

## - Vandalia Municipal Court -

### SPECIAL PROCEEDINGS

#### Rule 23.00 SMALL CLAIMS COURT

- A. **FILINGS:** Small Claims Complaints, which shall be for the recovery of money only, shall be accepted for filing when submitted in accordance with Vand. R. 2.04(C) and (D) and wherein the prayer of said Complaint does not exceed the monetary amount provided in Sec. 1925.02 O.R.C. All pleadings will be construed to accomplish substantial justice and may be heard by the Judge or Magistrate.

A Plaintiff may file up to twenty- four (24) claims in the Small Claims Division during any calendar year.

Corporations cannot file Small Claims unless represented by an attorney-at-law. In instances of partnerships not represented by counsel, the Affiant on the Complaint must be one of the partners.

Any party wanting to file a Counterclaim or Cross-Claim shall file it with the Small Claims Division and serve it on all other parties at least seven (7) days prior to the date of the trial of the Plaintiff's claim in the original action.

- B. **CONTINUANCES:** Motions for continuance must be filed in writing and the granting of a continuance shall be at the discretion of the Magistrate or Judge.
- C. **MEDIATION:** Small Claims cases are initially referred to Mediation unless otherwise directed by the Court. Cases not successfully mediated shall be set for trial.
- D. **DISCOVERY:** No depositions or interrogatories shall be taken in Small Claims cases.
- E. **TRANSFER TO REGULAR CIVIL DOCKET:** Upon the filing of a motion and affidavit, as required by Ohio Revised Section 1925.10, and upon payment of the required costs, the small claims complaint and any counter or cross-claims, may be transferred to the regular docket of the Civil Division at the discretion of the Court, or as otherwise mandated. Failure to comply with this rule may result in the case being retained on the Small Claims Docket.

#### Rule 24.00 FORCIBLE ENTRY AND DETAINER PROCEDURE

- A. **INITIAL APPEARANCE:** All Forcible Entry and Detainer cases shall be set for an initial appearance pursuant to the time limits set forth in Chapter 1923 of the Ohio Revised Code. When a case is called, it shall be disposed of as follows, unless otherwise ordered by the Court:

If the Defendant, upon proper service, fails to appear, the Court shall receive evidence on the necessary elements, pursuant to the Ohio Rules of Evidence. Plaintiff or Plaintiff's agent shall appear and give testimony, based upon personal knowledge of the facts concerning the forcible entry and detainer; or in lieu thereof, a sworn affidavit attesting to such facts may be submitted at the time of the hearing or no later than within seven days thereafter. The Court encourages Plaintiff to attach copies of the Notice to Vacate and an Affidavit of ownership or agency to the Complaint. If the Plaintiff or his counsel fail to appear, the case shall be dismissed.

If Defendant appears and presents a prima facie defense, the case shall be ordered set for trial, and, at the Court's discretion, it may require Defendant(s) to post a reasonable deposit in the amount of rent, pending trial. If no viable defense is presented, the Court will proceed to rule on Plaintiff's request for restitution.

- B. **TRIAL:** A notice of the trial date shall be issued by ordinary first class mail. All notices shall be mailed at least five (5) days before the date of the trial in Forcible Entry and Detainer cases.

- C. EXECUTION OF WRIT: Pursuant to Order of the Court dated July 25, 1996, and in accordance therewith, the Vandalia Municipal Court will no longer hire or utilize moving and storage companies when executing Writs of Restitution.

Plaintiff(s) will continue to pay court costs pursuant to the cost schedule of the Municipal Court; however, movers and storage companies will not be required for execution of Writs of Restitution. By Order of the Court as referred to above, after proper posting by the Bailiff of the Writ of Restitution, all property will be removed from the premises by persons of the Landlord's choice and placed at the curb of the residence address.

It will be the responsibility of the Plaintiff (Landlord) to provide manpower and materials for removal of property at the time and date designated by the Court's Bailiff.

**Rule 25.00**  
**PROCEEDINGS IN AID OF EXECUTION**

- A. BANK ATTACHMENTS: Bank Attachments may be filed on forms provided by the Court. Filings shall include an original (to be retained by the Clerk) and sufficient copies for service upon the financial institution, the Judgment Debtor and the Attorney or party filing same. Hearing dates shall be assigned within fourteen (14) days and notice of same shall be included in the forms served upon the appropriate parties. Service of said forms shall be accomplished by certified mail, return receipt requested, upon any financial institution and by ordinary mail to the Judgment Debtor.
- B. GARNISHMENT OF PERSONAL EARNINGS: Garnishment of Personal Earnings may be filed on forms provided by the Court. The filing shall include two (2) copies of the Notice to Judgment Debtor, one (1) copy of the 15-day Notice with method of mailing attached (i.e. certified mail, ordinary mail with certificate, etc.) and an original and four (4) copies of the Affidavit and Order for Garnishment. HEARING DATES SHALL BE ASSIGNED BY THE ASSIGNMENT COMMISSIONER ONLY UPON RECEIPT FROM THE JUDGMENT DEBTOR OF THE "REQUEST FOR HEARING" FORM. Said hearings shall be scheduled within the prescribed five (5) day time limitations as set forth in 2716.06 O.R.C. Service of the Garnishment forms shall first be attempted by certified mail, return receipt requested, upon the Employer, and followed by ordinary mail, if necessary.
- C. DEBTOR'S EXAM: Debtor's Exams may be filed on forms provided by the Court. Filings shall include one (1) original, which shall be retained by the Clerk of Court, and three (3) copies for service per Judgment Debtor. Hearing dates are assigned by the Assignment Commissioner and notice thereof shall be included in the forms served upon the Judgment Debtor. Personal service shall be accomplished by Bailiff, Special Process Server or Sheriff.
- D. CITATION IN CONTEMPT: See Vand. R. 31.00

**Rule 25.01**  
**EXEMPTIONS**

When it is claimed that the property attached is exempt from execution or attachment, the debtor may request a hearing to establish such exemption in the manner provided by law. When property attached or levied upon by the Bailiff is claimed by anyone other than the party against whom the writ was issued, the claimant shall file in the same case, a pleading designated "Third Party Claim." At least three (3) days notice shall be given to the attorney for Plaintiff of the time fixed for the hearing on the claimant's right to such property. Proof of service of notice shall be made as required by the Civil Rules.

**Rule 26.00**  
**SALES AND CONFIRMATION**

A copy of the notice of sale of personal property shall be mailed to the parties and to attorneys of record in the case; however, failure to mail such notice shall not invalidate the sale.

Entries of confirmation and distribution shall be prepared by the party who requested the sale and shall contain a statement that the sale was regular and proper in every respect unless otherwise directed by the court, and also a statement of the balance, if any, still due on the judgment.

Rule 27.00  
COGNOVIT JUDGMENTS

Before an Entry is filed in the case of confession of Judgment by warrant of Attorney, the original note shall be presented to the Clerk who shall stamp or endorse thereon the fact that the note is in judgment. The entry shall not be filed until this is done.

Rule 28.00  
TRUSTEESHIPS

- A. APPLICATION: The application for an appointment of a trustee shall include a complete and accurate statement, under oath, of: (a) the debtor's name, address and marital status; (b) the name and address of his employer(s); (c) the amount of his gross earnings for the previous thirty (30) days; and (d) a statement indicating the name of the creditor from whom the five (5) day written notice of proceedings against his earnings was received. Upon the filing of an application, the Clerk shall immediately become the trustee without formal order of the Court.

At the time of filing the application, the attorney for the debtor shall deliver or mail to the Clerk two (2) copies of a notice of the appointment for each creditor listed in the application together with a stamped envelope properly addressed to each creditor. The attorney for the debtor shall deposit such notices in the mail within twenty-four (24) hours and the Clerk shall indicate on the docket that notices were mailed to listed creditors. It shall be the responsibility of the Attorney to mail notices to creditor.

Each notice shall contain the name of the applicant, the sum the applicant claims is owing to the creditor, the time and place that objections to said application shall be heard and a place for the certification or objection of the creditor. Additional creditors may be listed in the trusteeship only upon application and the service of a notice to each additional creditor as heretofore provided. If such application is made by a creditor, a similar notice must be given to the debtor, unless the creditor has obtained a judgment in a court of record.

- B. DISTRIBUTION: The trustee shall make no distribution to anyone except a creditor or an attorney for a creditor.

The Clerk of Courts, or designee, shall supervise payments of debtors and distribute the funds in each case at least every six (6) months unless the amount available does not equal ten percent (10%) of the claims listed. Where a debtor pays directly, the Clerk shall require the debtor to produce payroll stubs or similar records and the Clerk may refuse to accept payments or installments thereof, which do not equal the amount required by law. In event payments are not made for thirty (30) days, the trusteeship shall be dismissed and the proceeds distributed.

The Clerk may not accept payments into a trusteeship where the debtor pays direct, unless the tender of payment is made by the debtor, his agent or attorney, within four (4) days after the receipt of the personal earnings by the debtor. This requirement can be waived only by the Judge of the Court.

- C. DISMISSAL / REINSTATEMENT: The dismissal of a trusteeship by rule of court or upon motion of counsel for one of the creditors listed therein shall make the debtor filing said trusteeship ineligible for reinstatement or refiling of application for another trusteeship for a period of six (6) months from the date of such dismissal. Provided, however, that such trusteeship may be reinstated upon the tender and payment to the Clerk of Courts, as Trustee, the amount of money required by law to make such trusteeship current to the date of such tender, if the approval of the Judge of the Court is first obtained.

Rule 29.00  
PEACE BOND / WARRANT

Actions seeking a Peace Bond/Warrant shall be filed and handled in accordance with Sections 2933.01 through 2933.10 O.R.C.

Rule 30.00  
REPLEVIN ACTIONS

Replevin Actions shall be filed in accordance with the provisions in Chapter 2737 of the Ohio Revised Code.

Rule 31.00  
CITATION IN CONTEMPT

Failure of any person, who has been properly served, to appear for a Debtor's Exam, or to respond to a Debtor's Questionnaire, or to hold funds as directed under the Proceedings in Aid of Execution (Garnishment or Bank Attachment), shall be grounds for the issuance of a Citation in Contempt. Contempt Citations may be filed on the forms prescribed by the Court and shall include one (1) original and four (4) copies. Hearing dates are assigned by the assignment commissioner and notice thereof shall be included in the forms served upon said Judgment Debtor. Personal service shall be accomplished by Bailiff, Special Process Server or Sheriff.

Rule 32.00  
LICENSE SUSPENSION APPEALS

All appeals filed in the Municipal Court from suspensions imposed by the Bureau of Motor Vehicles shall contain the following information:

1. Copy of BMV Suspension Notice
2. Petitioner's Date of Birth
3. Petitioner's Social Security Number
4. Driver's License Number

Appeals from Twelve (12) Point Suspensions will be set for pretrial conference.

Appeals from Administrative License Suspensions will be set for hearing in accordance with the law. Said appeals are to be requested under the underlying traffic case number. Requests for driving privileges are to be filed in the Civil Division.