

PAINESVILLE MUNICIPAL COURT

LOCAL RULES OF COURT

The Painesville Municipal Court hereby adopts the following Rules of Court for the handling of cases and management of the Court. These Rules are adopted pursuant to the authority of the Rules of Superintendence for Municipal and County Courts, Rule 5 and are intended to include a case management program pursuant to Rule 5B1 and Local Fax Filing Rules.

These Rules are intended to supplement and complement the Ohio Rules of Civil Procedure, the Ohio Rules of Criminal Procedure, the Ohio Traffic Rules, the Rules of Superintendence for Municipal and County Courts, and other controlling rules and statutes in the application and administration in proceedings in the Court.

These Rules shall be applied, construed and enforced so as to avoid inconsistency with other rules of court and statutes governing proceedings, functions and services of this Court. In their application and administration they shall be construed and employed so as to provide fairness and simplicity in procedure, to avoid technical and unjustifiable delay, and to secure just, expeditious and inexpensive determination of all actions and proceedings.

These Rules shall apply to all parties, counsel of record and subject matter of all actions, civil, criminal or traffic filed on and after the effective date hereof.

- **Rule No. 1 – Hours of the Court**

The offices of the Court shall be open between the hours of 8:00 o'clock A.M. and 4:30 o'clock P.M., Monday through Friday and 4:30 o'clock P.M. to 6:00 o'clock P.M. every Wednesday (traffic division only).* These hours may be extended or diminished by Order of the Court from time to time.

*NO CIVIL FILINGS WILL BE ACCEPTED.

- **Rule No. 2 – Motions for Continuance**

Motions for Continuance shall be submitted to the Court in writing at least seven (7) days in advance of the scheduled hearing, and must contain a brief in support setting forth the reasons requiring the continuance, along with a proposed Order for the Court's review and approval. No continuance will be granted by phone.

When a continuance is sought for the reason that counsel is scheduled to appear in another case assigned for trial or hearing on the same date in another court in the State, the movant shall attach to his or her motion, a copy of the Notice received from the other court, along with a copy of the Notice received from this Court. Motions for Continuance sought due to a conflict in hearing or trial schedules shall be decided in accordance with Rule 41 (B) of the Rules of Superintendence for Municipal and County Courts.

Motions for Continuance submitted after the aforementioned seven (7) day period may be granted upon the showing of good cause constituting extreme hardship, unforeseen circumstances or other unavoidable conditions.

A proposed Judgment Entry must accompany all Motions for Continuance.

LOCAL RULES OF COURT IN CIVIL CASES

- **Rule No. 3 – Filing Fees**

The schedule of filing fees in civil cases is attached hereto and marked Exhibit A and may be amended from time-to-time by order of Court.

- **Rule No. 4 – Default –Dismissal by Court**

In all civil cases where the defendant(s) have failed to answer or further plead ninety (90) days after the filing of the complaint, the Court shall cause to be served upon the plaintiff a Notice pursuant to Civil Rule 41 that the Court will dismiss the case for want of prosecution unless good cause is shown. If the plaintiff fails to move the Court for an Order granting judgment by default pursuant to Rule 55(A) or otherwise show good cause why it should not be dismissed, then, in that case, the Court shall dismiss the action without prejudice, for want of prosecution after six (6) months.

- **Rule No. 5 – Motion Practice**

A. General Motion Practice

A party filing any motion shall file therewith a brief in support containing a short concise statement of the points relied upon and the authorities supporting such contentions.

***All motions shall be accompanied by a proposed Entry for the Court’s review and consideration.**

B. Motion for Summary Judgment

Unless otherwise ordered by the Court, Motions for Summary Judgment shall be heard on briefs and supporting documentation authorized by Civil Rule 56 (C) without oral hearing no less than 15 days after the service and filing of the Motion. Adverse parties shall serve and file opposing briefs and documentation within fourteen (14) days of the filing of the Motion.

C. Motions for Default Judgment

Unless otherwise ordered by the Court, Motions for Default Judgment which are accompanied by an Affidavit on personal knowledge, showing affirmatively that the Affiant is competent to testify to the matters stated therein and setting forth such facts as would be admissible in evidence in support of the allegations contained in plaintiff’s Complaint, shall be considered by the Court without oral hearing.

The Court will not accept affidavits of the plaintiff’s attorney in support of a Motion for Default Judgment unless the attorney is also the plaintiff.

- **Rule No. 6 – Magistrates**

Unless otherwise ordered by the Court, automatic reference shall be made pursuant to Civil Rule 53, Criminal Procedure Rule 19, Traffic Rule 14, and the Rules of Superintendence for Municipal and County Courts to a duly appointed Magistrate of the Court of the following types of cases and the reference of each such case shall be deemed to be journalized:

1. Civil matters in which the parties are not entitled to, or have waived their right to, a trial by jury.
2. Small Claims.
3. Judgment Debtor and Garnishment Proceedings.
4. All criminal and traffic matters as set forth in Criminal Rule 19 (C)(1) and Traffic Rule 14.
5. Any other matter in which the parties agreed in writing to hearing or trial by a Magistrate.

- **Rule No. 7 – Small Claims Filings**

Corporations may use Small Claims Court with an individual representative so long as the representative does not act as an advocate and may not engage in cross-examination, arguments, or other acts of advocacy. A corporate representative shall be limited to any bona fide officer or salaried employee.

- **Rule No. 8 – Case Management Program**

All civil cases, except forcible entry and detainer, replevin and small claims, shall be set for a combined pre-trial and case management conference after the case is at issue.

Counsel and parties must appear before the Court at the conference. Insurance adjusters may substitute for their insured, if they have authority to settle the case on behalf of their insured.

Counsel will be encouraged at the conference by the Judge or Magistrate to review the possibility of settlement of the action, to simplify and narrow the issues for trial, to reach stipulations of fact not in controversy, to shorten the time and expense of the trial and to consider such other matters as may aid in the disposition of the action, including any appropriate and available alternative dispute resolution programs.

Counsel should be prepared at the conference to enter into a joint pre-trial statement and binding case management schedule setting forth the possibility or probability of settlement, facts which can be stipulated and those remaining in contention, special legal issues, if any, and a time-table for the amendment of pleadings, the filing of motions, the exchange of expert witness reports and medical and hospital records, the termination of discovery and the trial of the action.

At the time of the conference, the Judge or Magistrate may consider other appropriate pre-trial matters in accordance with Civil Rule 16, including the imposition of sanctions as authorized by Civil Rule 16, including the imposition of sanctions as authorized by Civil Rule 37 and other such matters as may aid in the disposition of the case.

Failure to appear at pretrial may result in a Dismissal or Default Judgment.

- **Rule No. 9 – Forcible Entry and Detainer Actions**

A. In cases involving combined claims for forcible entry and detainer and claims for money damages, the Court may hear both causes at the time of the forcible entry and detainer hearing pursuant to Ohio Revised Code Section 1923.081.

B. In cases in which the Court has issued a writ of restitution in actions in forcible entry and detainer, it shall be the responsibility of the plaintiff or his agents to provide for the actual moving out of the defendant from the residence premises, including the post move-out storage of any personal property of the defendant. The Court's Bailiff shall schedule the move-out and shall actually be in attendance at the time of the execution of the writ of restitution but shall not make advanced arrangements for movers or actually conduct the move-out. Nothing in this rule shall prevent a party from recovering the costs of restitution of premises as damages or court costs in an appropriate case pursuant to law.

- **Rule No. 10 – Judgment Entries**

Final Appealable Orders

The purpose of this rule is to comply with the dictates of the Supreme Court of the State of Ohio contained in Atkinson vs. Grumann Ohio Corp. (1988), 37 Ohio St. 3d 80. The

obligation to distinguish between interlocutory orders and final, appealable orders, however, is with the parties and their counsel and not with the Clerk or Deputy Clerks of this Court.

• **Rule No. 11 – Service by Publication**

In cases where there is a request for service by publication pursuant to Civil Rule 4.4, the Clerk shall cause service of Notice to be made by publication in a newspaper of general circulation in the County pursuant to Rule 4.4. The Clerk shall notify the publisher that the payment of the costs of the publication shall be the responsibility of the plaintiff. Payment arrangements shall be made directly by the plaintiff with the publisher without the Court assessing the publication costs as costs of suit or without the requirement of an advanced deposit by the plaintiff to the Court for payment of the publication costs. Nothing in this rule shall prevent a party from recovering the costs of publication as damages or court costs in an appropriate case pursuant to law.

LOCAL RULES IN CRIMINAL CASES

- **Rule No. 12 – Case Management Program – Pre-trials**

All criminal cases wherein the defendant pleads “not guilty” at the initial appearance or the case is not otherwise disposed of, shall be immediately set for a pretrial conference. The notice of the pretrial conference date shall be personally delivered to the defendant and/or his attorney prior to leaving court.

The defendant and his attorney shall be required to personally appear at the pretrial conference unless expressly excused by Court Order. All cases which are not disposed of at the conclusion of the pretrial conference shall be set for trial unless specifically indicated otherwise by the Court. Prior to leaving the Court at the conclusion of the pretrial conference, a notice of the trial date shall be personally delivered to the defendant and/or his attorney.

- **Rule No. 13 – Case Management Program – Trial**

All trials shall be scheduled before the Court unless the defendant files a timely jury demand or otherwise is accorded a right to trial by jury pursuant to law.

- **Rule No. 14 – Motions**

All Motions shall be made in accordance with Criminal Rule 12. Any motion which, by its nature, is capable of determination without hearing shall be ruled on without hearing.

- **Rule No. 15 – Cases Heard on Scheduled Date**

All criminal cases shall be heard only at the regularly scheduled date and time. Defendants may appear for hearing or disposition of their case at a time other than the regularly scheduled date and time only upon written motion filed in advance with the Court.

- **Rule No. 16 – Dismissals**

When the prosecutor desires to dismiss a criminal charge, he shall file a written application therefore pursuant to the provisions of the Ohio Rules of Criminal Procedure, Rule No. 48. The prosecutor shall state in a written application the reasons for the requested dismissal. A criminal charge may only be dismissed by the State by leave of court pursuant to this Rule.

- **Rule No. 17 – Traffic Violations Bureau**

A. Pursuant to the authority of Ohio Traffic Rule 13 and Criminal Rule 4.1 there is hereby established at the Painesville Municipal Court, a Traffic Violations Bureau. The Clerk of Court is hereby appointed as the Violations Clerk.

B. The purpose of the Violations Bureau shall be to accept appearance, waiver of trial, plea of guilty and payment of fine and costs for offenses within the authority of the Violations Bureau.

C. The Court hereby establishes and publishes a schedule of fines and costs for all offenses subject to the authority of the Violations Bureau. This schedule is attached hereto and marked Exhibit B and shall be distributed to all law enforcement agencies operating within the jurisdiction of the Court and shall be prominently displayed at the payment window of the Violations Bureau at the Court.

D. The Violations Bureau shall have authority to dispose of all traffic offenses and minor misdemeanor offenses except for the following offenses:

1. Indictable Offenses.
2. Operating a Motor Vehicle While Under the Influence of Alcohol or any Drug of Abuse.
3. Leaving the Scene of an Accident.
4. Driving While Under Suspension or Revocation of Driver's License.
5. Driving without being licensed to drive, except where the driver's or commercial driver's license had been expired for six months or less.
6. A third moving traffic offense within a 12 month period.
7. Failure to stop and remain standing upon meeting or overtaking a school bus stopped on the highway for purpose of receiving or discharging a school aged child.
8. Willfully eluding or fleeing a police officer.
9. Drag Racing
10. Wrongful Entrustment

E. The procedure for a defendant's appearance, plea and waiver of trial at the Violations Bureau shall be as set forth in Traffic Rule 13(D).

• **Rule No. 18 – Non-Resident Violator Compact (O.R.C. 4511.95 and 4511.951)**

Pursuant to the provisions of the Non-Resident Violator compact, any police officer issuing a traffic citation or minor misdemeanor citation to a resident of a member jurisdiction shall not require the violator to post collateral to secure his appearance if the arresting officer receives the violator's signed personal recognizance that he or she will comply with the summons. Any police officer issuing a citation to a non-resident motorist from a compact member jurisdiction for one of the following offenses shall not accept the violator's personal recognizance but shall instead require the violator to post security in accordance with the attached bond schedule or in lieu thereof take the violator into custody and hold the violator in custody for an immediate appearance in Court at the first available court session:

1. Indictable Offenses.
2. Operating a Motor Vehicle While Under the Influence of Alcohol or any Drug of Abuse.
3. Leaving the Scene of an Accident.
4. Driving While Under Suspension or Revocation of Driver's License.
5. Driving Without Being Licensed to Drive, except where the driver's or commercial driver's license had been expired for six months or less.
6. Willfully eluding or fleeing a police officer.
7. Drag Racing.
8. Wrongful Entrustment

• **Rule No. 19 – Non-Resident Violator Not a Member of the Interstate Violators Compact**

Any law enforcement officer issuing a traffic citation or minor misdemeanor citation to a violator who is not a resident of Ohio but is a resident of a state which is not a signator to the Non-Resident Violator Compact shall require the violator to post security in accordance with the attached bond schedule or, in lieu thereof, shall take the violator into custody and hold the violator in custody for an immediate appearance in Court at the first available court session.

• **Rule No. 20 – Ohio Violator**

Any law enforcement officer issuing a traffic citation or minor misdemeanor citation to a violator who is resident of the State of Ohio shall not require the violator to post collateral to secure his appearance if the arresting officer receives the violator's signed personal recognizance that the violator will comply with the summons. Provided, however, any such violator who has been charged with one of the following offenses shall instead be required to post security in accordance with the attached bond schedule or, in lieu thereof, the violator shall be taken into custody and held for an immediate appearance in Court at the first available court session:

1. Indictable Offenses.
2. Operating a Motor Vehicle While Under the Influence of Alcohol or any Drug of Abuse.
3. Leaving the Scene of an Accident.
4. Driving While Under Suspension or Revocation of Driver's License.
5. Driving Without Being Licensed to Drive, except where the driver's or commercial driver's license had been expired for six months or less.
6. Willfully eluding or fleeing a police officer.
7. Drag Racing.
8. Wrongful Entrustment.

• **Rule No. 21 – Continuing Traffic Appearance**

The date of any defendant's initial appearance on a traffic citation shall not be continued by the Court unless the defendant files a written motion with the Court in advance of the appearance date along with a brief memorandum or statement of facts setting forth the reasons requiring the continuance.

• **Rule No. 22 – Facsimile Filing**

The provisions of this local rule are adopted under Civ.R. 5(E), Civ.R. 73(J) and Crim.R. 12 (B).

Pleadings and other papers may be filed with the Clerk of Court by facsimile transmission to (440) 352-0028 subject to the following conditions:

APPLICABILITY

1. These rules apply to criminal, traffic, civil and small claims proceedings in the Painesville Municipal Court.
2. The following documents will not be accepted for fax filing: Jury Demand, New Complaints, and Garnishments.

ORIGINAL FILING

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

DEFINITIONS

As used in these rules, unless the context requires otherwise:

1. A "facsimile transmission" means the transmission of a source document by a facsimile machine that encodes a document into optical or electrical signals, transmits and reconstructs the signals to **print** a duplicate of the source document at the receiving end.
2. A "facsimile machine" means a machine that can send and receive a facsimile transmission.
3. "Fax" is an abbreviation for "facsimile" and refers, as indicated by the context, to facsimile transmission or to a document so transmitted.

COVER PAGE

1. The person filing a document by fax shall also provide therewith a cover page containing the following information:
 - (I) the name of the court;
 - (II) the title of the case;
 - (III) the case number;
 - (IV) the assigned judge;
 - (V) the title of the document being filed (e.g. Defendant Jones' Answer to Amended Complaint; Plaintiff Smith's Response to Defendants' Motion to Dismiss; Plaintiff Smith's Notice of Filing Exhibit "G" to Plaintiff Smith's Response to Defendants' Motion to Dismiss);
 - (VI) the date of transmission;
 - (VII) the transmitting fax number;
 - (VIII) an indication of the number of pages included in the transmission, including the cover page;
 - (IX) the name, address, telephone number, fax number, Supreme Court registration number, if applicable, and e-mail address of the person filing the fax document if available.
2. If a document is sent by fax to the Clerk of Court without the cover page information listed above, the Clerk may, at its discretion
 - (I) enter the document in the Case Docket and file the document;

- (II) if filing is not clear – return by fax requesting Cover Page.
3. The Clerk of Court is not required to send any form of notice to the sending party of a failed fax filing. However, if practicable, the Clerk of Court may inform the sending party of a failed fax filing.

SIGNATURE

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

EXHIBITS

1. Each exhibit to a facsimile produced document that cannot be accurately transmitted via facsimile transmission for any reason must be replaced by an insert page describing the exhibit and why it is missing. Unless the court otherwise orders, the missing exhibit shall be filed with the court, as a separate document, not later than five (5) court days following the filing of the facsimile document. Failure to file the missing exhibits as required by this paragraph may result in the court striking the document and/or exhibit.
2. Any exhibit filed in this manner shall be attached to a cover sheet containing the caption of the case which sets forth the name of the court, title of the case, the case number, name of the judge and the title of the exhibit being filed (e.g., Plaintiff Smith’s Notice of Filing Exhibit “G” to Plaintiff Smith’s Response to Defendants’ Motion to Dismiss), and shall be signed and served in conformance with the rules governing the signing and service of pleadings in this Court. (See appendix for sample exhibit cover sheet.)

TIME OF FILING

1. Subject to the provisions of these rules, all documents sent by fax and received by the Clerk shall be considered filed with the Clerk of Courts as of the date and time the Clerk time-stamps the document received, as opposed to the date and time of the fax transmission. However, the fax machine will be available to receive facsimile transmission of documents on the basis of 24 hours per day seven days per week including holidays.
2. Fax filings may only be transmitted directly through the facsimile equipment operated by the Clerk of Court.
3. Documents faxed to/from a 3rd party, then forwarded to the Court are not acceptable.
4. The Clerk of Court may, but need not, acknowledge receipt of a facsimile transmission.

5. The risks of transmitting a document by fax to the Clerk of Court shall be borne entirely by the sending party. Anyone using facsimile filing is urged to verify receipt of such filing by the Clerk of Court through whatever technological means are available.

FEES AND COSTS

1. Within five (5) days after the court has received the transmission, the party sending the transmission shall forward the following to the court;
 - (I) The applicable filing fee, if any.
2. This rule on facsimile filing shall not apply to the filing of a jury demand in a civil case in the court.
3. No additional fee shall be assessed for facsimile filings.

LENGTH OF DOCUMENT

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

EFFECTIVE DATE

1. These local rules shall be effective 05/23/2008, and shall govern all proceedings in actions brought after they take effect and also further proceedings in pending actions, except to the extent that, in the opinion of the court, their application in a particular action pending on the effective date would not be feasible or would work an injustice, in which event, the former procedure applies.

- **Rule No. 23 – Use of Electronically Produced Tickets**

Pursuant to Rule 3F of the Ohio Traffic Rules the use of electronically produced tickets is hereby permitted provided that the ticket conforms in all substantive respects, including layout and content, to the "Ohio Uniform Traffic Ticket".

Further if a ticket is issued at the scene of an alleged offense, the issuing officer shall provide the defendant with a paper copy of the ticket.

Any law enforcement officer who files a ticket electronically shall be considered to have certified the ticket and shall have the same rights, responsibilities, and liabilities as with all other tickets issued pursuant to the Ohio Traffic Rules.

- **Rule No. 24 – Record Management and Retention Schedule**

The Painesville Municipal Court adopts the Record Management and Retention Schedule Pursuant to rule 26 of the Rules of Superintendence for the Courts of Ohio.

These rules adopted this 1st day of July 2020, and shall be effective July 1, 2020. These rules shall supersede and replace prior local rules of the Painesville Municipal Court.

IT IS SO ORDERED.

PAUL R. MALCHESKY, JUDGE
PAINESVILLE MUNICIPAL COURT