

Judge Nancy Margaret Russo – Standing Orders for Foreclosure Cases

1. Pursuant to Civil Rule 4(E), if service of the complaint is not made upon a defendant within six months after the filing of the complaint, or amended complaint (if applicable), a case shall be dismissed as to that defendant without prejudice. Consequently, plaintiff will have then failed to properly join all necessary parties to a case and the court will thus dismiss a case in its entirety without prejudice at plaintiff's costs for failure to prosecute.
2. In a Bank Foreclosure Case or a Condominium Lien Foreclosure Case or a Home Owner's Association Case, within 20 days of filing the complaint, the plaintiff shall complete a Residential Property Status Report on a form prescribed by the court. Said form may be obtained from Judge Nancy Margaret Russo's website. This form requires the submission of a recent color photograph of the subject property. Said form is to be filed and hand-delivered to courtroom 18-C on the date of filing. Failure to comply will result in dismissal without prejudice.
3. Failure of any party's counsel or pro se party to appear in person at a court date, without prior permission of the court excusing attendance, may result in the court dismissing one's claims with or without prejudice or rendering judgment against a party or sanctions including contempt. Motions excusing attendance or to appear by phone must be filed at least 7 days in advance of the scheduled event and must clearly state a valid reason for the request.
4. If a continuance of a court date is sought for any reason, an appropriate motion **MUST** be filed no less than 7 days before the scheduled event.
5. Do not call the court to request a continuance. Absent an emergency, no consideration will be given to requests not made in writing, docketed and within the timeframe above.
6. The court requires a courtesy copy of all pleadings or filings in excess of 5 pages to be hand-delivered to the court. E-filing does not constitute a courtesy copy. Pleadings or filings 5 pages, or less, in length may be faxed to the court at 216-348-4036. Pleadings or filings of 5 pages or less that are e-filed do not need to be faxed or delivered to the court.
7. All pleadings and filings, greater than 5 pages, are to be hand-delivered to courtroom 18-C on the date of filing and left in the designated mailbox (on floor 18 of the Justice Center) by 4:30. Electronic filing or e-filing does not alter this policy. In addition to e-filing a document with the court, parties must still hand-deliver a hard copy of any pleading or filing, greater than 5 pages, to the court by 4:30. The court will strike any pleading or filing that is not timely delivered to the court by hand and/or the court may dismiss a party's claims without prejudice for failure to comply.
8. In the event the debtor enters into a forbearance agreement, loan modification, payment plan or any other similar settlement with the plaintiff, whether it is before judgment or after judgment, the plaintiff must notify the court of said agreement within 14 days of entering such an agreement. Failure to notify the court of such an agreement will result in a show cause hearing.

9. All 41(A) notices of dismissal or motions to dismiss filed with the court must have attached to them an affidavit indicating if any forbearance agreement, loan modification, payment plan, reinstatement, payoff or any other similar settlement with the defendant exists or not. Failure to comply may result in a show cause hearing.

10. In a Bank Foreclosure Case, the bank must be able to prove to the court that it holds the mortgage and the note. Failure to do so will result in the court dismissing the within case.

11. In the event the court awards plaintiff with a judgment and/or decree of foreclosure, plaintiff is ordered to provide the clerk and/or sheriff with all necessary documents to trigger the sale of the within property within 30 days of the date of the court's judgment. Failure to do so will result in the court vacating any judgment and/or decree of foreclosure and dismissing this case without prejudice for failure to comply. The court may also set the matter for a show cause hearing ordering counsel to show cause why he or she should not be held in contempt for failure to comply. If the property is unsold, plaintiff will be required to file a subsequent praecipe for sale, within 30 days after the sheriff's return reporting the property as unsold, until the property is sold or good cause is shown and the court docket such an entry.

12. Notices of Bankruptcy filed with the court must have attached to them a copy of the bankruptcy docket. Cases stayed due to bankruptcy may be returned to the active docket only upon a properly filed motion that states the date on which the automatic stay was lifted. Court to be notified of the lifting of a bankruptcy stay within 15 days of same. Failure to notify the court and file a motion to reactivate a case within that 15 day period of time will result in the court dismissing a case without prejudice. Counsel must attach a copy of the bankruptcy docket to his or her motion to reactivate a case.

13. Parties wishing to perfect service by special process server in any given case must first file a separate motion to appoint a special process server directly with Judge Nancy Margaret Russo. Failure to obtain the express permission of Judge Nancy Margaret Russo before attempting service by special process server may result in the court striking such service attempts. Motions to appoint special process servers must have a proposed order attached to the motion for the court's review and signature. (The proposed order should not be submitted separately to the court, but it must be attached to the motion).

14. Any Motion to Withdraw an Order of Sale must be filed at least 7 days in advance of the scheduled sale. Any motion not timely filed may be stricken. Said motion must clearly state a valid reason for the request to withdraw the sale. Motions to Withdraw an Order of Sale must have a proposed order attached to the motion for the court's review and signature. (The proposed order should not be submitted separately to the court, but it must be attached to the motion). Motions to Withdraw an Order of Sale that make reference to a forbearance agreement, loan modification, payment plan, reinstatement, payoff or any other similar settlement, must have proof of same attached to the motion. Motions to Vacate Sale must also clearly state a valid reason. Motions to Vacate Sale that make reference to a forbearance agreement, loan modification, payment plan, reinstatement, payoff or any other similar settlement, must also have proof of same attached to the motion.

15. A proposed order must be submitted with a Motion for Summary Judgment or a Motion for Default Judgment, and is to be submitted for signature by the Judge, rather than as a Magistrate's Decision. If a Magistrate's Decision is submitted it will be stricken.

16. No Reply Briefs are permitted absent leave of court.

17. In the event the defendant intends to pursue loss mitigation, he or she must submit a complete loss mitigation packet to the plaintiff or loan servicer within 60 days of the filing of the complaint.

18. Tax Certificate and Tax Foreclosure Cases will be handled by Magistrate John Dyke. A proposed Magistrate's Decision is required here. Failure to submit said decision may result in a dismissal without prejudice.

19. Court retains jurisdiction over all post-judgment motions.

20. All Foreclosure Files are maintained and kept in courtroom 18-C of the Justice Center, not in the Magistrate's Department or the Clerk's Office.

21. On March 20, 2020, the United States Postal Service announced a temporary modification to mail handling procedures for mail that requires customer signatures. To reduce health risks, the Postal Service modified customer signature capture procedures. While the court appreciates the need for safety during the current Covid 19 pandemic, the court has concerns on how this change in policy will impact proper service under the Ohio Rules of Civil Procedure.

The Civil Rules prescribe the procedure to be followed by all courts in the state of Ohio. They are to be construed and applied to effect just results and the administration of justice. In particular, service rules exist to safeguard due process. They ensure notice and an opportunity to be heard. They cannot be circumvented or suspended.

In light of the above, the court implements the following policy which is in effect until further notice. The court finds the following methods of service are acceptable and parties wishing to perfect service may do so under the applicable Civil Rule:

1. Publication
2. Special Process Server (preapproved by Judge Russo, See Standing Order #13)
3. Federal Express (completed)
4. Federal Express (refused then regular mail)
5. Sheriff Service
6. Secretary of State Service
7. A party waives service
8. Counsel waives service

Until further notice, United States Postal Service Certified Mail is no longer an acceptable means of service unless the Certified Mail return contains a clear, legible signature, as determined by the court.

In instances where the court cannot discern a clear, legible signature or if the Certified Mail return is "scribbled" or marked "Covid 19" or is "stamped with a signature" or contains a "printed first initial and printed last name," the court will indicate that this is not good service and plaintiff must re-attempt service or face dismissal for failure to prosecute.

22. Parties are to abide by the court's standing orders contained herein and located at <http://CPCUYAHOGACOUNTY.US/JUDGES/NANCYMARGARETRUSSO>. Failure to comply with any portion of the court's standing orders may result in dismissal with or without prejudice.