

**THE MUNICIPAL COURT OF  
MONTGOMERY COUNTY, OHIO  
EASTERN AND WESTERN DIVISIONS**

**LOCAL RULES**

**UPDATED:**

**January 6, 2022**

MUNICIPAL COURT  
WESTERN DIVISION

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## SCOPE AND AUTHORITY

The following rules are adopted by the Montgomery County Municipal Court for the purpose of promoting the administration of justice by conforming this Court's rules with the uniform rules of practice and superintendence in effect in the State of Ohio.

The rules shall be applied, construed, and enforced so as to avoid inconsistency with the rules of court and statutes governing proceedings, functions, and services of this Court. In their application and administration, they shall be construed and employed so as to provide fairness and simplicity in procedure, to avoid technical and unjustifiable delay, and to secure just, expeditious and inexpensive determinations of all actions and proceedings.

These rules are intended to be supplemental and are to be used in conjunction with the following rules:

1. Ohio Rules of Civil Procedure
2. Ohio Rules of Criminal Procedure
3. Ohio Rules of Superintendence
4. Ohio Traffic Rules
5. Rules of Superintendence of the Supreme Court of Ohio
6. All amendments or supplements thereto as may occur from time to time.

These local rules are not to be interpreted in any way that will conflict with the various Ohio Rules and should any conflict or contradiction be found, the Ohio Rules shall, in all cases, prevail over the Supplemental Local Rules as per Ohio Civil Procedure Rule 83.

These rules shall supersede all previous rules adopted by any judge or judges of the Montgomery County Municipal Court.

**RULE 1 - HOURS OF COURT SESSIONS AND TERM OF COURT**

**RULE 1.1**

The hours of the court shall be as follows:

<u>New Lebanon Courthouse</u>		<u>Huber Heights Courthouse</u>	
Monday	8:00 A.M. - 4:00 P.M.	Monday	8:00 A.M. - 4:00 P.M.
Tuesday	8:00 A.M. - 4:00 P.M.	Tuesday	8:00 A.M. - 4:00 P.M.
Wednesday	8:00 A.M. - 4:00 P.M.	Wednesday	8:00 A.M. - 4:00 P.M.
Thursday	8:00 A.M. - 4:00 P.M.	Thursday	8:00 A.M. - 4:00 P.M.
Friday	8:00 A.M. - 4:00 P.M.	Friday	8:00 A.M. - 4:00 P.M.

**RULE 1.2**

The sessions of the court shall be as follows:

<u>New Lebanon Courthouse</u> Judge James D. Piergies		<u>Huber Heights Courthouse</u> Judge William C. Cox	
Monday	8:00 A.M. - 1:30 P.M.	Monday	9:30 A.M.-12:30 P.M.
Tuesday	8:00 A.M. - 2:30 P.M.	Tuesday	8:30 A.M. - 1:30 P.M.
Wednesday	8:00 A.M. - 3:00 P.M.	Wednesday	8:30 A.M. - 3:00 P.M.
Thursday	8:00 A.M. - 4:00 P.M.	Thursday	8:30 A.M. - 1:30 P.M.
Friday	8:00 A.M. - 4:00 P.M.	Friday	8:00 A.M. - 4:00 P.M.

Each judge retains independent authority to schedule cases assigned to that judge outside of the scheduled sessions for any reason including, but not limited to, the speedy trial rights of the Defendant, the time limits set by the Rules of Superintendence and the schedule of that judge.

**RULE 1.3**

There shall be no term in Montgomery County Municipal Court, but for the purpose of computing time, ninety (90) days following judgment shall be considered within term and time thereafter shall be considered after term.

**RULE 1.4**

All holidays shall be observed, time computed and the court closed on those days and in the manner as set forth in section 1.14 of the Ohio Revised Code (hereinafter referred to as ORC) and 124.19 ORC.

**RULE 1.5**

Court sessions and the general business of the Court shall not be held when weather or other causes require the court to be closed as determined by the Administrative Judge.

**RULE 1.6**

The Administrative Judge shall be responsible for the preparation and filing of a schedule for sessions with the Clerk of Court as required by the Montgomery County Court Local Rule.

**RULE 2 - THE JUDICIARY AND COURT ADMINISTRATION**

**RULE 2.1 - THE ADMINISTRATIVE LAW JUDGE**

A. The Administrative Judge shall have full control over the administration, docket, and calendar of the court, pursuant to Rules of Superintendence for the Courts of Ohio (hereinafter referred to as Sup. R.) Rule 4.

B. The position of Administrative Judge shall be elected yearly between the judges. The term of office shall be the calendar year.

C. The Presiding Judge shall serve as Acting Administrative Judge in the absence of the Administrative Judge.

**RULE 2.2 - UNAVAILABILITY OF JUDGE**

In the absence of a judge, the *Administrative* Judge or the absent judge shall appoint an acting judge to carry out the duties of the absent judge, pursuant to the Ohio Revised Code.



### **RULE 2.3 - PUBLIC USE OF COURTROOMS**

Questions of the admission of persons to a courtroom shall be within the province of the Judge to whom that courtroom is assigned, and within the guidelines of public access to all court proceedings consistent with the order and dignity of the Court. No recordings shall be made of any court proceedings without approval of the Judge conducting the proceeding and pursuant to the Rules of Superintendence.

### **RULE 2.4 - ASSIGNMENT TO AN INDIVIDUAL JUDGE**

The method employed by the Montgomery County Municipal Court for the individual assignment of cases to judges shall be known as “true lots.” A true lot is defined as the possibility of each case having any one of the judges sitting on the Montgomery County Municipal Court bench assigned to the case. On a plea of not guilty in multiple related cases, these cases may be grouped for assignment to the same judge. Cases relating to different defendants, even if arising out of the same transaction, shall be separately assigned, unless the Court has granted a motion for consolidation. After a case has been individually assigned pursuant to Sup. R. 36, it shall not be reassigned to another judge without that judge’s consent. All transfers of assignments should be effected by a properly recorded entry.

A. A civil case shall be assigned by true lot to an individual judge upon the filing of an answer or motion other than a motion for default judgment.

B. A misdemeanor, traffic, or criminal case shall be assigned by true lot to a judge when a plea of not guilty by reason of insanity is entered.

C. When a case has been assigned to an individual judge by true lot, that judge shall be responsible for the determination of every issue and proceeding in that case until its termination.

### **RULE 2.5.1 - DISPOSITION OF SEIZED PROPERTY AND EVIDENCE NOT CLAIMED**

Pursuant to ORC 2933.41, all property in the custody of a police agency within the jurisdictional limits of the Montgomery County Municipal Court, except contraband, which is no longer needed as evidence and that the police department (including the Sheriff’s Department), despite reasonable efforts, has been unable to locate the person or persons entitled to possession, may periodically be sold at public auction. Contraband, which is no longer needed as evidence and

is not otherwise subject to other provisions of the law, may be destroyed upon receipt of an appropriate order of the court.

Firearms and dangerous ordinance suitable for police work may be given to law enforcement for that purpose. Firearms suitable for sporting use or as collectors' items may be sold at public auction. Other firearms and dangerous ordinance shall be destroyed pursuant to ORC 2933.41(D)(2).

#### **RULE 2.5.2 - UNCLAIMED RESTITUTION FUNDS**

All funds, including restitution, unclaimed after one year and after notice is given pursuant to ORC Section 1907.20 (D), shall be treated as unclaimed funds by the Clerk of Court and paid to the County Treasurer.

#### **RULE 2.6.1 - PRACTICE BEFORE THE COURT**

Only attorneys regularly admitted to the practice of law in the State of Ohio, or those certified to specially practice by the Supreme Court of Ohio, or those authorized by the Court shall be permitted to practice in this Court. This rule shall not prohibit a party from acting as his or her own counsel in any proceeding in this Court.

#### **RULE 2.6.2 - WITHDRAWAL OR CHANGE OF TRIAL ATTORNEY**

In order to maximize the efficient use of public funds available to represent indigent criminal and traffic defendants, the Montgomery County Public Defender's Office shall be appointed to represent all indigent criminal and traffic defendants charged with an offense for which they could go to jail, unless that office has a conflict of interest. In cases of conflict, counsel shall be appointed on a rotating basis from the list of attorneys maintained by the Court's Administrative Assistant.

Within seven (7) days of appointment, appointed attorneys shall file on behalf of their client the Financial Disclosure/Affidavit of Indigency Form with the twenty-five dollars (\$25.00) fee required by 120.36 R.C. or a motion to waive said fee. Within seven (7) days of appearance and/or appointment, Public Defender attorneys shall file a copy of the Public Defender Intake Referral form or the current qualifying form as approved by the State Public Defenders

Commission as an attachment to their Notice of Appearance. The Public Defender attorneys shall also file a motion to waive the Public Defender application fee as said attorneys deem appropriate.

Failure to file a motion to waive the public defender application fee shall create a rebuttable presumption of ability to pay any fine or court costs imposed at date of sentencing pursuant to 2947.14 R.C. unless appointed counsel or the public defender attorney present evidence on the defendant's ability to pay at sentencing.

### **RULE 2.7 - REQUEST FOR INTERPRETER OR TRANSLATOR**

In a criminal or civil case, the party requesting a court-appointed interpreter or translator shall make a written request to the Court at least seven (7) days before the date of the trial or hearing and the Court shall determine if an interpreter or translator is necessary. The expenses for the interpreter or translator in a civil case shall be taxed as part of the costs allowed to the prevailing party, unless otherwise directed by the Court. In a criminal case, the interpreter or translator expense shall be paid out of the same funds as witness fees.

## **RULE 3 - RECORDS AND PLEADINGS**

### **RULE 3.1.1 - NUMBERING OF CASES**

Rule 43 of the Rules of Superintendence for the Courts of Ohio shall be followed, and all actions brought in this Court shall be numbered consecutively as filed and shall be entered on the docket and indexed as numbered. Thereafter, in filing any papers therein or calling the attention of the Court to any case, its number must be given and the name of the judge to whom the case is assigned indicated below said numbers.

### **RULE 3.1.2 - FORM AND SIGNING OF PLEADINGS**

Rules 10 and 11 of the Ohio Rules of Civil Procedure shall be followed.

### **RULE 3.1.3 - PROOF OF SERVICE**

Except for original complaints, all filings shall contain certificates or proofs of service as provided by Ohio Civil Rule 5D. Prosecutor and police department drop box may be used when applicable.

### **RULE 3.2.1 - RECORDS OPEN FOR INSPECTION**

All indexes, dockets and journals maintained in accordance with law by the Clerk shall be open to inspection by anyone at any time during regular business hours. Original papers, however, shall not be removed from the office of the Clerk of Court. The same shall apply to all affidavits, warrants and other documents filed of record.

This rule shall not be construed to allow the right to examine certain documents, such as accident reports, alcoholic influence reports, arrest reports and other forms that are discoverable only upon court order pursuant to Ohio Criminal Procedure Rule 16.

### **RULE 3.2.2 - COURT FILINGS AND REMOVAL OF PAPERS FROM CUSTODY OF CLERK**

The Clerk shall file and preserve in his/her office all papers delivered to him/her for that purpose. All pleadings, motions and other forms filed in an action shall be filed in compliance with the Ohio Rules of Civil Procedure or the Ohio Rules of Criminal Procedure. All pleadings, including motions that are not filed in compliance with those rules, shall be reported by the Clerk of Courts to the Judge assigned to the case or to the Administrative Judge, and these pleadings may be stricken from the record upon the motion of the Court. No papers, documents, or exhibits on file in the office of the Clerk of Court shall be allowed to be taken from the custody of the Clerk except as hereinafter provided.

Excepting court personnel, original papers, which shall include transcripts or depositions filed in an action, shall not be taken from the files except upon filing an entry approved by the Court and a written receipt which shall be retained by the Clerk until the file is returned. In no event shall the file be removed for longer than three (3) days, except by court personnel.

By order of a judge of this Court, any exhibit may be returned to the witness or party by whom it was produced after the substitution of a photostat copy thereof, provided, however, that such order may dispense with such substitution in the case of an original record, paper, or object

taken from the custody of a public officer which is being returned to such officer, or in the case of an exhibit used only in making proof against a party whose default has been entered, or when a receipt shall be given, or when a written stipulation of all the parties consenting thereto is filed. The application for such an order shall be supported by an affidavit stating all the pertinent facts except where it is made on stipulation.

The Clerk shall, upon request, furnish extra copies of pleadings or other papers upon the payment of a reasonable fee.

In small claims cases, the exhibits shall be returned to the party submitting said exhibits at the completion of the appeal period.

### **RULE 3.3 - COPIES OF COMPLAINT**

Plaintiffs shall tender with the original complaint a sufficient number of service copies for all defendants to be served.

### **RULE 3.4 - RELEASES AND ASSIGNMENTS**

The assignment, cancellation, or release of judgment shall be in writing and filed as other papers in the appropriate case.

### **RULE 3.5 - FAX FILING**

The provisions of this Local Rule are adopted under Civ.R.5(E) and Crim.R.12(B).

Pleadings and other papers may be filed with the Clerk of Courts by facsimile transmission to Western Division, (937) 687-7119 and Eastern Division, (937) 496-7236 subject to the following conditions:

#### **APPLICABILITY**

- 1.01 These rules apply to all civil, criminal, and small claims proceedings in the Montgomery County Municipal Court.

#### **ORIGINAL FILING**

- 2.01 A document filed by fax shall be accepted as the effective original filing. The person making a fax filing need not file any source document with the Clerk of

Court but must, however, maintain in his or her records and have available for production on request by the court the source document filed by fax, with original signatures as otherwise required under the applicable rules, together with the source copy of the facsimile cover sheet used for the subject filing.

- 2.02 The source document filed by fax shall be maintained by the person making the filing until the case is closed and all opportunities for post judgment relief are exhausted.

#### DEFINITIONS

As used in these rules, unless the context requires otherwise:

- 3.01 A “facsimile transmission” means the transmission of a source document by a facsimile machine that encodes a document into optical or electrical signals, transmits and reconstructs the signals to print a duplicate of the source document at the receiving end.
- 3.02 A “facsimile machine” means a machine that can send and receive a facsimile transmission.
- 3.03 “Fax” is an abbreviation for “facsimile” and refers, as indicated by the context, to facsimile transmission or to a document so transmitted.

#### COVER PAGE

4.01 The person filing a document by fax shall also provide therewith a cover page containing the following information: [See appendix for sample cover page form.]

- I. Name of the court;
- II. The title of the case;
- III. The case number;
- IV. The assigned judge;
- V. The title of the document being filed (e.g. defendant Jones’ Answer to Amended Complaint; Plaintiff Smith’s Response to Defendant’s Motion to Dismiss);
- VI. The date of transmission;
- VII. The transmitting fax number;

- VIII. An indication of the number of pages included in the transmission, including the cover page;
- IX. If a judge or case number has not been assigned, state that fact on the cover page;
- X. The name, address, telephone number, fax number, Supreme Court registration number, if applicable, and e-mail address of the person filing the fax document if available; and
- XI. If applicable, a statement explaining how costs are being submitted.

4.02 If a document is sent by fax to the Clerk of Courts without the cover page information listed above, or the document is incomplete, it will be deposited in a file of failed fax documents with a notation of the reason for the failure and the document shall not be considered filed with the Clerk of Courts. Failed faxed documents will be retained by the Clerk of Courts for ninety (90) days.

4.03 The Clerk of Court is not required to send any form of notice to the sending party of a failed fax filing.

#### SIGNATURE

- 5.01 A party who wishes to file a signed source document by fax shall either:
  - I. Fax a copy of the signed source document; or
  - II. Fax a copy of the document without the signature but with the notation “/s/” followed by the name of the signing person where the signature appears in the signed source document.
  
- 5.02 A party who files a signed document by fax represents that the physically signed source document is in his/her possession or control.

#### EXHIBITS

- 6.01 Each exhibit to a facsimile produced document that cannot be accurately transmitted via facsimile transmission for any reason must be replaced by an insert page describing the exhibit and why it is missing. Unless the court otherwise orders, the missing exhibit shall be filed with the court, as a separate document, not later than five (5) court days following the filing of the facsimile document. Failure to file the missing exhibits as required by this paragraph may result in the court striking the document and/or exhibit.
- 6.02 Any exhibit filed in this manner shall be attached to a cover sheet containing the caption of the case which sets forth the name of the court, title of the case, the case number, name of the judge and the title of the exhibit being filed (e.g., Plaintiff Smith's Notice of Filing Exhibit "G" to Plaintiff Smith's Response to Defendants' Motion to Dismiss), and shall be signed and served in conformance with the rules governing the signing and service of pleadings in this court. [See appendix for sample exhibit cover sheet.]

#### TIME OF FILING

- 7.01 Subject to the provisions of these rules, all documents sent by fax and received by the Clerk shall be considered filed with the Clerk of Court as of the date and time automatically imprinted by the fax machine of the of the Clerk of Courts. The fax machine will be available to receive facsimile filings on the basis of 24 hours per day, seven days per week, including holidays.
- 7.02 Fax filings may NOT be sent directly to the court for filing but may only be transmitted directly through the facsimile equipment operated by the Clerk of Courts.
- 7.03 The Clerk of Court may, but need not, acknowledge receipt of a facsimile transmission.
- 7.04 The risks of transmitting a document by fax to the Clerk of Courts shall be borne entirely by the sending party. Anyone using facsimile filing is urged to verify receipt of such filing by the Clerk of Court through whatever technological means are available.



## FEES AND COSTS

8.01 No document filed by facsimile that requires a filing fee shall be accepted by the Clerk for filing until court cost and fees have been paid. Court cost and fees may be paid by credit or debit cards or through an escrow account established with the Clerk. The forms necessary for the authorization of payment by credit card or escrow account shall be available at the Clerk's office during normal business hours. Documents tendered to the Clerk without payment of court cost and fees, or with incomplete information on the charge authorization or request, or which do not conform to applicable rules will not be filed. [See appendix for sample credit card payment form.]

[Commentary: Information furnished for authorization of payment by credit/debit card shall not be part of the case file.]

8.02 No additional fee shall be assessed for facsimile filings.

## LENGTH OF DOCUMENT

9.01 Facsimile filings shall not exceed twelve (12) pages in length. The filing shall not transmit service copies by facsimile.

## EFFECTIVE DATE

10.01 These local rules shall be effective January 4, 2016, and shall govern all proceedings in actions brought after they take effect and also further proceedings in pending actions, except to the extent that, in the opinion of the court, their application in a particular action pending on the effective date would not be feasible or would work an injustice, in which event, the former procedure applies.

## **RULE 3.6 - RETENTION OF RECORDS**

All case files shall be retained for the applicable length of time specified by the Rules of Superintendence for Courts of Ohio, Rule 26, 26.01, and 26.05. Pursuant to Rule 26(G) all community control files and recordings of court sessions shall be retained the same length of time as the case files as specified under said rules.

## **RULE 4 SUBPOENA - TIMELINESS OF FILING**

### **RULE 4.1**

Praecipe for the service of subpoenas shall be filed within the following time limit:

- A. In-County Party at least seven (7) working days before the subpoenaed party is to appear.
- B. Out-of County Parties at least fifteen (15) working days before the subpoenaed party is to appear.

If this rule is not complied with, the failure of the subpoenaed party to appear because of failure of service shall not constitute grounds for a continuance. This rule applies unless it can be shown that the person filing the praecipe was unaware of the name or the location of the persons sought to be subpoenaed in sufficient time to comply and that such information could not reasonably have been obtained in time.

## **RULE 5 - PLEADING APPEARANCE NOT REQUIRED**

### **RULE 5.1**

In criminal matters every attorney of record shall appear before the court to enter the appropriate plea, however, written pleas of not guilty may be accepted by the Court at the discretion of the Judge. If acceptable, such Entries of Appearance may be accepted by means of fax. All such pleadings shall be signed by the attorney representing the party to appear before the Court and shall include their typewritten name, attorney identification number, telephone number and fax number on the said pleading.

## **RULE 6 - SMALL CLAIMS, FORCIBLE ENTRY AND DETAINER AND MISCELLANEOUS CIVIL ACTIONS**

### **RULE 6.1 - APPEARANCE CALL FOR CERTAIN CIVIL ACTIONS**

Appearance call for following civil actions shall be held before the Judge.

1. Forcible Entry and Detainer;
2. Objections to Applications for the Appointment of a Trustee under ORC 2329.70;

3. Garnishment and Bank Attachment; and
4. Aid of Execution and Citations in Contempt.

In actions in which the plaintiff or plaintiff's attorney does not appear, the action shall be dismissed without prejudice. In actions in Aid of Execution where the plaintiff or plaintiff's attorney does not appear at the time for examination as set forth in the order, the presence of anyone summoned to appear shall be noted on the docket and the party excused. In such event, the cost of that proceeding shall be taxed to the party who filed the proceedings and be so reflected on the docket, and counsel may be subject to appropriate action by the court.

The failure of any person to appear in examination or to hold funds, as directed under proceedings in Aid of Execution, shall be grounds for the issuance of a citation in contempt against said person. Such citation shall be issued on forms prescribed by Court and heard by the magistrate. On motion reciting that personal service of the proceedings in Aid of Execution was made upon the person who failed to appear or to hold funds as directed therein, an order may issue for the appearance forthwith of said person to show cause why he or she should not be punished for contempt of court.

#### **RULE 6.2 - FORCIBLE ENTRY AND DETAINER ACTIONS**

Actions in Forcible Entry and Detainer shall be filed and all proceedings conducted in accordance with provisions of ORC 1923.01 through 1923.14 and any amendments made thereto. Should any such action contain an additional cause of action for money judgment, then such additional cause of action shall proceed under all applicable Ohio Rules of Civil Procedure. If the Defendant is present in such action, the Court may proceed to the issue of damages at the time of hearing on the Forcible Entry and Detainer.

When it is necessary to forcibly vacate real property, the Bailiff shall notify the attorney who requested a writ of restitution and, unless otherwise ordered by the Clerk, shall require a deposit of not less than the amount specified in the civil costs section as security for costs for this type of action, unless otherwise ordered by the Court or otherwise exempted by law. Those unable to post the required security for costs may be excused from the same upon filing of a completed affidavit of indigency form, if approved by the Judge or magistrate assigned to the case.

### **RULE 6.3.1 - ORDERS IN AID OF EXECUTION IN CIVIL CASES**

Orders in Aid of Execution shall be served and scheduled pursuant to Statute and Civil Rules.

- A. Service thereof may be made by regular United States mail.
- B. No Order in Aid of Execution shall be accepted by the Clerk unless the name of the Attorney filing the same appears at the bottom of each copy.
- C. The Clerk shall not accept such orders unless one copy is furnished for each party to be served and one copy for the Clerk.
- D. In the event that the Plaintiff or his attorney fails to appear for the examination of a Debtor, the presence of the party shall be noted on the Docket and the party excused.
- E. A Debtor may obtain a release of wages upon delivery to the Court of a signed statement from his employer as to his earnings for the past thirty (30) days and upon payment to the Clerk of the amount by law to be withheld. This provision shall not relieve the debtor of his duty to appear at the time assigned if he has been ordered to appear for examination.
- F. Except for good cause made known to the clerk, no citation in contempt for failure to appear may be issued where more than sixty (60) days have elapsed after the date on which the debtor was ordered to appear.
- G. Order in Aid and Citations in Contempt shall be filed by the party requesting the orders and in a form approved by the Court.

### **RULE 6.3.2 - PRAECIPE FOR EXECUTION**

All Praecipis for Execution shall describe specifically and in detail (including model and serial number if known) all property to be seized by the Bailiff or Sheriff on execution. When an execution is issued, and unless otherwise ordered by the Clerk, the Court shall require a deposit of not less than Three Hundred Dollars (\$300.00) to secure the estimated basic costs of pick-up and storage of the items that are to be executed upon, plus costs and estimated mileage. This Deposit shall occur prior to any Bailiff action or pick up shall commence.

## **RULE 6.4 - SALES AND CONFIRMATION**

A copy of the notice of the sale of personal property shall be mailed by the Bailiff to all parties and to the 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 6.5 - TRUSTEESHIP**

Any person upon whom a demand has been made in accordance with section 2716.02 of the Revised Code (Order to Garnish Wages) may apply to this County Municipal Court for a trusteeship under 2329.70 O.R.C. provided that he or she resides within the territorial jurisdiction of this court or his or her place of employment is within this court's territorial jurisdiction and the petitioner is not an Ohio resident.

1. Petitioner has fourteen (14) days from the date they receive the fifteen (15) day Notice of Garnishment to file a *Petition for Appointment of Trustee*, along with a filing fee.
2. The clerk shall assign such petition a civil case number using CVT as the case designator. (Such cases will not be audited on the Supreme Court Reports.)
3. The petitioner shall file with his or her petition a complete and accurate sworn statement of all creditors with full addresses. Said statement must include a designation of secured or unsecured debts and the total amount due to each creditor. Additionally, copies of petitioner's last three (3) paycheck statements and copies of any garnishment orders must be attached.
4. The clerk of the court shall serve a copy of the petition to each creditor listed and any courts where garnishment is pending. ‘
5. The case shall be forwarded to the judge for review and a hearing shall be scheduled.
6. Once a hearing is held, and if the judge so orders, the clerk shall be appointed trustee for petitioner. The judge shall order how much shall be paid to the trustee by the

petitioner and the judge shall order how the funds shall be disbursed.

7. Upon the filing of the petition all garnishment, attachment, aid of execution or other action or proceeding against the petitioner's personal earnings by the listed creditors shall be stayed.
8. Failure of petitioner to pay as ordered shall result in immediate dismissal and cancellation of the stay.

## **RULE 7 - PRE-TRIAL CONFERENCE**

### **RULE 7.1 - PRE-TRIAL CONFERENCE**

All civil jury cases and such other civil and criminal cases as the court requires shall be set for pre-trial.

### **RULE 7.2 - PURPOSE**

The purpose of the pre-trial shall be to accomplish the objectives set forth in Rule 16 of the Civil Rules and Counsel shall cooperate fully in such procedure.

### **RULE 7.3 - PRE-TRIAL APPEARANCES**

The parties and their respective counsel shall appear at each pre-trial session. A corporate party may appear by an officer or by an employee having knowledge of the subject matter of the case. A party who is insured concerning the claims of the case may appear by a claims representative of and/or the attorney for his public liability insurance company. However, if the Court finds that the presence of the insured party is essential to the conduct of the pre-trial, the Judge may direct such party also to appear. A party unable to appear by reasons of illness or other disability, or residing outside the jurisdiction of the court, may be excused from appearing.

### **RULE 7.4 - PRELIMINARY ISSUES**

The Judge shall have authority to decide any undetermined preliminary matter, to record any admissions, stipulations or agreements; to hear and determine the case with the consent of the parties, to make such findings, orders, judgments, or decrees as may be warranted and proper under

the circumstances and within the scope and spirit of this rule, including the consideration of any pending motions; to set the case for trial or dismissal or to take other appropriate action if either or all of the parties and their respective counsel fail to appear at a duly assigned pre-trial hearing.

#### **RULE 7.5 - EVIDENCE**

At the pre-trial, supporting evidence for claims of special damages shall be available and photographs, reports or physical examinations and any proposed exhibits shall be available for disclosure to the Court and all counsel.

#### **RULE 7.6 - PARTY STATEMENTS**

Statements of the parties or their counsel made in the course of any pre-trial hearing shall not be binding upon the parties unless expressly made so by written stipulation in the course of the pre-trial.

#### **RULE 7.7 - PRE-TRIAL DISCLOSURES**

Counsel shall, at least five (5) days before the pre-trial conference, provide opposing counsel with a list of names, identities and whereabouts of each witness expected to be called at the trial, together with a brief statement of what counsel proposes to establish by the testimony of each such witness. Only such material points which counsel proposes to establish by the testimony of such witness need to be disclosed, but the refusal or willful failure of any counsel to disclose a material point may render evidence on that point inadmissible at the trial. If such disclosure is made and counsel discovers the name of an additional witness or names of additional witnesses on that point

which were not known at the time of the previous disclosure, the same information required to be disclosed previously shall be furnished to opposing counsel forthwith by a copy of the original of such disclosure, which shall be filed with the clerk.

#### **RULE 7.8 - COMPLETION OF DISCOVERY PRIOR TO THE PRE-TRIAL**

Counsel shall complete all necessary discovery prior to the pre-trial conference. If discovery has not been completed and cannot be completed prior to the pre-trial conference,

counsel shall so advise the court within five (5) days after receipt of assignment of the pre-trial conference with request for continuance. Such continuance shall not be granted except for good cause.

#### **RULE 7.9 - PRE-TRIAL PROPOSED WRITTEN ORDERS**

Each counsel present at the pre-trial shall submit to the Court and opposing counsel a proposed written order which recites the action taken at the pre-trial conference, in order to assist the Court in entering such an order. Such proposed orders shall be submitted within ten (10) days after the conference.

### **RULE 8 - MOTIONS**

#### **RULE 8.1 - NOTATION OF MOTIONS**

Motions shall be noted in the docket and submitted to the judge on brief or memoranda. When oral argument or testimony is desired, the motion shall contain a request for assignment for hearing.

#### **RULE 8.2 - FORCIBLE ENTRY AND DETAINER MOTIONS**

Motions in forcible entry and detainer cases shall be disposed of at the commencement of the trial.

#### **RULE 8.3 - TIME FOR FILING OF RESPONSE**

In all motions directed to the Court, unless otherwise provided in the Ohio Rules of Civil Procedure, the failure of the party against whom a motion is directed to file a brief or memorandum in opposition within fourteen (14) days from the date of service of such motions, may be construed by the Court as admission that the motion may be granted. Extensions of time for filing such brief or memorandum in opposition shall be requested prior to expiration of the fourteen (14) day period.

#### **RULE 8.4 - MOTION HEARING**

The Court on its own motion, may set any motion for hearing or oral argument.



## **RULE 9 - JOURNAL ENTRIES TO BE FURNISHED**

### **RULE 9.1 - JOURNAL ENTRIES**

In any case in which a judgment, decree or order is made by the Court sustaining or overruling motions, unless the journal entry is to be prepared by the Court, the prevailing party shall, within the time ordered by the Court, or within fourteen (14) days after the mailing of such decree, judgment or order, prepare and submit to the opposing counsel in the case a journal entry of such judgment, decree or order. Then the entry shall be submitted for approval to the Court.

When such journal entry is submitted to opposing counsel such counsel shall approve or reject the same within seven (7) days thereafter. If the opposing counsel fails to approve it or reject it within such time, it shall be submitted to the Court which shall make any necessary correction and order its entry. If the prevailing party fails to furnish such entry to opposing counsel within such time, it shall be submitted to the Judge who shall approve the entry in the form he considers proper, or the clerk on the application of Counsel for the losing party shall call the case to the attention of the Court who may dismiss the same for want of prosecution or make such other order as may be proper under the circumstances.

## **RULE 10 - BRIEFS**

### **RULE 10.1 - SUBMISSION OF BRIEFS**

A case shall be submitted to the court for decision unless arrangements for briefs are made at the conclusion of trial.

### **RULE 10.2 - TIMELINESS FOR SUBMISSION OF BRIEFS**

When requested by a party or by the Court, briefs shall be submitted to the Judge by the plaintiff or moving party within fourteen (14) days and by the opposing party within fourteen (14) day thereafter. A reply brief shall be filed within seven (7) days thereafter if desired. Upon failure of either party to file a brief within time, the cause may be disposed of at the discretion of the Judge.

### **RULE 10.3 FORM OF BRIEF**

All briefs shall be submitted on 8 ½" x 11" stationary.

## **RULE 11 - CONTINUANCES OF HEARINGS**

### **RULE 11.1 - MOTIONS FOR CONTINUANCE**

When notice of trial, pre-trial, or any other proceedings requiring personal appearances of the parties and/or counsel is mailed from this court, a motion for continuance shall be signed by both the attorney filing the continuance and the party he represents and filed with the Court within ten (10) days from the mailing date of such notice; notice of such motion shall likewise be served on opposing parties or counsel. Such motion shall set forth good cause; consent of opposing parties or their counsel shall not, in and of itself, constitute good cause for granting the motion for continuance.

No continuance shall be granted by anyone except the assigned Judge or magistrate. If a matter is set for hearing, it will remain set at that time and on that date, unless the continuance is granted by the Court. This procedure applies equally to all cases set before the Court.

### **RULE 11.2 - FAILURE TO COMPLY WITH REQUIREMENTS**

Any motion for continuance submitted beyond the aforementioned ten (10) day period may be granted upon showing good cause constituting extreme hardship, unforeseen circumstances or other unavoidable conditions. When a party or their counsel fails to comply with this rule and opposing counsel is present, the court may, upon its own motion, dismiss the case, enter a default finding or proceed to hear evidence and render a final judgment.

## **RULE 12 - JURY DEMANDS**

### **RULE 12.1 - JURY DEMAND**

Jury demands shall be made pursuant to the Ohio Criminal and Civil Procedure Rules. If the withdrawal of a jury demand is made following the summoning of Jurors, the party requesting the withdrawal shall be assessed the costs of notifying such jurors that their services will not be required. In civil cases, if the request for withdrawal of a jury is agreed upon by more than one party, all consenting parties shall equally share such cost irrespective of the party prevailing at trial. Any juror who appears for service because of the inability of the clerk's office, after diligent

effort to notify such juror, shall be paid the per diem fee for one-half day's service and such fee shall be chargeable as indicated heretofore.

### **RULE 12.2 - COSTS OF JURY FOR DELAYS DUE TO FAULT OF PARTY**

In the event a panel of jurors appears for service and the trial is continued or postponed due to the failure of a party or his counsel to appear, such party shall be assessed the per diem cost of the panel unless such failure to appear is as a result of extreme emergency or conditions beyond the control of the party or counsel as the same may be determined by the Court.

### **RULE 12.3 - FAILURE TO COMPLY WITH RULES**

The failure of a party demanding the jury to comply with any provisions of the Ohio Rules of Civil Procedure or Ohio Rules of Criminal Procedure or these Local Rules, shall constitute a waiver of the jury and the matter may be submitted to and decided by the Court. After a jury has been demanded, unless the jury is waived in writing not less than seven (7) days prior to the date set for trial, the party who requested that jury, and thereafter within such seven (7) days prior waives same, shall pay all jury fees and expenses incurred as a result of such demand.

## **RULE 13 - JURY MANAGEMENT PLAN**

### **RULE 13.1 - SERVICE**

Jury service is an obligation of all qualified citizens of the jurisdiction in which each court is located in Montgomery County, Ohio and the opportunity for jury service shall not be denied or limited on the basis of race, national origin, gender, age, religious beliefs, income, occupation, disability or any other factor that discriminates against a cognizable group in the jurisdiction. The jury size and unanimity in civil and criminal cases shall conform with existing Ohio law.

### **RULE 13.2.1 - JURY SOURCE LIST-RANDOM SELECTION PROCEDURE**

The jury commissioners shall receive a certified jury source list from the Board of Elections containing a list of registered voters no later than December 31st of each year. Pursuant to Court order, the Court shall fix the number of jurors upon the annual and supplemental jury list, to be selected from the list certified to the jury commissioners. The Court shall designate a key number

based on the total number of registered voters and the number of jurors needed for a year of service and shall designate a starting number for the purpose of using the key number. The annual and supplemental jury list shall be drawn no later than sixty days prior to the commencement of a jury year.

The jury year is hereby established from January 1st to April 30th of each year. The jury year shall be divided into three terms, commencing May 1st, September 1st and January 1st.

By court order, petit jurors shall be drawn no later than thirty days prior to the commencement of each term from the annual and supplemental jury list. (The Court further adopts the use of magnetic tapes and/or disks and the use of an automated information retrieval system in randomly selecting the annual jury list and the jurors for each term.)

#### **RULE 13.2.2 - ELIGIBILITY FOR JURY SERVICE**

All persons shall be eligible for jury service except the following:

- A. One less than 18 years of age;
- B. Non-citizens of the United States;
- C. Non-residents of Montgomery County Court jurisdiction;
- D. Those not able to communicate in the English language;
- E. Felons who have not had their civil rights restored.

#### **RULE 13.2.3 - TERM OF JURY SERVICE**

The time that persons are called upon to perform jury service and be available will be the shortest period consistent with the needs of justice. Jurors shall be "on call" for a one-month period. They do not report every day.

#### **RULE 13.2.4 EXEMPTION, EXCUSE AND RESCHEDULING**

There are no automatic excuses or exemptions with the exception of statutory exemption from jury service. Prospective jurors maybe exempt, excused, or deferred from jury service in accordance with the Ohio Revised Code and Standard 6 of the Ohio Trial Court Jury Use and Management standards. Requests for excuses, exemptions and rescheduling must be in writing and submitted to the Clerk of Courts who shall forward them to the appropriate Judge for decision.

### **RULE 13.2.5 - JUROR COMPENSATION**

- A. Persons called for jury service shall receive a reasonable fee for their service and expenses pursuant to statutory authority.
- B. Such fees shall be paid promptly.
- C. Employers shall be prohibited from discharging, laying off, denying advancement opportunities to, or otherwise penalizing employees who miss work because of jury service.

### **RULE 13.3 - NOTIFICATION AND SUMMONING PROCEDURE**

- A. Every person summoned as a regular juror shall be served at least forty-eight (48) hours before the time he or she is to appear in Court to answer said summons.
- B. The notice summoning a person to jury service and the questionnaire eliciting essential information regarding that person shall be:
  - 1. Combined in a single mailing;
  - 2. Phrased so as to be readily understood by an individual unfamiliar with the legal and jury system; and
  - 3. Delivered by ordinary mail.
- C. All summons shall clearly explain how and when the recipient must respond and the consequences of a failure to respond.
- D. The jury questionnaire shall be phrased and organized so as to facilitate quick and accurate screening and shall request only that information essential for determining whether a person meets criteria for eligibility; providing basic background information; and efficiently managing the jury system.

### **RULE 13.4 - VOIR DIRE**

- A. Voir dire examination shall be limited to matters relevant to determining the juror's fairness and impartiality.
- B. Basic background information regarding panel members will be made available to counsel for each party on the day on which jury selection is to begin.

### **RULE 13.5 - JURY DELIBERATIONS**

- A. Jury deliberations shall take place under conditions and pursuant to procedures that are designed to ensure impartiality and to enhance rational decision making.
- B. The Judge shall instruct the jury concerning appropriate procedures to be followed during deliberations.
- C. The jury shall not be sequestered except under the circumstances and procedures set forth in Local Rule 13.6 herein.
- D. A jury shall not be required to deliberate after a reasonable hour unless the trial Judge determines that evening or weekend deliberations would not impose an undue hardship upon the jurors and are required in the interest of justice.

### **RULE 13.6 - SEQUESTRATION OF JURORS**

- A. A jury shall be sequestered only for good cause, including but not limited to insulating its members from improper information or influences.
- B. The trial Judge shall have the discretion to sequester a jury on the motion of Counsel or on the Judge's initiative and shall have the responsibility to oversee the conditions of the sequestration.
- C. Training shall be provided to personnel who escort and assist jurors during sequestration.

### **RULE 14 - DEFAULTS AND DISMISSALS BY THE COURT**

#### **RULE 14**

In all cases where default judgment is available to a party by reason of failure of defendant to answer or enter an appearance, failure thereafter of such party to make demand for judgment by default under Ohio Civil Procedure Rule 55 (A) within sixty (60) days from the time that Plaintiff has notice of defendant's default, may constitute cause for dismissal, with prejudice, of the complaint by the Court for want of prosecution. An entry shall be filed in each case in which such

action is taken. At that time, the Clerk shall distribute or refund according to law the balance of any security deposit or other funds on hand or bill for an outstanding amount due.

## **RULE 15 - COSTS AND SECURITY FOR COSTS**

### **RULE 15.1 - COSTS WHEN DISMISSED**

When a case is dismissed for want of prosecution or for failure to comply with an order of the Court, or by Plaintiff without prejudice before judgment, all the proceedings by the Plaintiff in the same case or in any subsequent suit upon the same cause of action shall be stayed until the costs in the former action are paid unless otherwise ordered by the Court.

### **RULE 15.2 - SECURITY FOR COSTS**

No action or proceeding shall be accepted for filings by the Clerk of Courts unless there first shall be deposited the filing fee required by this Court in its schedule of costs, except that upon representation of indigency, the Clerk of Courts shall investigate the accuracy of such representation and upon finding that such indigency does exist, the security for costs shall be waived.

### **RULE 15.3 - INDIGENCY AFFIDAVITS**

The Clerk shall not accept a poverty affidavit for filing unless and until the Court indicated thereon its approval of the same. To secure such approval, the attorney for the party desiring to file said affidavit shall certify that no moneys have been paid to him by the party and that to his best knowledge and belief, the party is unable to make the deposit. In any case in which the Court has approved a poverty affidavit, the Clerk may, upon request by such party's attorney, waive deposit for costs of publication. However, in such cases it shall be the responsibility of the attorney making the request to advise the publisher in writing at the time the legal notice is presented for publication, that no funds have been deposited with the Clerk for payment of the publication costs, and at the same time the attorney shall file with the Clerk a written certification signed by the Attorney stating that he has so advised the publisher.

### **RULE 15.4 - COSTS**

For a list of all costs, refer to the Schedule of Court Costs attached hereto.

**RULE 16 - CRIMINAL PROCEDURE-GENERAL**

All rules set forth above with reference to civil proceedings shall, where applicable, be enforced in criminal proceedings before this Court, in addition thereto; the following rules shall prevail.

**RULE 16.1 - CRIMINAL ACTION - FILING**

The Clerk of Courts and all deputy clerks shall not accept criminal filings, other than criminal minor misdemeanor and traffic offense, from any person except a duly authorized police officer having jurisdiction within the territorial jurisdiction of this Court unless the complaint is initialed for approval by a county court or representative of the Montgomery County Court. Private citizens may file complaints only after consulting with the Montgomery County Prosecutor's Office or with one of the County Court Prosecutors.

**RULE 16.2 - CRIMINAL ACTION – COSTS**

Refer to Traffic/Criminal Costs Schedule attached hereto.

**RULE 17 - WITHDRAWAL OF CRIMINAL CHARGES**

**RULE 17**

All recommendations for withdrawal or dismissal of a case and the reasons thereafter shall be made in open court or in writing by the Prosecuting Attorney.

**RULE 18 - JUDGMENTS, ORDERS AND ENTRIES**

**RULE 18**

All Criminal and Traffic judgments and orders of this Court shall be shown as entered on the journals of the Court as of the date the said judgments were announced by the Court.

**RULE 19 - VIOLATIONS BUREAU**



## **RULE 19**

Pursuant to Rule 13 of the Uniform Rules of Procedure in traffic cases (also see Ohio Criminal Rules of Procedure 4.1) a violations bureau is hereby established for the acceptance of pleas of guilty in those cases not prohibited by said uniform rules. The Clerk of Courts is hereby appointed as Violations Clerk of the Bureau. In accordance with the Ohio Criminal Rules of Procedure Rule 4.1 (E), this Court establishes the bond, fines and costs per Schedule filed in the office of the Clerk.

## **RULE 20 - FAILURE TO APPEAR IN TRAFFIC CASES**

### **RULE 20**

Pursuant to Rule 7 of the Ohio Traffic Rules, when a defendant fails to appear pursuant to a ticket issued to him, except when an Ohio operator's license is held in lieu of bond, the Court shall issue a summons for his appearance, unless the trial Judge directs that a warrant shall be issued. If the summons or warrant is not served within twenty-eight (28) days, the file shall be directed to the Administrative Judge who shall take whatever action is necessary pursuant to Rule 7 of the Ohio Traffic Rules. Further the Clerk is directed to establish a file of Case Disposed Of Subject to Being Re-opened as prescribed in Ohio Traffic Rule 7. Further Rule 7 (B) of the Ohio Traffic Rules shall be complied with as required.

## **RULE 21 - BOND, FINES AND COST SCHEDULE FOR PARK DISTRICTS**

### **RULE 21**

Pursuant to Chapter 1545 of the Ohio Revised Code, for the preservation of good order within and adjacent to parks and reservations of land and for protection and preservation of parks, parkways and other reservations of land under its jurisdiction and control and of property and natural life therein, this Court establishes the bonds, fines and costs per schedule in the office of the Clerk.

## **RULE 22 - CASE MANAGEMENT**

## **RULE 22.1- CASE MANAGEMENT IN CRIMINAL CASES**

The purpose of this rule is to establish pursuant to the Rules of Superintendence for the Courts of Ohio Rule 18, a system for criminal case management which will provide the fair and impartial administration of criminal cases. These rules shall be construed and applied to eliminate unnecessary delay and expense for all parties involved in the Court Justice System.

### **A. Scheduling of Events:**

The scheduling begins after arraignment. Thereafter the case is managed in four (4) judicial steps.

1. *Pretrial:* After arraignment, all misdemeanors other than minor misdemeanors shall be set for pretrial within thirty (30) days. All minor misdemeanors shall be set for trial unless the Judge orders a pretrial in said case. The pretrial shall be conducted in accordance with Criminal Rule 18.1 of the Ohio Criminal Rules of Procedure and a memorandum of the matters agreed upon should be filed in said case. Any attorney who fails to appear for pretrial without just cause being shown may be punished for Contempt of Court. If the parties cannot resolve the case, then the case shall be set for trial to Court unless a jury is demanded.
2. *Motions:* All motions shall be made in writing and accompanied by a written memorandum containing the arguments of counsel. Motions must be filed within the time limits established by the Ohio Rules of Criminal Procedure. All motions shall be set for oral hearing, unless waived in writing.
3. *Trials:* Each case not resolved at pretrial shall be set for trial to the Court. If a jury demand is timely filed, then the case will be moved to the jury trial schedule.
4. *Sentencing:* Sentencing hearings shall be set within fourteen (14) days from trial if no pre-sentence report is requested, unless the party is sentenced immediately after the completion of the trial. After the Court receives the probation report, the Court will set the hearing for sentencing within fourteen (14) days.

## **RULE 22.2 - CASE MANAGEMENT IN CIVIL CASES**

The purpose of this Rule is to establish a system for civil case management which will achieve the prompt and fair disposal of civil cases.

A. Scheduling of Events:

The scheduling of a case begins when a civil case is filed. Thereafter, the case is managed in five (5) judicial steps.

1. Clerical Steps

- a. Summons shall be served in accordance with the Ohio Rules of Civil Procedure. In the event that there is a failure of service, the Clerk shall notify counsel immediately. If Counsel fails to obtain service of summons within six (6) months from the date the cause of action has been filed, then the Clerk shall notify Counsel that the case will be dismissed in ten (10) days unless good cause is shown to the contrary.
- b. Upon perfection of service, the clerk shall notify counsel if there is a default and that failure to submit an entry within fifteen (15) days may result in the case being dismissed.
- c. After any responsive pleading is filed, the Clerk shall immediately forward said pleading and file to a judge so the matter may be set for hearing.
- d. If no action has been taken on a file for a six (6) month period and the case is not set for trial, then the Clerk shall notify the party that the matter will be dismissed unless the entry is received within ten (10) days.

2. Judicial Steps

- a. Status Hearing: After a responsive pleading is filed, the case will be assigned to a Judge and the Clerk will forward the file to said Judge. The Court will then set an attorneys conference which may be heard in Court or by phone. The purpose of the attorney's conference is to set discovery and motion deadlines so a formal pretrial can be set.

- b. All motions must be in writing and accompanied by a written memorandum containing citations or the arguments of counsel. Opposing counsel shall answer in like manner within fourteen (14) days thereafter. All motions will be considered submitted at the end of said fourteen (14) day period unless time is extended by the Court. There will be no oral hearings granted in said motions unless the parties request an oral hearing in writing and the Court deems it necessary.

*Pretrial:* For the purpose of this rule, Pretrial shall mean a Court supervised conference chiefly designed to produce an amicable settlement. The term party or parties used hereinafter shall mean the party or parties to the action, and/or, his, hers, or their attorney of record. Any attorney for a party to the action who fails to attend at a scheduled pretrial conference without just cause being shown, may be punished as and for Contempt.

Notice of pretrial conference shall be given to all counsel of record by mail and/or by telephone from an assignment commissioner, not less than fourteen (14) days prior to the conference. Any application for continuance of the conference shall be addressed to the Judge or Magistrate to whom the case has been assigned, and then signed by the party represented as well as by counsel. Counsel attending the pretrial conference must have complete authority to stipulate on items of evidence and must have full settlement authority. The primary purpose of the pretrial conference shall be to achieve an amicable settlement of the controversy in suit.

The Court shall attempt to narrow legal issues, to reach stipulations as to facts in controversy and, in general, to shorten the time and expense of trial. Each party shall file a pretrial statement to become part of the record and the case embracing all stipulations, admissions, and other matters *which* have come before it in the pretrial. The Court shall, at that time, determine

whether or not trial briefs should be submitted and shall fix a date when they are to be filed.

Any judge presiding at pretrial conference or trial shall have the authority to dismiss the action for want of prosecution on motion of defendant upon failure of plaintiff, and/or his counsel to appear in person at any pretrial conference or trial; to order the plaintiff to proceed with the case and to decide and determine all matters ex parte upon failure of the defendant to appear in person or by counsel at any pretrial conference or trial as required; to make such other order as the Court may deem appropriate under all the circumstances.

If the case cannot be settled at pretrial, then the case shall be set for trial at a time agreeable to all parties.

*Continuances:* No party shall be granted a continuance of a trial or hearing without a written motion from the party or his/her counsel stating the reason for the continuance and signed by the party represented. When a continuance is requested for the reason that counsel is scheduled to appear in another case assigned for trial on the same date, in the same or another trial court of this state, the case which was first set for trial shall have priority and shall be tried on the date assigned. Criminal cases assigned for trial have priority over civil cases assigned for trial.

The granting of any request for continuance of a scheduled trial is a matter within the discretion of the trial Court. If a designated trial attorney has such a number of cases assigned for trial in courts of this state so as to cause undue delay in the disposition of such cases, the Administrative Judge may require the trial attorney to provide a substitute trial attorney. If the trial attorney was appointed by the Court, the Court shall appoint a substitute trial attorney.

*Judgment Entries:* Counsel for the party in whose favor an order or judgment is rendered shall prepare a journal entry. That entry shall be submitted to opposing counsel within (5) days of the decision. Opposing counsel shall approve or reject the entry within (5) days of the date it was submitted. Within fifteen (15) days of the decision, the journal entry shall be submitted to the Judge, or thereafter, the Court will prepare the journal entry. Entries of settlement may be filed at any time. The avoidance of trial by settlement shall be allowed without the filing of an entry, but such entry shall be filed within thirty (30) days or the case will be dismissed for want of prosecution. The journal entry shall state within it which party shall pay court costs.

### **RULE 22.3 - CASE MANAGEMENT IN SPECIAL PROCEEDINGS**

A. *Purpose:* The purpose of this rule is to establish, pursuant to Rules of Superintendence for the Courts of Ohio Rule 18, a case management system for special proceedings to achieve a prompt and fair disposition of these matters. The following civil matters are considered special proceedings and may be heard by a judge or magistrate, to wit: small claims, forcible entry and detainer, default hearings, rent escrow hearings, replevins, garnishment hearings, debtor's exams, and citations in contempt. The following criminal matters are considered special proceedings: criminal initial appearances, preliminary hearings, bureau of motor vehicle appellate hearings, and extradition hearings.

B. *Scheduling of Events:* Cases that have time limits established by the Ohio Revised Code shall be set within those time limits for hearing. In all other special proceedings that do not have established time limits, the case shall be set for hearing within a reasonable time not to exceed ninety (90) days.

C. *Clerical Steps:* In all new cases, if counsel fails to obtain service of summons within six (6) months, the clerk shall notify counsel that the case will be dismissed within ten (10) days, unless Good Cause is shown to the contrary.

D. Upon completion of service, the Clerk shall immediately notify plaintiff or plaintiff's counsel of a default. A failure to submit a default judgment entry within fifteen (15) days may result in the case being dismissed.

E. After a responsive pleading is filed, the Clerk shall immediately forward said pleading and the case file to a judge or magistrate so that the matter may be set for hearing.

F. If no action has been taken in a case for a six (6) month period and the case is not set for trial, then the Clerk shall notify the party that the matter shall be dismissed within one (1) week unless good cause is shown.

G. When a case file has been marked settled, and the agreed judgment entry or dismissal entry has not been approved and filed within thirty (30) days, then the Clerk shall notify the party that his case will be dismissed unless the entry is received within ten (10) days.

#### **RULE 22.4 - CASE MANAGEMENT FOR FORCIBLE ENTRY AND DETAINERS**

A. All forcible entry and detainer cases shall be set for hearing before the Court or magistrate, pursuant to the time limit set forth in the Ohio Revised Code. Trial by jury will be waived unless demand is filed on or before the appearance date. If the defendant (tenant) presents a prima facie defense on appearance, the case shall be ordered set for trial before the magistrate.

B. The time for serving a responsive pleading to any claim for relief in addition to the possessory action shall be governed by the Ohio Civil Rules of Procedure. The magistrate shall preside at the appearance call for forcible entry and detainer.

C. Service of summons upon the defendant shall be in accordance with ORC 1923.04 (A) and the Ohio Civil Rules.

D. At the time set for the appearance call, plaintiff's attorney of record shall be present in Court. Failure to comply with this rule shall result in a dismissal of the case without prejudice.

E. In the event that the defendant fails to appear at the restitution hearing, no default judgment shall be ordered unless testimony is taken from the plaintiff regarding the proper form and service of the required notice under ORC 1923.04 and the tenant's failure to pay rent when due or other reason why restitution of the property is being sought.

F. In cases based upon a tenant's failure to pay rent, all claims raised by the landlord/plaintiff shall be consolidated with any counterclaims raised by the defendant/tenant,

unless otherwise provided by law. The tenant shall serve any counterclaims upon the landlord or the landlord's attorney prior to trial. The tenant shall also deposit with the Clerk of Court all rent moneys claimed by the landlord to be due and owing, unless the court waives this requirement upon the showing of good cause.

G. If the landlord/plaintiff is successful in the eviction, the court will order that the tenant vacate the premises at any time following the granting of restitution.

H. Upon the granting of restitution, should the tenant fail to vacate the premises or remove his property therefrom, the landlord shall file a request to remove said property to the curb.

I. Upon receipt of the writ of restitution, a representative of the Bailiff's Office shall set a specific date for the move-out of the tenant and his property. The Bailiff's office shall supervise every move-out conducted through the Court. The writ of restitution will clearly identify the location of premises for which the move-out will be completed and the landlord will cooperate fully with the Bailiff's office to assist them in identifying the physical location of the premises which are covered by the writ. Failure to cooperate and comply with this requirement will result in the Bailiff returning the writ unexecuted. A security deposit shall be paid at the time of filing of the writ of restitution in an amount to be determined by the Clerk of Courts to cover the costs of the move-out.

J. In the event the tenant vacates the premises before the scheduled move-out date, the landlord or his attorney shall immediately notify the Bailiff's office.

K. Any items belonging to a tenant and stored by a moving and storage company on behalf of a landlord, pursuant to a court order, shall be stored at the warehouse for at least thirty (30) days after the move-out days, if arrangements are not made by the tenant to redeem said items, the items may be sold in accordance with the Ohio Revised Code.

## **RULE 22.5 - SMALL CLAIMS COURT**

A. Pursuant to the Ohio Revised Code, the Court has established a small claims division for cases for the recovery of money where the payer does not exceed the monetary amount provided in ORC 1925.02.

B. Cases filed in the small claims division shall be heard by a magistrate appointed and assigned under Rules of Superintendence for the Courts of Ohio Rule 18



C. In all cases, the magistrate may assess the costs as provided in ORC 192.5.15.

D. The magistrate's decision is subject to a fourteen (14) day objection period pursuant to Ohio Civil Rule 53 (E) (3).

E. The magistrate's decision shall be effective when adopted by the court, pursuant to Ohio Civil Rule 53 (E) (4). Upon consideration of any objections, the Court may adopt, reject, or modify the magistrate's decision, hear additional evidence, recommit the matter to the magistrate with instructions, or hear the matter.

F. A motion to transfer a case to the regular docket, to transfer a cross-claim or counterclaim exceeding the monetary jurisdiction of the Small Claims Division shall be referred to the Judge for assignment and handled in accordance with ORC 1925.10.

G. Where a motion has been granted to transfer a small claims case to the regular civil docket, the party seeking the transfer shall pay the appropriate fee to the Clerk upon filing the motion. Failure to pay the fee will result in the case being retained in the small claims docket.

H. A motion for continuance must be filed in writing not later than five (5) working days before the date of hearing.

I. No depositions or interrogatories shall be taken except by leave of the Court. All relevant evidence shall be admitted at the discretion of the magistrate.

### **RULE 23 - COURT SECURITY STANDARDS**

The Montgomery County Court is charged with dispensing justice, resolving disputes and protecting the constitutional rights of those who appear before the Court. Accordingly, appropriate levels of security should exist in the Court to protect the integrity of the Court proceedings, protect the rights of individuals before it, sustain the decorum and dignity of the Court and assure that Court facilities are secure for all those who visit and work there.

#### **RULE 23.1 - WEAPONS**

No weapons shall be permitted in the courthouse unless carried by a law enforcement officer or probation or parole officer, acting within the scope of their employment. Each court has authority to enforce more restrictive measures regarding weapons in a courtroom or hearing room on a case by case basis.

### **RULE 23.2 - TRANSPORTATION OF PRISONERS**

Individuals transported from the jail to a courtroom or a hearing room should be moved through areas which are not accessible to the public when possible. When public hallways must be used to transport such individuals, they should be secured in an appropriate manner, to protect the public. There shall be no physical contact between inmate and family or friends in the courtroom or during transport of the prisoner.

### **RULE 23.3 - ALARMS**

All courtrooms and hearing rooms shall be equipped with duress alarms connected to 911. Duress alarms shall be located in the court offices, Clerk of Court's offices, and the probation department.

### **RULE 23.4 - RESTRICTED ACCESS**

Access to the jury rooms, and the Judge's office facilities shall be restricted by a punch pad lock, key lock or electronic lock. Access to the Clerk of Courts offices shall be restricted by punch pad lock or electronic lock. All persons entering a court facility shall be subject to security screening, on a case by case basis, as requested by a judge or bailiff. Courtrooms shall be locked when not in use.

### **RULE 23.5 - ASSIGNMENT OF BAILIFFS**

Bailiffs and/or uniformed, armed law enforcement officers shall be assigned in sufficient numbers, to ensure the security of each court and related court facilities. All such officers shall be certified through the Ohio Peace Officers Training Council and shall receive training on court security and weapons instruction specific to the court setting.

### **RULE 23.6 - DIGITAL PERSONAL COMMUNICATORS**

All judges and magistrates shall be assigned a digital personal communicator for security purposes while away from the courthouse.

### **RULE 23.7 - REPORTING OF CRIMES OCCURRING WITHIN COURT FACILITY**

Each violation of law that occurs in a court facility or court area shall be reported to the Montgomery County Sheriff's department. A tabulation of all such incidents shall be reported, by the administrative judge, to the Supreme Court of Ohio on an annual basis.

## **RULE 24 - MEDIA COVERAGE OF COURT PROCEEDINGS**

### **RULE 24.1 - PERMISSION OF ASSIGNED JUDGE**

The Judge assigned to the trial or hearing shall permit the broadcasting or recording by electronic means and taking of photographs in court proceedings that are open to the public as provided by Ohio law. After consultation with the media, the judge shall specify the place or places in the courtroom where the operators and equipment are positioned. Requests for permission for the broadcasting, televising, recording or taking of photographs in the courtroom shall be in writing and the written order of the Judge shall be made a part of the record of the proceedings. The media request form shall be presented as far, in advance of as is reasonably possible but in no event later than twenty-four (24) hours prior to the trial or hearing to be recorded. All requests to record proceedings of arraignments shall be made in writing and presented to the arraignment Judge as far in advance as is reasonably possible but in no event later than one-half hour prior to the arraignment session to be recorded. Upon a showing of good cause, the judge may waive the advance notice provision.

### **RULE 24.2 - PERMISSIBLE EQUIPMENT AND OPERATORS**

- A. Use of more than one portable television, videotape, or movie camera with one operator shall be allowed only with the permission of the Judge.
- B. Not more than one still photographer shall be permitted to photograph trial proceedings without permission of the Judge. Still photographers shall be limited to two cameras with two lenses for each camera.
- C. For radio broadcast purposes, not more than one audio system shall be permitted in court. Where available pickup systems are not available, microphones and other electronic equipment necessary for the audio pickup shall be as inconspicuous as possible but shall be visible.

- D. Visible audio recording equipment may be used by news media reporters with the prior permission of the Judge.
- E. Arrangements between or among media for “pooling” of equipment shall be the responsibility of the media representative authorized to cover the proceeding. “Pooling” arrangements are to be made outside the courtroom and without imposing on the judge or court personnel, if disputes arise over arrangements between or among media representative, the judge may exclude all contesting representatives from the proceedings.
- F. The Judge shall prohibit the use of electronic or photographic equipment that produces distracting sound or light. No artificial lighting other than that normally used in the courtroom shall be employed, provided that, if the normal lighting in the courtroom can be improved without becoming obtrusive, the Judge may permit modification.
- G. Still photographers and television and radio representatives shall be afforded a clear view but shall not be permitted to move about in the courtroom during court proceedings from the places where they have been positioned by the Judge, except to leave or enter the courtroom.

### **RULE 24.3 - LIMITATIONS**

- A. There shall be no audio pickup or broadcasts of conferences conducted in a court facility between attorneys and clients or co-counsel or of conferences conducted at the bench between counsel and the Judge.
- B. The Judge shall inform victims and witnesses of their right to object to being filmed, videotaped, recorded or photographed.
- C. Jurors shall not be filmed, videotaped, recorded or photographed without permission of the Judge.
- D. Media representatives shall not be permitted to transmit or record anything other than the court proceedings from the courtroom while the court is in session.
- E. This rule shall not be construed to grant media representatives any greater rights than permitted by law.

#### **RULE 24.4 - REVOCATION OF PERMISSION**

Upon failure of any media representative to comply with the conditions prescribed by this rule or the Judge, the Judge may revoke the permission to broadcast or photograph the trial or hearing.

#### **RULE 24.5 - MEDIA REQUESTS TO INTERVIEW COURT EMPLOYEES**

A media representative may request to interview a court employee regarding an incident or story that involves the employee in his or her course of business as a representative of the Court. No interview shall be granted until the media representative requests such an interview in writing to the Court Administrator or Administrative Judge for review and approval. No employee of the court may comment or be interviewed by the media regarding Court matters without the approval of the Court.

#### **RULE 25 - ADMISSIBILITY OF ELECTRONIC MEDIA EVIDENCE**

The Administrative Judge shall cause a Notice of Electronic Media Compatibility to be posted on the court's website by January 31<sup>st</sup> of each year. That notice shall set forth the court's electronic media equipment and its compatible formats available to all parties for the presentation of electronic media evidence in this court. Any such evidence that is incompatible with the court's electronic media equipment shall not be admitted unless the proponent of such evidence provides the electronic equipment necessary to present such evidence to all parties and the court simultaneously. All judicial employees are prohibited from assisting any party in presenting non-conforming evidence other than familiarizing the proponent with the current equipment and software. This Rule applies to all parties in all cases including the State of Ohio, civil, criminal, and traffic cases.

#### **RULE 26 - ELECTRONICALLY PRODUCED TICKETS**

The use and filing of a traffic ticket that is produced by computer or other electronic means including photo tickets is hereby authorized. The electronic ticket shall conform in all substantive

respects of the "Ohio Uniform Traffic Ticket." If the electronic ticket is issued at the scene of an alleged offense, the issuing officer shall provide the defendant with a paper copy of the ticket in accordance with Traffic Rule (E) and in a format approved by the Court. The issuing officer shall have an electronic signature on the electronic ticket. An electronic signature is an electronic symbol, sound, or process attached to or logically associated with an electronic record, executed or adopted by the officer with the intent to sign the electronic record. An electronic signature shall have the same force and effect as an actual signature affixed to a hard copy traffic ticket and subjects the maker to the same legal rights, responsibilities and liabilities. By causing his or her electronic signature to be so written on the ticket, the officer states under the penalties of perjury and falsification that he or she has read the ticket and that the statements on the ticket are true.

## **26.1 - PHOTO ENFORCEMENT/RED LIGHT CAMERA TICKETS**

Traffic tickets which are the result of the use of photographic means will be resolved by a Special Docket of the Court which is established with this local rule. This docket shall be known as the Photo Enforcement Docket and said docket shall be a civil docket of the court, not subject to the requirements of the traffic or criminal dockets of the court. The Administrative Judge shall formulate rules and procedures for this Special Docket by means of General Orders of the court which can be changed or modified by him/her when the needs of the court dictate the necessity.

### **RULE 27 - MAGISTRATE**

A. Pursuant to Civil Rule 53, Traffic Rule 14, Criminal Rule 19 and Rule 19 of the Rules of Superintendence for the Courts of Ohio, the Magistrate of this Court is empowered to hear and report in the following cases:

1. Default proceedings.
2. Forcible entry and detainer actions.
3. Small Claims.
4. Traffic proceedings in which a guilty plea is entered, or in which the defendant executes a written waiver of the right to a trial by judge.
5. Judgment debtor proceedings.

6. Rent escrow hearings.
7. Conduct arraignments, initial appearances and preliminary hearings.
8. Conduct the trial of any cases that will not be tried to a jury.
9. Such other matters as may properly be referred by a judge.
10. Exercise any other authority specifically available to magistrates by statute, or rule of procedure.

B. **Objections to Magistrate's Report:** In all cases other than restitution of premises in forcible entry and detainer matters, the party objecting to the report of the magistrate shall file his or her objections within fourteen (14) days of the service of the magistrate's report on said party. The objecting party must state with specificity his or her objections to said report and the relief requested. It will be the duty of the attorney filing said objections to obtain a hearing date from the assignment clerk and to notify opposing counsel of said date within three (3) days. If counsel objecting should fail to obtain a hearing date, no oral hearing will be granted.

If no objections are filed to said report, the Judge shall review the Magistrate's decision and issue the appropriate order in said case.