

# Lakewood Municipal Court Cuyahoga County, Ohio

## **Local Rules of Court**

Revised January 1, 2015



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## **Table of Contents**

	<b><i>Page.</i></b>
<b>Local Rule 1 - Scope and Effective Date.</b>	<b>3.</b>
<b>Local Rule 2 – Hours of Court Sessions.</b>	<b>3.</b>
<b>Local Rule 3 – File Management.</b>	<b>3.</b>
<b>Local Rule 4 – Pleadings and Motions.</b>	<b>4.</b>
<b>Local Rule 5 - Signature.</b>	<b>4.</b>
<b>Local Rule 6 – Filing with the Clerk of Court.</b>	<b>5.</b>
<b>Local Rule 7 – Use of Electronically Produced Citations and/or tickets.</b>	<b>6.</b>
<b>Local Rule 8 – Appearance and Withdrawal of Counsel.</b>	<b>6.</b>
<b>Local Rule 9 – Security for Costs.</b>	<b>6.</b>
<b>Local Rule 10 - Not Guilty Plea in Traffic or Criminal Case.</b>	<b>7.</b>
<b>Local Rule 11 – Leave to Move or Plead.</b>	<b>7.</b>
<b>Local Rule 12 – Hearings and Submission of Motions; Objections to Discovery.</b>	<b>7.</b>
<b>Local Rule 13 – Trial Briefs.</b>	<b>8.</b>
<b>Local Rule 14 – Assignment of Cases.</b>	<b>8.</b>
<b>Local Rule 15 – Decorum at Court.</b>	<b>9.</b>
<b>Local Rule 16 – Case Management.</b>	<b>9.</b>
<b>Local Rule 17 – Continuance of Trial or Hearing.</b>	<b>13.</b>
<b>Local Rule 18 – Notice of Settlement.</b>	<b>13.</b>

<b>Local Rule 19 – Record of Proceedings.</b>	<b>14.</b>
<b>Local Rule 20 – Video Conferences or hearing.</b>	<b>14.</b>
<b>Local Rule 21 – Request for Interpreter.</b>	<b>14.</b>
<b>Local Rule 22 – Satisfaction of Judgment; Payment of Costs.</b>	<b>15.</b>
<b>Local Rule 23 – Proceedings in aid of Execution.</b>	<b>15.</b>
<b>Local Rule 24 – Fees for Additional Services.</b>	<b>15.</b>
<b>Local Rule 25 – Court Employees.</b>	<b>15.</b>
<b>Local Rule 26 – Pretrial Diversion Program.</b>	<b>15.</b>
<b>Local Rule 27 – Media.</b>	<b>17.</b>
<b>Local Rule 28 - Jury Management Standards.</b>	<b>17.</b>

**LAKWOOD MUNICIPAL COURT  
LOCAL RULES OF COURT**

**Local Rule 1 - Scope and Effective Date.**

(A) These Local Rules of Court are adopted for the practice and procedures in the Lakewood Municipal Court pursuant to Article IV, Section 5(B) of the Ohio Constitution, Rule 5 of the Rules of Superintendence for the Courts of Ohio, Rule 83 of the Ohio Rules of Civil Procedure and Rule 57 of the Ohio Rules of Criminal Procedure and are intended to supplement the Ohio Rules of Procedure and the Ohio Rules of Superintendence. Whenever any Local Rule is inconsistent with any rule promulgated by the Ohio Supreme Court, the rule promulgated by the Ohio Supreme Court shall govern.

(B) The purpose of these rules is to facilitate the expeditious disposition of cases and to supplement the procedures set out in the Ohio Rules of Civil Procedure, The Ohio Rules of Criminal Procedure and the Ohio Revised Code to assist counsel and parties with cases pending in the Lakewood Municipal Court.

(C) These rules are effective as of January 1, 2015, and shall supersede and replace any local rules previously entered by this court.

**Local Rule 2 – Hours of Court Sessions.**

(A) The clerk of court's office shall be open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Sessions in the civil and criminal branches of the court shall be conducted Monday through Friday. These times may be extended or diminished by special order of the court. Notwithstanding the hours for clerk of court, court sessions may also be conducted during evening hours by order of the court.

(B) For the purpose of night court proceedings the court will accept documents for filing only in those cases that are scheduled for that specific hearing. All traffic and criminal proceedings, except pretrial conferences unless otherwise ordered, shall be held in open court, or in the case of a scheduling conflict, in other rooms in the court area that are generally accessible to the public and capable of recording the proceeding.

**Local Rule 3 – File Management.**

(A) No person except authorized court personnel, parties or their attorneys shall be permitted to examine the complaint filed in any case until after service of summons. Thereafter, these files are available to any person upon reasonable request during regular business hours. Copies of documents may be provided upon request at a cost to be determined by the clerk of court as permitted by law. The current docket for all cases can also be obtained through the court's website.

(B) Withdrawal of files. No file(s), whether civil or criminal, may be removed from the office of the clerk of court without the written consent of the judge or clerk of court. Any person seeking to remove a file from the clerk's office must set out in writing the case name and number, the destination or office where the file is being taken, the reason for removal of the file, and the date and time the file is taken from the office. A file taken from the clerk of court's office pursuant to this rule must be returned to the clerk of court within twenty-four (24) hours of removal unless otherwise ordered.

(C) Disclosure of information. The clerk shall not provide a copy of any document, except as provided by law or ordered by the court, without redacting (1) social security number, (2) operator's license number, telephone or cell number, (4) date of birth, (5) other personal contained in a traffic or criminal citation. When there is a protection order pending or issued, the name of the victim or alleged victim, including any information regarding that person, shall not be released except as provided by law or ordered by the court.

#### **Local Rule 4 – Pleadings and Motions.**

(A) All pleadings and motions shall be legibly typewritten or printed on paper sized 8 1/2 inches by 11 inches. The caption of the complaint shall state the name and address, if known, of each party. Subsequent pleadings and motions shall state the case number, the name of the first party plaintiff and the first party defendant on each side. For all subsequent pleadings in which new parties are joined, the name and the address, if known, of each new party shall be stated in the caption of the pleading. Every pleading, motion, brief or other paper filed in a case shall be identified by title, and shall bear the name of the individual attorney, the firm, if any, office address and telephone number of the attorney filing the same, or if there be no attorney, then the party filing the same.

(B) Failure to comply with the formal requirements as set out above may be grounds for striking the non-complying document from the court's files. For good cause shown, the clerk of court is authorized to waive this requirement for cases involving small claims, forcible entry and detainer or other types of cases or proceedings in the interest of justice when the party is not represented by counsel. The clerk may also receive requests by letter in traffic and criminal cases regarding continuance, reinstatement of driving privileges, and other similar proceedings.

(C) Notwithstanding the exceptions to formalities of documents filed with the clerk of court, all documents must be served on the prosecutor or opposing party in accordance with Civil Rule 5 or Criminal Rule 49, as applicable. Failure to show proof of service on the document filed shall be grounds for striking the document from the court's record.

#### **Local Rule 5 - Signature.**

All pleadings, motions and other documents filed by the court shall contain the signature of the party or attorney representing the party in accordance with Civil Rule 11. Signatures signed by another person and initialed by the person signing the document are not permitted.

(A) Hardcopy documents. The original of every document filed in the court shall be signed by an attorney representing the party on whose behalf the document is filed. A party who is not represented by an attorney shall sign the document being filed.

(B) Electronic documents. A document that may be filed by facsimile pursuant to the local rules of this court or by court order shall include a copy of the signature or scanned version of the person's original

signature or a signature line with a backslash followed by a “s” followed by the person’s name in print (e.g., /s “John T. Smith”). A pleading, motion or other document that requires a signature by Civil Rule 11 may be filed by facsimile directly from a computer without the need for a separate paper copy if signed in accordance with this rule.

### **Local Rule 6 – Filing with the Clerk of Court.**

(A) Direct with clerk of court. All pleadings, motions and other documents in either civil or criminal cases may be filed directly with the clerk of court during regular court hours. All pleadings, motions or other documents filed by mail shall be deemed filed as of the date of receipt by the clerk of court.

#### **(B) Filing by Facsimile Transmission.**

(1) All pleadings, motions and other documents other than the original complaint, third party complaint or any other pleading that joins or adds a new party, may be transmitted to the court by facsimile transmission.

(2) Filing. A pleading, motion, or other document filed with the court by facsimile transmission shall be deemed received for filing when received by the clerk of court and will have the same force and effect as the original of the document being transmitted. All documents filed with the court by facsimile transmission must be done directly through the Lakewood Court's facsimile machine at (216) 529-7687, or some other telephone number and facsimile machine specifically ordered by the court. Documents indirectly transmitted through some other facsimile machine and indirectly presented to the clerk of court may not be accepted in lieu of the original, unless specifically ordered by the court.

(C) Electronic Filing. **(Reserved.)** The court is currently establishing standards and guidelines for electronic filing of pleadings, motion and other court documents and orders.

(D) Cost. The party filing a document by facsimile transmission shall be responsible for all costs of the transmission. There is no separate charge for these types of filing. The party is still responsible, however, for all filing fees associated with the filing of the document. The filing fee is required to be paid within five (5) days of the receipt of the document filed electronically or by facsimile transmission. Failure to timely pay the filing fees may result in the clerk's striking the document from the record.

(E) All documents filed with the clerk of court by facsimile transmission must be legible when received by the clerk of court. The clerk may reject any document which is illegible, in whole or part and upon doing so, shall promptly notify the sender of the condition or quality of the document.

(F) All documents which are submitted to the court must be received by the clerk of court during the regular office hours of the clerk of court as set out in these rules. Any document received after 4:30 p.m. Monday through Friday, shall be deemed received for filing the next business day. For the purpose of this local rule, 4:30 p.m. shall be determined by the notation on the court’s facsimile machine unless otherwise ordered by the court.

**Local Rule 7 – Use of Electronically Produced Citations and/or tickets.**

The use and filing of a traffic or criminal citation or ticket that is produced by a computer or other electronic means is hereby authorized by the court. The electronically produced citation or ticket shall conform in all substantive respects to the Ohio Uniform Traffic Ticket or criminal citation, as applicable. If an electronically produced citation or ticket is issued at the scene of an alleged offense, the issuing officer shall provide the defendant with a paper copy of the ticket. A paper copy shall also be filed with the clerk of court.

**Local Rule 8 – Appearance and Withdrawal of Counsel.**

(A) Upon the entry appearance of counsel, all documents filed with the court and all court orders and motions shall be served upon the designated counsel or the party's representative. Once an appearance is made, an attorney may only withdraw from a case by leave of court.

(B) No person who is not admitted to the practice of law before the Ohio Supreme Court may appear on behalf of another individual or entity in court, except as provided by R.C. 1925. or the Rules of the Supreme Court Rules for the Government of the Bar of Ohio. 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. Nothing in this rule shall prohibit an employee or agent of a party from appearance in a civil action to provide testimony on behalf of his or her employer, regarding information within that employee's or agent's personal knowledge, regardless of the presence or absence of the party.

**Local Rule 9 – Security for Costs.**

(A) No action or proceeding shall be accepted for filing by the clerk of court unless there first shall be deposited the filing fee required by this court in its schedule of costs, except that upon representation by affidavit of indigency, the judge, magistrate or clerk of court shall investigate the accuracy of any representation and upon finding that indigency does exist, the security for cost shall be waived. The clerk of court shall maintain a costs schedule and made available for public review.

Deposits and advance payments of fees and costs shall be returned only by order of court and only when the same have been paid by the party against whom they are assessed by the court.

The clerk of court shall maintain all schedules for costs, bonds, fines for applicable traffic and criminal citations, as well as any other fees to be assessed to a party in a case.

(B) For jury trials in civil cases, a deposit, as set out in the court's cost schedule, shall be made at the time the jury demand is filed with the court, unless otherwise ordered by the court. The failure to timely make the deposit as required by court order or rules of court shall be deemed a waiver of the right to a trial by jury. A person determined to be indigent may petition the court for a waiver of the jury deposit requirement. In criminal cases, no deposit shall be required for a trial by jury.

### **Local Rule 10 - Not Guilty Plea in Traffic or Criminal Case.**

In accordance with Rule 10 (B) of the Ohio Rules of Criminal Procedure and approval by the Lakewood Law Department, a defendant, by or through counsel, may waive formal arraignment without the presence of the defendant for the purpose of entering a not guilty plea in writing similar to the procedure set out in Traffic Rule 8(C). In granting this approval, the Law Department reserves the right to require the actual presence of the defendant in court upon reasonable notice to the court and defendant.

### **Local Rule 11 – Leave to Move or Plead.**

Except in actions for forcible entry and detainer or in replevin, when a party in any case is not prepared to move or plead on the answer day, one (1) extension of time may be obtained upon application to the court for a period not exceeding thirty (30) days. Notice by the moving party shall be served on the opposing party or counsel, as applicable, and whenever possible, obtain consent of the opposing party or counsel. Any leave to move or plead thereafter may be had only with the approval of the court, with notice to opposing party or counsel, and for good cause shown. Consent of opposing party or counsel shall not, in and of itself, constitute good cause. Applications for extensions of time, regardless of consent of opposing counsel, must be filed at least one (1) day prior to the due date.

### **Local Rule 12 – Hearings and Submission of Motions; Objections to Discovery.**

(A) Motions, in general, shall be submitted and determined upon the motion and supporting documents, if applicable. Oral arguments of motions may be permitted by written application and proper showing to the court or by court order.

(B) The moving party shall serve and file with his or her motion a brief written statement of reasons in support of the motion and a list of citations of the authorities on which he or she relies. If the motion requires the consideration of facts not appearing in the record, he or she shall also serve and file copies of all affidavits, depositions, photographs or other documentary evidence which he or she desires to submit in opposition to the motion.

(C) Each party opposing the motion shall serve and file within fourteen (14) days thereafter, unless another period of time is ordered by the court, a brief written statement of reasons in opposition to the motion and a list of citations of the authorities on which he or she relies. If the motion requires the consideration of facts not appearing of record, he or she shall also serve and file copies of all affidavits, depositions, photographs or other documentary evidence which he or she desires to submit in opposition to the motion.

(D) Reply or additional briefs upon motions and submissions may be filed only with leave of the court.

(E) Counsel are encouraged to participate in pretrial discovery conferences to reduce, in every way possible, the filing of unnecessary discovery procedures. To curtail undue delay in the administration of justice, no discovery procedure filed under Rule 26 through 37 of the Rules of Civil Procedure to which objection or opposition is made by the responding party shall be taken under consideration by the court, unless the party seeking discovery shall first advise the court in writing that after personal consultation and sincere attempts to resolve differences they are unable to reach an accord. This statement shall recite those matters which remain in dispute, and in addition, the date, time and place of the conference, and the names



of all parties participating therein. It shall be the responsibility of counsel for the party seeking discovery to initiate the conference.

(F) Sanctions. The presentation to the court of unnecessary motions, and the unwarranted opposition of motions, which in either case unduly delay the course of action through the courts, subject an offender to appropriate discipline including the imposition of costs.

(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.

(H) Summary Judgment.

All motions for summary judgment filed pursuant to Civil Rule 56 will be set for non-oral hearing on the fifteenth day following service of the motion upon the adverse party, unless a different time is set by court order. The adverse party shall serve and file opposing affidavits and memorandum prior to the day set for non-oral hearing. An oral hearing on a motion for summary judgment will not be conducted unless by order of court. Assignment of a summary judgment motion for oral argument shall not alter time periods for serving and filing briefs and permitted evidentiary materials unless specifically ordered by the court. If the adverse party also files a motion for summary judgment, the hearing date shall be from the service upon the opposing party of the latter motion.

### **Local Rule 13 – Trial Briefs.**

(A) When a trial brief is required by order of court, counsel for each party shall file the brief with the court and serve all other counsel at least one (1) weekday prior to commencement of trial unless otherwise ordered by court. The briefs shall relate to the issues referred to in the order and contain authorities supporting the propositions which counsel intends asserting during trial.

(B) In all civil jury cases, attorneys for all parties to the action shall, at least five (5) days before date of trial, furnish to the court a brief of the issues and the law they expect the judge to present to and instruct the jury. All trial briefs and proposed jury instructions are required to be exchanged with opposing counsel at the time of filing.

### **Local Rule 14 – Assignment of Cases.**

(A) Actions for replevin shall be set for hearing in accordance with the provisions of R.C. Chapter 2737. No continuance will be granted unless by order of court and written stipulation of all parties.

(B) All other actions shall be assigned for hearing, pretrial conference or trial, based upon the facts, relief sought, and procedural issues of the case, except that actions involving the liberty of the person, wages, possession of property, and cases carried over from previous days or specially set by the court shall have preference.

(C) Notice of any proceeding requiring personal appearance of parties or counsel except as noted herein, shall be mailed, communicated by facsimile transmission or as otherwise provided to the parties or counsel not less than ten (10) days prior to the date of the appearance.

(D) Motions for advancement of proceedings shall be submitted to the court in writing with a copy served upon opposing parties or counsel. The court, in its discretion, may advance a pending case for trial or pretrial, upon motion of a party or on the court's own motion.

(E) Night Court Proceedings. Trials or hearings in civil cases may be set for hearing in the court's night session at the request of either party or by court order. The party is required to make the request at the time of either (1) the filing of a complaint or claim; or (2) within ten (10) days of receipt of the complaint or claim, regardless of whether a responsive pleading is required. Upon request, the case will be scheduled for hearing at the night court session unless a timely objection is made by the opposing party within five (5) days of receipt of the request. Upon objection by the party or upon the court's own motion, the request for hearing during night court may be overruled.

### **Local Rule 15 – Decorum at Court.**

(A) All persons at the court shall conduct themselves with decorum and in a manner to not interfere with the proper administration of the court's business. Although the court is open to the public, persons attending any court session who are not parties or called as witnesses may not make any statements unless permitted by the court and identified on the record. All persons are subject to screening and/or search before entering the courtroom. The term "court" includes any location where a judge or magistrate conducts hearings or trials as well as the probation department, clerk of court office and surrounding areas.

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

(C) All cell phones are to be turned off or silenced in the courtroom and the use of cell phones is not permitted in the courtroom when court is in session. In the event a person needs to make or take a call, the person is required to leave the courtroom unless otherwise permitted by the court. Tablets, lap top computers, notebooks, cell phones and other electronic devices may not be used in the courtroom except as a research aid or tool during a hearing or trial.

(D) No smoking, eating or drinking is permitted in the courtroom. No one is permitted to bring food or drink into the courtroom, unless permitted by the court. Attorneys and litigants may have water at the trial table. Witnesses may be provided water when necessary. Jurors may have water in the jury box during trial. The judge, magistrate and court staff may have water in the courtroom as needed.

(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 sanction by the court, including continuance or dismissal of the matter before the court, confiscation of cell phone pending the conclusion of court proceedings or a charge of contempt of court.

### **Local Rule 16 – Case Management.**

The purpose of this rule is to establish, pursuant to Sup. R. 5, a system for case management which will provide the expeditious, fair and impartial administration of cases. These rules shall be construed and applied to eliminate unnecessary delay and expense for all parties involved in the court justice system. For both civil and criminal case, the court will attempt to schedule hearings, pretrial conferences and trials to accommodate attorney's schedules and to avoid unnecessary conflicts with other courts. Although the

court will attempt to schedule trials and hearings to accommodate counsel and witnesses, it is the primary responsibility of the party or counsel to make diligent efforts to notify the witness, including police officers, building inspectors, or other city employees of the scheduled date and to also promptly file a motion to continue if a witness is not available.

#### (A) Traffic and Criminal Cases

(1) Pretrial Conferences. After initial appearance, all first degree, second, third and fourth degree misdemeanors shall be timely scheduled for a pretrial conference by the assignment commissioner at the request of the defendant, prosecutor, or by the court's own motion. Unclassified misdemeanor charges may also be scheduled for a pretrial conference. All other misdemeanors shall be set for trial unless the judge orders a pretrial conference for the case.

The pretrial conference shall be conducted in accordance with Criminal Rule 17.1 and, if necessary or ordered, a memorandum of the matters agreed upon should be filed in the case. Any attorney who fails to appear for pretrial conference without just cause being shown may be subject to sanctions, including imposition of costs and/or removal from the case. Failure of the defendant to appear for pretrial conference may result in the issuance of a warrant for the defendant's arrest. If the parties cannot resolve the case, then the case should be set for trial before the court unless a jury is timely demanded. By request of counsel or by court order, additional pretrial conferences may be conducted.

(2) Motions. All motions shall be made in writing and accompanied by a written memorandum containing the arguments of counsel. Motions must be filed within the time limits established by the Ohio Rules of Criminal Procedure. If a defendant or defense counsel intends to file a motion to suppress evidence, timely notice should be provided to the court so that an evidentiary hearing can be scheduled, if applicable. Generally, the motion to suppress shall be filed at least ten (10) days prior to the scheduled hearing, unless a different time is ordered by the court.

(3) Trials. Each case not resolved at a pretrial conference shall be set for trial to court. If a jury demand is timely filed, then the case will be moved to the jury trial schedule.

(4) Sentencing. Sentencing shall be conducted at the conclusion of the trial unless a pre-sentence report is requested. If the court or counsel requests the pre-sentence report, the court will set the hearing for sentencing as soon as practicable of receipt of that report.

#### (B) General Civil Cases

(1) The summons and complaint 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 timely notify counsel or party if there is no counsel. Failure to instruct the court and make good faith efforts to obtain service of summons within six (6) months from the date the case has been filed, then the case may be dismissed in accordance with Civil Rule 4(E).

(2) Upon proof of service of the summons and complaint and no appearance by the defendant or other action taken by the parties on the case, the case may be set for trial, with notice to plaintiff that a motion for default judgment may be filed at least seven (7) days prior to the date of trial.

(3) After any responsive pleading is filed, the case shall be scheduled for a hearing, pretrial conference, or trial.

(4) Motions. All motions must be in writing and accompanied by a written memorandum containing citations or the arguments of counsel. Opposing counsel shall respond in writing within fourteen (14) days of service of the motion, unless a different time is set by court order. All motions will be considered submitted at the end of the required period unless time is extended by the court.

(5) Pretrial Conferences. For the purpose of this rule, "pretrial conference" shall mean a court supervised conference chiefly designed to produce an amicable settlement. The term "party" or "parties" means the party or parties to the action, and/or, his, hers, or their attorney of record. Notice of pretrial conference shall be timely given to all counsel of record by mail, electronic or facsimile transmission, or by telephone from the assignment commissioner. Counsel attending the pretrial conference must have complete authority to stipulate on items of evidence and must have full settlement authority, or have their clients available to do so. The primary purpose of the pretrial conference shall be to discuss settlement, discovery schedules and deadlines and trial preparation. Pretrial conferences may be in person or by telephone, as ordered by the court. The court shall attempt to narrow legal issues, to reach stipulations of facts in controversy and, in general, to shorten the time and expense of the trial. The court may file a pretrial statement to become part of the record and the case embracing all stipulations, admissions, and other matters which have come before it in the pretrial. The court shall, at that time, determine whether or not trial briefs should be submitted and shall set a date when they are to be filed.

(6) Failure to Appear. The judge presiding at pretrial conference or trial shall have the authority to dismiss the action for want of prosecution on motion of defendant upon failure of plaintiff, and/or his or her counsel to appear in person at any pretrial conference or trial; or order the plaintiff to proceed with the case and to decide and determine all matters ex parte upon failure of the defendant to appear in person or by counsel at any pretrial conference or trial as required; or to make any other order as the court may deem appropriate under all the circumstances. If the case cannot be settled at pretrial, then the case will be set for trial at a time agreeable to all parties.

(7) Continuances.

(A) All motions for continuances shall be submitted to the court in writing and shall include a brief statement setting forth the reasons requiring the continuance. No continuance shall be granted without reasonable notice or consent of the other party(s) or their counsel.

(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, counsel 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) 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 denied.

(C) Forcible Entry & Detainer Proceedings.

(1) Hearing. All claims for forcible entry and detainer shall be set for hearing before the judge or magistrate, pursuant to the time limits set forth in R.C. Chapters 1923 and 5321. The judge or magistrate shall, at the conclusion of the hearing, on the claim for eviction enter an order for the writ of restitution to be issued or denied, unless additional time is needed to resolve legal issues in the case. A copy of the writ or entry shall be served on the parties. If the plaintiff also files a claim for money damages in the complaint or the defendant files a counterclaim, the hearing for those claims shall be scheduled at a later date within sixty (60) days of the hearing on the claim for eviction.

(2) Magistrate's Reports. At the conclusion of the hearing, the magistrate shall review the evidence and issue a report and recommendation to the court. For a claim for eviction, the magistrate may issue an immediate report with the writ of restitution, explaining to the parties present of the decision and reasons for the decision. The magistrate's report shall be reduced to writing and filed with the clerk of court. For all other cases, the magistrate may take additional time to write a report and recommendation with findings of fact and conclusions of law in support of the recommendation. The extent of the findings of fact and conclusions of law will depend upon the nature of the claims raised and evidence presented and the sufficiency of the report and recommendation is within the discretion of the magistrate.

The magistrate's report and recommendation shall be served upon the parties with notice of the fourteen (14) day period to file written objections to the court. The notice shall also advise the parties that failure to timely file objections is a waiver of any objections.

(3) Judgment Entries. The court shall review the findings of the magistrate and enter the appropriate judgment entry.

(4) Objections to Magistrate's Report. Objections to the magistrate's report and recommendation should be stated in accordance with Civil Rule 53, with specificity and supporting documents or transcript, when applicable, the reasons in support of the objections. The court shall review the objections to magistrate's report and recommendation and may issue an order based upon the objections or provide the opposing party the opportunity to respond. Unless the objections are overruled by the court, the opposing party is permitted fourteen (14) days to respond to the objections unless a different time period is ordered by the court.

(5) If a jury demand is filed in a forcible entry and detainer case, the defendant requesting the jury trial shall be required to post a sufficient bond in accordance with the provisions of R.C. 1923.08.

(6) With respect to a claim for monetary damages, the defendant is required to provide the court with a current address. Notwithstanding the defendant's compliance with this rule, the plaintiff is required to make a good faith attempt to serve the defendant at his or her last known address. Failure to do so may be grounds for vacating a prior judgment.

(D) Small Claims Cases.

(1) A small claim action is commenced by filing a small claims complaint pursuant to R.C. 1925.04. No defendant is required to file an answer or statement of defense. If the defendant fails to appear for the hearing, however, after being duly served, then the hearing may proceed without the defendant present. All pleadings will be construed to accomplish substantial justice.

(2) Upon filing of motion and affidavit by the defending party, as required by R.C. 1925.10, and upon payment of the required cost, the small claim may be transferred to the regular docket. No transfer will be granted until the filing costs are paid. Requests to transfer which are made solely for the purpose of delay may result in sanctions, including dismissal and/or default judgment, as well as attorneys fee.

(3) Hearing. The hearing in small claims court may be conducted by the judge or magistrate. The judge or magistrate shall place all parties who plan to offer evidence under oath and then allow the plaintiff and defendant to state their case. The plaintiff and defendant may subpoena and call witnesses if they desire to do so. The Ohio Rules of Evidence and the Ohio Rules of Civil Procedure will not apply to a hearing in small claims court, unless provided by the court.

(4) Magistrate's Reports. At the conclusion of the hearing, the magistrate shall review the evidence and issue a report and recommendation to the court. The magistrate may take additional time to write a report and recommendation with findings of fact and conclusions of law in support of the recommendation. The extent of the findings of fact and conclusions of law will depend upon the nature of the claims raised and evidence presented and the sufficiency of the report and recommendation is within the discretion of the magistrate.

The magistrate's report and recommendation shall be served upon the parties with notice of the fourteen (14) day period to file written objections to the court. The notice shall also advise the parties that failure to timely file objections is a waiver of any objections.

(5) Objections to Magistrate's Report. Objections to the magistrate's report and recommendation should be stated in accordance with Civil Rule 53, with specificity and supporting documents or transcript, when applicable, the reasons in support of the objections. The court shall review the objections to magistrate's report and recommendation and may issue an order based upon the objections or provide the opposing party the opportunity to respond. Unless the objections are overruled by the court, the opposing party is permitted fourteen (14) days to respond to the objections unless a different time period is ordered by the court.

(6) When no objections are timely filed, the judge shall review the findings of the magistrate, and enter the appropriate judgment.

(7) Collection of Judgments. The employees of the court may assist the prevailing parties in collecting their judgments pursuant to R.C. 1925.13.

### **Local Rule 17 – Continuance of Trial or Hearing.**

No case assigned for trial or hearing may be continued except on written motion and for good cause shown. The motion shall be timely filed with the court. In the event the motion is filed within two (2) days of the trial or hearing, the moving party is required to first discuss the continuance with all opposing counsel, or opposing parties if there is no counsel, and state specifically why the motion could not have been filed prior to the two (2) day time limit.

### **Local Rule 18 – Notice of Settlement.**

Upon notice of settlement of any civil case, including cases on the small claims or forcible entry and detainer docket, may be grounds to continue a pretrial conference. Unless otherwise ordered by the

court, a notice of settlement is not grounds to continue a trial or other evidentiary hearing. Final settlement, by agreed judgment entry, dismissal or other, must be fully executed and filed with the court prior to the date of the hearing or trial.

### **Local Rule 19 – Record of Proceedings.**

(A) All traffic, criminal and civil proceedings, shall be recorded. Unless otherwise noted, the proceedings will be recorded by digital or other electronic audio recording means. Upon prior notice and order of court, a party in any case may have a court reporter present to record the proceedings. No fees for court reporters will be taxed as cost or otherwise paid by anyone other than the party providing the court reporter, unless that party makes a timely motion prior to trial or hearing for the appointment of an official court reporter and requests in advance that the fees be taxed as costs. See Civil Rule 54(D) and R.C. 1901.33.

(B) The court shall maintain exclusive custody and control of the electronic recording of proceedings. The court will maintain all recordings for any period required by law. At the expiration of this period the recordings may be disposed of at the discretion of the court except in the instance of an appeal in which event the subject recording will be retained while the appeal is pending.

(C) A party may obtain a full or partial transcript from a recording by either arranging for the presence and payment of a court reporter to prepare the transcript or purchasing a copy of the recording from the court on an audio disc.

(D) Unless otherwise ordered, the audio recording shall be the official record of court proceedings. If a party seeks to obtain a transcript of the proceedings for appeal or use in other court proceedings, a motion shall be filed with the court for appointment of a court reporter to make a written transcription of the audio recording. Any transcript prepared other than by an official court reporter appointed by the court shall not be considered as an official transcript of the record of proceedings. The costs of the transcript shall be paid by the party requesting the transcript directly to the court reporter. In the case of an appeal, the expense of the preparation of the transcript may be taxed as costs and assessed against the losing party on appeal.

### **Local Rule 20 – Video Conferences or hearing.**

A party in a case may be permitted to participate in a conference or hearing by video conference, due to geographic distance, incarceration, or other reason which, in the discretion of the court, may impose an undue hardship on the party to personally appear in court. All hearings shall be recorded in accordance with Local Rule 19.

### **Local Rule 21 – Request for Interpreter.**

In a criminal or civil case, the party requesting a court appointed interpreter or translator shall make a written request to the court at least three (3) days before the date of the trial or hearing. The request shall state the specific language required and any dialect, if applicable. The court may waive the written request requirement. Upon receiving the request, the court will determine if an interpreter or translator is necessary. The expenses for the interpreter or translator in a civil case shall be taxed as part of the costs allowed to the

prevailing party, unless otherwise directed by the court. In a criminal case, the interpreter or translator expenses shall be paid out of the court general fund.

**Local Rule 22 – Satisfaction of Judgment; Payment of Costs.**

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

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

**Local Rule 23 – Proceedings in aid of Execution.**

The order in aid of execution shall provide for the attendance of the parties named on a date not less than fourteen (14) days from the date of the order. The deposit required by the court schedule of fees and deposits, shall be made with the clerk of court at the time of the filing of the affidavit. No alias writ or order shall be allowed unless there has been failure of service on the writ and only after an additional deposit is made with the clerk.

Affidavits and orders in aid of execution proceedings shall be typed and sufficient copies of the affidavit and order shall be furnished for service upon the garnishee and the defendant(s) as are required to be served. The garnishee fee as required by statute per garnishee shall accompany the affidavit. Service will be made in accordance with the Ohio Rules of Civil Procedure and the Ohio Revised Code.

**Local Rule 24 – Fees for Additional Services.**

In cases where it becomes necessary for the bailiff to perform services in connection with property, the bailiff shall require a deposit sufficient to secure the probable charge in each case.

Any reasonable charge when approved by the court shall be taxed as part of the costs of the action and any property seized under any writ or process of the court need not to be released until said charges are approved and paid.

**Local Rule 25 – Court Employees.**

While court employees may assist persons with general information about court procedures, court employees are not permitted to give legal advice to a litigant, witness or other person. Assistance by court personnel shall be limited to directing the person to the court's website or furnishing necessary or requested forms when appropriate and providing any explanation of their use.

**Local Rule 26 – Pretrial Diversion Program.**



(A) In accordance with R.C. 2935.36, a defendant may be eligible to participate in a pretrial diversion program. Upon motion of the prosecutor, or on either the court's own motion or motion of defendant with the consent of the prosecutor, the court may permit a defendant to enter into a diversion program or initiate an investigation into an alleged offender's eligibility to participate in the pretrial diversion program. The purpose of the diversion program is to permit individuals charged with certain, specified non-violent offenses the opportunity to avoid a criminal conviction. Participation in the program is a privilege, not a right, and may not be used to evade or delay responsibility. The court may not permit a defendant to enter into a diversion program without the consent of the prosecutor, but the prosecutor may not unreasonably deny consent. The court reserves the right to inquire into grounds for approval or denial by the prosecutor for participation in the diversion program.

(B) The pretrial diversion program is generally limited to offenses involving:

- (1) Alcohol related offenses not otherwise excluded, including violations of R.C. Chapter 4301 and/or Lakewood Codified Chapter 529.
- (2) Offenses involving drugs of abuse or controlled substances, including possession and drug paraphernalia, if the offense is either a minor misdemeanor or fourth (4<sup>th</sup>) degree misdemeanor.
- (3) Housing, building, health safety or zoning code offenses. These cases are generally limited to owner occupied housing units, but with the consent of the prosecutor and valid, additional grounds, may include non-owner occupied housing units.

(C) Eligibility factors include:

- (1) Non-violent offenses or convictions.
- (2) No pending criminal charges.
- (3) No prior diversion.
- (4) No current or previous probation status.
- (5) Prior criminal or traffic record.
- (6) No pending warrants
- (7) Cooperation with law enforcement officers/building inspectors.
- (8) Evidence of remorse.
- (9) Any other factor that the court or prosecutor may determine to be relevant.

Upon motion of the prosecutor, for good cause and in the interest of justice, the limitations set out in this rule may be waived for offenses which are not otherwise excluded by R.C. 2935.36.

(D) Conditions of the diversion program may include:

- (1) Abide by all laws during the diversion program.
- (2) Abstain from use of alcohol and/or drugs of abuse.
- (3) Random drug screens.
- (4) Community work service.
- (5) Continued education, including G.E.D. classes.
- (6) Obtain employment.
- (7) Pay restitution.
- (8) Pay required court fees and costs.
- (9) Execute any required release of information.
- (10) Comply with any other appropriate terms imposed by the court.

(E) The administration of this program shall be conducted under the supervision of the prosecutor's office and/or court's probation department.

(F) In order to be considered for the program, a defendant must enter a plea of no contest to the charge(s) and waive any right to speedy trial. The court shall hold its findings in abeyance pending the defendant's participation in the diversion program. As a condition of participation in the diversion program, the defendant must agree to a waiver of any periods of limitations established by statute or rules of court and any other provisions as are necessary to accomplish the objectives of the diversion program.

(G) All persons referred to this program may be assessed a fee. The court, upon its own motion or upon request of prosecutor or defendant, may waive any administrative fee for any individual defendant who is indigent and unable to pay the fee or for other grounds in the exercise of the court's discretion.

(H) Any court costs or fees paid to the clerk of court shall be received and deposited in accordance with the Charter of the City of Lakewood, the Codified Ordinances and any applicable provisions of state law.

(I) Each defendant accepted into this program must agree and if applicable, sign an agreement setting out the conditions of participation in the program. The program shall be considered successfully completed when all those conditions contained are met. The case may be advanced and/or an arrest warrant issued in the event of failure to comply with the conditions of participation. If the defendant fails to comply with the conditions of participation, the defendant may be removed from the diversion program and brought to trial upon the charges in the manner provided by law. The defendant shall be advised of the right to withdraw the no contest plea and/or waiver of right to speedy trial.

(J) If the defendant successfully completes the program, the case may be dismissed.

#### **Local Rule 27 – Media.**

(A) The court recognizes the public interest in the operation of a court that is open and accessible to everyone. Recording and broadcasting of proceedings shall be in accordance with Sup. R. 12.

#### **(B) Sanctions**

(1) Upon failure to comply with the orders of the judge or with Superintendence Rule 12, the judge may revoke any permission previously granted.

#### **Local Rule 28 - Jury Management Standards.**

The Supreme Court adopted as guidelines the "Ohio Trial Court Jury Use and Management Standards" on August 16, 1993. This Jury Management Plan is intended to further the goals and objectives of the Ohio Trial Court Jury Use and Management Standards considering the needs of the jurisdiction of the Lakewood Municipal Court. The Ohio Trial Court Jury Use and Management Standards found in Appendix B to the Ohio Rules of Superintendence are incorporated herein by reference. The responsibility for administration of the jury system shall be vested exclusively in the Lakewood Municipal Court.

(A) Jury Commissioner. The court assignment commissioner shall serve as the jury commissioner for the purpose of random selection of potential jurors and selecting jury panels unless the judge designates some other person to serve in that position on a regular or temporary basis.

(B) Procedure for Jury Selection. Potential jurors shall be drawn from a jury source list which shall constitute a list of all registered voters residing in the City of Lakewood, Cuyahoga County, including random selection procedures using automated data processing equipment in accordance with these local rules and the provisions of R.C. 2313.06.

The jury commissioner shall convene and obtain at least one thousand (1,000) names, drawn at random by the Cuyahoga County Board of Elections, for potential jury trials for the year. In the event the number of prospective jurors drawn is insufficient to meet the needs of the court, the jury commissioners shall reconvene as necessary to select additional names. The jury commissioner may obtain more than one thousand (1,000) names, but the jury list provided by the board of elections must be updated at least once within a two (2) year period. Each time a new list of prospective jurors are obtained from the board of elections and the names are entered into the jury list, the remaining names from the prior two (2) year period shall be purged from the jury list. Once a person has been called for jury duty at least twice during the two (2) year period, that person may be removed from the jury list.

The court may annually review the jury source list for its representativeness and inclusiveness of the adult population in the jurisdiction as is feasible. If the court determines that improvement is needed in the representativeness or inclusiveness of the jury source list, appropriate corrective action shall be taken.

Random selection processes shall also be utilized to assign prospective jurors to specific panels also for assignment during voir dire. Departures from random selection shall be permitted:

1. To exclude persons ineligible for service.
2. To excuse or defer prospective jurors.
3. To remove prospective jurors for cause or if challenged peremptorily.
4. To provide all prospective jurors with an opportunity to be called for jury service and to be assigned to a panel.
5. To assure that a prospective jury panel is representative, diverse and fair.

All prospective jurors shall be notified by regular mail of their requirement of service by the issuance of a summons directing them to appear on the date assigned. Further, all prospective jurors shall be required to complete a jury questionnaire and, if appropriate, a request for excuse, exemption or a deferral. The summons shall be phrased to be readily understood by an individual unfamiliar with the legal process, and shall be delivered by ordinary mail. The summons shall also clearly explain how and when the recipient must respond and the consequences of his failure to respond. The jury commissioner shall remove from the jury list any summons returned for lack of receipt or other reasons indicating that the prospective juror would not be eligible to serve as a juror in the Lakewood Municipal Court.

(C) Summoning Prospective Jurors. Prospective jurors shall be summoned for trial dates determined by the court. Prospective jurors shall be summoned to appear in sufficient numbers to accommodate trial activity. Panels of thirty (30) to thirty five (35) persons per trial shall be summoned for service unless the court determines that a lesser or greater number is necessary for a particular trial.

The court and counsel and/or parties are required to make efforts to resolve case scheduled for jury trial prior to the day of trial. At least two (2), but no more than seven (7) days prior to trial, the court shall conduct a final pretrial conference unless otherwise ordered by the court.

In cases where multiple trials are set for the same date, jury costs shall be assessed to the last trial settled on that date. If a trial is settled on the day of trial, all lawful jury costs shall be assessed against the party who requested the jury unless otherwise agreed to by the parties or ordered by the court.

Persons summoned for jury service shall receive compensation in an amount determined by court order or fee schedule. These fees shall be promptly paid from the city or county treasury, as appropriate.

Any juror wishing to waive his fee for service shall be permitted to do so in writing in the clerk's office. All waived fees shall be returned to the city or county treasury, as appropriate.

The term of service for any prospective panel shall be for the completion of one trial.

(D) Exemption, Excuse, and Deferral. All persons except those who exercise their right to exemption are subject to service. Eligible persons who are summoned may be excused from service only if it is determined that their ability to receive and evaluate information is so impaired that they are unable to perform their duties as jurors, or that service upon a jury would constitute a significant hardship to them or members of the public. Persons excused from service shall be deferred and may be subject to jury service at a later time. Unless in the case of exigent circumstances or for good cause showing, all requests for excuse, exemption or deferral must be made in writing and shall be accompanied by appropriate documentation. These documents shall be retained by the court.

The following factors constitute a partial, although not exclusive, list of excuses for which a person may be excused or deferred from jury service:

1. Any person who suffers from a substantial physiological or psychological impairment.
2. Any person who has a scheduled vacation or business trip during potential jury service.
3. Any person for whom jury service would constitute a substantial economic hardship.
4. Any person for whom service on a jury would constitute a substantial hardship on their family, clients, or members of the public affected by the prospective juror's occupation.
5. Any person who has served on a jury within the last year.
6. Any person for whom it may be readily determined is unfit for jury service.
7. Any person for whom it is readily apparent would be unable to perform their duty as a juror.
8. Other valid excuse.

Any person shall not be excused from jury service, except by the judge, jury commissioner, or other specifically authorized by the judge to excuse jurors. Any person who does not complete the jury information form shall not be excused from service. Once a prospective juror has submitted his request for excuse, the prospective juror must report for service unless otherwise notified by the court.

Adopted and spread upon the Journal of the Lakewood Municipal Court this 30th day of December, 2014.

STATE OF OHIO            )  
CUYAHOGA COUNTY)

s/Judge Patrick Carroll  
Patrick Carroll, Judge

s/Terri A. O'Neill  
Terri A. O'Neill, Clerk of Court