

HOLMES COUNTY MUNICIPAL COURT

Local Rules of Practice

Effective Date: April 1, 2009

INDEX – LOCAL RULES OF PRACTICE

RULE	PAGE
1. General Provisions.....	3
2. Filings with the Court.....	4
3. Time Extensions.....	6
4. FAX rule.....	8
5. Civil Case Management.....	10
6. Reserved.....	14
7. Withdrawal of Counsel.....	15
8. Reserved.....	16
9. Pretrial Conferences in Civil Cases.....	17
10. Reserved.....	21
11. Findings of Fact and Conclusions of Law.....	22
12. Reserved.....	23
13. Judgment Entries and Decrees.....	24
14. Reserved.....	26
15. Service Upon Local Counsel.....	27

RULE 1
GENERAL PROVISIONS

(A) Adoption and Applicability.

The following rules are adopted effective on and after April 1, 2009, to govern the practice and procedure before this Court, subject to such rules as may be adopted or promulgated by the Supreme Court of Ohio. These rules shall be recorded by the Clerk of Courts of Holmes County and journalized therein, and shall be filed with the Supreme Court of Ohio. All previous orders and versions of these Rules are rescinded.

(B) Citation.

The Local Rules of Practice of the Holmes County Municipal Court shall be cited in this Court as follows: “**Local R. __**”.

(C) Computation of Time.

All time computations under these Rules shall be made in accordance with the Ohio Rules of Civil and Criminal Procedure as required by said Rules.

(D) Ohio Attorney.

No action in the Municipal Court shall be filed or tried by an attorney who is not admitted to practice in the State of Ohio, unless there is co-counsel who is admitted to practice in Ohio. This does not preclude pro se appearances.

Together with the attorney’s signature line upon any pleading filed with the Municipal Court, the attorney shall include his/her Supreme Court registration number and electronic mail address.

At the request of the Judge, an attorney may be requested to present identification that he or she is registered and in good standing with the Ohio Supreme Court to practice law in this state.

RULE 2

FILINGS WITH THE COURT

(A) Custody of Files.

The Clerk of Courts shall not permit any of the files of that office to be taken from her custody except with written approval of the Court. This Rule shall not prevent the files of the Clerk of Courts being removed from her custody by a Judge of the Court, a member of the Judge's staff, a Visiting Judge or Magistrate.

(B) Copies.

The Clerk of Courts shall upon advance request and as the business of her office allows, furnish certified copies of pleadings (except depositions or transcripts of evidence) contained in the files of the Court. All certified pages copied by the Clerk upon request shall be furnished upon the payment in advance at the rate of \$5.00 per page. The Clerk shall certify said copy as being true and correct. This paragraph's payment requirements shall not be applicable to any office or department of county government, nor shall it be applicable to indigent parties or their counsel upon written approval by the Court.

(C) File Management.

(1) The Clerk of Courts shall have custody of the case files and pleadings of the Court.

(2) Upon the filing of a pleading or other paper with the Clerk, such paper shall be docketed and otherwise processed pursuant to law. The Clerk shall place the paper in the appropriate case file and bring the file to the Judge's attention.

(3) Case files which are removed from the Clerk's office for the Judge's consideration shall be signed out by the person removing same. Upon completion of the Judge's consideration, the case file shall be returned to the Clerk's custody.

(4) When a paper is received by the Clerk for filing and the case file is in the Judge's possession, the pleading shall be forwarded to the Judge after processing and the Judge's staff shall be responsible for filing the pleading in the case file.

(D) Filing of Discovery Materials.

The Clerk of Courts shall not accept those materials proscribed by Civil Rule 5(D) unless ordered by the Court by entry, or the party seeking to file the same furnishes a statement that the materials shall be used as evidence at the trial on the merits or are related to consideration of a pending motion.

(E) Exhibits in the Custody of the Court Reporter.

All exhibits admitted into evidence at trial or hearing in the Holmes County Municipal Court shall be in the custody of the Clerk and made part of the case file unless otherwise ordered. The Clerk shall keep said exhibits in his/her custody for a period of sixty (60) days after the last action in this Court or an appellate court unless otherwise ordered.

At the end of said sixty (60) day period the Clerk shall notify the person who submitted the exhibit. Said person has ten (10) days within which to pick up the exhibit. Failure of such a person to pick up the exhibits within ten (10) days from notice by the Clerk shall result in the Court Reporter disposing of the exhibit.

RULE 3
TIME EXTENSIONS

(A) Leave to Plead.

Leave to plead or an extension of time to file a pleading, including but not limited to an answer, motion, reply, or response to request for discovery, shall be upon leave granted by the Court only. No stipulations for extensions of time shall be binding upon the Court. A party desiring an extension of time to file a pleading shall do so by motion, together with supporting memorandum and draft journal entry. Any request or extension of time shall comply with Local R. 5(D). Failure to make a filing within a time period required by the appropriate Civil or Criminal Rules of Procedure or the Local Rules of Practice or an Order of this Court may result in the striking of a pleading by the Court *sua sponte* or upon motion of an adverse party.

(B) Leave Instanter.

(1) All certifications or motions for leave to plead or extensions which are not filed with the Court before the expiration of the otherwise applicable time period shall be styled a “Motion for Leave to Plead Instanter.” Said motion shall be supported by memorandum and affidavit if necessary, which shall set forth the reason that the pleading was not filed timely. The motion shall be accompanied by the proposed pleading to be filed instanter together with a draft journal entry which may be executed by the Court in the event the “Motion for Leave to Plead Instanter” is granted.

(2) In the event any party objects to the granting of a “Motion to Leave to Plead Instanter”, such objecting party shall respond within five (5) days from the “Motion to Leave Instanter’s” filing with the Court. The Court shall determine the “Motion for Leave to Plead Instanter” and any objections thereto without hearing it on the basis of the

pleadings submitted to the Court. Reply or additional memoranda shall be submitted only with prior approval of the Court.

(C) **Leave as Justice Requires.**

Nothing herein shall prevent the Court from granting leave to prevent manifest injustice.

RULE 4

**FILING PLEADINGS AND OTHER DOCUMENTS
BY ELECTRONIC TRANSMISSION.**

Motions may be filed by facsimile, subject to the following provisions:

(1) The sending party or attorney must provide all required information on a cover page of transmission. Said cover page shall bear the name of the case, the full case and docket number, the sender's name, firm, address, phone number and fax number; the date of transmission; the number of pages, including the cover page being transmitted; and such other comments and information as may assist the Clerk and Court in processing the document. Transmissions without such information will not be accepted for filing. A transmitted document must be no longer than 10 pages, not including the cover page, and must pertain to only one case.

(2) The Clerk of Courts shall notify the attorney or sending party if the transmitted document cannot be filed for any reason. All documents submitted shall be considered filed when the date/time has been stamped by the Clerk. For the purposes of this rule, the date/time stamp produced by the Clerk's facsimile machine shall constitute the date/time stamp of the Clerk.

(3) The risk of fax filing remains with the sender and the Clerk of Courts assumes no new responsibilities or liabilities. The sending party shall be responsible for maintaining the source document and cover sheet until all appeals have been exhausted.

(4) The Clerk shall maintain on the premises a facsimile machine which will be attached to a dedicated phone line and dedicated electronic circuit protected by surge protector and shall be available 24-hours a day seven days a week. The device will use 20 lb. bond paper, to comply with Civ. R. 10(E) and will meet C.C.I.T.T. Group 3 specification. It shall automatically place the date and time of receipt on the printed transmission.

RULE 5
CIVIL CASE MANAGEMENT

(A) Preface.

The goal of this Rule is the prompt but fair disposition of civil litigation.

This goal can only be accomplished by early and continuing judicial control and management of each case assigned to the judge's docket. This Rule will establish a general framework for management of cases, leaving to the discretion of the judge the use of additional procedures to accomplish the goal of this Rule.

(B) Scheduling Order.

(1) At any time after service of the Complaint, the judge may make a scheduling order.

(2) The scheduling order may limit the time:

- (a) To join new parties and to amend the pleadings;
- (b) To file and hear motions, including motions for summary judgment;
- (c) To disclose experts and to jointly certify to the Court in writing the completion of discovery (the completion of discovery does not include the taking of depositions preserving testimony for use at trial.)
- (d) The scheduling order may establish the final pretrial date. Final pretrial conferences and any other pretrial conferences shall be conducted pursuant to Local Rule 9.
- (e) The Court may address in the scheduling order any other matters appropriate to the particular case.

(f) The scheduling order shall not be modified except by subsequent order of the Court.

(C) **Motions.**

(1) **Summary Judgment.**

(a) Motions for summary judgment shall be in accordance with Civil Rule 56, and shall be decided without oral hearing, unless oral argument is requested and determined necessary by the Court. The scheduling order shall fix a “hearing date” as required by Civil Rule 56(C). Rebuttal memoranda, affidavits, or other supporting documents shall be filed by the moving party only with prior permission of the Court.

(b) To assure compliance with Civil Rule 56(C), depositions answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact to support or oppose a motion for summary judgment shall be attached to the motion or memorandum, and the caption shall state the document attached, i.e. ‘...Including Affidavit of _____.’ Documents which are not expressly mentioned in Civil Rule 56(C) shall be attached to an affidavit and filed.

Failure to file any document as provided herein or to reference said document in the memorandum in support or in opposition to a motion for summary judgment may result in its exclusion by the Court.

(c) The movant for summary judgment shall submit a judgment entry granting the relief sought, together with the motion for summary judgment in the event said motion is granted.

(2) All Other Motions.

All other motions will be decided without oral hearing unless oral argument is requested and determined necessary by the Court. The moving party shall file with the motion a brief supporting memorandum containing the authorities relied upon and any affidavits or other supporting documents required or appropriate together with a draft judgment entry in the event the motion is granted. Each party opposing the motion shall file a written response within fourteen (14) days after the filing of the motion with the Court. Reply, rebuttal or additional briefs or memorandums shall be submitted only with prior approval of the Court. Motions for extensions or leave to plead shall be governed by Local Rule 3 and 5(C).

(D) Continuances.

(1) Requests for continuance shall be submitted to the judge in writing at least seven (7) days prior to the trial, hearing date or other date set by order or Rule of this Court, absent emergency or other cause deemed sufficient by the Court. Requests for continuance include continuances of case management conferences, pretrial conferences, matters established by scheduling orders, motion dates, trials and any other dates or time limits established by order of the Court or these Rules. Requests for continuance shall be made by written motion and separate proposed journal entry. The motion shall be supported by a memorandum which shall include:

(a) The reason for the request for continuance. If the reason is another case scheduled on the same date in another court, the memorandum shall be supported by a copy of that court's scheduling order setting forth the name of the court and assigned judge, the case caption, the date and time of the

conflicting case, and the date that the conflicting case was assigned for trial, together with whether said conflicting case is a criminal or civil matter;

(b)The number of continuances of the hearing, trial or other date which is sought to be continued which have been previously made by any party, together with the Court's ruling upon said requests.

(c)The request for continuance shall bear the signature of movant's client approving the continuance and the necessity thereof.

(2) The separate proposed journal entry which shall include:

(a)The time and date of the current assignment;

(b)The position of opposing counsel and parties on the continuance which shall have been obtained by movant prior to the filing of the motion for continuance;

(c)A new date obtained from the Court and previously cleared with opposing counsel by movant in the even the Court grants the motion for continuance.

(E) Sanctions.

Failure of counsel or a party to comply with the provisions of Rule 5(D) may result in a denial of a motion for continuance by the Court *sua sponte*.

RULE 6

RESERVED

RULE 7

WITHDRAWAL OF COUNSEL

(A) Leave of Court required.

Counsel for any party shall be permitted by the Court to withdraw from an action in all cases where he/she is obligated to withdraw under Ohio Rule of Professional Conduct 1.16 of the Ohio Code of Professional Responsibility. The Court may also permit counsel to withdraw when withdrawal is permitted under Ohio Rule of Professional Conduct 1.16.

(B) Procedure.

(1) When counsel's client consents to counsel's withdrawal, counsel shall file with the Court a written Motion to Withdraw, together with an entry and appearance of substitute counsel. The Court may not allow a continuance of the matter because counsel has been substituted.

(2) In all other cases counsel shall file a written Motion to Withdraw with the Court and counsel shall send written notice to the client of the time, date, and place of the hearing on the Motion by certified mail, return receipt requested. A copy of said notice shall be attached to the Motion. In the event that counsel is unable to locate the client, counsel shall submit with their Motion a statement detailing the efforts to communicate with the client.

(3) If the Motion is granted, counsel shall notify the client of the withdrawal by sending him a copy of the Entry by certified mail, return receipt requested, at the client's last known address.

RULE 8

RESERVED

RULE 9

PRETRIAL CONFERENCES IN CIVIL CASES

(A) Case Management Conference.

(1) The Court may hold one or more case management conferences. The purposes of the case management conferences are to establish a scheduling order, to clarify and simplify the issues, to consider the necessity or desirability of amendment to the pleadings, to facilitate constructive communication among the parties, to explore settlement possibilities, and to otherwise promote an economical, expeditious, and mutually satisfactory conclusion of the case.

(2) Case management conferences shall be scheduled at the time of the filing of the Complaint. Defendants shall be served with a copy of the notice establishing the case management conference by the Clerk together with the summons. The scheduling of a case management conference shall not relieve any party from a duty to timely plead pursuant to the Rules of Civil Procedure or as otherwise ordered by this Court.

(3) Counsel for each party shall appear at each case management conference, shall bring their calendar/schedule with them and shall have authority from their clients to fully discuss the issues in the case and explore settlement possibilities. The parties need not appear unless the Court orders otherwise. Any statement of counsel made in the course of a case management conference shall not be binding upon the parties unless expressly made so by written stipulation, or by request to the Court that such statement be incorporated into a pretrial order.

(4) Any counsel may elect, with at least three (3) business days notice to the Court and to opposing counsel, to conduct the case management conference by telephone

conference call. Counsel electing to conduct the conference by telephone shall have the responsibility of placing the conference call to the Court and opposing counsel. In the event the Court determines that a case management conference conducted by telephone conference call was inadequate for the purposes desired, the Court may schedule a subsequent case management conference and require the attendance of all counsel in person.

(5) Following the case management conference, the Court shall prepare a written pretrial scheduling order, which embodies the matters discussed and agreed upon at the conference.

(B) Other Pretrial Conferences.

The Court may at any time, upon its own motion or upon motion of any party, schedule a pretrial conference to discuss any matter relating to the expeditious and fair resolution of any matter concerning the litigation pending before the Court.

(B) Final Pretrial Conference.

(1) Unless the Court determines that a final pretrial conference would be unnecessarily burdensome to the Court or the parties, or the Court determines that final pretrial conference is otherwise unnecessary, a final pretrial conference shall be scheduled during the two-week period immediately preceding the trial date.

(2) Joint Pretrial Statement.

In the event the final pretrial conference is held, a joint pretrial statement shall be prepared by counsel for all parties, or by the party if unrepresented, and shall be filed with the Court not less than seven (7) business days prior to the date of the final pretrial conference. The joint pretrial statement shall include as follows:

- (a) A concise summary of the essential facts.
- (b) A brief statement of the issues involved.

- (c) A brief statement of the applicable law and the authorities upon which each party relies.
- (d) A list of demonstrative evidence and exhibits which will be offered at trial. An itemized statement of damages by persons claiming such damages.
- (e) Names and addresses of prospective lay and expert witnesses, together with a brief summary of the experts' qualifications.
- (f) A list of depositions and/or video-taped depositions which each party intends to introduce at trial.
- (g) Estimated length of trial.
- (h) A brief statement that counsel conferred prior to the final pretrial conference, discussed in depth the issues involved, proposed offers of settlement, that such offers were refused, and a statement as to the prospects of settlement prior to trial.

(3) If the case is to be tried to a jury, counsel shall also file with the Court and serve upon all parties at least seven (7) business days before the date of final pretrial conference a draft of substantive jury instructions, jury interrogatories (if any), verdict forms, and an indication as to whether a jury view will be requested and, if so, details as to the site parameters of the view. Jury instructions may be referred to by referencing standard Ohio Jury Instructions volumes and sections.

(4) In addition to counsel of record, all parties and persons who have authority to affect the disposition of the case shall attend the final pretrial conference.

(5) When justice so requires, such as when the party represents a limited or a peripheral interest or is not involved in the contested issues in the case, the Court may excuse any party or counsel from appearance at the final pretrial conference or from the preparation of a joint pretrial statement, or both. A party desiring to be excused from attendance or preparation of a joint pretrial statement, in the event such party is not expressly excused in the Court's notice of final pretrial conference, shall request such consideration by written motion pursuant to Local R. 5(D).

(6) Counsel shall be prepared to discuss all other matters referred to in Civil Rule 16 at the final pretrial conference.

(7) Following the final pretrial conference, the Court shall prepare a written pretrial order which embodies the matters discussed and agreed upon at the conference. The Court may direct counsel to prepare a draft of such pretrial order, pursuant to Local R. 13.

(C) **Failure to Appear or Failure to Comply.**

(1) Should a party or counsel fail to appear at a conference held pursuant to this Local Rule or fail to comply with the directions set forth in this Rule or an order of Court issued pursuant to this Rule, counsel and/or a party may be required to pay opponent's costs and attorney's fees, and/or may be punished for contempt of court, and/or an ex parte hearing may be held and judgment of dismissal or default or other appropriate judgment may be entered and sanctions imposed.

(2) Counsel or unrepresented party with any claim pending before this Court is hereby given notice, pursuant to Civ. R. 41(B)(1), that failure to appear at any conference, pursuant to this Rule, or failure to comply with this Rule or any order of this Court issued pursuant to this Rule may result in dismissal of said claim for want of prosecution.

(3) Failure of a party to include information in the joint pretrial statement may result in the exclusion of such information (fact, issue, law, authority, demonstrative evidence, exhibit, damages, witness, deposition, etc.) at trial.

RULE 10

RESERVED.

RULE 11

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

When a request under Rule 52 of the Ohio Rules of Civil Procedure is timely made for findings of fact and conclusions of law, the Court may direct either party to prepare within seven (7) days proposed findings of fact and conclusions of law and submit them to the Court and to opposing counsel and parties unrepresented by counsel. Within seven (7) days thereafter, the opponent shall submit any objections or counterproposals to the Court in writing.

RULE 12

RESERVED

RULE 13

JUDGMENT ENTRIES AND DECREES

(A) Preparation.

(1) Except as to certifications, entries granting leave to plead, and matters in which the Court prepares a Judgment Entry, or unless the Court otherwise directs, counsel for the party in whose favor an order, judgment, or decree is being granted in a civil case shall prepare a Judgment Entry relating the action of the Court and shall submit to the Court the same after circulation of the original to all other trial counsel and all parties unrepresented by counsel who have entered an appearance in the case, within fourteen (14) days of the Court's decision, unless the time is extended by the Court. In the event that no one party is clearly the prevailing party, the Court shall designate which counsel shall prepare the proposed Judgment Entry and, in the absence of such designation, the parties shall request the Court to make such a designation.

(B) Judgment Entry upon Settlement.

Counsel shall submit an order of dismissal for a case not later than fourteen (14) days after notice to the Court of settlement, unless said time is extended by the Court.

(C) Orders Sua Sponte.

Provisions of this Rule shall not be deemed to preclude the Court at any time from preparing and filing *sua sponte* its own judgment or order.

(D) Approval as to Form Only.

If counsel or a party unrepresented by counsel signs the entry "as to form only," said reservation shall be understood to mean that the attorney or party so signing admits the truth of no fact contained in the Entry and waives appeal of no legal issue resolved

therein, but acknowledges that the Entry properly reflects the decision of the Court. Unless otherwise provided for in the Entry, neither the admission of facts nor the waiver of legal issues may be inferred from a signature not accompanied by the foregoing reservation.

(E) Sanctions for Failure to Comply.

If an Entry is not presented for execution to the Court in conformance with this Rule, the Court may prepare its own Entry and/or may require counsel and the parties to appear and show cause why they should not be punished for contempt and/or may dismiss the case with or without prejudice for want of prosecution and assess costs.

Notice is hereby given pursuant to Civ. R. 41(B)(1) to any counsel for claimant or any unrepresented claimant who has a claim for relief pending before this Court that failure to abide by the terms of this Rule or any order of Court issued pursuant to this Rule may result in a dismissal of said claim for want of prosecution.

(F) Distribution of Entries.

All judgment entries and journal entries submitted to the Court shall at the end of the entry indicate for the Clerk of Courts to whom copies of the entry should be distributed (e.g. counsel, etc.). This Rule shall be complied with by listing the persons for distribution after “cc:” under the Judge’s and counsel’s signature lines.

RULE 14

RESERVED

RULE 15

SERVICE UPON LOCAL COUNSEL

The Clerk of this Court shall establish and maintain in the Office of the Clerk an individual drawer for each practicing attorney or firm or association of attorneys who maintain an office within the geographical limits of the County of Holmes. All pleadings subsequent to the original Complaint to be served upon any attorney or record in the action by the Clerk, the Court, or opposing counsel may be deposited in the drawer designated for that attorney, firm or association of attorneys, and such deposit shall constitute proper and complete service upon said attorney of record. Proof of service, when required by Civil Rule 5, shall indicate whether service was made pursuant to this Rule. All attorneys maintaining an office within the geographical limits of this County shall regularly check the contents of their individual or firm or association drawer. Failure in this regard will not excuse a claim of lack of proper notice.

IN THE MUNICIPAL COURT
HOLMES COUNTY, OHIO

IN THE MATTER OF	*	MISC. CASE NO.
REVISION OF LOCAL	*	
RULES OF PRACTICE	*	JUDGMENT ENTRY

* * * * *

The attached Rules are hereby adopted effective on and after April 1, 2009, to govern the practice and procedure before this Court, subject to such rules as may be promulgated by the Supreme Court of Ohio.

These Rules shall be recorded by the Clerk of Courts and a copy thereof shall be filed by the Clerk of Courts with the Clerk of the Supreme Court of Ohio.

The Clerk of Courts shall cause copies to be made of these Rules and shall provide copies to any person upon the payment of a fee of \$20.00.

All previous orders and versions of these Rules are rescinded. Cases in which scheduling orders were issued under prior Rules shall continue under said prior orders unless the Court otherwise Orders.

SO ORDERED,

JANE IRVING, JUDGE
MUNICIPAL COURT

cc: Clerk of Courts
Clerk of Ohio Supreme Court
(with enclosures)