

RULES OF THE BEREA MUNICIPAL COURT



Effective June 30, 1995

Amended to June 23, 2014

TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| ADMINISTRATIVE ORDER / JOURNAL ENTRY | 1 |
| PREAMBLE | 2 |
| RULE NO. 1: COURT HOURS | 3 |
| RULE NO. 2: CONDUCT IN COURT | 3 |
| RULE NO. 3: PUBLIC USE OF COURTROOMS (RULES) (MEDIA) | 3 |
| RULE NO. 4: COURT SECURITY | 4 |
| RULE NO. 5: APPEARANCE AND WITHDRAWAL OF COUNSEL AND APPOINTMENT OF COUNSEL TO INDIGENT DEFENDANTS | 4 |
| RULE NO. 6: ELECTRONIC FILING | 5 |
| RULE NO. 7: SERVICE OF PROCESS | 7 |
| RULE NO. 8: MOTIONS AND CONTINUANCE | 7 |
| RULE NO. 9: SCHEDULING OF CASES / RECUSALS / TRANSFERS | 8 |
| RULE NO. 10: COURT RECORD – RECORDING, TRANSCRIPT, PUBLIC REQUESTS | 9 |
| RULE NO. 11: CLERK OF COURT | 9 |
| RULE NO. 12: THE JUDICIARY | 10 |
| RULE NO. 13: MAGISTRATES | 10 |
| RULE NO. 14: ELECTRONICALLY SIGNED DOCUMENTS BY A JUDGE OR MAGISTRATE | 10 |
| RULE NO. 15: BAILIFFS | 10 |
| RULE NO. 16: TRAFFIC / CRIMINAL CASE MANAGEMENT | 10 |
| RULE NO. 17: PROBATION | 12 |
| RULE NO. 18: CIVIL CASE MANAGEMENT | 13 |
| RULE NO. 19: MOTIONS | 14 |
| RULE NO. 20: FORCIBLE ENTRY and DETAINER | 14 |
| RULE NO. 21: SMALL CLAIMS | 16 |
| RULE NO. 22: COURT COSTS AND OTHER MONETARY TRANSACTIONS | 17 |
| RULE NO. 23: RENT ESCROW RULES of COURT | 17 |
| RULE NO. 24: MISCELLANEOUS | 18 |
| APPENDIX A: JURY MANAGEMENT PLAN | 19 |
| JURY RULE 1: SCOPE | 19 |
| JURY RULE 2: JURY POOL | 19 |
| JURY RULE 3: RANDOM DRAW | 19 |
| JURY RULE 4: MANAGEMENT STANDARDS PRIOR TO THE ISSUANCE OF JURY SUMMONS FOR TRIAL DATE CERTAIN | 20 |

TABLE OF CONTENTS

Page

| | |
|--|----|
| JURY RULE 5: NOTICE OF SELECTION FOR JURY POOL AND SUMMONS FOR JURY SERVICE | 21 |
| JURY RULE 6: QUALIFICATION | 22 |
| JURY RULE 7: EXEMPTION | 22 |
| JURY RULE 8: DEFERRAL | 22 |
| JURY RULE 9: TERM OF JURY SERVICE | 23 |
| JURY RULE 10: JUROR SAFETY AND PRIVACY | 23 |
| JURY RULE 11: JURY ORIENTATION | 23 |
| JURY RULE 12: RECORD SHALL BE MADE | 23 |
| JURY RULE 13: JURY PANEL – OATH OR AFFIRMATION BY PROSPECTIVE JURORS | 23 |
| JURY RULE 14: INTRODUCTION TO CASE | 24 |
| JURY RULE 15: EXAMINATION OF PROSPECTIVE JURY PANEL (VOIR DIRE) | 24 |
| JURY RULE 16: NUMBER OF JURORS | 24 |
| JURY RULE 17: CHALLENGE FOR CAUSE | 25 |
| JURY RULE 18: NUMBER OF PEREMPTORY CHALLENGES | 25 |
| JURY RULE 19: OATH OR AFFIRMATION OF THE JURY | 25 |
| JURY RULE 20: PRELIMINARY INSTRUCTIONS | 25 |
| JURY RULE 21: OPENING STATEMENT | 26 |
| JURY RULE 22: PRESENTATION OF EVIDENCE | 26 |
| JURY RULE 23: JUROR TRIAL BOOKS | 26 |
| JURY RULE 24: PROCEDURE FOR JURORS WITH PERSONAL KNOWLEDGE IN CRIMINAL CASES | 26 |
| JURY RULE 25: JURY VIEW | 26 |
| JURY RULE 26: FINAL ARGUMENTS | 27 |
| JURY RULE 27: FINAL INSTRUCTIONS | 27 |
| JURY RULE 28: ASSISTING JURORS AT AN IMPASSE | 27 |
| JURY RULE 29: SEPERATION DURING DELIBERATION | 27 |
| JURY RULE 30: JUDGE TO READ THE VERDICT | 28 |
| ATTACHMENT A: JURY QUESTIONNAIRE | 29 |
| ATTACHMENT B: JURY SUMMONS | 30 |

IN THE BEREA MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO

In Re: Administrative Order)
 The Berea Municipal Court)
 Local Court Rules)
)
) Journal Entry
) June 23, 2014

It is ordered that the following Rules be, and they are hereby, adopted for the governance of the practice and procedures in the Berea Municipal Court effective June 23, 2014 until otherwise amended, pursuant to Article IV, Section 5(B) of the Ohio Constitution and Rule 5 of the Ohio Supreme Court Rules of Superintendence for the Courts of Ohio and have been adopted to provide for the efficient and expeditious management of business before this Court. These Rules are to be known as the Rules of The Berea Municipal Court and may be cited as *BMCR No. ____*.

The Clerk of Court is ordered forthwith to post this Order and the Preamble to the Rules (attached hereto). The Clerk of Court is further ordered to maintain copies of these Rules for review as requested by litigants and / or their counsel and to provide copies as requested charging only for the cost of copying. The Clerk of Court is further ordered to maintain a copy of these rules on the Court's website, www.bereamunicipalcourt.org.

IT IS SO ORDERED.

MARK A. COMSTOCK, JUDGE

Attest:

RAYMOND J. WOHL
CLERK OF COURT
Spread on the Berea Municipal Court Journal
Volume 2014 Page _____

Rules of The Berea Municipal Court

Preamble

The Rules of Court for the Berea Municipal Court hereinafter set forth have been promulgated in accordance with Rule 83 of the Ohio Rules of Civil Procedure, Rule 57 of the Ohio Rules of Criminal Procedure, and Rule 5 of the Rules of Superintendence for the Courts of Ohio and this Court's inherent authority.

All parties having business in The Berea Municipal Court shall follow these rules when filing documents, practicing, appearing or litigating in this Court in addition to, and in conjunction with, the Ohio Rules of Civil Procedure and the Ohio Rules of Criminal Procedure.

JUDGE, Mark A. Comstock
Presiding and Administrative Judge

Date

Rule 1: Court Hours

- A. The Clerk of Court's office shall be open to the public to transact business of the Court 8:00 a.m. to 4:30 p.m. Monday through Friday of each week.
- B. Sessions of Court shall be as set forth and scheduled by the Court. These times are subject to alteration by Court order and public holidays.
- C. The Clerk of Court shall prepare a holiday schedule before the first day of each calendar year, and make same available to any interested party.

Rule 2: Conduct in Court

- A. On opening of any Court session, all persons in the Courtroom shall stand. All persons in the Courtroom shall conduct themselves with decorum and in such manner so as not to interfere with or obstruct judicial activities or proceedings. All persons appearing before the Court shall appear in appropriate attire.
- B. Litigants and/or spectators are not permitted to smoke, eat or drink in the Courtroom nor shall they bring food or drink into the Courtroom.
- C. No person shall loiter or conduct himself or herself in an unseemly or disorderly manner in the Courtroom, halls, stairways, entryways, or parking lots adjacent thereto or otherwise interfere with or obstruct judicial activities or proceedings.
- D. All cell phones, pagers and other sound making devices are to be silenced while in the Courtroom.
- E. No person shall appear for any reason in this Court while under the influence, to any degree, of drugs or alcohol.
- F. Persons bringing small children with them to Court shall, after making their presence known to the bailiff, or other Court personnel, stay out of the Court room until their case is called. Children shall be kept quiet and under control.
- G. The Court expects that counsel shall call these rules to the attention of clients and witnesses.
- H. All counsel appearing before the Court shall be appropriately dressed in business attire.

Rule 3: Public Use of Courtrooms (Rules) (Media)

- A. Questions of admission of persons to a Courtroom shall be the province of the Judge or Magistrate to whom that Courtroom is assigned within the guidelines of public access to all Court proceedings and consistent with the order and dignity of the Court.
- B. Public statements by counsel, Court personnel, and witnesses shall be regulated by the Judge or Magistrate to whom the case is assigned, within the guidelines of public access to Court proceedings, and the right of the parties to be free of improper publicity within areas protected by fundamental rights.
- C. No recording shall be made of any Court proceeding without approval of the Judge or Magistrate conducting the proceeding. All such recording must conform to the guidelines set forth in Ohio Rules of Superintendence for Ohio Courts and these Rules.
- D. Requests for permission to broadcast, record, photograph or televise in the Courtroom shall be made to the Court's bailiff, in a format determined from time to time by him/her. Said request shall

be made as far in advance as possible, but in no event less than one-half (½) hour prior to the beginning of the Court session that will be affected.

- E. The extent of equipment, personnel, lighting, and sound and the location of each in the Courtroom will be determined by the Judge or Magistrate in each instance. The bailiff will consult with the Judge or Magistrate for that purpose and organize the requesting broadcasters/recorders appropriately.
- F. The Judge or Magistrate may prohibit broadcasting, recording, photographing or televising victims of sexual assaults, informants, or undercover police.

Rule 4: Court Security

- A. In order to maintain a safe environment for all those who visit, use and work at this Court, to deter those who would take violent action against the Court or its users, and to sustain the decorum and dignity of this Court, the following rules are imposed:
 - 1. Only authorized personnel are permitted in the Judges chambers and Clerk's offices.
 - 2. In cooperation with the City of Berea, a "magnetometer" machine is installed in the main lobby of the City Hall building, and all persons having business in this Court shall be subject to search thereby.
 - 3. Upon detection of any weapon or contraband of any kind, as determined in the sole discretion of the security personnel on duty, the detected item(s) shall be confiscated by security personnel. A weapon so confiscated may be returned, if at all, only upon the visitor leaving the building. The security personnel may take whatever action they deem appropriate in regards to contraband detected, including involving the Berea Police Department, which may thereby result in criminal charges being brought against the possessor of the contraband.
 - 4. Wackenhut Security is hired to provide Security personnel under the terms and conditions of a contract between the City, Court and Wackenhut.
 - 5. The Chief Bailiff, under the authority of the Judge, shall direct and manage all Security personnel.
 - 6. All litigants, attorneys, Court employees and other visitors to the Berea Municipal Court will follow the directives of the Security personnel under all circumstances.
- B. No persons entering this Court shall have or possess any weapon, or article which may be used as a weapon. Any such weapons are subject to immediate confiscation by security personnel. A bailiff of this Court authorized to carry a weapon and police officers on active duty who have business in this Court, as a function of their employment, are exempt. Off duty police officers are not permitted to possess weapons in the Court building. All weapons, if permitted in Court under this rule, shall be properly maintained and secured at all times.
- C. No persons entering this Court shall have or possess any materials or personal property that is illegal for a citizen of this State or City to possess. Such material or personal property is contraband and is subject to immediate confiscation by security personnel.

Rule 5: Appearance and Withdrawal of Counsel and Appointment of Counsel to Indigent Defendants

- A. Attorneys practicing before this Court shall designate their capacity as trial counsel on all pleadings, motions, petitions, etc. filed in this Court. All such documents shall bear, in addition to

the signature of trial counsel, counsel's name, office address and zip code, office telephone number, as well as the number of counsel's Ohio Supreme Court Certificate of Registration, as provided by Ohio Gov. Bar R. VI, §4. A law firm shall not be designated as trial counsel.

- B. Counsel shall be permitted to withdraw by submission of a written motion stating the reason for the application and:
1. Said motion must contain Certification of Service on opposing counsel, or the opposing party if not represented by counsel, and on the party or parties represented by the withdrawing counsel;
 2. Said motion must state the date and time of the next scheduled Court appearance if any;
 3. Said motion must contain counsel's statement that if the request is allowed a copy of the Journal Entry granting the request will be mailed immediately to the last known address of the party or parties represented by the withdrawing Counsel;
 4. Said motion is to be filed at least seven (7) calendar days prior to the next scheduled hearing.
- C. An Attorney shall be appointed to represent an indigent person only if his/her name appears on the Court Appointed Counsel List. Such appointment shall be random.
- D. In order to be placed upon the Court Appointed Counsel list, an attorney must submit a written request to the Chief Bailiff. Said request must include the attorney's name, business address, Ohio Attorney Registration Number, and affirmation that the attorney is in good standing with the Ohio Supreme Court. The application shall also include any special areas of expertise, such as language fluency or mental health law specialization. Upon ascertaining that the attorney is in good standing with the Ohio Supreme Court, the attorney's name shall be placed on the Court Appointed Counsel List. Said list will be reviewed by the Judge on a quarterly basis. The Chief Bailiff may alter and add to these conditions as he sees fit to promote practical and efficient appointment.
- E. The Court, as it may determine, may decline to accept any application for inclusion on any list, or may remove the name of any attorney from the list at the sole discretion of the Court.
- F. Compensation of such appointed counsel shall be as determined by Cuyahoga County guidelines promulgated for such purpose. Appointed Counsel shall comply with Cuyahoga County rules/regulations in that regard.
- G. Completed fee bills are to be filed with the Clerk of Court's Office and include the original and one copy in compliance with the guidelines set forth by Cuyahoga County.

Rule 6: Electronic Filing

- A. This rule applies to all proceedings and filings in the Berea Municipal Court and all such proceedings and filings are subject to all other Rules herein.
- B. A document filed by fax (abbreviation for facsimile used hereinafter) shall be accepted as the effective original filing. The person making a fax filing need not file any source document (original) with the Clerk of Court, but must maintain in his/her records and have available for production on request by the Court the source document, with original signature as otherwise required under the applicable rules, together with the source copy of the fax cover sheet used for the subject filing.
- C. The source document filed by fax shall be maintained by the person making the filing until the case is closed and all opportunities for post judgment relief are exhausted.

- D. The person filing a document by fax shall also include a cover page containing all of the following information:
1. Name of the Court;
 2. Name, title, telephone number, fax number, and e-mail address of person filing the fax document;
 3. Title of the case;
 4. Case number except where the document being filed is an original filing;
 5. Title of the document being filed (e.g., Defendant Jone's Answer to Amended Complaint; Plaintiff Smith's Response to Defendants' Motion to Dismiss; Plaintiff Smith's Notice of Filing Exhibit "G" to Plaintiff Smith's Response to Defendants' Motion to Dismiss);
 6. Name of the Judge to whom the case is assigned, if any;
 7. Date of fax transmission;
 8. Indication of the number of pages included in the transmission, including the cover page;
 9. If applicable, a statement explaining how costs are being submitted, filing may be held for submission of the required filing fee.
- E. A party who wishes to file a signed source document by fax shall either:
1. Fax a copy of the signed source document; or
 2. Fax a copy of the document without the signature but with the notion "/s/" followed by the name of the signing person where the signature appears in the signed source document.
 3. A party who files a signed document by fax represents that the physically signed source document is in his/her possession or control.
- F. An exhibit to a fax produced document that cannot be accurately transmitted via fax for any reason must be replaced by an insert page describing the exhibit and why it is missing. Unless the Court otherwise orders, the missing exhibit shall be filed with the Court, as a separate document, no later than five (5) Court days following the filing of the fax document. Failure to file the missing exhibits as required by this paragraph may result in the Court striking the document and/or exhibit.
- G. Any exhibit filed in the above manner shall be attached to a cover sheet containing the caption of the case which sets forth the name of the Court, title of the case, the case number, name of the Judge and the title of the exhibit being filed (e.g., Plaintiff City of Berea's Notice of Filing Exhibit 'G' to Plaintiff City of Berea's Response to Defendant's Motion to Dismiss), shall be signed and served in conformity with the rules governing the signing and service of pleadings in this Court.
- H. Subject to provisions of these rules, all documents sent by fax and accepted by the Clerk shall be considered filed with the Clerk of Court as of the date and time the Clerk time-stamps the document received as opposed to the date and time of the fax transmission. The office of the Clerk of Court will be deemed open to receive fax transmissions of documents on the same days and at the same time the Court is regularly open for business. Therefore:

1. Fax filing received after the Court closes on a given business day will be deemed filed with the Clerk of Court as of the opening of the next business day or where date and time stamped by the Clerk of Court, whichever is later.
 2. Fax filings may NOT be sent directly to the Court for filing but may only be transmitted directly through the fax equipment operated by the Clerk of Court.
 3. The Clerk of Court may, but need not, acknowledge receipt of a fax transmission.
 4. The risks of transmitting a document by fax to the Clerk of Court shall be borne entirely by the sending party. Anyone using fax filing is urged to verify receipt and acceptance of such filing by the Clerk of Court through whatever technological means available.
- I. Fax filings shall not exceed ten (10) pages in length.
 - J. The filer shall not transmit service copies by fax.
 - K. Use of electronically produced ticket. The use and filing of a ticket that is produced by computer or other electronic means is hereby authorized in the Berea Municipal Court. The electronically produced ticket shall conform in all substantive respects to the Ohio Uniform Traffic Ticket. If an electronically produced ticket is issued at the scene of an alleged offense, the issuing officer shall provide the defendant with a paper copy of the ticket.

Rule 7: Service of Process

The Clerk of the Berea Municipal Court shall accept service of process methods as outlined in Ohio Civil Rule 4.1. Methods of service shall include “virtual” service of process utilizing advanced postal technology for service by certified mail. This advanced postal technology does not modify Ohio Civil Rule 4.1(1) Service by Certified Mail, but merely provides for advanced electronic and website technology in the sending of certified mail and receipt of confirmation utilizing the court’s website to show to whom the mail was delivered, the date of delivery and address where delivered, all in accordance with the now-existing Ohio Rules of Civil Procedures.

All service of process of complaints or other documents served with virtual services of process are subject to review and/or challenge as further outlined in Ohio Civil Rule 4.1, with confirmation of service of process data being made available through the Clerk’s Office.

Rule 8: Motions and Continuance

- A. All motion’s, and responses thereto, shall be in writing and timely filed as permitted in these Rules and in accordance with Ohio Rules and Statutes.
 1. No case assigned for trial or hearing shall be continued except on written motion and for good cause shown. Such motion shall be presented to the Judge not less than seven (7) business days prior to the date of trial or hearing, except that in the case of unforeseen emergency, this time requirement may be waived. The moving party is required to first discuss the continuance with all opposing counsel, or opposing parties if there is no counsel, and state the reason for the continuance. Any conflicting trial notice, or other supporting documentation, shall be attached to the motion. Counsel shall also set forth at least two (2) other alternative dates for trial, agreeable to the Court and all parties in the case. If within 48 hours of the scheduled hearing or trial the requesting party is required to contact the opposing parties for consent, without an agreement the continuance shall not be granted.

The Judge may, for good cause, waive the requirement that these motions be in writing and/or the timing of them. .

2. Continuance of all other matters (e.g. Sentencing) must be submitted at the earliest possible time, in writing, and suggesting a new date, but in no event sooner than three (3) days prior to date in question, to the Court scheduler. The continuance will be ruled upon at the earliest opportunity.
3. Until the Court grants the requested continuance all parties shall presume that the scheduled event will go forward as scheduled.

Rule 9: Scheduling of Cases/Recusals/Transfers

- A. Actions shall be scheduled for trial in their numerical order, so far as possible, but subject to the following priority:
 1. Cases already in trial, coming over from previous day;
 2. Cases which the Court may advance for trial;
 3. Cases involving the liberty of a person.
- B. The appeal of Administrative License Suspension and/or Vehicle Seizure matters shall be automatically continued from arraignment and heard by a Magistrate on Monday mornings, or the next following business day in case of a holiday. Except that the Court may advance such hearing for good cause shown.
- C. Parties who owe money to the Court under any circumstance may be scheduled on a specially designated docket each month to present their financial circumstances, mitigating facts, and ability to pay to a Magistrate. This is entirely at the discretion of the Court.
- D. Probation Violation cases, changes to Temporary Protection Orders and other similar ad hoc proceedings may be heard by a Magistrate on a specially designated docket each month. This is entirely at the discretion of the Court.
- E. The Judge of the Court may modify the day of the week designated for hearing such ad hoc matters to any day the Court is in operation without amendment to these rules.
- F. Should the Judge recuse himself from hearing any case, for any reason or under any circumstance, the case will be referred to the Chief Justice of The Ohio Supreme Court for Assignment of a Judge in accordance with The Supreme Court's Guidelines for Assignment of Judges.
- G. The Clerk shall not transfer any case pursuant to venue change in application of Ohio Civil Rule 3 (C) until all costs are paid, and, in addition, a check made payable to the transferee Court in the sum sufficient to secure its costs is deposited with the Clerk to accompany the file upon transfer. It shall be the responsibility of the party seeking transfer to ascertain the filing cost in the transferee Court. Failure to comply with this rule within fourteen (14) days from the date of entry as to change of venue may form the basis for dismissal of the action.
- H. The Clerk shall not file and docket any case transferred to this Court pursuant to venue change in application of Ohio Civil Rule 3 (C) until a sum sufficient to secure costs has been deposited. Failure to comply with this rule within fourteen (14) days from receipt of the file from the transferor Court may form the basis for returning the file to the transferor Court.
- I. It shall be the responsibility of any party filing a counterclaim, crossclaim or third-party complaint exceeding the monetary jurisdiction of the Court to also file a motion to certify the case to the Court of Common Pleas. The motion shall be accompanied by a check or money order made payable to the Court of Common Pleas, in a sum of not less than the amount specified as security

costs for the Court. Failure to comply within thirty (30) days of the filing of such counterclaim, crossclaim or third-party complaint shall be grounds for dismissal under Ohio Civil Rule 41 (B).

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

Rule 10: Court Record – Recording, Transcript, Public Requests

- A. All proceedings shall be recorded by audio or video taping at the Court’s discretion. If counsel or a party desires a Court Reporter, that Counsel or party must make their own arrangements for the presence and payment of a Court Reporter, and shall file a written motion seeking to have their Court Reporter named as the Official Court Reporter for said hearing.
- B. The Court, once a fee is paid, will provide the requesting party with an audio and/or video tape or DVD of the proceeding in question. The party will obtain their own typewritten transcript, if at all, at their own cost, from a source outside of the Court.
- C. All audio and/or visual tapes or DVD’s of all proceedings will be maintained on file for a period of one year. These tapes will be recycled and reused after one year unless there is an appeal or other proceedings pending.
- D. All requests for copies of proceedings shall be made in writing to the Chief Bailiff. There will be a fee for each request and the copy shall be in the form of a DVD of the proceedings requested.

Rule 11: Clerk of Court

- A. The Clerk of Court shall maintain such dockets, books of record and indices as are required by law or practical necessity as public record, utilizing microfilm and computers for storage as appropriate and most efficient.
- B. The Clerk of Court shall permit any person to make a copy of any papers filed, in compliance with the Rules of Superintendence for the Courts of Ohio, but original papers filed in any case shall not be removed from the office without prior authority of the Clerk.
- C. The Clerk shall charge the actual cost incurred in responding to a request for access to a court record. The Clerk may require a deposit of the estimated actual cost to copy any such records available to be disseminated.
- D. Except for good cause shown, the Clerk of Court’s office shall not be required to issue subpoenas, nor shall the bailiff be required to serve the same, unless requests are filed with the Clerk at least seven (7) business days prior to the hearing date.
- E. Officers or employees of this Court shall not prepare or help to prepare any pleading, affidavit, entry or order in any Civil matter, except as provided under Ohio Revised Code §1925.

Rule 12: The Judiciary

- A. The single Judge of the Berea Municipal Court shall act as and be both the Presiding Judge and the Administrative Judge as those designations are significant under the Ohio Rules and Statutes.
- B. The Court shall annually appoint Acting Judges pursuant to §1901.10 of the Ohio Revised Code to serve from time to time when the incumbent Judge is temporarily absent or incapacitated. Each such Acting Judge shall have the same power and authority as the incumbent Judge, but only during the times each is sitting as Judge or otherwise specifically designated to act.

Rule 13: Magistrates

- A. The Judge may, at the Judge's sole discretion, appoint such magistrate or magistrates as, from time to time, the Judge may deem necessary to assist in the efficient administration of justice in the Berea Municipal Court.
- B. Notwithstanding any contrary provisions in these Rules, and subject to limitations that may be established by the Court or in Traffic Rule 14, Criminal Rule 19, Civil Rule 53 and Rule 19 of the Ohio Rules of Superintendence, the Judge may refer to a Magistrate, and upon such referral a Magistrate may preside over, any matters so referred.
- C. Any orders or findings issued by a Magistrate shall be in writing and included in the record.
- D. Within fourteen (14) days after the issuance of the Magistrate's Findings, a party may appeal to the Court by filing a written objection to the Finding, stating the objection(s) with particularity. The filing of such an objection does not stay the effectiveness of the Magistrate's Finding unless specifically stayed by the Judge or Magistrate. The objection will be considered by the Court in due course, and the Judge may affirm, reject or modify the Magistrate's Finding without further proceedings, or, the Judge may hear or consider additional evidence and then affirm, reject or modify the Magistrate's Finding.

Rule 14: Electronically Signed Documents by a Judge or Magistrate

- A. The following definitions shall apply to this rule:

Electronic' and 'Electronic Signature' have the same meaning as used in section 1306.01 of the Ohio Revised Code.

The term 'Document' includes journal entries, notices, orders, opinions, and any other filing by a Judge or Magistrate of this Court.

- B. Electronic transmission of a document with an electronic signature by a Judge or Magistrate that is sent in compliance with procedures adopted by the Court shall, upon the complete receipt of the same by the Clerk of Court, constitute filing of the document for all purposes of the Ohio Civil Rules, Ohio Criminal rules, Rules of Superintendence, and the Local Rule of this Court.

Rule 15: Bailiffs

- A. There shall be one bailiff who shall perform duties primarily inside the courtroom and one bailiff who shall perform duties primarily outside the court, and such other bailiffs as the Judge may determine. The inside bailiff shall be the chief bailiff.
- B. In addition to the other duties assigned from time to time, the Chief Bailiff shall be in charge of Court security and may be assisted by deputy bailiffs, as needed. The Chief Bailiff shall supervise and coordinate all of this Court's security personnel.
- C. Court bailiffs may carry firearms while on duty if they have completed the requirement of Ohio Revised Code §109.77(D); and, are approved for the carrying of a firearm by the Judge.
- D. The bailiffs shall follow the written policies and guidelines established by the Court as to security and weapons.

Rule 16: Traffic/Criminal Case Management

- A. The Clerk of The Berea Municipal Court shall require the filing of a written complaint or uniform traffic ticket before placing an individual's name on the Traffic/Criminal docket. In lieu of bond set

by a Judge or Magistrate, the Clerk and/or arresting police are authorized to release a person charged with a misdemeanor traffic/criminal offense based on the Bail Bond Schedule as set forth by this Court. Bond in felony cases shall be set by the Judge at the arraignment.

- B. The defendant, either on his/her own behalf or by and through counsel, may enter one of the following pleas at arraignment:
1. Guilty;
 2. Not guilty;
 3. No contest; or
 4. Not guilty by reason of insanity (except in traffic cases where a not guilty plea by reason of insanity is not applicable).
- C. A defendant may enter a plea of not guilty by letter prior to defendant's scheduled arraignment provided:
1. The letter is sent by Retained or Court Appointed Counsel; and
 2. Right to speedy trial is demanded or waived.
- If right to speedy trial is not addressed, the Court will presume that a right to speedy trial is NOT waived and schedule accordingly.
- In arraignments involving violent crimes or a crime to which there is an alleged victim, plea by letter or fax may be used ONLY with specific authorization of the Judge.
- D. The defendant may request a reasonable continuance of the arraignment by filing a written motion or the defendant may appear in Court at arraignment to request a continuance.
- E. At the Court's discretion, misdemeanor arraignments, traffic arraignments or other court proceedings may be held by means of closed circuit video transmission from any correction facility where a defendant is being held.
1. Video arraignments will be scheduled at a time mutually convenient to the Court and the correctional facility.
 2. Attorneys, retained or appointed, will be notified of the time scheduled for video arraignments, and may be present either at the Court or the correctional facility where the defendant is being held.
- F. The defendant may, upon entry of a plea of "not guilty" or "not guilty by reason of insanity", demand a jury trial in cases where jail is a possible penalty. Also, upon a plea of "not guilty", the Court will inquire as to whether or not statutory provisions regarding speedy trial are to be waived.
- G. Counsel shall be made available to those who the Court determines are indigent and unable to retain representation on their own, based upon criteria created by Cuyahoga County and/or State of Ohio. Each criminal defendant desiring a Court appointed attorney will be required to complete a financial disclosure form attesting to the current financial status of the individual as it pertains to the defendant's ability to retain private counsel.
- H. Pursuant to the requirement in Ohio Criminal Rule 4.1(E), and Ohio Traffic Rule 13, the Court adopts a Waiver Schedule. The Waiver Schedule is available on file with the Clerk of Court.

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

- I. After initial appearance, all cases shall be set for pretrial or trial, as appropriate, by the assignment commissioner within thirty (30) days of said initial appearance, or if a waiver of speedy trial provision document is executed, then at a longer time at the discretion of the Court.

The pretrial shall be conducted in accordance with Ohio Criminal Rule 17.1. Any attorney who fails to appear for pretrial without just cause being shown may be subject to contempt of Court. Failure of the defendant to appear for a pretrial will result in the issuance of a warrant for the defendant's arrest and/or the forfeiture of the defendant's operator's license.

- J. All motions shall be made in writing and accompanied by a written memorandum containing the arguments of counsel, unless the Court orders otherwise. Motions must be filed within the time limits established by the Ohio Rules of Criminal Procedure. Motions shall not be set for oral hearing, unless otherwise required by the Ohio Rules of Criminal Procedure or ordered by the Court.
- K. Each case not resolved at pretrial shall be set for trial to the Court. If a Jury demand is timely filed, then the case will be moved to the jury trial schedule. All attorneys shall notify the Court by 1:00 p.m. of the day preceding the day the case is set for jury trial of any change in plea or jury cost may be assessed to their case.
- L. At any time prior to sentencing, the Court may refer a defendant who has been found guilty to the probation department for a pre-sentence investigation. Upon completion of a pre-sentence investigation, the probation department shall cause a pre-sentence report to be timely filed with the court. The pre-sentence report shall be made available for review by the prosecution and/or the defense prior to sentencing.

Rule 17: Probation

- A. Eligibility for probation will be determined by the Court. Any defendant who is sentenced to probation shall report to the Court Probation Department prior to leaving the building. If no Probation Department personnel are available, the defendant shall contact the Probation Department within two (2) business days after leaving Court to schedule an appointment.
- B. The Probation Department shall provide general rules of probation to each defendant referred by a Judge or Magistrate. These rules shall be signed by the defendant. If the defendant fails to follow or comply with these rules, such failure or compliance may be deemed a probation violation and may result in the scheduling of a probation violation hearing before the Judge or Magistrate.
- C. The Probation Department shall inform each defendant referred by a Judge or Magistrate of the specific terms of their probation. A determination by the Probation Department that a defendant has failed to comply with the terms of probation shall result in the scheduling of a probation violation hearing before a Judge or Magistrate, and may result in the imposition of the maximum sentence allowed by statute for the offense to which the defendant has plead.
- D. The Court will, from time to time, establish a Probation Court Cost which is based upon expense of operating the Probation Department. Such Court cost will be charged in conjunction with other such Court costs under authority of §1901.26(B) of the Ohio Revised Code, and shall be accounted for in a separate fund established for this purpose.

Rule 18: Civil Case Management

- A. Upon the filing of a civil complaint, or other initiating document, and costs paid, a summons shall be served in accordance with the Ohio Rules of Civil Procedure. In the event there is failure of service upon the defendant(s), the Clerk of Court shall notify Plaintiff counsel/pro se litigant immediately. If Plaintiff counsel / pro se litigant fails to obtain service of the summons within six (6) months from the date the case has been filed, then the Clerk of Court shall notify Plaintiff counsel / pro se litigant that the case will be dismissed in thirty (30) days unless cause is shown to the contrary.
- B. Upon perfection of service, and passing of the answer due date with no answer or other responsive pleading having been filed and no action by the Plaintiff, the Clerk of Court may set the matter for review by the Court after ninety (90) days to consider dismissal of the case.
- C. If an answer or other responsive pleading is filed, the Clerk of Court shall immediately forward the file to set for trial or case management conference (CMC) as appropriate.
- D. All contested civil cases, except forcible entry and detainer, replevin, and small claims, shall be initially set for case management conference, after the filing of an answer by the defendant.
- E. Counsel and parties must appear before the Court at the CMC. Insurance adjusters may substitute for their insured if they have authority to settle the case on behalf of their insured. Appearances by telephone will be allowed unless specifically prohibited by the Judge or Magistrate or Law Clerk.
- F. Counsel and/or parties will be encouraged at the CMC by the Magistrate or Law Clerk to review and establish a discovery schedule, organize all pretrial matters, discuss the possibility of settlement, simplify and narrow the issues for trial, reach stipulations of fact not in controversy, shorten the time and expense of trial, consider such other matters as may aid in the disposition of the case, including any appropriate and available alternative dispute resolution programs and to schedule pretrial, if appropriate, and/or trial.
- G. If a pretrial is scheduled, counsel should be prepared at the pretrial to enter into a joint pretrial statement, and complete the case management schedule, also to set forth the possibility or probability of settlement, establish facts which can be stipulated and those remaining in contention, identify special legal issues, if any, and set a final deadline for the amendment of pleadings, the filing of motions, the exchange of expert witness reports and medical and hospital records, the termination of discovery, and the trial of the action. Such statement and hearing schedule may thereafter be adopted as an order by the Court.

A pretrial is available to the parties as an opportunity to revisit settlement possibilities after all or most of discovery has been completed, to discuss other pretrial matters and to finalize discovery. A pretrial need not necessarily be scheduled in all cases, but only where the parties agree that one shall be set.

- H. At the time of the pretrial, the Judge, Magistrate, or Law Clerk may consider other appropriate pretrial matters in accordance with Ohio Civil Rule 16, including the imposition of sanctions as authorized by Ohio Civil Rule 37 and such other matters as may aid in the disposition of the case.
- I. Any party desiring a jury trial in a civil case must demand the same in accordance with the Ohio Rules of Civil Procedure. The jury demand must be in writing, by separate instrument, or by prominent endorsement in the caption of a pleading. The jury demand must be filed in compliance with the time frame set forth in Civil Rule 38(B). See Rules of Jury Management, Appendix A attached.

- J. The party demanding the jury, at the time the demand is made, shall pay the Jury Demand Civil Cost and Deposit. The cost requirement may be waived upon the presentation of evidence, which establishes the indigence of the party demanding the jury, and upon approval of the Judge. See Rules of Jury Management, Appendix A attached.

Each party demanding a jury trial must file, seven (7) full days in advance of trial, a complete set of instructions suitable for charging the jury in the captioned matter. Any party who has not filed a jury demand may also file jury instructions pursuant to this rule in a case where a jury has been demanded by another party to the action.

Parties shall file a trial brief seven (7) days in advance of trial.

Failure to comply with these requirements will result in a waiver of jury.

Rule 19: Motions

- A. All motions and responses to motions must be in writing, on 8 ½ x 11 paper, with no backing, and served on opposing counsel / pro se litigant. All motions must be accompanied by a written memorandum containing argument and citations.
- B. Counsel shall respond, if at all, in writing within fourteen (14) days of service of the motion. All motions will be considered unopposed at the end of the said fourteen (14) day period unless time is extended by the Court.
- C. Motions for Joinder/Consolidation and Separation of Civil Cases shall be addressed to the Judge. The Clerk of Court shall be provided with a sufficient number of copies of any motion filed in accordance with this rule to include a copy in each file affected by the motion. Failure to comply with this provision will result in such partial filing being stricken.
- D. Unless otherwise ordered by the Court, Motions for Summary Judgment shall be decided on the briefs and other attachments without oral arguments. The adverse party may file a brief in opposition within thirty (30) days after service of the motion.
- E. In all cases in which Default Judgment is available to a party by reason of failure of the defendant to answer or appear, a motion for default judgment must be filed within ninety (90) days from the time that the defaulting party must have responded under these rules. Failure to file a motion for default may result in dismissal of the complaint for want of prosecution.

As a part of all such motions for default, proof of damages must be submitted to the Court by affidavit or testimony. For cases based on an account, the account statement must be submitted, along with proof by affidavit or testimony that no subsequent payments have been made on the account. For cases based upon contract a copy of the contract and signature of defendant must be submitted. In all cases a "Military affidavit" or equivalent is required. In all cases without a copy of the signed contract in which the debtor agreed to an interest rate other than provided by statute, the statutory rate of interest will be applied.

Rule 20: Forcible Entry and Detainer

- A. If a complaint in Forcible Entry and Detainer is filed, it shall contain a reason for the eviction, a copy of the notice under Ohio Revised Code §1923.04, and a copy of the written instrument, if any, which created the landlord/tenant relationship. When the plaintiff is a corporation, the complaint must be signed and prosecuted by an attorney. Noncompliance with this rule may result in dismissal of the complaint.

- B. The trial date shall be set forth in the summons. Defendant shall be served at least five (5) days prior to the date set for trial. Motions shall be heard at the trial, unless the assigned Judge or Magistrate directs otherwise. A continuance may be granted as provided in Ohio Revised Code §1923.08.
- C. The Magistrate shall, at the conclusion of each case, serve a copy of his or her findings upon the plaintiff and defendant. Pursuant to law, there shall be no right to object to the Magistrate's findings on a first cause of action in Forcible Entry and Detainer, and the judgment shall be final as if entered by a Judge. This Rule in no way prevents a party's access to the Court of Appeals.
- D. If an Answer and Jury Demand is filed in response to the Complaint in Forcible Entry and Detainer, the Jury Demand must be filed, along with full payment of the Courts required Jury deposit, no later than one (1) day prior to the hearing date. The Clerk shall then forward the case to Assignment to schedule the jury trial.
- E. As for the second cause of action, money damages, these claims shall be scheduled as with all other civil actions.
- F. Enforcement of First Cause Judgment – Writs and Move-outs as follows:
1. If judgment is for the plaintiff on the First Cause (possession), unless otherwise ordered by the Court, the plaintiff may immediately purchase a Writ of Restitution and schedule a move-out with the bailiff.
 2. Writs must be timely purchased. Timely purchase is determined according to the following:
 - a. Within thirty (30) days of the date of judgment.
 - b. Where the judgment is more than thirty (30) days old, but less than sixty (60) days old, plaintiff must file a Motion for Leave to Purchase a Writ and serve a copy of the motion on the defendant(s). The Court may schedule a hearing on the motion or decide the motion on the filing of the parties. Upon the granting of the motion, plaintiff may purchase a writ and schedule a move-out.
 3. Writs must be executed upon (the scheduled move-out must occur) within fifteen (15) business days of issuance by the Clerk's office. If a move-out is stayed or canceled, and more than fifteen (15) business days pass between the date the writ issued and the new move-out date, the plaintiff must purchase a new Writ.
- G. In order to arrange for the physical removal of the defendants and their belongings, the following must occur:
1. Plaintiff must purchase a Writ of Restitution from the Clerk;
 2. Plaintiff must call the Judge's bailiff to schedule the move-out within five (5) days of the purchase of the Writ.
 3. Upon presentation of the receipt, the bailiff shall schedule a move-out date and inform the plaintiff of the scheduled date.
- H. Every move-out scheduled by the Court pursuant to a Writ of Restitution shall be supervised by the bailiff. The actual physical move-out of defendant's belongings shall be conducted by movers hired by the plaintiff.

On the scheduled date and hour, the bailiff shall meet the plaintiff, or his/her agent, at the premises. The bailiff shall enter the premises and remove all inhabitants not lawfully entitled to

possession. The movers shall then conduct the actual physical move-out and place the items on the tree lawn or at such other location as may be approved by the bailiff.

Rule 21: Small Claims

- A. A Small Claim action is commenced by filing a Small Claims Complaint pursuant to Ohio Revised Code §1925.04. No defendant is required to file an answer or statement of defense. If the plaintiff fails to appear under any circumstance at the hearing scheduled in such a case the case will be dismissed at the plaintiff's cost. Should the defendant fail to appear at the scheduled hearing, after being duly served, then a default judgment may be entered against said defendant. All pleadings will be construed to accomplish substantial justice.
- B. Counterclaims, Cross-Claims and Motions to Transfer shall be filed at least seven (7) days prior to the date set for trial, be in accordance with §1925.02, 1925.05 and 1925.10 of the Ohio Revised Code and will not be considered timely unless all fees and costs are first 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 attorney fees.
- C. The hearing in Small Claims Court will be scheduled within forty (40) days of filing and 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. The Magistrate shall issue a Report and Recommendation within sixty (60) days of the hearing.
- D. The Magistrate shall, at the conclusion of each case, serve a copy of his/her findings upon the plaintiff and defendant and inform the parties that they may file objections to the Magistrate's findings within fourteen (14) days, in writing and with the appropriate filing fee. The objections to the Magistrate's findings should state, with specificity, the reasons the objections are being filed and shall be accompanied by a transcript of the prior proceedings. No oral hearing will be granted on the objections unless specifically requested in writing, supported by sufficient grounds, and consented to by the Court. The Court shall, after consideration of the objections to the Magistrate's findings, rule on the objections and shall affirm, reverse or modify the decision, as is appropriate.
- E. When no objections are filed, the Judge shall review the findings of the Magistrate and enter the appropriate judgment.
- F. The Court has prepared information sheets for both plaintiff and defendant in Small Claims. These documents are available from the Clerk of Court's Office. Failure to comply with directives of the information sheets may result in a default or dismissal of the case.
- G. Pursuant to Ohio Revised Code §1925.17, a corporation may file, present or defend a small claims action, by and through a bona fide officer or salaried employee of the corporation. However, an officer or employee of the corporation may not perform any acts of advocacy, which may only be performed by an attorney licensed to practice law in Ohio. The failure of a corporation to obtain counsel prior to the scheduled hearing date may not be considered by the Court as grounds for a continuance on the date scheduled for hearing.

A bona fide officer or salaried employee of a corporation may request a continuance on behalf of the corporation.

Rule 22: Court Costs and Other Monetary Transactions

- A. Except as is set forth below Court costs shall be assessed to the first charge under the case number. (The schedules of Court costs for criminal/traffic cases as well as for civil/small claims cases are set by administrative order; Journal Entry is on file with the Clerk's office).
- B. In addition to Court costs established above, it is determined that, for the efficient operation of the Court, additional funds are necessary to acquire and pay for special projects and services including, but not necessarily limited to, the acquisition of additional facilities or the rehabilitation of existing facilities, the acquisition of equipment, the hiring and training of staff, community service programs, mediation or dispute resolution services, the employment of Magistrates, the training and education of Judges, Acting Judges, and Magistrates, and other related services. All such local costs shall be assessed to each individual charge entered within the case number and are charged by authority of §1901.26(B) of the Ohio Revised Code. The City Finance Director shall establish and keep such "special projects" funds as are appropriate for the deposit of costs so collected.
- C. Whenever a fine is imposed upon a defendant in a Traffic/Criminal case, fines, monies for restitution and costs are expected to be paid immediately, unless otherwise permitted by the Court. If the defendant is unable to make payment in full for all monies required, the defendant may, at the sole discretion of the sentencing Judge, be referred to the Clerk of Court's office to make payment arrangements, or to this Court's Money Owing docket, at the discretion of the Court.
- D. No action, proceeding, motion or other document in a civil matter shall be accepted for filing by the Clerk of Court unless there first shall be deposited the sum of not less than the amount specified in the civil costs section as security costs, unless otherwise ordered by the Court or otherwise exempted by law. See Attachment C for detail of costs and deposits as may be from time to time amended. Those persons unable to post the required security for costs may be excused from the same upon filing of an appropriate affidavit, when approved by the Judge assigned to the case. (The schedules of Court costs for criminal/traffic cases as well as for civil/small claims cases are set by administrative order; Journal Entry is on file with the Clerk's office).

Rule 23: Rent Escrow Rules of Court

- A. These Rent Escrow Rules of Court are established and operated pursuant to Chapter 5321 of the Ohio Revised Code and the Berea Municipal Court Local Rules. A Magistrate or Judge shall hear and decide those cases that cannot be settled by agreement.
- B. The purpose of a Rent Escrow proceeding is to allow the public to resolve minor landlord-tenant disputes quickly, inexpensively and fairly without requiring the involvement of an attorney. Rent Escrow proceedings involve situations where the landlord has failed to maintain the property as required by the Ohio Revised Code §5321.04.
- C. A tenant who wishes to file a rent escrow proceeding must appear before the Clerk of Court's office to complete an application, and pay the required costs. The tenant must meet the following requirements:
 - 1. The tenant must live within the jurisdiction of the Court;
 - 2. The tenant must be current in his/her rent;
 - 3. The tenant must provide the current address of the landlord/or agent;

4. The tenant must have served landlord with a thirty (30) day notice to make repairs pursuant to Ohio Revised Code §5321.04 and provide a copy of same;
5. The landlord must have failed to make substantial repairs to the conditions detailed in the thirty (30) day notice.

Service of the Rent Escrow proceeding shall be by certified mail by the Clerk of Court. The Clerk shall have the tenant sign a request for regular mail service in the event of failure of certified mail service.

- D. Court Costs of 1% of the total amount deposited shall be assessed at the termination of the Rent Escrow proceeding.

Rule 24: Miscellaneous

- A. This Court will construe all pleadings, motions, claims, requests, letters and other written documentation according to law and to do substantial justice.
- B. The Judge shall not communicate with any party to an action currently before the Court, except in the presence of the opposing party.
- C. These rules are designed and intended to supplement the Rules of Superintendence promulgated by the Ohio Supreme Court and the Rules and Statutes of Ohio.
- D. The Jury Management Plan as detailed in Appendix A shall be in effect for all Juries and Jury Trials in the Berea Municipal Court.

Appendix A

Jury Management Plan

Jury Rule 1: Scope

This Local Rule of Practice for Jury Management shall govern petit jury assembly, selection and management in the Berea Municipal Court. It addresses the mandates of Rule 5(B)(2) of the Rules of Superintendence for the Courts of Ohio, requiring each Court to adopt a Jury Management Plan. The Plan addresses the provisions of the Ohio Trial Court Jury Use and Management Standards adopted by the Supreme Court of Ohio in 1993, and Title XXIII of the Ohio Revised Code, as most recently amended. The Rule also takes into consideration the Report and Recommendations of the Supreme Court Ohio Task Force on Jury Service (February 2004), and resulting amendments to the Ohio Rules of Criminal and Civil Procedure. Its purpose is to implement an efficient and comprehensive system of jury use and management for the Berea Municipal Court.

Jury Rule 2: Jury Pool

The Judge of the Berea Municipal Court shall appoint a Jury Commission consisting of not more than seven (7) electors residing in the jurisdiction of the Court. Each Jury Commissioner shall serve at the pleasure of the Judge.

The Jury Commission shall administer the jury assembly process. The Commission may appoint clerical personnel to aid in the administration of the jury system. Such personnel and the Judge and/or Clerk of Court shall cooperate with the Commission in making selected personnel available.

Jury Service is an obligation of all qualified citizens residing in the cities of Berea, Strongsville, Brook Park, Middleburg Heights, Olmsted Falls, and Olmsted Township. The opportunity for jury service shall not be denied or limited on the basis of race, national origin, gender, age, religious belief, income, occupation, disability or any other discriminating factor. As such, the Jury Commission shall compile in every odd calendar year, a jury pool from which individual panels may be randomly selected as needed.

Jury Rule 3: Random Draw

The Jury Source shall be a random list provided by the Cuyahoga County Board of Elections of citizens of the Court District who are registered voters. The Jury Commission shall randomly draw names from the Jury Source list as needed to establish jury panels for jury selection. Prospective jurors shall not be drawn from bystanders or any source except the Jury Source. The Jury Commission, by use of automated data processing software, shall intermix and randomly select the names of a sufficient number of prospective jurors for the ensuing two (2) years. The software system shall be utilized to randomly assign, from the Jury Source, sufficient prospective jurors to specific panels and for assignment during voir dire in a random selection process, while efficiently requesting the services of a minimally sufficient number of jurors needed to accommodate trial activity with a minimum of inconvenience to prospective jurors.

Jury Rule 4: Management Standards Prior to the Issuance of Jury Summons For Trial Date

A panel of prospective jurors shall be summoned by the Clerk of Court upon the filing of a written jury demand, as required by the Ohio Rules of Civil and Criminal Procedure, in cases that have not been resolved at pre-trial or other appropriate hearing.

In civil cases, a jury demand fee and deposit in an amount indicated in the Court's most recent Schedule of Court Costs, shall be assessed and paid prior to summons for jurors. If the jury demand is made upon the filing of a complaint or made upon the filing of a responsive pleading, the Jury Demand Fee and Jury Deposit, in the amount set by said Administrative Entry shall accompany said pleading. In no event shall said fees be received later than noon the day prior to the trial date. The Jury Deposit (as listed in the Court's most recent Schedule of Court Costs) shall be used to pay the stipend to the prospective jurors who have been called in response to the Jury Demand. The Jury Deposit may not completely cover the juror expense. Any additional juror expense will be added to the court costs of the case at hand. In the event either the Deposit or the Demand Fee is not made, this shall be deemed a waiver of the right to a trial by jury in the civil case. A party may petition the Court to determine the party to be indigent and for a waiver of the jury deposit requirement. No deposit shall be required of a party in a criminal/traffic case.

Every effort shall be made to resolve cases prior to summoning a jury. A jury panel shall not be summoned unless it appears that there is a substantial likelihood of trial. The Judge or his designee, shall contact counsel, or the parties, whichever is appropriate, at least two weeks prior to the scheduled trial date. If it appears that trial is inevitable, a jury panel shall be summoned upon Court order at least fourteen (14) days in advance of the trial. If however, the time limitations in a criminal case pursuant to ORC §2945.71 are invoked, than a jury panel summons shall be issued at least seven (7) days prior to the scheduled jury trial. Those costs associated with the summoning of a jury as set by the Court's most recent Schedule of Costs, shall be assessed to the party requesting the jury trial, except the Judge may at his/her sole discretion, assign costs among the parties to do substantial justice.

In cases where multiple civil trials are set for the same date, jury costs shall be assessed to the last case settled on the date of the jury trial, as substantial efforts have been made by the Court to have all issues resolved prior to trial. If a civil case is settled on the date of the jury trial all lawful costs shall be assessed against the party who requested the jury, unless otherwise agreed by consent entry, or at the discretion of the Judge.

Any Jury Deposit funds, not used to pay the Jury stipend, shall be refunded to the party who deposited same after any unpaid costs attributable to that party are deducted.

In cases where multiple traffic/criminal trials are set for the same date, the individual jury service payment shall be assessed at the discretion of the Judge and/or per agreement of the parties. Ultimately, said costs will be assessed based on the motion of the prosecution. If the agreement is that the State or the City pay costs, the cost of summoning the Jury, as well as other court costs, including the cost of paying juror fees, will be assessed to the State or City based on the complaint in the file unless amended. If the agreement is that the defendant is to pay costs, all said court costs shall be assessed to the defendant.

As provided in ORC §2947.23(A)(2)(b) if a jury has not been sworn at the trial of a case because of a defendant's failure to appear without good cause, the costs incurred in summoning jurors for that particular trial may be included in the costs of prosecution. If the costs incurred in summoning jurors are assessed against the defendant, those costs shall be paid to the public treasury from which the jurors were paid.

Jury Rule 5: Notice of Selection for Jury Pool and Summons for Jury Service

As soon as possible after receiving the names from the Jury Source, the Clerk of Court, at the behest of the Jury Commission, shall mail to each person whose name is drawn a juror questionnaire or jury qualification form. The form shall indicate that a jury summons may be issued in the ensuing two (2) years for service as a prospective juror (See Attachment A).

Upon notice of a staff member of the Judge that a case is scheduled for Jury Trial, the Clerk of Court shall send a summons to a panel of prospective jurors upon Court Order at least fourteen (14) days in advance of the scheduled trial date. The Judge may order prospective jurors to appear upon less notice when, in the course of jury selection, it becomes apparent that additional prospective jurors are required in order to complete jury selection, or where there is not a waiver of speedy trial in a criminal case.

Prospective jurors shall be summoned to appear in sufficient numbers to accommodate trial activity. Panels of thirty persons per trial shall be summoned for service unless the Court determines that a lesser or greater number is necessary for a particular trial.

Persons summoned for jury service shall receive a stipend to cover expenses in the amount designated in the most recent Administrative Journal Entry / Schedule regarding same. Such fees shall be promptly paid from the City Treasury, as appropriate, upon the appearance of the prospective jurors on the scheduled date.

Any juror wishing to waive his or her 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 Treasury, as appropriate.

The Summons shall include, the date of service, directions to the Court, parking, public transportation, per diem compensation set by the most current Administrative Journal Entry setting such rate, attire, meals and how to obtain auxiliary aides and services required by the Americans with Disabilities Act. It shall further explain how and when the recipient must respond, the consequences of a failure to respond, and how the recipient may check reporting status by phone. (see Attachment B).

The Summons shall indicate that the term of service for any prospective panel shall be one day or the completion of one trial, whichever is longer.

Departures from random selection shall be permitted only as follows:

1. To exclude persons ineligible for service;
2. To excuse or defer prospective jurors;
3. To remove prospective jurors for cause if challenged peremptorily; or
4. To provide all prospective jurors an opportunity to be called for jury service and to be assigned to a panel.

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 (see Attachment B). All prospective jurors will have previously been requested to complete the basic jury questionnaire form that will have been sent by the Jury Commission prior to the Summons being issued (see Attachment A).

The Summons shall also indicate that written request for seeking disqualification, exception or deferral will be accepted and considered by the Court at the Clerk's Office or on the Court's Web Site at www.bereamunicipalcourt.org. Written records shall be kept regarding Documentation.

Jury Rule 6: Qualification

The Court shall determine if the prospective jurors are qualified to serve, or if disabled but otherwise qualified, could serve with reasonable accommodation. In order to qualify as a juror, a person shall state under oath or affirmation that he or she is:

1. A citizen of the United States;
2. At least eighteen (18) years of age;
3. A resident of the summoning territorial jurisdiction of the Berea Municipal Court;
4. Able to read, speak and understand the English language;
5. Not suffering from a physical or mental disability that prevents him or her from rendering satisfactory jury service;
6. Not under a guardianship appointment because of a mental incapacity; or
7. Not a person who has had rights to vote revoked by reason of a felony conviction and whose rights to vote have not been restored.

Jury Rule 7: Exemption

Only those exemptions expressly provided by statute, narrowly construed, are permitted. 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. Such individuals must be excused by the Judge presiding over the case for which they have been summoned or by the judge's designee. Persons excused from service shall be deferred and may be subject to jury service at a later time. All requests for excusal, exemption or deferral must be made in writing described in Jury Rule 5. Once a prospective juror has submitted his or her request for exemption or deferral, the prospective juror must report for service unless otherwise notified by the Court.

Jury Rule 8: Deferral

The Judge or Judge's designee may authorize deferral of jury service for up to six (6) months upon a showing of hardship, extreme inconvenience, or necessity. All those deferred will remain in the jury pool for the next two years.

Jury Rule 9: Term of Jury Service

A person who appears for service as a petit juror serves until the conclusion of the first trial in which the juror is sworn, regardless of the length of the trial or the manner in which the trial is disposed. A person who appears for service by reporting to the Courthouse and being recorded as present for jury service and not deferred, but is not selected and sworn as a juror, completes the person's service in the Berea Municipal Court when jury selection is completed.

A person who: (1) serves as a juror; or (2) is present until jury selection is completed but is not chosen to serve as a juror, may not be selected for another jury panel during the two (2) year period for which that Jury Source is in effect, until all nonexempt persons in that jury pool for that two (2) year period have been called for jury duty.

Jury Rule 10: Juror Safety and Privacy

Personal information relating to a juror or prospective juror not disclosed in open Court is confidential, other than for the use of the parties and counsel. The Court shall maintain confidentiality to the extent consistent with constitutional and statutory rights of the parties, and with Ohio's Public Records laws.

Jury Rule 11: Jury Orientation

The Court shall provide prospective jurors with orientation prior to the selection process so that they may understand their role in the legal system. Jury Orientation shall include a standard presentation recommended by the Ohio Rules of Superintendence for the Courts of Ohio, Appendix B, Jury Management Standards, Standard 16.

Jury Rule 12: Record Shall be Made

Jury selection shall be recorded including all sidebar conferences. The parties may waive this process in civil matters, but only if the waiver is on the record.

Jury Rule 13: Jury Panel – Oath or Affirmation by Prospective Jurors

The jury panel consists of those prospective jurors who answered their Summons by reporting for jury service. Prior to Voir Dire the Judge or Judge's Bailiff shall administer the following Oath to the prospective jurors of the jury panel:

OATH:

“YOU AND EACH OF YOU DO SOLEMNLY SWEAR THAT YOU WILL TRUTHFULLY ANSWER THE QUESTIONS ASKED OF YOU BY THE ATTORNEY FOR THE STATE OF OHIO, CITY OF _____ AND THE DEFENDANT, AND BY THIS COURT IN REGARDS TO YOUR QUALIFICATIONS TO ACT AS A JUROR IN THIS CASE ENTITLED STATE OF OHIO, CITY OF _____ VS. _____ AND THIS YOU SO DO, AS YOU SHALL ANSWER TO GOD.”

AFFIRMATION:

“YOU AND EACH OF YOU DO SOLEMNLY SWEAR OR AFFIRM THAT YOU WILL DILIGENTLY INQUIRE INTO AND CAREFULLY DELIBERATE ALL MATTERS BETWEEN THE STATE OF OHIO, CITY OF _____ AND THE DEFENDANT. DO YOU SWEAR AND

AFFIRM YOU WILL DO THIS TO THE BEST OF YOUR SKILL AND UNDERSTANDING, WITHOUT BIAS OR PREJUDICE, SO HELP YOU GOD?"

Jury Rule 14: Introduction to Case

After welcoming the jury panel, the Judge shall introduce the panel to the case. The Judge's introduction to the case shall include at least the following:

1. Introduction of the participants;
2. The nature of the case;
3. The applicable standard of proof;
4. The applicable burden(s) of proof;
5. The presumption of innocence in a criminal case;
6. The appropriate means by which jurors may address their private concerns to the judge;
7. The appropriate standard of juror conduct;
8. The anticipated course of proceedings during trial; and
9. The rules regarding challenges.

To facilitate the jury panel's understanding of the general nature of the case, with consultation of the parties, the Judge may give jurors a brief introduction to the case. The brief introduction may include a general description of the legal claims and defenses of the parties.

Jury Rule 15: Examination of Prospective Jury Panel (Voir Dire)

Examination of prospective jurors shall be governed by Ohio Rule of Civil Procedure 47(B) and Ohio Rule of Criminal Procedure 24(B).

Examination of prospective jurors shall be limited to matters relevant to determining whether to remove a juror for cause, and to determine the juror's fairness and impartiality.

To reduce the time required for voir dire, basic background information regarding panel members shall be made available to counsel in writing for each party on the day on which jury selection is to begin.

Jury Rule 16: Number of Jurors

In all *traffic/criminal* cases in the Berea Municipal Court, the jury shall consist of eight (8) persons. The Court shall determine the number of alternate jurors to be seated. The verdict shall be unanimous.

In all *civil* cases in the Berea Municipal Court, the jury shall consist of six (6) persons, unless the parties agree to a lesser number of jurors before the jury is selected. The Court shall determine the number of alternate jurors to be seated. The verdict shall conform to existing Ohio Law and may be determined by simple majority of the jurors (e.g. four (4) out of six (6)).

Jury Rule 17: Challenge for Cause

In both civil and criminal cases, the parties shall make all challenges for cause before the jury is sworn to try the case, or upon a showing of good cause for the delay, before the jury retires to deliberate. If the Judge determines during the voir dire process that any individual is unable or unwilling to hear the particular case at issue fairly and impartially, that individual shall be removed from the panel. Such a determination may be made on motion of counsel or by the Judge.

Jury Rule 18: Number of Peremptory Challenges

Peremptory challenges shall be exercised alternatively as presently established by Ohio Revised Code §2945.23, Ohio Civil Rule 47, and Ohio Criminal Rule 24. All challenges shall be made in open Court. Peremptory challenges shall be limited to that number as established by the Rules of Civil and Criminal Procedure, and as governed by Procedure 41(C) challenges to prospective jurors, effective 7/1/2005, and Ohio Rule of Criminal Procedure (D) peremptory challenges, effective 7/1/2005.

Jury Rule 19: Oath or Affirmation of the Jury

After the jury has been selected, but before commencement of the trial, the Judge or the Bailiff shall administer the following oath or affirmation to the jury, including alternate juror(s):

OATH:

“YOU AND EACH OF YOU DO SOLEMNLY SWEAR THAT YOU WILL TRUTHFULLY ANSWER THE QUESTIONS ASKED OF YOU BY THE ATTORNEY FOR THE STATE OF OHIO, CITY OF _____ AND THE DEFENDANT, AND BY THIS COURT IN REGARDS TO YOUR QUALIFICATIONS TO ACT AS A JUROR IN THIS CASE ENTITLED STATE OF OHIO, CITY OF _____ VS. _____ AND THIS YOU SO DO, AS YOU SHALL ANSWER TO GOD.”

AFFIRMATION:

“YOU AND EACH OF YOU DO SOLEMNLY SWEAR OR AFFIRM THAT YOU WILL DILIGENTLY INQUIRE INTO AND CAREFULLY DELIBERATE ALL MATTERS BETWEEN THE STATE OF OHIO, CITY OF _____ AND THE DEFENDANT. DO YOU SWEAR AND AFFIRM YOU WILL DO THIS TO THE BEST OF YOUR SKILL AND UNDERSTANDING, WITHOUT BIAS OR PREJUDICE, SO HELP YOU GOD?”

Jury Rule 20: Preliminary Instructions

The Court shall instruct the jury before opening statements by reading the appropriate instructions that shall include at least the following:

1. The issues for trial;
2. The credibility of witnesses and the manner of weighing the testimony to be received;
3. That each juror may take notes during the trial and paper shall be provided, but note taking shall not interfere with the attention to the testimony; Ohio Civil Rule of Procedure 47 (E) and Ohio Criminal Rule of Procedure 24;
4. The personal knowledge procedure under Rule 25;

5. The order in which the case will proceed;
6. That a juror may seek to ask questions of the witnesses by submission of questions in writing. (Ohio Rule of Civil. Pro. 47 (F)); and
7. That a juror is not permitted to discuss the evidence among themselves in the jury room during recesses from trial. The Court shall admonish jurors not to discuss the case with anyone other than fellow jurors in their jury deliberation when all has been presented to them, after the instructions.

Jury Rule 21: Opening Statement

In *traffic/criminal* cases, the prosecution shall state briefly the evidence that supports its case. The defense may then state briefly the evidence in support of the defense, but has the choice to decline to make an opening statement.

In *civil* cases, the party with the burden of going forward may briefly state the evidence that supports its case. The adverse party may then briefly state the evidence in support of its case.

Jury Rule 22: Presentation of Evidence

Unless the Court otherwise directs, the party with the burden of going forward shall present evidence first, followed by the presentation of evidence by the adverse party.

Jury Rule 23: Juror Trial Books

In both criminal and civil cases, the Court may authorize the use of juror trial books to aid jurors in the performance of their duties.

Juror trial books may contain:

1. All given instructions;
2. Information regarding the anticipated trial schedule;
3. Witness lists; and
4. Copies of exhibits admitted for trial.

Jury Rule 24: Procedure for Jurors with Personal Knowledge in Criminal Cases

If the Court receives information that a juror has personal knowledge about the case, the Court shall examine the juror under oath, concerning that knowledge, in the presence of the parties and outside the presence of the other jurors.

If the Court finds that the juror has personal knowledge of a material fact, the juror shall be excused, and the Court shall replace that juror with an alternate. If there is no alternate juror, then the Court shall discharge the jury without prejudice, unless the parties agree to submit the cause to the remaining jurors.

Jury Rule 25: Jury View

When the Court determines it is proper, the Court may order the jury to view:

1. The real or personal property which is the subject of the case; or

2. The place in which a material fact occurred.

The place shall be shown to the jury by a person appointed by the Court for that purpose. While the jury is absent for the view, no person, other than the person appointed to show the place to the jury, shall speak to the jury on any subject connected with the trial. Counsel for the parties shall have the right to accompany the jury but shall not speak to the jury.

Jury Rule 26: Final Arguments

When the evidence is concluded, the parties may, by agreement in open Court, submit the case without argument to the jury.

If the parties argue the case to the jury, the party with the burden of going forward shall open and close the argument. If the party with the burden of going forward declines to open the argument, the adverse party may then argue its case. In criminal cases, if the defense declines to argue its case after the prosecution has made its closing argument, then that shall be the only argument allowed in the case.

In criminal cases, the party with the burden of going forward is the prosecution. In civil cases, the party with the burden of going forward is the plaintiff.

Jury Rule 27: Final Instructions

The Court shall read the appropriate final instructions. The Court shall reduce its final instructions to writing or make an audio, electronic or other recording of those instructions, provide at least one written copy or recording of those instructions to the jury for use during deliberations, and preserve those instructions for the record.

Jury Rule 28: Assisting Jurors at an Impasse

If the jury advises the Court that it has reached an impasse in its deliberations, the Court may, but only in the presence of counsel, and in a criminal case, the parties, inquire of the jurors to determine whether and how the Court and counsel can assist them in their deliberative process. After receiving the jurors' response, if any, the Court, after consultation with counsel, may direct that further proceedings occur as appropriate.

Jury Rule 29: Separation During Deliberation

The Court in its discretion may permit the jury in civil and criminal cases to separate during deliberations. However, before the jurors are permitted to separate, the Court shall instruct them that while they are separated they shall:

1. Not discuss the case among themselves or with anyone else;
2. Not talk to the attorneys, parties or witnesses;
3. Not express any opinion about the case; and
4. Not listen to or read any outside media accounts of the trial.

Jury Rule 30: Judge to Read the Verdict

When the jury has agreed upon its verdict, the jurors shall sign the appropriate verdict form in ink. When the jurors return to the Courtroom, the Judge shall request the foreperson to read the verdict. Upon the request of either party, the Court may poll the jury. If a juror dissents from the verdict, the jury shall again be sent out to deliberate.

Attachment A

BEREA MUNICIPAL COURT
11 BEREAS COMMONS
BEREA, OH 44017
Phone: 440-826-5860 - Fax: 440-891-3387

NAME
ADDRESS
CITY, STATE ZIP

Date:

We are pleased to inform you that you have been selected to be part of the biannual jury pool of the BEREAS MUNICIPAL COURT during the next two years.

An individual Jury Trial in this Court generally lasts one day and involves cases such as Driving While Under the Influence of Alcohol, Criminal Misdemeanors such as Assault, Domestic Violence, or Theft, and Civil Cases which are demands for payment of money. You will be part of a group of 30 – 40 prospective jurors who will be asked to be available over a three day period. Most jurors find jury service to be an interesting and rewarding experience. The Court will notify you by mail approximately three weeks prior to the exact date of your jury service.

Persons with distinct defects of sight, hearing or illnesses may be excused from jury duty by including with this questionnaire a **signed doctor's excuse** stating it is impossible for the patient to serve on jury duty due to their medical condition.

Please answer the questions on the enclosed questionnaire and return it within ten (10) days of receipt in the enclosed envelope. Under penalty as prescribed by the Ohio Revised Code, failure to comply could result in Contempt of Court proceedings against you.

We look forward to seeing you and thank you for your participation in this important civic duty.

Sincerely,

Raymond J. Wohl
Clerk of Court

Mark A. Comstock
Judge

DALE FINLEY – CHARLES HAWK – JIM COLE – JACK KAUFER
JURY COMMISSIONERS

**BEREA MUNICIPAL COURT
JURY QUESTIONNAIRE**

ALL QUESTIONS MUST BE ANSWERED

PLEASE PRINT

Last Name First Middle Initial Birth Date (optional)

Number & Street City State Zip

Your Occupation Home Phone

Name and Place of Employment Business Phone

Have you ever served as a Juror? If so, when and where? _____

If you have any physical disability which would hinder your serving as a juror, including impaired sight or hearing, state its nature and extent.

If you know of any reason why you cannot serve as a juror, state it here: _____

I solemnly affirm that the answers to the foregoing questions are true and correct to the best of my knowledge and belief.

Signature

Date

PLEASE RETURN IN THE SELF-ADDRESSED ENVELOPE WITHIN 10 DAYS.

Attachment B



Berea Municipal Court

11 Bera Commons ? Bera, Ohio 44017
www.bereamunicipal.org

Mark A. Comstock
Judge

Raymond J. Wohl
Clerk of Courts

Magistrates
Ryan A. Glaze
Christopher L. Greene
S. Robert E. Lazzaro
Marisa Mayer

Law Clerk
Gino Zomparelli
Paul T. Kirner

Date

[JUROR NAME]
[JUROR ADDRESS]
[JUROR ADDRESS 2]
[JUROR CITY STATE]

JURY SUMMONS

Dear [JUROR NAME],

Your name has been drawn to appear as a Juror at the BERA MUNICIPAL COURT. You are hereby summoned to appear on Tuesday, [DATETOREPORT] at 8:30 a.m. to serve as a Petit Juror.

As cases are many times settled, the Court will keep you updated on jury status. Please call (440) 891-3304 after 5:30 p.m. **the evening before** you are scheduled to appear to check for the updates regarding the status of your appearance.

The BERA MUNICIPAL COURT is located on the second floor of Bera City Hall, located at 11 Bera Commons, next to the Bera Police Department. For your convenience please park in the lot behind the Police Department, as this lot is for unrestricted parking.

Failure to appear on your assigned date could result in a Contempt of Court Hearing being scheduled and a warrant being issued for your arrest.

Thank you for participating in this important civic duty.

Very truly yours,

THE BERA MUNICIPAL COURT

Serving
Bera
Brook Park
Middleburg Heights
Olmsted Falls
Olmsted Township
Strongsville
Ohio State Patrol
Cleveland MetroParks

Raymond J. Wohl
Clerk of Courts

RJW/sjp