

# LYNDHURST MUNICIPAL COURT

## LOCAL RULES OF COURT JUDGE DOMINIC J. COLETTA PRESIDING JUDGE

Janet R. Colaluca  
Clerk of Court

5301 Mayfield Road  
Lyndhurst, Ohio 44124  
Phone: 440.461.6500 Fax: 440.442.1910  
[www.lyndhurstmunicipalcourt.org](http://www.lyndhurstmunicipalcourt.org)

Serving the communities of Lyndhurst, Mayfield Heights, Mayfield Village,  
Gates Mills Village, Highland Heights and Richmond Heights

**Effective February 22, 2019**

## TABLE OF CONTENTS

Rule

### **GENERAL PROVISIONS**

1. Scope and effective date
2. Hours of Court
3. Examination of files
4. Costs and filing fees
5. Facsimile Filing
6. Reserved for Electronic Filing
7. Admission of Out-of-State Attorney
8. Appearance and Withdrawal of Counsel
9. Appointed Counsel
10. Continuances
11. Recording of Proceedings
12. Courtroom Conduct
13. General Motion Practice
14. Pleadings and Motions
15. Bailiff Service

### **CRIMINAL/TRAFFIC DIVISION**

16. Criminal Complaints and Traffic Citations
17. Appearance of the Defendant
18. Video Hearings
19. Motion Practice
20. Case Management
21. Jury Management
22. Jury Instructions
23. Sentencing
24. Probation
25. Traffic Violations Bureau

### **CIVIL DIVISION**

26. Authority

27. Civil Jurisdiction
28. Security for Costs/Deposit for Jury Trial
29. Leave to Move or Plead
30. Case Management
31. Trials
32. Trial Brief and Jury Instructions
33. Settlement and Voluntary Dismissal
34. Default Judgment
35. Satisfaction of Judgment
36. Forcible Entry and Detainer Actions
37. Garnishment
38. Aid of Execution

### **SMALL CLAIMS DIVISION**

39. Authority
40. Purpose
41. Small Claims Jurisdiction
42. Small Claims Pleading
43. Counterclaim, Cross-Claim
44. Third Party Claim
45. Continuance
46. Dismissal
47. Subpoenas
48. Transfer to Regular Civil Docket
49. Small Claims Trial
50. Evidence
51. Objection to the Magistrate's Decision

## **GENERAL PROVISIONS**

### **Rule 1     Scope**

(A) These local rules are hereby adopted for the governance of the practice and procedures in the Lyndhurst Municipal Court. These rules are adopted pursuant to Article IV, Section 5(B) of the Ohio Constitution, Rule 83 of the Ohio Rules of Civil Procedure and Rule 5 of the Rules of Superintendence for Courts of Ohio.

(B) These rules are adopted to facilitate the expeditious disposition of cases in the Lyndhurst Municipal Court.

(C) These local rules are effective as of February 1, 2018, and shall supersede and replace any local rules previously entered by the Lyndhurst Municipal Court.

### **Rule 2     Hours of Court**

(A) The offices of the Lyndhurst Municipal Court shall be open weekly for the transaction of business between the hours of 8:00 a.m. to 4:00 p.m. Monday through Friday, except for scheduled holidays wherein the Court is closed.

(B) Traffic/Criminal cases are generally conducted weekly Monday through Thursday as follows:

1. City of Lyndhurst's arraignment sessions are on Mondays at 8:00 a.m., followed by pretrials, bench trials and/or special hearings beginning at 8:30 a.m. scheduled throughout the day.

2. City of Mayfield Heights' arraignment sessions are on Tuesdays at 8:00 a.m., followed by pretrials, bench trials and/or special hearings beginning at 9:00 a.m. scheduled throughout the day.

3. Cities of Richmond Heights and Highland Heights' arraignment sessions are on Wednesdays at 8:00 a.m. Pretrials, bench trials and/or special hearings for these cities alternate on Wednesdays at 8:30 a.m. No contested cases are heard when Jury Trials are scheduled.

4. The Villages of Mayfield and Gates Mills' arraignment sessions are on Thursdays at 8:00 a.m. Pretrials, bench trials and/or special hearings for these villages alternate on Thursdays at 9:30 a.m. No contested cases are heard when Jury Trials are scheduled.

5. Special motion hearings, felony initial appearances, trials and/or video conferences pursuant to pre-arranged agreed dates shall be scheduled through the Scheduler of the Criminal Division at (440) 461-6500 extension 205.

6. Jury Trials are scheduled as the schedule permits during the following months: January, March, April, June, July, August, September and October.

(C) Civil cases are generally scheduled Thursday and Friday between 8:30 a.m. and 3:00 p.m.

(D) Notwithstanding the aforementioned hours of the Court, these times may be extended or diminished by special order of the Court based upon need and/ or availability.

### **Rule 3 Examination of Files**

(A) Court files may be examined at the office of the Clerk of Court under the supervision of the Clerk or Deputy Clerk during regular business hours subject to the limitations of Criminal Rule 16. Disclosure of all public record information shall be made upon request.

(B) No document shall be removed from a Court file.

(C) Upon request, copies of documents will be provided at the cost of five (\$.05) cents per page, and certified copies at the cost of three (\$3.00) dollars per pleading.

(D) No file whether Civil or Traffic/Criminal may be removed from the Clerk's office without the consent of the Judge or Clerk of Court.

### **Rule 4 Costs and Filing Fees**

(A) The Court has adopted a schedule of costs and filing fees in Civil and Traffic/Criminal cases (Appendix A) which may be amended by order of the Court. A copy of same may be obtained from the Clerk's office.

(B) The Court shall charge a Special Projects Fee pursuant to Ohio Revised Code 1901.26(B) on each cause charged in a Civil, Traffic and/or Criminal complaint.

(C) In any Civil case, in which a pleading or motion requires a filing fee, the filing fee shall either be paid upon the filing of an original document, or the filing fee shall be paid, within three (3) days of the facsimile filing. Payments not received in a timely manner may result in the filing being returned.

(D) In any Traffic/Criminal case, in which a pleading or motion requires a filing fee, the filing fee shall either be paid upon the filing of an original document, or the filing fee shall be assessed as costs, regardless of the manner of filing.

(E) If a party requests a time-stamped copy of their filing, the party shall provide a copy of the first page of the document together with a self-addressed stamped envelope.

(F) A party may file an Affidavit of Indigency with regard to a required filing fee. The affidavit shall set forth the reasons that the person is unable to pay.

## **Rule 5 Facsimile Filing**

(A) This Rule regarding facsimile filing applies to Civil and Traffic/Criminal proceedings in this Court to the extent provided for herein.

(B) A document filed by fax shall be accepted as the effective original filing. The person making a fax filing need not file any source document with the Clerk of Court, however, they shall maintain in their records and have available for production on request by the Court the source document filed by fax, with original signatures otherwise required under the applicable rules, together with the source copy of the facsimile coversheet used for the subject filing. In addition, any document filed by facsimile shall have the same effect as any other original document provided that the sender of the transmission has confirmation of its receipt by the Court. Any duplicate documents filed may be stricken from the file pursuant to the discretion of the Court. 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.

(C) As used in these Rules, unless the context requires otherwise:

(1) A “facsimile transmission” means the transmission of a source document by a facsimile machine that encodes a document into optical or electrical signals, transmits and reconstructs the signals to print a duplicate of the source document at the receiving end.

(2) A “facsimile machine” means a machine that can send and receive a facsimile transmission.

(3) A “fax” is an abbreviation for “facsimile” and refers, as indicated by the context, to facsimile transmission or to a document so transmitted.

(D) The person filing a document by fax shall also provide therewith a cover page containing the following information:

(1) The name of the Court;

(2) The title of the case;

(3) The case number;

- (4) The assigned Judge;
- (5) The title of the document being filed;
- (6) The date of transmission;
- (7) The transmitted fax number;
- (8) An indication of the number of pages included in the transmission, including the cover page;
- (9) If a Judge or case number has not been assigned, state that fact on the cover page;
- (10) The name, address, telephone number, fax number, Supreme Court registration number, if applicable, and e-mail address of the person filing the faxed document if available.

(E) If a document is sent by fax to the Clerk of Court without the cover page information listed above, the Clerk may, with discretion:

- (1) Enter the document in the Case Docket and file the document; or
- (2) Deposit the document in a file of failed faxed documents with a notation of the reason for the failure; in this instance, the document shall not be considered filed with the Clerk of Court.

The Clerk of Court is not required to send any form of notice to the sending party of a failed fax filing. However, if practicable, the Clerk of Court may inform the sending party of a failed fax filing.

(F) 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 notation “/s/” followed by the name of the signing person where the signature appears in the signed source document.

A party who files a signed document by fax represents that the physically signed source document is in his/her possession or control.

(G) Each exhibit to a facsimile produced document that cannot be accurately transmitted via facsimile transmission 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, not later than five (5) Court days following the filing of the

facsimile document. Failure to file the missing exhibits as required by this paragraph may result in the Court striking the document and/or exhibit.

Any exhibit filed in this 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 and shall be signed and served in conformance with the rules governing the signing and service of pleadings in this Court.

(H) Subject to the 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 shall be deemed open to receive facsimile transmissions of documents on the same days and at the same time the Court is regularly open for business.

(I) Fax filings may not be sent directly to the Court for filing but may only be transmitted directly through the facsimile equipment operated by the Clerk of Court.

The Clerk of Court may, but need not, acknowledge receipt of a facsimile transmission.

The risks of transmitting a document by fax to the Clerk of Court shall be assumed entirely by the sending party. Anyone using facsimile filing is urged to verify receipt of such filing by the Clerk of Court through whatever technological means are available.

(J) Documents filed by facsimile that require a filing fee shall be accepted by the Clerk for filing. In Civil matters, the filing fee shall be paid within three (3) days. In Traffic/Criminal matters, the filing fee shall be assessed as court costs.

(K) Facsimile filings shall not exceed ten (10) pages in length. The filer shall not transmit service copies by facsimile.

## **Rule 6      Reserved for Electronic Filing**

## **Rule 7      Admission of Out of State Attorney Motion Pro Hac Vice**

An attorney not licensed to practice law in the state of Ohio, but who is duly licensed to practice law in any other state or the District of Columbia, may, in the discretion of the Judge, be permitted to represent a party or parties in any litigation pending or to be filed in this Court after completion of all of the following conditions:

(A) File a written oath substantially in compliance with Rule I, Section 8A of the Rules for the Government of the Bar;

(B) Certify in writing that he or she has familiarized himself or herself with local Court rules and will familiarize himself or herself with the appropriate Criminal or Civil Rules, the Rules of Evidence and the Ohio Rules of Professional Conduct;

(C) Be sponsored in writing by an attorney licensed to practice law in the state of Ohio. The motion made by the licensed attorney shall certify such out-of-state counsel's compliance with this rule and the Rules for the Government of the Bar;

(D) The sponsoring attorney shall submit with the motion and certification an entry authorizing the approval of the motion.

## **Rule 8      Appearance and Withdrawal of Counsel**

(A) All entries of appearance of counsel in an action shall be in writing.

(B) Upon the entry of appearance of counsel, all documents filed with the Court and entries of the Court shall be served upon the designated counsel.

(C) Once an appearance is made, counsel may withdraw from a case only by written leave of Court for good cause shown. In the event it is determined that good cause has not been shown, the Court may require counsel to appear in Court and set forth reasons for withdrawal on the record.

(D) No person who is not admitted to the practice of law before the Ohio Supreme Court may appear on behalf of another individual or entity in Court, except as provided by Section 1925.17 of the Ohio Revised Code or Rule II of the Supreme Court Rules for the Government of the Bar of Ohio. An executed power of attorney does not confer upon a person who is not an attorney the right or ability to represent another person in Court. Nothing in this Rule shall prohibit an employee or agent of a party from appearance in a Civil action to provide testimony on behalf of his or her employer, regarding information within that employee's or agent's personal knowledge, regardless of the presence or absence of the party.

## **Rule 9      Appointed Counsel**

(A) The Court shall maintain a list of attorneys desirous of being appointed as assigned counsel for indigent Defendants inailable criminal/traffic cases. The attorneys will be offered the opportunity for appointment as they appear on the list. The list of appointments will be reviewed semi-annually to ensure that no one attorney is being offered an opportunity for appointment at the expense of others on the list.

(B) Attorneys appointed to represent indigent Defendants shall be paid a flat rate of \$100.00 per case by the Court if the Defendant is charged under Municipal ordinance. If the Defendant is charged under State code, the attorney will be paid through the Cuyahoga County Public Defender's Office.

## **Rule 10    Continuances**

(A) All requests and/or motions for continuances shall be submitted to the Court in writing and shall set forth the reasons requiring the continuance. No continuance shall be granted in the absence of proof of reasonable notice to, or consent by, the other party.

(B) When a continuance is sought for the reason that counsel is scheduled to appear in another case for hearing on the same date in another Court, the movant shall attach a copy of the notice received from the other Court. Motions for continuance sought due to a conflict in hearing or trial schedules shall be ruled upon in accordance with Rule 41 (B) of the Rules of Superintendence for the Courts of Ohio.

(C) Except for an emergency, no continuance will be considered if filed less than five (5) business days prior to the hearing date unless the moving party secures the consent of the other party in writing and such consent is filed with the Court prior to the hearing date. Emergencies shall be determined within the discretion of the Court.

(D) Motions for continuance, when submitted in accordance with the above, shall be granted within the discretion of the Court for good cause shown. A continuance that has not been ruled on by the date of the hearing shall be considered to be denied.

(E) A filing fee shall be assessed for all motions for continuance. If the motion for continuance is received by the Court via facsimile, the filing fee for civil cases shall be paid to the Court within three (3) days, and the filing fee in Traffic/Criminal cases shall be assessed as Court costs.

## **Rule 11    Recording of Proceedings**

(A) A record shall be made of Traffic, Criminal and Civil proceedings before the Court by audio electronic device. Upon written request to the Court, a party may obtain a full or partial copy of said recording in the form of a CD. The Court shall charge twenty (\$20.00) dollars per recording.

(B) The Court shall maintain exclusive custody and control of the electronic recording while the case is pending. After final adjudication, the recording shall be kept for a period of five (5) years. At the expiration of such period, the recording will be recycled or destroyed.

(C) In the event a party requests to have a stenographic recording of the proceeding, such party shall arrange for the presence and payment of the Court reporter. Further, the party shall file a written motion requesting that such stenographic recording become the official transcript

for the hearing. A copy of the recording or transcript shall be provided to the Court at the party's expense.

## **Rule 12 Courtroom Conduct**

(A) Upon the opening of any Court session, all persons in the Courtroom shall stand except for those physically unable to do so, and all persons entering the Court are subject to search. All persons in the Courtroom shall conduct themselves with decorum and in such manner as to not interfere with the proper administration of the Court's business.

(B) All persons appearing before the Court shall, to the extent practicable, appear in appropriate dress. Improper or disrespectful dress may constitute postponement of a hearing and require a person to return to Court. Prior to approaching the bench, all persons must remove outer garments such as coats or jackets and hats unless they are religious in nature and all persons must leave any bag, purse, satchel or brief case on the table designated for such purpose by the Bailiff.

(C) Small children are not permitted in the Courtroom while the Court is in session unless they are capable of behaving as to not disturb the proceedings.

(D) No smoking, eating, drinking or chewing gum is permitted in the Courtroom. Exceptions may be granted with prior permission of the Court.

(E) No person shall loiter, behave in a disorderly manner or make coarse or vulgar utterances in the Courtroom or in any halls, lobby, entryway, or stairway or otherwise disrespect, interfere with, or obstruct judicial activities, proceedings or Court business.

(F) No person shall operate a cell phone, camera or recording device in the Courtroom.

(G) Failure to comply with any aspect of this Rule may result in appropriate sanction by the Court, including continuance or dismissal of the matter before the Court, or a charge for contempt of Court.

## **Rule 13 General Motion Practice**

(A) All matters shall be made in conformity with the Ohio Rules of Civil Procedure or the Ohio Rules of Criminal Procedure.

(B) Each motion shall include a certificate of service attesting to service upon the opposing party or, if represented by counsel, upon counsel for such party.

(C) Motions shall be supported by a brief, citing applicable case and statutory law.

(D) Any motion, which, by its nature, is capable of being determined without a hearing, shall be ruled upon without hearing.

## **Rule 14 Pleadings and Motions**

(A) All pleadings and motions shall be typed or legibly printed on paper approximately 8 1/2 by 11 inches in size and securely bound at the top.

(B) The caption of the complaint shall state the name and address, if known, of each party. The caption on any other pleading adding or naming new parties shall state the names and addresses, if known, of the new parties. All other pleadings and motions shall state the case number and the name of the first party Plaintiff and Defendant. Every pleading, motion, or other document filed in a case shall be identified by title and shall bear the name, address and telephone number of the individual filing the same. Documents filed by an attorney shall include the name of the attorney, his or her Ohio Supreme Court registration number, firm name, if any, address, phone number, facsimile number, if any, and electronic mail address, if any.

(C) Interrogatories, notices of deposition, requests for admissions, and other discovery requests shall not be filed with the Court unless otherwise ordered.

(D) Unless otherwise provided in the Ohio Rules of Civil Procedure or these Local Rules, a party opposing a motion, including motion for summary judgment, shall have thirty (30) days from the date of service to file a brief in opposition citing applicable case and statutory law.

(E) A motion to extend the time for filing a brief in opposition may be requested prior to the expiration of the thirty (30) days.

(F) The failure of a party to file a brief in opposition may be construed by the Court as an admission that the motion may be granted.

(G) All motions not heard or decided prior to trial will be disposed of at the time of trial.

## **Rule 15 Bailiff Service**

The bailiff shall effect personal or residential service only within the territorial jurisdiction of this Court. Any party desiring personal or residential service of process outside the Court's territory shall arrange for a process server fitting the requirements of the Ohio Rules of Criminal Procedure or the Ohio Rules of Civil Procedure. Request for bailiff service must be made in writing. An attorney of record in a case may not be a private process server except in the case of witness subpoenas.

## **CRIMINAL /TRAFFIC DIVISION**

## **Rule 16     Criminal Complaints and Traffic Citations**

All Criminal complaints and Traffic citations shall be filed with the Clerk in original form and in accordance with Ohio Traffic and Criminal Rules of Procedure. Traffic citations are generally heard by the Court's Magistrates.

## **Rule 17     Appearance of the Defendant**

(A) Persons charged with Traffic and/or Criminal offenses must be present at the initial appearance as well as all subsequent hearings except as set forth herein. The requirements of the Defendant's initial appearance may be satisfied by counsel for the Defendant entering a plea on the Defendant's behalf in writing, waiving the time for speedy trial, and requesting that a pretrial be set. Such writing must be filed with the Court prior to the date of the initial appearance.

(B) The Court under certain circumstances may make an exception to the Defendant's appearance for good cause shown.

## **Rule 18     Video Hearings**

(A) At the Court's discretion, hearings on Criminal or Traffic matters may be held by means of closed circuit video transmission to the Court from the correctional facility where the Defendant is being held.

(B) The attorney representing the Defendant, whether retained or appointed, shall be notified of the time scheduled for the video hearing, and may be present either at the Court or the correctional facility.

(C) Video hearings will be scheduled at times mutually convenient to the Court and correctional facility involved, and must be scheduled by the Scheduler at (440) 461-6500 extension 205.

(D) In the event the Defendant personally or through counsel objects to the matter being held by video transmission, the proceedings shall take place in person in the Courtroom.

## **Rule 19     Motion Practice**

(A) All motions shall be made in conformity with Criminal Rule 12.

(B) Any motion which, by its nature, is capable of being determined without a hearing shall be ruled on without hearing.

(C) All motions not heard or decided prior to trial will be disposed of at the time of trial.

(D) In any case where a party or counsel anticipates that a motion hearing will require more than one (1) hour, it is the responsibility of the party or counsel to notify the Court so that adequate time can be scheduled. These motion hearings are scheduled by the Court's Deputy Clerk Scheduler at (440) 461-6500 extension 205.

## **Rule 20 Case Management**

(A) All Criminal and Traffic cases, excepting minor misdemeanors, where the Defendant enters a plea of not guilty or not guilty by reason of insanity, is represented by counsel, and waives the right to speedy trial at the initial appearance may be set for pretrial hearing at the request of the parties or in the Court's discretion. In the event the Defendant or counsel requests a date certain for the pretrial hearing one may be ascertained through the Court's Scheduler prior to leaving the Court, or by calling (440) 461-6500 extension 205. Otherwise written notice of the pretrial and/or hearing date shall be provided to the Defendant and/or counsel by U.S. Mail. Defendants are required to provide current addresses and phone numbers to the Court.

(B) Defendant and counsel shall be required to personally attend the pretrial hearing as well as all other hearings. Failure of the Defendant to appear may result in the issuance of an arrest warrant and bond forfeiture. The Court may grant exception to this Rule under certain circumstances for good cause shown.

(C) Cases that are not disposed of at the conclusion of the pretrial conference will be set for trial unless specifically indicated otherwise by the Court.

(D) All trials shall be scheduled before the Court unless the Defendant files a timely written jury demand.

(E) Subpoenas must be filed seven (7) days prior to the scheduled hearing date. Costs shall be added to the case.

## **Rule 21 Jury Management**

(A) All jury trials shall be conducted in a manner consistent with the proceedings adopted by the Supreme Court of Ohio's Ohio Trial Court Jury Use and Management Standards.

## **Rule 22 Jury Instructions**

In jury cases, all parties desiring specific jury instructions shall, at least seven (7) days prior to trial, file proposed jury instructions with the Court and serve the same upon opposing counsel.

## **Rule 23    Sentencing**

- (A) Upon a finding of guilty, sentencing shall occur immediately unless otherwise permitted by the Court.
- (B) Prior to sentencing and in its discretion, the Court may refer the Defendant to the Probation Department for a pre-sentence investigation.
- (C) Costs, fines and monies for restitution are expected to be paid immediately after sentencing unless otherwise permitted by the Court. In the event the Defendant is unable to make payment in full of all sums required, the Defendant may, at the discretion of the Judge or Magistrate, be referred to participate in Court Community Service or to sign a payment agreement or in restitution cases be referred to the Probation Department.
- (D) Failure to satisfy monies owed may result in a Probation Violation, License Forfeiture Suspension and/or case being referred to collections.

## **Rule 24    Probation**

- (A) The Court shall determine eligibility for Probation. Any Defendant who is referred to Probation shall meet with the Probation Officer immediately after sentencing. In the event the Probation Officer is unavailable to meet with the Defendant, it shall be the Defendant's affirmative duty to schedule a Probation appointment by contacting (440) 461-6500 the next business day.
- (B) The Probation Officer shall provide a copy of the Court's conditions of Probation to each Defendant referred for Probation and secure the Defendant's signature upon the same.
- (C) The Probation Officer shall inform each Defendant referred to Probation of the specific terms thereof.
- (D) A determination by the Probation Officer that the Defendant has failed to agree to or comply with the conditions of Probation, or with the terms of Probation, shall result in the scheduling of a Probation violation hearing and may result in the imposition of the original sentence in whole or in part.
- (E) The Defendant shall pay a Probation supervision fee as the Court deems appropriate.

## **Rule 25    Traffic Violations Bureau**

- (A) Pursuant to Traffic Rule 13 and Criminal Rule 4.1, there is hereby established a Violations Bureau and the Clerk of Court is hereby appointed as Clerk thereof.

(B) The Violations Bureau shall have authority to dispose of Traffic offenses with the exception of the following that require a Court appearance:

- (1) Indictable offenses;
- (2) Operating a vehicle while under the influence of alcohol or any drug of abuse/Physical Control;
- (3) Leaving the scene of an accident;
- (4) Driving while under suspension or revocation of a driver's or commercial driver's license when jail is a possible penalty.
- (5) Driving without being licensed to drive, except where the driver's or commercial driver's license has been expired for thirty (30) days or less;
- (6) A third moving violation within a twelve (12) month period when jail is a possible penalty;
- (7) Failure to stop and remain standing upon meeting or over-taking a school bus stopped on the highway for the purpose of receiving or discharging a school child;
- (8) Willfully eluding or fleeing a police officer;
- (9) Drag racing;
- (10) Willful Wanton Disregard for Safety/ Reckless Operation
- (11) Speeding tickets that are thirty (30) mph or more, over the limit;
- (12) Any violation in which the officer marked the notice as personal appearance required.

(C) There is hereby established a waiver schedule of fines and costs for subject offenses. Such schedule shall be displayed at the Clerk's office of the Court and posted on the Court's website, [www.lyndhurstmunicipalcourt.org](http://www.lyndhurstmunicipalcourt.org).

(D) Within seven (7) days after the date of issuance of the ticket, or transfer of the matter to this Court, a Defendant charged with an offense that can be processed by the Violations Bureau may:

- (1) Pay in person at the Violations Bureau, sign a plea of guilty and waiver of trial provision on the ticket, pay the total amount of fines and costs, by cash, personal check, certified check, money order, VISA or MasterCard. Proof of financial responsibility must be shown if not clearly marked on the citation.

(2) Pay by mail, sign a plea of guilty and waiver of trial provision on the ticket, pay the exact total amount of fines and costs by personal check, certified check or money order. A copy of proof of financial responsibility must be included if not clearly marked on the citation.

(3) Pay by drop box located at the Lyndhurst Police Department, sign a plea of guilty and waiver of trial provision on the ticket, and pay the exact total amount of fines and costs by personal check, certified check or money order. The Court accepts cash, however, recommends cash payments be made in person. No change will be provided by Lyndhurst Police Department. A copy of proof of financial responsibility must be included if not clearly marked on the citation.

## **CIVIL DIVISION**

### **Rule 26 Authority**

The Civil Division is established and operated pursuant to Ohio Revised Code Chapter 1901.22.

### **Rule 27 Civil Jurisdiction**

(A) The monetary jurisdiction of the Civil Division is fifteen thousand dollars (\$15,000.00), exclusive of interest and Court costs, and subject to other provisions of law.

(B) In order to maintain a claim in the Civil Division, the Court must have jurisdiction over the parties in one of the following ways:

(1) The transaction giving rise to the complaint occurred within the territorial jurisdiction of the Court: Mayfield Heights, Mayfield Village, Highland Heights, Richmond Heights, Gates Mills or Lyndhurst; OR

(2) The Defendant maintains his/her residence or maintains his/her business within such territorial jurisdiction; OR

(3) The parties have agreed by contract to the jurisdiction of the Court.

### **Rule 28 Security for Costs/Deposit for Jury Trial**

(A) No action or proceeding shall be accepted for filing by the Clerk of Court unless the filing fee set forth in the schedule of costs established by the Court has been paid.

(B) Upon representation of any indigent party, such party shall file a written motion and affidavit setting forth his or her income and expenses, and the Court shall rule upon the same.

(C) When a judgment for costs against a party is unsatisfied, the Clerk may refuse to accept any new action or proceeding instituted by or on behalf of such party, unless ordered by the Court.

(D) A party filing a jury demand, in a forcible entry and detainer case, shall pay a jury demand fee and jury deposit. This demand for jury shall be made no later than three (3) Court days before the initial scheduled hearing.

(E) In all other Civil cases, wherein a jury demand is filed, the party making the demand shall pay a jury demand fee at the time of the filing. This party shall make an advance jury deposit. If the deposit is not timely, the jury demand will be deemed waived and the case shall proceed as a trial before the Court.

### **Rule 29 Leave to Move or Plead**

(A) Except in actions for forcible entry and detainer, or in replevin, when a party is not prepared to move or plead on the 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.

(B) Any additional leaves to move or plead, may be granted by order of the Court, with notice to the opposing party or counsel, and for good cause shown. Consent of the opposing party or counsel shall not, in and of itself, constitute good cause.

(C) Applications for extensions of time, regardless of consent of opposing counsel must be filed at least one (1) day prior to the due date.

### **Rule 30 Case Management**

(A) All contested matters, except forcible entry and detainer and small claims, shall be set for pretrial. The Court may schedule subsequent pretrials via telephone.

(B) Where one or more party is not represented by counsel, contested matters will be set for pretrial.

(C) Counsel and parties must appear before the Court at the pretrial. Insurance adjusters may substitute for their insured, provided they have full authority to settle. No appearances by telephone will be allowed unless specifically permitted by the Judge or Magistrate.

(D) Parties will be encouraged at the pretrial to review the possibility of settlement, to simplify and narrow the issues for trial, to reach stipulations of fact not in controversy, to shorten

the time and expense of trial and to consider such other matters as may aid in the disposition of the case.

(E) Parties should be prepared at the pretrial to enter into a binding case management schedule setting forth a timetable for the amendment of the pleadings, the filing of motions, the exchange of witness reports and medical and hospital records, the termination of discovery, and the trial of the action. Such schedule shall thereafter be adopted as an order of the Court.

(F) At the time of the pretrial, the Judge or Magistrate may consider other appropriate matters in accordance with Civil Rule 16 as well as the imposition of sanctions as authorized by Ohio Civil Rule 37, and such other matters as may aid in the disposition of the case.

(G) A status conference may be scheduled at the discretion of the Judge or Magistrate when necessary. Notice of said status conference shall be sent to the parties via regular U.S. mail.

### **Rule 31 Trial**

(A) All trials shall be set before the Court unless a party to the action files a timely jury demand.

(B) Notice to the Court of the withdrawal of a jury demand shall be made no later than seven (7) days prior to the date of trial. In the event a panel of jurors appears for service and the trial is continued or postponed due to the failure of a party or his counsel to comply with this Rule or to appear, such party shall be assessed the per diem costs of the panel.

### **Rule 32 Trial Brief and Jury Instructions**

(A) Where a trial brief is required by order of Court, counsel for each party shall file a copy with the Court and serve the same to opposing counsel at least seven (7) days prior to the commencement of trial.

(B) The trial brief shall state the issues, authorities upon which counsel intends to rely at trial, a list of witnesses, and a list of all exhibits intended for trial.

(C) In all jury cases, proposed jury instructions shall be filed seven (7) days prior to trial, a copy of which shall be served upon opposing counsel.

### **Rule 33 Settlement and Voluntary Dismissal**

(A) In cases of settlement or voluntary dismissal, the Court shall accept notice of the same by telephone or facsimile from the person pursuing each claim. The Plaintiff shall submit an entry within fourteen (14) days of such telephone notification, unless otherwise ordered by the

Court. The entry may be filed by facsimile, provided that the original is filed with the Court within three (3) days.

(B) It shall be the responsibility of the Plaintiff to notify the opposing party of the cancellation of any scheduled hearing due to voluntary dismissal unless otherwise ordered by the Court.

(C) If no entry is received within the time allowed, the Court shall issue an entry of dismissal with or without prejudice at the cost of the Plaintiff or other party notifying the Court of the dismissal.

### **Rule 34 Default Judgment**

(A) Motions for default judgment shall be in writing and clearly state the date the complaint was filed, the manner in which service was perfected, proof of service and the answer date.

(B) In the event the motion is accompanied by a current affidavit setting forth the claim for relief and amount of damages, it shall be ruled upon without oral hearing.

(C) In the event the motion is not accompanied by an affidavit, the motion shall be set for oral hearing. In the event an affidavit is filed prior to the hearing date, the motion shall be ruled upon without oral hearing. In the event an affidavit is not filed and the movant fails to appear or produce evidence at the hearing in support of the claim and amount of damages, the matter shall be dismissed without prejudice.

(D) All motions for attorney fees shall be set for oral hearing.

(E) Interest shall be awarded in accordance with law.

### **Rule 35 Satisfaction of Judgment**

(A) Satisfaction of judgment shall not be entered by the Clerk of Court unless 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 36 Forcible Entry and Detainer Actions**

(A) Cases for forcible entry and detainer, and cases for past due rent and money damages, shall be filed separately. A separate filing fee shall be assessed for each action. The Court shall hear each case separately.

(B) Forcible entry and detainer cases shall be set for hearing before a Judge or Magistrate within thirty (30) days after the issuance of the summons.

(C) At the conclusion of the hearing, the Judge or Magistrate shall file a written decision. A copy shall be served upon all parties.

(D) In forcible entry and detainer cases, in which the Court has issued a writ of restitution, it shall be the responsibility of the Plaintiff or his or her agent to provide for the actual move-out of the Defendant from the premises, including the post move-out storage of any personal property of the Defendant. The Bailiff's office shall schedule the move-out and shall be in attendance at the time of the execution of the writ of restitution, but shall not make advance arrangements for movers or conduct the move-out. Nothing in this rule shall prevent a party from recovering the costs of restitution of premises as damages in an appropriate case pursuant to law.

### **Rule 37    Garnishment**

(A) A party seeking a garnishment of personal earnings or property shall comply with the provisions of Ohio Revised Code 2716.01, et seq.

(B) Sufficient copies of the garnishment documents shall be filed with the Court for service upon the garnishee and the appropriate parties. The garnishee fee shall accompany the affidavit. In the event that the appropriate number of copies are not filed with the Court, the Court reserves the right to charge the filing party five (\$.05) cents per copy.

(C) The Court shall not accept garnishment forms that contain carbon inserts.

### **Rule 38    Aid of Execution**

(A) All proceedings in an aid of execution shall comply with the provisions of Ohio Revised Code 2327.

(B) Sufficient copies of the aid of execution order shall be filed for service upon the appropriate parties. The applicable fees shall accompany the order.

## **SMALL CLAIMS DIVISION**

### **Rule 39    Authority**

The Small Claims Division is established and operated pursuant to Ohio Revised Code Chapter 1925.

#### **Rule 40    Purpose**

(A)    The purpose of the Small Claims Division is to allow parties to resolve minor disputes efficiently without requiring the services of an attorney. Litigants are permitted to obtain an attorney if desired.

(B)    The Small Claims Division of the Court is for monetary judgments only. Complaints seeking the return of property or an order requiring a party to perform a certain act must be filed in the Civil Division.

#### **Rule 41    Small Claims Jurisdiction**

(A)    The monetary jurisdiction of the Small Claims Division is six thousand dollars (\$6,000.00), exclusive of interest and Court costs, and subject to other provisions of law.

(B)    In order to maintain a claim in the Small Claims Division, the Court shall have jurisdiction over the parties in one of the following ways:

(1)    The transaction giving rise to the complaint occurred within the territorial jurisdiction of the Court: Mayfield Heights, Mayfield Village, Highland Heights, Richmond Heights, Gates Mills or Lyndhurst; OR

(2)    The Defendant maintains his/her residence or maintains his/her business within such territorial jurisdiction; OR

(3)    The parties have agreed by contract to the jurisdiction of the Court.

#### **Rule 42    Small Claims Pleading**

(A)    The Plaintiff may initiate a small claims action by filing a complaint and paying the required costs.

(B)    No party is required to file a responsive pleading such as an answer to the complaint, counterclaim, cross-claim, or third party complaint.

(C)    Upon the filing of the complaint, the case shall be set for trial.

#### **Rule 43    Counterclaim and Cross-Claim**

(A) All counterclaims and cross-claims shall be filed at least seven (7) days before the scheduled trial.

(B) Any party filing such pleading shall send copies to all opposing parties by regular U.S. mail.

(C) Any pleading which is not timely filed shall be stricken from the file. If the claim is timely filed, the Clerk shall issue a notice of trial date to all parties.

#### **Rule 44 Third Party Claim**

(A) Any party seeking to join a new party to a pending case shall file a third party complaint at least seven (7) days before the scheduled trial date.

(B) The Clerk shall serve the new party Defendant with the third party complaint in the same manner as the original complaint.

(C) Any pleading which is not timely filed shall be stricken from the file. If the claim is timely filed the Clerk shall issue a notice of trial date to all parties.

#### **Rule 45 Continuance**

A motion for continuance in a small claims case shall comply with this Court's Local Rules 5 and 10.

#### **Rule 46 Dismissal**

(A) A person asserting a small claim may dismiss the small claim by contacting the office of the Clerk of Court. This may be accomplished in person, by mail, by telephone or facsimile. A dismissal entry shall be filed with the Clerk's office within three (3) days of the notification of the dismissal.

(B) If no entry is received within the time allowed, the Court shall issue an entry of dismissal with or without prejudice at the cost of the Plaintiff or other party notifying the Court of the dismissal.

#### **Rule 47 Subpoena**

Subpoenas must be filed seven (7) days prior to the scheduled hearing date. All filing fees and witness fees shall be paid at the time of filing.

**Rule 48     Transfer to Regular Civil Docket**

- (A) A motion to transfer a small claims case to the regular Civil docket shall be filed at least seven (7) days before the scheduled trial date.
- (B) When a counterclaim, cross-claim or third party claim exceeds the jurisdiction of the Small Claims Division, a motion to transfer must accompany it.
- (C) An untimely motion to transfer shall be stricken from the file.
- (D) In the event the motion is not filed or is stricken from the file, the claim will be limited to the monetary jurisdiction of the Small Claims Division.

**Rule 49     Small Claims Trial**

- (A) The trial shall be conducted by a Magistrate. The parties shall be placed under oath and shall be given the opportunity to state their cases.
- (B) At the conclusion of the trial, the Magistrate shall prepare a Magistrate's Decision. Findings of fact and conclusions of law need only be included if requested by a party.

**Rule 50     Evidence**

- (A) The Ohio Rules of Evidence do not apply to the Small Claims Division.
- (B) Any documents and/or witnesses that a party desires to be considered shall be produced at the time of trial and shall not be produced afterwards. Continuances shall not be granted on the date of trial for the purpose to submit additional documents and/or witnesses.
- (C) Witnesses shall be present in Court. The Court shall not receive telephone calls from witnesses. Affidavits or depositions of witnesses shall not be accepted as evidence.
- (D) In cases involving a motor vehicle collision, the party seeking damages shall submit at trial a certificate of title for the subject vehicle demonstrating ownership. Vehicle registration shall not be accepted as evidence. Failure to comply with this Rule shall result in dismissal of the claim and denial of damages.

**Rule 51     Objections to the Magistrate's Decision**

- (A) A party may file a written objection to a Magistrate's Decision within fourteen (14) days. Thereafter, the other party shall have a period of ten (10) days to respond.

- (B) Objections shall summarize, in writing, the evidence presented at trial and shall state with particularity the grounds for the objection. The objection shall be signed by the objecting party, filed with the Clerk's Office and served on all other parties by regular U.S. mail.
- (C) The filing of an objection shall result in a stay of the proceedings.
- (D) In the event the Court overrules the objections, final judgment shall be entered.
- (E) In the event the Court sustains the objection, the Judge may render a new decision or the matter shall be set for a new trial. All parties and witnesses shall appear for the new trial.