

VANDALIA MUNICIPAL COURT  
RULES OF PRACTICE

JOURNAL ENTRY ENACTING RULES OF COURT

IT IS HEREBY ORDERED that forthwith the following are adopted as the Rules for the docketing of causes and regulations of practice and procedure of this Court in civil and criminal cases until otherwise ordered, and that all previous Orders are hereby revoked.

These Rules shall be recorded by the Clerk in the volume of the Journal reserved for that purpose.

The Rules of Court presented here are hereby in effect this date until otherwise ordered.

APPROVED:

Effective:

\_\_\_\_\_  
HONORABLE CYNTHIA M. HECK

## CITATION OF RULES

These rules shall be known as the **Vandalia Municipal Court Rules of Practice** and may be cited as Vand. R. \_\_\_\_.

### COURT ADMINISTRATION AND GENERAL RULES

#### Rule 1.00 COURT SESSIONS

The sessions of this Court shall be held from 9:00 A.M. until Noon and 1:00 P.M. until 4:00 P.M., Monday through Friday, except legal holidays and as otherwise ordered by the Court.

A. **HOLIDAYS:** The Court shall be closed on the following days and such other days as ordered by the Court:

Martin Luther King Day  
President's Day  
Good Friday (1/2 day P.M.)  
Memorial Day  
Independence Day  
Labor Day  
Columbus Day  
Veteran's Day  
Election Day (1/2 day P.M.)  
Thanksgiving Day  
The day following Thanksgiving Day  
Christmas Day  
New Year's Day

#### Rule 2.00 CLERK OF COURTS

The office of the Clerk of Courts shall be open for the transaction of business from 8:00 A.M. until 4:00 P.M., Monday through Friday, except all legal holidays and as otherwise ordered by the Court.

By direction of the Judge, the Clerk of Courts has the power to speak for the Court with relation to personnel, bond, continuances, and administrative acts of the Municipal Court.

#### Rule 2.01 RECORDS

The Clerk of Courts shall keep and maintain the following records which are the public records of the Municipal Court. Notwithstanding Sec. 149.39 O.R.C., the disposition of said records shall be pursuant to Sec. 1901.41 O.R.C. and the Court's Records Retention Schedule.

A. CIVIL DOCKET AND JOURNAL - This docket and journal contain civil cases, together with all proceedings, properly dated and numbered and are the complete and final record of each case.

B. CRIMINAL AND TRAFFIC DOCKET AND JOURNAL - This docket and journal contain criminal and traffic cases, together with all proceedings properly dated and numbered and are the complete and final record of each case. Orders and Entries shall be shown as entered on the Journals of the Court as of the date said Judgments, Orders or Entries were announced.

C. ADMINISTRATIVE JOURNAL - The Administrative Journal contains orders made by the Municipal Court in all administrative matters. Rules and orders regulating the business of the Municipal Court shall be entered into the Administrative Journal, which shall be reserved for that purpose.

D. GENERAL INDEX - The General Index is an alphabetical listing of the names of parties to any action or proceeding.

E. TRUSTEESHIP DOCKET - This docket is a record of proceedings on behalf of debtors and accounts or creditors, administered by the Clerk of Courts as Trustee for such debtors.

Rule 2.02  
COPIES

The Clerk, upon proper request, shall permit copying of cases, according to public record. The expense of extended records shall be paid by the party or person requesting same.

Rule 2.03  
NUMBERING

All civil, criminal and traffic actions brought in the Municipal Court shall be numbered in accordance with the Ohio Rules of Superintendence.

Rule 2.04  
PAPERS FILED WITH THE COURT

A. PREPARATION. The officers or employees of this Court shall not prepare or help prepare any pleading, affidavit, entry or order in any Civil or Criminal matter, except as provided under 1925.13 O.R.C.

B. COPIES. The Clerk shall permit any person to make a copy of any of the papers filed, but original papers filed in any case shall not be removed from the office without approval of the Judge or the Clerk of Courts. Reproduction of any material shall be at a rate established by the Clerk and paid for by the party or person requesting same. When papers are being filed, sufficient copies shall be furnished by the filing party to cover each party served, as well as an original and one copy for the Court.

C. IDENTIFICATION. All papers offered for filing with the Court shall bear:

1. A case caption and case court number;
2. A title identifying the name and party designation of the party filing the paper and the nature of the document (e.g. Answer of Defendant, John Doe) and;
3. The typed name, office address, office telephone number, attorney registration number and signature of the designated trial attorney, if applicable. If a party is unrepresented, said party shall include their name, address, and telephone number. ALL PARTIES ARE RESPONSIBLE FOR ADVISING THE COURT, IN WRITING, OF ANY CHANGE IN ADDRESS.

D. PROOF OF SERVICE. All documents (except the Complaint) offered for filing and required to be served on other parties shall contain proof of service in the form provided by Civil Rule 5(D).

Rule 2.05  
FAXES

A faxed copy shall be accepted by the Court for filing so long as a signed original is maintained by the filing party and the person making a fax, complies with the Ohio Supreme Court model rule for facsimile filing. The Court adopted Superintendence Rule 27 as a local rule on June 14, 2002 and updated said local rule on December 2, 2004, which ensured compliance with Rule 83 of the Rules of Civil Procedure. (Contact Court for copy of facsimile filing rule.)

Rule 2.06  
COMPUTATION OF TIME

The time within which an act is required to be done shall be computed by excluding the first day, but including the last; except that when the last day falls on a Saturday, Sunday or a Holiday, it shall be excluded and the next business day counted.

Rule 3.00  
TRIAL ATTORNEY OF RECORD

All attorneys of record shall file an Entry of Appearance on behalf of their client. All documents filed on behalf of one or more parties represented by counsel shall be signed by one attorney in his individual name as trial attorney and show the Supreme Court Registration Number. All notices and communications from the Court and all documents required to be served will be sent to such designated trial attorney. No attorney who has entered his or her appearance in a case may withdraw as trial attorney except upon written motion for good cause shown and after notice to the client.

Rule 3.01  
ASSIGNMENT OF COUNSEL

When the Court determines that a defendant is legally entitled to counsel and is unable to obtain counsel pursuant to Criminal Rule 44, the Court shall appoint either an attorney from the Montgomery County Public Defender's Office or private counsel to represent the defendant.

Rule 3.02  
APPOINTED COUNSEL

The Court maintains a list of attorneys in private practice for appointment to represent indigent defendants in criminal and traffic cases that are qualified to serve as appointed counsel. Placement on the list can be made by any attorney upon submitting an application to the Court. Placement on the list is a privilege, not a right, and an attorney may be removed by the Court at any time, with or without cause.

To ensure equitable distribution of appointments, the list is arranged alphabetically and attorneys are contacted in that order until an attorney is reached that can take the case. When selecting the attorney to be appointed, the attorney's skill and expertise in handling that type of criminal case and the attorney's management of his or her other current caseload may be considered, pursuant to Superintendence Rule 8. Periodically, the list is reviewed for equitable distribution of appointments. The manner and rate of compensation for appointed counsel is made upon submission to the Court a completed motion, entry and certification for appointed counsel fees, an itemized fee statement and financial disclosure/affidavit of indigence on forms prescribed by the Ohio Public Defender's Commission.

Rule 4.00  
APPOINTED AND ACTING JUDGES AND MAGISTRATES

All appointed and acting Judges and Magistrates shall sit as designated by Court Order. No appointed or acting Judge or Magistrate shall modify any previous orders of the Court not entered by said appointed or acting Judge or Magistrate.

Rule 5.00  
MAGISTRATES

The Magistrate of the Municipal Court is empowered to hear and report on all matters authorized under Civ. R. 53, Traf. R.14, Crim. R. 19, Sup. R. 19, and other appropriate matters referred by the Judge.

RULE 5.01  
OBJECTIONS TO MAGISTRATE'S DECISION

In all cases, other than Forcible Entry and Detainer actions, the party objecting to a Magistrate's Decision shall file objection(s) pursuant to Civ. R. 53., Crim. R. 19, or Traf. R. 14, as applicable.

Rule 6.00  
BAILIFF

The Bailiff selected by the Judge shall formally open sessions in the traffic, criminal and civil court, maintain order, and provide service of court papers and documents, as appropriate.

Rule 7.00  
JURORS

A. SELECTION: Jurors shall be chosen by a jury commissioner designee as generally provided for in Section 2313.01 et seq. O.R.C. The Clerk of Courts shall serve as an alternate jury commissioner and shall have possession of the jury records. Jurors are selected at random from a computerized list of legal voters provided by the Montgomery County Board of Elections. A minimum of eighty (80) jurors shall be summoned for each criminal and civil jury.

B. SUMMONS: Unless otherwise directed by the Court, all service upon persons summoned for jury duty shall be by ordinary first class mail and mailed out at least thirty (30) days before the trial date.

C. CANCELLATION: If a jury is cancelled after it has been summoned into court and the Clerk of Courts is unable to notify all prospective jurors of said cancellation, the Court may assess costs so incurred to the last party canceling the jury demand.

Rule 8.00  
WITNESSES AND SUBPOENAS

A. PRAECIPE: The praecipe (request) for subpoenas of witnesses shall be filed with the Court not later than seven (7) days before the date of trial. Praecipes requesting documents shall be in the form of a subpoena duces tecum and shall state with specificity whether the custodian of the records is required to attend with said documents, or whether such documents may be submitted in lieu of appearance.

B. DEPOSIT. No subpoena for witnesses in a civil proceeding shall be issued until the witness fees, costs and estimated mileage are deposited with the Clerk. A witness who testifies or is timely available for that purpose shall receive the fee upon presentation of the subpoena to the Clerk of Courts.

C. FAILURE TO APPEAR. Failure of witnesses to appear in court may subject them to prosecution and fine for contempt of court. Failure of a witness to appear for whom the praecipe was not timely filed, will not be grounds for a continuance of the case.

Rule 9.00  
RECORDING DEVICES

This Court utilizes mechanical recording devices for courtroom proceedings.

Rule 9.01  
REQUESTING A TRANSCRIPT

Upon filing of an Objection with a request for a transcript, an estimate shall be provided and a deposit shall be paid prior to the preparation of the transcript. The party requesting the transcript shall have two weeks from the date of estimate to pay the deposit required. Failure to pay the required deposit within the time allotted will result in a waiver of the request and the Court will proceed accordingly without a transcript. The party requesting the transcript shall be notified upon the completion of the transcript and the final costs must be paid in full at that time or the transcript will not be released.

Rule 10.00  
SOLICITATION

No solicitation will be tolerated within the premises of the Municipal Court, or any of the offices or halls adjoining the same.

**RULES OF CIVIL PRACTICE**

Rule 11.00  
CIVIL RULES

The Municipal Court shall follow the rules governing the Courts of Ohio and Rules of Superintendence.

Rule 12.00  
CIVIL PROCEDURE

The civil procedure of this Court shall be that which is prescribed by the Ohio Rules of Civil Procedure and amendments thereto. The Court shall follow Chapters 1923 and 5321 of the Ohio Revised Code as to Forcible Entry and Detainer Actions and Chapter 1925 of the Ohio Revised Code as to Small Claims Actions.

Rule 13.00  
CIVIL COSTS AND FEES

Costs in civil cases shall be assessed and payable on filing according to the Schedule of Costs, a copy of which is available upon request in the civil division of the Clerk of Courts Office.

No fee shall be charged by any officer or employee of the Municipal Court to notarize affidavits or any other matter pertinent to the business of the Court.

Rule 14.00  
EXTENSIONS FOR FILINGS

Upon Motion, for good cause shown, and in accordance with the Civil Rules, the time for filing pleadings or other matters may, at the Court's discretion, be extended for such reasonable time as the Court may provide by written order.

Rule 15.00  
PRE-TRIAL CONFERENCE

In any civil action the Court may, in its discretion, assign such cause for pretrial conference. If a pretrial is ordered, the pretrial conference shall be conducted in person, unless otherwise specified by the Court.

Notice of the date, time and place of such pretrial conference shall be given by the assignment commissioner to all counsel of record and parties not represented by counsel. Trial counsel, or the parties themselves if not represented by counsel, are to be fully prepared to discuss the following matters at the conference:

1. The possibility of settlement;
2. If a jury has been timely requested, a decision as to whether the case is to be tried by a jury or whether a jury is to be waived;
3. The setting of discovery, motion filing and other cut-off dates;
4. A narrowing of any issues, factual or legal, by means of stipulation;
5. Determination of the trial date and the probable length of time for trial.

Rule 16.00  
CIVIL JURY TRIAL DEMAND AND DEPOSIT

A party desiring a jury trial shall file a jury demand in writing in accordance with Civ. R. 38 and 39. The party making a demand for a jury shall deposit with the Clerk of Courts a sum as set forth in the Schedule of Costs. Said deposit may be made at the time the demand is filed, but in any event no later than seven days following the pretrial conference. The jury shall not be drawn unless there is available in a fund, subject to the control of the Clerk, sufficient money to pay the fees of jurors and related costs.

The failure of a party demanding the jury to comply with any of the provisions of this rule shall constitute a waiver of the jury and the matter shall be submitted to, and decided by, the Court or Magistrate.



Rule 17.00  
BRIEFS

In all cases of trial by jury, the parties shall be required to file final pretrial briefs. All pretrial briefs shall be filed by a date set by the Judge or Magistrate and shall include a brief recitation of the facts, stipulations (if any), legal issues and any proposed jury instructions.

Rule 18.00  
NOTICE OF TRIAL

When a civil case is assigned for trial, the Clerk shall mail a notice containing the date, time and place of trial to attorneys of record, or to parties if unrepresented by counsel, and shall file a copy of such notice with the original papers. It shall be the responsibility of each party, or their attorney of record, to timely notify this Court of any change in address.

The notice shall be mailed at least ten (10) days before the date of trial, except in Forcible Entry and Detainer cases (see Vand. R. 24)

Rule 19.00  
MOTIONS

All Motions, other than those made in open court on the record, must be in writing, accompanied by a written memorandum containing the arguments of counsel and pertinent law and filed in accordance with the Ohio Rules of Civil Procedure. Opposing memoranda shall be filed not later than fourteen (14) days from the service of the motion or on the day prior to the trial or hearing on the motion, whichever is earlier. Motions shall be deemed submitted when opposing memoranda are filed or the time for filing expires, whichever is earlier. No oral hearing shall be held unless otherwise ordered by the Court. If the court schedules a motion for oral hearing, failure of the movant to appear for such hearing may be deemed an abandonment of the Motion.

Rule 20.00  
ENTRIES AND ORDERS

A. JUDGMENT ENTRIES: Counsel for the party in whose favor an Order or Judgment is rendered shall prepare a Judgment Entry and submit it to the Court within fourteen (14) days of said decision. No Entry shall be accepted for filing unless signed by a Judge or Magistrate. ALL ENTRIES SHALL DESIGNATE THAT A COPY OF SAME HAS BEEN ISSUED TO THE OPPOSING COUNSEL OR PARTY, IF UNREPRESENTED.

B. SUBMISSION: Entries and Orders shall not be submitted while Court is in trial. Entries and Orders, endorsed by all counsel involved, may be left with the Clerk's Office.

C. CONTENT: Entries shall be drawn in language that is appropriate to the specific facts of the case in which it is to be filed. Nothing in this Rule precludes the Court from preparing and filing a Judgment Entry *sua sponte*.

D. AGREED JUDGMENT ENTRIES: Entries of settlement may be filed at any time; however, the avoidance of trial by settlement shall be allowed only upon submission of an Agreed Judgment Entry before commencement of the trial, or by placing the agreement on the record on the scheduled date for trial. Any variance from this rule is subject to Court approval.

Rule 21.00  
CONTINUANCES

This Court is opposed to needless delay in the handling of its business and where a court date has been cleared with the parties, or their counsel, requests for continuances of such matters are discouraged. Every request for continuance shall be by written Motion, unless made on the record in open court. The Motion shall set forth the date from which a continuance is requested and the reasons for such request. MOTIONS MADE FOR CONTINUANCE DUE TO SCHEDULING CONFLICTS WITH ANOTHER COURT OF RECORD MUST HAVE ATTACHED A COPY FROM SAID COURT OF THE SCHEDULING NOTICE WHICH SET THE MATTER IN CONFLICT.

Attorneys submitting motions for continuance are encouraged to contact opposing counsel to obtain consent for said request. The movant shall submit an entry indicating the outcome of such efforts and shall provide blanks for the new trial or hearing date, time and courtroom.

This rule does not restrict the court's exercise of discretion in granting or denying continuances.

Rule 22.00  
DISMISSAL FOR WANT OF PROSECUTION

All cases, not reduced to Judgment, which have remained on the docket for six (6) months without the filing of any motion, pleading or entry shall be dismissed by the Court, at Plaintiff's cost, upon giving of proper notice.

**SPECIAL PROCEEDINGS**

Rule 23.00  
SMALL CLAIMS COURT

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

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

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

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

B. CONTINUANCES: Motions for continuance must be filed in writing and the granting of a continuance shall be at the discretion of the Magistrate or Judge.

C. MEDIATION: Small Claims cases are initially referred to Mediation unless otherwise directed by the Court. Cases not successfully mediated shall be set for trial.

D. DISCOVERY: No depositions or interrogatories shall be taken in Small Claims cases.

E. TRANSFER TO REGULAR CIVIL DOCKET: Upon the filing of a motion and affidavit, as required by Ohio Revised Section 1925.10, and upon payment of the required costs, the small claims complaint and any counter or cross-claims, may be transferred to the regular docket of the Civil Division at the discretion of the Court, or as otherwise mandated. Failure to comply with this rule may result in the case being retained on the Small Claims Docket.

#### Rule 24.00

#### FORCIBLE ENTRY AND DETAINER PROCEDURE

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

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

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

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

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

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

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

Rule 25.00  
PROCEEDINGS IN AID OF EXECUTION

A. Bank Attachments: Bank Attachments may be filed on forms provided by the Court. Filings shall include an original (to be retained by the Clerk) and sufficient copies for service upon the financial institution, the Judgment Debtor and the Attorney or party filing same. Hearing dates shall be assigned within fourteen (14) days and notice of same shall be included in the forms served upon the appropriate parties. Service of said forms shall be accomplished by certified mail, return receipt requested, upon any financial institution and by ordinary mail to the Judgment Debtor.

B. Garnishment of Personal Earnings: Garnishment of Personal Earnings may be filed on forms provided by the Court. The filing shall include two (2) copies of the Notice to Judgment Debtor, one (1) copy of the 15-day Notice with method of mailing attached (i.e. certified mail, ordinary mail with certificate, etc.) and an original and four (4) copies of the Affidavit and Order for Garnishment. HEARING DATES SHALL BE ASSIGNED BY THE ASSIGNMENT COMMISSIONER ONLY UPON RECEIPT FROM THE JUDGMENT DEBTOR OF THE "REQUEST FOR HEARING" FORM. Said hearings shall be scheduled within the prescribed five (5) day time limitations as set forth in 2716.06 O.R.C. Service of the Garnishment forms shall first be attempted by certified mail, return receipt requested, upon the Employer, and followed by ordinary mail, if necessary.

C. Debtor's Exam: Debtor's Exams may be filed on forms provided by the Court. Filings shall include one (1) original, which shall be retained by the Clerk of Court, and three (3) copies for service per Judgment Debtor. Hearing dates are assigned by the Assignment Commissioner and notice thereof shall be included in the forms served upon the Judgment Debtor. Personal service shall be accomplished by Bailiff, Special Process Server or Sheriff.

D. Citation in Contempt: See Vand. R. 31.00

Rule 25.01  
EXEMPTIONS

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

Rule 26.00  
SALES AND CONFIRMATION

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

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

Rule 27.00  
COGNOVIT JUDGMENTS

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

Rule 28.00  
TRUSTEESHIPS

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

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

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

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

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

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

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

Rule 29.00  
PEACE BOND / WARRANT

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

Rule 30.00  
REPLEVIN ACTIONS

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

Rule 31.00  
CITATION IN CONTEMPT

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

Rule 32.00  
LICENSE SUSPENSION APPEALS

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

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

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

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

**RULES OF CRIMINAL AND TRAFFIC PRACTICE**

RULE 33.00  
CRIMINAL PROCEDURE

All rules set forth above with reference to Civil Procedure shall, where applicable, be enforced in criminal proceedings before this Court. Further, this Court shall follow the Ohio Rules of Criminal Procedure and Ohio Traffic Rules. In addition thereto, the following rules and practices shall prevail.

Rule 34.00  
BAILIFF

The Bailiff or Deputy selected by the Judge shall formally open sessions of traffic and criminal court and shall enforce and maintain order.

Rule 35.00  
DOCUMENTS FILED WITH THE COURT

In all issued traffic citations, the Affidavit shall be filed within 48 hours of the offense and include a computer readout and statement of facts.

Electronically issued traffic citations which conform to OhioTraffic Rule 3(F) shall be accepted for filing.

Rule 36.00  
ARRAIGNMENTS

A. Scheduling: All arraignments will be held Monday through Friday at 9:00 A.M. except for those Defendants who are confined, in which case, video arraignments from the jail will be held Monday through Friday at 11:30 A.M. and 1:30 P.M., except that on Fridays, video arraignments will be held at 9:30 A.M.

Arraignment sessions shall include: initial appearances of all persons charged with felonies, criminal misdemeanors, and/or traffic offenses.

B. Pleas: At arraignment, the Defendant or his counsel may enter one of the following pleas: (1) guilty; (2) no contest; (3) not guilty; or (4) not guilty by reason of insanity. Prior to arraignment, Defendant's counsel may file a written appearance and a plea of not guilty pursuant to Crim. R. 10(B), except for those offenses listed in Vand. R. 36(D) below. No plea or appearance will be accepted by telephone.

C. Continuances: The Court is opposed to needless delay in the handling of its business. In cases where a continuance is necessary, the limit of time allowed will be one (1) week, unless for good cause shown, a longer time is approved by the Judge or Magistrate. The date of continuance, and by whom granted, shall be noted on the file.

D. Mandatory Appearances: All persons, regardless of residence, must appear in court if cited for the following offenses:

1. Indictable offenses
2. Operation of a motor vehicle while under the influence of alcohol or drugs
3. Leaving the scene of an accident
4. Reckless operation
5. Driving under suspension or revocation of driver's license
6. Driving without being licensed to drive
7. A second (or more) moving traffic offense within a twelve (12) month period
8. Failing to stop for a school bus
9. Willfully eluding or fleeing a police officer
10. Drag racing



11. Domestic Violence
12. Probation violation
13. Any drug offense or drug-related offense

FAILURE TO COMPLY WITH THIS RULE WILL RESULT IN THE ISSUANCE OF AN ARREST WARRANT OR A LICENSE SUSPENSION PURSUANT TO SEC. 2935.27 O.R.C.

Rule 37.00  
PRELIMINARY HEARINGS

Preliminary hearings in felony cases will be conducted within the time limits provided by law. Preliminary hearings shall be conducted in accordance with Crim. R. 5(B).

Rule 38.00  
COST, FEES AND BOND

A. **RELEASE:** Officers in charge shall release any person arrested and/or charged with any misdemeanors, who gives bail or executes bond according to law and satisfaction of the Clerk in the amount indicated in the Bail or Bond schedule of the Vandalia Municipal Court. Such persons shall be given an arraignment date in accordance with the normal procedures where an arrest is not made.

The arresting officer or any commanding officer may release arrested Defendants on their own recognizance if it appears that they will appear as directed.

The Court shall set bond in all felony cases.

B. **BAIL CREDIT CARDS:** In accordance with Crim. R. 46, the Clerk of Courts is authorized to accept, for purposes of bail, VISA or MasterCard, so long as no service charge is made against either the Court or the Clerk. Personal checks will not be accepted.

C. **BOND FORFEITURE:** All bond or bail will be declared forfeited for failure of appearance by the defendant. Where bond or bail has been declared forfeited by the Court, the forfeiture may be set aside if the Defendant in such case appears before the Judge or Magistrate and shows good cause for non-appearance.

D. **COST, FEES AND BONDS:** Assessed and payable according to the schedule established by the Court.

Rule 39.00  
PRETRIAL CONFERENCES

All criminal and traffic cases, except minor misdemeanors, will be set for pretrial conference at the Court's discretion, and the following persons are required to attend: the Prosecutor assigned to the case, Trial Counsel for the Defendant and the Defendant.

Rule 40.00  
PLEA BARGAINS

All recommendations for withdrawal, reduction or dismissal of charges and the reasons therefor shall be made in open court by the Prosecuting Attorney, or shall be specifically set forth in writing upon the case file. No such recommendation shall be binding until, and if, approved by the Court.

Rule 41.00  
MOTIONS

All motions shall set forth clearly and specifically the grounds for the Motion and supporting citations (copies of foreign, federal and unreported decisions to be attached). In Motions to Suppress, the items of evidence shall be specified. Any motions filed, which are not in compliance with this Rule, or with the applicable Rules of Criminal procedure, or are untimely filed, shall be summarily overruled.

All motions requiring oral hearing shall be set within thirty (30) days of the date such filing is made and it shall be the responsibility of each party to secure the attendance of all witnesses necessary to establish his position.

Rule 42.00  
TRIAL BY JURY

Any demand for trial by jury must conform with the requirements of Crim. R. 23. Failure to demand a jury trial as provided therein shall be deemed a complete waiver of such right.

Rule 43.00  
WITNESSES

Failure of a witness to appear in court may subject said witness to prosecution for Contempt of Court.

Rule 44.00  
VIOLATIONS BUREAU

The Misdemeanor Violations Bureau is established. The Clerk of Courts is appointed to be the Violations Clerk, to collect fines, give receipts therefor and render accounts to the Bureau, and accept guilty pleas. The Violations Bureau shall prominently display a statement of Defendant's rights and a schedule of fines and costs.

Rule 45.00  
CONVICTION RECORDS

All traffic violation convictions are reported to the Bureau of Motor Vehicles.

Rule 46.00

**CASE MANAGEMENT IN CIVIL CASES**

A. **PURPOSE:** The purpose of this rule is to establish, pursuant to M.C. Sup. R. 18, a system for civil case management which will achieve the prompt and fair disposition of civil cases.

B. **SCHEDULING:** The scheduling of events of a case begins when a civil case is filed. Thereafter, the case is managed in four (4) clerical steps and four (4) judicial steps.

C. **CLERICAL STEPS:**

1. Summons shall be served in accordance with the Ohio Rules of Civil Procedure. In the event there is a failure of service, the Clerk of Courts shall notify counsel immediately. If counsel fails to obtain service of summons within five (5) months after the date the cause of action was filed, then the Clerk of Courts shall notify counsel that the case will be dismissed in not less than thirty (30) days unless good cause is shown to the contrary.

2. After any responsive pleading is filed, the Clerk of Courts shall immediately forward said pleading and file to the Judge or Magistrate so that the matter may be set for pretrial or hearing once the issues are joined. All subsequent pleadings or filings shall be immediately sent to the Judge or Magistrate for review.

3. If no action has been taken on a file for a five (5) month period and the case is not set for trial, then the Clerk of Courts shall notify the party that the matter will be dismissed for want of prosecution in not less than thirty (30) days unless good cause is shown to the contrary.

4. When a file has been marked "Case Settled, Entry to follow" and the Entry has not been received within thirty (30) days, then the Clerk of Courts shall notify the party that the case will be dismissed unless the entry is received within ten (10) days after such notification; however, when a case is settled within the forty (40) days immediately preceding the scheduled trial date, the avoidance of trial by settlement shall be allowed only upon submission of an Agreed Judgment Entry before commencement of the trial, or by placing the agreement on the record on the scheduled date for trial. Variance to this rule is subject to court approval.

D. **JUDICIAL STEPS.**

1. **PRETRIALS.** After the issues are joined, the Court will set a pretrial conference which shall be held in person unless otherwise specified by the Court.

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, or their attorney of record.

Notice of the pretrial conference shall be given by mail or telephone by the assignment commissioner not less than fourteen (14) days prior to the conference. Any Motion for continuance of the conference shall be addressed to the Judge or Magistrate to whom the case has been referred. Failure to attend a scheduled pretrial conference, without just cause being shown, may be punishable for contempt of Court.

Counsel attending the pretrial conference shall be prepared, and have authority, to stipulate items of evidence, and authority to settle the case, in accordance with the best interest of their respective clients.

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. The Court will file an Entry which shall become part of the record, designating all stipulations, admissions and other matters which have come before it in the pretrial or, at the Court's discretion, may direct the parties to file same. The Court shall determine whether or not trial briefs should be submitted and shall fix a date when they are to be filed. This does not preclude a request by either party, at a later time, to file trial briefs.

The Judge or Magistrate shall have the authority: to dismiss an action for want of prosecution on motion of Defendant upon failure of counsel or a Plaintiff, if unrepresented, to appear as ordered at any pretrial conference; to order the Plaintiff to proceed with the case upon failure of the defendant to appear in person or by counsel at any pretrial conference as required; to make such other orders as the Court may deem appropriate under all the circumstances.

If a case cannot be settled at pretrial, it will be set for trial.

2. MOTIONS: All Motions must be in writing and accompanied by a written memorandum containing citations of law and the arguments of counsel. Opposing counsel shall answer in like manner within fourteen (14) days after the Motion is filed. All motions will be deemed submitted at the end of said fourteen (14) day period unless time is extended by the Court.

There will be no oral hearings granted on motions unless mandated by law, or unless a party requests an oral hearing in writing and the Court deems it necessary.

3. CONTINUANCES: No party shall be granted a continuance of a trial or a hearing without a written motion from the party or his counsel stating the reason for the continuance.

**MOTIONS MADE FOR CONTINUANCE DUE TO SCHEDULING CONFLICTS WITH ANOTHER COURT OF RECORD MUST HAVE ATTACHED A COPY FROM SAID COURT OF THE SCHEDULING NOTICE WHICH SET THE MATTER IN CONFLICT.** 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 other 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 Judge or Magistrate may require the trial attorney to provide a substitute trial attorney.

4. JUDGMENT ENTRIES: Counsel for the party in whose favor an order or judgment is rendered shall prepare an appropriate Entry and submit it to the Court within fifteen (15) days of the decision.

Entries of settlement may be filed at any time; however, the avoidance of trial by settlement shall be allowed only upon submission of an Agreed Judgment Entry before commencement of the trial, or by placing the agreement on the record on the scheduled date for trial. Variance to this step is subject to court approval.

#### Rule 47.00

### CASE MANAGEMENT IN SPECIAL PROCEEDINGS

A. **PURPOSE:** The purpose of this rule is to establish, pursuant to M.C. Sup. R. 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, rent escrow, replevin, citations in contempt, garnishment hearings, debtor's exams and license suspension hearings.

B. **SCHEDULING:** The scheduling of events in 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, the case shall be set for hearing within a reasonable time not to exceed ninety (90) days.

#### C. **CLERICAL STEPS:**

1. In all new cases, if counsel fails to obtain service of summons within five (5) months, the Clerk of Courts shall notify counsel that the case will be dismissed in not less than thirty (30) days unless good cause is shown to the contrary.

2. After any responsive pleading is filed (if applicable), the Clerk of Courts shall immediately forward said pleading and file to the Judge or Magistrate so that the matter may be set for hearing.

3. If no action has been taken on a file for a five month period and the case is not set for trial, the Clerk shall notify the party or his attorney of record that the matter will be dismissed in not less than thirty (30) days unless good cause is shown to the contrary.

4. When a file has been marked "Case settled, Entry to follow", and the Entry has not been received within thirty (30) days, the Clerk shall notify the party or his Attorney of record that the case will be dismissed unless the Entry is received within ten (10) days after such notification; however, when a case is settled within the forty (40) days immediately preceding the scheduled trial date, the avoidance of trial by settlement shall be allowed only upon submission of an Agreed Judgment Entry before commencement of the trial, or by placing the agreement on the record on the scheduled date for trial. Variance to this step is subject to court approval.

Rule 48.00

**CASE MANAGEMENT IN CRIMINAL CASES**

A. **PURPOSE:** The purpose of this rule is to establish, pursuant to M.C. Sup. R. 18, a system for criminal case management which will provide the fair and impartial administration of criminal cases. These rules are to be applied to eliminate unnecessary delay and expense for all parties involved in the court justice system.

B. **SCHEDULING:** Scheduling begins after arraignment. Thereafter, the case is managed in four (4) judicial steps.

C. **JUDICIAL STEPS:**

1. **PRETRIALS:** After arraignment, all first, second, third and fourth degree misdemeanors shall be set, at the Court's discretion, for pretrial by the assignment commissioner within thirty (30) days. All minor misdemeanors shall be set for trial, unless a pretrial is requested in writing.

The pretrial shall be conducted in accordance with Criminal Rule 17.1. Failure of an attorney to appear for pretrial without just cause being shown, may be punishable for contempt of court.

If the parties cannot resolve the case, the case shall be set for trial to the Court unless, in accordance with Crime. R. 23, a jury trial is demanded.

2. **MOTIONS:** All Motions shall be made in writing and accompanied by a written memorandum containing the arguments of counsel and citations of law. Motions must be filed within the time limits established by the Ohio Rules of Criminal Procedure. Oral hearings will be scheduled only on request of one of the parties or at the instruction of the court. Motions untimely filed shall be summarily overruled.

3. **TRIALS:** Cases not resolved at pretrial will be set for trial to the Court. If a written jury demand is timely filed, the case will be moved to the jury trial schedule. All attorneys shall notify the Court by 1:00 P.M. on or before the day preceding their jury trial of any change in plea. The last jury case cancelled will be charged jury fees.

4. **SENTENCING:** Sentencing hearings shall be set within thirty (30) days of conviction if no pre-sentence report is requested. After the court receives the probation report, the Court will set the matter for sentencing within forty-five (45) days.

Rule 49.00

**JURY MANAGEMENT**

A. **OPPORTUNITY FOR SERVICE:** The selection of jurors should not be denied or limited on basis of race, national origin, gender, age, religious belief, income, occupation, disability or any other factor that discriminates against a cognizable group in the jurisdiction.

B. **JURY SOURCE LIST:** The method for the selection of jurors is outlined by the laws of the State. Actual jurors are drawn under those laws by a jury commission under the supervision of the Court.

Choice of individuals is by lot or chance. This means that some may never be called upon to exercise the privilege of serving, while others may be called several times.

C. **EXEMPTION, EXCUSE AND DEFERRAL:** Reasons for Exemption, excuse and deferral include:

1. Statutory exemptions
2. Ability to receive and evaluate information is so impaired that they are unable to perform jury duty.
3. Service would be a continuing hardship to them or to members of the public.
4. Request for excuse or deferrals should be written or recorded. O.R.C. 2313.15.
5. Other exemptions may include: Firefighters and Military Personnel.

D. **ELIGIBILITY FOR JURY SERVICE:** All persons in jurisdiction should be eligible for jury service except those:

1. Less than 18 years of age
2. Not a U.S. Citizen
3. Not a resident of jurisdiction
4. Not able to communicate in English
5. Have been convicted of felony and not had their civil rights restored.

E. **VOIR DIRE**

1. Voir dire examination should be limited to matters relevant to determining whether to remove a juror for cause and to determine the juror's fairness and impartiality.
2. To reduce the time required for voir dire, basic background information regarding panel members should be made available to counsel in writing for each party on the day on which jury selection is to begin.
3. The Trial Judge should conduct a preliminary voir dire examination. Counsel shall then be permitted to question panel members for a reasonable period of time.

4. The Judge should ensure that the privacy of prospective jurors is reasonably protected, and the questioning is consistent with the purpose of the voir dire process.
5. In criminal cases, the voir dire process shall be held on the record. In civil cases, the voir dire process shall be held on the record unless waived by the parties.

F. **REMOVAL FROM THE JURY PANEL FOR CAUSE:** If the Judge determines during the voir dire process that any individual is unable or unwilling to hear the particular case at issue fairly and impartially, that individual should be removed from the panel. Such a determination may be made on motion of counsel or by the Judge.

G. **PEREMPTORY CHALLENGES:**

1. Peremptory challenges should be limited to a number no larger than necessary to provide reasonable assurance of obtaining an unbiased jury.
2. In civil cases, the number of peremptory challenges should not exceed three (3) for each side. If the Court finds that there is a conflict of interest between parties on the same side, the Court may allow each conflicting party up to three (3) peremptory challenges.
3. In criminal cases, the number of peremptory challenges should not exceed three (3) for each side and one (1) additional peremptory challenge for the empanelling of one (1) alternate juror.
4. In criminal and civil proceedings each side should be allowed one (1) peremptory challenge if an alternate juror is impaneled.

H. **ADMINISTRATION OF THE JURY SYSTEM:**

1. All procedures concerning jury selection will be governed by Ohio Rules of Court and responsibility for administering the jury system will be vested in a single administrator.
2. The notice summoning a person to jury service will explain how and when the recipient must respond and the consequences for failure to respond.
3. The Court will evaluate its jury performance on a regular basis.
4. The Court will employ the services of prospective jurors so as to achieve optimum use with a minimum of inconvenience to jurors.
5. The Court will determine the minimally sufficient number of jurors needed to accommodate trial activity. This information and appropriate management techniques should be used to adjust the number of individuals summoned for jury panels.

I. **JURY FACILITIES:**

1. The Court will provide an adequate and suitable environment for jurors with the entrance and registration area clearly identified and pleasant waiting facilities furnished with suitable amenities.



2. The jury deliberation room will include space, furnishings, and facilities conducive to reaching a fair verdict. The safety and security of the deliberation rooms should be ensured and the facilities arranged to minimize contact between jurors, parties, counsel and the public.

J. JURY COMPENSATION:

1. Persons called for jury service will receive a reasonable fee for their service and expenses: \$10.00 if excused; \$15.00 if seated, plus meals. The fee will be paid promptly through the Auditor's Office from Montgomery County, Ohio.
2. Employers shall be prohibited from discharging, laying-off, denying advancement opportunities to, or otherwise penalizing employees who miss work because of jury service.

K. JUROR ORIENTATION AND INSTRUCTIONS

1. Each prospective juror will receive an orientation program through written material and verbal information provided by the Court. The program is designed to increase prospective jurors' understanding of the judicial system and prepare them to serve competently as jurors.
2. The Court will provide orientation and instructions to persons called for jury service:
  - a. Upon initial contact prior to service;
  - b. Upon first appearance at the court; and
  - c. Upon reporting to a courtroom for voir dire.
3. The Trial Judge will:
  - a. Give preliminary instructions to all prospective jurors.
  - b. Give instructions directly following impanelment of the jury to explain the jury's role, the trial procedures, including note taking and questioning by jurors, the nature of evidence and its evaluation, the issues to be addressed, and the basic relevant legal principles.
  - c. Prior to the commencement of deliberations, instruct the jury on the law, on the appropriate procedures to be followed during deliberations, and on the appropriate method for reporting the results of its deliberations. Such instructions should be made available to the jurors during deliberations;
  - d. Prepare and deliver instructions which are readily understood by individuals unfamiliar with the legal system; and
  - e. Recognize utilization of written instructions if preferable.
  - f. Before dismissing jurors at the conclusion of a case:
    - (1) Release the jurors from their duty of confidentiality;

- (2) Explain their rights regarding inquiries from counsel or the press;
  - (3) Either advise them that they are discharged from service or specify where they must report; and
  - (4) Express appreciation to the jurors for their service, but not express approval or disapproval of the result of the deliberation.
4. All communications between the Judge and members of the jury panel, from the time of reporting to the courtroom for voir dire until dismissal, shall be in writing or on the record in open court. Counsel for each party shall be informed of such communication and given the opportunity to be heard.

L. JURY SIZE, UNANIMITY OF VERDICT AND DELIBERATIONS.

1. Jury size and unanimity in civil and criminal cases shall conform with existing Ohio law.
2. Jury deliberations will take place under conditions and pursuant to procedure that are designed to ensure impartiality and to enhance rational decision-making.
3. The Judge will instruct the jury concerning appropriate procedures to be followed during deliberations in accordance with Standard K3.
4. The deliberation room should conform to the recommendations set forth in Standard I2.
5. A jury should 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.
6. Training will be provided to personnel who escort and assist jurors during deliberation.