

## **Chapter 11 – Criminal**

### **Rule 11.01 – Case Management/Assignment**

Under Sup.R. 36, the clerk of courts or court administrator's staff shall assign a case by random assignment to a particular judge, who then becomes primarily responsible for the determination of every issue and proceeding in the case until its termination.

The clerk of courts shall assign co-defendants to the same judge. For each group of co-defendants, the judge assigned to the first-filed co-defendant's case will be the judge assigned to all of the co-defendants' cases.

If the same defendant has two or more cases on a grand jury report, the clerk of courts shall randomly assign the first-filed case, and the second case against the same defendant shall be assigned to the same judge as the first-filed case. The same rule would apply if one defendant has any number of additional cases on the same grand jury report.

When a case is dismissed and refiled against the same defendant with additional or different charges from the same facts that formed the basis of the previous case, the clerk of courts shall assign the case to the same judge who was responsible for the previous case.

If a defendant has a pending case, and an additional case is filed for the same defendant, the clerk of courts shall randomly assign the new case.

### **Rule 11.02 – Bail and Recognizance**

The purpose of bail is to ensure that the defendant appears at all stages of the criminal proceedings. Crim.R. 46 and R.C. 2937.22 (when applicable) will govern in all cases.

#### **A. Conditions of Release**

1. If the Court determines a defendant is to be released on the defendant's personal recognizance or an unsecured appearance bond, the release shall be effective upon the signature of the defendant and any other party determined by the Court.

The defendant and sureties, if any, shall execute the bond before the clerk or a deputy clerk of courts and pay any additional state mandated fees to the clerk of courts. A deputy sheriff may witness the bond and collect any and all funds in lieu of the clerk of courts when a defendant is incarcerated and transmit the same to the clerk of courts except when bail bonds are being established by a surety. The clerk of courts shall

approve the sufficiency of any surety bail bond prior to any release per Crim.R. 46(J).

2. If the Court determines a person is to be released, the following shall be considered:
  - a. The defendant shall be given the opportunity to post the Crim.R. 46(A)(2) 10% feature bond in the defendant's name. No additional surety is required.
  - b. The defendant may have another person post a Crim.R. 46(A)(2) 10% feature bond provided that the person provides sufficient financial responsibility in the amount of the bond.
  - c. In the absence of sufficient financial responsibility, the defendant may have a surety post the full amount of the bond in cash.
  - d. The defendant or any surety may post a property bond with property located within the county with sufficient value, double the full amount of the bond. The defendant or surety is required to deliver the deed and proof of sufficient value, as required by the clerk of courts, including a certificate of title search as to the sufficiency of the property to meet the value of the bond.
  - e. The defendant may have a professional bail bondsman post surety in the full amount of the bond. The clerk of courts shall determine the sufficient financial responsibility of the surety. The professional bail bondsman must be licensed by the State of Ohio for the sale of surety bonds and provide proof. The bail bondsman shall also provide proof to the clerk of courts that the underwriter is registered with the State of Ohio and has sufficient assets. In addition to any other requirements of the clerk of courts, the bondsman shall provide to the clerk of courts a copy of his or her personal history data of the defendant and/or any other party to which the bonding company holds claim.

## **B. Forfeiture**

If there is a breach of the conditions of the bond, the Court may declare a forfeiture of the bond. Any surety shall be given notice by ordinary mail at the address shown on the bond of a show cause hearing on a date determined by the Court pursuant to R.C. 2937.36. The surety shall produce the defendant, cash equal to the full amount of the bond or show cause why judgment should not be rendered at the hearing. If the bond is secured by property, the clerk of courts shall proceed as in execution for the sale of

the property to satisfy the bond.

### **Rule 11.03 – Criminal Motions**

Motions in criminal cases are generally set for oral hearing or non-oral consideration on the second Monday following the date of filing. However, if that Monday is a legal holiday, the motion docket will occur on the Tuesday following the holiday. Written responses, if any, shall be filed and served on or before the Friday prior to the hearing or non-oral consideration, unless provided otherwise below. For responses filed and served on that Friday, a courtesy copy shall be directed to the courtroom.

Motions to suppress evidence will be scheduled by scheduling order.

### **Rule 11.04 – Criminal Pre-trial**

All criminal cases shall be set for a pre-trial conference following arraignment.

### **Rule 11.05 – Appointment and Withdrawal of Counsel**

When a defendant is unable to employ counsel, the assigned judge shall appoint counsel to represent the defendant pursuant to Crim.R. 44 and Local Rule 6.01. The appointment shall be reflected in a judgment entry.

An attorney may not withdraw from representation without the permission of the Court. An attorney who desires to withdraw from representation of the defendant shall file a written motion with the Court. An attorney is not deemed to have withdrawn from the representation until it is reflected in a judgment entry.

### **Rule 11.06 – Certification of Qualification for Employment**

Under R.C. 2953.25, the Court adopts the following procedure to obtain a Certification of Qualification for Employment (CQE).

- A. The Court has established an electronic account with the division of parole and community services of the Ohio Department of Rehabilitation and Correction (ODRC) to access the CQE system for the following purposes: to review completed electronic petitions filed with the Court, to receive notices regarding electronic petitions filed with the Court, to provide the individual filing the petition with information regarding the petition, and to provide the ODRC with information regarding petitions that are granted or denied by the Court.
- B. Eligible individuals who seek to petition the Court for a CQE must establish an electronic account with the division of parole and community services of the ODRC and shall follow the administrative rules and regulations adopted under

R.C. 2935.25 and the rules and procedures adopted by the Court.

C. All petitions for a CQE should be completed electronically, through the ODRC website, on the form prescribed by the division of parole and community services. The Court will accept the paper filing of a petition for a CQE. However, Petitioners are encouraged to apply through the ODRC website [www.drccqe.com](http://www.drccqe.com) for the most efficient processing.

D. The individual filing the petition for a CQE (Petitioner) is responsible for removing personal and private information, such as the individual's social security number, from the petition, any exhibits or addenda attached to the petition, or from documents later filed in the proceeding.

Personal and private information must be submitted on a Disclosure of Personal Identifier form, which is a non-public record. The information will be kept in a separate envelope within the case file and appropriately marked as containing personal and private information, and opened only upon an order of the Court.

E. After the petition for a CQE has been submitted electronically and is determined to be complete by the ODRC, Petitioner shall appear at the office of the clerk of courts, within 30 days of electronic submission, to complete filing and pay a court cost deposit of \$50.00. If the Petitioner files a petition with the Court but fails to complete filing by paying the court cost deposit within 30 days, the Court will dismiss the petition for want of prosecution. If the Petitioner files directly with the clerk of courts, the filing fee must be paid upon filing.

F. The petition for a CQE shall be deemed filed as of the date the Petitioner personally appeared in the office of the clerk of courts, signed the petition under penalty of perjury, and paid the filing fee.

G. Upon the filing of a petition for a CQE, the clerk of courts shall notify the Tuscarawas County Community Corrections Program and the Tuscarawas County Prosecuting Attorney of the filing and provide them with a copy of the petition. The Community Corrections Program shall determine, to the extent possible, all other courts with records of felony or misdemeanor convictions (other than minor traffic offenses) of Petitioner and attempt to notify the appropriate court of conviction, in writing, of the filing of the petition, and solicit comments, in writing, regarding the granting of relief.

H. The Community Corrections Program shall attempt to obtain all pre-sentence investigations and reports, drug and alcohol evaluations, and psychological evaluations of the Petitioner for a CQE, and any law enforcement agency's report or reports of the crime or crimes of conviction.

I. The Community Corrections Program shall notify the judge assigned to hear

the petition for CQE of all the information it has requested, and the results of its notifications and solicitations for comments, and may suggest to the judge any other investigation report or information that may assist the Court in deciding whether to grant or deny the petition.

- J. All investigation-related documents and information gathered by the Community Corrections Program and the Court in its consideration of the petition for a CQE shall be considered confidential and not a public record. Such documents and information shall be treated with the same level of confidentiality as a pre-sentence report and shall be kept sealed and transmitted in a sealed condition to the Court of Appeals in the event of appellate review, and shall not be opened except upon an order of the Court.
- K. When the Court has completed its investigation and received and assembled all of the documents and information it requires to consider the petition for a CQE, the Court will, upon notice from the Community Corrections Program, schedule a hearing to occur within 60 days.
- L. The Tuscarawas County Prosecuting Attorney shall be an associated party to the proceedings on the petition, shall receive notice of any hearing, and shall represent the interests of the people of the State of Ohio on all pertinent issues, particularly whether the Petitioner for a CQE poses an unreasonable risk to safety of the public or an individual. The Community Corrections Program shall also receive notice of hearings on such petitions.
- M. The Court shall notify the Petitioner and the ODRC of its decision to grant or deny the petition through the Court's electronic record.
- N. In determining whether to grant a petition for a CQE, the Court may require the Petitioner to undergo psychological testing, drug testing, risk assessment or other investigation, at Petitioner's expense.
- O. Petitioners who have been granted a CQE by the Court shall have a continuing duty to report, in writing, to the Court any arrest or conviction of Petitioner for a felony offense after the issuance of the CQE. Such reports must be filed with the clerk within seven days of the arrest or the conviction of, or plea of the felony offense.

## **Rule 11.07 – COBRA Drug Court**

**Establishment of the Changing Offender Behavior through Rehabilitation and Accountability Court**—In order to facilitate efficient and effective treatment of alcohol and drug addicted offenders, the Court of Common Pleas, General Trial Division, has established a specialized docket known as the Changing Offender Behavior through Rehabilitation and Accountability (COBRA) Court. The Court,

established on July 1, 2005, and certified by the Supreme Court of Ohio on April 11, 2014, accepts the referral of cases identified for this program to the COBRA Court judge who is, by this rule, designated to attend to and manage such cases.

The goals of the COBRA Court are to reduce participant jail/prison/institution days by 25% of the original sentence, decrease the number of COBRA Court participants who re-offend following successful completion of the COBRA Court program by 40%, and to graduate 30% of participants successfully from the program.

The COBRA Court will include a Diversion Track and a Post-Conviction Track.

- The COBRA Court Diversion Track is a voluntary, comprehensive program designed to assist participants in becoming sober, responsible, and contributing members of society. The Court shall dismiss the criminal proceedings against participants who successfully complete the program and seal the record.
- The COBRA Court Post-Conviction Track gives the participant a final opportunity to address substance dependence and anti-social behaviors while remaining in the community.

**A. Placement in the COBRA Court**—All cases may be referred by the Prosecutor/Assistant Prosecutor/Defense Attorney for screening by the Chief Probation Officer or designee to determine appropriateness for placement. The pre-screening process allows needed information to be collected pertaining to all offenders prior to placement in the COBRA Court program. This information includes criminal history; residency; instant offense and contributing factors.

The assigned supervising officer and/or judge may refer pending pre-trial candidates, post-conviction community control candidates, judicial release candidates and/or pending revocation candidates for screening by contacting the Chief Probation Officer (CPO) or Assistant Chief Probation Officer (ACPO). Defense attorneys assisting a candidate in the filing of a judicial release motion can make a referral by contacting the CPO/ACPO.

Upon receipt of prospective participant referrals the CPO/ACPO and/or defense attorney will provide the candidate with a copy of the program handbook and an application screening form to be completed and returned to the CPO/ACPO prior to screening by the COBRA Court treatment team.

The **legal eligibility criteria** for referral to the COBRA Court under this rule are the following:

- Any Community Control-eligible case where alcohol and/or drug use was directly or indirectly related to the offense;
- The offender must be a resident of Tuscarawas County;
- The offender must be assessed and diagnosed as chemically dependent by an approved alcohol and/or drug treatment provider;
- The offender is determined to be high-moderate to very high risk in

- the substance abuse domain utilizing the Ohio Risk Assessment System (ORAS); and
- The offender must be mentally competent and have the developmental capacity to adhere to the participation requirements.

The **clinical eligibility criteria** for referral to the COBRA Court under this rule are the following:

- The offender has a history of alcohol/substance use/abuse;
- The offender must complete an alcohol/drug assessment;
- The offender is diagnosed with substance dependence (Axis I); and
- The offender has the developmental capacity to complete the COBRA Court requirements.

An offender will be **disqualified** from participation in the COBRA Court if any of the following pertain:

- The offender is charged with an offense for which a prison term is mandatory;
- The offender is actively working as a police informant;
- The offender is mentally incompetent and/or has an Axis I mental health disorder which would prevent or interfere with successful completion of the COBRA Court requirements;
- The offender is an integral part of a distribution or manufacturing network or actively engaged in crimes to benefit a gang; and/or
- The offender resides outside of Tuscarawas County.

Once an offender is determined to have met the legal and clinical eligibility criteria for participation in the COBRA Court, the CPO/ACPO will review all collateral information gathered and make a decision regarding placement in the COBRA Court.

The Prosecutor must consent to the placement of the offender in the COBRA Court Diversion Track. Refusal of the Prosecutor to consent to such placement will not preclude consideration of the offender for placement in the COBRA Court Post-Conviction Track.

The COBRA Court judge has final authority regarding placement of an offender in the COBRA Court (either track) and termination of offender placement.

**B. Case Assignment**—The process of the initial assignment of judges remains unchanged. The case will be transferred to the COBRA Court judge upon placement of the offender.

- In the event of termination from the COBRA Court Post-Conviction Track, the participant will remain with the COBRA Court Judge for further proceedings.
- In the event of termination from the COBRA Court Diversion Track, the

participant's case will be transferred to the originally assigned judge for further proceedings.

**C. COBRA Court Case Management**—The COBRA Court is a specialized docket established to assist chemically dependent offenders on their road to recovery, by providing services and programming to address their specific needs. Services and programming are more specifically outlined in the COBRA Court description, COBRA Court Handbook and COBRA Court Participant Agreement. Services may include participation in the following:

- Residential treatment;
- Intensive outpatient treatment;
- Individual treatment sessions;
- Gender-specific programming;
- Family therapy;
- Medication;
- Medication monitoring;
- Ongoing mental health treatment;
- Case management;
- Education;
- Vocational training;
- Employment;
- Transportation;
- Anger management;
- Criminal thinking;
- Housing;
- Parenting classes;
- Domestic violence programming; and
- Physical, mental and dental health.

**D. Termination from the COBRA Court** – The COBRA judge has discretion to decide probable cause for termination from the COBRA Program in accordance with the following criteria:

- Ongoing non-compliance with treatment or resistance to treatment;
- A new conviction for a felony offense of violence, firearm-related offense, or sexually oriented offense will result in termination from the COBRA program;
- Any serious specialized docket infraction or series of infractions; or
- A serious probation violation or series of probation violations.

If a participant is terminated from the COBRA Court Post-Conviction Track, he or she will be subject to the following:

- The participant will be subject to the imposition of other penalties or incarceration by the COBRA Judge; and;
- The participant will be ineligible for placement in the COBRA



Court (either track) for a period of five years.

If a participant is terminated from the COBRA Court Diversion Track, he or she will be subject to a hearing before the originally assigned judge for the following purposes:

- Adjudication of guilt.
- Imposition of sentence.