

CRIMINAL RULES

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*Loc.R.10 is a temporary order and only effective for the duration of the emergency

RULES OF PRACTICE AND PROCEDURE
OF THE COURT OF COMMON PLEAS, MUSKINGUM COUNTY, OHIO

UNDER THE AUTHORITY OF ARTICLE IV, SECTION 5(B) OF THE OHIO CONSTITUTION, THE RULES PROMULGATED BY THE OHIO SUPREME COURT AND SECTION 2505.45 OF THE OHIO REVISED CODE, IT IS ORDERED THAT THE FOLLOWING BE THE LOCAL RULES OF PRACTICE AND PROCEDURE IN THIS COURT UNTIL OTHERWISE PROVIDED. HOWEVER, THE SAME SHALL NOT CONFLICT WITH THE RULES OF THE SUPREME COURT.

Rule 1: REMOVAL OF FILES AND OTHER DOCUMENTS

No files, or other documents on file in this Court shall be removed from the office of the Clerk of Courts except with the Clerk's permission and under such rules as shall prescribed. Provided, however, that this rule does not apply to:

- A) The use of such files or documents in open court of Judge's Chamber's during any hearing, proceeding or trial in the case to which said files or documents belong, or in which they may be used.
- B) Any removal made pursuant to law, or with express permission of the Court.

RULE 2: CRIMINAL CASE MANAGEMENT PLAN

PURPOSE

The purpose of these rules of criminal practice is to provide the fairest and most expeditious administration of criminal justice possible within the requirements of the Ohio Rules of Criminal Procedure; and the provisions of the Ohio Revised Code, the Ohio Constitution and the U.S. Constitution. These rules shall be construed and applied to eliminate delay, unnecessary expense, and all other impediments to a just determination of criminal cases. Further, the disclosure and discovery requirements placed upon both the prosecution and the defense are to fully implement Rule 16 of the Ohio Rules of Criminal Procedure and the requirements of Brady vs. Maryland, 373 U.S. 83 (1963). The rules of practice of this Court for civil cases apply to all criminal proceedings, except where clearly inapplicable.

RULE 3: GRAND JURY

Failure to Act. Criminal cases bound over to this court on which no final action is taken by the grand jury within twenty-eight (28) days shall be dismissed forthwith and without prejudice. If the complaining witness's testimony is not available, the case may be continued by the court for a definite period of time and such continuance noted in the report of the grand jury.

Upon Indictment:

- (A) Jail Cases – Set for next scheduled Arraignment
- (B) Bond and Direct Cases – Cases are set by the Court at the next available arraignment docket after service of the indictment has been executed.
- (C) All information heard by assigned judge.

ARRAIGNMENT ON INDICTMENT

- (A) Scheduled per Grand Jury section, above. All arraignments heard by same judge.
- (B) Defendant shall be represented by counsel
- (C) A not guilty plea or a plea of not guilty by reason of insanity will be the only pleas accepted by the Court at the time of arraignment.
- (D) The assignment commissioner will set a trial date once the time to try has been established by the Prosecutor's Office.
- (E) Failure of Defendant to Appear:
 - (1) Continued until next Arraignment Date, if determined appropriate by the Court.
 - (2) Warrant issued.

RULE 4: ARRAIGNMENT, INFORMATION PAKCETS AND SCHEDULING

- (A) Arraignments will be scheduled at the time of preliminary hearing or as ordered in the indictment or the next available arraignment docket after service has been executed. All arraignments will be heard by the same judge.
- (1) After arraignment an information packet shall be delivered to defendant's counsel upon execution of a Demand and Receipt for same.
 - (2) The INFORMATION PACKET shall contain:
 - a. All police reports
 - b. All witness statements
 - c. Any statements of defendant
 - d. All available laboratory reports
 - e. Names and addresses of all witnesses
 - (3) The police reports supplied in the information packet shall not be used for cross-examination of any witness unless same is properly qualified under Rule 16 (b) (1) (g) Ohio Rules of Civil Procedure and Rule 613 Ohio Rules of Evidence.
 - (4) Execution of a demand and receipt, and acceptance of the information packet by counsel for defendant automatically obligates defendant to supply reciprocal discovery as provided in Rule 16 Ohio Rules of Criminal Procedure.
- (B) The date for trial, and/or for hearing of any preliminary motions, will be fixed as the assigned judge may determine.

Rule 5: CRIMINAL MOTIONS

When a motion is filed in a criminal case a copy thereof shall also be served on the assigned Judge's office, such motion shall be submitted without oral argument except as required by any rule promulgated by the Supreme Court or unless demanded by a party by separate instruments in writing filed with the Clerk with a copy to be filed with the assignment commissioner, in which event the same shall be scheduled for hearing.

RULE 6: CONTINUANCE OF A CRIMINAL CASE

All requests for continuance of a trial or hearing shall be by written motion or oral motion made during a court proceeding wherein the Court Reporter will make a record, which shall state the nature of the matter to be continued and the reason(s) for the requested continuance.

No continuance of any trial or hearing shall be granted to the prosecutor or to the defense unless request is made in writing and/or in open court before the assigned judge. Request for continuances of any trial or hearing shall be made no less than fourteen (14) days prior to the trial date. Request for continuance of a trial date shall be accompanied by an irrevocable and unconditional time waiver.

Upon granting a continuance of a trial or hearing, the Assignment Commissioner shall notify the parties of the new date and time set.

Except where a continuance has been granted by the Court prior to the date of the originally scheduled trial or hearing, the parties and counsel shall appear at the scheduled date and time. Failure to appear or to be prepared can result in dismissal of the case and/or other appropriate sanctions.

RULE 7: AGREEMENT OF COUNSEL

Stipulations and agreements of counsel or parties to the case must be reduced to writing and signed by the parties to the case or their respective counsel, or made in open Court and dictated to the Court Reporter; otherwise any such stipulations or agreements shall not be recognized by the Court if disputed by any of the parties.

RULE 8: MEDIA COVERAGE OF COURT PROCEEDINGS

(A) Requests for permission to broadcast, televise, photograph or record during sessions in the Common Pleas Courtrooms shall be made in writing to the judge presiding at such proceedings and shall be made on the appropriate application form available from the Court. Such application shall be made as far in advance as is reasonably possible but in no event later than forty-eight (48) hours prior to the courtroom session to be broadcast, televised, photographed or recorded. The trial judge may waive the advance notice provision upon a showing of good and substantial cause thereof. All applications shall become part of the record of the proceedings.

(B) Pursuant to Canon 3(A) of the Code of Judicial Conduct and Superintendence Rule 11 of the Ohio Supreme Court the trial judge shall grant the request and record that permission in writing setting forth therein, any conditions not provided for by this rule. Provided also, that the trial judge may impose further conditions upon media representatives during the course of the proceedings if in the judge's discretion they are deemed necessary.

(C) All media representatives interested in recording courtroom proceedings by audio, video, photographic means shall do so through the pooling of their respective resources. Local media representatives shall select a pool coordinator who shall take responsibility for

- a. Placing and operating stationary cameras inside the courtroom,
- b. Placing and operating all audio equipment and
- c. Making the technical arrangements necessary for feeding the output from this equipment to all participating locations outside the courtroom.

The pool coordinator shall consult with the trial judge in advance about possible camera and microphone locations inside the courtroom. All pooling arrangements are the responsibility of the media representatives. Such arrangements shall be made without involving the court but subject to the trial judge's approval. If any disputes arise, the trial judge may exclude all contesting media representatives.

(D) Not more than one (1) portable camera (television, video tape or movie) with one (1) operator and not more than one (1) still photographer using not more than two (2) cameras of professional quality, with not more than two (2) lenses for each camera shall be permitted. Motor drives or auto winders are not permitted. No artificial lighting other than that normally used in the courtroom shall be used.

Media representatives shall be afforded a clear view of proceedings in the courtroom but shall not be permitted to move about in the courtroom during the court proceedings except for reasonable ingress to and from the courtroom.

No interviews shall be permitted inside the courtroom or in any areas connected with or adjacent to the courtrooms, Clerk of Courts' office, court chambers or in the elevator or on the stairways connected to the second floor of the courthouse before, during or after sessions including recesses between session.

Broadcasting, televising, recording and photographing shall not be permitted in any area connected with or adjacent to the courtrooms, the Clerk of Courts' office, court chambers, elevator or stairways, connected to the second floor of the courthouse before, during or after sessions including recesses between sessions. Witnesses waiting to testify and jurors going to and from the jury room are in these areas therefore the above described media activity is prohibited.

All equipment needed for the pool shall be located where possible outside the courtroom. Changes of cassettes for film shall be not be made inside the courtroom during proceedings. No equipment shall be used inside the courtroom which produces distracting sounds. All equipment in the courtroom must be set up fully and be operational before the beginning of the court proceeding.

(E) If the courtroom has an existing audio system that is technically satisfactory for broadcast purposes, the media pool shall utilize this system. If no such system is available, the pool shall place microphones and wiring as unobtrusively as possible after initial consultation with the judge and his permission therefore is obtained. Only one (1) audio system is permitted in each courtroom.

(F) There shall be no audio pickup of conferences conducted in any court facility between attorneys and clients or co-counsel, counsel, or of conferences conducted at the bench between counsel and judge.

The filming, videotaping, recording or taking photographs or jurors shall not be permitted in any circumstance. The filming, videotaping, recording or taking photographs or victims or witnesses who object thereto shall not be permitted.

It shall be the responsibility of counsel for each side to advise witnesses of their rights to object to being filmed, videotaped, recorded or photographed and the Court shall place such advices and their written response thereto of record prior to their appearance on the witness stand and outside the presence of the jury. Only those who have expressly granted permission to do so may be filmed, videotaped, recorded or photographed.

Proper courtroom decorum and dress shall be maintained by media representatives in the courtroom at all times.

(G) The failure of any media representative to comply with the conditions prescribed by the judge, this Rule or the Superintendence Rules of the Supreme Court may result in the revocation of permission to broadcast, televise, record or photograph a trial or hearing.

Rule 9: Miscellaneous

9.1: Electronic Monitored House Arrest device Fund

9.2: Fees for computer Systems

9.3: Fees for Computerized Legal Research Systems

RULE 9.1: ELECTRONICALLY MONITORED HOUSE ARREST DEVICE FUND

Pursuant to O.R.C. Section 2929.23(E)(1) the Muskingum County Court of Common Pleas hereby establishes an electronically monitored house arrest and detention fund.

The Clerk of Courts of said county shall establish said fund and all fees collected from eligible offenders upon whom electronically monitored house arrest is imposed pursuant to the above section and section 2951.355 (2951.35.5) of the O.R.C.

The fund may be used only for the payment of the costs of electronically monitored house arrest program, including, but not limited to, the cost of electronically monitored house arrest or detention of indigent eligible offenders.

FILED
COMMON PLEAS COURT
MUSKINGUM CO., OHIO

2013 MAR 22 PM 1 33

RULE 9.2

TODD A. BICKLE

IN THE COMMON PLEAS COURT OF MUSKINGUM COUNTY, OHIO
CLERK

ENTRY

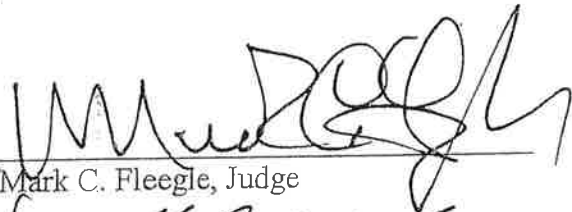
IN RE: Fees for Computer Systems

The Court hereby determines that the efficient operation of the Court requires that additional funds be provided to make technological advances in or to maintain computer systems for the Office of the Clerk of Court of Common Pleas. Therefore, pursuant to Ohio Revised Code Section 2303.201(B)(1), the Clerk of the Court of Common Pleas is hereby authorized and directed to charge a fee of twenty dollars (\$20.00) pursuant to said section. Also pursuant to Ohio Revised Code Section 2303.201(B)(1), the Clerk of Court of Common Pleas is authorized to charge a fee not to exceed one dollar each for the services described in divisions (B),(C),(D),(F),(H), and (L) of Ohio Revised Code Section 2303.20.

All monies collected under this section shall be paid to the County Treasurer and shall be disbursed only upon the order of this Court.

This entry shall be effective March 22, 2013.

IT IS SO ORDERED.



Mark C. Fleegle, Judge

Kelly J. Cottrill, Judge

Todd Bickle, Clerk of Courts

FILED
COMMON PLEAS COURT
MUSKINGUM CO., OHIO

2013 MAR 22 PM 1 33

RULE 9.3

TODD A. BICKLE
CLERK

IN THE COMMON PLEAS COURT OF MUSKINGUM COUNTY, OHIO


ENTRY

IN RE: Fees for Computerized Legal Research Services

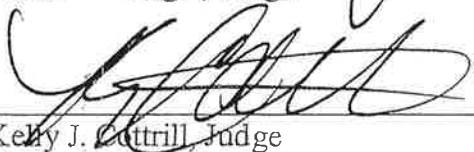
In the opinion of the Court, the business of the Court so requiring for the efficient operation of the Court, additional funds are required to make available computerized legal research services. In accordance with Ohio Revised Code Section 2303.201(A)(1), the Clerk of Court is hereby authorized and directed to charge an additional fee of six dollars (\$6.00) on the filing of each cause of action or appeal under Divisions (A),(Q), and (U) of Section 2303.20 of the Ohio Revised Code. All monies so collected under this section shall be paid the County Treasurer and shall be disbursed only upon the order of this Court.

This entry shall be effective March 22, 2013.

IT IS SO ORDERED.



Mark C. Fleegle, Judge



Kelly J. Cottrill, Judge

Todd Bickle, Clerk of Courts

RULE 10

FILED
COMMON PLEAS COURT
MUSKINGUM CO., OHIO

**IN THE COURT OF COMMON PLEAS
MUSKINGUM COUNTY, OHIO**

2020 DEC 30 AM 9:59

Courthouse, Zanesville, Ohio 43701
Shana Long, Clerk, Jury Commissioner
Phone (740) 588-4329
Fax: (740) 455-7934

WENDY L. SOWERS
JUDGE MARK C. FLEEGLE
JUDGE KELLY J. COTTRILL

ORDER OF THE COURT

COVID-19 POLICIES AND PROCEDURES

**ALL POLICIES AND PROCEDURES WILL BE
FOLLOWED AS CLOSELY AS POSSIBLE**

If you are a litigant, attorney or proposed juror, be assured that the Court is working to balance the need for public service with health recommendations to reduce health risks during trials. This letter is designed to give you particular directions about some of these health orders.

First, prospective jurors who are 65 years of age or older may be excused on their own request. It is not mandatory to request this excuse, but if you make the request, you will be excused without further inquiry. If this applies to you, contact the Court to verify your intentions.

Next, prospective jurors who have a particular health condition(s) that increases the susceptibility of contracting a virus may also seek to be excused from jury service. If you believe you fit into this category, you may contact the Court to inquire about being excused. You will need to provide proof of the medical condition so be prepared to do so. The information will be kept confidential. However, you are not automatically entitled to be excused.

Generally, if you have a medical appointment and/or schedule conflict, these are not typically a reason to be excused from attendance at trial. If you have a scheduled medical appointment, you should seek to have it rescheduled. If rescheduling is not possible, please contact the Court to explain the conflict and seek guidance. Again, be prepared to submit proof of the medical appointment. The information will be kept confidential. You are not automatically entitled to be excused.

Social distancing, wearing masks, hand sanitizing and surface cleaning all are required during the trial. Much of what is expected in the public is also required in the courtroom. There are, at times, modifications to allow for effective communications.

Prospective jurors should not report if you have tested positive for Covid within 10 days prior to the trial date or are in a contact group that is expected to quarantine. Do not report if you have a fever above 99.9 degrees without use of fever-reducing medications, or if you have a persistent cough. Attorneys and pro se parties should notify the court if health issues arise. Witnesses should advise the party who summoned your appearance.

If you contact the Court, please use the number listed above and ask for the Shana Long, Clerk, Jury Commissioner (740) 588-4329. Documents should be sent to the fax number listed above. Make sure you have provided a valid phone number in the event the Court must contact you.

Pursuant to Ohio Supreme Court Chief Justice Maureen O'Conner's December 10, 2020, e-mail, those policies and procedures will also be following as closely as possible. (See attachment).

IT IS SO ORDERED.


JUDGE MARK C. FLEEGE


JUDGE KELLY J. COTTRILL

COVID Guidance

1 message

Chief Justice Maureen O'Connor <ChiefJustice@sc.ohio.gov>

Thu, Dec 10, 2020 at 2:42 PM

Dear Judge:

As the COVID situation in Ohio continues to worsen, among the few bright spots I have observed are the active steps many judges have taken to reduce risk to their staff and the public. Courts have maximized their use of technology for remote proceedings. They have scrupulously followed health authorities' guidance, modifying procedures and facilities—both inside their courtrooms and throughout courthouses—to facilitate social distancing and other safe health practices. They have issued orders postponing jury trials and granting continuances, citing their authority under RC 2945.72(H).

These measures have by necessity become our default settings, allowing courts to maintain operations while dealing with the increasing spread of COVID.

At the same time, I continue to receive disheartening reports about some courts that are doing some of the following: holding "cattle-call" proceedings, allowing crowded courthouse hallways; requiring in-person appearances for routine, non-essential matters; denying requests for reasonable, COVID-related continuances; and not mandating ODH safety measures in staff work areas. It is no surprise then, that we are also seeing a rise in infections among judicial staff as well as in the offices of public defenders, prosecutors, clerks of court and law enforcement. This rise in infections has caused a number of courts to curtail their operations.

I stated in March, when the pandemic hit, that the courts could not and would not close. There have been numerous guidance documents released in March and throughout the last 10 months to identify practices that must be followed in order to keep the courts working. Unfortunately, some judges may have heard only the first part of the message and didn't take to heart the guidance detailing what must be done to keep courts operating safely. In addition to the obvious danger to the health of those who enter the courthouse (and their families, etc.), noncompliance with health directives whittles away at the public's trust and confidence in the judiciary.

I want to reiterate the guidance on how courts should operate while the pandemic persists.

Hearings, proceedings, pre-trials, status conferences, fine enforcement hearings, etc.

First and foremost, we must operate with a strong presumption toward remote proceedings. Courts will leverage technology to conduct all trials and proceedings remotely to the extent possible, including but not limited to jury trials, bench trials, oral arguments, pre-trials, status conferences, evidentiary hearings, motion hearings, or any other similar hearings.

In-person appearances should be required only in exceptional circumstances, where there is an immediate need to protect the safety or well-being of a person, and a remote proceeding is not feasible. Examples might include, but are not limited to, proceedings related to civil protection orders, emergency guardianships, civil commitments, and abuse, neglect and dependency cases.

Trials

If a trial cannot be held remotely, judges should liberally grant continuances. In criminal preliminary hearings and jury trials, a judge may grant a continuance under R.C. 2945.72(H), citing the COVID-19 pandemic as the basis. For additional information regarding the continuance of criminal jury trials, please consult AG Opinion 2020-002.

If a trial must be held in person, the court must comply with all Ohio Department of Health and local health department orders and guidance. Additional considerations, specific to jury trials are as follows:

- Schedule in-person trials so that only people such as attorneys, parties, and witnesses are present in the courtroom and surrounding area. Congregating in courtrooms, hallways, or other common or confined spaces is a dangerous practice and contrary to orders from the governor and the Ohio Department of Health;
- Summon the smallest number of jurors possible, conduct voir dire in small groups appropriately protected, establish a liberal policy to excuse jurors with health concerns, and grant continuances;
- Develop a plan to maintain appropriate distancing and to minimize contact among jurors; assemble them in a courtroom or other large room to allow for spacing;
- Limit the number of individuals in the courtroom; consider live-streaming the trial to provide access for the public.

Minimize individuals in the court building

- When remote appearances are not possible, schedule cases at various times and on different days to minimize the number of individuals appearing at one time;
- Do not block schedule a large number of cases at one time (such as arraignments, traffic cases, or fine enforcement hearings), which leads to congestion in the hallways and courtrooms;
- Consider having individuals wait in their vehicles until they are called or texted for a case;
- Update the court's website to encourage self-service, including access to forms and payment information, as well as local bar association contact information and local legal aid contact information.

Comply with Ohio Department of Health and local health department orders

- Require all persons within the courthouse to properly wear masks;
- Maintain at least six-foot separation by designating distances with signage, tape, or by other means;
- Enforce limits on personal capacity of facilities and rooms to comply with social distancing requirements.

Staff

- Work remotely, to the greatest extent possible. Employees in facilities must comply with all applicable health orders and guidance;
- Require daily health assessments of employees to determine fitness for duty. Immediately report infections to and cooperate with the local health department to facilitate contact tracing;
- Use alternate areas, such as the courtroom, jury room, or break room, as temporary work stations to ensure appropriate distancing and minimize contact;

- Establish alternative hours to minimize contact among staff, including dividing employees into groups rotating in shifts when possible to ensure appropriate distancing and minimize contact.

Facility

- Establish a robust process for cleaning and sanitizing the courthouse throughout the day and at the close of business, particularly in common areas, work spaces, and high-touch surfaces;
- Make hand sanitizer readily available in multiple locations;
- Ensure proper ventilation and the movement of fresh air throughout the court and office areas, if possible.

I know these practices are not new to you. Many of you are already implementing most, if not all of them, and for that I am grateful. I also recognize that we are all weary of COVID-19 and are excited at the prospect of a vaccine. In the attached letter to Governor DeWine, I asked him to add you and your staff to the list of essential workers eligible to receive the vaccine during Phase 1 of the state's distribution plan. The vaccine is a long-awaited light at the end of the tunnel, but we cannot allow ourselves to become complacent now. Your vigilance continues to protect your employees and the public you serve.

Lastly, the Supreme Court staff can provide support to you and your staff as you work to implement these recommendations. The Court Services Division is available to answer your questions regarding case scheduling and case processing, and the Ohio Judicial College has created several timely webinars that can provide education for you and your staff on a number of COVID-19 related topics.

Stay safe and God Bless,



Maureen O'Connor
Chief Justice of Ohio

3 attachments



image001.jpg
4K

 **12.10.20 Letter to Gov DeWine Vaccine.pdf**
61K

 **Responsible RestartOhio Court Access.pdf**
133K