

**EAST CLEVELAND MUNICIPAL COURT
2012 LOCAL RULES OF PRACTICE
WILLIAM L. DAWSON
PRESIDING AND ADMINISTRATIVE JUDGE**

**SERVING: THE CITY OF EAST CLEVELAND
14340 Euclid Avenue
East Cleveland, Ohio 44112**

**Phone: (216) 681-2220
Fax: (216) 681-2217
www.eccourt.com
court@eccourt.com**



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EAST CLEVELAND MUNICIPAL COURT

LOCAL RULES OF PRACTICE

INTRODUCTION

The following rules, effective January 31, 2010, have been promulgated by the East Cleveland Municipal Court, Cuyahoga County, Ohio, pursuant to Article IV, Section 5(B) of the Ohio Constitution and Rule 5 of the Rules of Superintendence for the Courts of Ohio, for the expeditious management of business before this Court. All former rules of this Court are hereby revoked.

The following rules and any amendments thereto are incorporated here by reference, as if fully rewritten and made a part hereof:

- The Supreme Court Rules for the Government of the Bar of Ohio
- The Code of Professional Responsibility
- The Ohio Rules of Criminal Procedure
- The Ohio Traffic Rules
- The Rules of Superintendence for the Courts of Ohio
- The Ohio Rules of Evidence
- The Ohio Rules of Civil Procedure

These Rules and any amendments thereto not in conflict with any of the above, shall govern practice and procedure in this Court and, in the event of conflict, the Rules of Superintendence, or the Ohio Rules of Civil Procedure, or the Ohio Rules of Criminal Procedure or any of the above with amendments thereto, these rules shall be subservient.

CITATION OF RULES

These Rules shall be known as the East Cleveland Municipal Court Rules of Practice and may be cited as "ECR No. ____".

GENERAL

RULE 1: COURT HOURS AND SESSIONS

The East Cleveland Municipal Court shall be open between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday. The court shall be in session at such other times as the Judge shall prescribe to meet special situations.

RULE 2: FILE MANAGEMENT

(A) Court files may be examined at the office of the Clerk of Courts under the supervision of the Clerk or deputy clerk. Upon request, copies of documents will be provided at the cost of \$1.00 per page, and certified copies at the cost of \$10.00 per page.

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

(C) No 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. Files must be promptly returned to the Clerk's Office and may not be removed from the court building.

RULE 3: COURTROOM CONDUCT AND ADMISSION

(A) All cell phones, pagers and other sound making devices are to be silenced while in the courtroom. The court will impose a fee of \$20.00 or more if any of the aforementioned devices are engaged while court is in session.

(B) Admission to the courtroom is within the discretion of the Judge or Magistrate within the guidelines of public access to all court proceedings, consistent with the order and dignity of the court.

(C) All persons in the courtroom shall conduct themselves with decorum and in such manner so as not to interfere with or obstruct judicial activities or proceedings. The court expects that counsel will inform his/her clients and witnesses of these rules.

(D) No person shall loiter or behave in an unseemly or disorderly manner in the courtroom or in any hall, entryway or stairway near the Clerk's offices, or otherwise interfere with or obstruct judicial activities or proceedings. All persons shall follow the directives of the East Cleveland Municipal Court's Bailiffs/Security officers.

(E) All persons appearing before the court shall appear in appropriate attire.

(F) There will be no smoking, eating, chewing gum or drinking in the courtroom.

(G) Proceedings shall not be recorded without the consent of the Presiding Judge and must conform to the guidelines set forth in Ohio Rules of Superintendence for Ohio Courts. Requests for permission to broadcast, record, photograph or televise in the

courtroom shall be in writing to the Presiding Judge as far in advance as reasonably practical, but in no event no later than one-half (1/2) hour prior to the courtroom session to be broadcast or photographed unless otherwise permitted by the Judge.

(H) Public statements by counsel, court personnel, and witnesses shall be regulated by the Judge or Magistrate to whom the case is assigned within the guidelines of public access to court proceedings and the right of the parties to be free of improper publicity within areas protected by fundamental rights.

RULE 4: EMPLOYEES OF THE COURT

(A) No employee of the Court shall at any time, whether by request or otherwise, refer or direct any person to an attorney or to a bail bondsman or bail bond company or agent. No court employee shall give legal advice to a litigant, witness, or other person. In small claim cases, assistance shall be limited to supplying such persons with the necessary forms and any explanation only to the portions thereof to be completed by the complainant on his or her own initiative.

(B) Neither an employee nor a family member residing in the employee's household shall accept a gift, bequest, favor, or loan from any person whose interests have come or are likely to come before the court, or from any person under circumstances that might reasonably be regarded as influencing or appearing to influence the performance of the employee's official duties.

(C) Any violations of this Rule shall subject the violator to disciplinary action including suspension or termination by the Court.

RULE 5: RECUSAL OF JUDGE OR MAGISTRATE

(A) Should the Judge or Magistrate recuse himself or herself from hearing any individually assigned case, said Judge shall cause a Journal Entry, or said Magistrate shall cause a Magistrate's Decision, to be made setting forth the recusal and the reason therefore. The Magistrate's case shall be reassigned by the Administrative/ Presiding Judge and the Judge's case shall be reassigned by the Ohio Supreme Court.

(B) In the event of the protracted illness of a Judge, the Judge shall appoint an acting Judge or visiting Judge and/ or the Ohio Supreme Court shall reassign a Judge.

RULE 6: COURT SECURITY PLAN

Pursuant to the Rules of Superintendence the Court's Security Policy and Procedures Plan shall be on file the Clerk of the Ohio Supreme Court.

RULE 7: APPEARANCE AND WITHDRAWAL OF COUNSEL

(A) **Appearance.** Attorneys practicing before this court (except for pro se litigants) shall designate their capacity as trial counsel on all pleadings, motions, petitions, etc. filed in this court. All such documents shall bear, in addition to the signature of trial counsel, counsel's name, office address and zip code, office telephone number, facsimile number, email address as well as counsel's Ohio Supreme Court Certificate of Registration number, as provided by Ohio Gov. Bar R. VI, §4. A law firm shall not be designated as trial counsel. Upon entry of appearance, all documents filed with the court and all court Orders and Motions shall be served upon the designated counsel. Once an appearance is made, an attorney may only withdraw from a case by leave of court.

(B) **Admission to Practice.** A person who is not admitted to the practice of law before the Ohio Supreme Court may not appear on behalf of another individual or entity in court, except as provided by ORC §1925.17 or Rule VI, §4, of the Supreme Court Rules for the Governance of the Bar of Ohio. Except as otherwise provided in these Rules, an executed power of attorney does not confer upon a person who is not an attorney the right or ability to represent some other person in court.

(C) **Admission Pro Hac Vice.** Admission *pro hac vice* will be allowed only on motion of an attorney admitted to practice in Ohio and registered with the Clerk of the Ohio Supreme Court for active status. The motion shall briefly state the qualifications of the attorney seeking admission.

(D) **Withdrawal.** Counsel must submit a written motion setting forth the reasons for the requested withdrawal. The motion must be filed no less than ten (10) calendar days prior to the next scheduled hearing. The motion must be directed to the Presiding Judge and shall include the following:

- (i) Certificate of service on opposing counsel or party and the client;
- (ii) The date and time of the next scheduled court appearance;
- (iii) A statement of counsel that a copy of the Journal Entry granting the withdrawal will be immediately mailed to the last known address of the client;

RULE 8: COURT APPOINTED COUNSEL

(A) The court shall assign an attorney acting as public defender pursuant to a contractual agreement to represent indigent defendants whereby the attorney works those hours designated by the court or the court shall assign private attorney to represent indigent defendants from the court/county assignment list.

(B) The attorney must submit a written application to the Judge. Said application must include the attorney's name, business address, Ohio Attorney

Registration Number, and whether the attorney is in good standing with the Ohio Supreme Court. The application shall also include any special areas of expertise, such as language fluency or mental health law specialization. Upon ascertaining that the attorney is in good standing with the Ohio Supreme Court, the attorney will enter into a contractual arrangement with the Court for a period of one (1) year, or by individual assignment or county public defender.

RULE 9: MAGISTRATES

The Administrative/Presiding Judge shall appoint a full-time Magistrate or part-time Magistrates, who may hear cases by reference, and in accordance with Ohio Civ. Rule 53, Traffic Rule 14, Criminal Rule 19, and Rules of Superintendence Rule 19.

(A) **Objections to Magistrate's Decisions.** Objections must be filed with the court within fourteen (14) days after the date of mailing by the court. Objections shall state with particularity the grounds therefore. Upon consideration of the objections, the court may adopt, reject or modify the decision, hear additional evidence or return the report to the Magistrate with instructions.

(B) **Orders.** Orders of the Magistrate may take immediate effect without approval by the Judge under Ohio Civ. R. 53 and objections, if any, must be filed within ten (10) days of such Order, must state with particularity the grounds for the objections but does not stay the effectiveness of the order unless a stay is granted by the Judge or Magistrate.

RULE 10: FILING WITH THE COURT

The filing of Complaints, pleadings and other papers with the court as required by these Rules shall be made by filing them with the Clerk of Court. The Clerk shall immediately time-stamp appropriate papers upon filing, which time-stamp shall bear the date and time that a paper was filed and process the appropriate filing fee, if required. The document is then deemed filed. The Clerk or Deputy Clerk shall not destroy or alter or allow a party to destroy or alter a paper once it has been filed. Documents that have not been filed may be considered at the option of the Presiding Judge or Magistrate at trial, since a court is not bound to honor documents that have not been filed.

RULE 11: PLEADINGS

(A) **Size/Format.** All complaints, pleadings, motions, briefs and other papers filed with the Clerk shall be on white, 8 1/2 " x 11" paper without any cover or backing.

RULE 12: COMPLAINTS

(A) Content. A complaint shall contain:

(1) The full name and address of each plaintiff and phone number, if known, and the full name, business address, telephone number, facsimile number, email address and attorney registration number of counsel;

(2) The full name and address of each defendant, if known;

(3) A short and plain statement of the claim for which the complaint seeks relief;

(4) A demand for judgment for the relief sought. If the recovery of money is demanded, the amount shall be stated and, if interest is claimed, the amount of interest and time for which interest is to be computed, shall be stated;

(5) The complaint shall be fully completed and signed before filing and, once filed, shall be the record in the case;

(6) If the action is in contract, the complaint must include:

(a) If in writing, a copy of the contract and/or billing statement;

(b) If oral, a statement or allegation of its terms;

(c) A statement of the amount of any offsets or credits; and

(d) A copy of proof of assignment from the original creditor or original party in interest to the plaintiff establishing standing and jurisdiction of the court.

(7) All other complaints as for special proceedings (e.g., forcible entry and detainer) shall comply with the requirement of these Rules and the Ohio Revised Code.

RULE 13: MOTIONS

(A) Motions.

(1) Pleadings, motions and other pertinent documents shall be filed with the Clerk of Court. All motions shall be in writing accompanied by a written memorandum containing argument, affidavit and citation, timely filed and served on all appropriate parties in accordance with Ohio Rules and Statutes. Motions and responses must be filed within the time guidelines set forth in the Ohio Rules of Civil Procedure. The failure of a party to file a reply within the time guidelines may be construed by the court as an admission that the motion may be granted. Motions shall be ruled on without a hearing unless otherwise requested in writing, and at the court's discretion.

(2) **Motions for Summary Judgment.** Unless otherwise ordered by the court, Motions for Summary Judgment shall be decided on the briefs and other attachments without oral arguments. The adverse party may file a brief in opposition

within ten (10) days after service of the motion, unless a longer time period is provided in the Ohio Rules of Civil Procedure.

(3) Motions other than for Summary Judgment. Each party opposing a motion other than a Motion for Summary Judgment shall serve and file a brief in opposition within ten (10) days of service of said Motion, unless a longer time period is provided in the Ohio Rules of Civil Procedure.

RULE 14: CONTINUANCE FOR TRIAL OR HEARING

Except as otherwise provided here in these Rules, no case assigned for trial or hearing may be continued except on written motion and for good cause shown. Such motion shall be filed with the Clerk of Court not less than seven (7) days prior to the date of trial or hearing, except that in the case of unforeseen emergency, this time requirement may be waived. The moving party is required to first discuss the continuance with all opposing counsel, or opposing parties if there is no counsel, and state the reason for the continuance. If counsel is alleging a conflicting trial date as the reason for continuance, the conflicting trial notice must be attached to the notice. Counsel must also set forth at least two (2) other alternative dates for trial, agreeable to the court and all parties in the case.

RULE 15: FILING BY FACSIMILE

(A) Except for the filing of Complaints, Answers and Counterclaims, a document filed by fax shall be accepted as the effective original filing. The person making a fax filing need not file the original document containing the original signatures with the Clerk of Court but must, however, maintain the original in his / her records for production on request by the court together with the copy of the facsimile cover sheet used for the filing. Such document shall be retained by the person making the filing until the case is closed and all opportunities for post judgment relief are exhausted.

(B) A party who files a signed document by fax represents that the physically signed document is in his / her possession or control.

(C) Exhibits that are not capable of accurate, legible transmission must be replaced by an insert page describing the exhibit and why it is missing. The missing exhibit shall be filed with the court, as a separate document, not later than five (5) business days following the filing of the facsimile document. Failure to file the missing exhibit(s) as required by this paragraph may result in the court striking the document and / or exhibit. The exhibit 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 and shall be signed and served in conformance with the rules governing the signing and service of pleadings in this court.

(D) Subject to the provisions of these rules, all documents sent by fax and accepted by the Clerk shall be considered filed with the Clerk of Court as of the date and time the Clerk time-stamps the document received as opposed to the date and time of the fax transmission. The office of the Clerk of Court will be deemed open to receive facsimile transmission of documents on the same days and at the same time the court is regularly open for business. A fax filing received after the court closes on a given business day will be deemed filed with the Clerk of Court as of the opening of the next business day.

(E) Fax filings will only be accepted and deemed filed when transmitted directly through the facsimile equipment operated by the Clerk of Court.

(F) The Clerk of Court may, but need not, acknowledge receipt of a facsimile transmission. 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.

(G) **Fees/Costs.** No document filed by facsimile that requires a filing fee at the time of filing shall be accepted by the Clerk for filing until court cost and fees have been paid by credit or debit cards (VISA or MasterCard). Documents tendered to the Clerk without payment of court cost and fees, or with incomplete information on the charge authorization or request, or which do not conform to applicable rules will not be filed. No additional fee shall be assessed for facsimile filings.

(H) **Length.** Facsimile filings shall not exceed ten (10) pages in length including exhibits.

(I) **Service copies.** Services copies shall be transmitted as provided by the Ohio Rules of Civil Procedure.

RULE 16: BAILIFF SERVICE

(A) The bailiff shall effect personal or residential service of process only within the territorial jurisdiction of this court. Any person desiring personal or residential service of process outside the court's territory shall arrange for a private process server fitting the requirements of the Ohio Rules of Civil Procedure. Requests for bailiff service shall be made in writing. An attorney of record in a case may not be a private process server except in the case of witness subpoenas.

RULE 17: SPECIAL PROCESS SERVER

(A) A Special Process Server may be appointed by the Court for service of Summons and Complaints and/or other pleadings for one time and/or may be appointed as a Standing Special Process Server for a period of one (1) year.

(B) A Special Process Server shall meet the following requirements:

(1) The person is not less than eighteen (18) years of age.

(2) The person is not a agent, a party or counsel for a party in the case.

(C) A Special Process Server shall follow the requirements of Ohio Rules of Civil Procedure's Rules 4 through 4.6.

RULE 18: BONDS

Bonds posted in criminal and traffic cases shall be held until all court dates are completed by the defendant and all fines and costs have been paid. Bonds shall be completed on forms designed by the court and the posting of a bond shall be in cash only.

RULE 19: FORCIBLE ENTRY AND DETAINER CASE MANAGEMENT

(A) **Complaint.** A complaint in Forcible Entry and Detainer shall be filed and shall contain a reason for the eviction, a copy of the three-day notice required under ORC §1923.04, as well as a copy of any other notices required by local, state or federal law. A copy of the written instrument (lease, rental agreement) upon which the claim is founded shall also be attached. Defendant shall be served with summons at least seven (7) business days prior to the date set for trial as required by ORC §1923.08, as amended.

(B) **Representation by Counsel.** When the plaintiff is a corporation, limited liability company or other artificial person, the complaint must be signed and prosecuted by an attorney. A manager of the property who is authorized to file a complaint on behalf of the property owner must be represented by counsel. A person proceeding by power of attorney must be represented by counsel. Noncompliance with this rule may result in dismissal of the complaint. A plaintiff operating under a fictitious name who is lawfully registered to use such name in the state of Ohio may file if that person produces a copy of the fictitious name registration provided by the Ohio Secretary of State or files in its true legal name as well as its assumed name, *i.e.*, "John Jones, doing business as XYZ."

(C) **Evidence.** The plaintiff (owner/agent), and counsel where required, must be present at the hearing. Proof of service of the Three Day Notice to Leave Premises must be presented at the hearing in the form of the certified mail receipt or testimony of the person who actually served the Notice. The evidence must show that the Notice was served in the manner specified by Ohio Revised Code §1923.04 (certified mail, personal delivery, placing inside door, posting). Improper service of the Notice to Leave premises will result in dismissal. The contents of the Notice must be proper, accurate and in accordance with Ohio Revised Code §1923.04 and related Ohio law, as well as any other notice required by law.

(D) **Trial.** Actions in forcible entry and detainer shall be set for hearing on the First Cause of Action for possession of the property and then the Second Cause of Action for money damages shall be set for hearing within sixty (60) days. The Complaint shall be heard by the assigned Judge or Magistrate.

(E) **Continuance.** A continuance may be granted as provided in Ohio Revised Code §1923.08 which provides, “No continuance in an action under this chapter shall be granted for a period longer than eight days, unless the plaintiff applies for the continuance and the defendant consents to it, or unless the defendant applies for the continuance and gives a bond to the plaintiff, with good and sufficient surety, that is approved by the court and conditioned for the payment of rent that may accrue, if judgment is rendered against the defendant.” A continuance for a period greater than eight days may only be allowed without the posting of a bond by mutual agreement of the parties.

(F) **Enforcement of First Cause Judgment**

(1) **Writs of Restitution.** If judgment is for plaintiff on the First Cause (possession), unless otherwise ordered by the court, the plaintiff may immediately purchase a Writ of Restitution and the Clerk shall provide the schedule for move-out.

(2) **Alias Writ.** An alias writ is a writ issued when the first writ has not produced its intended effect and supersedes the first writ.

(3) **Timing for Issuance; Expiration of Writs.** The Clerk shall not issue a writ of restitution or alias writ of Restitution after thirty (30) days from the date of plaintiff’s judgment for possession of the premises unless expressly authorized by the Judge in writing upon Motion duly filed and copy properly served on the adverse party. A writ of restitution shall issue within fourteen (14) days from the date of judgment unless otherwise specified by the Magistrate or Judge and is valid for thirty (30) days following its issuance. A party seeking an alias writ shall do so within ten (10) days of the expiration of the initial writ. If a party fails to request an alias writ within the prescribed grace period or fails to execute upon the initial writ or an alias writ timely requested, then judgment shall lapse.

(4) **Writs must be timely purchased.** Timely purchase is determined according to the following:

(a) Within thirty (30) days of the date of the judgment.

(b) Where the judgment is more than thirty (30) days old, but less than sixty (60) days old, plaintiff must file a Motion for Leave to Purchase a Writ and serve a copy of the motion on the defendant(s). The court may schedule a hearing on the motion or decide the motion on the filings of the parties. Upon the granting of the motion, plaintiff may purchase a writ and schedule a move-out.

(G) **Second Cause of Action**

The Second Cause of Action for back rent and damages, if any, will be heard approximately thirty (30) days after the hearing for possession of the premises. The parties may be given the date for said hearing, in court, at the time of the First Cause (Forcible Entry and Detainer) hearing or otherwise notified. The Second Cause Hearing shall proceed as a regular law suit requiring witnesses, documents, photographs or other

evidentiary material. Affidavits in lieu of witness appearances are not acceptable. Plaintiff's counsel may not testify unless qualified as a witness under oath.

RULE 20: RENT DEPOSITS

(A) **Jurisdiction and Procedure.** Rent deposits shall be in compliance with ORC Chapter 1923 and §5321.07. Tenant must file with the court at the time of rent deposit a completed Application for Tenant Rental Escrow, a copy of the written Notice of Repairs that tenant sent, thirty (30) days in advance, to the landlord at the place where rent is normally paid and any evidence of mailing or delivery. The Notice of Repairs shall specify the acts, omissions, or code violations of which the tenant complains. Tenants must be current in their rent at the time of deposit of rent in escrow with the Clerk of Court. Tenant must continue to rent deposit in a timely matter until otherwise ordered by the court. The rent deposit shall be in the form of cash, certified check or money order.

(B) **Costs.** While costs may not be assessed of a Tenant in a Rent Deposit Case, the court may impose poundage from the rent on deposit and, in a proper case, may require costs of inspections required to be assessed against the parties or a party, in the court's discretion.

(C) **Rent Deposit Release.** Upon the proper filing of the Application for Rent Deposit, the case will be set for hearing.

RULE 21: FILING BY ELECTRONIC TRANSMISSION (eFILING)- RESERVED

RULE 22: RECORDING OF PROCEEDINGS

Proceedings, including discovery proceedings before the court, may be recorded by stenographic means, by use of audio electronic recording devices or by use of video tape recording systems. The Judge may order the use of any method of recording authorized by this Rule. Any request for a particular means of recording must be submitted to the court in writing at least seven (7) days before the proceeding. All proceedings before a Magistrate shall be recorded. (Ohio. Civ. R. 53.)

RULE 23: RECORDED TAPES; RETENTION

Master audio cassette tapes shall be erased six months after the last day recorded on the tape, except when a transcript has been prepared from the tape reel. When a transcript has been prepared, then the master audio tape shall be erased one year from the last day recorded on that tape. The new digital recorder compact discs (cd's) shall be retained for two (2) years or longer as space provides.

RULE 24: CASE FILES – DISPOSITION

The Clerk of Court may destroy or otherwise dispose of case files which have been terminated by the court as set forth in ORC §1901.41.

RULE 25: EX PARTE COMMUNICATIONS (Communications with Judges, Magistrates or other Hearing Officers)

No party, or counsel for a party, shall engage in *ex parte* communications involving the merits of their case with the Judge or Magistrate, out of the presence of the opposing party. Procedural matters, however, may be briefly discussed, without sanction.

RULE 26: ACTIONS IN REPLEVIN

Actions in Replevin shall be filed and proceedings conducted in accordance with the provisions of ORC §§ 2737.01 through 2737.24, and any amendments thereto. If other causes of action for money judgment are included within the same complaint, such causes shall be separately stated and numbered and proceed under the applicable Ohio Rules of Civil Procedure.

RULE 27: SMALL CLAIMS CASE MANAGEMENT

(A) **Jurisdiction.** Small Claims actions shall be filed and proceedings had in accordance with Ohio Revised Code Chapter 1925. The Small Claims Division has been established for the recovery of money only where the claim does not exceed Three Thousand Dollars (\$3,000.00), excluding costs and interest. The Small Claims Division shall not have jurisdiction in libel, slander, replevin, malicious prosecution and abuse of process actions, in actions on any claim brought by an assignee or agent or in actions for the recovery of punitive or exemplary damages.

(B) **Commencement of Action, Answer.** A small claims action is commenced by filing a small claims complaint pursuant to ORC §1925.04. A small claims handbook is available from the Clerk of Court. The Clerk of Court shall accept claims for filing and shall not provide legal advice. A defendant is not required to file an answer or a statement of defense.

(C) **Notice and Summons.** A notice of the time and place set for trial shall be given to the person signing the claim. The time set for trial shall be not less than fifteen (15) days nor more than forty (40) days after commencement of the action. The Summons and Complaint shall be served on the defendant pursuant to ORC §1925.05 and as required by the Ohio Rules of Civil Procedure. Should defendant fail to appear for the hearing, a judgment may be entered in his/her absence.

(D) **Counterclaims/Cross-claims.** A counterclaim or cross-claim may be filed. A counterclaim or cross-claim of more than Three Thousand Dollars (\$3,000.00), does not affect the jurisdiction of the Small Claims Division. If a counterclaim or cross-claim exceeds Three Thousand Dollars (\$3,000.00) and the case is transferred to the regular Civil Docket of the court, the court may, if it finds that the counterclaim or cross-claim was without substantial grounds, award reasonable attorney's fees by special order to the party against whom the counterclaim or cross-claim is instituted, if he or she prevails in the action on that claim. ORC §1925.02.

(1) **Counterclaims Exceeding Amount of Original Claim.** Any counterclaim which exceeds the amount of the original claim must be filed with the Clerk of Court at least ten (10) calendar days prior to the scheduled trial. Such counterclaim must contain a Certificate of Service. No counterclaim requiring service shall be considered filed unless all filing fees are paid to the Clerk of Court.

(2) **Counterclaims Equal to or Less Than Original Claim.** Counterclaims which are equal to or less than the original claim may be made orally at the time of the hearing.

(E) **Motions to Transfer to the Civil Docket.** A Small Claims case shall be transferred to the regular Civil Docket upon motion of the court, motion of a defendant or upon the filing of a counterclaim in an amount greater than the jurisdiction of the Small Claims Division. The motion of the defendant shall be accompanied by an affidavit stating that a good defense to the claim exists, setting forth the grounds of the defense, the compliance of the defendant with any terms fixed by the court and filing fees.

(F) **Subpoenas.** Subpoenas for witnesses or documents shall be issued by the Clerk or by Order of the Judge or Magistrate. The Judge or Magistrate may require the party requesting the issuance of a subpoena to pay a fee to cover the actual cost of issuance and service as required under ORC §1925.11 or similar section, as amended.

(G) **Trial.** Initial hearings on the merits in the Small Claims Division shall be before a Judge or Magistrate to whom such matters are hereby referred. The bailiff of the court shall administer an oath to the witnesses before proceeding with trial. Such trial shall be conducted in an informal manner with the purpose of accomplishing substantial justice. The Judge or Magistrate will determine the amount of weight to attach to all evidence presented to the court, and may make his or her decision upon the Law and the Evidence without the requirement of separate Findings of Fact or Conclusions of Law. However, a decision containing Findings of Fact or Conclusions of Law may be issued upon proper and timely request by any party.

RULE 28: CIVIL CASE MANAGEMENT

(A) **Costs.** No action, proceeding, motion or other document shall be accepted for filing by the Clerk of Court unless there first shall be deposited the sum of not less

than the amount specified in the civil costs section as security costs, unless otherwise ordered by the court or otherwise exempted by law. Those persons unable to post the required security for costs may be excused from the same upon filing of an appropriate poverty/indigent affidavit when approved by the Judge assigned to the case.

(B) Summons. The summons shall be served in accordance with the Ohio Rules of Civil Procedure. In the event there is a failure of service, the Clerk of Court shall notify counsel immediately. If counsel / pro se litigant fails to obtain service of the summons and complaint after several attempts, then the Clerk of Court shall notify the party that the complaint shall be dismissed without prejudice if service is not perfected within 6 months from the filing date of the complaint.

(C) Default. Upon perfection of service, and passing of the answer due date with no answer or other responsive pleading having been filed, the Clerk of Court shall notify counsel / pro se litigant of the default and that failure to file a motion for default within forty-five (45) days shall result in dismissal of the complaint.

(D) Response. If an answer or other responsive pleading is filed, the Clerk of Court shall set the case for pretrial.

(E) Continuances. When notice of trial, pretrial, or other proceedings requiring personal appearance of the parties is mailed from this court, a motion for continuance shall be filed with the court within seven (7) days from the mailing date of such notice along with the applicable continuance fee. Notice of such motion shall likewise be served on opposing parties. Such motions shall set forth good cause for the request. Consent of opposing parties or counsel shall not, in and of itself, constitute good cause. Any motion for continuance submitted beyond the aforementioned seven (7) day period may be granted only upon showing of good cause constituting extreme hardship, unforeseen circumstances or other unavoidable conditions.

(F) Joinder and Separation of Cases. Motions for joinder, consolidation and separation of civil cases shall be addressed to the Presiding Judge. The Clerk of Court shall be provided with a sufficient number of copies of any motion filed in accordance with this Rule to include a copy in each file affected by the motion. Failure to comply with this provision will result in such partial filing being stricken.

(G) Pre-trial Conferences. The Judge or Magistrate may schedule a pre-trial conference to narrow and clarify issues, agree to stipulations, set a case management schedule, and attempt to reach settlement. Pre-trial conference may be held by teleconference at the discretion of Judge or Magistrate. Attorneys and/or pro se litigants are required to appear at scheduled pre-trial conferences unless such presence is excused by the court. All parties in interest must be present at the pretrial, unless excused by the court. If any claim for relief by any party is covered in whole or in part by insurance, a representative of the insurance company or carrier who is authorized to handle the claim for relief in controversy must be present at the pretrial conference, unless otherwise ordered by the court. If any claim for relief against any party is fully covered by

insurance, that party's presence at the pretrial conference is not required unless ordered by the court. Counsel attending a pre-trial conference must have authority to stipulate to items of evidence and admissions, and to reach settlement. Failure of any party to be prepared for pre-trial conference, and failure of a party or attorney to appear, or to cooperate in good faith in the conduct of the pre-trial conference, shall subject said attorney or party, in the discretion of the judge or magistrate to any sanctions provided by Ohio Civ. R. 37, including an award of expenses and/or attorney fees to any party prejudiced by said failure. In addition, the court shall have the authority to dismiss an action for failure on the part of the plaintiff to comply with this rule; and shall have the authority to proceed with all or any portion of the case and to decide and determine any or all matters *ex parte* upon failure of the defendant to appear in person or by counsel at the pre-trial conference in accordance herewith.

(H) Subpoenas for Witnesses. Subpoenas for witnesses, if requested, shall be issued by the Clerk or by Order of the court. The court may require the party requesting the issuance of the subpoena to pay a fee to cover the actual cost of issuance and service. ORC §1925.11.

(I) Trial Exhibits. All documentary evidence to be offered at trial:

- i. Shall be marked "Plaintiff's Exhibit 1 (to 99)" or "Defendant's Exhibit A (through Z)".
- ii. Shall be prepared in a number sufficient to provide one copy each for the court, the witnesses and each attorney.
- iii. Shall be available at the time trial commences.

(J) Journal Entries. The court shall prepare Journal Entries. However, when ordered by the court, counsel for the party in whose favor an entry, order, judgment, or decree is entered, shall prepare a proper Journal Entry within thirty (30) days and submit it to the opposing party and the court for approval. This does not apply where the entry is to be prepared by the court, nor to Orders of the court sustaining or overruling motions, unless the court directs otherwise. When such Journal Entry is submitted to opposing counsel, such counsel shall approve or reject the same within ten (10) days thereafter. If opposing counsel fails to approve it within the time limit, the Journal Entry shall be submitted to the court to make any necessary corrections and order its entry. If the prevailing party fails to furnish such Entry to opposing counsel, the Clerk, on application of counsel for the party that did not prevail, shall call such case to the attention of the court which may dismiss the same for want of prosecution or make such other order as may be proper under the circumstances.

(K) Default Judgments. In all cases in which default judgment is available to a party by reason of failure of defendant to answer or appear, the motion for default judgment shall be filed within forty-five (45) days from the time that plaintiff has notice of such default from the court. Service of the motion upon the defendant is required even if defendant has not made an appearance in the case. A copy of an affidavit of current

military status with Department of Defense documentation shall be attached to motions for default judgment for all persons named as defendant. The written motion shall include where appropriate, if not previously submitted to the court, the following documents: proof of assignment from the original creditor or original party in interest to the plaintiff, last billing statement from the original creditor sent to the defendant, or an affidavit explaining why any of the required documents are not available. The court may deny the motion for default judgment and dismiss the complaint without prejudice for failure to comply with the requirements of this section. Otherwise, if all documents are included and satisfactory, the motion shall be granted without oral hearing. Failure to file a motion for default within the above required time period shall result in dismissal of the complaint for want of prosecution without prejudice.

RULE 29 JURY MANAGEMENT PLAN

As is reasonably practical, the Ohio Trial Court Jury Use and Management Standards are adopted as the jury management plan for the court.

RULE 30: JURY DEMAND

(A) **Procedure.** Any party desiring a jury trial in a civil case must demand the same in accordance with the Ohio Rules of Civil Procedure. The provisions of Ohio Civ. R. 38 relating to jury trials shall be a rule of this court in all civil cases, except in forcible entry and detainer. The jury demand must be in writing, by separate instrument, or by prominent endorsement in the caption of a pleading. The jury demand must be filed in compliance with the time frame set forth in Ohio Civil R. 38(B). The jury demand must specify the issues which are to be tried by the jury. Failure to specify will result in all issues being tried by jury.

(B) **Service of Demand.** Any party may demand a trial by jury by serving upon the other parties a demand at any time after the commencement of the action but not later than fourteen (14) days after service of the last pleading, except in Forcible Entry and Detainer cases.

(C) **Cost.** The party demanding the jury at the time the demand is made shall pay the Jury Demand Civil Cost in the amount of Ten Dollars (\$10.00) or higher.

(D) **Waiver.** The failure to serve and file a demand as required by these Rules constitutes a waiver by such party of trial by jury.

(E) **Withdrawal of Demand.** A demand for trial by jury made in conformity with these Rules may not be withdrawn without the consent of the parties.

RULE 31: ADVANCE DEPOSIT FOR JURY COSTS

Pursuant to ORC §1901.26(A)(3), the following provisions shall govern advance deposits and costs for jury trial:

(A) **Advance Deposit.** When a jury trial is demanded, in addition to paying the Jury Demand Cost in ECR No. 29, the party demanding same shall be required to make an Advance Deposit in the sum of Six Hundred Dollars (\$600.00) or higher. The Advance Deposit shall be made not later than forty-five (45) days prior to the date set for jury trial. After final pretrial or as ordered by the Judge, no motion for continuance of the jury trial shall be considered. In the event a Jury Demand was filed at a time when the deposit was less than the amount currently fixed by the court, the party originally making the Jury Demand shall deposit the remaining amount necessary to bring the total deposit to the sum required by the court no later than thirty (30) days before trial. If the Plaintiff and the Defendant request a jury trial then they shall each pay 50% of the advance deposit.

(B) **Withdrawal of Jury Demand.** In the event a jury demand is made and later withdrawn, the Advance Deposit shall be returned to the depositor, providing such withdrawal is made prior to summoning of prospective jurors. If the withdrawal is made following the summoning of jurors, the party requesting the withdrawal shall be assessed the cost of summoning and notifying the jurors that their services will not be required. Any juror who appears for service because of the inability of the court, after diligent effort, to notify such jury of the withdrawal, shall be paid the *per diem* fee for one (1) day's service, which cost may be assessed as determined by the court.

(C) **Jury Trial Continued or Postponed.** In the event a panel of jurors appears for service and the trial is continued or postponed due to the failure of a party to appear, or the inability of a party to proceed with the trial, such party shall be assessed the per diem cost of the panel. If the action has been settled or dismissed without sufficient notice to the court, costs will be assessed as determined by the court.

(D) **Return of Advance Deposit.** The Advance Deposit payment shall be returned only by Order of the court.

RULE 32: CHANGE OF VENUE, CERTIFICATION OR PROCEEDINGS

(A) **Court as Transferor.** The Clerk shall not transfer any case pursuant to venue change in application of Ohio Civ. R. 3(C) until all costs are paid and, in addition, a check made payable to the transferee court in the sum sufficient to secure its costs is deposited with the Clerk to accompany the file upon transfer. It shall be the responsibility of the plaintiff's attorney to ascertain the filing cost in the transferee court. Failure to comply with this rule within fourteen (14) days from the date of entry as to change of venue may form the basis for dismissal of the action.

(B) **Court as Transferee.** The Clerk shall not file and docket any case transferred to this court pursuant to venue change in application of Ohio Civil R. 3(C) until a sum sufficient to secure costs has been deposited. Failure to comply with this rule within fourteen (14) days from receipt of the file from the transferor court may form the basis for returning the file to the transferor court.

(C) **Certification to Common Pleas Court.** It shall be the responsibility of any party filing a counterclaim, cross-claim or third-party complaint exceeding the monetary jurisdiction of the court to also file a motion to certify the case to the Court of Common Pleas. The motion shall be accompanied by a check or money order made payable to the Court of Common Pleas, in a sum of not less than the amount specified as security costs for that court. Failure to comply within thirty (30) days of the filing of such counterclaim, cross-claim or third-party complaint shall be grounds for dismissal under Ohio Civ. R. 41(B).

RULE 33: TRANSFER OF JUDGMENT

Pursuant to provisions of ORC §2329.02, the Clerk of Court shall accept for filing, a Certificate of Judgment or a Transcript of the Proceedings of the original court which shall be docketed and numbered as if originally filed in this court and the Clerk shall notify the original court by mail that such transfer has been made.

RULE 34: JUDGMENT SATISFACTION, PAYMENT OF COSTS

(A) No satisfaction of judgment shall be entered unless and until all court costs have been paid. No satisfaction of judgment in whole or in part shall be entered in the Civil or Small Claims dockets except by the Clerk of Court, or deputy clerk. All satisfactions must be attested by the Clerk or deputy clerk, in writing or by an appropriate stamp reflecting same, signed by the Clerk or deputy clerk.

(B) It shall be the duty of the plaintiff or his or her attorney to immediately have an entry of satisfaction made upon the docket when a judgment is satisfied. Failure to do so shall form the basis for appropriate sanctions by the court.

RULE 35: GARNISHMENTS; PROCEEDINGS IN AID OF EXECUTION

All garnishments and proceedings in aid of execution shall proceed under ORC Chapters 2716 and 2329, as well as all applicable statutes, and any amendments thereto.

RULE 36: TRUSTEESHIPS

Any person upon whom a demand has been made in accordance with ORC §2716.02 that resides within the geographical jurisdiction of this court may apply for the appointment of a trustee to receive that portion of the personal earnings of the debtor that is not exempt from execution, attachment, or proceedings in aid of execution, and such additional sums as the debtor voluntarily pays or assigns to the trustee. See ORC §§2329.70 and 2329.71.

RULE 37: DEBTOR EXAMINATIONS

(A) Debtor's Failure to Appear. If a judgment debtor fails to appear at a scheduled examination, and it appears that the debtor was personally served with notice, the creditor may request of the court that a bench warrant be issued for the arrest of the debtor. The request for a bench warrant may be made orally or in writing to the court.

(B) Creditor's Failure to Appear. If a creditor fails to appear at a debtor's examination, the court may order that there be no further examination of the same party within sixty (60) days from the date set for the examination at which the creditor fails to appear and dismiss the motion.

RULE 38: MARRIAGE CEREMONIES

Marriage ceremonies may be performed by the Judge upon the presentation of a valid marriage license together with application and evidence of payment to the Clerk of Court of a fee in the amount of Thirty Dollars (\$30.00) or higher. Marriage ceremonies will be performed by appointment only. The Clerk shall provide the applicants with a receipt showing the names appearing on the marriage license. The marriage certificate and receipt must be presented to the Judge performing the ceremony prior to the performance of the marriage. The Clerk shall keep a record of the fees received.

RULES 39 THROUGH 41 RESERVED

CRIMINAL/TRAFFIC CASE MANAGEMENT

RULE 42: ARRAIGNMENT

The Clerk of East Cleveland Municipal Court shall require the filing of a written complaint, citation or uniform traffic ticket before placing an individual's name on the criminal /traffic docket.

(A) **Plea by personal appearance.** The defendant, either on his/her own behalf or by and through counsel, may enter one of the following pleas at arraignment:

1. Guilty;
2. Not guilty; only by defendant's attorney or the court
3. No contest; or
4. Not guilty by reason of insanity (except in traffic cases where not guilty plea by reason of insanity is not applicable).

(B) **Not Guilty Plea by Motion.** The defendant may enter a plea of not guilty by motion prior to Defendant's scheduled arraignment provided however:

1. Motion must be sent by retained or court appointed counsel.
2. Right to speedy trial must be demanded or waived.

(C) **Plea in Absentia.** The defendant may enter a plea of guilty or no contest in absentia due to unavailability due to incarceration or out of county or state in written motion only.

(D) **Request for Continuance.** The defendant may request a reasonable continuance of initial arraignment by filing a written motion via mail and/or fax to the Clerk of Court. Defendant may also appear in court to request a reasonable continuance of arraignment.

(E) **Jury Demand.** The defendant may, upon entry of a plea of "not guilty" or "not guilty by reason of insanity" to any charge other than a minor misdemeanor, demand a jury trial. The demand must be in writing and filed with the Clerk of Court not less than forty-five (45) days prior to the date set for trial. Unless otherwise specified by statute, the right to a jury trial shall be deemed waived if not timely demanded in writing as provided by this rule.

RULE 43: TRIAL PROCEDURE

(A) **Pretrial and Trial.** Upon entering a plea of not guilty, the case will be set for pretrial and then a bench or jury trial. Any attorney and/or defendant who fails to appear for pretrial may be punished for contempt of court. A *capias* shall issue upon the Defendant.

(B) **Motion for continuance.** No case set for pretrial or bench trial will be continued except on written motion and for good cause shown. Such motion is to be filed not less than seven (7) days prior to the pretrial or bench trial. The judge for good cause may waive the time requirement. No case set for jury trial will be continued except on written motion prior to the date of the final pretrial or during the final pretrial.

(C) **All other Motions.** All motions other than motions for continuance must be timely filed in accordance with the Ohio Rules of Civil Procedure, Ohio Rules of Criminal Procedure and Ohio Revised Code.

RULE 44: SENTENCE

If sentencing does not immediately follow the trial, the case may be referred to the probation department for a pre-sentence investigation from which a report will be prepared. The court shall set the matter for sentencing within thirty (30) days after the conclusion of the trial. Counsel of record, defendants and victims shall receive notice of sentencing date (via Prosecutor) and have the opportunity to be heard in accordance with law.

RULE 45: FIRST OFFENDER PROGRAM

(A) Upon the courts own motion or the recommendation of the prosecutor, the court may order first offender treatment of the defendant. Repeat offenders, dangerous offenders, persons accused of an offense of serious violence, traffic offenders, drug dependent persons and persons accused of crimes enumerated in R.C. §2935.36(A)(2) are ineligible for the program. Drug dependent persons are candidates for treatment in lieu of conviction (R.C. §2951.04)

(B) However, the court or the prosecutor may recommend that persons accused of an offense of violence or other offense described in R.C. §2935.36 (A)(2) enter the first offender program if he/she determines any of the following: (1) accused did not cause, threaten, or intend serious physical harm to any person, (2) offense was the result of circumstances not likely to recur, (3) no history of prior delinquency or criminal activity, (4) accused previously led a law abiding life, (5) substantial grounds exist for excusing or justifying the offense.

(C) Defendants under consideration for entrance into the first offender program shall agree to the tolling of all periods of time limitation.

(D) Where practicable, the prosecutor assigned to the case shall notify the victim of the crime and arresting officers of its recommendation that the defendant enter the program. Victims may submit objections to the prosecutor or to the court.

(E) After acceptance into the program by the court, defendants shall: (1) enter a plea of “no contest” to the charge, (2) fully cooperate with the probation department and (3) pay all fees and costs.

(F) Successful completion of the program will result in dismissal of the charge and a Motion to Seal the Record shall be filed. Any criminal activity during the program will result in expulsion from the program. If the offender fails to complete the program, then the matter shall be brought to trial for sentencing.

RULE 46: COURT COSTS FOR CRIMINAL/TRAFFIC CASES

Pursuant to O.R.C. §1901.26 (B)(1)(2), when a Defendant has been convicted of, or pleads guilty by waiver to, any charge the Defendant is to pay the fees and costs associated with each charge. When a Defendant is convicted of, pleads guilty to, or pays by waiver, more than one charge arising out of the same act, or series of acts, local court costs shall be assessed to each individual charge contained within the case number associated with the case, however state court costs will be assessed only to the first charge under the case number.

RULE 47: TRAFFIC VIOLATIONS BUREAU

Pursuant to Traffic Rule 13, a Traffic Violations Bureau is hereby established. A person charged with a traffic violation waivable under Ohio Traffic Rule 13 may, in lieu of appearance in court and within the time specified in the citation, appear personally at the Clerk's office and pay the stated fine and costs or mail to the court the stated fine and costs established by administrative order of the court.

RULE 48: WAIVERS FOR VIOLATION OF CODIFIED ORDINANCES AND THE OHIO REVISED CODE

(A) Pursuant to the requirement to the Criminal Rule 4.1 (E), and Traffic Rule 13, the court adopts a waiver schedule.

(B) Any otherwise waivable violation alleging an injury resulting from an accident cannot be waived, and personal appearance in court by the Defendant is required.

(C) The Clerk of Court shall prominently post a current waiver schedule at the counter in the Clerk's office where such waivers are paid.

RULE 49: BOND

(A) **Bond Schedule.** In lieu of bond set by a Judge or Magistrate, the Clerk and/or police are authorized to release a person charged with a misdemeanor criminal/traffic offense based on the schedule.

(B) **Felony Cases.** Bond in felony cases shall be set by the Judge or Magistrate at the time of arraignment.

RULES 50 THROUGH 52 RESERVED

These Local Rules of the East Cleveland Municipal Court are effective on January 31, 2010.

Sandra L. Walker, Administrative and Presiding Judge