

**FAIRFIELD COUNTY
MUNICIPAL COURT
CIVIL – CRIMINAL RULES**

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Judges

ADOPTED

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CIVIL RULES

1.00 SCOPE AND EFFECTIVE DATE

These rules are adopted as Local Rules of the Court governing practice and procedure in the Civil Division of the Fairfield County Municipal Court. They are adopted pursuant to the court's inherent authority as reserved in Rule 83, Ohio Rules of Civil Procedure. These rules may be cited as "MC Civ. R. _____." They are effective as of April 18, 2005, and govern all proceedings filed subsequent to that date and proceedings pending on that date except to the extent that such application would not be feasible or would work an injustice.

2.00 COURT SESSIONS

The hours for court sessions are eight o'clock a.m. until twelve o'clock noon and from one o'clock p.m. until four o'clock p.m. unless otherwise ordered by the judge presiding at the session. Sessions will be held on Monday through Friday except on any day designated by law or proclamation of the President of the United States or the Governor of this State as a national or state holiday, on which holidays the court will be closed. The court will also close on such other times and dates as may be prescribed by the Presiding Judge.

3.00 OFFICER MAY NOT PREPARE PAPERS OR CHARGE FOR NOTARY SERVICE

Officers or employees of this court shall not prepare or help prepare any pleading, affidavit, entry, or order in any civil matter, except as provided under Section 1925.04, Ohio Revised Code. No fee shall be charged by any officer or employee of this court for notarizing affidavits or any other matter pertinent to the civil business of this court.

4.00 FORM OF PAPERS FILED WITH THE COURT

All papers offered for filing with the court shall be typewritten or printed on 8 ½ by 11 inch bond paper without backing. Original documents attached or offered as exhibits and official court forms supplied by the Clerk are exempt from the requirements of this rule.

4.01 IDENTIFICATION

All papers offered for filing with the court shall be identified by including:

1. The name of the assigned judge immediately below the case number, if the case has been assigned to a judge pursuant to the Rules of Superintendence;
2. A title containing the name and party designation of the party filing it and the nature of the document (e.g. Defendant John Doe's Answer); and
3. The typed name, Supreme Court Identification Number, office address, and office telephone, facsimile number of the designated trial attorney.

4.02 COPIES OF DOCUMENTS

Only legible copies of documents may be attached to pleadings or motions.

4.03 FAILURE TO COMPLY

The court may order stricken any filed paper which does not comply with Rule 4.00 through 4.02.

5.00 APPEARANCE CALL

Appearance Call will be held at one o'clock p. m. each Tuesday, as practicable, for first appearance in actions in forcible detainer, all proceedings to enforce the collections of judgments, objections to applications for the appointment of a trustee under Section 2329.70, Ohio Revised Code, and actions in Replevin where possession of property is sought prior to trial on the merits. Actions on the Appearance Call docket for Replevin or claims in forcible entry and detainer for restitution in which the plaintiff or plaintiff's attorney does not appear may be dismissed without prejudice.

5.01 WRIT OF RESTITUTION

A writ of restitution in forcible entry and detainer cases shall not be issued after thirty (30) days from the date of judgment unless the parties have entered into an agreement to extend the period during which a writ may be issued. In no event shall a writ of restitution be issued after 120 days from the date of judgment. Subsequent actions will require a new forcible entry and detainer case filing.

6.00 SUBPOENAS FOR WITNESSES

The return for subpoenas of witnesses shall be filed with the clerk before the date of trial. The failure of a witness to appear for whom the return was not filed in accordance with this rule will not be grounds for a continuance of the case.

7.00 DEMAND AND DEPOSIT FOR JURY

Request for trial by jury shall be made in accordance with Civil Rule 38. A party requesting a jury trial shall pay a deposit for the jury, as security for costs; unless an affidavit of hardship, approved by the Court, is filed in lieu of the deposit. The failure of a party demanding a jury to comply with any of the provisions of this rule shall constitute a waiver of the jury, and the matter shall be submitted to and be decided by the court.

8.00 PRETRIAL PROCEDURE

Pretrial conference(s) and telephone conference(s) may be ordered by the judge to whom a civil case is assigned. Upon notice of the scheduling of a pretrial conference, it shall be the duty of counsel to contact each other, make a sincere effort to dispose of the matter by settlement, and agree on any matters of evidence about which there is no genuine dispute. Prior to the date of the pretrial conference, counsel shall exchange reports of expert witnesses expected to be called by each party, as well as medical reports and hospital records of such are involved.

Parties must appear for pretrial unless prior authorization for absence or to conduct pretrial by telephone is granted by the Court to that particular party. Failure of a party to appear for pretrial may result in dismissal of the case or default judgment as the trial judge deems appropriate.

Failure of counsel to be prepared for pretrial conference may result in dismissal of the case for want of prosecution or in a default judgment of such other action to enforce compliance as the trial judge deems appropriate. It shall be the duty of counsel to do the following at the pretrial hearing:

1. The counsel who will be trial counsel and who is fully authorized to act and negotiate on behalf of the party must be present and must proffer in writing a statement indicating the status of settlement negotiations.
2. All parties in interest must be present at the pretrial unless such presence is excused by the trial judge.
3. Each counsel shall present to the court in writing a statement of the issues involved, the matters stipulated, and the questions of law which are to be resolved by trial.
4. Each counsel shall bring to the pretrial all exhibits, if practicable, which are expected to be offered in evidence at the trial.
5. Each counsel shall present in writing to the court an itemization of all special damages claimed, if any.
6. Each counsel shall present to the court in writing a statement indicating the names of all witnesses, both expert and non-expert, expected to be called at the trial; whether a view will be requested; whether a jury

trial, if previously demanded, will now be waived, and if not, the number jurors demanded; and whether the case is one where the issue of damages should be tried separately if liability is found.

7. Each counsel shall come to the pretrial fully prepared and authorized to negotiate toward settlement of the case.
8. Each counsel shall give his best estimate of the time required to try the case.

All written statements shall be filed at or before the pretrial hearing.

Each counsel shall provide in writing the text of, and citations of authority for, any instructions requested at least ten (10) days before the date of the jury trial.

9.00 REQUESTS FOR CONTINUANCE

Every request for a continuance shall be by written motion, unless made on the record in open court. The motion shall set forth the date from which a continuance is requested and the reasons for continuance.

Attorneys submitting motions for continuance shall accompany them with an entry along with an indication that the requested continuance has been approved or disapproved by opposing counsel.

This rule does not restrict the assigned judge's exercise of discretion in granting or denying continuances.

10.00 MOTIONS

Any motions other than for continuance under Rule 9.00 shall be accompanied by a memorandum indicating the questions and authorities in support thereof; absent such a memorandum, motion shall be stricken from the files.

Opposing memoranda shall be filed not later than seven days from the service of the motion or on the day prior to the trial or hearing on the motion, whichever is earlier, or at such other time as set by the assigned judge. Motions shall be ruled upon on or after the opposing memoranda are filed or the time for filing expires, whichever is earlier.

Assignment of any motion for oral hearing shall be at the discretion of the court. Failure of counsel to appear for an oral hearing may be deemed an abandonment of the motion.

11.00 DECISIONS AND ENTRIES

The Court, in its discretion, may order proposed findings of facts and conclusions of law either before or after a trial or hearing. The failure of any party to comply with the Court's order may result in a dismissal of the case for want of prosecution or a default judgment.

Entries on decisions other than on the merits will be prepared and filed by the court unless otherwise ordered.

1. Counsel for the prevailing party shall prepare a judgment entry within five (5) days of an order of the court and submit the same to counsel for the adverse party, who shall approve or reject the entry within five (5) days. If opposing counsel fails to return the entry within five (5) days, it shall be submitted to the trial judge, who shall approve the entry in the form he considers proper.
2. No entry shall be accepted for filing unless signed by a judge.
3. Nothing in this Rule precludes the assigned judge from preparing and filing a judgment entry sua sponte.
4. An entry shall be drawn in language that is appropriate to the specific case in which it is to be filed.

12.00 COSTS

Fees and costs shall be as prescribed by the Court by Court order.

On motion of the opposing party or at the request of the officer of the court, and if satisfied that the deposit specified is insufficient, the court may require said deposit to be increased from time to time so as to secure all costs that may accrue in the cause. If such security is not given after reasonable notice the court may dismiss the action, if before judgment, or may dismiss the proceeding, if after judgment.

All costs and deposits shall be delivered to and disbursed by the clerk.

13.00 TRIAL ATTORNEY

All documents filed on behalf of one or more parties represented by counsel shall be signed by one attorney in his individual name as trial attorney. All notices and communications from the court and all documents required to be served will be sent to the designated trial attorney. No attorney who has entered his or her appearance in a case may withdraw as trial attorney except upon written motion for good cause shown and after notice to the client.

14.00 RECORDING OF PROCEEDINGS AND COSTS

Pursuant to Rule 8 (a) of the Rules of Superintendence for Municipal and County Courts, the official method for recording court proceedings shall be by audio-electronic recording devices.

Either party to the cause of action may request the court proceedings be recorded by stenographic means if the court has received written notice of the request at least three (3) days prior to the hearing. The cost for such stenographic recording shall be borne by the requesting party. The requesting party shall also be responsible for the attendance of a qualified stenographer. Any party requesting transcript of any recorded hearing shall bear the cost of said transcript except as otherwise ordered by the court.

SMALL CLAIMS DIVISION INFORMATION

1.0 PARTIES

The individual or corporation who initiates an action is known as the plaintiff. The individual or corporation against whom an action is brought is known as the defendant. Anyone may file a claim; however, a minor under the age of 18 must bring an action through his or her parent or guardian. A corporation must bring an action through an officer, salaried employee or an attorney at law.

It is the duty of the plaintiff to supply the correct name and address of all defendants. A certified letter to an individual in care of a business address, when the business is not involved with the suit is not acceptable, unless the individual would sign the certified receipt card. If a business is incorporated, you must supply the exact corporate title of the defendant. You may be able to determine whether the defendant is incorporated by contacting the Secretary of State, Corporation Section, (614) 466-3910. If the business is not incorporated, you must supply the name of the owner or owners.

2.0 JURISDICTION

The Small Claims Division has jurisdiction over claims for the recovery of money only, for out of pocket loss only, disallowing no expenses incurred in attempting to collect, with a maximum allowable recovery of \$3,000.00, exclusive of interest and court costs. Generally, the court has jurisdiction over a claim if the incident (or transaction) giving rise to the claim occurred in Fairfield County, or if the defendant resides in, or conducts business in Fairfield County. **The individual signing the complaint must appear. If an attorney signs as agent for an individual, then both must appear.**

3.0 FILING

There is a filing fee (court cost) for a Small Claims action, established annually by the Court. Costs can be recovered, provided you win your suit. All pleadings must be on 8 1/2 x 11 inch paper.

4.0 EVIDENCE

You must have all of your evidence at the hearing of your case. Under no circumstances will any new evidence be accepted after conclusion of the hearing. Although you may prepare and present your case in any manner you see fit, you must have evidence to support your claim. Evidence includes your testimony, the testimony of witnesses, written agreements, receipts, public records, tangible items, photographs, etc. **A written statement from a witness is not admissible as evidence.** You may issue subpoenas, if necessary, to command the attendance of witnesses, and also for any documents you may need to substantiate your claim. Listed below are several examples of the types of cases commonly heard in the Small Claims Division, and the evidence that is suggested:

AUTOMOBILE PROPERTY DAMAGE

- Certificate of title to prove ownership of vehicle
- Two copies of two estimates of repair, or repair bill.
- Witnesses who viewed the accident
- Accident report from the proper law enforcement agency.

SECURITY DEPOSIT

- Two copies of receipt or canceled check, etc., showing payment.
- Lease agreement, if one exists.
- Witnesses who viewed the premises before and after occupancy.

DAMAGE TO REAL PROPERTY

- Two copies of two estimates of repair, or repair bill.
- Photographs/video recording of the damage.
- Witnesses who viewed the incident.

LOSS OR CONVERSION OF PERSONAL PROPERTY

- Two copies of receipt, canceled check, or invoice showing value of the item lost, or estimate of the value of the property.
- Witnesses who could describe the condition of the property.

FAULTY REPAIR OF AUTOMOBILE, APPLIANCE, ETC.

- Description of the item repaired.
- Receipt from the transaction, or a witness who observed the transaction.
- Copies of estimates prepared by repair experts, showing the cost to complete or do over again, the alleged faulty or incomplete repairs.
- An expert witness in the field of such subject matter, to discuss the damages caused to the property.

ACCOUNT OR OTHER WRITTEN INSTRUMENT

When any claim or defense is founded on an account or other written instrument, two copies are needed so one can be attached to the pleading. If not so attached, the reason for the omission must be stated in the pleading. If more than the legal rate of interest at the statutory rate is charged, you must show substantiation in writing that the defendant was aware of this at the time of the transaction.

5.0 CONTINUANCES

One continuance, not exceeding thirty (30) days may be granted to any party who makes such a request in writing, at least seven (7) days prior to the trial date. The request should include the names of the parties involved, the case number, and the reason for the continuance.

6.0 TRANSFER TO REGULAR CIVIL DOCKET

The defendant has a right to transfer the case out of Small Claims Division and into the regular Civil Division. The defendant may do this in order to preserve his right to a trial by jury, and also his right to a stenographic record of the proceedings. Once transferred, the case will not return to the Small Claims Division. There is a transfer fee, which is established annually by the Court.

7.0 COUNTERCLAIM

If you deny the plaintiff's claim, and if you feel that the plaintiff actually owes you money as a result of the same incident or transaction, you may file a counterclaim. Counterclaims for less than \$3,000.00 may be heard in Small Claims Division. **If you believe you have a claim against the plaintiff, you must file a counterclaim with the court and must serve the plaintiff and all other parties with a copy of the counterclaim at least seven (7) days prior to the date of the trial of the plaintiff's claim. There is a counterclaim filing fee, which is established annually by the Court.**

8.0 SETTLEMENT

If you do not contest the claim, you may contact the plaintiff and negotiate a settlement. The plaintiff must notify the court in writing upon payment in full of any claim.

9.0 DORMANT CLAIM

If you do receive a judgment and no action has been taken within five (5) years, then it becomes dormant and a special action must be filed in order to revive the claim. Prior to five years, contact the Small Claims Division for information to prevent a dormant judgment.

10.0 MAGISTRATE HEARING

At the trial you will have an opportunity to present your argument and your evidence to the court. **You must have all of your evidence, substantiation, witnesses, etc., with you at the hearing of your case.** You will also have a right to cross examine the defendant and his witnesses, in order to bring out points in your favor. Similarly, the defendant will have an opportunity to present his evidence to ask questions of the plaintiff. Individuals signing a Small Claims Complaint must appear at the hearing. **NOTE: A CORPORATION APPEARING WITHOUT AN ATTORNEY AT LAW MAY NOT ENGAGE IN CROSS EXAMINATION, ARGUMENT OR OTHER ACTS OF ADVOCACY. IT IS STRONGLY RECOMMENDED THAT A CORPORATION BE REPRESENTED AT THE HEARING BY AN ATTORNEY AT LAW. THE PERSON SIGNING THE COMPLAINT MUST APPEAR. IF AN ATTORNEY SIGNS THE COMPLAINT, THEN THE PLAINTIFF MUST APPEAR ALSO.**

The court, after hearing the case on its merits, will render a decision. The decision may be announced at the conclusion of the case, or it may be mailed to you in the form of a written opinion. Within fourteen (14) days from the filing of the Decision of the Magistrate, any party may file with the court written objections to the Magistrate's Decision. The objecting party must serve notice of the objection to the opposing side and must include a CD reproduction of the hearing with the objection, for which standard rates per the Court's Schedule of Costs apply. The objections and the case will then be assigned to a Judge for his consideration. The Judge may then modify the recommendation of the Magistrate, order a new hearing, or approve the Decision of the Magistrate and enter a judgment. There is a filing fee for Objections to the Magistrate's Decision, which is established annually by the Court.

If the case is decided in favor of the plaintiff, the defendant should make arrangements to pay the plaintiff the amount of the judgment. Otherwise, the plaintiff can proceed against the defendant, to collect the judgment amount through garnishment of personal earnings, bank attachment, etc.

11.0 LEGAL ADVICE

The personnel in the Small Claims Division will be able to assist you in completing any forms needed, which you may not understand, but cannot help you in investigating the whereabouts of the defendant's income or property. Representation by an attorney at law is permitted, but not required. If you have any questions concerning your legal rights, you should contact your attorney for advice before coming to the Small Claims Division, as the personnel cannot give you legal advice.

NORMALLY SMALL CLAIMS HEARINGS ARE SCHEDULED FOR WEDNESDAY AFTERNOON AT 4:00 P.M., AND ARE HELD IN EITHER COURTROOM NO. 1 OR NO. 2, LOCATED ON THE SECOND FLOOR OF CITY HALL.

12.0 HEARING DATE:

Typically, the hearing date is scheduled in approximately 30 to 45 days from the date of filing. Hearings are scheduled for Wednesday afternoon at 4:00 p.m., and are held in either courtroom number 1 or 2, located on the second floor of City Hall.

13.0 COLLECTION PROCEDURES FOR SMALL CLAIMS COURT

The filing party in a Small Claims action is known as the plaintiff. After judgment, that party is known as the judgment creditor. The defendant becomes the judgment debtor.

It is the responsibility of the creditor, not the Court, to collect the judgment owing. After the filing of a Magistrate's Decision, where no settlement has been made between the parties, the judgment creditor cannot take any action to collect until the fourteen-day appeal period has elapsed. Below are several courses of collection, and although the Small Claims Division

will assist you by providing and in the preparation of completing forms, we cannot give you legal advice in your collection procedures.

FINANCIAL STATEMENT

You may file a request for a Financial Statement if, thirty days after judgment, the judgment remains unpaid and the parties have not otherwise agreed. The Court will order the judgment debtor to answer questions as to his or her financial status (assets, liabilities and personal earnings). The judgment debtor will have seven days from the date of receipt to respond. Court costs for a financial statement request are established annually by the Court.

GARNISHMENT OF PERSONAL EARNINGS

Fill out in duplicate, "NOTICE OF COURT PROCEEDING TO COLLECT DEBT". Send one copy of the "NOTICE" to the defendant by regular mail with certificate of mailing or by certified mail with return receipt.

If, after 15 days from the date of service, or the date of mailing, you have not received a satisfactory reply, you may then proceed to file the garnishment papers with the Clerk.

The following items are needed to file:

- An Affidavit of Garnishment
- A copy of the Notice of Court Proceeding to Collect Debt, with proof of service
- Cash, check or money order made payable to Fairfield County Municipal Court in the filing fee amount established annually by the Court.

NOTE: The garnishment may be filed no sooner than 15 days from the date of mailing or date of service of the "NOTICE", and not more than 45 days, after the demand is made.

Once your garnishment of personal earnings is successful, it is your responsibility to file annually, an Affidavit of Current Balance Due with the court, employer and defendant. Additionally, you are required to send the Notice and Request for Hearing, along with a self addressed, stamped envelope, addressed to the court, with the defendant's copy of the Affidavit of Current Balance Due.

BANK ATTACHMENT

A Court order requiring the debtor's bank to take money from the debtor's checking and/or savings account, not exempted by law. You must have knowledge of where the judgment debtor conducts his or her banking and additional information (i.e., bank account number or social security number) is helpful. Filing fees are required both to the Court and to the bank, and are established annually by the Court.

LIEN

Filing a request for a Certificate of Judgment will place a claim on the property of another, as security for the payment of the judgment. It is your responsibility to file the Certificate of Judgment with the Court of Common Pleas in the county where the judgment debtor's property is located. Court costs are established annually by the Court and do not include the Common Pleas filing fee.

CRIMINAL RULES

1.00 SCOPE AND EFFECTIVE DATE

These rules are adopted as Local Rules of Court governing practice and procedure in the Criminal Division of the Fairfield County Municipal Court. They are adopted pursuant to the court's inherent authority as reserved in Rule 57, Ohio Rules of Criminal Procedure. These rules may be cited as "MC Cr. R. _____." They are effective as of April 18, 2005, and govern all proceedings filed subsequent to that date and proceedings pending on that date except to the extent that such application would not be feasible or would work an injustice.

2.00 CRIMINAL PROCEDURE - GENERAL

All Rules set forth above with reference to Civil proceedings shall, where applicable, be enforced in Criminal Proceedings before this court. In addition thereto, the following Rules shall prevail.

3.00 CRIMINAL ACTION FILING

No criminal charges shall be filed by a private individual until they are first reviewed and approved by a prosecutor operating within the jurisdictional limitations of this Court.

4.00 BAILIFF

A Bailiff shall formally open sessions in the Traffic and Criminal Court and shall enforce and maintain order.

5.00 ARRAIGNMENTS

In all DUI cases and cases involving allegations of violence a defendant shall personally appear at their scheduled arraignment date for purposes of entering a plea and establishing bond. In all other cases, a written not guilty plea may be accepted and the defendant may be released without bond, unless the Court determines that a bond is appropriate under the circumstances.

6.00 WITHDRAWAL OF CHARGES

All recommendations for withdrawal, reduction, amendment or dismissal of charges and the reasons herefore shall be made in open court by the prosecuting attorney, and/or shall be specifically set forth in writing and placed in the case file. No such modification shall be permitted without the express consent of the judge presiding over the case.

7.00 BAIL

The Court shall establish a bail and bond schedule. The Court, at arraignment or at some other time during the pendency of a case, may modify a defendant's bond.

8.00 JURY

Demand for a jury must be filed at least ten (10) days prior to trial date, or on or before the third day following receipt of notice of the date set for trial, whichever is later. Failure to demand a jury trial as provided in this subdivision is a complete waiver of the right thereto.

8.01 JURY COSTS

In order to minimize the inconvenience to prospective jurors and to promote judicial economy, the full costs of the jury will normally be assessed to the defendant, if the jury is waived and jurors have already been called to appear in Court. Such assessment shall occur unless otherwise directed by the judge presiding over said trial. No deposit for criminal jury trial is required. Jury costs shall be computed at the rate of \$12.50 per prospective juror who appears on the trial date regardless of whether or not the prospective juror(s) are sworn in. A prospective juror shall be deemed to have begun service upon reporting to the clerk of court for jury service. All defendants pleading to any charge on the date of the jury trial when the case is scheduled for jury trial, or defendants who waive a jury trial on the date of the scheduled jury trial, shall be deemed to accept jury fees. Any defendant refusing to accept jury fees shall not have their right to a jury trial waived and shall proceed with the jury trial.

9.00 MOTIONS

All motions shall set forth clearly and specifically the grounds for such motions, along with supporting citations. In Motions to Suppress, the items of evidence in question shall be specified. Any motions filed which are not in compliance with this Rule shall be summarily overruled.

All motions requiring Oral Hearing should be set, if scheduling permits, within fifteen (15) days of the date such filing is made and it shall be the responsibility of each party to secure the attendance of all witnesses necessary to establish the party's position.

10.0 PRETRIAL PROCEDURE

After entering a plea of not guilty to a criminal or traffic offense, the court, in its discretion may set a pretrial conference. When a pretrial conference is ordered, the following persons are required to attend: the prosecutor, the state's representative, defendant, and defendant's trial counsel. It is the duty of the trial counsel to enforce the appearance of the defendant. Failure of the defendant to appear at a pretrial may be deemed by the court to be a violation of defendant's bond.

Both the prosecutor and the defendant and defendant's attorney should complete discovery prior to the pretrial.

Upon conclusion of a pretrial conference, the prosecutor therein involved shall complete the appropriate form indicating the name of the defendant, the case number, the type(s) of offenses charged, the defense attorney's name if any, and the proposed settlement agreement. This settlement shall be signed by the prosecutor and the defendant's attorney. The completed pretrial form shall be attached to the case file. Any alleged victims to a case should also sign the pretrial conference sheet either to acquiesce to the prosecutor's recommendation or to state that they are not in agreement with that recommendation.

The above pretrial procedure does not restrict or prevent the assigned Judge of any criminal or traffic case from conducting additional pretrial conferences. No provision of this rule shall be construed to limit or otherwise modify the requirements and procedures prescribed by Rule 16 of the Ohio Rules of Criminal Procedure. Pretrial conference recommendations are only prosecutor recommendations and the Court reserves the right to sentence a defendant in a manner not consistent with such recommendation.

11.0 APPEALS

In all cases appealed, both the State and the defendant shall furnish the Court with a time -stamped copy of their briefs filed in the appellate proceedings within five (5) days of the filing of the same in the appellate court.

12.00 PROBATION FEES

As a general rule, all defendants who are placed on probation shall be required to pay a probation fee. The Fairfield County Municipal Court Probation Fee form, which outlines the fee schedule, may be obtained at the Clerk of Court's office. For those individuals who are indigent and incapable of paying the probation fee, a community

service option has been made available. See Probation Fee/Community Service Request Form also located at the Clerk of Court's Office.

13.00 ASSIGNMENT OF CASES

A. Assignment – Criminal cases shall be assigned to each of the municipal court judges in an alternating fashion. The name of the assigned trial judge shall be placed in the file.

B. Re-indicted cases – If a case has been terminated by nolle prosequi or other form of dismissal, the re-indicted case shall contain the following designation under the case number: “This is Reindicted Case #, Previously Assigned to Judge. . .”. Additionally, the original case number shall appear under the above designation. The trial judge to whom the case was previously assigned shall be reassigned to the re-indicted case. If a re-indicted case is not assigned to the previously assigned trial judge, the Assignment Commissioner shall transfer the re-indicted case to that trial judge.

C. Assignment of Cases with Multiple Co-Defendants – All co-defendants charged in a multiple defendant case(s) shall be assigned to the same trial judge. Any subsequent arraignments of other co-defendants shall be assigned to the same trial judge if scheduling permits. If a subsequently arraigned co-defendant is not assigned to the same trial judge, and the case(s) involving the co-defendant(s) are still pending, the Assignment Commissioner shall transfer the case to the originally assigned trial judge.

D. Assignment of Cases of Defendants with Active Probation Cases – If a probationer is charged on a new case, the new case shall be assigned to the trial judge who placed the defendant on probation or community control. If the defendant/probationer is not assigned to the trial judge who placed the defendant on probation or community control, the Assignment Commissioner shall transfer the new case to the appropriate trial judge.

E. Assignment of Cases when the Defendant has Pending Cases – If a defendant is arraigned on a new case and the defendant has pending case(s) assigned to a trial judge, the new case shall be assigned to that trial judge. In the event that the defendant is a co-defendant in the new case, the new case shall be assigned to the trial judge previously assigned the case(s) of the other co-defendants.

F. Priority of Assignments – In the event that a case is subject to more than one assignment category, the following assignment priority applies:

1. Re-indicted cases;
2. Co-defendant cases;
3. Pending cases; and
4. Active probation cases.

G. Removal of a Trial Judge from the Random Draw – If a transfer is made to a judge pursuant to MC Cr. R. 14, that trial judge shall be removed from the rotation for new criminal cases for one assignment cycle.

MEDIATION RULES

Introduction

The Fairfield County Municipal Court adopts Local Rule 15.00 effective January 1, 2007. Through Local Rule 15.00 the Fairfield County Municipal Court incorporates by reference the R.C. 2710 “Uniform Mediation Act” (UMA) and Rule 16 of the Supreme Court of Ohio Rules of Superintendence.

(A) Definitions

All definitions found in the “Uniform Mediation Act” (UMA) R.C. 2710.01 are adopted by this court through this local rule including, but not limited to the following:

- (1) “Mediation” means any process in which a mediator facilitates communication and negotiation between the parties to assist them in reaching a voluntary agreement regarding their dispute.
- (2) “Mediator” means an individual who conducts mediation.
- (3) “Mediation Communication” means a statement, whether oral, in a record, verbal or non verbal, that occurs during mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening mediation or retaining a mediator.
- (4) “Proceeding” means either of the following:
 - a. Judicial, administrative, arbitral or other adjudicative process, including related pre-hearing and post-hearing motions, conferences, and discovery;
 - b. A legislative hearing or similar process.

(B) Purpose

To promote greater efficiency and public satisfaction through the facilitation of the earliest possible resolution for Fairfield County Municipal Court cases through the use of mediation. To accomplish this goal, Court Mediation Services has been established.

(C) Scope

At any time any action under the jurisdiction of this court may be referred to mediation by any and/or all party(s).

(D) Case Selection

(1) Referral Process

The intake form and instructions for completion and submission are available at the Court Administrator’s Office and the Court’s internet website. The Court’s mediator will schedule the matter for mediation and notify the claimant and the respondent by first class mail of the scheduled date and time for the mediation. The mediator will note on a form provided by the Court whether the parties appeared for mediation and whether the mediation resulted in settlement of the matters in dispute. All mediation hearings will be held on Wednesday at noon (12:00 p.m.). All mediation hearings are held at 104 E. Main Street, Lower Level, Jury Room. All parties and counsel shall advise the assigned judge or magistrate of any domestic violence allegations known to them to exist or to have existed in the past, or which become known to them following entry of the order but before conclusion of all mediation proceedings, which allegations involve any two or more persons whose attendance is required by the referral order.

(2) Eligibility of Cases

The Court’s mediator will determine the eligibility and appropriateness of each referral prior to the commencement of the mediation process and may decline any referral(s) deemed inappropriate.

(3) Mediator Selection and Assignment

The following methods may be used to determine the mediator for the case:

- a. The court mediator may facilitate the mediation.
- b. The court randomly assigns a mediator to the case from the court’s roster of approved mediators.
- c. Specific appointments may be made by the court taking into consideration the qualifications, skills, expertise, and caseload of the mediator in addition to the type, complexity and requirements of the case.
- d. Parties may select a mediator from the court roster.

(E) Procedures

In accordance with all applicable provisions of this rule, if a case is deemed appropriate by the Court Mediation Services, mediation will be scheduled. A mediator may meet with the parties individually prior to bringing the parties together for any reason including, but not limited to further screening. A mediator may schedule multiple mediation sessions, if necessary and mutually acceptable for the resolution of the issues in part or in their entirety.

(1) The court shall utilize procedures for all cases that will:

- Ensure that parties are allowed to participate in mediation, and if the parties wish, that their attorneys and other individuals they designate are allowed to accompany them and participate in mediation.
- Screen for domestic violence both before and during mediation.
- Encourage appropriate referrals to legal counsel and other support services for all parties, including victims of and suspected victims of domestic violence.

- Prohibit the use of mediation in any of the following:
 - As an alternative to the prosecution or adjudication of domestic violence;
 - In determining whether to grant, modify or terminate a protection order;
 - In determining the terms and conditions of a protection order; and
 - In determining the penalty for violation of a protection order.
- (2) Party/Non-Party Participation
- Parties to informal cases may voluntarily attend mediation sessions.
 - Parties who are ordered into mediation in formal cases shall attend scheduled mediation sessions. The court may order parties to return to mediation at any time in formal cases.
 - A judge, magistrate and/or mediator may require the attendance of the parties' attorneys at the mediation sessions if the mediator deems it necessary and appropriate.
 - If counsel of any party to the mediation becomes aware of the identity of a person or entity whose consent is required to resolve the dispute, but has not yet been joined as a party in the pleadings, they shall promptly inform the mediator as well as the assigned judge or magistrate.
 - If the opposing parties to any case are 1) related by blood, adoption, or marriage; 2) have resided in a common residence, or 3) have known or alleged domestic violence at any time prior to or during the mediation, then the parties and their counsel have a duty to disclose such information to the mediator and have duty to participate in any screening required by the court.
 - By participating in mediation a nonparty participant, as defined by R.C. 2710.01(D), agrees to be bound by this rule and submits to the court's jurisdiction to the extent necessary for enforcement of this rule. Any nonparty participant shall have the rights and duties under this rule attributed to parties except as provided by R.C. 2710.03(B) (3) and 2710.04(A) (2).
- (3) Confidentiality/Privilege
- All mediation communications related to or made during the mediation process are subject to and governed by the "Uniform Mediation Act" (UMA) R.C. 2710.01 to 2710.10, R.C., the Rules of Evidence and any other pertinent judicial rule(s).
- (4) Mediator Conflicts of Interest
- In accordance with R.C. 2710.08(A) and (B), the Mediator assigned by the Court to conduct a mediation shall disclose to the mediation parties, counsel, if applicable, and any nonparty participants any known possible conflicts that may affect the Mediator's impartiality as soon as such conflict(s) become known to the Mediator. If counsel or a mediation party requests that the assigned Mediator withdraw because of the facts so disclosed, the assigned Mediator should withdraw and request that the assigned Judge or Magistrate appoint another Mediator from the list of qualified Mediators that is maintained by the Court. The parties shall be free to retain the mediator by an informed, written waiver of the conflict of interest(s).
- (5) Termination
- If the assigned Mediator determines that further mediation efforts would be of no benefit to the parties, he or she shall inform all interested parties and the Court that the mediation is terminated using the procedure required by this Court.
- (6) Stay of Proceedings
- All remaining court orders shall continue in effect. No order is stayed or suspended during the mediation process except by written court order. Mediation shall not stay discovery, which may continue through the mediation process in accordance with applicable rules, unless agreed upon by the parties and approved by the judge or magistrate assigned to the case.
- (7) Continuances
- It is the policy of this court to determine matters in a timely way. Continuances of scheduled mediations shall be granted only for good cause shown after a mutually acceptable future date has been determined. The case may be continued by the Mediator or the Judge or Magistrate who referred the case. Except as authorized by the court, the existence of pending motions shall not be good cause for a continuance and no continuance will be granted unless the mediation can be scheduled prior to the final pretrial. If a continuance of a scheduled mediation is requested and the proposed new date is within 45 days of the initial referral to mediation, then the request shall be made to the Mediator. If the requested date is more than 45 days after the referral to mediation, then the request must be made to the judge or magistrate assigned to the case.
- (8) Mediation Case Summary
- Attorneys may, at their option, or must if required on a specific case by the judge and/or magistrate, submit a "Mediation Case Summary" to the mediator which shall contain the following:
- Summary or material facts.

- Summary of legal issues.
 - Status of discovery.
 - List special damages and summarize injuries or damages.
 - Settlement attempts to date, including demands and offers.
- (9) Mediator Report
At the conclusion of the mediation and in compliance with R.C. 2710.06 the court shall be informed of the status of the mediation including all of the following:
- Whether the mediation occurred or was terminated;
 - Whether a settlement was reached on some, all or none of the issues; and
 - Attendance of the parties.
 - Future mediation session(s), including date and time.
- (F) Qualifications
- (1) Qualifications
To be a court approved mediator the following qualifications apply:
- Commitment to Continuing Education,
 - Membership in a Mediation Association,
 - Minimum number of years mediating a specific type of case(s), etc.
- (2) List of Qualified Mediators
The court maintains a list of qualified Mediators which shall be maintained by the Court Administrator and a copy shall be distributed to all Judges and Magistrates of the Court.
- a. All those on the list of qualified mediators shall submit to the Court Administrator a regularly updated Curriculum Vitae (including a list of training related to the field of dispute resolution and professional or association memberships) which CV shall be provided by the Court Administrator to those requesting information on an assigned Mediator's qualifications to mediate a dispute pursuant the requirements set forth in R.C. 2710.08(C).
 - b. The Court will review applications of person seeking to be added to the list of qualified Mediators in accordance with the procedures adopted by the Judges of the Court.
- (G) Fees and Costs
Unless stated differently, mediation will be a free serviced offered by the Court.
- (H) Bad Checks
"Bad check" cases shall be submitted to mediation prior to filing criminal charges.
- (I) Sanctions
If any individual ordered by the court to attend mediation fails to attend mediation without good cause, the court may impose sanctions which may include, but are not limited to, the award of attorney's fees and other costs, contempt or other appropriate sanctions at the discretion of the assigned Judge or Magistrate

SPECIALIZED DOCKETS

(A) MENTAL HEALTH COURT

There is hereby established in Fairfield County Municipal Court the Mental Health Court: Jail Diversion Program (FCMC-MHC) effective July, 2000.

It is the mission of the Fairfield County Municipal Court Mental Health Court to offer qualified offenders treatment at the earliest stage and in the least restrictive manner that is consistent with public safety. The Fairfield County Municipal Court – Mental Health Court will stress a therapeutically jurisprudant approach of supporting a psychiatrically stable and crime-free lifestyle for mentally ill persons living within Fairfield County.

The FCMC-MHC will serve persons convicted of misdemeanors who have serious mental illnesses that are contributing or mitigating factors in their law enforcement involvement and for whom court-monitored treatment and other services would enhance their ability to lead a law abiding life.

In order to have his/her case placed on the Mental Health Court Specialized Docket, a defendant must be referred to the program and must:

- (1) meet certain Clinical Criteria, more completely outlined in the Fairfield County Municipal Court Mental Health Court policy and procedures manual, including: an Axis I diagnosis; be stable enough to understand and comply with program requirements; and not pose an unacceptable risk to program staff or the community. A diversion candidate must be amenable to treatment and must be legally competent in order to enter the program.
- (2) meet certain Legal Criteria, more completely outlined in the Fairfield County Municipal Court Mental Health Court policy and procedures manual, including: a misdemeanor conviction and approval of the judge.

The primary reward for successful completion of the program is clinical stability and the reduction or avoidance of actual jail time served. The ultimate sanction for non-compliance is termination from the program, and serving of any suspended jail time.

The operation of the Fairfield County Municipal Court – Mental Health Court shall be in accordance with the Fairfield County Municipal Court Mental Health Court policy and procedures manual, which may be amended from time to time.

(B) “FRESH START” DRUG COURT

There is hereby established in Fairfield County Municipal Court the “Fresh Start” Drug Court effective February 14, 2007.

It is the mission of the Fairfield County Municipal Court “Fresh Start” Drug Court Program to provide management and treatment to misdemeanor defendants who incur drug related offenses in an effort to recognize and correct their problematic behavior, as well as reduce the risk they pose to the safety of the community. The opportunity for change is afforded through regular appearance before the judiciary, supervised treatment, mandatory periodic drug/alcohol testing, and the use of graduated sanctions and rehabilitative services.

The “Fresh Start” Drug Court program will serve persons who are non-compliant and/or in violation of his/her probation and/or incur additional charges which result in the revocation of his/her probation and have a probable cause/revocation motion filed by his/her probation officer.

In order to have his/her case placed on the “Fresh Start” Drug Court Specialized Docket, a defendant must be referred to the program and must:

- (1) meet certain Clinical Criteria, more completely outlined in the Fairfield County “Fresh Start” Drug Court Program components and procedures manual, including: have a major diagnosis of Substance Abuse from The Recovery Center; be competent to stand trial and understand/comply with program requirements; and not pose an unacceptable risk to program staff or the community. A candidate must acknowledge having a substance abuse condition that needs treatment.
- (2) meet certain Legal Criteria, more completely outlined in the Fairfield County “Fresh Start” Drug Court Program components and procedures manual, including: a misdemeanor charge(s) pending in municipal court; active probation status with charges or incur new charges that are at least indirectly related to drugs; consent of a victim (if applicable) for participation in the program; and consent of the judge, prosecutor, counselor, probation officer, coordinator, case manager and defendant.

A defendant must enter the program on a voluntary basis. The Judge, prosecutor, case manager/liaison, probation officer, coordinator and victim all provide input into the defendant’s intake decision. The Judge makes the final decision on whether or not a defendant will enter the program.

The primary reward for successful completion of the program is the termination of court proceedings, clinical stability and freedom from drugs and incarceration. The ultimate sanction for non-compliance is termination from the program, resulting in serving significant jail time.

The operation of the "Fresh Start" Drug Court Program shall be in accordance with the Fairfield County "Fresh Start" Drug Court Program components and procedures, which may be amended from time to time.

MISCELLANEOUS

The Court has previously adopted the following plans mandated by the Superintendence Rules:

1. Case Management Plan (see Sup. R. 5(B)(1));
2. Jury Management Plan (see Sup. R. 5(B)(2));
3. Facsimile Filing Rule (see Sup. R. 5).
4. Mediation Rule (see Sup. R. 16)
5. Court Security Plan (see Sup. R. 9)

All these Plans which have been previously adopted are incorporated herein by reference.