

**COURT OF COMMON PLEAS
LAKE COUNTY, OHIO
GENERAL DIVISION**

IN RE: LOCAL RULES OF COURT) JOURNAL ENTRY

BY ORDER OF THE COURT, effective April 1, 2006, the Local Rules of the Court of Common Pleas of Lake County, Ohio, General Division, be and are hereby amended.¹ A copy of the amended rules is attached hereto and will be posted on the Court's website.

IT IS SO ORDERED.

JUDGE PAUL H. MITROVICH
Presiding Judge

JUDGE EUGENE A. LUCCI
Administrative Judge

JUDGE RICHARD L. COLLINS JR.

JUDGE VINCENT A. CULOTTA

¹ The last sentence of Article II.A.2. and all of Article II.C.4. of the former version have been deleted.

**Local Rules
of the
Court of Common Pleas of Lake County, Ohio
General Division**

(Effective April 1, 2006, Rev. March 31, 2006)

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Local Rules

of the

Court of Common Pleas of Lake County, Ohio

General Division

(Effective April 1, 2006)

**Local Rules
of the
Court of Common Pleas of Lake County, Ohio
General Division**

(Effective April 1, 2006, Rev. March 31, 2006)

It is ordered that the following rules are hereby adopted to govern practice and procedures in the General Division, Court of Common Pleas, Lake County, Ohio, until otherwise provided, pursuant to Article IV, Section 5 of the Ohio Constitution, Rules 16 and 83 of the Ohio Rules of Civil Procedure and the Rules of Superintendence adopted by the Supreme Court of Ohio. It is further ordered that any future rule changes, with their effective dates, shall be embodied in the published rules of court, posted in the office of the clerk of court for six months, and copies thereof furnished counsel on request. Counsel shall maintain, update and comply with these rules of court. Reasonable accommodation, with or without sanctions, at court discretion, will be considered to enable the disposition of all legal matters in the interests of justice and consistent with the purposes of the Ohio Rules of Civil Procedure.

I. THE JUDGES AND THE OPERATION OF THE COURT

A. APPLICABILITY.

These rules shall pertain to the General Division of the Court of Common Pleas, including civil and criminal cases.

B. JUDGES.

The presiding judge shall have the general superintendence of the business of the court and shall classify and distribute it among the judges.

1. ASSIGNMENT OF CASES.

Cases shall be assigned to the judges by lot.

2. MEETINGS OF THE JUDGES.

The judges of the General Division shall meet according to the Rules of Superintendence and the standing resolution of the court governing meetings, or at the call of the administrative judge, to handle matters arising within the General Division.

C. TERMS OF COURT; HOURS; SECURITY.

1. TERMS.

The court shall be in continuous session for the transaction of judicial business, but each calendar year shall be divided into four terms to be designated as January, April, July, and October terms of court. The day of the commencement of each term of court shall be fixed by the judges.

2. HOURS.

The court and the office of the clerk of court shall be open daily Monday through Friday from 8:00 a.m. to 4:30 p.m. The court shall be in session at such other times as the administrative judge or any other judge prescribes to meet special situations or circumstances.

3. ARRAIGNMENTS.

Each judge shall determine the times at which arraignments shall be conducted. When mass arraignments are to be conducted, and in recognition of the need for pre-arraignment consultation, all persons attending such mass arraignments shall arrive one half hour before the scheduled commencement of such mass arraignments so as to avoid delay. This applies to defense and prosecution attorneys, defendants, sheriff's deputies, and others participating in such mass arraignments.

4. SECURITY.

The court has adopted the Rules on Courthouse Security as promulgated by the Lake County Common Pleas Judges and filed with the Lake County Clerk of Court on May 17, 1995, and filed with the Ohio Supreme Court on June 28, 1995, and as amended from time to time. In addition, the following rules shall be applicable to all individuals conducting business before the court:

- (a) No firearms or weapons are permitted within the courthouses and court grounds, except as carried in accordance with the above described rules.
- (b) The court reserves the right to search individuals and packages before entering the courthouses and court grounds.
- (c) The court reserves the right to expel any person from the courthouses and court grounds whose conduct disrupts the proceedings before the court or poses a threat to the security of the court.

D. TRIAL.

1. DATES.

Cases assigned for trial for a specific date may, at the discretion of the court, be tried before or after that date.

2. CONTINUANCES.

No case assigned for trial may be continued except on written motion, and in compliance with Superintendence Rule 41, subject to approval of the court.

3. NOTICE.

Notice of the date and time for trial shall be given to all counsel of record by mail, computer and/or telephone by the court not less than fourteen days prior to trial, unless good cause requires a lesser time period. The court will make every reasonable effort to notify counsel, but it shall be counsel's responsibility to be aware of the date and time of said trial.

E. CASE MANAGEMENT AND PRETRIAL PROCEDURE.

1. PURPOSE.

For the purpose of insuring the readiness of cases for trial, the following procedure shall be in effect.

2. CASE MANAGEMENT CONFERENCE.

The court, through its assignment commissioner, may schedule a case management conference approximately sixty days after service of the complaint on all defendants.

- (a) Method. The case management conference may be conducted by the court, bailiff, a referee or magistrate appointed by the court, or judicial staff attorney, at the court's option. The case management conference may be conducted in person or telephonically, according to the court's preference. Counsel shall be prepared to discuss all aspects of the case, including settlement.
- (b) Notice. Notice of the date and time of the case management conference shall be given to all counsel of record by mail, computer and/or telephone by the court not less than fourteen days prior to the conference, unless good cause requires a lesser time period. The court will make every reasonable effort to notify counsel, but it shall

be counsel's responsibility to be aware of the date and time of said conference.

- (c) Agenda. The following decisions shall be made at the case management conference and all counsel attending must have full authority to enter into a binding case management order:
 - (i) Complex Litigation. Where the parties have filed a "Suggestion of Complex Litigation," as required by Local Rule II(C)(2), the court will advise counsel of its determination as to classification as "complex litigation."
 - (ii) Schedule. Definite dates shall be set for:
 - (a) the exchange of expert witness reports;
 - (b) the completion of all discovery;
 - (c) the filing of all motions;
 - (d) the pretrial conference;
 - (e) the referral to arbitration, if applicable, and the trial if an arbitration award appeal is filed; and,
 - (f) the trial.
- (d) Order. A Judgment Entry shall be filed setting forth said dates and shall be binding on all parties and counsel. Modifications to said Judgment Entry may be made only upon motion of a party and approval by the court; provided, however, that discovery may continue after the deadline so long as there is no delay of the trial.
- (e) Addition of new parties. If new parties are added to the case after the case management conference, the court shall conduct another case management conference with all parties. The new case management order shall supersede any prior case management order.

3. PRETRIAL CONFERENCE.

A pretrial conference shall be conducted, except in criminal actions and actions for injunctions, foreclosures, marshaling of liens, partition, receiverships, and appeals from administrative agencies.

- (a) Scheduling. The court, through its assignment commissioner, may schedule more than one pretrial conference before the court, between counsel for the parties and the parties in the absence of the court, or before a referee or magistrate appointed by the court.
- (b) Notice. Notice of a pretrial conference shall be given to all counsel of record by mail, computer and/or telephone by the court not less than fourteen days prior to the conference, unless good cause requires a lesser time period. The court will make every reasonable effort to notify counsel, but it shall be counsel's responsibility to be aware of the date and time of said conference.
- (c) Agenda. The purpose of a pretrial conference is to effect an amicable settlement, if possible, and to resolve and/or narrow factual and legal issues by stipulation.
- (d) Parties present or by telephone. Each plaintiff must be present or, with permission of the court, be available by telephone with full settlement authority. Each defendant, or a representative of each defendant, including any insurance adjuster, must be present or, with permission of the court, be available by telephone with full settlement authority. If the real party in interest is an insurance company, common carrier, corporation, or other artificial legal entity, then the chosen representative must have full authority to negotiate and settle the claim to the full extent of plaintiff's demand. Plaintiff's demand shall be submitted to counsel for defendant at least fourteen days prior to the pretrial conference.
- (e) Authority of Counsel. Counsel attending the pretrial conference shall have complete authority to settle the case and to stipulate as to items of evidence and admissions.
- (f) Trial Briefs. The court shall determine whether trial briefs should be submitted and shall set a date when they are to be filed.
- (g) Pretrial Statement. Each party shall submit (without filing) to the court, with a copy to opposing counsel, a pretrial statement at least seven days in advance of the pretrial conference setting forth the following:
 - (i) statement of facts and legal issues;
 - (ii) statement of real factual and legal issues in dispute;

- (iii) stipulations;
 - (iv) list of non-expert trial witnesses;
 - (v) list of expert trial witnesses;
 - (vi) special legal problems anticipated;
 - (vii) estimated length of trial;
 - (viii) pretrial motions contemplated;
 - (ix) special equipment needs for trial;
 - (x) settlement demand; and,
 - (xi) settlement offer.
- (h) Referral to Arbitration. If the court determines that the case is suitable for arbitration, then the court may order the case to arbitration. The court may set a trial date in the event an appeal is filed from the arbitration award.
- (i) Court Authority. The Court shall have authority:
- (i) after notice, to dismiss an action without prejudice for want of prosecution upon failure of plaintiff and/or plaintiff's counsel to appear in person at any pretrial conference.
 - (ii) after notice, to order plaintiff to proceed with the case and decide and determine all matters *ex parte* upon failure of the defendant and/or defendant's counsel to appear in person at any pretrial conference.
 - (iii) to make such other orders as the court deems appropriate under the circumstances.
- (j) Failure to Comply. The failure of counsel to comply with the provisions of Rule I(E)(3)(e) or Rule I(E)(3)(g) without good cause may subject said counsel to sanctions, including a fine of up to \$100.00, to be paid by counsel to cover the costs of opposing counsel's appearance at the pretrial conference.

- (k) Failure to Appear. The failure of counsel to appear within 30 minutes of a pretrial conference without good cause may subject said counsel to sanctions, including a fine of up to \$250.00, to be paid by counsel to cover the costs of opposing counsel's appearance at the pretrial conference. Before imposing sanctions, the court shall make a reasonable attempt to contact said counsel to determine the cause of the nonappearance.

II. CLERK OF COURT

A. CUSTODY OF FILES.

1. REMOVAL FROM OFFICE.

The clerk of court shall not permit original files of the office, pertaining to cases entered upon the appearance docket, to be taken from said office, unless the same are to be delivered to a judge, or unless an order authorizing the same is made by the court and entered upon the journal, or unless such file is receipted for by a party and their counsel for a short term removal to the Lake County law library and for return within a specified time, not exceeding one hour.

2. DOCUMENTS, TRANSCRIPTS AND EXHIBITS.

The court has general custody of and authority over its own records and files. No deposition transcript or other exhibit in a pending case shall be removed from the file except by the court or order of the court. Parties to a cause of action and their counsel shall have access to, and the right to inspect, at all reasonable times records and papers in said cause.

3. CUSTODY OF FILE WHEN NOTICE OF APPEAL FILED.

When a notice of appeal has been filed in a case, the entire file becomes subject to the exclusive direction and control of the court of appeals. Upon filing of the notice, any existing authority to allow removal of the transcript of the evidence from the clerk of court's office is automatically superseded by the authority of the court of appeals. Permission for removal of the transcript may be granted, upon application to the court of appeals, on a form provided and approved by the court of appeals. Any removal shall be conditioned upon the return of the transcript within fourteen days from the date of removal or fourteen days before the date set for hearing of argument, whichever is earlier. Failure to comply with this rule may result in the issuance of a citation for contempt of court.

4. CUSTODY OF VIDEOTAPES.

- (a) When videotapes have been filed in a case, they may be removed from the file only with permission of a judge. The videotape may be taken to a court room for viewing, after scheduling an appointment

with the judge. The videotape shall not be removed from the courthouse.

- (b) After one year from the date of termination of a case and the exhaustion of any appeals, the clerk of court may petition the trial court for the removal and destruction of any videotapes remaining in a file. The trial court shall notify the counsel of record who submitted the videotape of the intent to remove and destroy such videotape. If no objection is made within fourteen days, the court may order the clerk of court to remove and destroy the videotape after including a notation in the file.

B. SECURITY FOR COSTS.

1. AFFIDAVIT OF POVERTY.

An affidavit of poverty may be filed with the clerk of court in lieu of a deposit of security for any pleading seeking affirmative relief.

2. DEPOSIT FEE SCHEDULE.

The court shall determine a deposit fee schedule and shall post such schedule in the clerk of court's office and on the court's web site. When the clerk deems a deposit insufficient, a demand for additional sums to be deposited shall be made. If a party fails to deposit on demand, the court shall in its discretion sua sponte dismiss the case.

3. MULTIPLE PARTIES.

In cases with multiple parties, the clerk of court may require the party requesting service to advance an amount estimated by the clerk to be sufficient to cover the costs thereof.

4. TRANSFERRED CASES.

In matters of transfer due to limited jurisdiction of the original proceedings or due to change of forum, it shall be the obligation of the plaintiff to deposit sufficient funds to satisfy the initial deposit requirement of the clerk of court, who shall follow a uniform and nondiscriminatory policy in that regard. The same rule as to required deposits shall apply to a defendant who files a cross or counterclaim in a municipal court case which exceeds the monetary jurisdiction of that court, thus causing the action to be transferred to the court of common pleas for disposition, and shall also apply to a plaintiff who causes a case to be transferred to the court of common pleas because of original improper venue.

5. SECURITY FOR REOPENING CASES.

A party not filing an affidavit of poverty in an action shall be required to deposit a security for costs, in an amount as determined by the court and posted in the clerk's office, for any motion to reopen a case.

6. REFUNDS.

All deposits for costs, unless otherwise ordered by the court, shall be applied by the clerk of court to the payment of costs and shall not be refunded unless costs are awarded against and paid by another party. Judgment entries shall provide for the apportionment of costs or the continuation of determination thereof.

7. RETURN OF BOND IN CRIMINAL CASES.

If a defendant has posted a bond in a criminal case, prior to releasing such bond, the clerk of court shall first determine whether the defendant has paid the court costs. Unless the defendant is indigent, if the defendant has not paid the court costs, then the clerk shall first deduct the amount of court costs which is due from the amount of the bond and apply the same to the court costs before releasing the remainder of the bond to the defendant.

8. ATTORNEY AS SURETY.

No practicing attorney shall be received as surety on any bond or recognizance in any action or proceeding, civil or criminal.

9. RELEASE OF EXISTING DEPOSITS TOWARDS COSTS.

If no activity occurs in a case, the court may on its own motion dismiss the case in accordance with Ohio rules and law. Upon dismissal, the court may direct the clerk of court to determine the outstanding costs in the action and apply any monies on deposit to costs as appropriate.

C. FILING OF DOCUMENTS.

1. CASE DESIGNATION FORMS. The initial complaint in a case shall be accompanied by a case designation sheet, setting forth the designation of the case as one of the following:

- Administrative Appeal (Specify Revised Code Section: _____)
- Consumer action - O.R.C. 1245
- Contract or Quasi Contract
- Criminal
- Declaratory Judgment

Foreclosure				
Foreign Judgment				
Malpractice (specify)	Medical	_____	Dental	_____
	Optometric	_____	Chiropractic	_____
	Other	_____		
Personal Injury				
Product Liability				
Professional Tort				
Provisional Remedy (Replevin, Attachment, Garnishment)				
Workers Compensation				
Other Tort				
Other Civil				

The designation “money only” may not be used if one of the above specific categories is applicable. Further, the caption shall note any statutory provision that is unique to the particular cause and controls the time within which the case is to proceed, once filed. Eg.: Miscellaneous - Contest of Election (O.R.C. Section 3515.10 - Hearing Within 30 Days).

2. COMPLEX LITIGATION.

Cases shall not be classified by the parties upon filing as “complex litigation.” However, counsel shall, within sixty days of the filing of the complaint or any third party complaint, file a separate “Suggestion of Complex Litigation” so as to bring to the court’s attention in a timely fashion the potentially complex nature of the litigation. Such suggestion does not, without court order, designate the case as complex litigation as defined in the Rules of Superintendence for the Courts of Common Pleas.

3. REFILED CASES.

Upon the refile of a case previously dismissed under Civ. R. 41, the plaintiff shall indicate that the case is a refile on the cover sheet of the new complaint by including the word “REFILING” in capital letters directly beneath the word “COMPLAINT.” Directly underneath the word “REFILING,” the new complaint shall identify the case number of the dismissed action, clearly distinguishing same from the case number of the refiled version. The refiled case shall be assigned to the docket of the same judge to whom the previously dismissed case was assigned.

D. RETURN OF EVIDENCE.

Upon settlement or exhaustion of all rights of appeal, counsel shall provide the court with a draft judgment entry instructing the clerk of court to return to respective counsel any video tape exhibits, deposition transcripts, and non-documentary exhibits. The draft judgment entry shall include the proper case name and number, and shall sufficiently identify the items to be returned, either by caption or exhibit number, as well as by date of filing of same, if applicable.

E. SERVICE BY PUBLICATION.

The clerk of court no longer performs service by publication. It shall be the responsibility of the person filing the complaint to arrange for publication with the newspaper. Upon completion of service by publication, proof of same shall be submitted to the clerk of court for filing.

III. PLEADINGS AND MOTIONS

A. FORMAT.

1. SIZE.

All pleadings and motions shall be legibly typewritten or printed on paper approximately 8-1/2" x 11", bound or stapled at the top or left upper corner, and filed in accordance with the provisions and exceptions set forth in Civil Rule 5(D). All pleadings, motions and documents shall be formatted with 1" margins on all sides and 1.5 line spacing except footnotes and quotations which may be single spaced. The body or text of any document, except complaints, counterclaims, cross-claims, and third party complaints, shall not exceed ten pages in length without leave of court. Copies, if offered as the original, will, sua sponte, be ordered stricken from the files. Pursuant to LOC. R. III(D)(3), pleadings, motions and documents shall not have attached exhibits or appendages which are not absolutely necessary. Extraneous material will be stricken from the file.

2. PROOF OF SERVICE.

Proof of service of interrogatories, requests for documents, notices of depositions, requests for admissions, and any responses thereto, shall be filed in lieu of such original papers.

3. CAPTION.

The caption in every complaint shall state the name and address, if known or reasonably ascertainable, of each party, or shall state that the address is unknown. Subsequent pleadings and motions shall state the case number, the name of the judge to whom the case is assigned, and the name of the first party plaintiff and first party defendant. Every pleading, motion or brief or other paper filed in a cause shall be identified by title, and shall bear clear identification of each person on whose behalf the document is filed and shall bear the name (written, typewritten, or printed) of the individual attorney, if any, who prepared such document, together with his or her attorney registration number, the name of his or her firm, if any, the office address, telephone number, e-mail address, and facsimile number of counsel filing the same, or, if there is no counsel, then of the party filing the same. This latter requirement shall also be applicable to the names of notaries public. Counsel shall be responsible to register as counsel of record, with proof of service indicating notice to all other attorneys.

4. AMENDMENT.

Pleadings and motions may be amended as provided in Civil Rule 15, but no pleading or motion shall be amended by interlineation or obliteration except upon leave of court first obtained. Upon the filing of an amended pleading or motion the original or any prior amendment thereof shall not be withdrawn from the files except upon leave of court.

5. NON-COMPLIANCE.

Any pleading, motion, or leave filed not in compliance with this section may be stricken from the files on the court's own motion.

B. SERVICE.

See Civil Rules 4 through 5.

C. EXTENSIONS.

Parties may obtain an extension of time, not to exceed thirty days, in which to answer, plead, or otherwise move, when no such prior extension has been granted, by filing with the clerk of court a written stipulation approved by all counsel and the court providing for such an extension. Such stipulation shall affirmatively state that no prior extension has been granted and shall be subject to the court's approval. Additional extensions may be requested in accordance with the procedures of the respective judges.

D. MOTIONS AND BRIEFS.

1. BRIEFS IN SUPPORT.

The moving party shall serve and file with a motion a brief written statement of reasons in support of the motion and refer to any citations of authority relied upon. If the motion requires consideration of facts not appearing of record, the movant shall also serve and file copies of affidavits, photographs or documentary evidence, to the extent practicable, in support of the motion.

2. AUTHORITY.

All pleadings and briefs containing references to regulations, municipal ordinances, and/or case law not available on LexisNexis or Westlaw, shall have attached thereto a copy of same.

3. ATTACHMENTS AND EXHIBITS.

Attachments and exhibits may be appended where they are absolutely necessary to support the motion or brief. Attachments and exhibits which merely explain or enhance the parties' position shall not be attached but may be forwarded to the judicial staff attorney for the appropriate judge.

The court may, on its own motion, strike from the files any documents or material which is not part of the pleadings. The items which may be so stricken include, but are not limited to, the following:

- (a) copies of reported cases and cases available on LexisNexis or Westlaw;
- (b) copies of statutes, unless not published anywhere;
- (c) news clippings;
- (d) photographs;
- (e) law review articles and similar, non-authoritative publications;
- (f) items of evidence more appropriately presented at trial or hearing;
- (g) deposition transcripts, or portions thereof, which are of greater length than is required to illustrate the pertinent point; and,
- (h) any other frivolous or non-essential material.

4. BRIEFS IN OPPOSITION.

Each party opposing the Motion shall serve and file, within fourteen days or advanced rule day, if applicable, a brief written statement of reasons in opposition to the motion which includes proper citations of the authorities on which the party relies. If the motion requires the consideration of facts not appearing of record, counsel shall also serve and file copies of all affidavits, depositions, photographs or documentary evidence which counsel desires to submit in opposition to the motion.

5. REPLY BRIEFS.

Reply briefs to motions and submissions may be served and filed within five days after the filing of a brief in opposition.

6. SPURIOUS MOTIONS.

The presentation to the court of unnecessary motions and unwarranted opposition to motions which unduly delay the course of an action through the courts, or unduly burden a court, may subject an offender to appropriate sanctions as authorized by law.

7. RULE DAY.

Except as hereinafter set forth, all motions may be considered upon the motion papers alone twenty days after the filing of same and without oral argument. Oral argument may be permitted upon application and proper showing.

In the event that a claimant files a motion for default judgment under Civil Rule 55, or in the event that a party files a motion for summary judgment under Civil Rule 56, the court hereby fixes the day for non-oral non-appearing hearing on the motion as twenty-three days after the day the motion was filed, so that any brief in opposition and any affidavit or other evidentiary material

in opposition shall be filed on or before the seventeenth day after the filing of the motion, and such motion shall be deemed submitted for consideration and ruling on the twenty-third day. No reply brief, reply affidavit or evidentiary material in reply to the brief in opposition shall be considered unless filed within five days after the filing of the brief, affidavit, or other evidentiary material in opposition to the motion. **This rule is the only written notice the parties will receive of the submission of deadlines or the day fixed for the hearing.**

8. ADVANCED RULE DAY.

Counsel filing motions which require ruling prior to the normally anticipated rule day shall bring such motions to the attention of the court immediately upon filing same, and shall certify upon the motion, and copies thereof, service upon all adverse parties, and shall specify the advanced rule day requested of the court.

9. MOTIONS FOR APPROVAL OF PAYMENT OF ASSIGNED COUNSEL FEES.

Applications for fees for representation of indigent persons shall be submitted to the court in triplicate together with a copy of the defendant's Affidavit of Indigency. The fees requested shall comply with the fee schedule and plan adopted by the board of Lake County commissioners.

10. MOTIONS FOR INTERVENTION IN LIEU OF CONVICTION AFTER FILING OF INFORMATION.

The prosecutor or defense counsel shall immediately notify the court when an Information has been filed and a motion for intervention in lieu of conviction is to be filed. The defendant shall be arraigned prior to the filing of said motion in accordance with the court's arraignment procedure. A "not guilty" plea shall be entered, a bond set and defendant shall acknowledge and sign the conditions of bond form which shall include the condition that defendant shall not use any illegal drug or substance and that if the defendant tests positive for drugs, the bond shall be revoked. The motion for intervention in lieu of conviction shall not be filed until after the defendant has been arraigned. Upon the filing of said motion, the court shall stay all criminal proceedings and refer defendant to the Lake County adult probation department for an evaluation pursuant to R.C. 2951.041. The stay of all criminal proceedings shall not preclude the court from revoking defendant's bond upon violation of any conditions of bond. At the hearing on said motion, defendant shall waive his right to have the case presented to the Lake County grand jury and shall enter a plea of "guilty" to the charge(s) set forth in the Information. Should the defendant choose not to enter a plea of "guilty" to the charge(s) in the Information, the state may vacate said information and present the case to the Lake County grand jury for consideration.

E. APPEALS TO THE COURT OF COMMON PLEAS.

1. PROCEDURE.

Except as may be otherwise provided by specific rule or statute, all cases filed by way of appeal from administrative agencies, shall be heard solely upon briefs and be governed by the same procedure, to wit:

- (a) Transcript. Along with those documents required by O.R.C. 2506, the administrative agency shall file findings of fact and conclusions of law in support of their decision.
- (b) Briefs. Counsel for appellant, within thirty days after filing a notice of appeal, or filing the transcript of proceedings, if required, whichever is later, shall file with the clerk of court a brief containing a statement of the facts, issues presented for review, arguments in support of position and legal authorities in support of said arguments. Where assignments of error are required by statute, the filing of same does not satisfy the requirement for a brief, but appellant's brief may incorporate the assignments of error if specifically set forth within the caption and body thereof. Copies, with proof of service, shall be served on all other counsel.

Within fifteen days after service of said brief, counsel for appellee shall file and serve a response brief subject to the same requirements and any brief in reply shall be filed by the appellant within five days thereafter. Copies, with proof of service, shall be served on all other counsel.

- (c) Extensions. Extensions of time in which to file briefs may be granted by written agreement of counsel and with the consent of the court, or upon an approved motion for good cause shown.
- (d) Oral Argument. Oral argument will be permitted only upon a "Request for Oral Hearing" being granted at the court's discretion, or where required by statute or rule.
- (e) Supersedeas Bond. Where a supersedeas bond is required under the provisions of O.R.C. Chapter 2505, if all counsel are able to agree on the amount of the bond, then the appellant may submit same to the court with an agreed judgment entry for approval. If all counsel are unable to agree on a satisfactory amount for the supersedeas bond, then appellant shall file a request for a hearing for the determination of the amount of the bond. In such a request, the appellant shall

specify what efforts have been made to determine the amount of the bond. Once the amount of the bond has been set, acceptance of same shall occur when the bond is submitted to the court together with a prepared judgment entry approving same, and such judgment entry is signed by the court and filed.

F. TRIAL BRIEFS.

Where a trial brief is required by the court, counsel for each party shall deliver a copy to the court, in accordance with each court's rules. The briefs shall relate to the issue or issues of the case and contain legal authorities supporting the positions counsel intends to assert during trial.

IV. TEMPORARY RESTRAINING ORDERS AND EX PARTE PROCEEDINGS

A. MOTIONS.

Motions, other than those for temporary restraining orders, may be granted without regard to the time generally allowed adverse parties to respond only if the motion is of a mere ministerial nature, the granting of which will not prejudice the other parties and which may generally be granted by "leave slip" without the necessity of a motion; or, if the motion is one for a temporary restraining order, if the specific provisions of Civ.R. 65 are satisfied.

B. SERVICE.

Nothing herein shall preclude the requirement that movant serve a copy of such motion upon all adverse parties or notify other parties of leave received. Where leave results in the filing of a pleading or motion to which an adverse party must respond in order to protect his or her interests, the party filing same is required to serve a copy of such pleading or motion, once filed after leave is granted, and apart from any exhibit of same previously served along with request for leave, upon all adverse parties. Nothing in this rule shall be construed so as to abridge the requirements of Civ.R. 65.

V. DISCOVERY

A. DOCUMENT DELIVERY.

Counsel shall deliver to opposing counsel all written reports of medical, non-expert, and expert witnesses expected to be called to testify at trial by each party. Said reports shall be delivered in accordance with the deadlines set forth in the case management order and prior to the pretrial conference.

1. Plaintiff. The plaintiff, counter-claimant, cross-claimant, or a third party claimant shall deliver to all other parties:

- (a) all items of special damages which the party intends to prove, including medical bills, property damage bills (or evidence if there is no bill) and loss of earnings or income. As to loss of earnings or income, the information supplied shall include the name of employers, dates of absences, and rates of pay and shall further include written verification by the employer of such facts. In the case of a self-employed person, sufficient documentation shall be supplied to support the claim of loss of earnings or impairment of working capacity. The court may order such copies of the claimant's income tax returns as the court deems appropriate to be furnished other parties;
- (b) written medical reports, and the substance of any unwritten medical reports, of any doctor rendering medical services to the claimant in connection with the alleged injuries; and,
- (c) written reports, and the substance of unwritten reports, of any expert witness other than medical expert witnesses whose opinion is expected to be offered in evidence at the time of trial, whether such reports are formal or informal, written or verbal.

2. Defendant. The defendant shall deliver to all other parties:

- (a) estimates or reports of property damages sustained by the claimant;
- (b) written medical reports, and the substance of unwritten medical reports, of any doctor who examined the claimant on behalf of any defendant, and of any other doctor who examined the claimant or was consulted by the first doctor in connection with the alleged injuries; and,
- (c) written reports, and the substance of unwritten reports, of any expert witness other than medical expert witnesses whose opinion is expected to be offered in evidence at the time of trial, whether such reports are formal or informal, written or verbal.

3. Expert Witnesses.

- (a) Burden. The party with the burden of proof to a particular issue shall be required to first submit expert reports as to that issue at least thirty days before any pretrial conference. Thereafter, the responding party shall submit opposing expert reports.

- (b) Expert witness to submit report. An expert witness shall not testify unless a written report has been procured from the witness and provided to opposing counsel. It is counsel's responsibility to take reasonable measures, including the procurement of supplemental reports, to insure that each report adequately sets forth the expert witness' opinion. The report of an expert witness must reflect his or her opinion as to each issue on which the expert will testify. An expert witness shall not testify or provide opinions on issues not raised in his or her report.
- (c) Non-party expert witness must submit report. If a party is unable to obtain a written report from a non-party expert witness, counsel for the party must demonstrate that a good faith effort was made to obtain the report and must advise the court and opposing counsel of the name and address of the expert witness, the subject of the expert witness' expertise together with his or her qualifications and a detailed summary of his or her testimony. In the event the non-party expert witness is a treating physician, the court may determine whether the hospital and/or office records of that physician's treatment which have been produced satisfy the requirements of a written report. The court may exclude testimony of the expert witness if good cause is not shown.
- (d) Non-production of non-party expert witness report. If the court finds that good cause exists for the non-production of a non-party expert witness' report, the court shall assess costs of the discovery deposition of the non-complying expert witness against the party offering the testimony of the expert witness unless, upon motion, the court determines such payment would result in a manifest injustice. These costs may include the expert witness' fee, the court reporter's charges and travel costs.
- (e) Non-production of non-party treating physician. If the court finds that good cause exists for the non-production of a non-party treating physician's report, the court shall assess costs of the discovery deposition of the physician equally between the plaintiff and the party or parties seeking discovery of the expert witness. These costs may include the physician's fee, the court reporter's charges and travel costs.
- (f) Mutual exchange required for deposition. A party may take a discovery deposition of their opponent's non-party medical expert witness or other expert witness only after the mutual exchange of written reports has occurred. Upon good cause shown, additional

time after submission of both sides expert witness reports will be provided for these discovery depositions if requested by a party. If a party chooses not to hire an expert witness in opposition to an issue, that party will be permitted to take the discovery deposition of the proponent's expert witness. Except upon good cause, the taking of a discovery deposition of the proponent's non-party expert witness prior to the opponent's submission of an expert witness report constitutes a waiver of the right on the part of the opponent to call an expert witness at trial on the issues raised in the proponent's expert witness' report.

- (g) Any objections to an expert witness' anticipated testimony shall be made prior to the pretrial conference. The court will not consider any such objections at trial.

B. INTERROGATORIES.

Requests for and answers to interrogatories shall be in conformance with Ohio Rules of Civil Procedure and shall not be filed with the court except as necessary exhibits and attachments to appropriate motions, and in accordance with Local Rule III(D)(3). Interrogatories or answers thereto which are filed in violation of this rule shall be stricken sua sponte.

C. RELEASE AND REPRODUCTION OF MEDICAL RECORDS.

1. ORDER.

Upon motion of any party showing good cause and upon notice to all other parties, and prior to the pretrial hearing, the judge may order any hospital in the state, by any agent thereof competent to act in its behalf, to reproduce by copying or other recognized method of facsimile reproduction, all or any portion of designated hospital records or x-rays, which constitute or contain evidence pertinent to an action pending in this court. Such order shall direct the hospital to describe by cover letter the portion or portions of the record reproduced and any omissions therefrom and to specify the usual and reasonable charges therefor, and such order shall designate the person or persons to whom such reproductions shall be delivered or made available.

2. OBJECTIONS.

Objections to the admissibility of such reproduced hospital records on the grounds of materiality or competency shall be deemed reserved for ruling at the time of trial without specific reservation in the order to reproduce. Reproductions made pursuant to this procedure may be admitted in evidence without further identification or authentication, but subject to rulings on objections impliedly or specifically reserved, unless the order otherwise expressly provides.

3. COSTS.

Charges for reproductions of its records shall be paid directly to the hospital concerned by the movant or the movants.

4. RETURN.

Where original records are produced in court and reproductions subsequently substituted by agreement of the parties or by order of the court, the movant or movants shall be responsible for the cost thereof. Unless otherwise ordered by the court, all original records shall be returned by the moving party to the hospital upon entry of judgment in this court.

D. MOTIONS TO COMPEL.

Counsel shall participate in both formal and informal discovery conferences and correspondence to reduce, in every way possible, the filing of unnecessary discovery motions. 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 have first attempted personal consultation and correspondence to resolve differences and the parties are unable to reach an accord. The motion to the court shall make such representations. It shall be the responsibility of counsel for the party seeking discovery to initiate such personal consultation.

E. DEPOSITIONS.

1. PROCEDURE.

Depositions shall be taken in accordance with the Rules of Civil Procedure and the following:

- (a) Scheduling. Counsel shall make a timely and good faith effort to mutually agree to schedules for the taking of depositions. Except for good cause, counsel for the deponent shall not cancel a deposition or limit the length of a deposition without agreement of the examining counsel or order of the court.
- (b) Decorum. Witnesses, parties and counsel shall conduct themselves in a professional, temperate, dignified and responsible manner. Opposing counsel and the deponent shall be treated with civility and respect, and the examining counsel shall not engage in repetitive, harassing or badgering questioning. Ordinarily, the deponent shall be permitted to complete a responsive answer without interruption by counsel.

- (c) Objections. Objections shall be limited to (I) those which would be waived if not made pursuant to Ohio R.Civ.P. 32(D), and (ii) those necessary to assert a privilege, enforce a limitation on evidence directed by the court, present a motion under Ohio R.Civ.P. 30(D) or to assert that the questioning is repetitive, harassing or badgering. No other objections shall be raised during the course of the deposition.
- (d) Speaking Objections. Counsel may interpose an objection by stating “objection” and the legal grounds for the objection. Speaking objections which refer to the facts of the case or suggest an answer to the deponent are improper and shall not be made in the presence of the deponent.
- (e) Instruction Not to Answer. Counsel may instruct a deponent not to answer a question only when necessary to preserve a privilege, enforce a limitation on evidence directed by the court, present a motion under Ohio R.Civ.P. 30(D), or terminate repetitive, harassing or badgering questioning. In the event privilege is claimed, examining counsel may make appropriate inquiry about the basis for asserting the privilege. In the event that the ground for the instruction not to answer is that the questioning has become repetitive, harassing or badgering, and the examining counsel believes that further questioning on the subject is necessary and proper, the examining counsel may apply to the court for the right to pursue such questioning at a later date.
- (f) Irrelevant and Embarrassing Questions. If an attorney objects to a particular line of questioning on the ground that the questioning is being conducted in bad faith, or in such a manner as unreasonably to annoy, embarrass or degrade the deponent, the questioning attorney shall move on to other areas of inquiry, reserving the right to pursue the objected-to questions at a later time, or if the objecting attorney agrees to withdraw the objection or if, as a result of a conference call by the attorneys to the appropriate court, a motion to compel or a motion filed under Civil Rule 30(D), the court determines that the objected-to questions are proper.
- (g) Conferring During Questioning. While a question is pending, counsel for the deponent and the deponent shall not confer, except for the purpose of deciding whether to assert a privilege.
- (h) Documents. During the deposition, examining counsel shall provide opposing counsel and counsel for the deponent with copies of all documents shown to the deponent.

- (i) Sanctions. Where a witness, party or counsel violates any of these rules at a deposition, the court may order sanctions or remedies, including those sanctions and remedies available under Ohio R.Civ.P. 37.
- (j) Method of Objections. Where video tape depositions or written depositions are to be used at trial, objections to any testimony must be brought to the attention of the court by motion, within such time as each court's trial order shall specify, listing the specific objections upon which ruling is required, as well as transcribing those portions pertinent to the objections.
- (k) Trial Objections. No objections to depositions shall be entertained at trial.

VI. JUDGMENT

A. DEFAULT JUDGMENT.

Motions for default judgment, with proof of service on all parties who have appeared, shall be in writing and shall be accompanied by a proposed judgment entry and all necessary documentation, including an affidavit, in support of the requested judgment.

1. HEARING.

If the court sets the matter for hearing, then at the hearing moving counsel shall be prepared to offer testimonial and documentary evidence in support of the claim, and if the claim is for damages, counsel shall present evidence in support of damages. The court may continue the hearing until satisfied that the evidence supports a judgment.

B. COGNOVIT ACTIONS.

In all actions on cognovit notes, the appearance of counsel for the plaintiff and counsel for the defendant shall be required.

C. JOURNAL ENTRIES, FINDINGS AND CONCLUSIONS.

1. RESPONSIBILITY.

The prevailing party shall forthwith provide the court with a judgment entry.

2. TIME.

When a request for findings of fact and conclusions of law is made, the court may direct the party making the written request to prepare, within five days of such request or longer time as the court may order, proposed findings of fact and conclusions of law and submit them to opposing counsel. Within ten days after service upon opposing counsel or parties, the proposed findings shall be submitted to the court with written objections and counter-proposals, if any. However, only those findings of fact and conclusions of law made by the court shall form part of the record. The court may require the proposed judgment entry or findings of fact and conclusions of law to be submitted electronically, by e-mail, or by computer disk.

3. AMENDMENT.

Upon motion of a party, made within ten days after the filing of such findings and conclusions, the court may amend the findings and conclusions, make additional findings and conclusions and may amend the judgment accordingly. Such motion may be made with a motion for a new trial.

4. VACATING JUDGMENT AND LIEN RELEASE.

Every proposed judgment entry which is submitted to the court and which would, if adopted, vacate a prior judgment, and/or release and/or satisfy any lien, shall identify the judgment lien docket and page number or numbers of any such liens which are to be released and/or satisfied, and, in the case of the vacation of a prior judgment, shall identify the date on which the judgment to be vacated was filed.

VII. SPECIAL FORMS OF ACTION

A. REAL PROPERTY ACTIONS.

1. PRELIMINARY STATE OF TITLE.

In actions to quiet title, partition and for the marshaling and foreclosure of liens on real property, the plaintiff's attorney shall procure and file with clerk of the court, at the time of the filing of the complaint, evidence of the state of the record title to the premises in question, including the names of the owners of the property to be sold and a reference to the volume and page of the recording of the next preceding recorded instrument by or through which the owners claim title as the same shall have been prepared and extended by a responsible title or abstract company to a date not over thirty days prior to the filing of the complaint. A true copy certified by the attorney or a copy of the original evidence of title may be filed with the clerk of court in lieu of such original. Upon failure of the attorney for the plaintiff to comply with the foregoing requirement, any cross-complainant or other interested party, upon notice to plaintiff's attorney, may procure leave to furnish and file such evidence of the state of title within thirty days after filing the complaint. Such evidence of title or copy thereof shall become and remain a part of the file in the case. Where the

evidence of title indicates that necessary parties have not been made defendants, the attorney for the party filing the same shall proceed without delay to cause such new parties to be added and served. Failure to file the required evidence of title or failure to add and serve necessary parties may result in dismissal of the action after written notice by the court to counsel.

2. FINAL STATE OF TITLE.

At the time of entry of judgment in any such case, a final certificate of extension of the evidence of title shall be prepared and filed in accordance with the foregoing requirements showing the address or location of the property and the record state of title dated within thirty days of the final decree evidencing changes pertaining to the interest of all necessary parties after filing of the preliminary evidence of title. Such extension shall also become and remain a part of the file in the case.

3. COSTS.

The expense of the title work required under this rule may be taxed as part of the costs against the losing party unless otherwise ordered by the court.

B. SHERIFF'S SALES.

1. PAYMENT METHOD.

On all sales of goods and chattels, the purchase price shall be paid in cash or equivalent unless otherwise ordered by the court.

2. PAYMENT MANNER.

On all sales of real estate, except where the purchaser is the holder of the first lien after the lien of costs, taxes, and assessments, where the sale price is \$1,000.00, or less, the sheriff shall require payment from the purchaser of the amount of the purchaser's bid as soon as the bid is accepted. Where the amount of the bid is more than \$1,000.00, the sheriff shall require a deposit of \$1,000.00 or ten percent of the bid, whichever is greater. The deposit shall be made as soon as the bid is accepted and be by cash, certified personal check, bank check, money order or letter of credit supported by a personal check.

3. PAYMENT BALANCE.

Within thirty days after confirmation of sale is approved by the court, the purchaser shall pay the balance of the purchase price, if any, to the sheriff and, after confirmation of such sale by the court, shall receive the deed. In the event the purchaser is the holder of the first lien, except the lien of costs, taxes and assessments, the purchaser shall pay, within thirty days after confirmation of sale is approved by the court, a sufficient amount to cover the court costs and said taxes and assessments and shall deliver to the sheriff a receipt for the balance of the purchase price, not to exceed the

amount of their lien, and if their bid exceeds the amount due them, plus the amount of said costs, taxes and assessments, the purchaser shall also pay to the sheriff the amount of such excess.

4. PAYMENT FAILURE.

In the event the purchaser does not pay the entire amount due on the purchase price of the premises to the sheriff within said thirty days after confirmation of sale is approved by the court, the purchaser shall be in contempt of this court and the sheriff shall forthwith cause a citation to issue commanding such defaulting purchaser to appear before the judge of this court and show cause why such purchaser should not be held in contempt and an appropriate order issued.

5. NOTICE OF TERMS OF SALE.

The sheriff shall keep a copy of this rule conspicuously posted at the place where the sheriff conducts sales and shall call attention thereto before receiving bids. In each advertisement of sale unless otherwise ordered by the court, the sheriff shall state the terms of sale to be in substance as follows: "Terms of Sale-cash if purchase price is One Thousand Dollars (\$1,000.00) or less. If more than One Thousand Dollars (\$1,000.00) purchase price is to be paid in accordance with the Rule of Court of Common Pleas, Lake County, Ohio, Governing Sheriff's Sales."

6. CONFIRMATION.

The following procedures shall be used regarding the confirmation of sale in foreclosure actions:

- (a) the purchaser shall file a motion to confirm sale, as described in paragraph (C), below;
- (b) notice shall be given in accord with Civil Rule 5 to the debtor, creditors, purchaser or other interested parties unless the decree is approved by all parties; and,
- (c) the court may file a judgment entry of confirmation, following its review of the file, which judgment entry shall identify specifically by volume and page, or other appropriate reference, any lien, encumbrance, or cloud on title being canceled, affected, or removed by virtue of the sale, with appropriate order as to each.

C. CONFIRMATION OF SALE.

1. MOTIONS AND JUDGMENT ENTRY.

The purchaser shall file with the court, together with a prepared judgment entry, a motion to confirm the sale.

2. SERVICE.

A copy of the motion, together with a copy of the proposed confirmation order, shall be served in accordance with the provisions of Civ. R. 5 on all interested parties, unless the entry is approved by all parties.

3. ENCUMBRANCE RELEASE.

The entry of confirmation shall release all liens and mortgages by enumerating the name(s) of the mortgagor(s)/mortgagee(s) and debtor(s)/creditor(s) accompanied by the volume and page of the lien, encumbrance or cloud on title being canceled, affected or removed by virtue of the sale, with appropriate orders as to each.

4. HEARING.

No motion for confirmation of sale shall be heard earlier than the fifteenth day after the filing of the motion.

D. RECEIVERSHIP.

1. INVENTORY.

As soon as practicable after appointment, a receiver shall file an inventory of all property and assets in such receiver's possession unless otherwise ordered by the court.

2. REPORTS.

A receiver shall file reports of receipts and of all monies disbursed (with receipts for same and only after prior court approval) and of his or her acts and transactions as receiver within three months after the date of the appointment and at regular intervals every three months thereafter until discharged or at such other times as the court may direct.

3. COMPENSATION.

Applications for allowance of compensation to receivers or attorneys for receivers shall be made only upon prior notice to creditors, the debtor and other persons in interest as the court may direct. Such applications shall be heard at the convenience of the court.

4. ACCOUNTING.

A detailed final accounting shall be filed and a copy sent to all creditors, the debtor and other persons in interest as the court may direct. Objections to the final accounting shall be heard at the time set for court approval of the final accounting; however, such objections shall be in writing accompanied by a short brief and filed with the clerk of the court prior to the hearing on the final accounting.

E. FIDUCIARIES.

In any matter pending in this court in which a trustee, receiver, or other fiduciary has been appointed by this court, and such fiduciary desires to secure from the court an allowance of compensation for their services and/or for attorney's fees for services rendered, such fiduciary shall file in this court a written application for such allowance containing notice of the time and place for hearing, which shall not be less than five days from the filing of such application. The foregoing requirement for hearing and notice may be waived by the court.

F. NOTARIES PUBLIC.

Every person desiring to secure from a judge of the court of common pleas a certificate as to his or her qualifications and ability to discharge the duties of the office of notary public shall take an examination to be conducted by a committee of six members of the bar appointed by the presiding judge, unless otherwise examined by a judge of the court of common pleas in his or her discretion. The members of such committee shall be appointed to serve a period of one year or until a successor is appointed. Said examination may be oral or written as said committee shall determine, and be conducted on the first Saturday of each month and such other time as the committee may determine. One or more of the committee may act on behalf of the committee, as it shall determine and subject to court approval. Within ten days after the examination, the committee shall report in writing, to the court as to whether or not the applicant possesses the qualifications to discharge the duties of the office of notary public. Said committee may make a reasonable charge to defray costs and expenses of giving examination, subject to approval of the court.

**Lake County
Court of Common Pleas
General Division
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Painesville, OH 44077**

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Judge Eugene A. Lucci

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