

NOTICE OF COURT RULES

THE COURT PUBLISHES AND GIVES NOTICE OF THE FOLLOWING COURT RULES:

Rule 3.6 – Small Claims Division

Rule 3.10 – Civil Case Management Plan

COMMENTS ON THE COURT RULES MAY BE SENT IN WRITING TO:

DAYTON MUNICIPAL COURT
COURT ADMINISTRATOR ANN MARIE MURRAY
301 WEST THIRD STREET, ROOM 365
DAYTON, OHIO 45402

The Dayton Municipal Court finds an immediate need to revise Dayton Municipal Court Rule (DMCR) 3.6, Small Claims Division, to provide for notice of service requirements and notification of dismissal for failure to obtain service.

The Court hereby revises DMCR 3.6, as indicated below in bold type, which shall be effective on the date this Order is filed.

Rule 3.6 – Small Claims Division

A. Small Claims Cases.

Pursuant to the Ohio Revised Code, the Court has established the Small Claims Division for cases for the recovery of money where the prayer does not exceed the monetary amount provided in O.R.C. 1925.02. The Small Claims form provided by the Dayton Municipal Court shall be used for the filing of all small claims cases.

1. **Service of Summons.**

Summons shall be served in accordance with the Ohio Rules of Civil Procedure. In the event there is a failure of service, the Clerk of Court shall notify the plaintiff immediately.

2. **Failure to Obtain Service.**

(a) **Notice of Service Requirements.**

If service has not been obtained and no action has been taken on a case for ninety (90) days and the case is not set for trial, then the Clerk shall send plaintiff a "Notice of Small Claims Service Requirements."

(b) **Notification of Dismissal.**

If plaintiff fails to obtain service within one hundred and eighty (180) days from the date the cause of action was filed, then the Clerk shall send plaintiff a Notification of Dismissal advising that the case will be dismissed in ten (10) days unless good cause is shown to the contrary.

B. Magistrate.

Cases filed in the Small Claims Division shall be heard by a magistrate appointed and assigned under Sup.R. 19. Sessions shall be set by the Administrative Judge as required.

C. Continuance.

A motion for continuance must be filed in writing not later than five (5) days (excluding intervening Saturdays, Sundays, and court holidays) before the date of the hearing.

D. Discovery.

No depositions or interrogatories shall be taken except by leave of court. All relevant evidence shall be admitted at the discretion of the magistrate.

E. Costs.

In all cases, the magistrate may assess costs as provided in O.R.C. 1925.15.

F. Objection Period.

The magistrate's decision is subject to a fourteen (**14**) day objection period pursuant to Civ.R. 53.

G. Adoption by Court.

The magistrate's decision shall be effective when adopted by the court, pursuant to Civ.R. 53. Upon consideration of any objections, the court may adopt, reject, or modify the magistrate's decision, hear additional evidence, recommit the matter to the magistrate with instructions, or hear the matter.

H. Mediation.

The Magistrate may find that a Small Claims Case should be mediated and refer that case to Mediation. Attorneys or other designated individuals may accompany the parties and participate in the mediation. The mediator shall keep mediation communications confidential unless the parties consent to disclosure in writing. The efforts of the mediator shall not be construed as giving legal advice. The case shall be dismissed after a Mediated Agreement is reached and the damages are paid. If the damages are not paid, a Conversion Hearing can be requested to convert the Mediated Agreement into a Judgment.

Mediation shall not be used:

1. As an alternative to the prosecution or adjudication of domestic violence;
2. To determine whether to grant, modify, or terminate a protection order;
3. To determine the conditions and terms of a protection order; or
4. To determine the penalty for violating a protection order.

I. Transfer to Civil Docket.

A motion to transfer a case to the regular docket and to transfer a crossclaim or counterclaim exceeding the monetary jurisdiction of the Small Claims Division shall be referred to the Administrative Judge for assignment and handled in accordance with O.R.C. 1925.10.

J. Payment of Fee.

Where a motion has been granted to transfer a small claims case to the civil docket, the party seeking the transfer shall pay the appropriate fee to the Clerk. Failure to pay the fee will result in the case being retained in the small claims docket.

The Dayton Municipal Court finds an immediate need to revise Dayton Municipal Court Rule (DMCR) 3.10, Civil Case Management Plan, to provide notification of dismissal for failure to obtain service and for failure to take action on a case.

The Court hereby revises DMCR 3.10, as indicated below in bold type, which shall be effective on the date this Order is filed.

Rule 3.10 – Civil Case Management Plan

A. Purpose:

The purpose of this rule is to establish, pursuant to Sup. R. 5(B)(1), a system for civil case management, which will achieve the prompt and fair disposition of civil cases.

B. Scheduling of Events:

The scheduling of a case begins when a civil case is filed. For information on filing pleadings and papers by facsimile transmission, see DMCR 2.15.1.

Thereafter the case is managed in clerical steps and judicial steps.

C. Clerical Steps:

- 1. Summons shall be served in accordance with the Ohio Rules of Civil Procedure. In the event there is a failure of service, the Clerk of Court shall notify plaintiff/counsel immediately.**

(a) Failure to Obtain Service.

If plaintiff/counsel fails to obtain service within one hundred and eighty (180) days from the date the cause of action was filed, then the Clerk shall send plaintiff/counsel a Notification of Dismissal advising that the case will be dismissed in ten (10) days unless good cause is shown to the contrary.

(b) No Action on Cases Eligible for Default Judgment.

If no action has been taken on a case for ninety (90) days and no answer has been filed by the defendant, then the Clerk shall send plaintiff/counsel a Notification of Dismissal. The Notification will advise that the case will be dismissed in ten (10) days unless good cause is shown to the contrary or a motion for default judgment is filed with the Court.

D. Judicial Steps:

1. Status Hearing:

After an answer or other responsive pleading is filed, the case will be assigned to a judge and the Clerk will forward the information to the assigned judge. The judge, or magistrate if the case is referred, may then set a status hearing, which may be heard in court or by telephone. The purpose of the status hearing is to set discovery and motion deadlines so a formal pre-trial can be set.

2. Motions:

All motions must be in writing and accompanied by a written memorandum containing citations of authority and the arguments of counsel. Opposing counsel shall respond in like manner within fourteen (14) days. All motions will be deemed submitted at the end of said fourteen (14) day period unless time is extended by the judge or magistrate. There will be no oral hearings granted in said motions unless the parties request an oral hearing in writing and the judge or magistrate deems it necessary.

3. Pre-trials:

For the purpose of this rule, pre-trial shall mean a court-supervised telephonic conference chiefly designed to produce an amicable settlement. The judge or magistrate shall attempt to narrow legal issues, to reach stipulations as to facts in controversy; and, in general, to shorten the time and expense of trial.

- (a) Notice of the pre-trial conference shall be given to all counsel of record not less than fourteen (14) days prior to the conference. Any application for continuance of the conference shall be addressed to the judge or magistrate to whom the case has been assigned.
- (b) Counsel participating in the pre-trial conference must have complete authority to stipulate on items of evidence and must have full settlement authority.
- (c) If the case cannot be settled at pre-trial, then the case will be set for trial at the next available trial date.

4. Continuances:

No party shall be granted a continuance of a trial or a hearing without a written motion from the party or counsel stating the reason for the continuance. When a continuance is 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 this state, the case which was first set for trial 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 for a scheduled trial is a matter within the discretion of the trial court.

5. Judgment Entries:

Counsel for the party in whose favor an order or judgment is rendered shall prepare a journal entry. That entry shall be submitted to opposing counsel within five (5) days of the decision. Opposing counsel shall approve or reject the entry within five (5) days. Within fifteen (15) days of the decision, the journal entry shall be submitted to the judge or thereafter the judge shall prepare the entry. Entries of settlement may be filed at any time. The avoidance of trial by settlement shall be allowed without the filing of an entry, but such entry shall be filed within thirty (30) days, or the case will be dismissed for want of prosecution. The entry shall state which party will pay the court costs.

6. Default Judgment Damages:

When a motion for default judgment is filed, plaintiff/counsel shall submit an affidavit of the specific nature of the damages claimed along with a default judgment entry. Failure to do so will result in the court setting a damages hearing.