

BEREA MUNICIPAL COURT

RULES OF COURT



Effective June 30, 1995

Amended to July 31, 2006

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Preamble: The following uniform rules for Municipal Courts in the Greater Cleveland area as amended to fit the needs of The Berea Municipal Court are intended to cover areas where the courts have common problems and are not intended to limit the courts in the promulgation of rules pertaining to the specific problems of any court.

These rules are further intended to supplement the Ohio Rules of Civil Procedure. The following rules shall be effective upon adoption, by each individual Court, and, the filing of the same thereafter with the Supreme Court of the State of Ohio as required under the Ohio Rules of Civil Procedure, Rule No. 83.

Rule No. 1 - Hours of Court Sessions

The offices of the Court shall be open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, prevailing time, or earlier or later as so ordered by the Court, at its discretion. Sessions of all Branches of the Court shall be conducted on days Monday through Friday. These times may be extended or diminished by special order of the Court.

Rule No. 2 - Examination of Files

The Berea Municipal Court practices an open system with open file policies. All documents are a matter of public record with the information contained therein being freely accessible.

When a person wishes to review a court case, THERE WILL BE SUPERVISION of that person's review of that case. The concern is that documents such as pleadings, exhibits, etc. as contained in the court file, may be removed without permission. If the person reviewing the file wishes to have copies from the court file, the requesting party will be charged the standard rate for copies (\$.10 per page/minimum \$1.00).

No file will be handed through the glass windows at the counters to the requesting party. The party will be allowed to review a file in the Clerk's Office with a Deputy Clerk or with another Court employee in attendance.

Rule No. 3 - Withdrawal of Files

The Clerk of Court shall **NOT** permit original files of his office pertaining to cases entered upon the Appearance Docket, to be taken from his office and custody, unless

the same are to be delivered to a Judge or Magistrate of said Court or unless an entry authorizing the same is made by the Court and is entered upon the journal. **Rule No. 4 - Formalities of Documents**

- A. **Parties.** Every complaint shall contain in the caption thereof, the full names and addresses of all parties to the action, and on any Cross-Claim or Counter-Claim or any pleading adding new parties, the addresses of such new parties shall be given in the caption of such pleading.

This rule shall not apply when it is alleged that such address is unknown.

- B. **Counsel.** Every first pleading, including motions and first leave to move or plead of counsel first entering the case, shall contain the office address and telephone number of the counsel filing the same, and his/her Ohio Supreme Court Registration Number.

- C. **Forms. All forms filed in The Berea Municipal Court shall be on 8 1/2 x 11" paper.** All pleadings, motions, interrogatories and all other papers filed in an action shall state in the caption the general nature of the pleading, e.g. "Complaint", "Answer", "Motion", "Interrogatories" or other appropriate designation.

It shall **NOT** be necessary to furnish a cover sheet for any document to be filed where the office address and telephone number of counsel filing the same appears upon the document.

Any pleading, motion, or leave filed not in compliance with this rule shall be reported by the Clerk of Court to the Judge of this court and may be stricken from the files on the Court's own motion.

Rule No. 5 - Costs

- A. **NO** action or proceeding shall be accepted for filing by the Clerk of Court unless there is deposited the sum of money set forth in the **Schedule of Costs** established from time to time by this Court and which schedule shall be posted in a conspicuous place in the Offices of the Clerk of Court.

- B. Documents may be submitted to Court via FAX machine. If this is done, the party sending the document by **FAX MUST** mail or personally deliver to the Clerks Office the original documents and the required Court Costs/Filing Fee.

All documents submitted via FAX will be held on file until the **ORIGINAL DOCUMENT** and the **FILING FEE** are received.

- C. Upon representation of any party of INDIGENCY, the bailiff shall investigate the accuracy of such representation and upon finding that such indigency does exist, the security for costs may be waived by the Clerk.

- D. In the event a PANEL OF JURORS appears for service and the trial is continued or postponed or does not go forward for any other reason, due to the failure of a party or his counsel to appear, such offending party **SHALL** be assessed the per diem costs of the panel, unless such failure to appear is as a result of extreme emergency or conditions beyond control of the party or counsel as the same may be determined by the Court.

Jury Demand - Summons

CIVIL:

Upon filing a Jury Demand, the following costs must be deposited by the filing party with the Clerk of Courts:

- \$75.00 Jury Demand Cost
- \$100.00 Jury Summons Cost
- \$750.00 Juror Cost Deposit

Upon disposition of the Case for which the above court costs were deposited, the Court will determine which party is responsible for the costs. When the depositing party is not responsible for the costs, the deposited funds will be returned, only after the Court has received payment of all court costs in Full from the responsible party.

TRAFFIC/CRIMINAL:

Each Traffic or Criminal Case requesting a Jury Trial will be assessed a \$75.00 Demand Fee regardless of whether or not the case is heard. This includes reductions, pleas or dismissals. No fees for a Jury are due until case disposition.

In addition, a \$100.00 Summons Fee will be assessed to each Defendant if the Case is not resolved (dismissal, plea or reduction) by Friday at 4:00 p.m. of the week prior to scheduled Trial. These costs will not be assessed until case disposition.

IF A JURY IS CALLED AND SIGNED IN:

Case that is heard will be charged the \$25.00 Per Juror Fee.

If "X" number of cases are scheduled - 1 prime and 'X' backups - and all settle by Friday of prior week, no jury fee (\$25.00) will be assessed. No one will pay \$100.00. All will pay the Jury Demand of \$75.00.

PLEASE NOTE!!!!!!

In all cases, if the required fees are not paid on a timely basis, the Jury Demand will be deemed to be waived and the Case will proceed as a bench trial to the Judge.

Rule No. 6 - Leave to Move or Plead

Except in actions for Forcible Entry and Detainer (Evictions) or in replevin, when a party in any case is not prepared to move or plead by answer day, **ONE EXTENSION** of time may be had upon application to the Court and without notice for a period not exceeding thirty (30) days.

Consent of counsel may be filed as a Journal Entry in the Case and shall be evidence of "Good cause shown". Any Leave to Move or Plead thereafter may be had only with the approval of the Court and upon application to the Court, with notice to the opposing party or counsel, and for good cause shown. Consent of opposing a party or counsel shall not, in and of itself, constitute cause.

- A. Counsel filing any motion or exception shall file therewith a **MEMORANDUM** containing a short, concise statement of the points relied upon and the authorities supporting such contentions and a true copy of it shall be served forthwith upon each opposing counsel and each party not represented by counsel.
- B. Unless the time be extended by the Court, a motion directed to any pleading shall be filed within the time allowed by the Ohio Rules of Civil Procedure for a responsive pleading.
- C. Any motion or exception to be heard upon evidence shall so state and shall be accompanied by requisite affidavits.
- D. Opposing counsel **SHALL**, within ten (10) days after receiving a copy of such motion or exception, file an answer, brief, or memorandum of like character. Copies thereof, shall be furnished and delivered as provided in Paragraph (A) of this rule.

Rule No. 7 - Continuances

CIVIL: NO CONTINUANCE will be considered if filed within 48 hours of Trial or Hearing Date unless the moving party is able to obtain the consent of the opposing party in writing and that consent is filed with the Court prior to the Trial or Hearing Date. With consent, said Continuance will be granted. The moving party has the responsibility of obtaining the other party's consent/agreement for a Continuance.

When a Continuance is requested earlier than the 48 hour period as discussed above, no party shall be granted a Continuance of a Trial or Hearing without a **WRITTEN MOTION** from the moving party or his counsel stating the reason for the requested Continuance.

When a Continuance is requested for the reason that counsel is scheduled to appear in another case assigned for Trial on the same date in the same or another Trial Court of

equal jurisdiction of this state, the case which was first set for Trial shall have priority and shall be tried on the date assigned. Common Pleas Court always has priority.

Any and all costs to be assessed to the moving party.

Criminal cases assigned for Trial have priority over civil cases assigned for Trial. The granting of any other request for Continuance of a scheduled Trial is a matter within the discretion of the Trial Court.

A. Journal Entries

The Journal Entry shall state which party will pay the court costs.

TRAFFIC/CRIMINAL:

- All motions for Continuance must have proof of conflict attached and must be filed NO later than three working days before the scheduled court date.
- Continuance requests for TRIALS must also include the Prosecutors consent; the consent must be obtained by the requesting party.
- All continuance requests are subject to the Courts approval.

Rule No. 8 - Times for Hearings of Motions

- A. Unless otherwise ordered by the Court, all motions and exceptions shall be submitted to and determined by the court ***WITHOUT*** oral hearing.
- B. The foregoing rule shall not apply to any motion to be heard upon evidence, when that fact is stated in the motion or exception. In such cases, moving party shall be responsible for obtaining a hearing time and informing opposing parties or counsel.

Rule No. 9 - Failure to File Answer Brief

Failure to file answer brief in response to any motion will not necessarily be considered as an admission. All motions will be considered on the merits regardless of lack of response by the opposing party.

Rule No. 10 - Pre-Trial Procedure

The Court may order any case, civil or criminal, except Forcible Entry and Detainer or Replevin, to be set for a pre-trial hearing at any time after the case is at issue.

Counsel and parties must appear before the Court at the time designated in the notice provided by the Court.

Counsel ***MUST*** have complete authority to stipulate on items of evidence and admissions and must have full settlement authority. In civil pre-trials, the party need not be present if: counsel is present and has full authority to make decisions, and the party is available by telephone during the pre-trial.

The primary purpose of the pre-trial hearing shall be to achieve a settlement. If the Court concludes that settlement is unattainable, then the Court may attempt to narrow the legal issues, to reach stipulations as to facts not in controversy, and to shorten the time and expense of trial.

A memorandum may be prepared by the Court reciting actions taken at the conference, which may be made an order of the Court and which shall govern the subsequent course of the action.

The Court in its discretion may advance a pending case for pre-trial at any time.

Rule No. 11 - Trial Brief

Where a Trial Brief is required by order of the Court, counsel for each party shall deliver a copy to the Court and all other counsel at least one week prior to commencement of trial. The briefs shall relate to the issue or issues referred to in the order and contain authorities supporting the propositions which counsel intends asserting during trial. Delivery may be made by ordinary mail with a proof of service appended to each brief.

Rule No. 12 - Assignment of Cases (Civil)

- A. Actions for Replevin shall be set for hearing not less than twenty (20) days after issuance of summons.
- B. Actions in Forcible Entry and Detainer shall be set for hearing no more than ten (10) days after the issuance of summons.
- C. All other actions shall be assigned for trial after they are at issue, in their numerical order of filing as far as possible, except that actions involving the liberty of the person, wages, possession of property, and cases carried over from previous days or specially set by the Court shall be preferred.
- D. Notice of any proceeding requiring personal appearance of parties or counsel except as noted in (A) and (B) above, shall be mailed or communicated to the parties or counsel not less than fourteen (14) days prior to the date of the appearance.

Rule No. 13 - Passing

No case assigned for trial may be passed except on oral or written motion for good cause shown. Such motion shall be presented to the Judge who is to try the case not more than three days after receipt by counsel of notice of the assignment, except that in case of unforeseen emergency, this time requirement may be waived.

Rule No. 14 - Journal Entries to be Furnished

In any case in which a judgment, decree or order is made by the Court excepting orders of the court sustaining or overruling motions unless the journal entry is to be prepared in the court, the prevailing party shall within ten (10) days after the making of such decree, judgment or order, prepare and submit to the opposing counsel in the case a journal entry of such judgment, decree or order. Then said entry shall be submitted for approval to the court. When such journal entry is submitted to opposing counsel, such counsel shall approve or reject the same within seven (7) days thereafter. If the prevailing party fails to furnish such entry to opposing counsel within such time, the Clerk of Court on the application of counsel for the losing party shall call such case to the attention of the Court who may dismiss the same for want of prosecution or make such order as may be proper under the circumstances.

Rule No. 15 - Defaults - Dismissal by the Court

Pursuant to Ohio Civil Rule 55 regarding Entry of Default Judgment, when a party against whom a Judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by the Ohio Civil Rules, the party entitled to a Judgment by Default shall apply in writing or orally to the Court therefore. In order to enable the Court to enter Judgment or carry it into effect, if it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the Court may conduct such hearings or order such references as it deems necessary and proper.

Rule No. 16 - Settlements - Notification to Court

After a cause has been set for pre-trial, trial or other proceedings requiring personal appearance, a request for dismissal by the plaintiff or by agreement of the parties due to settlement or some other reason shall be submitted in writing to the court as soon as reasonably possible, after prompt notification by telephone to the Clerk of Court. Failure to give such **WRITTEN NOTICE OF SETTLEMENT** and non-appearance of the parties shall subject the action to dismissal by the Court at plaintiff's costs.

Rule No. 17 - Satisfaction - Payment of Costs

- A. No Satisfaction of Judgment shall be entered by the Clerk of Court unless and until all court costs have been paid.
- B. No person other than the Clerk of Court or a Deputy Clerk may enter satisfaction of judgment upon the records of the Court.

Rule No. 18 - Unpaid Costs - New Cases Not To Be Filed

When a judgment for costs appears against a party unsatisfied, the **CLERK MAY REFUSE** to accept for filing any new action or proceedings instituted by such party, unless otherwise ordered by the Court, without first making payments to the Clerk of such unpaid costs.

Rule No. 19 - Statutory Demands – Notice of Court Proceedings to Collect Debt and Payment to Avoid Garnishment (14 day demand)

- A. A person seeking a **NOTICE AND ORDER OF GARNISHMENT** against personal earnings in an action shall comply with the provisions of Chapter 2715 of the Ohio Revised Code. A failure to comply with these provisions will render the proceedings voidable.
- B. Where such demand is served, or attempted to be served by registered or certified mail, proof of such service shall be made by the affidavit of the person sending the demand by registered mail or certified mail, and shall be accompanied by the signed registered or certified mail receipt, or proof of refusal of service or by a photocopy thereof, or the certified mail envelope endorsed “unclaimed”.
- C. A copy of the statutory demand made on defendant together with proof of affidavit of service of the statutory demand shall be filed with the affidavit.

Rule No. 20 - Proceedings in Aid of Execution

Proceedings in aid of execution shall be heard each Monday at 9:00 a.m., or on such day and time as determined by the Court. The order in aid of execution shall provide for the attendance of the parties named therein, on a date not less than ten (10) days from the date of such order. The fee required by the Court’s Schedule of Costs, shall be made with the Clerk at the time of the filing of the affidavit. No alias order shall be allowed unless there has been failure of service on the writ and only after an additional deposit is made with the Clerk.

Affidavits and orders in aid of execution proceedings shall be typed and sufficient copies of the affidavit and order shall be furnished for service upon the garnishee and such defendants as are required to be served. Currently, the garnishee fee of Ten Dollars (\$10.00) per garnishee shall accompany the affidavit. Service thereof may be made by regular United States mail.

Rule No. 21 - Mayor’s Courts

Mayor’s Courts are governed pursuant to Chapter 1905 of the Ohio Revised Code as amended December 31, 1999. Section 1905.05 allows for appointment of Mayor’s Court Magistrate.

Rule No. 22 - Trusteeship

In Trusteeship, all proceedings shall be as provided by Section 2329.70 of the Ohio Revised Code.

Rule No. 23 - Computerized Legal Research Fee - Repealed May 1, 1995

Computer funds pursuant to §1901.26(A)(2) have been created by Court order and are not properly a part of Court Rules.

Rule No. 24 - Selection and Assignment of Judges in all Criminal/Traffic and Civil Cases

This rule is retained for HISTORICAL PURPOSES and will apply if the Berea Court is again expanded to two judges.

As of now, ***ALL CASES ARE ASSIGNED*** to the “one” Judge of Berea Municipal Court.

A. Random Selection Process

For all Traffic/Criminal and Civil Cases in which a random selection process shall be used to determine the assignment of a Judge, the following process shall be used:

1. Three employees of The Berea Municipal Court shall be present at the drawing for assignment purposes, preferably the following:
 - a. Assignment Commissioner
 - b. Chief Deputy Clerk of Court
 - c. One other Deputy Bailiff and/or Deputy Clerk
2. A log showing the following shall be kept by the Assignment Commissioner:
 - a. Date of assignment drawing
 - b. Signatures of the three persons present
 - c. A listing of case numbers in the drawing process and the Judge to which each case was assigned
3. Civil and Criminal drawings shall be separate.
4. Cases to be assigned shall be arranged in numerical order and the case number entered on the log.
5. Ten balls for each Judge shall be placed in the box.
6. As the ball is drawn, the Judge’s name shall be entered on the log and on the case jacket.
7. If there are more than twenty cases, after the first twenty balls are drawn, then the box shall be replenished with twenty balls and the drawing continued until all cases are assigned.
8. Drawing shall be set at the discretion of the Deputy Clerk assigned that task. Any number of cases may be assigned at any drawing.
9. In the event a mistake occurs in stamping a Judge’s name, all three witnesses shall state the circumstances in writing on the log and all three witnesses shall sign the case jacket where the mistaken Judge’s name is crossed out.

B. Criminal/Traffic Cases

1. The Judge who is on the Criminal/Traffic docket on the date set for a Defendant's first appearance or on the first date the Defendant is brought to Court by the Police following his/her arrest, whichever is earlier, shall be then assigned as Judge for all further action in that case. Generally, one judge will be in session from the first to the fifteenth of each month and the other judge will be in session from the sixteenth to the end of each month. The Presiding Judge may change specific days each Judge is in session as the occasion requires.
2. In all Traffic/Criminal cases transferred to The Berea Municipal Court from any of the Mayor's Courts within The Berea Municipal Court jurisdiction or from any other Court shall be assigned by the random selection process described above.

C. Civil/Small Claims Cases

1. Filing - Cases are not assigned to a specific Judge upon filing. Such cases will be handled by a so-called "sessions" Judge (Exception - See #5).
2. Small Claims - Will be heard by the Magistrate or by a Judge, if no Magistrate is available. Various documents and handouts regarding Small Claims are available at the Clerk's Office including preprinted Small Claims Forms.
3. Forcible Entry - Will be heard by the Magistrate or by a Judge if no Magistrate is available.
4. Defaults - Are to be divided about equally between the Judges (if there are multiple Judges), as they become ready for a ruling. The Clerk is to use discretion as to who is to receive a particular days work. Cases where there is correspondence which does not qualify as an answer falls in this category. When a Judge requires an Oral Hearing be scheduled on a Motion for Default Judgment, then it will be scheduled for that Judge.
5. BMV Appeals - Driver license appeals will be assigned by lot upon filing.
6. Assignment by Lot - When any of the following events occur, the case will be assigned by lot.
 - a. Answer
 - b. Motion for Continuance
 - c. Motion to Dismiss
 - d. Motion for More Definite Statement

- e. Motion for Change of Venue
- f. All other motions except Motion for Default
- g. Demand for JURY TRIAL on Forcible Entry (FED)

Rule No. 25 - Jury Commission and Jury Selection

- A. The Jury Commission is established to supervise and select jurors. There shall be a maximum of **FIVE (5) JURY COMMISSIONERS** who are to be appointed by the Presiding Judge after consultation with the second Judge (if there is one). If the Court expands to a third full-time Judge, appointments will be made by the concurrence of the majority of the Judges. They shall serve at the pleasure of the Court until replaced and shall be electors within the court district.
- B. The Berea Court Clerk's office shall provide a Deputy Clerk to act as Secretary of the Commission. The Secretary shall work under the authority of the Commissioners and be subject to their supervision. The Secretary shall be paid by the Clerk of this Court and the duties assigned by the Commission shall be performed within the Secretary's work day as a Deputy Clerk.
- C. The Commissioners shall cause a jury list to be compiled in July, 2003 and each odd numbered year thereafter or as needed. ***A VENIRE SHALL BE DRAWN FROM THE CUYAHOGA COUNTY BOARD OF ELECTIONS COMPUTER GENERATED LIST*** in December of 2002 for use during 2003, 2004 and 2005. In December of each odd numbered year, a venire shall be drawn for use during the following two year period. At the end of each two year period, the venire list shall be destroyed and the remaining jurors relieved from call unless the Commissioners determine that a new venire will not be available in time to meet the requirements of the Court for jurors for the next two year period. In any event, the old venire shall be destroyed as soon as the new venire is available. The Commissioners may make a supplemental drawing of the venire whenever necessary.
- D. The jury list shall be compiled from lists of electors within the Berea Court District or shall be compiled from a combination of lists of electors and lists of licensed drivers over the age of eighteen living within the district. The jury list shall be compiled at random by one of the following methods:
 - 1. The Commissioners shall assign a consecutive number to each name on the list of electors, and shall use, for the purpose of compiling said list of prospective jurors, a key number which shall be designated by the Commissioners. They will then proceed to select from said list of electors the name of each person accordingly as the key number so designated, or the multiples thereof, until a sufficient number of names are selected.
 - 2. An automated system may be used to select names and the selection service may be contracted to any organization which can select the names at random. The selection need not be done in the presence of the Commissioners.
 - 3. Any other random selection process agreed to in writing by the Commissioners.

- E. Once the jury list has been compiled, a notice shall be sent to each prospective juror requiring a return of a ballot with name, address, occupation and any other pertinent data. The Commissioner's secretary shall have the authority to excuse prospective jurors at their request for good cause such as age, infirmity, and shall mark the ballot "excused". The Secretary may upon proper request defer jury service for good cause shown and mark the ballot "deferred". The Secretary shall also review the ballots to make a preliminary determination to excuse persons by reason of age, infirmity, and shall mark the ballot "provisionally excused" or "p. excused". Final excuse will be made by the Commissioners at the time of the draw. The ballots shall be retained by the Secretary.
- F. At such time as a venire is to be drawn, the Commissioners will meet in The Berea Municipal Court building at a location designated in the notice of the meeting. During the meeting notices are to be prominently posted in public spaces notifying the public that the meeting is in progress and the public is welcome. The meeting shall be public and any number of the public may attend subject to space limitations.

Notice of the meeting to select a venire shall be mailed or personally delivered to:

1. The Jury Commissioners
2. The Judge(s) of The Berea Municipal Court
3. The Clerk of The Berea Municipal Court

Such notice shall be posted at the same location as the notices of the Berea City Council are posted.

The notices shall be served and/or posted not more than thirty days prior to the meeting and no fewer than six days prior to said meeting. The notice shall be in the following form:

"The Jury Commission of The Berea Municipal Court will meet to draw names of jurors by lot on _____ at _____ in _____ at: The Berea Municipal Court, 11 Berea Commons, Berea, OH 44017.

This is a public drawing and members of the public may attend."

For a drawing to proceed, three of the five Commissioners, a person designated by the Clerk's office (who may also be the Secretary of the Commission), and one of the Judges (or a person designated by the Judge) must all be present or the drawing will be postponed to another day when all such persons are present.

- G. The drawing will proceed as follows:
1.
 - a. All ballots prepared by the Secretary shall be deposited in the jury wheel, even though the prospective juror was already excused or provisionally excused.

- b. The ballots shall be thoroughly mixed and drawn one at a time. If an “excused” ballot is drawn, it shall then be destroyed. If a “provisionally excused” ballot is drawn, the Commissioners shall then decide if the excuse is granted and shall then destroy the ballot. If a deferred ballot is drawn, it shall be set aside and retained by the Secretary in the event a supplemental drawing is necessary. Those not excused will be numbered consecutively starting with one and the name and address be entered on the venire list before the next ballot is drawn. The venire list may be handwritten, typed, or entered on a computer.
- c. All the ballots shall be drawn and numbered unless the Presiding Judge has designated that the venire list shall be drawn to a specific number.
- d. Ballots not drawn (and those marked deferred) shall be deposited in an appropriate envelope or box, sealed, and maintained by the Secretary of the Commission in the event a later supplemental drawing becomes necessary. The ballots and the venire list shall be retained by the Secretary.

2. ***BY COMPUTER GENERATED SELECTION AND PRINTOUTS*** in accordance with a written procedure authorized in writing in advance by the Commissioners.

- H. The venire list shall serve for a two year period and until the next two year list is prepared and then may be destroyed.
- I. When a jury is to be drawn for duty, the Secretary shall cause to be summoned jurors numbers one through forty from the venire list, summon them for service and maintain the panel list in that numerical order for the first day of service as a panel. (The next panel shall summon numbers forty-one through eighty and so on.)

Once a panel has been voir dired, selected and sworn and a subsequent case is to be tried using the same panel, the numerical order of the panel shall be reversed, that is the first juror on the panel list will be number forty, the second number will be thirty-nine, and so on.

In the event not enough jurors are available in the group of forty jurors, the Presiding Judge or in his absence the other Judge, shall order the summoning of additional jurors starting with the last juror on the jury venire and working backwards until a sufficient number are summoned. Those who were actually summoned at the same time as the original panel but who did not appear will not be maintained on the venire list. However, those summoned or called within five days of the trial but did not appear, will remain on the venire list. The newly summoned jurors shall be placed at the end of the jury list in the order they were summoned (descending order). Where the panel is to serve for a second or

subsequent case, the supplemental jurors will remain at the end of the list even though the first forty names are to be placed in reverse order.

- J. Once a juror has been summoned to a specific panel and that panel has been discharged from its duties, that juror will be removed from the active venire and will not be eligible to serve until a new two year venire is drawn.

Rule No. 26 - Case Management of Civil and Criminal Cases

Case Management in Civil Cases

A. Purpose

The purpose of this rule is to establish, pursuant to M.C. Sup. R 18, a system for Civil Case Management which will achieve the prompt and fair disposal of civil cases.

B. Scheduling of Events

The scheduling of a case begins when a civil case is filed.

1. Summons shall be served in accordance with the Ohio Rules of Procedure. In the event there is a failure of service, the Clerk shall notify plaintiff or counsel immediately.
2. Repealed May 1, 1995.
3. Upon Plaintiff's filing a Motion of Default Judgment, the case shall be delivered to the Judge who shall rule on the matter or set it for an oral hearing where necessary or desirable.
4. If the case is at issue it shall be set for trial before the Judge unless the Judge desires to schedule a pre-trial. The Judge's bailiff should call the parties about one week before the scheduled date to encourage settlement.
5. If the case is to be tried by jury, then a pre-trial shall be scheduled prior to the jury trial.
6. No civil case shall be inactive awaiting the scheduling of the next event for more than six months.

C. Status Call

Anytime service has not been achieved within one year, where the parties promise a journal entry and it has not been received within ninety days, where there is a failure of

the Plaintiff to file a Motion for Default within ninety days of the alleged default, or at any other time or for any other reason when the Judge determines it is desirable.

A Status Call letter shall be mailed to the party or parties affected giving a date certain of which the status of the case is to be clarified and/or further action must be taken.

If the response to the status call is not satisfactory or non-existent by the date certain, the case may be dismissed for want of prosecution with or without prejudice.

D. Judicial Steps

1. Status Hearing - After an answer is filed, the case will be assigned to a Judge.
2. Motions - All motions must be in writing and accompanied by a written memorandum containing citations or the arguments of counsel. Opposing counsel shall answer in like manner within fourteen days thereafter. All motions will be considered submitted at the end of said fourteen day period unless time is extended by the court.

There will be no oral hearings granted in said motions unless the parties request an oral hearing in writing and/or the court deems it necessary.

3. Pre-Trials - For the purpose of this rule “pre-trials” shall mean a court supervised conference chiefly designed to produce an amicable settlement. The term “party” or “parties” used hereinafter shall mean the party or parties to the action, and/or, his, hers, or their attorney of record.

Any attorney for a party to the action who fails to attend at a scheduled pre-trial conference, without just cause being shown, may be punished as for contempt of this court.

Notice of pre-trial conference shall be given to all counsel of record by mail and/or by telephone from the assignment commissioner not less than fourteen days prior to the conference. Any application for continuance of the conference shall be addressed to the Judge to whom the case has been assigned.

If the case cannot be settled at pre-trial, then the case will be set for TRIAL at a time agreeable to all parties.

4. Continuances - No party shall be granted a continuance of a trial or a hearing without a written motion from the party or his counsel stating the reason for the continuance.

When a continuance is requested for the reason that counsel is scheduled to appear in another case assigned for trial on the same date in the same

or another trial court of equal jurisdiction of this state or in a higher court of this state, the case which was first set for trial or which is in the higher court shall have priority and shall be tried on the date assigned. Criminal cases assigned for trial have priority over civil cases assigned for trial. The granting of any other request for continuance of a scheduled trial is a matter within the discretion of the trial court.

5. Journal Entries - The journal entry shall state which party will pay the court costs.

Case Management in Criminal Cases

- A. The purpose of this rule is to establish, pursuant to M.C. Sup. R 18, a system for Criminal Case Management which will provide the fair and impartial administration of criminal cases. These rules shall be construed and applied to eliminate unnecessary delay and expense for all parties involved in the court justice system.
- B. Scheduling of Events

The scheduling begins after arraignment.

Pre-Trials

After arraignment, all misdemeanors shall be set for pre-trial by the assignment commissioner within thirty days. In certain instances, when compliance with statutory periods necessitates, misdemeanors other than minor misdemeanors may be set for trial without a pretrial. All minor misdemeanors shall be set for trial unless the Judge orders a pre-trial in said case.

The pre-trial shall be conducted in accordance with Criminal Rule 17.1.

If the parties cannot resolve the case, then the case should be set for trial.

Sometimes it will be desirable to schedule a pre-trial with a trial to follow on the date certain a week or two after the pre-trial.

No criminal case should be inactive for more than twenty days awaiting the scheduling of the next event unless the Judge makes a specific entry delaying a prompt scheduling.

Rule No. 27 - Court Security

The Court occupies the second floor of the building located at 11 Berea Commons, Berea, Ohio. There is access to the Court by a west public stairway and an elevator. In addition, there is an east private stairway to the second floor. The first floor is occupied by City of Berea offices and by the Berea Police Department.

Access to the first floor lobby is from both north and south of the building. The Clerk's office has two counters to serve the public as they stand in the lobby. There is a secure

and locked door from the lobby to the Clerk's office. The Courtroom has open access for the public.

C. THE COURT SECURITY PLAN IS AS FOLLOWS:

1. "Panic Buttons" connected to the Police Department are located at each counter, each desk in both the Clerk's areas and the Judge's areas, at the Judge's bench, at the Bailiff's courtroom station, in the rear of the courtroom, and in each restroom. Upon pushing the button, the police dispatcher will send police to the Court areas on an emergency basis.
2. All personnel will be instructed in detecting potentially dangerous situations and will be authorized to summon the police. If there appears to be a need to search any person for weapons, the Police are to do the search. The Court will not acquire any device to detect weapons on persons as no Court personnel will be trained or authorized to take any action if a weapon is found.
8. Staff will be trained on an ongoing basis to:
 - e. recognize suspicious packages;
 - f. recognize suspicious persons;
 - g. act in questionable situations to summon police.
9. Written criteria for seeking police assistance will be circulated to staff.
10. Police will be involved in security review meetings twice a year.

D. COURT ROOM SECURITY

1. Ohio Court Houses represent justice and reason. Court facilities must be safe and secure for all of those who visit and work there.

Pursuant to O.R.C. Chapter 1901. - Municipal Courts, Section 1901.32 (A) (6), relating to Municipal Court "Bailiffs"; and, Appendix "C" of the Supreme Court of Ohio Judicial Conference Committee on Court Security Standards, Standard #4 - dealing with Court Security Officers states that ***all Court Security Officers assigned to Court Security should be certified through the Ohio Peace Officers Training Counsel. These officers should receive specific training on court security and weapon instruction specific to the Court setting.***

Each Bailiff/Court Security Officer shall be required to undergo psychiatric examination/testing similar to that conducted for police officers. The Court recognizes its duty to ensure that the Court Security Officers are not only physically fit but also mentally competent.

Each Bailiff shall be registered to attend the one week OPOTA approved course provided by the Law Enforcement Training Institute. The Court shall also provide each trained Bailiff/Court Security Officer with a weapon (pistol). The necessary and required forms of Special Insurance shall also be provided to the Court Security Officers/Bailiffs by The Berea Municipal Court.

2. The Berea Municipal Court shall have Court Security Officers as per O.R.C. 1901.32 (A) (6) dealing with Bailiffs, ***the Bailiff/s and Deputy Bailiffs shall perform for the Court services similar to those performed by the Sheriff for the Court of Common Pleas and shall perform any other duties that are requested by Rule of Court.*** With that directive, The Berea Municipal Court finds that the safe operation of the Court and the safety of the Bailiffs and other court personnel including the Judge, in the performance of their duties will be enhanced by each Bailiff being qualified to carry a firearm while on duty.

Those Bailiffs who are designated as Court Security Officers, shall maintain their Certification through attendance at required weapon instruction courses as needed. They shall also perform the functions required of them at designated shooting ranges.

Rule No. 28 - Video Arraignments

Effective in April, 2000, The Berea Municipal Court in conjunction with various Police Departments in cities being served by the Court, have together instituted and put into effect a Video Arraignment System. This System will be expanded and modified as needed in the future.

The rights of the accused shall be protected. The Defendants do retain the right to choose between a Video Arraignment or an Arraignment in the presence of a Judge of The Berea Municipal Court.

Rule No. 29 - Video Taping, Cassette Recording and Unauthorized Record Taking

Pursuant to this Rule of Court, The Rules of Superintendent, especially Rule-12, and Rule 13, there is a **PROHIBITION** placed on the unauthorized taking of a video, cassette or other form of Court record by all parties other than the Court itself, a Court Reporter, or by approved Newspaper, Radio, or TV reporting/coverage.

If a Plaintiff, Defendant or the Agent of either wishes to make a recording, they **MUST** submit a written request to the Court Seven (7) days prior to Trial or Hearing. If permission is granted, the Court will take possession of the "original" tape and a copy will be provided to the parties.

Rule No. 30 - Rules of Court Updates

At the direction of the Judge, these Rules of Court may be reviewed and updated on a periodic basis.

Rule No. 31 - Subpoena - Time for Filing

In order to ensure that Subpoenas are being issued on a timely basis, the Court requires that all Subpoenas for Witnesses **MUST** be filed at least seven (7) days in advance of the appearance date set for the Trial/Hearing of the Matter.

This Rule of The Berea Municipal Court shall apply to and be in compliance with both Rule-17 of the Ohio Rules of Criminal Procedure and with Rule-45 of the Ohio Rules of Civil Procedure. The Berea Municipal Court makes available and does provide a pre-printed Subpoena Form. The party who decides to have a Subpoena(s) issued shall be responsible for and pay any and all costs associated with the issuance of the Subpoena(s).

Rule No. 32 - Small Claims Division

The Berea Municipal Court has previously established a Small Claims Division which functions under compliance with Chapter-19 of the Ohio Revised Code, and with the Local Rules of The Berea Municipal Court. Established Court Costs, Filing Fees, etc. are and shall be in compliance with Ohio Revised Code §1901.26A.

Rule No. 33 - Rent Deposit/Release

RENTAL ESCROW ACCOUNT, in accordance with § 5321 of the Ohio Revised Code.

The Court has an application for the Tenant to use when depositing rent with the Court, pursuant to O.R.C. 5321.07 (1). In addition, the Court has available an Application for Release of Rental Escrow pursuant to O.R.C. 5321.09 (A)(1).

There will be a 1% Poundage Fee withheld from the Rental Escrow amounts and paid to the City of Berea as a part of regular Court disbursements.

These **Rules of Court** for The Berea Municipal Court, consisting of nineteen (19) pages are effective, as amended, July 31, 2006.

Mark A. Comstock
Presiding Judge

Raymond J. Wohl
Clerk of Courts