

CITY OF ZANESVILLE MUNICIPAL COURT

Zanesville, Ohio

RULES OF COURT

2014

**WILLIAM D. JOSEPH,
Presiding Judge**

GENERAL PROVISIONS

1. JURISDICTION OF COURT

The territorial jurisdiction of the Zanesville Municipal Court includes only the City of Zanesville and the monetary jurisdiction shall be the amount as provided in the Ohio Revised Code.

2. TIMES OF HOLDING COURT

A. The sessions of this Court shall be from 9:00 o'clock a.m. until 4:00 o'clock p.m. Monday-Thursday and Friday from 9:00 a.m.-Noon, legal holidays excepted. The office of the Clerk shall be open for the transaction of business from 8:00 o'clock a.m. to 4:00 o'clock p.m. Monday-Thursday and Friday from 8:00 a.m.-Noon, legal holiday excepted. The Clerk's office may be closed at such other times as the Court may designate.

B. To facilitate the issuance of such papers as might be discovered necessary during a trial, after the conclusion of the Court day at 4:00 P.M., the Clerk is instructed to keep the Clerk's office facilities available, and should a trial be continuing after 4:00 P.M., the Clerk shall have herself or at least one Deputy Clerk remain in the Clerk's office until the conclusion of the trial for that day.

C. The Judge shall have full discretion in the disposition of the work of their office and shall have the right to make their own rules and regulations with respect to the time of the convening and adjourning. In the absence of any order to the contrary, five days of the week, Monday through and including Friday, shall be for regular Court work with attendance of jurors such as are necessary.

3. TERM OF COURT

There shall be no term of Court unless provided by the Ohio Revised Code, for the purpose of the computing time, ninety (90) days following judgment shall be considered within the term and time thereafter shall be considered after term.

4. REMOVAL AND FILING OF PAPERS

Original papers or depositions shall not be removed from the Clerk's office. Copies of all pleadings and other papers shall be filed with the Clerk and the number of copies shall be determined by the number of complainants or defendants, as the case may be.

5. COMPUTING TIME

The time within which an act is required to be done under these rules shall be computed in accordance with Ohio Civil Rule 6 and Ohio Criminal Rule 45.

6. JURY SELECTION

Selection of Jurors shall be done in accordance with the drawing of Jurors for the Court of Common Pleas of Muskingum County, Ohio, and the procedure as directed by the Common Pleas Judges as prescribed by Chapter 2313 of the Ohio Revised Code.

7. RECORDS OF THE CLERK

The Clerk shall prepare and keep records, dockets and books as provided by the Ohio Revised Code.

8. CASE MANAGEMENT: CRIMINAL CASES

8.1 PRE-TRIALS

The pretrial shall be conducted in accordance with Criminal Rule 17.1 and a memorandum of the matters agreed upon should be prepared in said case. Any attorney who fails to appear for pretrial without just cause being shown, may be punished for contempt of Court.

Attorneys residing outside a 30 mile radius of the Court may request leave to conduct the pretrial via phone. Said leave is at the discretion of the Judge.

If the parties cannot resolve the case, then the case will be set for trial to the Court unless a Jury Trial is demanded. Since jury demands are almost always filed by an attorney with their notice of appearance, if following the pretrial, the defendant still wishes to proceed to trial with a jury, the court **MUST** be notified of that desire at least two weeks prior to the scheduled hearing, at which time the matter will be moved to the jury trial schedule. A second and final pre-trial will then be scheduled to take place two weeks prior to the actual jury trial. Failure to give such notice of the defendant's continued desire to proceed to a trial by jury, will be deemed as a waiver to a trial by jury.

8.2 NOTICE OF COUNSEL

All attorneys representing Zanesville Municipal Court clients shall file a Notice of Appearance with the Clerk of Court. Prosecutors who have approved a criminal complaint filing shall be the attorney of record in such case unless and until a subsequent

prosecutor files a motion of appearance. The Clerk of Court shall not accept any documents for filing from any attorney not designated as recorded counsel in the case.

8.3 WITHDRAWAL OF COUNSEL, EXCEPT PROSECUTOR

An attorney shall be designated as Counsel of Record when he/she has filed a Notice of Appearance or appeared at a scheduled docket action on behalf of a party to that action. Once designated, that attorney may not withdraw without permission of the Judge. Permission shall only be granted by journal entry for good cause shown on the moving attorney's motion with proof of service to the client. Said motion for withdrawal shall not be granted if filed with the Court less than seven (7) days before trial or at any time after a jury demand has been filed, unless a Notice of Substitution of Counsel is filed simultaneously therewith or for good cause shown.

8.4 MOTIONS

All motions shall be made in writing and accompanied by a written memorandum containing the arguments of counsel. Motions must be filed within the time limits established by the Ohio Rules of Criminal Procedure. All motions shall be set for oral hearing.

8.5 TRIALS

Each case not resolved at pretrial shall be set for trial to the Court. If a jury demand has been timely filed, then the case will be moved to the jury trial schedule, only if the court is notified at least two weeks prior to the scheduled hearing that the defendant still wishes to proceed to trial with a jury, as specified in Section 8.1. All attorneys shall notify the Court by **2:00 P.M.** of the day preceding their jury trial of any changes in plea or jury costs **WILL BE ATTACHED** to their case.

8.6 COURT COSTS AND SECURITY DEPOSIT FOR COSTS

The basic cost assessed in criminal cases shall be seventy-five (\$75.00) dollars. Additional local costs may be assessed per sub-case in the amount of thirty-six (\$36.00) dollars.

8.7 BAIL BOND, FINE AND COST SCHEDULE

A bond schedule for misdemeanor cases and a fine and costs schedule for the Traffic Violations Bureau shall be prepared by the Court and a copy shall be posted in the Clerk's office so that it is available to the public.

8.8 NOTIFICATION OF CASES SET FOR HEARING

The Court will notify the Prosecutor and the defendant at his last known address or his attorney of record of the hearing date. The Prosecutor will be responsible for notifying the complaining witness (either private citizen or police officer) and any other witnesses he/she wishes present at the hearing date.

8.9 APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS

If a defendant claims he/she is indigent, they may request of the Court that an attorney be appointed to represent them. In support of this request, the defendant shall file with the Court an Affidavit setting forth their financial standing. The Judge shall review the Affidavit and may require further investigation to substantiate the facts in the Affidavit or present additional facts to the court. If the facts do not warrant an attorney being appointed, the defendant shall be so informed. The cost for this request is \$25.00 in accordance with O.R.C. 120.05 and 2921.13,

8.10 PRAECIPE FOR WITNESSES

All requests for the issuance of subpoenas for witnesses in a criminal case must be made in writing to the Clerk no later than five (5) working days before trial. If this rule is not complied with, failure of a witness to appear shall not be grounds for a continuance. A witness subpoenaed by any person other than the City shall be paid by the person requesting the subpoena.

8.11 JURY STANDARDS

- a.** The names of potential jurors shall be drawn from a jury source list by the Jury Commissioners of Muskingum County, as provided in Chapter 2313 of the Ohio Revised Code.
- b.** Potential jurors drawn from the jury source list by the Jury Commissioners shall be available to be called for duty as jurors over a three (3) month period.
- c.** Prospective jurors who are summoned for service in a jury trial may be excused from jury service only if their ability to receive and evaluate information is so impaired that they are unable to perform their duties as jurors and they are excused for this reason by the Judge, or the prospective jurors request to be excused because their service would be a continuing hardship to them or to members of the public and they are excused by a Judge. Prospective jurors may also be excused from jury duty if such exemption is permitted by the Ohio Revised Code.
- d.** The Court shall prepare and mail a questionnaire which is to be filled out by the prospective juror and returned to this Court. When a jury trial is to be held, the Court shall prepare a notice summoning a prospective juror to jury service. The jury

questionnaires shall be forwarded from the Court to counsel scheduled for jury trial at the time the voir dire list is sent from the Court to counsel.

e. Once a written demand for a jury has been filed and confirmed as required in sections 8.1 and 8.5, any subsequent waiver of the jury trial shall be made in writing at least five (5) working days prior to the trial date. Failure to abide by this rule shall result in the defendant paying all jury fees and expenses incurred by such jury demand.

8.12 PRESENCE OF WITNESSES

The presence of witnesses for any party is not required at the commencement of the cause in which they are to testify. However, their names and addresses shall be available and revealed to the Court and the jury prior to the commencement of the trial.

8.13 COURT REPORTER/RECORDING OF ALL PROCEEDINGS

a. All proceedings shall be recorded by audio. If counsel or a party desires a stenographic court reporter, then the counsel or party must make his or her own arrangements for a stenographic court reporter's presence and payment.

b. Parties appealing the trial court's decision shall file a praecipe advising the Court what portion(s) of the record they wish transcribed. The court will provide a disk copy of the proceedings and any transcripts thereof shall be the responsibility of the requesting party. All audio records will be maintained on file for a period of one (1) year. Said audio recordings will be recycled and reused after one (1) year unless there is an appeal pending.

9. CASE MANAGEMENT IN CIVIL CASES

- A. 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.
- B. Upon perfection of service, counsel shall file the proper entry, i.e. default entry, agreed entry, etc. Failure to submit an entry within twenty-one (21) days may result in the case being dismissed.
- C. After an answer is filed the case will be set for pretrial conference. Any motions to be filed must be in writing and accompanied by a written memorandum containing citations or the arguments of counsel. Opposing counsel shall answer in the like manner within fourteen (14) days thereafter. No additional responses are to be filed without leave of court. All motions will be considered submitted at the end of said

fourteen (14) day period unless time is extended by the Court. There will be no oral hearings granted in said motions unless the parties request an oral hearing in writing and the Court deems it necessary.

D. Pretrial shall mean a supervised conference chiefly designed to produce an amicable settlement. Any attorney for a party to the action who fails to attend at a scheduled pretrial conference without just cause being shown, may be punished for contempt of this Court. Notice of pretrial conference shall be given to all counsel of record by mail 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 Clerk. Counsel attending the pretrial conference must have complete authority to stipulate on items of evidence and must have full settlement authority. The primary purpose of the pretrial conferences shall be to achieve an amicable settlement of the controversy in suit. 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 shall have the authority to dismiss the action for want of prosecution on its own motion or upon the motion of the defendant upon failure of plaintiff and/or his counsel to appear in person at any pretrial 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 pretrial conference or trial as required; to make such other order as the Court may deem appropriate under all the circumstances. If the case cannot be settled at pretrial, then the case will be set for trial at a time agreeable to all parties. There are no pretrial statements required for the first scheduled pretrial. Any attorney whose office is located outside of a thirty (30) mile radius from this Court may request leave to conduct the pretrial conference via telephone. Said leave is at the discretion of the Judge.

9.1 CONTINUANCES

No party shall be granted a continuance of a trial or a hearing without a written motion from the party or his counsel stating the reason for the continuance. Criminal cases assigned for trial have priority over civil cases assigned for trial. The granting of any other request for continuance of a scheduled trial is a matter within the discretion of the trial Court. If a designated trial attorney has such a number of cases assigned for trial in courts of this state so as to cause undue delay in the disposition of such cases, the Judge may require the trial attorney to provide a substitute trial attorney. If the trial attorney was appointed by the Court, the Court shall appoint a substitute trial attorney.

9.2 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. Within fifteen (15) days of the decision, the journal entry shall be submitted to the Judge, or, thereafter the court will prepare the journal entry.

Entries 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 may be dismissed for want of prosecution.

9.3 FILING OF PLEADINGS, MOTIONS, ETC.

All civil pleadings shall be printed neatly or typed. If a civil pleading is typed it must have a two (2) inch top margin to allow for the time stamp of the court.

If an attorney wishes to file a motion for summary judgment on a civil case that has already been set for a pre-trial conference, a motion for leave of court must be filed prior to the summary judgment motion.

All other rules and procedures shall be made in accordance with the Ohio Rules of Procedure as follows:

9.4 AGREEMENTS OF COUNSEL

Stipulations of agreements of counsel or parties to a suit must be reduced to writing and signed by the parties or their respective counsel, or made in open court and a memorandum made thereof or dictated into the record, otherwise, such stipulations or agreements shall not be recognized by the Court if disputed by any of the parties.

9.5 REMOVAL OF FILES, PLEADINGS OR OTHER DOCUMENTS-

No files, pleadings or other documents on file in this court shall be removed from the office of the Clerk of this Court except with her permission and under such rules as she shall from time to time prescribe. Provided, however, that this rule shall not apply to:

- a. The use of such files, pleadings or other documents in open Court or Judge's chambers during any arguments, hearing, trial or other

proceedings in the case to which such files, pleading or other documents belong, or in which they may be used.

- b. Any removal made pursuant to law, or with express permission of the Court.

9.6 OBJECTIONS AND MOTIONS RELATED TO DISCOVERY PROCEDURES

A. CONSULTATIONS AMONG COUNSEL

Counsel are encouraged to participate in pretrial discovery conferences to reduce, in every possible way, the filing of unnecessary discovery procedures. No interrogatories, requests, motion, or application will be filed under Rules 26 through 37 of The Ohio Rules of Civil Procedure until counsel shall have explored the objectives with opposing counsel in an effort to informally handle the matter or matters and/or reduce the area of controversy. It shall be the responsibility of the party seeking discovery to initiate such personal consultation.

B. PROHIBITION ON FILING OF UNNECESSARY DISCOVERY MOTIONS OR OBJECTIONS

The presentation to the Court of unnecessary discovery motions, as well as any unwarranted opposition to proper discovery proceedings will subject the offender to appropriate remedies, including the imposition of costs and counsel fees.

C. DISCOVERY MOTION, APPLICATION, INTERROGATORIES, ETC.

To the extent such personal consultation does not dispose of the matter, the party seeking the discovery may then proceed with the filing of a formal motion, application, interrogatories or request under any of Rules 26 through 37 of the Ohio Rules of Civil Procedure.

D. OBJECTIONS TO DISCOVERY MOTION, ETC.

Objections to any discovery motion, application, interrogatories or request under Rules 26 through 37 of the Ohio Rules of Civil Procedure shall be filed within twenty (20) days after service of the formal motion, application, interrogatories or request, and shall be accompanied by a memorandum or brief.

E. ANSWER, MEMORANDUM OR BRIEF

The party initiating discovery, to which objections are filed, may file an answer memorandum or brief within ten (10) days after service of the objections. Upon the filing of such answer, memorandum or brief, or at the end of the ten (10) day period, the matter will be automatically submitted.

F. ENTRIES IN ABSENCE OF OBJECTIONS TO DISCOVERY MOTION, ETC.

Motions, applications and requests, to which objections are not seasonably filed, may be granted as a matter of course (as will orders directing answers to interrogatories) upon the informal presentation of an appropriate proposed and endorsed order by counsel for the party initiating discovery.

G. EXTENSIONS

Requests for the extensions of the prescribed periods must be in writing and state the grounds therefore.

9.7 SECURITY FOR COSTS

A. Upon the filing of a civil action, an advance deposit for fees and costs shall be paid to the Clerk of Courts in accordance with a schedule of such fees as may be fixed from time to time by the Court under the provisions of Section 1901.26 of the Ohio Revised Code.

The deposit for a civil appeal to Fifth District Court of Appeals for Muskingum County, Ohio, shall be One Hundred (\$100.00) Dollars.

B. If it is brought to the attention of the Judges that any security as previously ordered is insufficient, the Court may require the said security to be increased at any time.

C. In cases filed wherein legal advertising is used, counsel shall cause publication costs to be arranged for and paid directly to the publisher.

D. Conforming to this Rule, the Clerk shall not accept for filing, and the Court may sua sponte strike from the file, any complaint, cross complaint, petition, motion, application or other

document not in compliance herewith. The necessity for the costs deposits herein required shall not be abrogated by anyone except upon Court order.

9.8 SUBMISSION OF BRIEFS

In all civil Jury cases, trial briefs must be submitted fifteen (15) days in advance of the day of trial unless the Court for good cause extends the time for submitting the same. Failure to file trial brief by counsel for plaintiff may result in dismissal by the Court.

9.9 TESTIMONY OF EXPERTS

No civil action that has been assigned a trial date will be removed from the assignment because of the inability of a medical or other expert witness to be present to testify. After a trial has commenced, reasonable effort will be made to accommodate the medical or other expert witness as to their appearance, but no unreasonable delay during trial will be granted for this reason. If video tape depositions are to be used during trial, counsel's attention is directed to Sup. R. 15-B-6 (a)(b).

9.10 JURY TRIALS AND DEMANDS

A. A demand for a civil jury trial shall be made as required by Civil Rule 38.

B. The party requesting a jury trial must deposit with the court the sum of five hundred (\$500.00) dollars, at least thirty (30) days prior to the scheduled trial. Failure to do so may result in the matter being removed from the jury schedule and being assigned to the court for hearing to the Judge.

C. In the event a civil case is settled or dismissed prior to trial and it is not possible to notify all jurors of said cancellations, the requesting party shall bear the costs of juror's fees of those jurors who report for the day of trial.

9.11 SALES AND PROCEEDINGS IN AID OF EXECUTION

The Bailiff shall follow the rules prescribed by Section 2329.13, et seq of the Revised Code of Ohio in the advertising and conducting of all sales on attachments, execution or foreclosure of chattel mortgages.

9.12 GARNISHMENT PROCEEDINGS

All orders of garnishment shall be served to the employer by certified mail. If a debtor requests a hearing on the garnishment, the attorney for the creditor may request to make an appearance at said hearing by telephone if the law office is

outside of a thirty (30) mile radius. Said request shall be decided by the Judge at his sole discretion.

9.13 FORCIBLE ENTRY AND DETAINER

Once a judgment has been rendered ordering a defendant to vacate a house or other building, the Bailiff shall not take action to remove the defendant until a request is filed with the Clerk, requesting that said action be taken and the Bailiff shall not proceed with said action until sufficient costs are deposited to cover the expense of accomplishing the move. The additional expense shall be taxed as costs in the case.

9.14 JUDGMENT DEBTOR EXAMINATION

All judgment debtor examinations will be held as assigned by the Judge.

If a judgment debtor fails to appear at the scheduled examination, and it appears the debtor was served with notice, the attorney for the creditor may request of the Court that a bench warrant be issued for the arrest of the debtor. The request for a bench warrant shall be made in writing to the Court. Maximum bond amount is \$500.00 and the law enforcement agency is ordered to cite only. If the debtor fails to appear for a second time, the attorney for the creditor may again request of the Court that a bench warrant be issued for the arrest of the debtor. The request for bench warrant shall be made in writing. Maximum bond amount is five hundred (\$500.00) dollars and the Court may order the debtor be required to post the bond or be arrested.

9.15 SMALL CLAIMS DIVISION

A. All small claims complaints filed in this Court shall be numbered consecutively and shall carry a suffix of "CVI". Claims filed shall be entered as numbered and indexed in the Civil Docket Index. Thereafter, on filing any papers therein or calling the attention of the Court to any case, its number must be given.

B. There shall be made available to the citizenry an alternative to the system in the form of mediation. Mediation can be arranged through the Clerk's office and is available either at pre-filing or post-filing stages. The mediation process may be used upon the request of either of the parties or upon motion by the Court.

