

**PROPOSED AMENDMENTS TO LOCAL RULES OF PRACTICE AND PROCEDURE  
FOR THE GENERAL DIVISION OF THE MONTGOMERY COUNTY  
COURT OF COMMON PLEAS**

**COMMENTS DUE BY OCTOBER 9, 2008**

**COMMENTS REQUESTED:** Pursuant to Loc. R. 1.03, Local Rules of Practice and Procedure for the General Division of the Montgomery County Court of Common Pleas, proposed amendments to Local Rules 1.19, 1.27, 1.29 and 1.30 are being published for a sixty-day public comment period beginning Monday, August 11, 2008, through Thursday, October 9, 2008.

Comments on the proposed amendments to the local rules can be submitted via email to [rulecom@montcourt.org](mailto:rulecom@montcourt.org) or in writing to:

James W. Drubert, Court Administrator  
Montgomery County Common Pleas Court, General Division  
41 N. Perry Street  
P.O. Box 972  
Dayton, OH 45422

**COMMENTS MUST BE RECEIVED BY 4:30 P.M. ON THURSDAY, OCTOBER 9, 2008.**

**EFFECTIVE NOVEMBER 7, 2008**

The proposed amendments to the local rules will take effect on **November 7, 2008**, unless prior to such date the Court in its discretion, amends, modifies, or withdraws the local rule. In the event the Court amends, modifies, or withdraws the local rule, the revision will be published for a thirty-day notice period.

## Rule 1.19 – The Assignment System

I. The assignment system shall be governed by the following provisions:

A. Definition:

1. The individual assignment system is the procedure adopted by the Court for the assignment of cases. Pursuant to this system, each civil and criminal case shall be randomly assigned ~~by lot~~ to a Judge who will be responsible for determining all matters in the case.

B. Court Services Division, Caseflow Services:

1. Rule 1.19 shall govern the Court Services Division, Caseflow Services of the General Division and shall require the division to perform the following duties:

a. Maintain a case record of each pending case. Each case record shall:

(1) Be identified by:

- (a) A consecutive number;
- (b) The name of the Judge to whom the case is assigned; and
- (c) One of the following case types:
  - i) Administrative appeals;
  - ii) Appropriations
  - iii) Complex litigation
  - iv) Criminal;
  - v) Declaratory judgment;
  - vi) Forcible entry;
  - vii) Foreclosure;
  - viii) Habeas corpus;
  - ix) Injunction;
  - x) Medical malpractice;

- 27 xi) Other tort (specify type);
- 28 xii) Personal injury;
- 29 xiii) Product liability;
- 30 xiv) Professional tort;
- 31 xv) Workers' Compensation; and
- 32 xvi) All others

33 (2) Record:

- 34 (a) The date of any pretrial conference;
- 35 (b) The date the case was assigned;
- 36 (c) The date notices were ~~transmitted;~~ mailed;
- 37 (d) The date the case was assigned for trial;
- 38 (e) The details of any continuance;
- 39 (f) The date of the verdict of decision; and
- 40 (g) The date of the final entry.

- 41 b. Prepare reports required by Rule 37 of the Rules of Superintendence for the
- 42 Courts of Ohio;
- 43 c. Prepare and approve separate reports for each Judge of the General Division;
- 44 d. Provide a monthly report on the status of the dockets to each Judge; and
- 45 e. Identify cases that should be terminated and notify the appropriate Judges of
- 46 the status of those cases. After the Judges have been notified, the Court
- 47 Services Division, Casflow Services, shall submit final termination entries for
- 48 approval to each assigned Judge for cases that are eligible for dismissal.

49 II. THE ASSIGNMENT SYSTEM:

50 A. Administration of Civil Dockets:

- 51 1. All civil cases shall be assigned to the Judges of the Court as follows:

52 a. ~~All civil cases shall be randomly assigned to~~On the first day of each week, the  
53 ~~Court Services Division, Casflow Services, shall assign all civil cases that have~~  
54 ~~been filed in the Court the preceding week. All cases shall be equally divided~~  
55 ~~among~~ the Judges of the General Division of the Court. Subject to Sup. R. 4. C.,  
56 the Administrative Judge may be relieved from part of the Judge's trial duties to  
57 utilize time to manage the calendar and docket of the Court.

58 b. Case assignments shall be made through the use of computer software and  
59 hardware systems that have been tested to ensure that case assignments are  
60 made in a random manner.

61 c. Random assignment is assignment of cases by chance.

62 ~~b. To provide an equal distribution, the sequence of numbers used at each drawing~~  
63 ~~shall be completed at the next drawing.~~

64 ~~e.~~d. Adjustment of Assignments:

- 65 (1) ~~Companion~~If, at the drawing or at any subsequent time there are companion  
66 cases, these cases shall be assigned to the Judge whose name was drawn for  
67 the case filed first, if that Judge so determines. A Judge who withdraws from  
68 a case shall report this to the Court Services Division, Casflow Services, via a  
69 request for disqualification. The Administrative Judge shall reassign the case  
70 to another Judge. In instances where a previously filed and dismissed case is  
71 refiled, the case shall be reassigned to the originally assigned Judge unless,  
72 for good cause shown, the Judge is precluded from hearing the case. All  
73 changes shall be noted in the records of the Clerk and Court Services  
74 Division, Casflow Services.

75 ~~d.~~e. \_\_\_\_\_ Civil cases shall be consolidated pursuant to Rule 42 of the O.R.C.P., upon  
76 motion for consolidation filed with both the Judges assigned the lowest and  
77 highest case numbers of the cases wherein one or more parties desire  
78 consolidation. The decision of whether to consolidate cases into a single trial  
79 initially will be decided by the Judge with the lowest case number. The entry,  
80 granting or denying consolidation, upon being signed by the Judge with the  
81 lowest case number then will be presented to the Judge(s) with the higher case

82 number(s) for signatures. If consolidation is appropriate, the case will be placed  
83 on the docket of the Judge with the lowest case number unless otherwise  
84 ordered by the Administrative Judge.

85 ~~e. Court Services Division, Caseflow Services, shall furnish the Clerk with a list of~~  
86 ~~assignments and any subsequent adjustments in assignments.~~

87 f. Clerk’s Duty:

88 (1) The Clerk shall:

89 (a) ~~RecordStamp~~ the name of the Judge to whom each civil case is assigned  
90 on the appearance docket; ~~and on the folder containing the original~~  
91 ~~records;~~

92 (b) Record any subsequent change in assignment on the appearance docket  
93 and ~~any other~~ ~~the folder containing the original~~ records; and

94 (c) ~~ProvidePublish~~ all assignments and adjustments in assignments ~~to~~ the  
95 Daily Court Reporter ~~for publication on the Wednesday following the~~  
96 ~~assignment.~~

97 g. When a Judge is not available, arrangements may be made by that Judge or by  
98 the Administrative Judge for another member of the Court to handle urgent  
99 matters or sign entries.

100 2. Administration of Criminal Docket:

101 a. General Supervision:

102 (1) Each term, one Judge will be assigned to supervise the Grand Jury. The  
103 Grand Jury Judge shall preside over central arraignments. The Grand Jury  
104 Judge shall handle criminal matters that may arise in individual cases prior to  
105 indictment and arraignment, including the setting of bonds. The Grand Jury  
106 Judge shall handle extraditions and habeas corpus actions pertaining to  
107 extraditions. The Grand Jury Judge and the assigned Judge may handle  
108 arraignments. Pleas of guilty and no contest will be handled by the assigned  
109 Judge. The Judge assigned to the next Grand Jury term shall assist the Grand  
110 Jury Judge when requested to do so.

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b. Assignment of Individual Cases:

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(1) All criminal cases shall be randomly assigned to the Judges of the General Division of the Court~~assigned~~ upon the approval of felony charges by the

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prosecuting attorney. Each day, the Court Service Division, Caseflow

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Services, shall randomly assign pre-indictment cases ~~by lot~~ unless: (a) the

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defendant is on probation and probation has been terminated by entry; or

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(b) the defendant has another prior indictment pending on active or inactive

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status in this county.

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(a) If condition (a) or (b) is met in any case that does not involve multiple

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defendants, that case shall be assigned to the Judge to whom the first

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prior indictment was assigned or to the Judge who placed the defendant

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on probation.

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(b) If condition (a) or (b) is met, and the case does not involve multiple

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defendants, the condition which was met first shall control the

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assignment.

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(c) Whenever an adjustment in the method of assignment is made as a result

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of the satisfaction of condition (a) or (b) or the satisfaction of conditions

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(a) and (b), a credit for additional assignment shall be made. The purpose

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of the adjustment of assignments is to ensure that a defendant who has a

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prior or pending indictment or probation appears before the same Judge

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who was previously assigned to his case.

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(2) Case assignments shall be made through the use of computer software and hardware systems that have been tested to ensure that case assignments are made in a random manner.

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c. Clerk's Duty:

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(1) The Clerk shall:

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(a) ~~RecordStamp~~ the name of the Judge to whom each criminal case is

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assigned on the appearance docket; ~~and on the folder containing the~~

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~~original records; and~~

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- 140 (b) Record any subsequent changes in assignment on the appearance docket  
141 and ~~any other on the folder containing the original~~ records.
- 142 3. Transfer of ~~Assigned~~Assignment Case to New Judge:
- 143 a. If a case is transferred from the originally assigned Judge to a new Judge, the  
144 new Judge shall hear all motions and proceedings pertaining to the case.
- 145 4. Assignment of Cases to New Judges:
- 146 a. A new member of the Court shall be assigned the cases previously assigned to  
147 the Judge whom the new Judge succeeds. An additional Judge shall be assigned  
148 a proportionate share of the pending cases from the individual docket of the  
149 other members of the Court.
- 150 ~~5. Emergency Assignments in the General Division:~~
- 151 ~~a. The Court Services Division, Caseflow Services, shall maintain an emergency~~  
152 ~~assignment list which shall be drawn by lot. In any case where an emergency~~  
153 ~~assignment is required before the case has been regularly assigned, the Court~~  
154 ~~Services Division, Caseflow Services, shall assign the case to the Judge next~~  
155 ~~available by sequence and shall notify the Clerk and Judge of the assignment.~~
- 156 ~~6.5.~~ Foreign Executions and Other Ancillary Matters:
- 157 a. When necessary to resolve any question arising on a foreign execution,  
158 certificate of judgment from another court or similar ancillary matter not  
159 otherwise assigned to any Judge under these rules, counsel shall call the matter  
160 to the attention of the Administrative Judge.

## 161 **Rule 1.27 – Deposition Testimony**

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- 163 I. FILING:
- 164 A. In addition to the requirements of Rule 13 of the Rules of Superintendence for the  
165 Courts of Ohio, unless otherwise ordered by the Court, no deposition shall be filed prior  
166 to the deadline for filing of any pretrial statement or seven (7) days prior to trial,  
167 whichever is later.

168 | B. If a ~~videotaped~~ deposition in an electronic format is filed, then a paper transcript of the  
169 | deposition must be filed simultaneously unless the transcript has been filed previously.  
170 | The filing of the transcript must comply with Local Rule 2.09 (IV).

171 | C. The Clerk shall not accept for filing any deposition unless it is accompanied by a  
172 | certification from counsel that it is being filed in compliance with this rule and Local Rule  
173 | 2.09 (IV).

174 | II. PRETRIAL REQUIREMENTS:

175 | A. The Court has video equipment for use at trial. It is the responsibility of the using party  
176 | to:

- 177 | 1. Notify the Bailiff of intended use within three (3) working days prior to trial;
- 178 | 2. Ensure that the format of the electronic version of the deposition~~videotape~~ is  
179 | compatible with the Court's presentation equipment;
- 180 | 3. Be ~~ablefamiliar with how~~ to operate the Court's presentation equipment.

181 | III. POST-TRIAL DISPOSITION OF DEPOSITIONS AND VIDEOTAPES:

182 | A. The owner of any deposition and/or electronic version of the deposition~~videotape~~ shall  
183 | take possession of it within sixty (60) days of the following:

- 184 | 1. The final disposition of the case where no trial is had;
- 185 | 2. The expiration of the appeal time; provided no appeal is taken following trial; and
- 186 | 3. The final disposition of the case, if an appeal is taken.

187 | B. If the owner fails to take possession of the deposition and/or electronic  
188 | version~~videotape~~, the Clerk shall dispose of it in any manner the Clerk determines is  
189 | proper.

190 | **Rule 1.29 – Disclosure of Transcripts of Testimony**

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192 | I. DISCLOSURE BY COURT REPORTER:

193 | A. Request for Preparation of Transcript:

- 194 | 1. When stenographic notes have been taken in a case and the Court or either party to  
195 | the suit or counsel requests transcripts of any portion of the notes, the Court  
196 | Reporter reporting the case shall make full and accurate transcripts of the notes at a  
197 | cost determined by the Court of Common Pleas for the use of the Court or party. A  
198 | copy of the fee schedule is available in the Court Administrator's Office:

- 199 a. Procedure:
- 200 (1) The Court Reporter shall not provide any transcript of testimony to any party
- 201 to the suit or counsel unless the party or counsel has:
- 202 (a) Filed a written request for transcripts under the case number with the
- 203 Clerk;
- 204 (b) Served a copy of the request upon the Court Reporter who is responsible
- 205 for the preparation of the transcript; and
- 206 (c) Caused the Court Reporter to be compensated for making the transcript
- 207 or copies thereof in the amount determined by the Judges of the Court of
- 208 Common Pleas.

209 B. Duplicating:

- 210 1. Upon request, the Court Reporter shall provide copies of any original transcript of
- 211 testimony that the Court Reporter has prepared. Copies of the transcripts shall be
- 212 made available at a cost determined by the Judges of the Court of Common Pleas
- 213 within a reasonable period of time, and during regular business hours. A copy of the
- 214 fee schedule is available in the Court Administrator's Office.

215 II. DISCLOSURE BY CLERK OF COURTS:

- 216 A. All transcripts of testimony that are filed with the Clerk of Courts may be removed,
- 217 examined, and/or duplicated in accordance with the following procedure:

218 1. Removal:

- 219 a. No filed original transcript of testimony may be removed from the Clerk's Office
- 220 without an order of the Court.

221 2. Examination:

- 222 a. Upon request, the Clerk of Courts shall allow any individual to examine, but not
- 223 remove, any original transcript to testimony that has been filed with its office.
- 224 Examination shall be allowed during regular business hours.

225 3. Duplication:

- 226 a. Copies of transcripts shall be provided in accordance with State ex rel. Slagle v.
- 227 Rogers, 103 Ohio St. 3d 89, 93 (Ohio 2004).<sup>1</sup>

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<sup>1</sup> Accordingly, we hold that when a party to an action requests copies of a court transcript of proceedings in that action, R.C. 149.43 is superseded by R.C. 2301.24, and the party must pay the official court reporter the fees designated by the court pursuant to the latter statute. However, where a party only seeks a copy of an audiotape of court proceedings, he is entitled to that copy.

228 ~~a. Upon request and payment of a photocopy fee, the Clerk of Courts shall provide~~  
229 ~~copies of any original transcript of testimony that has been filed with its office.~~  
230 ~~Copies shall be provided during regular business hours within a reasonable~~  
231 ~~period of time as determine by the Clerk of Courts. A reasonable period of time~~  
232 ~~shall be based upon the extent of the request with efforts toward a twenty four~~  
233 ~~(24) hour response time.~~

### 234 **“New” Rule 1.30 – Appeal Transcripts and Recordings**

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- 236 I. The Administrative Judge will designate the method of recording for General Division  
237 courtrooms as required by Ohio Sup. R. 11.
- 238 II. Any filing, exchange, transmission, or other transfer of recordings produced in General  
239 Division courtrooms shall be in a format produced by recording systems designated by the  
240 Administrative Judge pursuant to Ohio Sup. R. 11.
- 241 III. If a rule, practice, or other procedure designates a recording media or format that is  
242 obsolete or not authorized by the required designations in Ohio Sup. R. 11, to be filed, the  
243 media format designated by the Administrative Judge shall be utilized for any such filing.