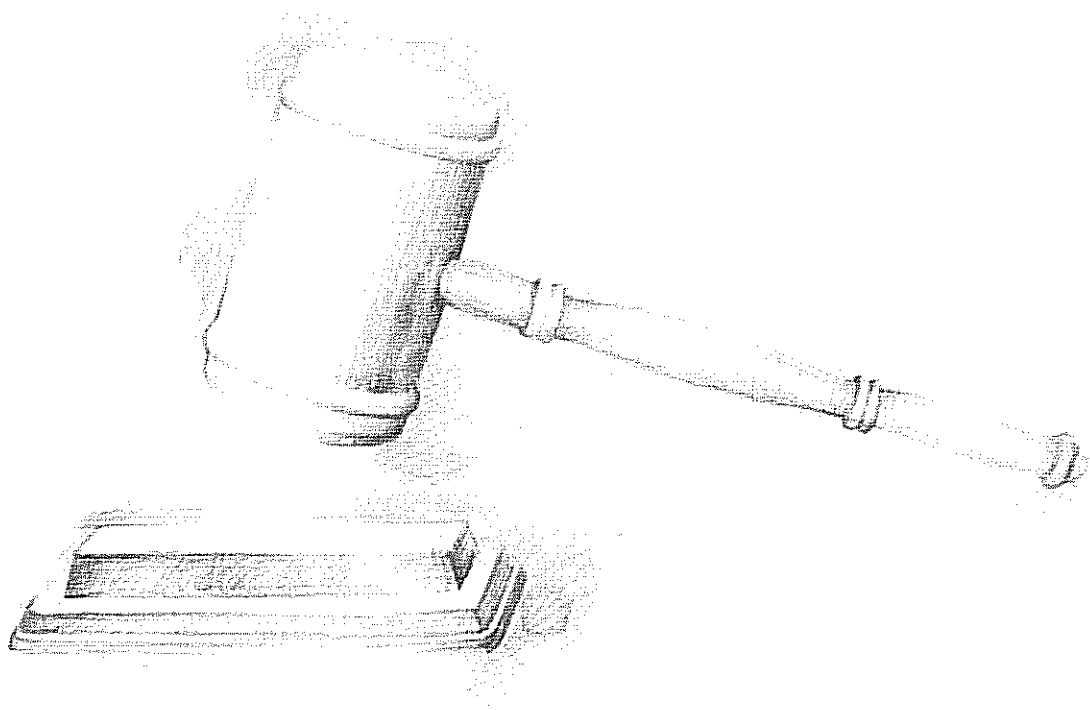


**Local Rules  
of Court  
for the  
South Euclid Municipal Court  
Cuyahoga County, Ohio**



**JUDGE GAYLE WILLIAMS-BYERS**

**SOUTH EUCLID MUNICIPAL COURT  
CUYAHOGA COUNTY, OHIO**

**\*\*\*\*\* LOCAL RULES OF COURT \*\*\*\*\***

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### **Rule 1. Scope and effective date**

(A) These Local Rules of Court are adopted for the governance of the practice and procedures in the South Euclid Municipal Court, Cuyahoga County, Ohio, pursuant to Article IV, Section 5(B) of the Ohio Constitution, Rule 83 of the Ohio Rules of Civil Procedure and Rule 5 of the Rules of Superintendence for the Courts of Ohio.

(B) The purpose of these rules is to facilitate the expeditious disposition of cases that come before the court.

(C) Except where otherwise noted herein, these rules are effective as of January 1, 2010, and shall supersede and replace any local rules previously entered by this court.

### **Rule 2. Hours of regular operation**

The offices of the court shall be open for the transaction of business between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except for legal holidays when courts are closed. Additionally, The Court will close at noon on the Friday following the 4<sup>th</sup> Thursday of the month when Night Court is held.

### **Rule 3. File management**

(A) Paper court files may be examined at the office of the Clerk of Court under the supervision of the clerk or deputy clerk.

(B) No document may be removed from a paper court file.

(C) No paper file may be removed from the clerk's office without the written consent of the judge or clerk. Any person seeking to remove a file shall set forth in writing the case name and number, the reason for removal and the destination of the file. Paper files must be promptly returned to the clerk's office and may not be removed from the court building.

**Rule 4. Costs and filing fees**

The court has adopted a schedule of costs and filing fees in civil cases (Appendix A ), as well as criminal and traffic cases (Appendix B), and may amend the same from time to time.

**Rule 5. Pleadings and motions**

(A) All pleadings and motions shall be typed or legibly printed on paper approximately 8 1/2 inches by 11 inches in size and securely bound at the top.

(B) The caption of the complaint shall state the name and address, if known, of each party. The caption on any other pleading adding or naming new parties shall state the names and addresses, if known, of the new parties. All other pleadings and motions shall state the case number and the name of the first party plaintiff and the first party defendant. Every pleading, motion, or other document filed in a case shall be identified by title and shall bear the name, address and telephone number of the individual filing the same. Documents filed by an attorney shall include the name of the attorney, his or her Ohio Supreme Court registration number and firm name, if any, as well as his or her address, telephone number, fax number and e-mail address.

(C) All pleadings and motions must be served upon the opposing counsel, or if a party is not represented, then upon the opposing party in accordance with the Ohio Rules of Civil Procedure.

(D) If service of process by certified mail is returned by the postal authority with an endorsement of "refused" or "unclaimed," unless otherwise instructed by the party requesting service, the clerk will automatically re-issue the service by ordinary mail in accordance with Civil Rule 4.6 (C) or 4.6(D). The clerk will notify the party, who requested service, that service has been re-issued by regular mail.

(E) Interrogatories, notices of deposition, requests for admissions, and other discovery requests shall not be filed with the court unless otherwise ordered.

(F) Any pleading or motion filed in contravention of this rule may be stricken from the files in the court's sole discretion.

**Rule 6. Facsimile filing**

(A) All pleadings, motions, or other documents other than the original complaint or any other pleading that joins or adds a new party, may be transmitted to the court by facsimile transmission, to (216) 381-1195, subject to the conditions set forth in this rule. However, no document that requires a filing fee shall be accepted by facsimile by the clerk for filing. No additional fee shall be assessed for facsimile filings.

(B) The following definitions shall apply herein, unless the context requires otherwise:

(1) "Facsimile transmission" means the transmission of a source document by a system that encodes a document into optical or electrical signals, and transmits and reconstructs the signals to print a duplicate of the source document at the receiving end.

(2) "Facsimile machine" means a machine that can send and/or 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.

(C) A document filed by fax shall be accepted as the original filing. The sender shall not be required to file the source document with the clerk but must maintain the same in the sender's records, and have the same available for production on request of the court, with original signatures as otherwise required under these or other applicable rules, together with the original

copy of the facsimile cover sheet used for the subject filing. Moreover, the sender shall maintain the source document until the subject case is closed and all opportunities for appeal have been exhausted.

(D) The person filing a document by fax shall also provide a cover page containing the following information:

- (1) The name of the court;
- (2) The title of the case;
- (3) The case number;
- (4) The assigned judge;
- (5) The title of the document being filed;
- (6) The date of transmission;
- (7) The transmitting fax number;
- (8) The number of pages included in the transmission, including the cover page;
- (9) An indication that a judge or case number has not been assigned, if applicable;
- (10) The name, address, telephone number and fax number of person filing the fax document.
- (11) For an attorney, his or her Ohio Supreme Court registration number and firm name, if any.

(E) In the event a document is sent by fax to the clerk without the cover page information listed above, the clerk may, in his sole discretion enter the document in the docket and file the document, or deposit it in a file of failed faxed documents with a notation of the reason for the failure. In the later event, the document shall not be considered filed with the clerk.

(F) A party filing a signed source document by fax shall either fax a copy of the signed source document, or 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 on the signed source document. The individual filing a signed document by fax represents that the physically signed source document is in such party’s possession or control.

(G) 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.

(1) Unless otherwise directed by court order, the missing exhibit shall be filed as a separate document not later than five days following the transmission of the fax document. Failure to file the same shall result in the court striking the document and/or exhibit in its sole discretion.

(2) Any exhibit filed as set forth above shall be attached to a cover sheet containing the information set forth in subsection (D) of this rule, and shall be signed and served in conformance with the rules governing the signing and service of pleadings in the court.

(H) Subject to the provisions of these rules, all documents sent by fax and accepted by the clerk shall be considered filed as of the date and time the clerk time-stamps the document received, rather than as of the date and time of the fax transmission. The clerk’s office shall be deemed open to receive facsimile transmission of documents on the same days and times that the court is regularly open for business.

(1) Fax filing may only be transmitted directly through the facsimile equipment operated by the clerk and may not be sent directly to the court for filing.

(2) The clerk shall not be required to acknowledge receipt of a facsimile transmission.

(3) The risks of transmitting a document by fax to the clerk shall be borne entirely by the sender. Anyone using facsimile filing is urged to verify receipt of such filing with the clerk.

(I) Facsimile filings shall not exceed 10 pages in length.

*Effective January 1, 2014, South Euclid Municipal Court is implementing a "paperless" system.*

Rule 7. Electronic filing

(A) The clerk shall provide electronic filing service to all court users for all documents in any category of cases or any particular case as designated by an administrative order of the presiding judge.

(B) In matters where electronic filing is authorized by administrative order, the electronically filed document will be part of the official court record. Paper records, if maintained, will be considered a copy of the official court record.

(C) The following definitions shall apply herein, unless the context requires otherwise:

(1) "Electronic filing" means the transmission of a digitized source document electronically via the Internet to the clerk for the purpose of filing the document and refers to the means of transmission or to a document so transmitted.

(2) "Electronic mail" means messages sent by a user and received by another through an electronic service system utilizing the Internet. Any communication sent to the court by electronic mail is not considered a legal communication of any form and will not be received or ruled upon by a judge or entered into the court record.

(3) "Document" means any pleading, motion, exhibit, declaration, affidavit, memorandum, paper or photographic exhibit, order, notice, and any other filing by or to the court, except trial exhibits that have not yet been admitted into evidence by the court.

(D) All electronically filed pleadings must be signed by an attorney admitted to practice in the State of Ohio or party not represented by such an attorney, either by hand or electronic signature.

(1) Any signature on electronically transmitted documents shall be considered that of the attorney or party it purports to be for all purposes. If it is established that the documents were transmitted without authority, the court shall order the document stricken.

(2) No attorney shall authorize anyone to electronically file on that attorney's behalf, other than his/her employee or a service provider retained to assist in electronic filing.

(3) The electronic filing of a document by an attorney, or by another under the authorization of said attorney, or by a party not represented by an attorney shall constitute a signature of that attorney or party under Ohio Civil Rule 11.

(4) No person shall utilize, or allow another person to utilize, the password of another in connection with electronic filing.

(E) The electronic filing service shall be available twenty-four hours per day, seven days a week. All electronic filing of documents must be completed by 4:30 pm to be considered timely filed that day. Documents transmitted outside of regular court hours shall be deemed filed on the next normal business day of the clerk.

(F) A document electronically filed shall be accepted as the original filing if the filer complies with all of the requirements set forth in this rule. The filer shall not be required to file the source document with the clerk but must maintain the same in the filer's records, and have the same available for production on request of the court, the clerk or other counsel. The filer shall maintain the source document until the subject case is closed and all appeals and opportunities for appeal have been exhausted.

(G) Upon the filing of a properly executed and signed User Agreement Form and Credit Card Authorization Form with the clerk, the clerk shall establish an electronic filer user account and assign a filer identification number and initial password to be used for electronically filed documents.

(H) The filer electronically filing a document shall also complete an on-line Document Description Form containing the following information:

(1) The title of the case;

**Rule 8. Appearance and withdrawal of counsel**

- (A) All entries of appearance of counsel in an action shall be in writing.
- (B) Upon the entry of appearance of counsel, all documents filed with the court and entries of the court shall be served upon said counsel.
- (C) Once an appearance is made, counsel may withdraw from a case only by written leave of court for good cause shown.

**Rule 9. Continuances**

- (A) All motions for continuances shall be submitted to the court in writing and shall include a brief in support setting forth the reasons requiring the continuance. No continuance shall be granted in the absence of proof of reasonable notice to, or consent by, the other party.
- (B) When a continuance is sought for the reason that counsel is scheduled to appear in another case assigned for hearing on the same date in another court, the movant shall attach a copy of the notice received from the other court. Motions for continuance sought due to a conflict in hearing or trial schedules shall be ruled upon in accordance with Rule 41(B) of the Rules of Superintendence for the Courts of Ohio.
- (C) No continuance in a civil case will be considered if filed within seventy-two hours of the hearing date unless the moving party secures the consent of the other party in writing and such consent is filed with the court prior to the hearing date.
- (D) No continuance in a criminal or traffic case will be considered if filed within seventy-two hours of the hearing date.
- (E) Motions for continuance, when submitted in accordance with the above, will be granted in the discretion of the court for good cause shown. A continuance that has not been ruled on by the date of the hearing shall be considered to be denied.

**Rule 10. Recording of proceedings**

- (A) A record shall be made of traffic, criminal, civil and small claims proceedings by audio electronic recording device. In the event a party desires recording by stenographic means, such party must arrange for the presence and advance payment of a court reporter and further file a written motion requesting that such individual be named as the official reporter for the hearing.
- (B) The court shall maintain exclusive custody and control of the electronic recording tapes of proceedings. The court will retain all tapes for a period of one year. At the expiration of such period, tapes will be recycled or destroyed except in the instance of an appeal in which event the subject tape(s) will be retained during the pendency of the appeal.
- (C) A party may have a full or partial transcript prepared from the court tape(s) by arranging for the presence and advance payment of a court reporter to prepare the same. The expense relating to the transcript shall be the responsibility of the requesting party.

**Rule 11. Conditions for recording and/or broadcasting proceedings****(A) Definitions and application**

- (1) For purpose of these rules, the terms "record and/or broadcast" shall be construed to include broadcasting, televising, and recording whether by video, movie, audio and/or photograph. The term "proceedings" shall be construed to include any public hearing held by the

court.

(2) Application for permission to record and/or broadcast proceedings shall be made in writing to the assigned judge as far in advance as reasonably practical, but in no event less than one-half hour prior to the proceeding unless otherwise permitted by the judge.

(3) Although no special form of application is required, it must identify and be signed by the applicant and specify the type of equipment to be used. The "pooling" required by Rule 12 of the Rules of Superintendence for the Courts of Ohio shall be accomplished prior to submission of the application.

(4) The judge shall grant or deny the application in accordance with Rule 12 of the Rules of Superintendence for the Courts of Ohio and Canon 3 (B)(3) of the Code of Judicial Conduct.

(B) Permissible equipment and operators shall be as follows, unless otherwise permitted by the assigned judge:

(1) Not more than one portable television, videotape, or movie camera with one operator shall be permitted.

(2) Not more than one still photographer with not more than two still cameras with not more than two lenses for each camera shall be permitted.

(3) For radio broadcast purposes, not more than one audio system shall be permitted.

(4) No electronic or photographic equipment shall be permitted that produces distracting sound and light. No artificial lighting other than that normally used in the courtroom shall be allowed. No motor driven cameras shall be allowed.

(C) Location of equipment and operators

(1) The television, videotape or movie camera(s) shall be positioned on a tripod in an area designated by the judge which provides reasonable access to coverage and shall remain fixed in that position. Equipment that is not a component part of the in-court unit shall be located outside of the courtroom.

(2) Equipment operators shall position themselves in a location in the courtroom either standing or sitting and shall assume a fixed position in that area. Operators shall act so as to not call attention to themselves through further movement. Sudden moves, pans, tilts or zooms by television or still camera operators are prohibited. Operators shall not be permitted to move about except to leave or enter the courtroom.

(3) Cameras, microphones and taping equipment shall not be placed, moved or removed from the courtroom except prior to the commencement of or after adjournment of the proceedings or during a recess unless otherwise permitted by the assigned judge. Television film magazines, rolls or lenses, still camera film, and audio portable tape cassettes shall not be changed except during a recess.

(4) Microphones shall be located only at the bench, witness stand, and attorney tables. Microphones shall be as inconspicuous as possible but shall be visible.

(D) Limitations

(1) No media recording of proceedings in a judge's chambers or access to the same shall be permitted, unless expressly granted by the judge.

(2) There shall be no audio pickup or broadcast of conferences conducted in court between attorneys and clients or co-counsel, or of conferences conducted at the bench between counsel and the judge.

(3) No media recording shall be permitted in the jury deliberation room at any time during the course of the trial or after the case has been submitted to the jury. No pictures of jurors shall be



permitted at any time.

(4) The judge shall inform victims and witnesses of their right to object to being filmed, videotaped, recorded or photographed. Recording and/or broadcasting of victims of sexual assaults, informants and undercover police officers shall not be permitted.

(5) No media recording shall be made of any document or exhibit before or after it is admitted into evidence, except those which are clearly visible to spectators (e.g. maps, charts, blackboards, etc.)

(6) Media representatives shall not be permitted to transmit or record anything other than the court proceedings from the courtroom while the court is in session.

(E) Revocation of permission

Upon the failure of any media representative to comply with the conditions prescribed by these Local Rules, the judge, or of Rule 12 of the Rules of Superintendence for the Courts of Ohio, the judge may revoke the permission to record and/or broadcast the proceedings.

### **Rule 12. Decorum and conduct**

(A) Upon the opening of any court session, all persons in the courtroom shall stand except for those physically unable to do so. All persons in the courtroom shall conduct themselves with decorum and in such manner as to not interfere with the proper administration of the court's business.

(B) All persons appearing before the court shall, to the extent practicable, appear in appropriate and clean dress.

(C) Small children are not permitted in the courtroom while the court is in session without the prior permission of the judge.

(D) No smoking, eating or drinking is permitted in the courtroom. No one is permitted to bring food or drink into the courtroom.

(E) No person shall loiter or behave in an unseemly or disorderly manner in the courtroom or in any hall, entryway or stairway, or otherwise interfere with or obstruct judicial activities or proceedings.

(F) Failure to comply with any aspect of this rule may result in appropriate sanctions by the court, including continuance or dismissal of the matter before the court, or a charge of contempt of court.

### **Rule 13. Reserved for future use**

## **CRIMINAL/TRAFFIC DIVISION**

### **Rule 14. Appearance of the defendant**

(A) Persons charged with traffic and/or criminal offenses must be present at the initial appearance as well as all subsequent hearings except as set forth herein. Failure to appear will result in the issuance of an arrest warrant and/or other appropriate sanctions.

(B) The requirement of the defendant's initial appearance may be satisfied by counsel for the defendant filing a letter or notice of appearance with the court prior to the date of the initial appearance and setting forth all of the following:

(1) Plea on the defendant's behalf;

(2) Waiver of the time for speedy trial which shall be signed by the defendant as well as by

defendant's attorney; and

- (3) Request that a pretrial be set.

**Rule 15. Video hearings**

(A) At the court's discretion, hearings on criminal or traffic matters may be held by means of closed circuit video transmission to the court from the correctional facility where the defendant is being held.

(B) The attorney representing the defendant, whether retained or appointed, shall be notified of the time scheduled for the video hearing, and may be present either at the court or the correctional facility.

(C) Video hearings will be scheduled at times mutually convenient to the court and correctional facility involved.

(D) In the event the defendant personally or through counsel objects to the matter being held by video transmission, the proceedings shall take place in person in the courtroom.

**Rule 16. Motion practice**

(A) All Motions shall be made in conformity with Criminal Rule 12.

(B) Any motion which, by its nature, is capable of being determined without a hearing shall be ruled on without hearing.

(C) All motions not heard or decided prior to trial will be disposed of at trial.

(D) In any case where a party or counsel anticipates that a motion hearing will require more than one hour, it is the responsibility of the party or counsel to notify the court so that adequate time can be scheduled.

**Rule 17. Case management**

(A) Criminal and traffic cases in which the defendant enters a plea of not guilty at the initial appearance shall be set for trial.

(B) The trial will be set before a judge unless the defendant files a timely jury demand in writing, or is otherwise accorded the right to jury trial by law.

(C) A pretrial conference may be set where the court determines the same is necessary and appropriate.

(D) Cases that are not disposed of at the conclusion of a pretrial conference will be set for trial unless the court determines a final pretrial conference is necessary and appropriate.

(E) Written notice of the date and time of a trial and/or pretrial conference shall be provided in person to the defendant and/or counsel. If not present to receive the same, written notice shall be sent by mail to the defendant or to counsel of record. Written notice of all hearings shall be sent to the prosecuting attorney of record.

(F) Continuances shall be submitted and ruled upon in accordance with Local Rule 9.

(G) Both the defendant and counsel of record shall be required to personally attend all hearings. The defendant's failure to appear will result in the issuance of an arrest warrant and/or license forfeiture or warrant block.

**Rule 18. Jury instructions**

In jury cases, all parties desiring specific jury instructions shall, at least seven days prior to trial, file proposed jury instructions with the court and serve the same upon opposing counsel.

**Rule 19. Sentencing**

(A) Upon a finding of guilty, sentencing shall occur immediately unless otherwise permitted by the court.

(B) Prior to sentencing and in its discretion, the court may refer the defendant to the probation department for a presentence investigation. Upon completion of its investigation, the probation department shall prepare a written report. Such report may be made available for review by the prosecution and defense prior to sentencing.

(C) Costs, fines and monies for restitution are expected to be paid immediately after sentencing unless otherwise permitted by the court.

**Rule 20. Community Control Sanctions**

(A) The court will determine eligibility for community control sanctions(CCS). Any defendant who is referred to CCS shall meet with the probation officer immediately following sentencing. In the event the probation officer is unavailable to meet with the defendant, it shall be the defendant's affirmative duty to schedule an initial appointment.

(B) The probation officer shall provide a copy of the court's Standard Rules of CCS to each defendant referred for probation and secure the defendant's signature upon the same.

(C) The probation officer shall inform each defendant referred to CCS of the specific terms thereof.

(D) A determination by the probation officer that the defendant has failed to agree to or comply with the Standard Rules of CCS, or with the terms of CCS, shall result in the scheduling of a CCS violation hearing and may result in the imposition of the original sentence in whole or in part.

- (b) Account numbers for an individual's bank account, security account, debit card, charge card, or credit card; or
- (c) Information concerning a minor, including the minor's date of birth, age, or telephone number, or address.

#### Rule 21. Violations Bureau

(A) Pursuant to Ohio Traffic Rule 13 and Criminal Rule 4.1, there is hereby established a Violations Bureau and the Clerk of Court is hereby appointed as clerk thereof. The South Euclid Police Department dispatch officer is appointed to serve as deputy violations bureau clerk to act when the violations clerk is not on duty.

(B) The Violations Bureau shall accept appearances, waivers of trial, pleas of guilty, and payment of fines and costs for offenses within its authority.

(C) The Violations Bureau shall have authority to dispose of traffic offenses and minor misdemeanor offenses with the exception of the following:

- (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 a driver's or commercial driver's license;
- (5) Driving without being licensed to drive, except where the driver's or commercial driver's license has been expired for six months or less;
- (6) A third moving violation within a twelve-month period;
- (7) Failure to stop and remain standing upon meeting or overtaking a school bus stopped on the highway for the purpose of receiving or discharging a school child;
- (8) Willfully eluding or fleeing a police officer;
- (9) Drag racing; or
- (10) Any violation in which the officer marked the notice as "personal appearance required".

(D) There is hereby established a waiver schedule of fines and costs (Appendix C) for subject offenses. Such schedule shall be distributed to the law enforcement agency operating within the jurisdiction of the court and shall be prominently displayed at the cashier's office of the court.

(E) Within seven days after the date of issuance of the ticket, or the filing of the matter in this court, a defendant charged with an offense that can be processed by the violations bureau may:

- (1) Appear in person at the violations bureau, sign a plea of guilty and waiver of trial, and pay the total amount of fines and costs; or
- (2) Sign the guilty plea and waiver of trial, and mail the ticket and a personal check, certified check or money order to the bureau; or
- (3) Call the bureau with payment by VISA or MasterCard. Payment by telephone constitutes a guilty plea and waiver of trial.

(F) Waivers in person or by mail must be accompanied by proof of financial responsibility which must have been in effect on the date of the violation.

## **Rule 22. Reserved for future use**

### **CIVIL DIVISION**

#### **Rule 23. Security for costs/deposit for jury trial**

(A) No pleading, motion, or other document shall be accepted for filing by the Clerk of Court unless there is first deposited the filing fee set forth in the schedule of costs established from time to time by the court.

(B) Upon a claim of indigency, a party shall file a written motion and affidavit setting forth his or her income and expenses, and the court shall rule upon the same.

(C) When a judgment for costs against a party appears unsatisfied, the clerk may refuse to accept for filing any new action or proceeding instituted by or on behalf of such party, unless otherwise ordered by the court, without such party first making payment to the clerk of such unpaid costs.

(D) When a jury trial is demanded, the party requesting the same shall make an advance deposit. If the deposit is not made within fourteen days of the scheduled trial, the jury demand will be deemed to have been waived and the case will proceed as a trial before the court.

#### **Rule 24. Leave to move or plead**

(A) Except in replevin actions and actions for forcible entry and detainer, when a party is not prepared to move or plead on the answer day, one extension of time may be had upon application to the court for a period not exceeding thirty days. Consent of counsel may be filed as a judgment entry in the case and shall be evidence of good cause shown.

(B) Any leave to move or plead thereafter may be had only with the approval of the court, with notice to the opposing party or counsel, and for good cause shown. Consent of the opposing party or counsel shall not, in and of itself, constitute good cause.

(C) Applications for extensions of time, regardless of consent of opposing counsel, must be filed at least one day prior to the due date.

#### **Rule 25. Motion practice**

(A) All motions shall be made in conformity with the Ohio Rules of Civil Procedure.

(B) Each motion shall include a certificate of service attesting to service upon the opposing party or, if represented by counsel, upon counsel for such party.

(C) Motions shall be supported by a brief citing applicable case and statutory law.

(D) Any motion, which, by its nature, is capable of being determined without a hearing, shall be ruled upon without hearing.

#### **Rule 26. Disposition of motions**

(A) Motions Other Than for Summary Judgment. Unless otherwise provided in the Ohio Rules of Civil Procedure or these Local Rules, each party opposing a motion except a motion for summary judgment shall serve and file the brief or memorandum in opposition within fourteen (14) days after the motion was filed with the court.

(B) Motions For Summary Judgment. Unless otherwise provided in the Ohio Rules of Civil Procedure or these Local Rules or otherwise ordered by the court, motions for summary judgment shall be heard on briefs and other materials authorized by Civil Rule 56 without oral arguments no sooner than thirty days after the service of the motion upon the opposing party.

The adverse party prior to the day of the hearing may serve and file opposing party affidavits. In the event the adverse party also files a motion for summary judgment, the hearing date shall be extended to thirty days from the service upon the opposing party of the latter motion.

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

(D) A motion to extend the time for filing the brief in opposition to motions may be requested prior to the expiration of the of the original deadline for filing the brief in opposition.

(E) All motions not heard or decided prior to trial will be disposed of at the time of trial.

(F) Motions in criminal cases shall follow Ohio Criminal Rule 12.

(G) All motions and briefs containing references to statutes or regulations other than the Ohio Revised Code or the Ohio Rules of Court shall have attached to the motion or brief a copy of the statute or regulation. Copies of unreported court decisions cited or referred to in a motion or brief shall also be attached to the motion or brief.

### **Rule 27. Case management**

(A) Summons shall be served in accordance with the Rules of Civil Procedure. In the event of a failure of service, the clerk shall promptly notify the plaintiff or counsel of record.

(B) The clerk shall provide the judge with a monthly report of all cases which are pending without service for more than six months. The judge shall determine what further action is necessary to ensure the timely disposition of the cases reported.

(C) All contested matters, except forcible entry and detainer and small claims, shall be set for a telephone case management conference where all parties are represented by counsel. Thereafter, the matter will be set for pretrial if further hearing is necessary, or at the discretion of the judge may be set for a further status conference by telephone.

(D) Where one or more parties are not represented by counsel, contested matters will be set for a case management conference at which all parties must be present at court.

(E) Parties should be prepared at the case management conference, whether conducted by telephone or held at court, to enter into a binding case management schedule setting forth a timetable for the amendment of the pleadings, the filing of motions, the exchange of witness reports and medical and hospital records, the termination of discovery, and the trial of the action. Such schedule shall thereafter be adopted as an order of the court.

(F) Counsel and parties must appear before the court at any pretrial conference held at court. Insurance adjusters may substitute for their insured provided they have full authority to settle the case on behalf of the insured. No appearances by telephone will be allowed unless specifically permitted by the court.

(G) Parties will be encouraged at the pretrial to review the possibility of settlement, to simplify and narrow the issues for trial, to reach stipulations of fact not in controversy, to shorten the time and expense of trial and to consider such other matters as may aid in the disposition of the case.

(H) Cases that are not disposed of at the conclusion of a pretrial or telephone case management conference will be set for trial unless the court determines a final pretrial conference is necessary and appropriate.

(I) Written notice of the date and time of a trial and/or pretrial or case management conference shall be provided in person to the parties and/or counsel. If not present to receive the same, written notice shall be sent by mail to the parties and/or counsel of record.

(J) Continuances shall be submitted and ruled upon in accordance with Local Rule 9.

(K) At the time of the pretrial or case management, the court may consider other appropriate matters in accordance with Civil Rule 16, as well as the imposition of sanctions as authorized by Ohio Civil Rule 37, and such other matters as will aid in the disposition of the case.

(L) The clerk shall provide the judge with monthly written reports of all cases which are within six months of the case time limits provided in Superintendence Rule 39(B). The judge shall determine what further action is necessary to ensure the timely disposition of the cases reported.

#### **Rule 28. Trials**

(A) All trials shall be set before the court unless a party to the action files a timely jury demand in writing and makes the jury deposit required under Local Rule 23(D). There shall be no jury trials in a small claims case.

(B) Notice to the court of the withdrawal of a jury demand shall be made no later than seven days prior to the date of trial. In the event a panel of jurors appears for service and the trial is continued or postponed due to the failure of a party or his counsel to comply with this rule or to appear, such party shall be assessed the per diem costs of the panel unless waived by the court for good cause shown.

#### **Rule 29. Trial briefs and jury instructions**

(A) Where a trial brief is required by order of court, counsel for each party shall file a copy with the clerk at least seven days prior to the commencement of trial and serve copies on all opposing counsel or parties not represented by counsel.

(B) The brief shall state the issues involved, authorities upon which the party intends to rely at trial, a list of witnesses the party intends to call and a list of all exhibits the party intends to introduce at trial. Briefs containing references to statutes or regulations other than the Ohio Revised Code or Ohio Rules of Court shall have attached to the brief copies of the statutes or regulations. Copies of unreported court decisions cited or referred to in a brief shall also be attached to the brief.

(C) In all jury cases, all parties, or the attorneys for the same desiring specific jury instructions shall, at least fourteen days prior to trial, file proposed jury instructions with the clerk, and serve the same upon opposing counsel.

(D) Exhibits shall be marked prior to trial. Plaintiff shall use numbers and defendant shall use alphabetic letters. Parties shall provide no less than an original and two copies of all exhibits.

#### **Rule 30. Notification of settlements**

(A) In cases of settlement or voluntary dismissal, the court will accept notice of the same by telephone from the person pursuing each claim. The plaintiff must submit a judgment entry detailing the settlement terms within fourteen days of such telephone notification, unless otherwise ordered by the court.

(B) If no judgment entry regarding settlement is received within the time allowed, the court will issue an entry of dismissal at the cost of the plaintiff.

(C) It shall be the responsibility of the plaintiff to notify the opposing party of the cancellation of any scheduled hearing due to voluntary dismissal unless otherwise ordered by the court.

#### **Rule 31. Default judgment**

(A) Motions for default judgment shall be in writing and clearly state the date the complaint was

filed, the manner in which service was perfected, proof of service and the answer date.

(B) A default by a defending party is an admission of allegations in the claim except damages. Civ.R.8(D). For all motions (other than cases based on an account), proof of damages is required. For cases based on a promissory note, the motion shall include the following documents:

(1) An itemized accounting, which shows all charges and all money due, all payments made, and all credits applied.

(2) If the promissory note was for the purchase of a car or other personal property, or, if the movant held a security interest in any property, the documents shall show who has possession of the property. If said property has been repossessed, the documents shall include an itemized statement, which shows the sale price less all costs of sale.

(C) In the event the motion is accompanied by a current affidavit setting forth the claim for relief and amount of damages, it will be ruled upon without oral hearing.

(D) In the event the motion is not accompanied by an affidavit, the motion will be set for oral hearing. In the event an affidavit is filed prior to the hearing date, the motion will be ruled upon without oral hearing. In the event an affidavit is not filed and the movant fails to appear or produce evidence at the hearing in support of the claim and amount of damages, the matter will be dismissed without prejudice at plaintiff's costs.

(E) In the event the defendant fails to appear or otherwise answer and no motion for default is filed, the court will set the matter for oral hearing. In the event the plaintiff files a motion for default judgment with an affidavit setting forth the claim for relief and amount of damages prior to the hearing, the matter will be ruled upon on the basis of the motion and affidavit. In the event a motion with an affidavit is not filed and the plaintiff fails to appear or produce evidence at the hearing in support of the claim and amount of damages, the matter will be dismissed without prejudice at plaintiff's costs.

(F) All motions for attorney fees will be set for oral hearing.

(G) Interest will be awarded in accordance with law.

### **Rule 32. Satisfaction of judgment**

(A) No satisfaction of judgment shall be entered by the clerk unless all court costs have been paid.

(B) No person other than the clerk or deputy clerk may enter satisfaction of judgment upon the records of the court.

### **Rule 33. Forcible entry and detainer actions**

(A) Claims for forcible entry and detainer and claims for past due rent and money damages must be filed as separate counts in a single complaint and the court shall hear each count separately. Plaintiff shall attach to the complaint a copy of the Notice to Leave Premises (O.R.C. 1923.04) and any other required notice.

(B) Actions in forcible entry and detainer shall be set for hearing before a judge or magistrate pursuant to the time limits set forth in Chapter 1923 of the Ohio Revised Code.

(C) At the conclusion of the hearing on the first count, the judge or magistrate will decide if plaintiff is entitled to possession of the property. If the judge or magistrate determines that the plaintiff is entitled to possession, the judge or magistrate will set a date certain for defendant to vacate the property and a date certain for the bailiff to go to the property in the event the



defendant does not comply with the order to vacate. At the conclusion of the hearing on the first count, the judge or magistrate shall file a judgment entry along with a copy of the South Euclid Municipal Court Move-Out Procedures, and cause a copy to be served upon all parties.

(D) If judgment is entered for plaintiff on the first count, the plaintiff shall purchase a writ of restitution and may schedule a move-out with the civil deputy clerk of court. There is a filing fee for the purchase of the writ and an additional filing fee for the court bailiff to conduct the move-out. The filing fee for the writ of restitution shall be paid when judgment is entered on the first count. The filing fee for the move-out shall be paid no later than the date set by the court for defendant to vacate the property, but must be paid prior to the time for the move-out and must be paid at the office of the clerk of court. The filing fees for the purchase of the writ and the move-out are non-refundable. The applicable fees are set forth in the Appendix A.

(E) The court does not require plaintiff to procure the services of a moving company to remove defendant's personal property in the event defendant leaves personal property at the premises. Plaintiff shall not place defendant's personal property on the tree lawn or any other place outside the premises.

(F) The court issues only one writ of restitution. The court does not issue second or alias writs.

(G) If a second count for money damages has been filed, the hearing on the same shall be scheduled after judgment is entered on the first count.

(H) Jury demands in forcible entry and detainer actions shall be filed and notice given to all parties not later than three business days before the trial date. A jury demand must be accompanied by payment of jury costs in accordance with Local Rule 23(D). The previously set trial date will be continued. As a condition precedent to the jury trial, the court will, where appropriate, order defendant to deposit with the court the rent for the current month and, thereafter, to deposit the rent as it becomes due.

#### **Rule 34. Garnishment of personal earnings or property**

(A) A party seeking a garnishment of personal earnings or property must comply with the provisions of Ohio Revised Code 2716.01, et seq.

(B) Sufficient copies of the affidavit shall be filed for service upon the garnishee and such parties as are required to be served, and the garnishee fee shall accompany the affidavit.

#### **Rule 35. Proceedings in aid of execution**

(A) All proceedings in aid of execution shall comply with the provisions of Ohio Revised Code 233.01, et seq.

(B) Sufficient copies of the order shall be filed for service upon such parties as are required to be served, and the applicable fees shall accompany the order.

#### **Rule 36. Reserved for future use**

### **SMALL CLAIMS DIVISION**

#### **Rule 37. Authority**

The Small Claims Division is established and operated pursuant to Ohio Revised Code Chapter 1925.

**Rule 38. Purpose**

(A) The purpose of the Small Claims Division is to allow parties to resolve minor disputes quickly, inexpensively and fairly without requiring the services of an attorney. However, litigants are free to use an attorney if desired.

(B) The Small Claims Division of the court is for monetary judgments only. Complaints seeking the return of property, or an order requiring a party to perform a certain act, must be filed in the Civil Division.

**Rule 39. Jurisdiction**

(A) The monetary jurisdiction of the Small Claims Division is \$3,000, exclusive of interest and court costs, and subject to other provisions of law.

(B) In order to maintain a claim in the Small Claims Division, the court must have jurisdiction over the parties in one of the following manners:

(1) The transaction giving rise to the complaint occurred within the territorial jurisdiction of the court;

(2) The defendant maintains his/her residence or maintains his/her business within such territorial jurisdiction; or

(3) The parties have agreed by contract to subject the matter in controversy to the court.

**Rule 40. Corporation as a party**

(A) A corporation which is a real party in interest in any action in a small claims division may commence such an action and appear therein through an attorney at law. Such a corporation may, through any bona fide officer or salaried employee, file and present its claim or defense in any action in a small claims division arising from a claim based on a contract to which the corporation is an original party or any other claim to which the corporation is an original claimant, provided such corporation does not, in the absence of representation by an attorney at law, engage in cross-examination, argument, file objections to a decision of the magistrate, or other acts of advocacy.

(B) A bona fide officer or salaried employee of a corporation may request a continuance.

**RULE 40.1. Assignees, Agents or Powers of Attorney**

(A) Pursuant to Ohio Revised Code Section 1925.02(A)(2)(a)(ii), a Small Claims Division does not have subject matter jurisdiction to hear actions on any claims brought by an assignee or agent, except a claim to recover taxes that is filed by an authorized employee of a political subdivision or any authorized officer or employee of the state, as defined in Ohio Revised Code Section 1925.08(C) or a claim filed by a person designated under Ohio Revised Code Section 1925.18 to act as the representative of a prosecuting attorney.

(B) Except when represented by an attorney at law, a small claims action must be filed, presented and/or defended by the real party in interest. Individuals with a power of attorney, whether recorded or not, cannot represent a party in a small claims action.

**Rule 41. Pleadings**

(A) The plaintiff may begin a small claims action by filing a complaint and paying the required costs. The complaint should be written in plain, concise language. All pleadings will be construed to accomplish substantial justice.

(B) No party is required to file a responsive pleading such as an answer to the complaint, counterclaim, cross-claim or third party complaint.

(C) Upon the filing of the complaint, the case will be set for trial.

(D) The court may schedule a pretrial hearing if any claim seeks judgment in excess of \$2000.00. All parties shall be present at the pretrial hearing. The purpose of the pretrial hearing is to explore the possibility of settlement or, in the alternative, to narrow the issues at trial.

#### **Rule 42. Counterclaims and cross-claims**

(A) All counterclaims and cross-claims must be filed at least seven days before the scheduled trial.

(B) Any party filing such pleadings shall send copies to all opposing parties by regular U.S. mail.

(C) Any pleading which is not timely filed shall be stricken from the file. If the claim is timely filed, the clerk shall issue a notice of trial date to all parties.

#### **Rule 43. Third party claims**

(A) Any party seeking to join a new party to a pending case must file a third party complaint at least seven days before the scheduled trial date.

(B) The clerk shall serve the new party defendant with the third party complaint in the same manner as the original complaint.

(C) Any pleading which is not timely filed shall be stricken from the file. If the claim is timely filed, the clerk shall issue a notice of trial date to all parties.

(D) If a third party complaint is filed, the trial shall be moved to a date allowing the third party sufficient time to appear.

#### **Rule 44. Continuances**

(A) A request for a continuance of a case set for trial in a small claims case shall be filed in writing at least three days prior to the trial date.

(B) The request shall be in writing and shall include:

(1) The case caption and case number;

(2) The reason for the request;

(3) The date and time of the scheduled trial;

(4) A statement signed by the moving party that he or she has notified the other parties in accordance with rules of service; and

(5) The signature of the party requesting the continuance, or of such party's attorney.

#### **Rule 45. Dismissals**

A person asserting a claim may dismiss the claim by a written notice thereof to the clerk.

#### **Rule 46. Subpoenas**

All subpoenas or praecipes for subpoenas must be filed seven days prior to the scheduled trial date with the filing fee and witness fees paid at the time of filing.

#### **Rule 47. Motions to transfer to the regular civil docket**

(A) A motion to transfer a small claims matter to the regular civil docket shall be filed at least

three days before the scheduled trial date.

(B) When a counterclaim, cross-claim or third party claim exceeds the jurisdiction of the Small Claims Division, it must be accompanied by a motion to transfer.

(C) An untimely motion to transfer shall be stricken from the file.

(D) In the event the motion to transfer is not filed or is stricken from the file, the damage recovery will be limited to the monetary jurisdiction of the Small Claims Division.

#### **Rule 48. Other pretrial motions**

All pretrial motions shall be filed and served upon the opposing parties at least seven days before the scheduled trial date. Motions which are not timely filed shall be stricken from the file. Pretrial motions shall be heard at the time of trial. The filing of pretrial motions shall not excuse any party's failure to appear at trial.

#### **Rule 49. Trial**

(A) The trial shall be conducted by a judge or magistrate. The parties shall be placed under oath and shall be given the opportunity to state their cases.

(B) At the conclusion of the trial, the judge shall prepare a decision or the magistrate shall prepare a magistrate's decision.

(C) If any party makes a request for findings of fact and conclusions of law, of if findings and conclusions of law are otherwise required by law or by court order, the magistrate's decision shall include findings of fact and conclusions of law in accordance with Civil Rule 53(E)(3).

#### **Rule 50. Evidence at trial**

(A) The Ohio Rules of Evidence do not apply to small claims cases.

(B) Any documents and witnesses that a party desires to be considered must be produced at the time of trial and cannot be produced afterwards. No continuances will be granted on the date of trial to submit additional documents or witnesses.

(C) Witnesses must be present in court. The court will not receive telephone calls from witnesses. Affidavits or written statements of witnesses will not be accepted as evidence.

#### **Rule 51. Objections to the magistrate's decision**

(A) Any objections shall be made in conformity with Civil Rule 53(E)(3). They shall be ruled upon in conformity with Civil Rule 53(E)(4).

(B) Any party may file written objections to a magistrate's decision within fourteen days of the filing of the decision. Thereafter, any other party shall have a period of ten days to file objections. If a party makes a request for findings of fact and conclusions of law, the time for filing objections begins to run when the magistrate files a decision including findings of fact and conclusions of law.

(C) Objections shall be specific and state with particularity the grounds for the objections. They shall further contain a statement signed by the filing party that copies have been served on all other parties.

(D) Any objection to a finding of fact shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that fact or an affidavit of that evidence if a transcript is not available.

(E) The filing of objections shall result in an automatic stay of the judgment entered by the

court on the magistrate's decision.

(F) In ruling upon any objections, the court may adopt, reject or modify the magistrate's decision, hear additional evidence, recommit the matter to the magistrate with instructions or hear the matter.

**These Local Rules of the South Euclid Municipal Court are effective on January 1, 2010.**