

SHAKER HEIGHTS MUNICIPAL COURT



LOCAL RULES OF PRACTICE

Revised June 18, 2012

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LOCAL RULES OF PRACTICE

These Local Rules of Court are being promulgated pursuant to Rule 5 of the Ohio Supreme Court Rules of Superintendence for the Courts of Ohio and are effective as amended on June 18, 2012. 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 Shaker Heights Municipal Court.

The following rules are incorporated by reference herein:

1. The Supreme Court Rules for the Government of the Bar of Ohio;
2. The Code of Professional Responsibility
3. The Ohio Rules of Criminal Procedure
4. The Ohio Traffic Rules
5. The Rules of Superintendence for the Courts of Ohio
6. The Ohio Rules of Evidence
7. The Ohio Rules of Civil Procedure

These rules and any amendments thereto not in conflict with any of the above shall govern practice and procedure in this court. All prior rules and amendments thereto are abolished.

1: ASSIGNMENT OF CIVIL CASES

- 1.1 With the exception of special proceedings, notice of any civil trial or pretrial requiring personal appearance of parties or counsel shall be mailed, communicated by facsimile transmission or otherwise provided to the parties or counsel not less than twenty-eight (28) days prior to the date of appearance. This time requirement may be abbreviated with consent of all parties and counsel.
- 1.2 Notice of any motion hearing, mediation or small claims proceeding requiring personal appearance of parties or counsel 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 appearance.

2: ATTORNEYS

- 2.1 Admission to Practice – A person who is not admitted to the practice of law before the Ohio Supreme Court may not appear on behalf of another individual or entity in court, except as provided by Section 1925.17 of the Ohio Revised Code or Rule VI, Section 4 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.

- 2.2 Pro hac vice – Admission *pro hac vice* will be allowed only upon compliance with Rule XII of the Supreme Court Rules for the Government of the Bar of Ohio.
- 2.3 Appearance – Upon the entry of appearance of counsel, all documents filed with the court and all court orders and motions shall be served upon the designated counsel. Once an appearance is made, an attorney may withdraw from a case only by leave of court.
- 2.4 Withdrawal – Withdrawal shall be permitted only by written motion filed with the court. The motion must include (1) the time and date of the trial or, if no trial has been set, the time and date of the next court proceeding; (2) the specific reasons for requesting withdrawal; (3) the name and address of a substitute attorney, if any, and (4) proof of notification to the opposing attorney and to the client.

3: BAILIFF SERVICE

- 3.1 The bailiff shall effect personal or residential service of process only within the territorial jurisdiction of this court. Any party desiring personal or residential service of process outside the court's territory shall arrange for a private process server fitting the requirements of the Civil Rules. Request for bailiff service must be made in writing. An attorney of record in a case may not be a private process server except in the case of witness subpoenas.

4: BONDS

- 4.1 Bonds posted in criminal cases shall be held until all court dates are completed by the defendant and all fines and costs have been paid. Bonds shall be completed on forms designed by the court.

5: CASE MANAGEMENT IN CIVIL CASES

- 5.1 When the plaintiff of a case on the regular civil docket of the court is a corporation or limited liability company, the complaint must be signed and prosecuted by an attorney at law. Noncompliance with this rule shall result in dismissal of the complaint.

- 5.2 Summons shall be served in accordance with the Ohio Rules of Procedure or in accordance with the Ohio Revised Code in the case of Forcible Entry and Detainer actions. In the event there is a failure of service, the clerk shall notify the party or counsel immediately. If the party or counsel fails to obtain service of summons within six (6) months from the date the cause of action has been filed, the court will set the case for dismissal pursuant to Civil Rule 4(E).
- 5.3 Within ninety (90) days of perfection of service, if the defendant is in default of an answer or appearance and the plaintiff has failed to file a motion for default judgment, the court will set the case for a hearing to show cause why the case should not be dismissed for want of prosecution. The clerk shall notify the plaintiff of the hearing.
- 5.4 When a file has been marked “Hold for Entry” and the entry is not received within thirty (30) days, then the case shall be set for a dismissal hearing and notice of said hearing shall be sent to all parties or counsel.
- 5.5 No later than five months after the pleadings are concluded, the case shall be set for mediation or pretrial before a magistrate.
 - 5.5.1 Mediation shall be before the court appointed mediator who will regulate the mediation proceedings. If the mediation does not result in a settlement, the mediator will set the cases on the regular civil docket for pretrial and small claims cases for trial.
 - 5.5.2 Pretrials shall be in court unless the magistrate approves a telephonic conference. Counsel attending the pretrial shall have client present or available for consult or have full authority to settle. If, however, the case cannot be settled at pretrial, the magistrate will set the case for trial and issue a pretrial order. Pretrial orders shall establish any deadlines for discovery and dispositive motions and indicate the date that the trial briefs must be filed. If appropriate, a second pretrial will be set rather than a trial.
- 5.6 Motions shall be addressed in accordance with the court’s rule on motion practice.
- 5.7 Continuances will be addressed in accordance with Court Rule on continuances.
- 5.8 If requested by the court, counsel for the party in whose favor an order or judgment is rendered shall prepare a journal entry. The entry shall be submitted to opposing counsel within five (5) business days of the decision. Opposing counsel shall approve or reject the entry within five (5) business days. Within fifteen (15) business days of the decision, the journal entry shall be submitted to the judge, or, thereafter, the court will prepare the journal entry.

- 5.9 Entries of settlement may be filed at any time. The avoidance of trial by settlement may be allowed without the immediate filing of an entry so long as the court has notice, but such entry shall be filed within thirty (30) calendar days or the case will be set for hearing to show cause why the action should not be dismissed for want of prosecution.

6: CASE MANAGEMENT IN CRIMINAL AND TRAFFIC CASES

- 6.1 This rule shall be construed and applied to eliminate unnecessary delay and expense.
- 6.2 **Scheduling of Events:** Criminal cases shall be managed in four (4) judicial steps.
- 6.2.1 Pretrial: After arraignment the court may consult with the prosecutor on the setting of a pretrial conference. If such conference occurs, it shall be in accordance with Criminal Rule 17.1.
- 6.2.2 Motions: All motions shall be made in writing and accompanied by a written memorandum containing the arguments of counsel. Motions must be accompanied by the filing fee and must display a proof of service clause. Motions must be filed within the time limits established by the Ohio Rules of Criminal Procedure. At the discretion of the court or as required by law motions may be set for oral hearing.
- 6.2.3 Trials: Each case 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. The procedures for deposits for costs, jury demands and jury withdrawals shall be in accordance with the laws and rules of the State of Ohio.
- 6.2.4 Sentence: If sentencing does not immediately follow the trial, the case may be referred to probation for a pre-sentence investigation from which a report will be prepared. The probation department shall set the matter for sentencing within sixty (60) days after the conclusion of the trial. Counsel of record and victims shall receive notice of sentencing date and have the opportunity to be heard in accordance with law.

7: CASE MANAGEMENT IN SPECIAL PROCEEDINGS

7.1 Forcible Entry and Detainer

- 7.1.1 Actions in forcible entry and detainer shall be filed and proceedings conducted in accordance with provisions of O.R.C. Chapter 1923 and any amendments thereto. If such action in forcible entry and detainer contains an additional claim for money then such additional claim shall proceed under the applicable Ohio Rules of Civil Procedure.
- 7.1.2 A writ of restitution shall issue no sooner than (10) days following the entry of judgment and no later than 30 days thereafter. A writ of

restitution shall be executed within ten (10) days of its issuance. If a party fails to request a writ within the prescribed time of this rule or fails to execute on a writ, then the judgment for restitution shall lapse.

7.2 Small Claims Cases

- 7.2.1 Actions filed in the small claims division of the court shall be filed and proceedings had in accordance with the provisions of O.R.C. Chapter 1925 and any amendments thereto.
- 7.2.2 A magistrate shall be the trier of fact for all small claims cases unless the court orders otherwise.
- 7.2.3 Upon the conclusion of the small claims trial the magistrate shall prepare a decision which shall be filed with the clerk's office and mailed to all parties.
- 7.2.4 Transfer of a case from the small claims docket to the regular docket of the court shall be as prescribed in O.R.C. § 1925.10. However, no small claims case shall be transferred to the regular docket without the movant first paying the filing fee required for a case filed on the regular docket.

8: CONTINUANCES

- 8.1 When notice of trial, pretrial, or other proceeding requiring personal appearance of the parties and/or counsel is mailed from this court, a request by motion or otherwise for continuance shall be filed with the court within seven (7) days from the mailing date of such notice along with the applicable continuance fee; notice of such request shall likewise be served on opposing parties or counsel. Such requests shall set forth good cause; consent of opposing parties or counsel shall not, in and of itself, constitute good cause. Any request for continuance submitted beyond the aforementioned seven (7) day period may be granted upon showing of good cause constituting extreme hardship, unforeseen circumstances or other unavoidable conditions.
- 8.2 If a request by defendant for continuance in a forcible entry and detainer matter will delay proceedings more than eight (8) days, then the party seeking the delay must post bond pursuant to O.R.C. §1923.08.
- 8.3 Upon receipt of notice from this court of assignment of date of trial, pretrial or other proceedings requiring personal appearance of parties or counsel, no attorney shall accept from any other court an assignment issued subsequent to the assignment of this court without applying for and receiving express consent of this court.
- 8.4 If an attorney is requesting a continuance due to a hearing scheduled in another court, that attorney shall attach to his request in this court a copy of the notice from the other court which reflects the conflict in scheduling.

9: COURT APPOINTMENTS

- 9.1 The court shall maintain a list of attorneys desirous of being appointed as assigned counsel for indigent defendants in criminal cases. The attorneys will be offered the opportunity for appointment as they appear on the list. Every effort will be made to distribute the opportunities equally among those on the list. The list of appointments will be reviewed semi-annually to ensure that no one attorney is being offered an opportunity for appointment at the expense of others on the list.
- 9.2 Attorneys appointed to represent indigent defendants will be paid by the municipality if the defendant is charged under municipal ordinance. If the defendant is charged under state code, the attorney will be paid through the Ohio Public Defender's office.

10: COURT SECURITY PLAN

Pursuant to the Rules of Superintendence the Court's Security Policy and Procedures Plan shall be on file with clerk of Ohio Supreme Court.

11: DEFAULTS; DISMISSAL BY COURT

In all cases where default judgment is available to a party by reason of failure of defendant to answer or appear, the subsequent failure of the plaintiff to make demand for judgment by default under Civil Rule 55(A) within ninety (90) days from the time that plaintiff has knowledge of defendant's default, shall constitute cause for dismissal of the complaint by the court for want of prosecution. Where the plaintiff has failed to properly make a demand for default judgment under Civil Rule 55(A), the court shall notify the plaintiff of the hearing to dismiss for failure to prosecute.

- 11.1 A default by a defending party is an admission of all allegations in the complaints except damages. See 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 payments or credits on the account subsequent to the filing of the complaint. 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. A hearing for proof of damages may be set according to the magistrate's determination. 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 except for establishing attorney's fees.

- 11.2 An application for judgment by default must be made in writing. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. If a party requests a default judgment which is different in kind or exceeds in amount that which is prayed for in the demand for judgment, such party must file an amended complaint/counterclaim which shall then be served in the manner provided for service of summons in Civil Rule 4 through Civil Rule 4.6.
- 11.3 For cases based on assigned account, the plaintiff is required to show that no payments or credits on the account have been made subsequent to the filing of the complaint. The motion for default judgment shall include (where appropriate) the following documents, if they were not previously submitted:
- Proof of assignment from the original creditor or the original party in interest to the plaintiff and intervening assignment(s) (if any),
 - The last billings statement from the original creditor sent to the defendant, or an affidavit explaining why any of the required documents is not available. The affidavit shall also include the name of the original lender, original account number, interest rate, date of default and principal amount at default on original account, date of write-off and principal amount at write-off on original account;

The court may deny the motion for default judgment and dismiss the complaint without prejudice for failure to comply with the requirements of this section. Otherwise, if all documents are included and satisfactory, the motion may be granted without oral hearing.

12: EMPLOYEES OF THE COURT

- 12.1 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. No court employee shall give legal advice to a litigant, witness, or other person. In small claim cases, assistance shall be limited to supplying such persons with the necessary forms and any explanation only to the portions thereof to be completed by the complainant on his or her own initiative.
- 12.2 Neither an employee nor a family member residing in the employee's household should accept a gift, bequest, favor, or loan from any person whose interests have come or are likely to come before the court, or from any person under circumstances that might reasonably be regarded as influencing or appearing to influence the performance of the employee's official duties.

13: EXAMINATION OF FILES; WITHDRAWAL OF FILES

- 13.1 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.
- 13.2 No person except authorized court personnel shall remove any court papers, files of the court or any of the contents of a file from the custody of the clerk without consent of the court.

14: FILING BY FACSIMILE

Pleadings and other papers may be filed with the clerk of court by facsimile transmission to (216) 491-1314 subject to the following conditions:

14.1 Applicability

- 14.1.1 These rules apply to civil, criminal, and small claims proceedings in the Shaker Heights Municipal Court.
- 14.1.2 The following documents will not be accepted for fax filing:
- (A) Any civil pleading
 - (B) Cognovit note
 - (C) Any criminal pleading or filing which requires a fee.
 - (D) Bonds
- 14.1.3 The following civil and small claims filings may be filed by fax so long as they are accompanied by the court Civil Fax Credit Card Payment Form:
- (A) Continuances
 - (B) Leaves to plead
 - (C) All motions
 - (D) Request for findings of fact and conclusions of law
 - (E) Objections to magistrate's decision
 - (F) Garnishment Release
 - (G) Satisfaction of judgment
 - (H) Writ
 - (I) Certificate of judgment for lien or transfer
 - (J) Lien release
 - (K) Certified copies

14.2 Original Filing

- 14.2.1 A document filed by fax shall be accepted as the effective original filing. The person filing a document by fax is not required to file any source document with the clerk. The person filing the document shall 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.

14.2.2 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.

14.3 **Definitions**

As used in this rule, unless the context requires otherwise:

14.3.1 “Facsimile transmission” means the transmission of a source document by a facsimile machine that encodes a document into optical or electrical signals, transmits and reconstructs the signals to print a duplicate of the source document at the receiving end. “Facsimile transmission” does not include transmission by e-mail.

14.3.2 “Facsimile machine means a machine that can send and or receive a facsimile transmission.

14.3.3 “Fax” is an abbreviation for “facsimile” and refers, as indicated by the context to facsimile transmission or to a document so transmitted.

14.3.4 “Source document” means the original document transmitted to the court by facsimile machine.

14.4 **Cover Page**

14.4.1 The person filing a document by fax shall also provide therewith a cover page containing the following information.

- (A) the name of the court;
- (B) the title of the case;
- (C) the case number;
- (D) the title of the document being filed (e.g. Defendant Jones’ Motion for Leave to Plead; Plaintiff’s Response to Defendant’s Motion for Summary Judgment);
- (E) the date of transmission;
- (F) the transmitting fax number;
- (G) an indication of the number of pages included in the transmission, including the cover page;
- (H) 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.

14.4.2 (A) If a document is sent by fax to the clerk of court without the cover page information listed above, the clerk may do either of the following:

1. enter the document in the case docket and file the document;
2. deposit the document in a file of failed fax documents with a notation of the reason for the failure.

- (B) If the clerk acts pursuant to division (A)(2) of this section, the document shall not be considered filed by the clerk.

14.5 **Signature**

14.5.1 A party who wishes to file a signed source document by fax shall do either of the following:

- (A) fax a copy of the signed source document;
- (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.

14.5.2 A party who files a signed document by fax represents that the physically signed source document is in his or her possession or control.

14.6 **Exhibits**

14.6.1 Each exhibit to a facsimile produced document that cannot be accurately transmitted via facsimile transmission for any reason shall 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 court days following the filing of the facsimile document. The court may strike any document or exhibit, or both, if missing exhibits are not filed as required by this section.

14.6.2 Any exhibit filed pursuant to Section 14.6.1 shall include a cover sheet containing the caption of the case which sets forth the name of the court, title of the case, the case number and title of the exhibit being filed (e.g. Plaintiff’s Notice of Filing Exhibit to Plaintiff’s Complaint) and shall be signed and served in conformance with the rules governing the signing and service of pleadings in this court.

14.7 **Time of Filing**

14.7.1 Subject to the provisions of these rules, all documents sent by fax and accepted by the clerk shall be considered filed with the clerk as of the date and time the clerk time-stamps the document received. The office of the clerk will be open to receive facsimile transmission of documents on the same days and at the same time the court is regularly open for business which times are 8:30 A.M. – 4:30 P.M., Monday through Friday excluding legal holidays.

14.7.2 Fax filings may not be sent directly to the court for filing but may be transmitted only through the facsimile equipment operated by the clerk.

14.7.3 The clerk of court may but need not acknowledge receipt of a facsimile transmission.

14.7.4 The sending party bears the risk of transmitting a document by fax to the clerk. The sending party is urged to verify receipt by the clerk of a fax filing through whatever technological means are available.

14.8 Length of Document

14.8.1 Facsimile filings shall not exceed 10 pages in length. The filer shall not transmit service copies by facsimile.

15: FILING OF CRIMINAL OFFENSE AFFIDAVIT BY A PRIVATE CITIZEN

For purposes of a private citizen desiring to file with a reviewing official an affidavit charging a criminal offense in accordance with Ohio Revised Code Section 2935.09, the reviewing official shall be the prosecutor from the municipality in which the alleged offense arose.

A private citizen may file with the clerk of court an affidavit charging the offense committed only when the court is open for business but the office of the appropriate municipal prosecutor is not. If the clerk receives such an affidavit, the clerk shall forward it to the appropriate municipal prosecutor by U.S. mail as soon as possible.

16: HOURS OF COURT SESSIONS, GENERAL PROCEDURES

16.1 The Shaker Heights Municipal Court shall be open between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday. Sessions in the civil and criminal branches of the court shall be conducted Monday through Friday. These hours may be extended or diminished by special order of the court. Notwithstanding the hours of the clerk of court, court sessions may also be conducted during the evening hours by order of the court.

16.2 Payment may be made on criminal or traffic cases only: Monday 8:30 a.m. – 6:30 p.m. and Tuesday through Friday 8:30 a.m. – 4:30 p.m.

16.3 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.

16.4 For the purpose of night court proceedings the court will accept documents for filing only in those cases that are scheduled for hearing.

17: JURY MANAGEMENT PLAN

17.1 As is reasonably practical the Ohio Trial Court Jury Use and Management Standards are adopted as the jury management plan for the court. (New 6/18/12)

17.2 The judge shall appoint two (2) suitable persons, neither of whom shall be an attorney nor belong to the same political party as the other to be commissioners of jurors. The appointments shall be made in writing by the judge, filed in the office of the clerk of court and entered upon the journal of the court. (New 6/18/12)

Commissioners shall hold office at the pleasure of the judge. Upon a vacancy occurring, the judge shall, as soon as practicable, appoint a successor of the same political party as the commissioner whose place is to be filled.

Before entering upon duties, a commissioner shall be sworn.

18: LEAVE TO MOVE OR PLEAD

- 18.1 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 on (1) day prior to the due date.

19: MEDIA

19.1 Definitions; Applications

- 19.1.1 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.
- 19.1.2 Application for media recording shall be made in writing (unless otherwise waived) 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 positioning of the cameras shall be at a location to be determined by the trial judge.
- 19.1.3 In the event the judge approves the application, he or she shall prepare and sign a journal entry setting forth the conditions of media recording and such journal entry shall be made a part of the record of the case. Before preparing the journal entry, the judge shall confer with media representatives regarding the positioning of the operators and equipment.
- 19.1.4 The journal entry 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.

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

19.1.6 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.

19.2 **Limitations**

19.2.1 Any equipment which is not portable 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.

19.2.2 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 room 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.

19.2.3 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.

19.2.4 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 were no media recording in process.

19.2.5 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.

19.2.6 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.

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

19.2.8 Sanctions: Upon the media's failure to comply with the orders of the judge or with the Rules of Superintendence, the judge may revoke any permission previously granted.

20: MOTION PRACTICE

20.1 Motions Other Than for Summary Judgment

Each party opposing a motion except a motion for summary judgment shall serve and file the brief or memorandum in opposition within fourteen (14) days after the motion was filed with the court.

20.2 Motions for 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 arguments no sooner than thirty (30) days after the 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.

20.3 Unless otherwise provided in Ohio Rules of Civil Procedure, failure to file an answer brief or memorandum may be construed by the court as an admission that the motion shall be granted.

20.4 Motions on criminal cases shall follow Ohio Criminal Rule 12.

20.5 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.

21: ORDER OF REFERENCE

21.1 The magistrate shall have all the powers, authority and responsibility prescribed by Civil Rule 53, Traffic Rule 14, and Criminal Rule 19 except as limited by a specific order of reference. The magistrate shall also have all the powers, authority and responsibility prescribed for the small claims magistrate pursuant to O.R.C. Chapter 1925. Reference shall be automatic and without limitation in the following proceedings and the reference of each such case shall be deemed to be journalized in this court:

- Civil pretrials
- Uncontested traffic cases
- Garnishment hearings
- Evictions
- Default or proof of damage hearings
- Dismissal hearings
- Housing code violation cases
- Motions for replevin

- 21.2 Reference shall also be automatic on all civil cases for the purpose only to issue orders necessary to regulate the proceedings.
- 21.3 In all cases excluding the foregoing, each order of reference shall be signed by the judge, journalized, and contain the following language:

“This case is referred to Magistrate _____ for
_____ pursuant to Civil Rule 53/Criminal Rule 19:

1. Without limitation, or
2. With the following issues to be determined...”

22: PLEADINGS AND OTHER DOCUMENTS

- 22.1 The filing of all documents with the court shall be made by filing them with the clerk of court.
- 22.2 All documents shall be typewritten (or legibly printed) on 8 ½” x 11” paper without cover.
- 22.3 All documents subsequent to the complaint shall contain a proof of service. Papers filed with the court shall not be considered until proof of service is endorsed thereon or separately filed. The proof of service shall state the date and manner of service and shall be signed in accordance with this rule. Failure to show proof of service on the document filed shall be grounds for striking the document from the court’s record.
- 22.4 Litigants not represented by an attorney licensed in the State of Ohio shall be designated *pro se*. *Pro se* litigants shall designate this capacity on all documents filed in this court and include their name, signature, address with zip code and relevant telephone numbers and e-mail addresses.
- 22.5 Every document filed by an attorney shall be signed by at least one attorney of record in the attorney’s individual name, whose address, attorney registration number, telephone number, telefax number, if any, and business e-mail address, if any, shall be stated.
- 22.6 Upon filing and where appropriate, complaints shall have attached proof of assignment from the original creditor or original party in interest to the plaintiff in order to establish standing and jurisdiction of the court. The court may dismiss the complaint without prejudice if the proof of assignment is not produced upon court order or at evidentiary hearing.

23: PROTECTION ORDERS

If this court has issued a protection order pursuant to 2919.26 of the Ohio Revised Code and becomes aware another court has issued a conflicting order, this court will consider revising its order to resolve the conflicting provisions, if appropriate. (New 6/18/12)

24: RECORD RETENTION

- 24.1 All administrative records not specifically governed by the Ohio Rules of Superintendence, R. 26.01 and all municipal court records not specifically governed by the Ohio Rules of Superintendence, Rule 26.05(D), (E), (F) and (G) shall be retained only as long as the normal business of the court requires. (New 6/18/12)
- 24.2 The court adopts a Record Retention Schedule which may be changed from time to time and attached to these rules for reference. (New 6/8/12)

25: RECORD OF PROCEEDINGS

All traffic and criminal proceedings including traffic arraignments shall be recorded. All proceedings before a magistrate shall be recorded. Civil trials, hearings and other proceedings will be recorded only at the request of either counsel or party if there is no counsel. Unless otherwise noted, the proceeding will be recorded by electronic 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 costs 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.

26: SATISFACTIONS; PAYMENT OF COSTS

- 26.1 No satisfaction of judgment shall be entered by the clerk of court unless and until all court costs have been paid.
- 26.2 No persons other than the clerk of court or a deputy clerk may enter satisfaction of judgment upon the records of the court.

27: SECURITY FOR COSTS IN CIVIL CASES

- 27.1 No action or proceeding shall be accepted for filing by the clerk of court unless there first shall be deposited the sum of money set forth in the schedule of deposits established from time to time by the court.
- 27.2 Upon a representation of indigence the court shall investigate the accuracy of such representation and upon finding that such indigence exists, the court shall defer the deposit of costs until the conclusion of the case. The nonprevailing party shall pay costs.
- 27.3 Costs Related to Jury Demand
- 25.3.1 If a jury demand is made and later withdrawn, the deposit for such demand shall be returned to the depositor providing such withdrawal is made prior to summoning the prospective jurors. If the withdrawal is made following the summoning of the jurors, the party initially demanding the jury shall be assessed the costs of notifying such jurors that their services will not be required. Any juror who appears for service because of the inability of the court after diligent effort to notify such juror, shall be paid the per diem for one day's service, the cost of which is to be charged to the party withdrawing the jury demand.
- 27.3.2 If an array or jury reports for service and the case is settled, all parties shall share equally in the cost of summoning the array or jury and its service.
- 27.3.3 If a panel of jurors appears for service and trial is postponed due to the failure of a party or his counsel to appear, such party shall be assessed the per diem cost of the panel unless such failure to appear is the result of extreme emergency or conditions beyond control of the party or counsel as the same may be determined by the court.
- 27.3.4 Deposits and advance payments of fees and costs shall be returned only by order of the court and only when the same have been paid by the party against whom they are assessed by the court.

28: SETTLEMENT; NOTIFICATION TO THE COURT

After a case has been set for pretrial, trial or other proceeding 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 thirty (30) days, unless otherwise permitted, of the scheduled court appearance, after prompt notification of the settlement and non-appearance of the parties shall subject the action to dismissal by the court at the plaintiff's costs.

29: UNPAID COSTS – NEW CASES NOT TO BE FILED

When a judgment for costs against a party appears unsatisfied, the clerk may refuse to accept for filing, unless otherwise ordered by the court, any new action

or proceeding instituted by such party without that party first making payments to the clerk of such unpaid costs.

**30: USE OF ELECTRONICALLY PRODUCED TICKETS
(RESERVED)**

**31: VENUE CHANGE IN CIVIL PROCEEDINGS; CERTIFICATION
PROCEEDINGS**

31.1 Court as Transferor

The clerk shall not transfer any case pursuant to venue change in application of Civil Rule (3) until all costs are paid, and , in addition, a check from plaintiff made payable to the transferee court in the sum sufficient to secure its costs is deposited with the clerk to accompany the file upon transfer. It shall be the responsibility of the plaintiff's attorney to ascertain the filing cost in the transferee court. Failure to comply with this rule within fourteen (14) days from the date of entry as to change of venue may form the basis for dismissal of the action.

31.2 Court as Transferee

The clerk shall not file and docket any case transferred to this court pursuant to venue change in application of Civil Rule (3) until a sum sufficient to secure costs has been deposited. Failure to comply with this rule within fourteen (14) days from receipt of the file from the transferor court may form the basis for returning the file to the transferor court.

31.3 Certification to Common Pleas Court

It shall be the responsibility of any party filing a counterclaim, cross claim or third party complaint exceeding the monetary jurisdiction of the court to also file a motion to certify the case to the Court of Common Pleas. The motion shall be accompanied by a check or money order made payable to the Clerk of Common Pleas, in a sum of not less than the amount specified as security costs for that court. Failure to comply within (30) days of the filing of such counterclaim, cross claim or third party complaint shall be deemed consent to the court's dismissal of the counterclaim, cross claim or third party complaint.

32: VENUE CHANGE IN CRIMINAL PROCEEDING

Change of venue shall be as set forth in Criminal Rule 18.

APPENDIX A - Records Retention Schedule

Shaker Heights Municipal Court maintains records in accordance with the Ohio Rules of Superintendence of Courts, the Ohio Revised Code, and applicable case law concerning record retention. Pursuant to Ohio Superintendence Rule 26(G), a court may establish retention schedules for any records not listed in Sup. R. 26.01 to 26.05. The following schedule shall be followed by the Shaker Heights Municipal Court:

DOCUMENT	RETENTION PERIOD
Audio Records of Courtroom Case Proceedings	Retained for 4 years from the date of recording.
Intranet Procedures (procedures that the court records to establish instruction and regularity in the performance of day-to-day tasks)	May be destroyed in the normal course of business as soon as they are considered to be of no value.
Blank Juror Questionnaire Form	Retained permanently.
Jury Information for Criminal Cases that Go to Trial	Retained for 50 years after the final order of the court, just as the case file will be maintained.
Jury Information for Civil Cases that Go to Trial	Retained for 2 years after the issuance of the audit report by the Auditor of State, just as the case file will be maintained.
Jury Information for Traffic Cases that Go to Trial	Retained for 25 years after the final order of the court, just as the case file will be maintained.
Jury Information for Cases that Never Go to Trial	May be destroyed in the normal course of business as soon as they are considered to be of no value.
Probation Files	Retained for 2 years after probation ends.
Probation Referral Resources	May be destroyed in the normal course of business as soon as they are considered to be of no value.
Security Tapes/Records (Audio and/or Visual Security Tapes in Courtrooms I and II when court business is being conducted and the Clerk's Office Window)	Retained for 3 months from the date of recording.
Bailiff Weapons Qualifications	Retained for 10 years after the termination of employment.
Unsubstantiated Internal Investigations	May be destroyed in the normal course of business as soon as they are considered to be of no value.
Case Exhibits, Depositions and Transcripts	After the conclusion of litigation, retained for 60 days after notice of destruction to tendering party, unless collected earlier by the tendering party.

Substantiated Internal Investigations	Retained for 10 years after the termination of employment.
Mediation Notes	Treated as drafts and/or informal notes; May be destroyed in the normal course of business as soon as they are determined to be of no value.
Catch-All Rule	All administrative records not specifically governed by Ohio Rules of Superintendence, R. 26.01 and all municipal court records not specifically governed by the Ohio Rule of Superintendence, Rule 26.05(D)(E)(F) and (G) shall be retained only as long as the normal business of the court requires.