

# **COURT RULES**

## **Eaton Municipal Court**

**Paul D. Henry, Judge**  
**James W. Thomas, Sr., Magistrate**  
**Sharon L. McKee, Clerk**  
**Pamela Boyd, Chief Bailiff/Security/Probation**  
**Andrew Borgwardt, Deputy Probation**  
**Belinda Harry, Chief Deputy Clerk**

**(Effective January 20<sup>th</sup>, 2016)**

### **Rule 1.00 Scope and Effective Date.**

These rules are adopted as the local Rules of Court governing practice and procedure in the Eaton Municipal Court. They are adopted pursuant to the Ohio Constitution, Section 1901.14, Ohio Revised Code, the Court's inherent authority as set forth in the Ohio Rules of Civil and Criminal Procedure and the Rules of Superintendence for Municipal Court promulgated by the Ohio Supreme Court. These rules shall be known as the "Eaton Municipal Court Rules" and shall be cited as "E.M.C. Rule". They are effective as of January 20<sup>th</sup>, 2016 and govern all proceedings filed subsequent to that date and may be revised periodically as required.

### **Rule 2.00 Court Sessions and Hours**

The hours of court sessions and for the Clerk of Court's Office shall be from eight o'clock a.m., until 4:30 p.m., Monday thru Friday, unless otherwise ordered by the judge or the day is a legal holiday. A docket schedule is attached hereto as Appendix A which is subject to change from time to time as the Court orders.

### **Rule 3.00 Forms of Paper Filed**

All papers offered for filing with the Court shall be typewritten or printed on 8 ½ inch X 11 inch paper. Original documents attached or offered as exhibits are exempt from the requirements of this rule. Only legible copies of the documents will be accepted.

### **Rule 4.00 Costs**

Court costs shall be determined from time to time by the Judge. A copy of the current schedule of costs may, be obtained from the Clerk of Court at no charge upon request.

## **Rule 5.00 Form Entries and Abbreviations**

The Court adopts abbreviations and/or symbols that may be used in Court entries as determined from time to time by the Judge as amended to these Rules (See “Appendix B- Abbreviations and/or symbols commonly used”).

## **Rule 6.00 Public Use of Courtroom**

Questions of the admission of persons to a courtroom shall be the province of the Judge within the guidelines of public access to all Court proceedings, consistent with the order and dignity of the Court. The court does not think it appropriate for parties to bring children to court. The Court believes that it is not good judgment to subject children to the happenings in court. Unless the child is a witness children may be asked to leave. The Court will take into consideration the age of the child, the impact of the proceedings and whether the child will cause a disruption. Public statements by the Court, counsel, Court personnel, and witnesses shall be regulated by the Judge within the guidelines of public access to Court proceedings and the right of the parties to be free of improper publicity within areas protected by fundamental rights. No recording shall be made of any Court proceeding without approval of the Judge and within the Rule of Superintendence, Rule 9 of the Municipal Court Rules of Superintendence and Canon Rule (1) of the Code of Judicial Conduct.

## **Rule 7.00 Court Reporter**

All proceedings involving the Judge shall be recorded unless counsel or both parties waive the recording.

### **RULE 7.01 Transcript Fees:**

The Court does hereby adopt the following fee schedule as set by the Common Pleas Court of Preble County regarding transcripts of court proceedings: Effective 9/10/12

\$.25 per page per paper copy  
\$3.50 per page for the original transcript  
\$5.00 per page for expedited transcripts

## **Rule 8.00 Duties of Counsel**

- (A) **DESIGNATION OF TRIAL COUNSEL.** Attorneys and not parties will designate their capacity as trial counsel on all pleadings in civil and criminal cases and shall include their office address, zip code, and telephone number. Normally, a law firm should not be named as trial attorney. However, substitution of counsel within the same law firm at hearings is authorized.
- (B) **WITHDRAWAL OF COUNSEL.** Counsel shall be allowed to withdraw from trial counsel responsibility in cases where counsel was designated upon the

consent of the Judge. No such application will be considered unless a written motion and entry are presented stating the reasons for the application with certificate of service on opposing counsel and/or client and time and date trial, if set. Withdrawal of counsel will not be approved if application is made within (5) working days of the trial date except for good cause shown. Approved withdrawal entries will be mailed immediately by the withdrawing counsel to his client's last known address.

- (C) MOTIONS PRACTICE.** All motions except those normally made at the trial, shall be in writing, served on opposing counsel, and made within the time limits prescribed in the Ohio Rules of Civil and Criminal Procedure. Motions will be supported by Memoranda of Law containing applicable statutory and case law citations. (Copies of significant decisions shall be attached to the original filing only). Unless the following statement appears prominently upon the first page of the motion, no oral hearing will be allowed.

“Counsel requests an oral hearing of approximately \_\_\_\_\_ minutes at which time \_\_\_\_\_ witnesses are expected to be called.

A date and time for oral hearing on motions must be obtained from the Assignment Clerk. Parties wishing to respond in writing to such motions shall do so not later than the seventh (7<sup>th</sup>) day following service of the motion or three days prior to the oral hearing date, if an oral hearing has been requested. All motions not heard or decided prior to trial will be disposed of at trial. In MOTIONS TO SUPPRESS, the grounds must be stated with particularity and the items of evidence in question shall be specified. Any motions filed which are not in compliance with this rule may be summarily overruled. All motions, where an oral hearing is not required, should be accompanied by an entry.

- (D) JURY TRIAL.** When a jury trial in a civil case is demanded, and advance deposit of \$200.00 in addition to regular filing costs is required at time of filing. No later than fourteen (14) days prior to the scheduled jury trial, an additional \$100.00 in advance deposit must be made or the civil jury trial will be deemed waived. The trial will then be hearing by the Court as if no jury demand was filed. The Court will consider affidavits of hardship upon written motion timely filed.

If jury trial in either civil or criminal trials is to be waived, it is the responsibility of counsel who demanded the jury trial to notify the Clerk of Court at least ten (10) days prior to the trial date.

- (E) CONTINUANCES.** Every request for a continuance shall be by written motion and will be granted upon showing of good cause. All requests shall be served on opposing counsel or party. The motion shall set forth the date from which a continuance is requested and reasons for continuance. If a prior trial conflict exists, the date of the scheduling shall be stated. Entries shall accompany the

motions with blanks for the new trial time and date, and if agreed to by opposing counsel. No requests for continuance will be considered if made less than two (2) business days before trial except for circumstances which by reasonable diligence could not be determined two (2) or more business days prior to trial.

### **Rule 9.00 Default Judgment**

All motions for default judgment shall be in writing and clearly state the date the complaint was filed, how service was made, proof of service and answer date. All motions for default judgment shall also contain a list of all damages supported by documentary or other evidence if not readily identified in the complaint. An entry shall accompany the motion. An affidavit may be filed upon the filing of the Motion for Default hearing if the plaintiff wishes not to appear at such hearing. An oral hearing may be required at the discretion of the Judge.

### **Rule 10.0 Summary Judgment**

All motions for summary judgment filed pursuant to Ohio Civil Rule 56 shall be heard on written memorandum only unless otherwise ordered by the Court on a date filed by the Court. The adverse party shall file and serve opposing affidavits and memorandum prior to the day set for non-oral hearing. An oral hearing on a motion for summary judgment shall not be held or scheduled unless counsel so requests in accordance with M.C. Rule 8 ©, or unless the Judge so requires.

### **Rule 11.00 Criminal Practice**

No case with the exception of minor misdemeanor cases and cases where the defendant is not represented by counsel shall be called for trial until it has first been pre-tried.

Criminal pre-trials shall be conducted outside the presence of the Judge unless counsel requests otherwise. The following persons are required to attend the pre-trial unless such attendance is excused by the Judge for good cause shown:

1. the prosecutor assigned to the case;
2. trial counsel for the defendant;
3. the prosecuting witness if requested or subpoenaed by either party except that if the prosecuting witness is a police officer, his or her attendance shall be required only on the approval of the court.

It is the duty of the respective counsel to enforce the appearance of the defendant or the prosecuting witness if requested or subpoenaed by either party.

On application to the Court made before pre-trial or trial, the substitution of photographs or copies may be permitted.

No provision of this rule shall be construed to limit or otherwise modify the requirements and procedures prescribed by Rule 16 of the Ohio Rules of Criminal Procedure.

At the close of the pre-trial, counsel shall agree upon a trial date with the Court, which shall provide written notice of said date to the parties at that time upon the Memorandum Of Pre-Trial form. At the completion of the pre-trial, the memorandum shall be completed, signed by the parties and the Judge and filed with the Court. A copy of the Journal Entry setting the further hearing will be made available to all parties.

**(B) Continuances in criminal cases.**

Continuances, of either pre-trials or trials in criminal cases shall be allowed to a date certain in conformity with M.C. Rule 8 (E). For purposes of speedy trial determination, defense counsel shall be held to have consented to such continuance if such continuance is obtained upon that counsel's request or with that counsel's agreement.

**(C) Misdemeanor summons and arrest warrants upon complaint.**

The Court adopts the following procedure for the issuance of summons and arrest warrants upon complaint for criminal offense classified as misdemeanors, not including traffic offenses, under the Ohio Revised Code or a municipal or village ordinance.

**SUMMONS**

Pursuant to Rule 4 (A)(1) of the Ohio Rules of Criminal Procedure and Section 2935.10 Revised Code, the Clerk of Court shall issue a summons upon a complaint for all misdemeanor offenses, not including traffic offenses, under Ohio Revised Code or a municipal or village ordinance, unless an arrest warrant is authorized or requested under paragraph two of this rule.

**WARRANTS**

If at all possible, all requests for arrest warrants in misdemeanor cases shall be reviewed by the Judge. In the absence of the Judge, the Clerk of Court may issue arrest warrants in the following circumstances:

The Clerk of Court shall issue an arrest warrant for the defendant when the defendant is in the custody of a law enforcement officer upon the charge contained in the complaint.

The Clerk of Court shall issue an arrest warrant for the defendant when the defendant is in the custody of a law enforcement officer or confined in any type of penal facility, on a charge other than the charge contained in the complaint.

The Clerk of Court shall issue an arrest warrant for the defendant upon the written request of the Prosecutor.

The Clerk of Court shall issue an arrest warrant for the defendant upon the written request of the solicitor of a municipality or village for an offense under an ordinance of that municipality or village or for a violation of state law occurring within that municipality or village. This subparagraph does not apply in cases transferred to this court from a mayor's court.

Pursuant to Section 2935.24, Ohio Revised Code, this Court hereby honors arrest warrants issued by this Court, and any other Court competent jurisdiction of this state, and grants authority to serve such arrest warrants by teletype of all law enforcement agencies in Preble County, Ohio, and hereby directs that any such arrest warrants issued by the clerk of the Eaton Municipal Court pursuant to Chapter 2935 of the Ohio Revised Code, based upon probable cause that a crime has been committed and the defendant committed such crime shall carry with it the authority of the Court to be served by teletype.

**(D) Arrest warrant upon felony complaints.**

The Court adopts the following procedure for the issuance of summons, arrest warrants, or scheduling a probable cause hearing upon a complaint for a criminal offense classified as a felony under the Ohio Revised Code. If at all possible, all requests for arrest warrants shall be reviewed by the Judge. In the absence of the Judge, the Clerk of Court may issue arrest warrants in the following circumstances.

If the Clerk of Court determines that the complaint states an offense, including all facts and elements, and that the probable cause to believe that a crime was committed and that the defendant committed that crime, the Clerk of Court may:

- a. Issue a summons to the defendant, or
- b. Issue a warrant for the defendant's arrest if the complainant is a law enforcement officer as defined in Section 2901.01 (K), O.R.C., or
- c. Issue a warrant for the defendant's arrest upon written request of the Preble County Prosecuting Attorney, Eaton City Prosecutor, when the complaint is not a law enforcement officer as defined in Section 2901.01 (K), O.R.C.

## **Rule 12.00 Procedure in Bad Check Cases**

The Court adopts the following procedure for the filing of complaints for passing back checks under Section 2913.11 Ohio Revised Code, and any other similar ordinances of municipalities located in Preble County:

1. The Clerk of Court shall not file a criminal complaint for passing back checks and assign a case number to such complaint, placing the complaint upon the Court's docket, unless the prosecuting attorney with jurisdiction to prosecute such offense has endorsed his authorization upon the complaint.
2. The Clerk of Court shall accept for filing sworn criminal complaints for passing back checks that do not meet criteria established in section (1) above, but shall not assign a case number to the complaint. Such complaint shall be referred to the prosecuting attorney with jurisdiction to prosecute such offense for investigation and determination if authorization should be endorsed upon the complaint.
3. After referral of an unendorsed complaint for passing back checks, if the prosecuting attorney endorses authorization on such complaint, it shall be returned to the clerk's office, assigned a case number and process shall issue upon the complaint.
4. Absent unusual circumstances, absolutely no bad check case which has been filed shall be dismissed by the Court without provision being made first for the payment of all court costs and restitution.

## **Rule 13.00 Minor Misdemeanors Violations Bureau**

There is hereby established in accordance with 4.1, Ohio Rules of Criminal Procedure a Minor Misdemeanors Violations Bureau with authority to process and dispose of minor misdemeanor other than offenses covered by the Uniform Traffic Rules. The Clerk of Court is appointed to collect fines in the violation's bureau, give receipts therefore and render accounts of the bureau. The schedule of fines and costs for minor misdemeanors which shall be charged by the violations bureau is established, published and annexed hereto as "Appendix D-Fines and Costs in Minor Misdemeanor Cases."

## **Rule 14.00 Traffic Violations Bureau**

There is hereby established a Traffic Violations Bureau in accordance with Ohio Traffic Rule 13 with authority to process and dispose of those traffic offenses for which no Court appearance is required. The Clerk of Court is appointed as the Traffic Violations Clerk to accept appearances, waivers of trial, pleas of guilty and payments of fines and costs for offenses within its authority. The schedule of fines and costs which shall be charged by the Traffic Violations Bureau shall be posted in a conspicuous place in the clerk's office and shall be provided upon request at no cost to any party.

### **Rule 15.00 Procedure for Granting Limited Driving Privileges or Contesting Suspension**

No grant of limited driving privileges to a defendant whose operator's license has been otherwise suspended shall be issued by the Court unless a written petition with accompanying memorandum and/or affidavits is filed with the Court. Included in the Petition must be specific description of the limited driving privileges sought, the routes to be traveled, detailing the exact location and departure times requested to be encompassed in the Court's Order. The caption of a Petition filed pursuant to Sections 4507.16(E), 4511.19(I)(1), or 4507.191 (I)(4), Ohio Revised Code shall, also include the first, middle and last names and the address of the petitioner. Such caption shall also include the date of birth, the social security number, and the operator's license number of the petitioner. The clerk shall not accept for filing a petition the caption of which fails to contain every item of information required by this rule. In addition, the Petitioner must demonstrate proof of financial responsibility. A fee of \$10.00 shall be assessed each time a petition for limited privileges is filed with the Clerk of Court or any modification being performed on privileges previously granted.

### **Rule 15.01 Procedure for Driving Privileges when Petitioner wishes to pay reinstatement fees with installment method.**

Per Section 4510. et.al. of the Ohio Revised Code, effective 1/1/04 a defendant may get driving privileges on filing a proper petition and paying reinstatement fees directly to the Ohio BVM after first petitioning the Court. The fee for such petition is \$100.00 Petitioner must show proof of insurance; bring any documentation from BMV with regard to this matter. All monthly payments are then paid to the Ohio BMV directly. The above \$100.00 fee does not go toward any reinstatement fees but stay with this court to cover administrative costs.

If the petitioner had a traffic matter in the Eaton Municipal Court in which a reinstatement fee was paid the petitioner may file a proper petition with the traffic matter and only pay a filing fee of \$50.00.

### **Rule 15.02 Procedure for Driving Privileges when Petitioner receives an FRA suspension from BMV.**

Per Section 4509.101(A)(2)(a) & (b) of the Ohio Revised Code, effective 1/1/04 a defendant may get driving privileges upon filing proper petition for a 1<sup>st</sup> and 2<sup>nd</sup> offense of driving without financial responsibility insurance. The fee for such petition is \$160.00 unless the petitioner received the suspension from a case out of the Eaton Municipal Court, then the filing fee will be \$25.00. Petitioner must show proof of insurance, bring documentation from BMV with regard to this matter and provide proof that all reinstatement fees have been paid in conjunction with this matter.



## **Rule 16.00 Civil Practice**

**Assignment of Magistrate.** Upon the filing of an answer all civil matters shall be assigned to the Magistrate of the Eaton Municipal Court.

**Pre-Trial procedure.** A pre-trial conference may be requested by either party or ordered by the Magistrate. Upon notice of the scheduling of a pre-trial conference it shall be the duty of counsel to contact each other and make sincere effort to dispose of the matter by settlement and to agree on any matters of evidence about which there is no genuine dispute. Prior to the date of the pretrial conference, counsel shall exchange reports of expert witnesses expected to be called by each party and shall exchange medical reports and hospital records if such are involved.

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

1. The counsel who will be trial counsel and who is fully authorized to act and negotiate on behalf of the party must be present and proffer in writing a statement indicating the status of settlement negotiations.
2. All parties in interest must be present at the pre-trial unless such presence is excused by the Magistrate.
3. Each counsel or pro se litigant shall present to the court in writing a statement of the issues involved in the case.
4. Each counsel or pro se litigant shall bring to the pre-trial all exhibits, which are to be offered in evidence at the trial.
5. Each counsel or pro se litigant shall present to the court in writing to the court an itemization of all special damages claimed.
6. Each counsel or pro se litigant shall present to the court in writing a statement indicating the names of all witnesses, both expert and non-expert, expected to be called at the trial; whether or not a view will be requested; whether or not a jury trial, if previously demanded, will now be waived, and if not, the number of jurors demanded, and whether the case is one where the issue of liability should be tried separately with a subsequent trial on the issue of damages if liability to be found.
7. Each counsel shall come to the pretrial fully prepared and authorized to negotiate toward settlement of the case.
8. The text of, and citations of authority for, instructions requested by counsel or pro se litigant pursuant to Rule 51, Ohio Rules of Civil Procedure shall be provided the Court at least 14 days before trial. Counsel's or pro se litigant's best estimate of the time required to try the case shall be provided.
9. The written statement shall be filed at or before the pretrial hearing.

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

**Trial Briefs.** Trial briefs shall be required on all civil jury cases, within three (3) days of trial where there is a substantial conflict of views as to specific questions of law, and may be required from case to case as ordered by the Magistrate.

### **Rule 17.00 Forcible Entry and Detainer Actions**

The following procedure shall apply in forcible entry and detainer actions when a complaint seeks not only restitution of the premises but also money damages as a second cause of action.

Plaintiff's failure to appear will result in the case being dismissed without prejudice. When residential property is involved, the plaintiff may supplement the claim for damages within 14 days of obtaining possession of the premises. The second cause of action may be set for hearing 28 days after original service or 28 days after the supplemental claim for damages is served on defendants, whichever is later. Trial by jury will be waived unless demand is and the jury deposit is paid at least 10 days before trial.

### **Rule 18.00 Procedure For Release of Rent Deposits**

In cases of deposit of rent with the clerk of court pursuant to Section 5321.07, Revised Code, no money shall be released to the landlord except according to the provisions of Section 5321.09, Revised Code. Where the tenant did give written notice to the clerk, the clerk may release the rent according to the agreement between the landlord and the tenant. Where the tenant does not agree to a release of the rent, the clerk shall release no funds to the landlord but the clerk may advise the landlord of the necessity of filing the action required by Section 5321.09(A)(2) and (3).

### **Rule 19.00 Disposition of Case Files**

- (A) Pursuant to Section 1901.41,(E), 1907.231 and 2301.141, Ohio Revised Code and also Ohio Rules of Superintendence of Ohio, Rule 26.05(G) the Court hereby authorize the Clerk of Court to destroy from time to time all files of court cases that have been finally disposed of by this court for at least fifty years. "Finally disposed of by the Court" shall be interpreted to mean that the case file has been

closed and there exists no pending matters in the case file for resolution by the Court. The file must be retained in a form that is admissible as evidence in a criminal proceeding as evidence of a prior conviction.

- (B) All case files may be disposed of immediately after the date of the final entry provided the file has been audited and electronically imaged as outlined by Rule (24).
- (C) All reports that must be retained by the Clerk of Court or the Court itself may be disposed of immediately after they have been electronically imaged as outlined Local Rule (24).
- (D) All minor misdemeanor traffic and criminal cases with a completion date greater than five (5) years may be shredded and disposed of without scanning.
- (E) All non-misdemeanor cases that must be retained for more than five (5) years per Sup. R 26 may be scanned, then immediately shredded and disposed of if necessary for space.
- (F) All Civil cases that have been dismissed or satisfied for greater than 15 years can be shredded and disposed of without scanning.
- (G) Probation files will follow the same retention schedule as case files and may be disposed of in accordance with Sup. R. 26.
- (H) All audio recordings shall be retained for 5 years.

**Rule 20.00 Procedure Governing Proof of Financial Responsibility.**

- (A) Any defendant who pleads guilty or is found guilty of a traffic offense specified in Ohio Traffic Rule 13 (B) that requires an appearance in Court may be required, as part of the sentencing procedures, to prove that the operation of the motor vehicle was covered by proof of financial responsibility, at the time of the offense in accordance with Section 4509.101. Ohio Revised Code.

## **Rule 21.00 Small Claims Division**

The practice and procedure in actions in the Small Claims Division shall be as provided under applicable statutes of rules of this court as set out separately under “Eaton Municipal Court Rules Small Claims Division.”

### **Eaton Municipal Court Rules Small Claims Division**

#### **(A) Establishment of Small Claims Division**

The Small Claims Division of the Eaton Municipal Court is established pursuant to Chapter 1925 of the Ohio Revised Code and the Rules of the Court of the Eaton Municipal Court.

A Small Claims Deputy Clerk position is established to assist persons in filing claims, and docket the same, setting them for hearing and receiving court costs and deposits.

#### **(B) Purpose of Small Claims Court**

The purpose of the Small Claims Court is to allow the public to resolve minor money disputes quickly, inexpensively and fairly without requiring an attorney’s involvement. If an attorney enters his appearance at hearing for a party the court shall grant the other party a reasonable continuance to obtain legal counsel.

#### **(C) Type of Cases**

The Small Claims Division handles all types of cases involving amount not exceeding \$3,000.00 and counter claims not exceeding \$3,000.00. (Such amounts are amended from time to time by the ORC) These include but are not limited to landlord-tenant, unpaid accounts, defective merchandise, minor traffic accident repair costs, overcharge of services, and minor property damages.

#### **(D) Procedure and Limitations**

A complaint is filed by plaintiff and a counterclaim by defendant along with an information sheet. It must be for money only and not to exceed \$3,000.00 on the complaint or \$3,000.00 on the counterclaim. (Such amounts as amended from time to time by the ORC) Jurisdiction must be proper under the law. Plaintiff or counterclaimant must bring with him/her any copies of documents supporting his/her claim and plaintiff must have a current address of defendant.

#### **(E) Filing Fee**

\$55.00 Filing Fee.

### **(F) Failure of Service on Defendants**

If service of process on defendant by certified mail is refused the Clerk shall resend the summons by ordinary mail. Upon failure of service on defendant by ordinary mail the Clerk shall notify the plaintiff that the case will be dismissed within (60) days unless plaintiff provides the Clerk a new address for defendant. Any pending case wherein service is not obtained within six months shall be dismissed by the Court sua sponte without prejudice.

### **(G) Counterclaims**

Counterclaims are claims filed by the defendant against the plaintiff for a sum arising out of the same incident not to exceed \$3,000.00. (Such amounts as amended from time to time by the ORC) The filing fee is \$75.00. The transfer to the civil division is accomplished if the amount of the counterclaim exceeds \$3,000.00 and defendant deposits the filing fee with a motion, affidavit and entry. (Such amounts as amended from time to time by the ORC)(effective 3-1-02)

### **(H) Continuances**

A request for continuances of a case set for trial should be directed to the Small Claims Division at least three (3) business days prior to the trial date. Requests for continuances shall be in writing, which must include (1) reasons for the request and (2) the date and time of the current assignment. No continuance shall be granted for more than thirty days, nor shall any party be entitled to more than one continuance except for good cause shown and with the express approval of the court. Failure of the plaintiff to appear at trial unless otherwise excused shall result in a dismissal of the case without prejudice.

### **(I) Trial**

The court shall administer an oath to witnesses, and proceed to a trial on the merits. Unless all parties are represented by counsel, trial shall be conducted in an informal manner with the purpose of accomplishing substantial justice. The Ohio Rules of evidence do not apply in small claims court. {(Evidence Rule 101©(8)}(Effective 3/1/02)

### **Rule 22.00 Facsimile filing**

The provisions of this local rule are adopted under {Civ.R. 5(#)} {Civ.R. 73(J)} {Crim.R. 12(B)} {Juv.R. 8} {App.R. 13(A)}.

Pleadings and other papers may be filed with the clerk by facsimile transmission to 937-456-4685 as provided in this rule.

## **APPLICABILITY**

**1.01** This rule applies to civil, criminal and small claims, proceedings in the Eaton Municipal Court.

## **ORIGINAL FILING**

**2.01** A document filed by fax shall be accepted as the effective original filing. The person filing a document by fax is not required to file any source document with the clerk. The person filing the document shall 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, and 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:

**3.01** “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. “Facsimile transmission” does not include transmission by email.

**3.02** “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 include a cover page containing all of the following information: {See appendix for sample cover page form.}

- (A) name of the court;
- (B) title of the case;
- (C) case number;
- (D) name of the judge to whom the case is assigned, if any;
- (E) title of the document being filed (e.g. Defendant Jones’ Answer to Amended Complaint; Plaintiff Smith’s Response to Defendants’ Motion to Dismiss;

Plaintiff Smith's Notice of Filing Exhibit "G" to Plaintiff Smith's Response to Defendants' Motion to Dismiss);

- (F) date of transmission
- (G) transmitting fax number;
- (H) indication of the number of pages included in the transmission, including the cover page;
- (I) if a judge, magistrate or case number has not been assigned, state the fact on the cover page;
- (J) name, address, telephone, fax number, Supreme Court registration number, if applicable, and e-mail address of the person filing the fax document if available;
- (K) if applicable, a statement explaining how costs are being submitted.

**4.02** (A) If a document is sent by fax to the clerk without the cover page information listed above, the clerk may do either of the following:

- (1) enter the document in the case docket and file the document;
- (2) deposit the document in a file of failed faxed documents with a notation of the reason for the failure.

(B) If the clerk acts pursuant to division (A)(2) of this section, the document shall not be considered filed with the clerk.

**4.03** The clerk may inform the sending party of a failed fax filing.

## **SIGNATURE**

**5.01** A party who wishes to file a signed source document by fax shall do either of the following:

- (A) fax a copy of the signed source document;
- (B) 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 or 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 shall 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 court days following the filing of the facsimile

document. The court may strike any document or exhibit, or both, if missing exhibits are not filed as required by this section.

- 6.02** Any exhibit filed pursuant to Section 6.01 shall include a cover sheet containing the caption of the case that sets forth the name of the court, title of the case, the case number, name of the judge or magistrate 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). The exhibit and cover sheet 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 accepted by the clerk shall be considered filed with the clerk as of the date and time the fax transmission was received by the clerk. The office of the clerk will be open to receive facsimile transmission of documents on the basis of twenty-four hours per day seven days per week including holidays. Each page of any document received by the clerk shall be automatically imprinted with the date and time of receipt. The date and time imprinted on the document shall determine the time of filing, provided the document is deemed accepted by the clerk.
- 7.02** Fax filings may be transmitted only through the facsimile equipment operated by the clerk.
- 7.03** The clerk may acknowledge receipt of a facsimile transmission.
- 7.04** The sending party bears the risk of transmitting a document by fax to the clerk. The sending party is urged to verify receipt by the clerk of a fax filing 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. Documents tendered to the clerk without payment of court cost and fees or that do not conform to applicable rules will not be filed.
- 8.02** No addition fee shall be assessed for facsimile filings.

## **LENGTH OF DOCUMENT**

- 9.01** Facsimile filings shall not exceed 30 pages in length. The filer shall not transmit service copies by facsimile.



## **Rule 23**

### **Public Records:**

#### **General Policy:**

It is the policy of the Eaton Municipal Court (“the public office” and “office”) that openness leads to a better informed citizenry, which leads to better government and therein better public policy. It is the policy of the Eaton Municipal Court to strictly adhere to the state’s Public Records Act. All exemptions to openness are to be construed in their narrowest sense and any denial of public records in response to a valid request must be accompanied by an explanation, including legal authority, in accordance with the Ohio Revised Code. If the request is in writing, the explanation must also be in writing.

#### **I. Public records**

This office, in accordance with the Ohio Revised Code, defines records as including the following: Any document – paper, electronic (including, but not limited to, e-mail), or other format – that is created or received by, or comes under the jurisdiction of a public office that documents the organization, functions, policies, decisions, procedures, operations, or other activities of the office. All records of the Eaton Municipal Court are public unless they are specifically exempt from disclosure under Ohio law.

##### **A.**

It is the policy of the Eaton Municipal Court that, as required by Ohio law, records will be organized and maintained so that they are readily available for inspection and copying (See Section 104.05 for the e-mail record policy). Record retention schedules are to be updated regularly and posted prominently.

#### **II. Record requests**

Each request for public records should be evaluated for a response using the following guidelines:

##### **A.**

Although no specific language is required to make a request, the requester must at least identify the records requested with sufficient clarity to allow the public office to identify, retrieve, and review the records. If it is not clear what records are being sought, the records custodian must contact the requester for clarification, and should assist the

requestor in revising the request by informing the requestor of the manner in which the office keeps its records.

**B.**

The requester does not have to put a records request in writing, and does not have to provide his or her identity or the intended use of the requested public record. It is this office's general policy that this information is not to be requested.

**C.**

Public records are to be available for inspection during regular business hours, with the exception of published holidays. Public records must be made available for inspection promptly. Copies of public records must be made available within a reasonable period of time. "Prompt" and "reasonable" take into account the volume of records requested; the proximity of the location where the records are stored; and the necessity for any legal review of the records requested.

**D.**

Each request should be evaluated for an estimated length of time required to gather the records. Routine requests for records should be satisfied immediately, if feasible to do so. Routine requests include, but are not limited to, meeting minutes (both in draft and final form), budgets, salary information, forms and applications, personnel rosters, police criminal reports and reports of a non-criminal nature to include traffic citations, crash reports, and civil investigations, etc., etc. If fewer than twenty (20) pages of copies are requested or if the records are readily available in an electronic format that can be e-mailed or downloaded easily, these should be made as quickly as the equipment allows.

All requests for public records must either be satisfied or be acknowledged in writing by the (public office) within a reasonable amount of time following the office's receipt of the request. If a request is deemed significantly beyond "routine", such as seeking a voluminous number of copies or requiring extensive research, the acknowledgement must include the following:

1. – An estimated number of business days it will take to satisfy the request.
2. – An estimated cost if copies are requested.
3. - Any items within the request that may be exempt from disclosure.

**E.**

Any denial of public records requested must include an explanation, including legal authority. If portions of a record are public and portions are exempt, the exempt portions are to be redacted and the rest released. If there are redactions, each redaction must be accompanied by a supporting explanation, including legal authority.

**III. Costs for Public Records**

Those seeking public records will be charged no more than the actual cost of making copies.

**A.**

The charge for paper copies is 25 cents per page.

**B.**

The charge for downloaded computer files to a compact disc is \$10.00 per disc.

**C.**

There is no charge for documents e-mailed.

**D.**

Requesters may ask that documents be mailed to them. They will be charged the actual cost of the postage and mailing supplies.

**IV. E-mail**

Documents in electronic mail format are records as defined by the Ohio Revised Code when their content relates to the business of the office. E-mail is to be treated in the same fashion as records in other formats and should follow the same retention schedules.

**A.**

Records in private e-mail accounts used to conduct public business are subject to disclosure, and all employees or representatives of this office are instructed to retain their e-mails that relate to public business (see Section 104.02 Public Records) and to copy them to their business e-mail accounts and/or to the office's records custodian.

**B.**

The records custodian is to treat the e-mails from private accounts as records of the public office, filing them in the appropriate way, retaining them per established schedules and making them available for inspection and copying in accordance with the Public Records Act.

**V. Failure to respond to a public records request**

The Eaton Municipal Court recognizes the legal and non-legal consequences of failure to properly respond to a public records request. In addition to the distrust in government that failure to comply may cause, the Eaton Municipal Court's failure to comply with a request may result in a court ordering the Eaton Municipal Court to comply with the law and to pay the requester attorney's fees and damages.

**RULE 24. Court Records – Electronic Imaging**

**All Court Records may be maintained in an electronic format.**

All cases electronically scanned or imaged by the Court will be either in a “Portable Document Format” (PDF), “Tagged Image File Format” (TIF) or in a format that meets the requirements set down in Sup. R. 26 and will be retained accordingly.

**RULE 25. Electronic Produced Tickets**

Use of electronically produced ticket. The use and filing of a ticket that is produced by computer or other electronic means is hereby authorized in the Eaton Municipal Court. The electronically produced ticket shall conform in all substantive respects to the Ohio Uniform Traffic Ticket. If an electronically produced ticket is issued at the scene of an alleged offense, the issuing officer shall provide the defendant with a paper copy of the ticket.

**RULE 26. Electronic Submission of Reports to the Supreme Court of Ohio**

The Clerk of Court shall submit in electronic format via the Ohio Supreme Court website reports as required by Supreme Court Sup. R 37.01 through 37.03. The reports shall be as prescribed by the Supreme Court and submitted no later than the fifteenth day after the close of the reporting period. Only the Judge/Administrative Judge and the Clerk of Court shall have access to the Supreme Court website login credentials. The Judge/Administrative Judge and the Clerk of Court shall take all necessary steps to ensure and maintain the security of the Supreme Court website login credentials.

Rule 26 shall be recorded by the Clerk of Court and a copy thereof shall be filed by the Clerk with the Clerk of the Supreme Court of Ohio. The Clerk of Court shall cause a copy of Rule 26 to be posted on the Court's web page: [www.eatonmunicipalcourt.com](http://www.eatonmunicipalcourt.com): Court Rules.

The Clerk of Court shall provide copies of the Local Rules of Practice including Rule 26 to any person upon the payment of a fee representing the actual cost of making copies.

**Eaton Municipal Court  
Appendix**

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**EFFECTIVE DATE**

**These local rules shall be effective January 20<sup>th</sup>, 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 procedures apply.**

**SO ORDERED:**

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**PAUL D. HENRY, JUDGE**

Dated: January 20<sup>th</sup>, 2016

**EATON MUNICIPAL COURT SCHEDULE**  
**TRAFFIC/CRIMINAL**  
**ARRAINGMENTS**

**Non Jailable Traffic Offenses and Jailable Traffic Ofenses– Mondays 8:30 a.m.,  
unless legal holiday then Tuesdays at 8:30 a.m.**

**Criminal Offenses – Mondays 10:00 a.m., unless legal holiday then Tuesdays at  
10:00 a.m.**

**SENTENCINGS, PROBATION VIOLATIONS, MOTION TO SUPPRESS AND**  
**TRIALS TO COURT**

**Tuesdays, Wednesdays, Thursdays and Fridays between 8am and 12:00 p.m.**

**PRE-TRIALS AND SENTENCING AND PRELIMINARY HEARINGS**

**Pre-Trials for State of Ohio, OSP and City of Eaton – Wednesdays between 8am  
and 2:30 p.m.**

**Pre-Trials for Preble County Prosecutors Office & the Village of New Paris  
Village of Lewisburg & Village of West Alexandria  
Wednesdays between 8:00 a.m. and 11:30 a.m.**

**Pre-Trials for Village of Camden 1<sup>st</sup> & 3<sup>rd</sup> Thursday of each month between 9:00  
a.m. and 11:30 a.m.**

**Preliminary hearings between 9:30 a.m., to 11:30 a.m. – Wednesdays or Fridays**

**JURY TRIALS**

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