

Rule 6. Civil Practice

6.01 Pretrial procedure. A pretrial conference may be ordered by the judge to whom a civil case is assigned. Upon notice of the scheduling of a pretrial conference it shall be the duty of counsel to contact each other and make sincere effort to dispose of the matter by settlement and to agree on any matters of evidence about which there is no genuine dispute. Prior to the date of the pretrial conference counsel shall exchange reports of expert witnesses expected to be called by each party and shall exchange medical reports and hospital records if such are involved.

It shall be the duty of counsel to do the following at the pretrial hearing and failure to be prepared may result in dismissal of the case for want of prosecution or in a default judgment or such other action to enforce compliance as the trial judge deems appropriate.

1. The counsel who will be trial counsel and who is fully authorized to act and negotiate on behalf of the party must be present and proffer in writing a statement indicating the status of settlement negotiations.
2. All parties in interest must be present at the pretrial unless such presence is excused by the trial judge.
3. Each counsel shall present to the court in writing a statement of the issues involved, of the matters stipulated and of all questions of law which it is expected will be involved in the case.
4. Each counsel shall bring to the pretrial all exhibits which are to be offered in evidence at the trial.
5. Each counsel claiming same shall present in writing to the court an itemization of all special damages claimed.
6. Each counsel shall present to the court in writing a statement indicating the names of all witnesses, both expert and non-expert, expected to be called at the trial; whether a view will be requested; whether a jury trial, if previously demanded, will now be waived, and, if not, the number of jurors demanded, and whether the case is one where the issue of liability should be tried separately with a subsequent trial on the issue of damages if liability be found.
7. Each counsel shall come to the pretrial fully prepared and authorized to negotiate toward settlement of the case.
8. Each counsel shall provide the text of, and citations of authority for, instructions requested.
9. Each counsel shall provide his or her best estimate of the time required to try the case.

The written statement shall be filed at or before the pretrial hearing.

The court may, and on the request of either party shall, make a written order which recites the action taken at the conference. The court shall enter the order and submit copies to the parties. The order, subject to Civil R. 60(A), shall control the subsequent course of the action, unless modified at the trial to prevent manifest injustice.

6.02 Trusteeships. An application by a debtor for the appointment of a trustee pursuant to R.C. 2329.70 must contain a full and complete statement, under oath, setting forth:

1. The names of all secured and unsecured creditors with liquidated claims, the creditors' complete mailing addresses, the account number and amount due and owing to each creditor, the name and complete address of the administrator, if the account is being administered by someone other than the creditor.
2. The total amount of personal earnings of the applicant earned in a thirty (30) day period, the applicant's place of residence, the number of applicant's dependents, the dependents' names, ages, and relationship to the applicant.
3. The name of the person or entity who made demand upon the applicant in accordance with R.C. 2716.02 and the date of mailing of such demand.

At the time of filing, the applicant shall present to the trusteeship clerk a copy of the demand made in accordance with R.C. 2716.02 and paycheck stubs sufficient to verify, to the satisfaction of the trusteeship clerk, the amount of personal earnings earned by the applicant during the thirty (30) day period immediately preceding the date of the filing of the application.

The trusteeship clerk shall notify each creditor listed on the application by certified mail that an application for the appointment of a trustee has been filed and require verification of all information regarding the account provided by the applicant.

If the applicant fails, through mistake or otherwise, to list a creditor, said creditor may, upon motion to the court, be added to the trusteeship. The motion to add a creditor may be filed by either the applicant or the creditor. It must be made in writing, with notice to the non-moving party. Any creditor who becomes a creditor after the appointment of the trustee pursuant to this rule shall make application, in writing, to share in any distribution made by the trustee after the date of such addition to the trusteeship.

Any attorney at law representing an applicant for the appointment of a trustee shall be permitted to include his claim for such service in the trusteeship and said claim for attorney fees shall be given priority over all creditors in an amount not to exceed one hundred dollars (\$100.00). Upon the first distribution of funds to creditors, the claim of such attorney shall be paid in accordance with this priority and shall not exceed one hundred dollars (\$100.00).

The applicant shall be required to periodically provide verification of personal earnings at such times and in such manner as the trustees shall deem necessary. Failure to provide verification required by the trustee will result in dismissal of the trusteeship.

If the applicant fails to make the required payment within thirty (30) days of the date it is due, the trustee shall apply to the court for dismissal. Said application shall be in writing and the applicant and all creditors shall be notified that it has been filed with the court. Upon the filing of an application to dismiss the trusteeship for non-payment, the court shall set a hearing and notify the applicant and all creditors.

- 6.03 Certificates of readiness. No civil case will be assigned for pretrial or for trial until counsel files a form 6.03, certificate of readiness with the clerk of courts except (1) in cases involving challenges to cognovit judgments when assignment to a judge is made pursuant to Rule 1.01(1) or (2) in cases where the judge to whom the case is assigned finds, by ordering trial or pretrial in the case, that assignment shall be had prior to such filing. A copy of the certificate shall be served upon all other counsel and upon any party not represented by counsel. Objection to this certificate may be made in writing pursuant to Rule 3.04. If such objections are not filed within twenty-eight days after service, counsel or party failing to object will be conclusively presumed to have concurred in the statements contained in the certificate.
- 6.04 Leave to move, plead, or amend. Requests for leave to move, plead, or amend shall be made in writing, by motion, pursuant to Rule 3.04.
- 6.05 Deposit of costs for jury. The advance jury deposit Schedule 9.00 shall be paid to the Clerk no later than 14 days after the service of the last pleading directed to such an issue. In an action filed pursuant to R.C. Chapter 1923 the advance jury deposit shall be paid by the party at the time the jury demand is filed. Failure to advance the jury deposit shall constitute a waiver of trial by jury.
- 6.06 Answers in forcible entry and detainer cases. In forcible entry and detainer cases involving residential property, the court may decide at the first hearing both causes of action. If the defendant appears, the court shall inquire whether the defendant chooses to contest the second cause of action. If the defendant responds affirmatively, leave shall be granted for response to the complaint. If the defendant makes a knowing waiver of the right to respond to the second cause, the court may proceed to hear both causes.
- 6.07 Jury demands in forcible entry and detainer cases. In any case in which there has been service of process, upon the filing of a jury demand not less than three (3) days before the date set for trial, and upon failure of the parties to agree to a waiver of the time requirement of Section 1923.08, Revised Code, and upon failure of defendant to post an appropriate bond, the case will be transferred to the assignment commissioner. Assignment to a judge shall be made immediately, by lot, to one of those judges having jury availability within the time limitation.

6.08 Eviction of defendants in forcible entry and detainer cases

Should actual, physical set-out of property be required pursuant to a writ of restitution of premises, plaintiff shall file with the clerk's office a "Request for Set-Out" on the form designated by the court, and pay the fee provided in Loc. R. 13, Schedule 9.00. The form must be filed and the fee paid within ten days after the issuance of the writ of execution for restitution.

Plaintiff shall arrange for sufficient workers to be present, at plaintiff's expense, to accomplish the set-out within one and one-half hours, under the supervision of the Franklin County Municipal Court Service Bailiff's Office. No set out shall occur until five (5) days after service by the service bailiff of a red tag notice to vacate the premises. Request for an immediate set out from the premises shall be made at the time of the eviction hearing

Some set-outs present circumstances such as an infestation or the existence of illegal or harmful substances that make it hazardous to conduct the set-out. In those cases in which the set-out presents hazardous circumstances, the chief service bailiff, or his/her designee, shall have authority to determine the most appropriate means of conducting the set-out and restoring possession of the premises to the plaintiff. This determination may be made on the date of or during any set-out. The means of set-out may include, but are not limited to, physical removal of the contents to the curb or disposal of the contents.

The service bailiff shall include the following language in a conspicuous place on the red tag notice and the notice of the set-out date:

The plaintiff may be allowed to destroy or dispose of any hazardous property, such as infested, illegal or harmful items that you do not remove by the date and time of the set-out. You should contact your attorney if you have any questions about your legal rights.

6.09 Default Judgment - Hearing on Damages

After a finding of liability by the duty judge, a case shall be set for oral hearing on the amount of damages unless the amount of damages sought is liquidated or capable of mathematical computation from documents or affidavits contained in the record. The party seeking an award of damages without oral hearing must attach to the motion for default judgment an affidavit or other appropriate document that supports the judgment amount and which includes an explanation of:

- 1) the amount of the principal balance due;
- 2) if applicable, the amount of any statutory damages and a reference to the statute that authorizes such damages;
- 3) if applicable, the amount of attorney fees and the legal authority for an award of attorney fees;
- 4) if applicable, the basis for an award of prejudgment interest;
- 5) the rate of interest and the date from which interest is calculated.

6.10 Foreclosures and Permanent Injunction Actions in the Environmental Division.

(a) In every action demanding the judicial sale of real property the party or parties seeking such judicial sale shall file, within seven (7) days after the filing of the pleadings requesting such relief, with the Franklin County Recorder's office a Notice of Lis Pendens ("Notice"). The Notice shall be labeled as a "Notice of Lis Pendens" and contain the following information: the names of the property owner pursuant to the title insurance commitment required by section (b) below or as shown on the Franklin County Auditor's duplicate, property address, legal description of the property, permanent parcel number, case caption and case number of the Environmental Division case. A copy of the recorded Notice shall be filed and maintained in the Environmental Division file.

(b) In every action demanding the judicial sale of one to four family residential real property the party or parties seeking such judicial sale shall file, within fourteen (14) days after the filing of the pleadings requesting such relief, a commitment for an owner's policy of title insurance, on the currently revised ALTA owner's policy form prepared by a licensed "title insurance company" as that term is defined in Section 3953.01(c) of the Ohio Revised Code, showing: (i) the name of the owners of the property to be sold; (ii) a reference to the volume and page of the recording by which said owners acquired title to such real property; (iii) a description of all exceptions to said owner's fee simple title and liens thereon; and (iv) the name and address, as shown on the recorded lien, of the lien holder(s). Such commitment shall have an effective date within fourteen (14) days prior to the filing of the complaint or other pleading requesting judicial sale. Such commitment shall cover each parcel of real property to be sold, shall be in "the amount of the successful bid at judicial sale", shall show "purchaser at judicial sale" as the proposed insured, and shall not expire until thirty (30) days after recordation of the deed to the purchaser arising from the judicial sale. No later than thirty (30) days prior to the date set for such judicial sale, the party or parties submitting the same shall cause the original commitment to be updated by the issuer thereof to a date subsequent to the date of judgment, to insure that all necessary parties are properly before the Court in the pending action. Where the evidence of title indicates that a necessary party or parties have not been made defendants, the attorney for the party submitting the Decree shall proceed without delay to cause such new parties to be added and served a copy of the complaint in accordance with the Ohio Rules of Civil Procedure. The expense of the title work required by this rule shall be taxed as costs in the case. The purchaser at the judicial sale may, by paying the premium for such policy, obtain the issuance of title insurance in accordance with the commitment. After the Sheriff's return of the order of sale and prior to the confirmation of the sale, the party or parties requesting the order of sale shall cause an invoice for the cost of the title insurance policy, commitment cost related expenses and cancellation fee, if any, to be filed with the Clerk of this Court. The amount of the invoice shall be taxed as costs in the case. The purchaser at the judicial sale may, by paying the premium for such policy, obtain the issuance of title insurance in accordance with the commitment. The party or parties requesting the order of sale shall prepare a distribution entry showing the court costs assessed, which include the invoice for the cost of the title insurance policy, commitment cost related expenses, including cancellation fee, if any, and all other costs and distribution of sale.

(c) In every action in which a permanent injunction has been ordered, the party or parties who requested the permanent injunction shall file, within seven (7) days after the order of the

permanent injunction, with the Franklin County Recorder's office a Notice of Lis Pendens (Notice"). The Notice shall be labeled as a "Notice of Lis Pendens" and contain the following information: the names of the property owner as shown on the Franklin County Auditor's duplicate, property address, legal description of the property, permanent parcel number, case caption and case number of the Environmental Division case. A copy of the recorded Notice shall be filed and maintained in the Environmental Division file.

6.11 Reviving Dormant Judgments. To revive a dormant judgment, a judgment creditor shall file a motion to revive dormant judgment, which the clerk shall serve in accordance with Civ. R. 4(F). No conditional order of revivor will be granted.

(A) If the judgment debtor fails to file a response within the time provided by the Ohio Rules of Civil Procedure, the judgment creditor shall present an entry granting the motion to the duty judge.

(B) If the judgment debtor files a response to the motion, the case shall be assigned pursuant to Loc.R. 1.01.