

FILED

IN THE BARBERTON MUNICIPAL COURT  
SUMMIT COUNTY, OHIO

2025 DEC 30 AM 10:35

MUNICIPAL COURT  
BARBERTON OHIO  
KATIE REED, CLERK

IN THE MATTER OF:

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MUNICIPAL COURT RULES

ORDER

Pursuant to Rule 5 of the Ohio Supreme Court Rules of Superintendence for Municipal Courts and County Courts, the following rules shall be adopted for the regulation of practice and procedure of the Barberton Municipal Court in Civil, Criminal, and Traffic cases, effective December 29, 2025. All previous rules are hereby rescinded.

These Rules and Orders shall be recorded by the Clerk in the Journal of the Court, and after said recording the Clerk shall cause a copy of these Rules to be made available to members of the Bar and litigants, upon request. Further, a copy shall be forwarded to the Ohio Supreme Court in accordance with Sup. R5(A)(3) of the Rules of Superintendence.

IT IS SO ORDERED.

  
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Todd McKenney  
Administrative Judge

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## **Rule 1: The General Conduct of the Court**

### **RULE No. 1.1 – CITATIONS OF RULES**

These rules shall be known as the Barberton Municipal Court Rules of Practice and may be cited as BMCR No. \_\_\_\_.

### **RULE No. 1.2 – HOURS OF SESSION**

The hours for holding the regular sessions of the Court shall be from 8:30 a.m. to 12:00 noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday each week, except on those days designated by law as legal holidays, City of Barberton holidays, or by entry. A judge may extend the hours to include evening, Saturday, and holiday sessions when deemed necessary. Each judge may establish different hours for his or her Court.

### **RULE No. 1.3 – HOURS OF THE OFFICE OF THE CLERK OF COURT**

The hours the office of the Clerk of Court will be held open shall be, in handling all case types, from 8:00 a.m. to 4:30 p.m. Monday through Friday. For handling criminal or traffic cases only, the office shall be held open from 8 a.m. to 11 a.m. on Saturday. Exceptions shall be made for those days designated by law as legal holidays, City of Barberton holidays, or by entry. The Clerk of Court may modify these hours when deemed necessary.

### **RULE No. 1.4 – DECORUM AND CONDUCT**

#### **(A) Courtroom Conduct**

Upon the opening of any Court session, all persons in the courtroom shall stand. All persons in the courtroom shall conduct themselves with decorum and in such a manner so as not to interfere with or obstruct judicial activities or proceedings. All persons appearing before the Court shall, as far as practicable, appear in appropriate dress.

#### **(B) Food and Drink**

No smoking, eating, or drinking is permitted in the courtroom, nor shall anyone bring food or drink into the courtroom.

#### **(C) Loitering**

No person shall loiter or behave in an unseemly or disorderly manner in the courtroom or in any halls, entryways, or stairways leading thereto, or otherwise interfere with or obstruct judicial activities or proceedings.

#### **(D) Electronic Devices**

All electronic devices including, but not limited to, cellular telephones, pagers, and computers, shall be turned off before a person enters a courtroom.

(E) Minors

Minors are not permitted in the courtroom if their behavior or condition causes a disturbance of proceedings.

(F) Failure to Comply

Failure to comply with any aspect of this rule may result in sanctions, including restrictions on continuance, confiscation of the offending object(s), or a charge of contempt of Court.

(G) Attention to Rule

The Court expects that counsel shall call this rule to the attention of clients and witnesses.

**RULE No. 1.5 – BROADCASTING AND PHOTOGRAPHING COURT PROCEEDINGS**

(A) Request Submitted to Assigned Judge

(1) No broadcast, photography, or other recording shall be made of any court proceeding without approval of the judge or magistrate conducting the proceeding. All such recording must conform to the guidelines set forth in Ohio Rules of Superintendence for Ohio Courts. Requests for permission to broadcast, record, photograph or televise in the courtroom shall be in writing and submitted to the assigned judge as far in advance as reasonably practical, but no later than one-half (1/2) hour prior to the courtroom session to be broadcast or photographed unless otherwise permitted by the trial judge. These requests shall be made a part of the record of the proceedings.

(2) If the judge approves of the recording, the judge, after consultation with the media, shall specify the place or places in the courtroom where operators and equipment are to be positioned. The judge shall also direct the media as to what equipment is permissible to be operated in the court room and how many personnel or photographers may be present.

(B) Permissible Equipment and Operators.

(1) For radio broadcast purposes, the audio pickup shall be as inconspicuous as possible but must be visible.

(2) Visible audio recording equipment may be used by news media reporters with the prior permission of the judge.

(3) Arrangements between or among media for "pooling" of equipment shall be the responsibility of the media representatives authorized to cover the proceedings. Such arrangements are to be made outside the courtroom and without imposing on the judge or court personnel. In the event disputes arise over such arrangements between or among

media representatives, the judge shall exclude all contesting representatives from the proceeding.

(4) The use of electronic or photographic equipment which produces distracting sound or light shall be prohibited by the judge. No artificial lighting other than that normally used in the courtroom shall be employed, provided that if the normal lighting in the courtroom can be improved without becoming obtrusive, the judge may permit modification.

(5) Still photographers, television and radio representatives shall be afforded a clear view but shall not be permitted to move about in the courtroom during court proceedings from the places where they have been positioned by the judge, except to leave or enter the courtroom.

### (C) Limitations

(1) There shall be no audio pickup or broadcast of conferences conducted in a court facility between attorneys and clients of co-counsel, counsel, or of conferences conducted at the bench between counsel and the judge.

(2) The judge shall inform victims and witnesses of their right to object to being filmed, videotaped, recorded or photographed.

(3) This rule shall not be construed to grant media representatives any greater rights than permitted by law wherein public or media access or publication is prohibited, restricted or limited.

(4) Media representatives shall not be permitted to transmit or record anything other than the court proceedings from the courtroom while the court is in session.

### (D) Revocation of Permission.

Upon the failure of any media representative to comply with the conditions prescribed by the judge, the Rules of Superintendence for Ohio Courts, or by interrupting or interfering with court proceedings, the judge may revoke the permission to broadcast or photograph the trial or hearing.

## RULE No. 1.6– OFFICIAL NOTICE OF PROCEEDINGS

The Akron Legal News is the official daily journal of the Municipal Courts of Summit County as authorized by R.C. 2701.09. Publication in The Akron Legal News shall be deemed official and complete notification to all local counsel of any assignment of any case for any purpose, and it shall be the duty of such counsel to ascertain such notice from The Akron Legal News. Non-local counsel and parties representing themselves shall be notified by mail. Notwithstanding provisions of any rule to the contrary, any mail notification provided shall be sufficient.

## RULE No. 1.7 – DUTIES OF ATTORNEYS

### (A) Designated Trial Attorney

Each party represented by counsel shall have one attorney designated as trial attorney. All notices and communications from the Court and all documents required to be served will be sent to the designated trial attorney.

(B) Counsel must abide by the Ohio Rules of Professional Conduct in all matters involving this court.

### (C) Withdrawal or Change of Counsel

An attorney cannot withdraw or change counsel from any case unless he or she first makes a timely request for permission to withdraw in writing and obtains the written approval of the assigned judge or magistrate. Any request to withdraw must be in writing and be filed with the court at least seven (7) calendar days before the next scheduled hearing, or as otherwise permitted, and shall contain:

- (1) the reasons for the motion;
- (2) a certificate of service to opposing counsel and the client;
- (3) the date and time of the next court appearance;
- (4) a statement from counsel that if the motion is granted, a copy will be mailed by counsel to the clients at their last known address, including a confirmation of previously scheduled court hearing(s).

### (D) Pro Hac Vice

An attorney who is not admitted to practice law in the State of Ohio may not appear on behalf of another individual or entity in court without the permission of the judge or magistrate. The motion for permission shall be in writing and shall attach a copy of the Certificate of Pro Hac Vice Registration obtained from the Ohio Supreme Court. It shall certify that the attorney is admitted to practice law in the highest court of another state or in the District of Columbia and that the attorney is not a resident of this state. The request must be cosigned by an attorney admitted to the practice of law in this state and registered under the Rule VI of the Rules for the Government of the Bar of Ohio. If the judge or magistrate grants the applicant's motion for permission to appear pro hac vice, the applicant must file a Notice of Permission to Appear Pro Hac Vice and a copy of the order granting permission with the Office of Attorney Services at the Ohio Supreme Court within thirty (30) days.

## RULE No. 1.8 – DUTIES OF PARTIES APPEARING PRO SE

(A) Parties appearing pro se shall designate themselves as such on all pleadings, motions, etc. submitted to the court or served on other parties. All notices and communications from the Court and all documents required to be served will be sent to the designated pro se party.

(B) Pro se litigants will be bound to the same Municipal Court Rules as attorneys, though the particular duties of attorneys indicated in BMCR No. 1.7 do not apply.

(C) A party appearing pro se shall not bring or defend a proceeding, or assert or controvert an issue in a proceeding, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. A criminal defendant appearing pro se may nevertheless so defend the proceeding as to require that every element of the case be established.

(D) A party appearing pro se shall not knowingly do any of the following:

- (1) make a false statement of fact or law to the Court or fail to correct a false statement of material fact or law previously made to the Court by the party;
- (2) fail to disclose to the Court legal authority in the controlling jurisdiction known to the party to be directly adverse to the party's position and not disclosed by opposing counsel;
- (3) offer evidence that the party knows to be false. If a party or a witness called by the party has offered material evidence and the party comes to know of its falsity, the party shall take reasonable measures to remedy the situation, including, if necessary, disclosure to the Court. A party may refuse to offer evidence that the party reasonably believes is false.

(E) In an ex parte proceeding, a party appearing pro se shall inform the Court of all material facts known to the party that will enable the Court to make an informed decision, whether or not the facts are adverse.

(F) Fairness to Opposing Party and Counsel

A party appearing pro se shall not do any of the following:

- (1) unlawfully obstruct another party's access to evidence; unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value; or counsel or assist another person to do any such act;
- (2) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (3) knowingly disobey an obligation under the rules of the Court, except for an open refusal based on a good faith assertion that no valid obligation exists;
- (4) in pretrial procedure, intentionally or habitually make a frivolous motion or discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
- (5) in trial, allude to any matter that the party does not reasonably believe is relevant or that will not be supported by admissible evidence or by a good-faith belief that such

evidence may exist, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, culpability if the party is a civil litigant, or guilt or innocence if the party has been criminally accused;

(6) advise or cause a person to hide or to leave the jurisdiction of the Court for the purpose of becoming unavailable as a witness.

(G) Impartiality and Decorum of the Court

A party appearing pro se shall not do any of the following:

(1) seek to influence a judicial officer, juror, prospective juror, or other official by means prohibited by law;

(2) lend anything of value or give anything of more than de minimis value to a judicial officer, official, or employee of the Court;

(3) communicate ex parte with either of the following:

(i) a judicial officer or other official as to the merits of the case during the proceeding unless authorized to do so by law or court order;

(ii) a juror or prospective juror during the proceeding unless otherwise authorized to do so by law or court order;

(4) communicate with a juror or prospective juror after discharge of the jury if any of the following applies:

(i) the communication is prohibited by law or court order;

(ii) the juror has made known to the party a desire not to communicate;

(iii) the communication involves misrepresentation, coercion, duress, or harassment;

(5) engage in conduct intended to disrupt a proceeding;

(6) engage in undignified or discourteous conduct that is degrading to the Court.

(H) A party appearing pro se shall reveal promptly to the Court improper conduct by a juror or prospective juror, or by another toward a juror, prospective juror, or family member of a juror or prospective juror, of which the lawyer has knowledge.

(I) A party appearing pro se who wishes to acquire counsel must first make a timely request for permission to acquire counsel in writing and obtain the written approval of the assigned judge or

magistrate. Any such request must be in writing and be filed with the court at least seven (7) calendar days before the next scheduled hearing and shall contain:

- (1) the reasons for the motion;
- (2) a certificate of service to opposing counsel and the client;
- (3) the date and time of the next court appearance.

#### RULE No. 1.9 – FRIVOLOUS ACTIONS AND VEXATIOUS LITIGATORS

(A) If the Court, sua sponte or on motion by a party, determines that an action is frivolous or is filed for delay, harassment or any other improper purpose, it may impose, on the person who signed the complaint or action, a represented party or both, appropriate sanctions. The sanctions may include an award to the opposing party of reasonable expenses, reasonable attorney fees, costs or any other sanction the court deems just. An action shall be considered frivolous if it is not reasonably well-grounded in fact or warranted by existing law or a good faith argument for the extension, modification or reversal of existing law.

(B) If a party habitually, persistently and without reasonable cause engages in frivolous conduct under section (A) of this rule, the court may, sua sponte or on the motion by a party, find the party to be a vexatious litigator. If the court determines that a party is a vexatious litigator under this rule, the court may impose filing restrictions on the party. The restrictions may include prohibiting the party from instituting legal proceedings in the court without first obtaining leave or any other restriction the court considers just.

#### RULE No. 1.10 – TECHNOLOGY IMPLEMENTATION AND PLAN

In accordance with Superintendence Rule 5(E), the Court shall adopt and maintain a court technology plan which will include:

- (A) A comprehensive strategy for implementing and maintaining technology solutions for conducting remote hearings, electronic service, the acceptance of electronic signatures, and any other technology-related solution utilized by the court or division; and
- (B) Procedures for notifying and providing instructions to the public on how to use the technology solutions implemented by the court or division and how the solutions will comply with any accessibility accommodation requirements, including any applicable requirements of the “Americans with Disabilities Act.”

This plan will be available from the office of the Court Administrator

## **Rule 2: Motions, Pleadings, Jury Demand, and Judgment Entries**

#### RULE No. 2.1 – PLEADINGS AND OTHER PAPERS

(A) Style

All papers filed with the Clerk shall be filed under the style and number of the cause, and shall include: the name of the judge assigned the case, if any; a notation as to the type of case; a short description of the pleading or motion being filed; and any other information required by Civ. R.10. All papers shall remain in the Clerk of Court office except when required by the Court.

(B) Caption

The caption on all pleadings shall provide a blank space of approximately three inches (3") in diameter on the upper right portion of the pleading for the Clerk's time-stamp imprint. The face sheet of all complaints filed in civil cases shall provide a two and one-half inch (2-1/2") type horizontal line approximately one-half inch (1/2") below and parallel to the line provided for the case number.

(C) Identification of Filer

All pleadings, motions, and other papers filed in an action shall bear the case number and the name, address, and telephone number of the attorney or other person filing the same. If an attorney is the person filing the document, the attorney registration number shall be included.

(D) Certificate of Service

Other than the original complaint, every pleading, motion or other paper filed with the Clerk shall contain a certification of service to the other parties to the action. In every proceeding where there is an attorney of record, the service shall be made upon such attorney unless service upon the party is ordered by the Court. Civ.R.5(B).

(E) Document Size

All pleadings and other papers shall be typewritten or printed on 8 ½ x 11-inch paper only. They shall be offered without backing, suitable for a flat filing system. Original documents attached or offered as exhibits are exempt from this requirement, provided that all exhibits shall be neatly bound.

## RULE No. 2.2 - ELECTRONICALLY TRANSMITTED FILINGS

Pursuant to Rule 5(E) of the Ohio Rules of Civil Procedure and Rule 12(B) of the Ohio Rules of Criminal Procedure, the Court will allow the filing by electronic transmission, through the Clerk of Court's Office, of complaints, motions, pleadings, letters, documents and all other matters that may be filed in person or by mail with the following provisions:

(A) The Clerk shall maintain a dedicated email account of and phone line to accept electronically transmitted filings.

(B) An attorney must provide all required identification on the first page of transmission in the format prescribed in Rule 2.1(C). Transmissions without such information will not be accepted. A transmitted document must be no longer than ten pages and must pertain to only one case.

(C) The electronically transmitted document's filing date is determined by court hours. Any filings sent electronically and received by the Court after 4:00 p.m. Eastern Time will be file-stamped the next business day.

(D) A document filed by electronic transmission shall be accepted as the effective original filing. The person filing a document by electronic transmission 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 electronic transmission, with original signatures as otherwise required under the applicable rules, and the source copy of the cover sheet used for the subject filing. Attorneys must indicate on the original filing the date and time the electronic transmission was sent.

(E) Any signature on electronically transmitted documents shall be considered that of the attorney or party it purports to be for all purposes. If it is established that the documents were transmitted without authority, the court shall order the filing stricken.

(F) The source document filed by electronic transmission shall be maintained by the person making the filing until the case is closed and all opportunities for post judgment relief are exhausted.

(G) Electronically transmitted filings must contain all information required by Rule 2.1 in addition to:

- (1) the transmitting email address or phone number of the responsible attorney;
- (2) the date and time of the electronic transmission; and
- (3) if applicable, a statement explaining how costs are being submitted.

(H) Any document filed electronically that requires a filing fee may be rejected by the clerk of court unless the filer has complied with the mechanism established by the court for the payment of filing fees.

#### RULE No. 2.3 – ELECTRONICALLY PRODUCED TICKETS

The use and filing of a ticket, citation, or other criminal complaint that is produced by a computer or other electronic means is hereby authorized in the Barberton 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 citation.

#### RULE No. 2.4 –ELECTRONICALLY FILED CRIMINAL COMPLAINTS

The Barberton Municipal Court hereby authorizes the electronic filing of criminal complaints. A criminal complaint transmitted electronically must comply with Crim.R. 3. It must state the essential facts constituting the offense charged and must also include the numerical designation

of the applicable statute or ordinance. The complaint must be made upon oath before any person authorized to administer oaths.

#### RULE No. 2.5 – SERVICE

(A) As provided in Rule 4.1 of the Ohio Rules of Civil Procedure, Service of Process may be effectuated by the Clerk of Court by personal service, service to the residence of the party to be served, certified or express mail, or by commercial carrier.

(B) Except as otherwise provided in these rules or the Ohio Rules of Criminal or Civil Procedure, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties. Service is not required on parties in default for failure to appear except that pleadings asserting new or additional claims for relief or for additional damages against them shall be served upon them in the manner provided for service of summons in Civ. R. 4 through Civ. R. 4.6.

(C) As provided in Civ. R. 5(B)(2), service may be effectuated by handing it to a party or attorney, by delivering it to a party's office or dwelling, by mailing it or delivering it by commercial carrier to a last known address, by leaving it with the Clerk of Court if there is no last known address, or by sending it by facsimile or email address in a manner permitted by these rules and the Rules of Civil Procedure.

#### (D) Proof of service

The served document shall be accompanied by a completed proof of service which shall state the date and manner of service specifically identify the division of Civ.R. 5(B)(2) by which the service was made, and be signed in accordance with Civ.R. 11. Documents filed with the Court shall not be considered until proof of service is endorsed thereon or separately filed.

#### (C) Filing

All documents, after the original complaint, required to be served upon a party shall be filed with the court within three (3) days after service, but depositions upon oral examination, interrogatories, requests for documents, requests for admission, and answers and responses thereto shall not be filed unless on order of the court or for use as evidence or for consideration of a motion in the proceeding.

#### RULE No. 2.6 – MOTION PRACTICE

(A) Motions made during a hearing or trial may be made orally or in writing to the judge or magistrate assigned to the case. All other motions shall be made in writing and timely filed and served on all appropriate parties, unless waived by the judge.

(B) Motions for a definite statement pursuant to Civ. R.12(E) and motions to strike pursuant to Civ. R.12(F) shall set forth the language sought to be stricken or claimed to be indefinite.

(C) Motions will not be set for hearing except as the Court, in its discretion, orders. A party desiring a hearing should request the same. When a motion is set for hearing, the Court shall notify the parties to the action of the date and time of the hearing.

(D) Parties shall have fourteen (14) calendar days to respond to a motion. The Court in its discretion, may extend the time for filing and answering motions, unless prohibited by statute or the civil and criminal rules.

(E) To the extent that this rule may conflict with BMCR No. 4.3, the latter rules shall prevail.

#### RULE No. 2.7 – HEARINGS BY TELECOMMUNICATION

(A) The Court may, in its discretion, hear oral argument on any motion or conduct a pretrial conference or other hearing by speaker, regular telephone, or other telecommunications method provided that every statement is audible to all persons.

(B) Upon request of any party, such oral argument, conference, or hearing may be recorded under such conditions as the judge shall deem practicable.

(C) The Court may direct which party shall pay any cost, long distance or otherwise, associated with the communications method chosen. The requesting party shall set up such conference call with all counsel, parties and the Court unless otherwise directed by the Court or magistrate.

#### RULE No. 2.8 – SUBPOENAS FOR WITNESSES

(A) Witnesses may be served by filing a praecipe with the Clerk or by a person designated by an order of the Court as provided in Civ.R.45(C).

(B) Any praecipe for subpoena or order designating a person to serve a subpoena should be filed with the Clerk no later than seven (7) days before the date of trial. If a witness fails to appear at trial and the filing for such service was made fewer than seven (7) days before trial, then such nonappearance shall not constitute grounds for a continuance.

(C) In any case, service of subpoena may be made by an attorney-at-law or by any person designated by the court pursuant to Rule 45 (B) of the Ohio Rules of Civil Procedure or Rule 17(D) of the Ohio Rules of Criminal Procedure. In civil cases, service of subpoena may be made by the service bailiff.

#### RULE No. 2.9 – COSTS OF JURIES REQUESTED BUT NOT USED

In all civil, criminal, and traffic cases, when a jury is requested and not used, the jury costs shall be assessed against the party making the demand, unless the demand is withdrawn in writing by 9:00 a.m. of the last working day before the date set for trial.

#### RULE No. 2.10 – JUDGMENT ENTRIES

(A) Whenever a judgment or dismissal entry is required in any case, the Court may prepare it or order that counsel prepare the same. The entry shall be filed within thirty (30) days. If such entry was to be prepared and presented by counsel, the Court may prepare and file the same when it is not timely presented to the Court by counsel. [M.C.Sup.R.7]

(B) "Judgment or dismissal entry" as used in this Rule includes all decrees and orders from which an appeal lies as provided in R.C. 2505.02.

### **Rule 3: Criminal Procedure**

#### RULE No. 3.1 – WAIVER

Pursuant to the requirements of Criminal Rule 4.1(E), and Traffic Rule 13, the court has established a waiver schedule by administrative order. The schedule is available through the Clerk of Court website:

<http://www.cityofbarberton.com/clerkofcourts/waiver.shtml>

#### RULE No. 3.2 – PRIVATE CITIZEN’S AFFIDAVIT

When a private citizen or attorney files a criminal or traffic affidavit without authorization from a prosecutor, law enforcement officer, or judge, the Clerk shall number, index and docket that affidavit separate from other filings. Such affidavit shall be assigned as provided in BMCR No. 8.4, and the assigned judge shall schedule a date for a probable cause hearing.

If the judge finds no probable cause for the affidavit, it shall be ordered dismissed, and the Clerk shall enter that finding on the probable cause docket. If the judge finds probable cause, the Clerk shall assign to it a case number in the regular criminal index and docket and the proceedings shall be held in that case by the assigned judge as required.

#### RULE No. 3.3 – COURT APPOINTMENT FOR REPRESENTATION OF INDIGENT

##### (A) Misdemeanor Appointments

(1) The Summit County Legal Defender Office is designated to provide the legal representation for an indigent individual charged with criminal or traffic misdemeanor

other than a minor misdemeanor. Any such individual found by the Court to be in need of an attorney and entitled to such services may be considered for an appointment of the Legal Defender. Payment for the services of the Summit County Legal Defender Office shall be from Summit County and/or other governmental bodies contracting with it.

(2) In cases where the Legal Defender's Office identifies to the Court a conflict of interest in representing that person, an attorney shall be appointed and paid as provided herein.

(3) When a felony is reduced to a misdemeanor, or otherwise remanded back to the Municipal Court, a practicing attorney previously appointed as provided herein may continue with such representation and be paid as provided herein.

(4) When other exceptional circumstances exist, and for good cause, the Presiding Judge may appoint a practicing attorney in a misdemeanor case, and the attorney shall be paid as provided herein.

(B) Appointed Counsel List

(1) The Court, through the Akron Bar Association, shall maintain a list of attorneys in private practice who are willing to accept appointments for cases identified in (A)(2)-(4), and felony cases arraigned in the Barberton Municipal Court (collectively, "Appointed Counsel List"). Attorneys desiring placement on the Appointed Counsel List shall apply as directed by the Akron Bar Association, or its designee.

(2) In order to be approved for inclusion on the Appointed Counsel List an attorney must meet, and provide verification as directed, of those requirements promulgated by the Akron Bar Association.

(3) Upon appointment to a case, the attorney shall perform basic duties as warranted by the facts of the case and shall act in a professional manner.

(4) The attorney shall have a working phone with a secretary and/or voicemail to be able to respond to calls from the Court or clients. The attorney shall promptly inform the Court of a change of address or phone number.

(C) Felony Appointments

Any person charged with a felony and found to be indigent, in need of an attorney, and entitled to the same, shall be appointed a practicing attorney from the Appointed Counsel List. The Judge sitting in Arraignment Court shall appoint counsel from the Appointed Counsel List as defined herein, and shall ensure an equitable distribution of appointments among all persons on the appointment list. Each Judge may also consider the skill and expertise of potential appointees in selecting counsel in an individual case. A record of the appointments made in Felony Arraignment Court shall be maintained by the bailiff in the Felony Arraignment Court and shall

be reviewed annually at a Judges' Meeting to ensure the equitable distribution of appointments among attorneys on the Appointed Counsel List.

(D) Fee Schedule

The fee schedule applicable to all practicing attorneys on the Appointed Counsel List will be the fee schedule identified by the Ohio Public Defender Commission and approved by Summit County at the time of the request, as well as expenses allowed by Court.

No attorney, including the Legal Defender, appointed to represent an indigent defendant, shall receive any fees other than public funds for services relative to that appointment. Before the appointed attorney shall receive any money from or on behalf of an indigent for services in such representation, the Court shall immediately be notified, withdrawing with waiver of any fees from public funds.

RULE No. 3.4 – ARRAIGNMENT

(A) The Clerk of Barberton Municipal Court shall require the filing of a written complaint or uniform traffic ticket before placing an individual's name on the traffic / criminal docket.

(1) Arrested

Unless BMCR Nos. 3.4(C) or 3.4(D) below applies, persons arrested and held in custody shall appear as assigned at the next session of Misdemeanor, Felony, or Traffic Court.

(2) Charged with Traffic Violation

Unless BMCR Nos. 3.4(C) or 3.4(D) below applies, persons charged with traffic violations, except for waivable minor misdemeanors, are required to be present at the arraignment and all subsequent appearances. This paragraph limits Traf.R. 8(C).

(B) Plea by Personal Appearance

(1) Persons who are summoned to appear for arraignment as Defendants in criminal misdemeanor and felony cases shall report for processing as directed at 9:00 a.m. on the date set forth in the summons, unless 1:00 p.m. is indicated, then at that time.

(2) The defendant, either on his own behalf or by and through counsel, may enter one of the following pleas at arraignment:

(a) Guilty,

(b) Not guilty

(c) No contest, or

(d) Not guilty by reason of insanity (except in traffic cases where a not guilty plea by reason of insanity is not applicable).

(C) Not Guilty Plea by Letter

A defendant may enter a plea of not guilty by letter prior to defendant's scheduled arraignment provided that the letter is sent by retained or court appointed counsel. The letter shall demand or waive the defendant's right to a speedy trial. The letter may demand or waive the defendant's right to a jury trial if the offense is one that provides a right to a jury trial. If the letter elects to waive the right to a jury trial, it may indicate whether the defendant is willing to have his case heard by a magistrate. If right to a jury trial is not addressed, that right is waived pursuant to Ohio Rule of Criminal Procedure 23.

(D) Arraignment and Subsequent Proceedings through Video Transmission

At the Court's discretion, it may hold bond hearings, preliminary hearings, misdemeanor arraignments or other court proceedings by means of closed circuit video transmission from the Summit County Jail or any other correctional facility where a defendant is being held.

(E) Request for Continuance

The Defendant may request by phone a continuance of arraignment of seven (7) days. The Defendant may request a second reasonable continuance of arraignment by filing a written motion or defendant may appear in court at arraignment to request a continuance.

RULE No. 3.5 – BAIL BONDS

(A) Misdemeanor Criminal/Traffic Cases

In lieu of bond set by a judge or magistrate, the clerk and/or arresting police authority are authorized to release a person charged with a misdemeanor criminal / traffic offense based on the Bail Bond Schedule established by administrative order. The schedule is available in the Clerk's Office and on the Clerk's website: <http://www.cityofbarberton.com/clerkofcourts/criminal.shtml>

(1) Notice of Arraignment

Persons charged with a criminal misdemeanor offense who are released on bail, after having posted the required bond with the Clerk, shall be notified to appear at an arraignment session at 9:00 a.m.

(B) Felony Cases

Bond in felony cases shall be set by the judge on the arraignment docket. The judge may refer the setting of the bond in felony cases to a magistrate.

(C) Holding of Bonds

Bonds posted in criminal cases shall be held until all court dates are completed by the defendant and all fines and costs have been paid.

(D) Alternative to the Bond Schedule

As an alternative to the bond schedule, the judge may:

(1) Utilize a risk assessment tool as per BMCR No. 3.11 to determine appropriate alternative methods of ensuring the Defendant's appearance for criminal proceedings;

(2) Pursuant to Crim. R. 46(A)(2), accept a deposit of ten (10) percent of the scheduled bail bond amount as a security for that bond, with the full amount of the bond due if the Defendant should fail to appear or otherwise adhere to the directions of the judge;

(3) Utilize any of the methods indicated in Crim. R. 46(B) to ensure the Defendant's compliance; and

(4) Notify the Defendant of his obligations as the judge determines in his or her discretion.

#### RULE No. 3.6 – BENCH WARRANTS AND BOND FORFEITURE PROCEDURE

When a bench warrant is ordered by the Court, The following procedure shall occur, unless otherwise ordered by the Court:

(A) A bench warrant for the Defendant's arrest shall be prepared by the Clerk;

(B) Any cash deposit for bond shall be forfeited; and

(C) The bench warrant shall be signed by a judge and issued to the appropriate law enforcement agency.

#### RULE No. 3.7 – PRETRIAL CONFERENCES

(A) In any criminal or traffic action the Court may in its discretion, with or without request of a party, assign such cause for pretrial conference. When a criminal or traffic case is assigned for a pretrial conference, the prosecutor assigned to the case, Defendant's counsel, and the Defendant shall be present. If the Defendant fails to appear at the pretrial conference, the judge may issue a warrant for his arrest. If Defendant's counsel fails to appear, the judge may issue sanctions.

(B) The prosecutor's office shall determine parties to attend the pretrial conference on behalf of the State of Ohio, or appropriate political subdivision or charging agency, and file a praecipe for subpoena with the Clerk of Court.

(C) The prosecutor shall bring to the pretrial conference the following information:

(1) Any written or recorded statement of the Defendant or co-Defendant, or a summary of any such oral statement.

(2) Criminal record of the Defendant, as is available to the prosecutor, including the BMV record in traffic cases.

(3) Reports of tests or examinations made in connection with the case, accident reports, and in DUI/BAC cases, calibration information and alcohol influence reports, or in the alternative, have this information available to Defendant's counsel within a reasonable time.

(4) A written list of the names and addresses of all known witnesses intended to be called at trial, together with any record or prior felony convictions of any such witnesses.

(5) Documents or tangible objects which may be material to the defense if used at the trial or which were obtained from or belong to the Defendant.

(6) A written statement of all known evidence favorable to the Defendant and material either to guilt or punishment.

(D) The Defendant's counsel shall bring to the pretrial conference the following information:

(1) Documents or other tangible objects which may be material to the case or used at the trial.

(2) Reports of tests or examinations made in connection with the case, including chemical tests in DUI cases.

(3) A written list of the names and addresses of all witnesses intended to be called at trial, together with any record of prior felony convictions of any such witnesses.

(F) No provision contained in this rule shall be construed to limit or otherwise modify the requirements and procedures prescribed by Crim. R.16.

#### RULE No. 3.8 – JURY TRIALS

Where there is a right of jury trial, the jury demand shall be made in accordance with Crim.R.23. In criminal and traffic cases, the Defendant, if found guilty, shall be responsible for the jury costs.

#### RULE No. 3.9 – INSTALLMENT PAYMENTS OF FINES AND COSTS

In any criminal or traffic matter, the fines and costs may be paid in installments when the assigned judge has given the Defendant time to pay such fines and costs. Installment payments shall not be received beyond the date set for payment unless authorized by the assigned judge.

#### RULE No. 3.10 – COMMUNITY SERVICE PROGRAM

(A) A community service program is established as a sentencing alternative. The sentencing judge or magistrate may allow a person convicted of a misdemeanor who qualifies for the

community service program to elect to perform community service work. The Probation Department shall establish the guidelines for the qualification and administration of the community service program.

(B) The community service work may be performed:

- (1) As a condition of suspended confinement;
- (2) In lieu of confinement;
- (3) In lieu of payment of fines and/or court costs; and/or
- (4) As punishment.

Community service work ordered by the court is subject to the approval of the Probation Department.

(C) Credit for community service work shall be given upon verification by the Probation Department and at the Court's discretion. When a misdemeanor performs community service as a condition of a suspended sentence or in lieu of confinement, then an eight-hour day of work shall be equal to one day's confinement.

(D) When a misdemeanor is unable to pay fines or costs imposed, the Court may refer him to the community service program. The misdemeanor shall be credited an amount equal to the then established federal hourly minimum wage for each hour worked or greater amount as determined by the Court.

(E) Any violation of the community service program by a misdemeanor, including the requirements established by the Probation Department or the sentencing judge, is a violation of a court order and subjects that misdemeanor to sanctions provided by law.

(F) A misdemeanor herein is defined as provided in R.C. 2951.011.

#### RULE No. 3.11 – RISK ASSESSMENT

(A) Pursuant to R.C. 5120.114(A), when the court orders an assessment of an offender for sentencing or any other purpose, it shall use the validated risk assessment tool selected by the Ohio Department of Rehabilitation and Correction. {See HB 86 from 2011 and electronically sent documents regarding the Ohio Risk Assessment System, ORAS.}

(B) Pursuant to R.C. 5120.114(B), any employee of the court who uses the risk assessment tool shall be trained and certified by the Department of Rehabilitation and Correction.

(C) Users of the risk assessment tool shall use the report generated by the tool in accordance with the provisions of R.C. 5120.115. Any report generated by the risk assessment tool is confidential and not public record.

## RULE No. 3.12 – SPECIAL PROGRAMS

(A) The Barberton Municipal Court hereby authorizes a Suspended License Intervention Program (SLIP). The purpose of SLIP is to assist individuals charged with driving while under suspension, driving with no license, or driving with an expired license to obtain a valid Ohio operator's license. A defendant who qualifies for SLIP will enter a guilty plea to any of these violations committed. Sentencing will then be held in abeyance for four months to allow the defendant the opportunity to complete the program. Upon successful completion of the program and obtaining a valid Ohio Operator's License, the court will vacate the plea and dismiss the license charge and any related non-moving minor misdemeanor charges. The court will then proceed with sentencing on all other charges. Defendants who fail to complete SLIP will be scheduled for sentencing on the original plea and any conviction will be reported to the Ohio Bureau of Motor Vehicles. Eligibility for and administration of this program shall be as the court directs.

## RULE No. 3.13 – SPECIALIZED DOCKETS: MENTAL HEALTH COURT

### (A) Establishment of the Barberton Mental Health Court Program

(1) Pursuant to Sup. R. 36.20 and by order of the Judges of the Barberton Municipal Court, effective March 2013, the rules and guidelines of the Barberton Municipal Mental Health Court Program, Barberton Encourages Self Treatment (hereinafter referred to as "BEST") are formally adopted.

(2) The goal of BEST is to reduce recidivism among individuals with behavioral health issues in the justice system; to reduce periods of incarceration by individuals with behavioral health issues in the justice system; to reduce periods of incarceration by individuals with behavioral health issues; and to successfully graduate participants from BEST.

### (B) Placement and Screening for BEST

(1) In order to have his/her criminal case placed on the BEST docket, a criminal defendant must make an Application for Admission.

(2) Legal Criteria: To qualify for admission, defendant must be a resident of Summit County; be charged with a misdemeanor of the third, second, and/or first degree; have a persistent mental illness which would benefit from court monitored treatment; and voluntarily enter the program.

(a) Persons charged with OVI, sex crimes (excluding public indecency), crimes involving the use of any weapon, crimes involving children as victims, and minor misdemeanors or fourth degree misdemeanors are ineligible for BEST.

(b) BEST is not available if felony charges are pending.

(3) Clinical Criteria: Upon initial acceptance, a diagnostic evaluation is made to confirm defendant meets clinical criteria that include:

- (a) Axis I diagnosis that is consistent with a severe and persistent mental illness;
- (b) Sufficient stability to understand and comply with the program requirements;
- (c) The criminal defendant must not pose an unacceptable risk to program staff, family or community.

(C) Case Assignment

(1) All eligible Mental Health Court cases shall be transferred to the Mental Health Court Judge following a plea of guilty and sentencing. The sentence will be suspended subject to terms of probation that will include the mental health treatment plan.

(2) The Mental Health Court Judge will be responsible to monitor compliance by utilizing appropriate rewards and sanctions to help modify offender behavior.

(3) In the event a participant is terminated from the program, the case shall remain with the Mental Health Court Judge. The Mental Health Court Judge will administer the re-imposition of the participant's sentence.

(D) Case Management

(1) The Barberton Mental Health Court Program will provide case management services in the least restrictive manner that is consistent with offender compliance and public safety.

(2) The Barberton Mental Health Court Program will work closely with all of its community partners to provide the most intensive and comprehensive treatment to each offender entering BEST.

(3) All forms, program descriptions, handbooks and agreements shall be incorporated as part of the BEST program.

(E) Termination from the Mental Health Court Program

(1) All individuals who are unsuccessfully terminated from BEST are subject to have their entire original suspended sentence re-imposed.

(2) Neutral discharge can occur if the defendant is no longer capable of completing BEST.

RULE No. 3.14 – SPECIALIZED DOCKETS: DRUG COURT

(A) Establishment of the Barberton Municipal Drug Court Program

(1) Pursuant to Sup.R. 36.20 through 36.29, and by order of the Judges of the Barberton Municipal Court, effective September 2015, the rules and guidelines of the Barberton Municipal Court Drug Program are hereby established.

(2) The Barberton Municipal Drug Court Program will provide effective supervision and enhanced treatment services to thirty (30) misdemeanor offenders in an effort to (A) change their substance use behaviors and (B) reduce the risk they pose to the safety of the community and themselves.

(3) The goals and objectives of the Barberton Municipal Court Drug Program are to:

(a) Goal 1: To reduce the number of offenders with substance use disorder.

(i) Objective: 75% of clients involved in Barberton Municipal Drug Court will remain out of jail while enrolled in the program.

(ii) Performance Measure: The number of clients who spend at least one day in jail each month over the course of the program.

(b) Goal 2: Reduce the number of arrests

(i) Objective: 75% or greater of the clients involved in Barberton Drug Court will not have a new arrest while enrolled in the program.

(ii) Performance Measure: The number of clients who have a new arrest while enrolled in the program each month over the course of the program.

#### (B) Placement and Screening for the Barberton Municipal Drug Court Program

(1) Individuals being considered for the Barberton Drug Court Program must be adjudicated through the Barberton Municipal Court. Offenders will be referred to the program either through Intervention in Lieu of Conviction, under R.C. 2951.041; or post-conviction of an eligible misdemeanor offense.

(a) Offenders will be screened at the arraignment stage by the Barberton Municipal Court Adult Probation Department. The Barberton Adult Probation Department will review the arraignment docket each day (Monday through Friday). The screening staff will complete the Drug Court Preliminary Screening form on any offender that meets eligibility criteria based upon the arresting offense. The screening form shall be placed in the court file for further review with a copy being given to Drug Court Program Manager and Probation Officer.

(b) Offenders may also be referred from another Judge in the Barberton Municipal Court, pre or post-adjudication, or on referral from a probation violation and/or early release from another Judge in the Barberton Municipal Court.

#### (2) Legal Eligibility Criteria

(a) Intervention in Lieu offenders are required to meet the statutory requirement set forth in R.C. 2951.041.

(b) Post-Conviction offenders are those convicted of a first or second degree misdemeanor offense that is directly related to substance use; or wherein the offender (a) has prior drug related convictions; (b) is under pre-sentence investigation; or (c) is on direct supervision with the Barberton Municipal Court and determined to have drug issue. The charged offenses may include (but are

not limited to): Attempted Drug Abuse (M-1), Drug Abuse Land Premise (M-1), Permitting Drug Abuse (M-1), Possession of Drug Abuse Instruments (M-1 or M-2), Purchase Pseudo-Ephedrine (M-1), Receiving Stolen Property (M-1), Theft (M-1), Criminal Trespass (M-1 or M-2), Criminal Damaging (M-2).

(3) Clinical Eligibility Criteria

- (a) All offenders are required to be diagnosed drug-dependent by a properly credentialed professional;
- (b) All offenders must express a willingness to participate in the Drug Court Program and engage in treatment.

(C) Exclusionary Criteria (Disqualifying Factors)

(1) Exclusionary legal criteria for those participants entering through Intervention in Lieu of Conviction are set forth in R.C. 2951.041.

(2) Exclusionary legal criteria for post-conviction participants includes the following:

- (a) No violent felony convictions within the past five (5) years and no prison term within the past five (5) years for a violent offense;
- (b) No active felony probation or parole supervision;
- (c) No pending felony charges;
- (d) No prior convictions for Trafficking or Distribution of Drugs
- (e) No Registered Sex Offenders
- (f) No prior successful completion of the Barberton Drug Court or Summit County Drug Court Programs within the past two years
- (g) No prior successful completion of an Intervention in Lieu of Conviction Program
- (h) No unsuccessful discharge from the Barberton Municipal Drug Court Program.

(3) Exclusionary clinical criteria for all offenders include offenders who are highly resistant to changing their behavior in spite of previous interventions and/or punishments; offenders diagnosed with a developmental disability if this disability prohibits the offender from complying with or comprehending substance use treatment; and offenders with co-occurring mental health conditions if there is no adequate treatment available.

(D) Case Assignment

(1) All eligible Drug Court cases shall be transferred to the Drug Court Judge prior to sentencing. Individuals found eligible and who voluntarily agree to enter the Drug Court Program will enter a plea before the Drug Court Judge. Case assignment for the Barberton Municipal Court Judges will not be changed.

(2) The Drug Court Judge will be responsible to monitor compliance by utilizing appropriate rewards and sanctions to help modify offender behavior.

(3) In the event a participant is terminated from the program, the case shall remain with the Drug Court Judge. The Drug Court Judge will administer the re-imposition of the Drug Court participant's sentence.

(E) Case Management

(1) The Barberton Municipal Court program will work closely with all of its community partners to provide case management services in a least restrictive manner that is consistent with offender compliance and public safety and that provides the most intensive and comprehensive treatment available for each offender

(2) The Drug Court Program will operate in a manner consistent with the nationally recognized "Drug Court Model" and "The 10 Key Components of a Drug Court Program."

(3) The Barberton Municipal Drug Court Program Description, Participant Handbook, and Participation Agreement are hereby incorporated as part of the Barberton Municipal Drug Court Program.

(F) Termination from the Drug Court Program

(1) Offenders who are unable to follow the Drug Court Program rules will be terminated from the program.

(2) All post-conviction individuals who are successfully terminated from the Barberton Municipal Drug Court program are subject to have their entire original suspended sentence re-imposed by the Drug Court.

(3) All Intervention in Lieu of Conviction participants who are unsuccessfully terminated from the Barberton Municipal Drug Court are subject to a finding of guilt and the imposition of sentence up to the maximum penalties permitted for each charge.

(4) With input from the Drug Court Treatment Team, the Drug Court Judge may impose a sentence utilizing a combination of all resources available to the court including but not limited to jail, community service, house arrest, residential treatment, non-residential treatment, probation, fines, court costs, etc.

## **Rule 4: Civil Procedure**

### **RULE No. 4.1 – CIVIL COURT COSTS**

Unless exempted by law or otherwise ordered by the Presiding Judge, no civil action or proceeding shall be accepted for filing by the CLERK OF COURT without deposit of a filing fee. Such prescribed fees may be amended from time to time by order of the Court. All entries or other dismissals terminating any case shall indicate the party having responsibility for payment of court costs.

#### RULE No. 4.2 – DISMISSALS ON FAILURE OF SERVICE OR OTHER GROUNDS

(A) A civil case pending for one hundred-eighty (180) days or longer in which service of process of the complaint has not been made shall be dismissed without prejudice after notice to the plaintiff pursuant to Civ. R. 4(E), unless, for good cause shown, the judge otherwise directs. [M.C.Sup.R. 6(A)]

(B) Unless otherwise specified by these local rules, cases pending on the docket for failure to comply with an order or direction of the court and cases being held for settlement or other disposition shall be dismissed without prejudice one-hundred eighty (180) days after such failure to comply, file, settle or dispose of, unless good cause is shown to the contrary.

#### RULE No. 4.3 – CIVIL LEAVES TO MOVE OR PLEAD

(A) In all civil cases a party may obtain one automatic leave to move or plead by certification to the Clerk or by motion and order, stating that no previous leaves have been taken by that party in that case. Such leave may not exceed twenty-one (21) days.

(B) One additional leave to move or plead may be obtained at the discretion of the judge. The request for such leave shall be made in writing, with notice to other parties, stating the reason for requesting such leave and setting forth the particulars of the prior leave. Such additional leave shall not exceed twenty-one (21) days. A judge, for good cause, may waive any requirement in this paragraph.

#### RULE No. 4.4 – PRETRIAL CONFERENCES

(A) In any civil action the Court may, in its discretion, with or without request of a party, assign such cause for pretrial conference. A pretrial conference shall be held in every case where a jury demand has been duly filed unless the judge orders otherwise. All attorneys or parties without counsel shall be present for the pretrial conference. However, the judge may order all of the parties to be present.

(B) A pretrial proceeding by telecommunicated conference conducted pursuant to BMCR No. 2.7 may be permitted upon a motion.

(C) At the pretrial conference, the parties and/or counsel shall be prepared as follows:

(1) Have completed the pleading and motion process unless the judge or the civil rules allow for a longer period.

- (2) Have completed discovery unless the judge or civil rules allow for a longer period.
- (3) Be prepared for consideration of evidence questions, stipulations as to facts and law, and other issues.
- (4) Furnish a list of all witnesses whom they intend to call at trial, together with a statement of the general nature of their testimony.
- (5) Produce all exhibits intended to be offered at trial.
- (6) Be prepared to present the legal theory of the case.
- (7) Be prepared to discuss the possibility of settlement.
- (8) Other matters as the Court may require.

#### RULE No. 4.5 –MEDIATION

(A) A claim may be scheduled for a mediation hearing at the same time the trial is scheduled. The Court may direct the Clerk to refer any small claims case for mediation on the date of trial.

(B) The following shall apply to all mediation hearings:

- (1) All parties shall attend;
- (2) Participation by the parties attending the hearing is voluntary;
- (3) The purpose is to attempt to resolve the dispute between the parties;
- (4) If the plaintiff fails to appear, the claim may be dismissed without prejudice;
- (5) If the Defendant fails to appear, then a judgment by default may be entered;
- (6) If the dispute cannot be resolved, then a trial shall be held on the claim.

#### RULE No. 4.6 –JURY TRIALS

(A) A demand for trial by jury shall be made in accordance with Civ.R.38. To obtain a jury in a civil case, a written jury demand shall be filed with the Clerk, together with a jury deposit in the sum of \$300.00. The \$300.00 deposit may be waived upon determination by the judge that the party making the jury demand is indigent.

(B) If the jury demand does not specify a number of jurors, the number used shall be eight (8).

(C) The nonprevailing side shall be responsible for jury costs unless the Court otherwise directs.

(D) Each party shall file, seven (7) full days in advance of trial, a complete set of instructions suitable for charging the jury. Parties shall file a trial brief seven (7) full days in advance of trial.

(E) Failure to comply with these requirements may result in a jury waiver or other appropriate sanctions.

#### RULE No. 4.7 – CIVIL TRIAL DATE ASSIGNED

(A) When a civil case is assigned a date for trial, the case shall proceed to trial on that date, unless the Court directs otherwise. If plaintiff is not willing to proceed, the Court may dismiss the case with or without prejudice, pursuant to Civ. R. 47.

(B) If a civil case set for trial is settled, the attorneys assigned to that case shall immediately notify the Court. The Court may order an appropriate judgment entry or stipulation to be filed in accordance with BMCR No. 2.8. Any remaining deposit after payments of costs shall be returned after the filing of a stipulation or judgment entry.

#### RULE No. 4.8 – CIVIL CONTINUANCES

##### (A) Written Request

No party shall be granted a continuance of a trial or hearing without first submitting a written request to the assigned judge stating the reason for such request. The request must contain a certificate of service to opposing counsel or party. The requesting party is required to first discuss the continuance with all opposing counsel, or opposing parties if there is no counsel, and state the reason for the continuance. Entries shall accompany the request with blanks for the new time and date of the trial or hearing.

##### (B) Setting of New Date for Trial or Hearing

No judge shall grant a continuance to any party at any time without first setting a new date for the trial or hearing.

##### (C) Scheduling Conflict

When a continuance is requested for the reason that counsel is scheduled to appear in another case assigned for trial on the same date in the same or another trial court of this state, the case which was first set for trial shall have priority and shall be tried on the date assigned. Criminal cases assigned for trial have priority over civil cases assigned for trial. The granting of any other request for continuance of a scheduled trial is within the discretion of the Court.

##### (D) Time for Motions

Motions for continuances filed within seven (7) calendar days before trial may be denied except upon a showing of exigent circumstances.

##### (E) Failure to Attend Pretrial Conference Grounds for Denial of Continuance

No continuance will be granted on the grounds that the trial attorney is not prepared to go forward if he has failed to attend a pretrial conference.

(F) Stipulations

Stipulated continuances shall not be granted as a matter of course.

(G) Waiver of Rule

A judge, for good cause, may waive any requirement in this Rule.

#### RULE No. 4.9 – TRANSFER OF CASES TO ANOTHER COURT

(A) Monetary Jurisdiction

The party filing a counterclaim, cross-claim, or third-party claim exceeding the monetary jurisdiction of the Court, which is transferred to the Court of Common Pleas, shall pay the required costs for such transfer to the Clerk and to the Clerk of the Common Pleas Court.

(B) Venue

The plaintiff in a case that is ordered transferred because of improper venue or other reason shall pay the required costs for such transfer to the Clerk and to the Clerk of the transferee court.

(C) Failure to Comply

Failure to comply with subdivision (A) or (B) of this rule within fourteen (14) days shall be deemed to be a failure to prosecute under Civ. R. 41(B)(1). A Court, in its discretion, may grant additional time, but failure to comply within that extended period shall also be deemed to be a failure to prosecute under Civ.R.41(B)(1).

#### RULE No. 4.10 – DEFAULT

(A) If after the expiration of the answer period, the defendant has failed to plead or otherwise defend, the plaintiff shall file a written motion for default judgment.

(B) After a finding of liability by the assigned judge, a case shall be set for oral hearing on the amount of damages unless the amount of damages sought is liquidated or capable of mathematical computation from documents or affidavits contained in the record. The party seeking an award of damages without oral hearing must attach to the motion for default judgment an affidavit or other appropriate document that supports the judgment amount and which includes an explanation of:

- (1) the amount of the principal balance due;

- (2) if applicable, the amount of any statutory damages and a reference to the statute that authorizes such damages;
- (3) if applicable, the amount of attorney fees and the legal authority for an award of attorney fees;
- (4) if applicable, the basis for an award of prejudgment interest;
- (5) the rate of interest and the date from which interest is calculated.

#### RULE No. 4.11 – NOTICE OF FINAL APPEALABLE ORDERS

Pursuant to Rule 58(B) of the Ohio Rules of Civil Procedure, the Clerk of Court shall send parties notice of all final appealable orders and such notice shall be entered on the docket.

### **Rule 5: Small Claims Proceedings**

#### RULE No. 5.1 – JURISDICTION

(A) Pursuant to R.C. 1925.02, the Small Claims Division of this court established under R.C. 1925.01 has jurisdiction in civil actions for the recovery of taxes and money only, for amounts not exceeding six thousand dollars, exclusive of interest and costs.

(B) The Small Claims Division does not have jurisdiction over:

- (1) Libel, slander, replevin, malicious prosecution, and abuse of process actions;
- (2) Actions on any claim brought by an assignee or agent, except a claim to recover taxes that is filed by any authorized employee of a political subdivision or any authorized officer or employee of the state or a claim filed by a person designated under R.C. 1925.18 to act as the representative of a prosecuting attorney;
- (3) Actions for the recovery of punitive or exemplary damages.

(C) Division (B) of this section does not exclude actions for the recovery of damages specifically authorized by division (B) of either R.C. 1345.09 or 1345.48 from the jurisdiction of the Small Claims Division.

(D) The territorial jurisdiction and venue of the Small Claims Division are concurrent with that of the court under its procedures in ordinary civil actions. Jurisdiction over the person of a defendant may not be obtained by any form of published or substituted service or warrant of attorney.

(E) Any person who files 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.

#### RULE No. 5.2 – REPRESENTATION OF CORPORATE ENTITIES

(A) Pursuant to Ohio Revised Code Section 1925.17, a corporation may file, present or defend a small claims action, but may not conduct any acts of advocacy unless represented by an attorney.

(B) A bona fide officer or salaried employee of a corporation may request a continuance or file an objection in a small claims action.

#### RULE No. 5.3 – PLEADINGS

All pleadings may be written in concise non-technical form. Answers and other responsive pleadings are permitted but not required unless specifically ordered by a judge or a magistrate.

#### RULE No. 5.4 – SMALL CLAIMS TRIALS

(A) A memorandum of the time and place set for trial shall be given to the person signing the claim. The time set for such trial shall not be fewer than fifteen (15) nor more than forty (40) days after commencement of the action. Notice shall be served on the Defendant pursuant to R.C. 1925.04.

(B) A continuance may be granted as provided in BMCR No. 4.8(D), except the number of days in BMCR No. 4.8(D) shall be three (3) days.

(C) All parties shall be prepared to present their case or defense in a concise and organized manner.

#### RULE No. 5.5 – RULES OF EVIDENCE AND PROCEDURE

All proceedings shall be conducted in accordance with Ohio Revised Code Chapter 1925. The Ohio Rules of Evidence do not apply but certain rules of civil procedure do apply (Ohio Revised Code, Section 1925.16). Conduct of proceedings may be informal. No depositions or interrogatories shall be taken in small claims cases except by leave of the court, and all relevant evidence shall be admitted at the discretion of the magistrate.

#### RULE No. 5.6 – TRANSFER OF SMALL CLAIMS CASE

(A) A small claims case shall be transferred to the regular docket of the Court upon motion of the Court, upon motion of a Defendant, or upon the filing of a counterclaim in an amount greater than the jurisdiction of the Small Claims Division. The motion of Defendant shall be accompanied by an affidavit stating that a good defense to the claim exists and setting forth the grounds of defense and the compliance of the Defendant with any terms fixed by the Court.

(B) The failure to file a motion to transfer the case to the regular docket of the Court constitutes a waiver by the Defendant of any right to trial by jury.

(C) If a case is ordered transferred to the regular docket, the Defendant shall deposit the additional costs deposit required by the Court and/or the Clerk and comply with such other orders made by the transferring judge. The payment of said additional cost deposit is required to be paid before any small claims case is transferred to the regular docket.

#### RULE No. 5.7 – SUPREMACY OF THE REVISED CODE

These Rules are suspended to the extent that they are inconsistent with the practice and procedure for small claims set forth in R.C. 1925.

### **Rule 6: Forced Entry and Detainer Matters**

#### RULE No. 6.1 – COMPLAINT IN FORCIBLE ENTRY AND DETAINER

A complaint in Forcible Entry and Detainer shall be filed in accordance with BMCR No. 7.1 and shall contain a reason for the eviction, a copy of the notice given under R.C. 1923.04. When the plaintiff is not an individual, the complaint must be signed by an attorney. Noncompliance with this rule may result in dismissal of the complaint.

#### RULE No. 6.2 – TRIAL IN FORCIBLE ENTRY AND DETAINER

There shall be no "Answer Day" or "Call Day" as the term is used in other civil cases, and the trial date shall be set forth in the summons. Defendant shall be served at least seven (7) days prior to the date set for trial. The plaintiff shall provide a copy of the lease or other written instrument if not previously filed. Motions shall be heard at the trial, unless the assigned judge or magistrate directs otherwise.

#### RULE No. 6.3 – CONTINUANCE

A continuance may be granted as provided in R.C. 1923.08 and BMCR No. 4.8(D), except the number of days in BMCR No. 4.8(D) shall be three (3) calendar days.

#### RULE No. 6.4 – JURY TRIAL IN FORCIBLE ENTRY AND DETAINER

A demand for jury trial shall be made in accordance with BMCR No. 4.6, except that it shall not be made fewer than three (3) days prior to the trial date. BMCR No. 2.9 also applies.

## RULE No. 6.5 – WRITS OF RESTITUTION

(A) If judgment is for plaintiff on the first cause (possession), unless otherwise ordered by the court, the plaintiff may immediately obtain a Writ of Restitution. The service bailiff shall schedule a move-out date within ten (10) days of the plaintiff obtaining such a Writ.

(B) The Clerk shall not issue a writ of restitution or an alias writ of restitution after sixty (60) days from the date a Court ordered restitution of the premises, unless authorized by the Presiding Judge.

## RULE No. 6.6 – MOVE-OUTS

(A) The move-out of the defendant's belongings shall be conducted on the scheduled move-out date under the supervision of the service bailiff in such a manner as the court directs.

(B) The actual physical move-out of defendant's belongings shall be conducted by the plaintiff or the movers hired by the plaintiff.

(C) On the scheduled move-out date, the service bailiff shall meet the plaintiff, or his/her agent, at the premises. The service bailiff shall enter the premises and remove all inhabitants not lawfully entitled to possession. The plaintiff or his agents, pursuant to statute or local ordinance, shall then conduct the actual physical move-out and place the items in an appropriate location.

(D) If the volume or nature of the contents of the premises is such that removal of the contents would create a health or safety hazard, the move-out may be canceled and a new date for move-out scheduled with the service bailiff.

(E) If special waste collection must occur in conjunction with the move-out, the cost of such collections are borne by the plaintiff, though the plaintiff may plead such costs as damages.

## **Rule 7: Records**

### RULE No. 7.1 – COURT REPORTERS

There is no official court reporter for the Barberton Municipal Court. The responsibility of arranging for the attendance of a court reporter shall rest with the attorney and/or party desiring the same.

### RULE No. 7.2 – RECORDING OF PROCEEDINGS

A request for the recording of any proceeding shall be made in writing and directed to the assigned judge prior to the commencement of such proceeding.

#### RULE No. 7.3 – RETENTION OF ELECTRONIC RECORDINGS

Electronic recordings, except in cases of felony arraignment, shall be erased one (1) year after the date of the recording, except when a transcript has been prepared from the recording. When a transcript has been prepared, then the recording shall be erased two (2) years from the date of the recording. Electronic recordings from cases of felony arraignment shall be erased after six (6) months from the date of the recording.

#### RULE No. 7.4 – DISPOSITION OF FILES, RECORDS RETENTION, DESTRUCTION, AND FILE MAINTENANCE

(A) The Clerk and Court have adopted and follow the Record Retention Schedule adopted by Administrative Order incorporating Rule 26 of the Rules of Superintendence for the Courts of Ohio.

(B) Court files may be examined at the office of the Clerk of Court under the supervision of the clerk or deputy clerk. Upon request, copies of documents will be provided at a cost per the Barberton Municipal Civil Cost Schedule.

(C) No document may be removed from a court file.

(D) No file may be removed from the clerk's office without the consent of the judge or clerk. Files must be promptly returned to the clerk's office and may not be removed from the court building.

### **Rule 8: The Judiciary and the Assignment of Cases**

#### RULE No. 8.1 POWERS OF THE COURT

(A) In any action or proceeding of which the court has jurisdiction, the court or any judge of the court has the power to do all of the following:

(1) Issue process, preserve order, punish contempts, summon and impanel jurors, refer matters to a magistrate, set aside a verdict, grant a new trial or motion in arrest of judgment, vacate or modify a judgment, suspend execution of sentence upon filing of notice of appeal, admit the defendant to bail, fix the amount of bond and approve the sureties, inquire into the financial responsibility of proposed sureties on all bonds in both civil and criminal actions or proceedings and, on the motion of any party or on its own motion, require security or additional surety, order bench warrants, and to exercise any

other powers that are necessary to give effect to the jurisdiction of the court and to enforce its judgments, orders, or decrees;

(2) Issue any necessary orders in any proceedings before and after judgment, for attachment or garnishment, arrest, aid of execution, trial of the right of property, revivor of judgment, and appointment of a receiver of personal property, for which authority is conferred upon the courts of common pleas or a judge of the court of common pleas;

(3) Hear and determine questions of exemptions upon application or action of any party to a pending cause;

(4) Control and distribute all property or the proceeds of property that are levied upon or seized by any legal process issuing from the court and that may come into the hands of its officers, and to order immediate sale of any property of a perishable nature that may come into the hands of an officer of the court upon any process issuing from the court. Any money realized from the sale of property of a perishable nature shall be deposited with the clerk until distributed by order of the court.

(B) The judges of this court have the following powers and duties:

(1) To perform marriage ceremonies anywhere in Ohio, take acknowledgment of deeds and other instruments, administer oaths, and perform any other duties that are conferred upon judges of county courts.

(2) To adopt, publish, and revise rules for the regulation of the practice and procedure of the court, and for the selection and manner of summoning persons to serve as jurors in the court;

(3) To adopt, publish, and revise rules relating to the administration of the court.

#### RULE No. 8.2.1 – PRESIDING JUDGE

(A) The judges of this Court shall, by majority vote, elect one of their members to serve as the Presiding Judge. The Presiding Judge shall serve a Term of not less than one year nor more than three years, the length of such Term to be stated in the appointing entry. The Term shall begin on January 1<sup>st</sup> of the year immediately following the designation or election. A Presiding Judge may serve consecutive Terms.

- (B) If the judges of a court are unable to elect a presiding judge of the court pursuant to division (A) of this rule, the Presiding judge shall be determined as follows:
- a. The judge having the longest total service on the court shall serve as the Presiding Judge;
  - b. If two or more judges have equal periods of total service on the court, the judge having the longest total service as an Ohio judge shall serve as the Presiding Judge;
  - c. If two or more judges have equal periods of total service as an Ohio judge, the judge having the earliest date of admittance to the practice of law in Ohio shall serve as the Presiding Judge;
  - d. If two or more judges were admitted to the practice of law in Ohio on the same date, the Chief Justice of the Supreme Court shall designate one of the judges of the court to serve as the Presiding Judge.
- (C) The Presiding Judge will call and chair at least one meeting each month to be held the first Tuesday of each month, or as agreed. The Presiding Judge or a designated representative may represent the Court at all public or civic functions occurring during the Presiding Judge's term of office.

#### RULE No. 8.2.2 –ADMINISTRATIVE JUDGE

- (A) The judges of this Court shall, by majority vote, elect one of their members to serve as the Administrative Judge on or before December 31 of the year preceding the term. The Administrative Judge shall serve a Term of not less than one year nor more than three years, the length of such Term to be stated in the appointing entry. The Term shall begin on January 1<sup>st</sup> of the year immediately following the designation or election. A Presiding Judge may serve consecutive Terms.
- (B) If the judges of a court are unable to elect a presiding judge of the court pursuant to division (A) of this rule, the presiding judge shall be determined as follows:
- a. The judge having the longest total service on the court shall serve as the Administrative Judge;
  - b. If two or more judges have equal periods of total service on the court, the judge having the longest total service as an Ohio judge shall serve as the Administrative Judge;
  - c. If two or more judges have equal periods of total service as an Ohio judge, the judge having the earliest date of admittance to the practice of law in Ohio shall serve as the Administrative Judge;
  - d. If two or more judges were admitted to the practice of law in Ohio on the same date, the Chief Justice of the Supreme Court shall designate one of the judges of the court to serve as the Administrative Judge.

- (C) The Administrative Judge shall do all of the following:
- a. Be responsible for and exercise control over the administration, docket, and calendar of the court or division;
  - b. Be responsible to the Chief Justice of the Supreme Court in the discharge of the administrative judge's duties, for the observance of the Rules of Superintendence for the Courts of Ohio, and for the termination of all cases in the court or division without undue delay and in accordance with the time guidelines set forth in Sup.R. 39;
  - c. Pursuant to Sup.R. 36, assign cases to individual judges of the court or division or to panels of judges of the court in the court of appeals;
  - d. Assign cases to particular sessions pursuant to Sup.R. 36;
  - e. Require timely and accurate reports from each judge of the court or division concerning the status of individually assigned cases and from judges and court personnel concerning cases assigned to particular sessions;
  - f. Timely file all administrative judge reports required by the Case Management Section of the Supreme Court;
  - g. Develop accounting and auditing systems within the court or division and the office of the clerk of the court that ensure the accuracy and completeness of all required reports;
  - h. Request, as necessary, the assignment of judges to the court or division by the Chief Justice or the presiding judge of the court;
  - i. Administer personnel policies established by the court or division;
  - j. Pursuant to Sup.R. 19(B), notify the Office of Attorney Services of the Supreme Court of the appointment or termination of appointment of a magistrate of the court or division;
  - k. Perform other duties as required by the Revised Code, the Rules of Superintendence of the Courts of Ohio, local rules of the court or division, or the Chief Justice;
- (D) Perform any other duties in furtherance of the responsibilities of the administrative judge.
- (E) The Administrative Judge may designate another judge of the Court to serve in his or her absence.

#### RULE 8.2.3 PRESIDING JUDGE SERVICE AS ADMINISTRATIVE JUDGE

A Presiding Judge of the Court may serve as an Administrative Judge of the Court pursuant to Sup.R. 4.

#### RULE No. 8.3 – MAGISTRATES

(A) The Court shall appoint one or more magistrates to hear the actions authorized by Superintendence Rule No. 19.1. In addition, any Judge with the consent of the Presiding Judge may refer other appropriate matters to a magistrate.

(B) The magistrate presiding in Traffic Court is designated an officer of the court and is authorized to issue warrants and summons. Crim.R.4(A)(1)

(C) A magistrate shall prepare a magistrate's decision respecting any matter referred under paragraph (A) herein. Such a decision shall be sufficient for a judge to make an independent review of the magistrate's findings and conclusions. A magistrate's decision shall be in writing, identified as a magistrate's decision in the caption, signed by the magistrate, filed with the clerk, and served by the clerk on all parties or their attorneys no later than three (3) days after the decision is filed. A magistrate's decision may be general unless findings of fact and conclusions of law are timely requested by a party in accordance with the provisions of Civ. R. 53(D)(3)(a)(ii) or otherwise required by law.

(D) Objections to magistrate's decision shall be made in accordance with the provisions of Civ. R. 53(D)(3)(b). In considering objections to magistrate's decision the Court shall only review evidence that was presented at the hearing before the magistrate. After considering the decision the Court may adopt the decision, sustain the objection, conduct an evidentiary hearing or remand the case to the magistrate for further fact finding.

(E) The provisions of Civ. R. 53 govern the appointment, powers, and conduct of magistrates. In any conflict between this Rule and Civ. R. 53, Civ. R. 53 shall prevail.

#### RULE No. 8.4 – ASSIGNMENT OF CASES TO JUDGES

(A) All cases shall be assigned to a judge by lot as provided in this Rule. The case file and lot card shall show the date the lot was assigned, the lot number, and who pulled the lot. Lot cards shall be pulled in successive order without skipping. The cases so assigned shall include:

(1) Civil Cases.

Civil cases, except as heard under BMCR No. 8.3, in which a motion, other than for default judgment, answer, or other pleadings have been filed.

(2) Criminal Misdemeanor Cases.

Criminal Misdemeanor cases, other than traffic cases, upon a "Not Guilty" plea, or upon the filing of a motion, except as provided in paragraph (5) herein.

(3) Traffic Misdemeanor Cases.

Traffic misdemeanor cases, other than minor misdemeanors, upon a "Not Guilty" plea, or upon the filing of a motion, except when the Traffic Magistrate may elect to grant a continuance for one week or less and retain the case for that period.

(4) Traffic Minor Misdemeanor Cases.

Traffic minor misdemeanor cases, when the Defendant has refused to waive a trial by a judge or when the magistrates are unavailable to hear the case.

(5) Felony Cases.

Felony cases, the judge responsible for Initial Appearance may elect not to lot a case which is a companion case to a felony case pending grand jury presentation or a preliminary hearing. If the judge finds probable cause as to the felony, or during the period of grand jury review, then as provided in Crim.R.8(A), the judge may elect to refer the companion case with the felony case as provided in Crim.R.8(A). However, if the charge is under an ordinance, then it shall be assigned by lot unless the judge directs that a corresponding complaint be executed charging a violation of a statute.

(B) Multiple Offenses

When a Defendant is, or multiple Defendants are, charged as a result of a single event with the same or similar misdemeanors, or in cross-complaints, or with multiple offenses, then pursuant to Crim.R. 8 and 13 the case shall be assigned to one judge by one lot. The criminal cases of a Defendant charged with multiple unrelated offenses may be assigned to one judge by lot as justice and judicial economy require.

(C) Succession of Judges

The clerk of courts shall immediately, upon the succession of a sitting judge by a newly elected or appointed judge, transfer all pending cases of the sitting judge to the new judge's docket.

(D) Case File Time Limit.

The case file shall be brought to the assigned judge within 24 hours of assignment, unless otherwise directed by the judge.

(E) Case Records.

The Case Management Office shall keep record of all cases assigned to each judge and provide each with a current listing of those cases so assigned and pending. This listing shall be provided three times a month. M.C.Sup. R.3.

## RULE No. 8.5 – PRIORITY OF SCHEDULING

(A) Actions shall be scheduled for trial in their numerical order so far as possible, except that the following matters shall have priority for trial:

- (1) Cases on trial which have gone over from the preceding day.
- (2) Cases which the court may advance for trial.
- (3) Cases involving the liberty of a person.
- (4) Cases for wages.
- (5) Cases for replevin.
- (6) Cases for attachment.

(B) Pursuant to Sup. R. 36(C)(2) of the Rules of Superintendence for Ohio Courts, the following types of cases shall immediately be assigned to a judge upon the filing of the required motions:

(1) Cases involving attachment or garnishment before judgment.

(2) Cases involving immediate seizure in a replevin action.

(C) Priority of normal assignment shall be as follows (subject to R.C. 2945.71):

(1) Criminal/traffic jury trials;

(2) Criminal/traffic bench trials;

(3) ALS appeals, BMV Administrative Appeals, and/or Alternative Motions for Limited Driving Privileges;

(4) Civil jury trials;

(5) Civil bench trials;

(6) Pre-trials – criminal/traffic and civil;

(7) Motions (with request for oral hearing).

#### RULE No. 8.6 – CASES THAT HAVE BEEN ASSIGNED

(A) A judge assigned to a case shall be responsible for the determination of every issue and proceeding in that case until its termination. Emergency orders and orders as of right, including requests for continuance, shall be submitted to the judge to whom the case is assigned. If the assigned judge is unavailable, the matter may be submitted to and determined by the Presiding Judge, if in the opinion of the Presiding Judge undue prejudice would be caused by not considering the matter.

(B) Cases voluntarily dismissed under Civil Rule 41 and subsequently re-filed shall be assigned to the same judge to whom the case was originally assigned. Each Plaintiff who re-files a case voluntarily dismissed under Civil Rule 41 shall specify that the action is a re-filing by stating the prior case number and assigned judge in the caption of the re-filed complaint.

#### RULE No. 8.7 – CONSOLIDATION AND REASSIGNMENT OF CASES

(A) Related Case.

If a case assigned under BMCR No. 8.4 is found to be related to another case or cases, or if there is a companion case which presents substantially the same issues for determination, such fact shall be called to the attention of the Presiding Judge by the submission of a related case transfer entry, signed by the transferring judge and the transferee judge. If the related case transfer entry

has been approved by the transferring judge and the transferee judge, the Presiding Judge shall approve the same and reassign such case or cases to the transferee judge. The Presiding Judge may transfer the case without the approval of the transferee judge when he deems such transfer appropriate. As used herein, the transferee judge shall be the judge with the lowest lot number of the companion case(s) unless the affected judges agree otherwise.

**(B) Disqualification.**

If, for any reason, a judge is disqualified to hear an assigned case, that judge shall sign and submit a case transfer entry to the Presiding Judge. If approved by the Presiding Judge, a new lot shall be drawn and that case shall be assigned to another judge. The transferring judge shall then receive the next case that would have been assigned by lot to the transferee judge.

**(C) Illness or Absence.**

In the event of the protracted illness of a judge, or the unduly prolonged time for trial of a case assigned to a judge, the Presiding Judge may order the reassignment of cases assigned to that judge to another judge or to a visiting judge, as the Presiding Judge may determine.

**(D) General.**

The Presiding Judge may reassign any case in the furtherance of justice. A judge appointed or elected to succeed another shall have the cases assigned to his or her predecessor. When there is a transfer of a case, the case file and the other records shall be changed to reflect the reassignment to the transferee judge.

## **Rule 9: Jury Management Plan**

### **RULE No. 9.1 – INTRODUCTION**

This plan is being implemented to comply with the mandate of the Ohio Supreme Court that each municipal court develop and implement a jury management plan prior to July 1, 1994.

### **RULE No. 9.2 – JURY ELIGIBILITY AND SELECTION**

**(A)** Jury service is an obligation of all qualified citizens of Barberton, Green, Norton, Copley, New Franklin, Coventry, and Clinton Ohio, hereinafter referred to as the court's jurisdiction.

**(B)** The opportunity for jury service will not be denied or limited on the 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 of the Barberton Municipal Court. (Ohio Jury Management Standard 1).

**(C)** The judges of the Barberton Municipal Court shall administer the jury assembly process. These officials may appoint clerical personnel to aid in the administration of the jury system.

Any person appointed to administer the jury assembly process is a jury administrator. (Ohio Jury Management Standard 10).

(D) The selection of jurors shall conform with the laws of Ohio. Any contrary provision in these rules is suspended to the extent they are inconsistent with those laws.

#### RULE No. 9.3 – SUMMONING PROSPECTIVE JURORS

(A) Pursuant to BMCR Nos. 2.9, 3.8, 4.6 prospective jurors shall be summoned only on the filing of a written jury demand or under circumstances when the Defendant is entitled to a jury trial as a matter of right.

(B) Every effort shall be made to resolve cases prior to summoning juries. A jury panel shall not be summoned unless it appears that there is a substantial likelihood of trial.

#### RULE No. 9.4 – VOIR DIRE

(A) Examination of prospective jurors shall be limited to matters relevant to the matter before the Court and to determine the juror's fairness and impartiality.

(B) All prospective jurors shall be placed under oath in accordance with the Ohio Revised Code.

(C) To reduce the time required for voir dire, basic background information regarding prospective jurors shall be made available to counsel in writing for each party on the day on which jury selection is to begin.

(D) In criminal cases, the voir dire process shall be held on the record. In civil cases, voir dire may be held on the record. Voir dire may be conducted outside the presence of other jurors in order to protect juror privacy, or to avoid juror embarrassment.

(E) The judge shall ensure that the privacy of prospective jurors is reasonably protected, and the questioning is consistent with the purpose of the voir dire process (Ohio Jury Management Standard 7). In the event there exists a potential for sensitive or potentially invasive questions, the Court or the parties may request a hearing preceding voir dire to consider these questions.

(F) The Court may conduct a preliminary voir dire examination concerning basic and relevant matters.

(G) Counsel shall be permitted a reasonable period of time to question panel members. Counsel or parties shall conform their voir dire questioning to the following rules:

(1) The case may not be argued in any way while questioning the jurors.

(2) Counsel may not engage in efforts to indoctrinate jurors.

(3) Jurors may not be questioned concerning anticipated instructions or theories of law. This does not prevent general questions concerning the validity and philosophy of reasonable doubt or the presumption of innocence.

(4) Jurors may not be asked what kind of verdict they might return under any circumstance.

(5) Questions are to be asked collectively of the entire panel whenever possible.

#### (H) Challenges for Cause

If it is determined by the Court during the voir dire process that an individual is unable or unwilling to sit in a particular case fairly and impartially, the individual may be removed from the panel for cause. Ohio Revised Code 2313.17 or the Ohio Criminal Rule of Procedure 24(C) set forth additional cause challenges which may be made against potential jurors.

(1) Such motion for removal for cause may be made by counsel, a party if unrepresented, or upon the motion of the Court.

(2) There shall be no limit to challenges for cause.

(3) Unless otherwise agreed, all challenges for cause shall be made outside the hearing of prospective jurors.

#### (I) Peremptory Challenges

Peremptory challenges shall be exercised alternately as presently established by Revised Code 2945.23, Civil Rule 47, and Criminal Rule 24, unless prior to trial the parties agree on the record to another method.

(1) Unless otherwise agreed, all challenges shall be made in open court. In special circumstances, challenges may be made outside the hearing of the prospective jurors.

(2) Peremptory challenges shall be limited to that number as established by Ohio Rule of Civil Procedure 47(C) and Ohio Rule of Criminal Procedure 24(D).

#### RULE No. 9.5 – JURY SIZE

In criminal cases, the jury shall consist of eight regular jurors and possibly one alternate juror. In civil cases, the jury shall consist of eight regular jurors and possibly one alternate juror, unless by agreement, the parties stipulate to a lesser number. In special circumstances, additional alternate jurors may be selected.

#### RULE No. 9.6 – JURY SUPERVISION AND CONFIDENTIALITY

(A) Upon appearance for service, all prospective jurors shall be placed under the supervision of assigned personnel and shall direct any questions or communications to such court personnel for appropriate action.

(B) Personal information relating to a juror or prospective juror not disclosed in open court is confidential, other than for the use of the parties and counsel. The court shall maintain confidentiality to the extent consistent with constitutional and statutory rights of the parties, and with Ohio's Public Records laws. (Ohio Jury Management Standard 7 D).

#### RULE No. 9.7 – PRELIMINARY INSTRUCTIONS

(A) The Court may give preliminary instructions to all prospective jurors, as well as additional instructions following the impaneling of the jury to explain the jury's role, trial procedures of the Court, along with other basic and relevant legal principles as the Court deems necessary and appropriate.

(B) In particular, the court shall instruct the jury before opening statements by reading appropriate instructions that shall include at least the following:

- (1) The issues for trial,
- (2) The credibility of witnesses and the manner of weighing the testimony to be received,
- (3) The personal knowledge procedure under BMCR No. 9.8,
- (4) The order in which the case will proceed,
- (5) That jurors are not permitted to discuss the evidence among themselves in the jury room during recesses from trial. The court shall admonish jurors not to discuss the case with anyone other than fellow jurors in their jury deliberation when all has been presented to them, after the instructions. {See 2014 Draft Rule 21 of Appendix A}

#### RULE No. 9.8 – PROCEDURE FOR JUROR WITH PERSONAL KNOWLEDGE IN CRIMINAL CASES

If the court receives information that a juror has personal knowledge about the case, the court shall examine the juror under oath, concerning that knowledge, in the presence of the parties and outside the presence of the other jurors. If the court finds that the juror has personal knowledge of a material fact, the juror shall be excused, and the court shall replace that juror with an alternate. If there is no alternate juror, then the court shall discharge the jury without prejudice, unless the parties agree to submit the cause to the remaining jurors.

#### RULE No. 9.9 – INSTRUCTIONS PRIOR TO JURY DELIBERATIONS

Upon the completion of the case and prior to jury deliberations, the Court shall instruct the jury on the law and the appropriate procedures to be followed during the course of deliberations. In accordance with the Civil and Criminal Rules of Procedure, the parties or their counsel may request that special instruction be given to the jury. These instructions shall be part of the record.

A final jury charge may in the discretion of the judge be committed to writing, and may be provided to the jury for its use during deliberation.

#### RULE No. 9.10 – COMMUNICATIONS WITH THE JURY

All communications between the judge and the members of the jury panel, from the time of reporting to the court through dismissal, shall be committed to writing or placed on the record in open court. Counsel for each party shall be informed of any communication and shall be given the opportunity to be heard as to such communication. Under no circumstances shall counsel, a party, or other witnesses, have any contact with jurors.

#### RULE No. 9.11 – JURY DELIBERATIONS

(A) All jury deliberations shall be conducted in the jury deliberation room. Jury deliberation rooms shall include space, furnishings and facilities conducive to reaching a fair verdict.

(B) Court personnel shall endeavor to secure the safety of all prospective jurors and shall arrange and conduct all activities so as to minimize contact between jurors, parties, counsel and the public. Upon the commencement of deliberations, all jurors shall remain in the care of court personnel and shall not be permitted to leave the court without permission.

(C) Deliberations shall not continue 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. Jurors may be consulted prior to any decision.

(D) If jury deliberations are halted, jurors shall be permitted to be separated, unless for good cause shown, the Court finds that sequestration is necessary. If a jury is sequestered, the Court shall undertake the responsibility to oversee the conditions of sequestration and the transportation of all jurors.

(E) If the jury advises the court that it has reached an impasse in its deliberations, the court may inquire of the jurors to determine whether and how the court and counsel can assist them in their deliberative process, provided that the court so inquires only in the presence of counsel and, in a criminal case, the parties. After receiving the jurors' response, if any, the court, after consultation with counsel, may direct that further proceedings occur as appropriate.

#### RULE No. 9.12 – VERDICTS

(A) Upon reaching a verdict, all jurors shall return to the courtroom where the verdict or verdicts shall be read in open court. Upon the reading of the verdict, in criminal cases, either party may request that the jury be polled.

(B) In criminal cases, the verdict shall be unanimous.

(C) In civil cases, the verdict shall conform to Ohio law.