT INFORMATION:

NAME OF COURT: MIAMISBURG MUNICIPAL COURT

FAX NUMBER: (937) 866-0135

SENDING PARTY INFORMATION:

NAME:

SUPREME COURT REGISTRATION NO. (if applicable):

OFFICE/FIRM:

TELEPHONE NUMBER:

FAX NUMBER:

E-MAIL ADDRESS:

CASE INFORMATION:

TITLE OF CASE:

CASE NUMBER: (If no case number yet, state "None")

TITLE OF DOCUMENT:

FILING INFORMATION:

DATE OF FAX TRANSMISSION:

NUMBER OF PAGES (including this page):

IN THE MUNICIPAL COURT OF MIAMISBURG, OHIO

JOHN SMITH

*

Plaintiff

*

CASE NO: _____
(If no case number yet, state "None")

*

vs.

*

BILL JONES

*

Defendant

*

PLAINTIFF SMITH'S
NOTICE OF FILING
EXHIBIT "G" TO...

Plaintiff Smith, through counsel, hereby files Exhibit "G" to Plaintiff Smith's Response to Defendant's Motion to Dismiss. The referenced pleading was filed by facsimile transmission with the Court on [date]. Exhibit "G" could not be transmitted by fax and is therefore being timely filed as a separate document with the Court pursuant to the Miamisburg Municipal Court Facsimile Filing Rules(Local Rule 16).

Respectfully submitted,

Attorney Name
Attorney for Plaintiff, John Smith
Office/Firm
Address
Telephone
Fax
E-Mail

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Filing Exhibit "G" was sent by regular U.S. mail service on the ____ day of _____, 20____, to counsel for Defendant, Bill Jones at his address of _____.

Attorney Name