

**IN THE NEWTON FALLS MUNICIPAL COURT
TRUMBULL COUNTY, OHIO**

RULES OF PRACTICE AND CASE MANAGEMENT

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ORDER

The following Rules, promulgated by the Newton Falls Municipal Court, Trumbull County, Ohio, shall be effective on January 24, 2011, pursuant to Article IV, Section 5 (5), Ohio Constitution and Rule 18 of the Rules of Superintendence for Municipal and County Courts and to provide for efficient and expeditious management of business and caseload before this Court.

As used in these Rules a reference to "Civil Rules" is a reference to the Ohio Rules of Civil Procedure; a reference to "Criminal Rules" is a reference to the Ohio Rules of Criminal Procedure; a reference to the "Rules of Superintendence" is a reference to the Rules of Superintendence of Municipal and County Courts of Ohio; and, a reference to "Traffic Rules" is a reference to the Rules of Practice and Procedure in Traffic Cases.

RULE 1 – CITATIONS OF RULES

(A) These Rules shall be known as the Newton Falls Municipal Court Rules of Practice and may be cited as "NFMC Rule_____".

(B) In the event of a conflict between these rules and the Rules of Superintendence, the Civil Rules, the Criminal Rules and the Traffic Rules, the State rules shall govern.

RULE 2 – HOURS OF OPERATION

(A) The hours of holding regular sessions of the Court shall be from 8:00 A.M. to 4:00 P.M., Monday through Friday, except those days designated by law as holidays or by Entry signed by the Judge.

RULE 3 – CONDUCT AND DECORUM IN THE COURTROOM

(A) On opening and closing of any court session, all persons in the courtroom shall stand.

(B) All persons in the courtroom shall conduct themselves in accordance with, and in such a manner as not to interfere with or obstruct judicial activities and proceedings.

(C) No smoking shall be permitted in the building housing the Court and smoking outdoors shall be in compliance with the requirements set forth in R.C. 3794.

(D) All persons appearing before the court shall, as far as practicable, appear in appropriate dress. The Court expects that counsel will call this rule to the attention of clients and witnesses.

(E) Children must be monitored by an adult and shall be removed from the courtroom if their behavior does not comply with the requirement of the Court.

(F) No food or drink shall be permitted in the courtroom, nor animals, unless trained to assist a handicapped person and their presence is not disruptive to the proceedings.

(G) Cell phones and pagers shall be turned off in the courtroom. No contraband shall be permitted, as defined by the Court's Security Rules. No packages or other containers shall be taken into the courtroom unless inspected by court personnel and permitted as necessary to the proceedings or for other reasons specifically found by the Court.

(H) All persons awaiting a hearing or other proceeding shall wait in the courtroom and not in the hallways, stairways or other areas of the building unless directed to do so by the Bailiff or Court Security Officer.

(I) No hats or other headwear shall be worn in the courtroom unless part of the person's religious beliefs and approved by the Court.

RULE 4 – OFFICIAL NOTICE OF CIVIL AND CRIMINAL PROCEEDINGS

Official and complete notification of all counsel of record of assignment of any case for any purpose whatsoever shall be one of the following:

(A) Written notice hand delivered to the party or counsel of record;

(B) Ordinary mail service of written notice to counsel of record for each party and unrepresented parties by the Clerk to the address indicated for such attorney or party on the pleadings as filed.

(C) Where ordered by the Judge, telephone notification of counsel or unrepresented parties shall be sufficient notice.

RULE 5 – REPRESENTATION OF CLIENTS

(A) An attorney, appointed by this Court to represent an indigent charged with an offense, shall not receive any fees for professional services without first securing approval of the Court and having been discharged as appointed counsel.

(B) An attorney, once having entered an appearance as counsel of record for any civil party or criminal defendant, shall not be permitted to withdraw as such counsel without court approval. Said counsel shall first move the Court in writing, certification for service on the client, and shall state, with particularity, the cause or causes upon which counsel bases the request to withdraw. Counsel shall appear at all hearings scheduled in the matter until granted permission by the Court to withdraw as counsel.

RULE 6 – RECORD OF PROCEEDINGS

(A) Proceedings in this Court are digitally recorded. Upon written request, the Court will provide a CD recording of such proceedings for transcription and submission to the Court for approval as a transcript of the proceedings. The cost of such CD shall be as periodically ordered by the Court.

RULE 7 – FILINGS/FACSIMILE (FAX)

(A) All papers filed with the Clerk of Court in any contested action or proceeding shall be typed on 8 ½" x 11" white paper and filed under the style and number of the cause, and shall include the name of the judge to which the case is assigned, a notation as to the type of the case, a short description as to the type of pleading being filed and any other information required by the applicable civil or criminal rules. All papers filed shall remain in the Clerk's office, except as required by the Court.

(B) FAX FILING: Subject to the following provisions, parties may comply with these rules via fax filing at **(330) 872-3899**:

(C) FEE AND LENGTH OF DOCUMENT: There is a fee of \$0.50 per page for all facsimiles received and shall not exceed 10 pages. If the facsimile exceeds 10 pages, it will not be accepted by facsimile and will need to be sent by regular US Mail. In addition, there will be a \$2.50 fee for all outgoing facsimiles. The sender shall not transmit service copies by facsimile;

(D) ORIGINAL FILING: All documents and pleadings may be filed with the Newton Falls Municipal Court by fax as follows:

(1) Documents or pleadings WHICH REQUIRE A FILING FEE pursuant to Newton Falls Municipal Court's schedule of fees will not be considered "filed" nor docketed UNTIL THE FILING FEE IS RECEIVED by the office of the Clerk of the Newton Falls Municipal Court.

(2) Any person, attorney, or entity who files by fax a document or pleading with the Court attests thereby that the document or pleading transmitted is the original document or pleading.

(3) Any person, attorney, or entity who files by fax a document or pleading with the Court containing a signature attests thereby that the signature is genuine and that the document or pleading has not been altered since the signature was affixed.

(4) A fax duplicate in compliance with these rules shall be accepted for filing to the same extent as an original unless:

(a) a genuine question is raised as to the authenticity of the original, or

(b) the Newton Falls Municipal Court determines within its discretion that the filing of the original document or pleading will be required

(5) The time of filing of a subsequent original will relate back to the filing of the initial faxed duplicate unless the Court determines that Rule 2.01(b) or Rule 2.01 (c) has been violated.

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

(1) the name of the court;

(2) the title of the case;

(3) the case number; (except for initial filings);

(4) the assigned judge (except for initial filings);

(5) the title of the document being filed (e.g. Defendant Jones' Answer to Amended Complaint; Plaintiff Smith's Response to Defendants' Motion to Dismiss; Plaintiff Smith's Notice of Filing Exhibit "G" to Plaintiff Smith's Response to Defendants' Motion to Dismiss);

(6) the date of transmission;

- (7) the transmitting fax number;
- (8) an indication of the number of pages included in the transmission, including the cover page;
- (9) the name, address, telephone number, fax number, Supreme Court registration number, if applicable, and e-mail address of the person filing the fax document if available.

(F) If a document is sent by fax to the Clerk of Court without the cover page information listed above, the Clerk may, at its discretion;

- (1) enter the document in the Case Docket and file the document; or
- (2) deposit the document in a file of failed faxed documents with a notation of the reason for the failure; in this instance, the document shall not be considered filed with the Clerk of Court

The Clerk of Court will make ONE attempt to send notice to the sending party of a failed fax filing. However, the clerk will utilize the address provided by the sending party or found in the local attorney directory; the sending party is responsible for providing accurate, up to date contact information.

(G) EXHIBITS: Each exhibit to a facsimile produced document that cannot be accurately transmitted via facsimile transmission for any reason must be replaced by an insert page describing the exhibit and why it is missing. Unless the court otherwise ordered, the missing exhibit shall be filed with the court, as a separate document, not later than five (5) court days following the filing of the facsimile document. Failure to file the missing exhibits as required by this paragraph may result in the court striking the document and/or exhibit and/or issuing a ruling as if the document or exhibit did not exist.

Any exhibit filed in this manner shall be attached to a cover sheet containing the caption of the case which sets forth the name of the court, title of the case, the case number, name of the judge and the title of the exhibit being filed (e.g. Plaintiff Smith's Notice of Filing Exhibit "G" to Plaintiff Smith's Response to Defendants' Motion to Dismiss), and shall be signed and served in conformance with the rules governing the signing and service of pleadings in this court.

(H) TIME OF FILING – RECEIPT VERIFICATION:

- (1) Subject to the provisions of these rules, (See Rule 11(C)), all documents sent by fax and received by the Clerk shall be considered filed with the Clerk of Courts as of the date and time automatically imprinted by the fax machine of the Clerk of Courts. The fax machine will be available to receive facsimile filings on the basis of 24 hours per day, seven days per week, including holidays.
- (2) Fax filings may NOT be sent directly to the court for filing but may only be transmitted directly through the facsimile equipment operated by the Clerk of Courts.
- (3) The Clerk of Courts may, but need not, acknowledge receipt of a facsimile transmission.

(4) The risks of transmitting a document by fax to the Clerk of Courts shall be borne entirely by the sending party. Anyone using fax filing is urged to verify receipt of such filing by the Clerk of Court through whatever technological means available.

RI © 8 - FILING FEES

(A) No civil action or proceedings shall be accepted by the Clerk of Courts unless there is first deposited a sum not less than the filing fee ordered by the Judge. Such prescribed fees may be amended from time to time by order of the Court.

(B) All entries or orders of dismissal terminating any case shall contain a determination as to the responsibility for court costs. If no determination is included in the order, costs shall be borne by the Plaintiff.

(C) Demands for juries shall be made in writing and, in civil cases, accompanied by the jury deposit required by the Court's schedule of costs.

RULE 9 – CONTINUANCES

(A) No party shall be granted a continuance of a trial or hearing without first submitting a written motion to the Judge stating the reason for such request. The Court will not grant a continuance without first setting a new and definite date for trial or hearing.

(B) Conflict of Trial Assignment Dates: 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 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 shall have priority over civil cases assigned for trial. The Bailiff shall note in the case notes when he contacts counsel and clears a trial date on counsel's calendar. The granting of any other request for continuance of a scheduled trial shall be a matter within the discretion of the Judge of this court.

(C) Motions for Continuance within seven (7) days of trial shall be denied, except upon showing of exigent circumstances.

(D) Stipulated continuances shall not be granted as a matter of course. The Judge's approval must be obtained and noted before such a continuance is granted.

RULE 10 – TRIAL BY JURY

(A) Except as specified in Special Proceedings per NFMC Rule 16, demands for jury trials shall be made in writing in conformance with the applicable Civil or Criminal Rules of Procedure. Any required deposit for costs under the Court fee schedule shall be deposited as ordered in the pretrial order of the Court.

(B) The Court must be notified by the parties or either counsel no later than 12:00 noon on the last working day prior to a jury trial if the matter has been resolved and will not proceed to a jury trial. Failure to do so will require the payment of one day's jury costs.

(C) When a jury trial is held, the non-prevailing party shall be responsible for all jury costs unless the Court provides otherwise.

RULE 11 – MANNER OF SELECTING JURIES

(A) Jurors for the Newton Falls Municipal Court shall be chosen and summoned as provided in the Ohio Revised Code. Selection shall be made from residents within the Court's jurisdiction by the Jury Commissioners according to law. Compensation for such commissioners shall be as Ordered by the Court.

RULE 12 – JOURNAL

(A) The "Journal" of this Court for all entries in specific civil and criminal cases numbered and entered in the Court records shall be the record of such case as entered in the Court's computer records. Entry of such Orders and Entries in said computer records shall constitute "journalization" for the purposes of §1901.31 of the Revised Code. Entries pertaining to matters other than specific cases shall be recorded in the Court's "Journal Book", as maintained by the Clerk of Courts to record general Orders of the Court.

(B) When ordered or directed by the Court, counsel for the party in whose favor an entry, judgment or decree is entered in a civil case shall, within ten (10) days thereafter, unless the time is extended by the Court, prepare and file a proper Judgment Entry and submit same to counsel for the opposite party or parties, who shall approve or reject same within three (3) days after its receipt and may, in the case of rejection, file objections thereto in writing with the Court. In the event counsel fails to prepare and present a Judgment Entry within the time required, the Court may prepare and journalize such Entry in its discretion.

(C) In the event a matter set for trial is settled, counsel for the parties shall immediately notify the court and shall prepare and sign a judgment entry. Such entry shall be presented to the Court within ten (10) days of said notification. Should counsel fail to present an entry within such time, the Court may, in its discretion, use its own entry to be filed, costs to the Plaintiff. (See Rule 8(B)).

RULE 13 – CASE MANAGEMENT IN CIVIL CASES

(A) Purpose: The purpose of this Rule is to establish, pursuant to the Rules of Superintendence Rule 18, a system of civil case management which will achieve prompt and fair disposal of civil cases.

(B) Scheduling of Events: The scheduling of a case begins when a civil case is filed. Thereafter, the case is managed in the following clerical steps and judicial steps:

(C) Clerical steps:

(1) Summons shall be served in accordance with the Rules of Civil Procedure. In the event there is a failure of service, the Clerk shall notify counsel immediately. If counsel fails to obtain service within six (6) months from the date the cause of action is filed, the Clerk shall notify counsel that the case will be dismissed within ten (10) days unless good cause is shown to the contrary.

(2) Upon perfection of service, after the lapse of 28 days, the Clerk shall notify Plaintiff or counsel of default in answer, and that Plaintiff or counsel shall submit the proper pleadings and a default entry within thirty (30) days. Failure to file said pleadings and entry may result in a *sua sponte* dismissal without prejudice for failure to prosecute.

(3) After any responsive pleading is filed, the matter will be set for pretrial conference and the clerk shall immediately forward such pleadings and the file to the Judge so that the matter can be set for any other hearing or hearings that the Judge deems necessary.

(4) Notice of pre-trial conference or motion hearing shall be given to all counsel of record by mail, by hand, and/or by telephone. No continuance will be granted except upon written motion for continuance and upon a showing of good cause and shall not be effective until granted by the Judge. (See NFMC Rule 9).

(D) Judicial Steps:

(1) Initial Pretrial Hearing: At the initial pretrial hearing, the parties/counsel will confer with the Court regarding setting of discovery deadlines, motion hearings, final pretrial and trial dates and to discuss any potential resolution.

(2) Motions: All Motions must be in writing and accompanied by a proposed Judgment Entry should such Motion be granted. Opposing counsel shall answer in a like manner within fourteen (14) days of the filing of such Motion. All Motions will be considered submitted at the end of such fourteen (14) day period unless a party seeks and receives leave for a longer period. There will be no oral hearings on Motions unless the parties request an oral hearing in writing and/or the Court deems such a hearing necessary.

(3) Final Pretrial Conferences: No later than 1 week before the scheduled trial date, a final pretrial conference will be held. All parties and respective counsel and/or representatives with full settlement authority must be present. The parties/counsel shall be prepared to furnish a witness list along with a general statement of the nature of each witness' anticipated testimony; produce all exhibits anticipated to be offered at trial and such other matters the parties/counsel or the Court believe relevant and/or may require to provide a fair trial in as an expedient manner as possible.

(4) If a designated trial attorney has such a number of cases assigned for trial in the courts of this State so as to cause undue delay in the disposition of such cases, the Judge may require that trial attorney to provide substitute trial counsel.

(E) The Judge presiding at the pre-trial conference, motion hearing, or trial, shall have the authority to dismiss the matter for want of prosecution upon the failure of the Plaintiff and/or his counsel to appear in person; to Order the plaintiff to proceed ex parte to decide and determine all matters should the Defendant and/or his counsel fail to appear; and to make such other Order as the Court may deem necessary.

RULE 14 – LEAVES TO PLEAD

(A) Where a party desires a leave to plead, such party, may obtain the FIRST leave by filing with the Clerk a certification that the party has not theretofore obtained any such leaves in that particular case. Such leave shall not be for more than thirty (30) days, and a proof of service upon opposing counsel shall be endorsed thereon.

(B) One additional Leave to Plead may be obtained by a party for a period of thirty (30) days by filing a stipulation in which consent to such leave is had from opposing counsel and so indicated in the stipulation. In such stipulation, the party obtaining the leave to plead shall certify the

number of leaves to plead he or she has previously obtained in that case and the total length of time of those leaves to plead.

(C) Except as provided above, leaves to plead and/or leaves to file motions may only be obtained by written application to and approval by the court. Such application must set forth the number of previous leaves obtained, the reason(s) for such leaves and the total time such leaves have extended the time to plead.

RULE 15 – CIVIL TRIAL DATE

(A) Each civil case assigned for trial shall proceed to trial upon the date so designated except as otherwise provided in these rules. If the Plaintiff or attorney fails to appear and/or is not ready to proceed, without good cause, said case shall be dismissed. Should the Defendant fail to appear, the Plaintiff may proceed, the Court will take evidence, as necessary, and a judgment rendered.

(B) If a civil case set for trial is settled by the parties, the parties or trial counsel shall immediately notify the Court and submit a stipulation of dismissal or other Judgment Entry within ten (10) days. Failure to so notify the court in a timely manner prior to the scheduled trial date may result in additional court costs and/or jury fees. (See also NFMC Rule 10).

RULE 16 – CASE MANAGEMENT IN SPECIAL PROCEEDINGS

(A) The following matters are considered “special proceedings” for the purposes of this Rule:

1. Small Claims
2. Forcible Entry and Detainer
3. Default Hearings
4. Rent Escrow
5. Garnishment Hearings
6. Debtor’s Exams
7. Preliminary Hearings
8. Extradition Hearings
9. BMV Hearings and Petitions for Privileges

(B) Cases that have time limits set by statute or rule shall be set within the time(s) required. Where a jury demand is filed, the case may be set for status hearing at the Court’s discretion.

(C) In all other respects, such cases will be governed by NFMC Rule 13.

RULE 17 – FORCIBLE ENTRY AND DETAINER

(A) A Complaint in Forcible Entry and Detainer shall state the reason for such eviction and shall be accompanied by the following exhibits when filed with the Clerk of Courts:

- (1) A copy of the Notice required by §1923.04 and/or 5131.06 of the Revised Code;
- (2) The Land Installment Contract, lease, written instrument or other contract, upon which said action is based;

(B) The Clerk shall refuse to accept for filing any Complaint that does not comply with this Rule, and any Judge to whom the Complaint is assigned may summarily dismiss, without prejudice, a Complaint filed in violation of this Rule.

TRIALS

(C) There shall be an "Answer Day" or "Call Day" as the term is used in other civil cases, which are assigned to the regular docket.

(D) Forcible Entry and Detainer cases shall be called for trial on the date set forth in the summons, unless a continuance is granted under these Rules. If neither party appears, the matter may be dismissed without prejudice for failure to prosecute.

(E) No trial shall be held in a Forcible Entry and Detainer action unless service is had on the Defendant at least five (5) days prior to the date set for trial unless the Defendant appears and consents to an earlier trial date.

(F) Where other causes of action are filed, along with the action in Forcible Entry and Detainer, the Court may hold trial of the other causes of action unless good cause is shown, and the Court continues the other causes of action. For the purposes of this Rule "good cause" shall include, but is not limited to, reasons set forth in Revised Code.

(G) Unless otherwise designated by the Judge to whom the case has been assigned, all Motions filed in Forcible Entry and Detainer cases shall be heard on the date set for trial. Unless the ruling on a Motion disposes of the case, a trial on the issues shall be had, after ruling on the Motion.

DEMAND FOR JURY TRIAL

(H) Demand for jury trial in Forcible Entry and Detainer Actions must be made, in writing, no later than three (3) days prior to the date scheduled for trial and must be accompanied by the full deposit required for civil actions in this Court's fee schedule.

CONTINUANCES

(I) Continuances may be granted at the discretion of the Judge to whom the case is assigned.

(J) Any request for continuance of a cause of action for restitution must be submitted, in writing, not less than three (3) days prior to the date of trial. The request must specifically set forth the grounds for such request and are subject to the provisions of RC 1923.08.

(K) The continuance shall not be effective until approved by the assigned Judge, subject to any conditions, including the posting of any bond which the Court may require.

RULE 18 – ACTIONS ON AN ACCOUNT

(A) Any action upon an account shall have attached to the Complaint a copy of such account, which account shall begin from a zero balance and indicate each and every charge and credit

upon such account thereafter, to and including the date of such filing. Affidavits stating a final balance without such documentation **will not** be accepted in lieu of the requirements of this rule.

(B) If such account is based upon a credit card agreement or other written contract or instrument, a copy of such agreement including the Defendant's signature thereon shall be attached to the Complaint.

(C) The Clerk shall refuse to accept for filing and return any action on an account that does not conform to the requirements of this subsection, and the Court will summarily dismiss without prejudice any Complaint filed in violation of this rule.

RULE 19 – SMALL CLAIMS DIVISION

Small Claims shall be heard at such times as the Court may hereafter designate for trial.

TIME FOR TRIAL OF SMALL CLAIMS

(A) A memorandum of the time and place set for trial shall be given to the person filing the claim. The time set forth for such trial shall be not less than fifteen (15) nor more than forty (40) days after the commencement of the action (§1925.04 Revised Code).

(B) Nothing in subsection (A) shall deny the Judge the option of exercising his discretion to grant a continuance, in accordance with these rules.

(C) No default judgment shall be granted to a Plaintiff who is not present for trial, individually or through counsel.

(D) Litigants in small claims shall bring all documents, exhibits and witnesses to trial. Letters and "affidavits" will not be accepted in lieu of appearance and testimony by witnesses.

TRANSFER OF SMALL CLAIMS TO REGULAR DOCKET

(E) A case duly entered on the docket of the Small Claims Division shall be transferred to the regular docket of the Court upon Motion of the Court, made at any stage of the proceedings, upon Motion of a Defendant, accompanied by an affidavit stating that a good defense to the claim exists, setting forth the defense, setting forth the reason such transfer is requested and the compliance of the party with any other terms set by the Court; or by the filing of a Counter-Claim in excess of Three Thousand (\$3000.00) Dollars. (§1925.10 Revised Code)

(F) If said transfer is upon the court's own motion, the Judge, in addition to any other proper conditions, may order a party to deposit additional costs within the time designated by the Court.

(G) If said transfer is upon Defendant's motion, the Defendant shall, in addition to any other proper conditions set forth by the Judge, deposit additional court costs within the time designated by the Court.

(H) In cases where the claim is to be transferred to the regular docket and the additional court costs are not paid within the time designated by the Court, the claim may be returned to the small claims docket and may not, thereafter, be transferred to the regular docket.

(I) The Clerk of Courts shall not accept for filing a counter-claim in excess of \$3000.00, excluding costs, without deposit of the additional court costs designated for transfer of a small claim to the regular docket.

(J) If a counterclaim or crossclaim exceeds Three Thousand (\$3000.00) Dollars and the case is transferred to the regular docket of the Court, the Court may, if it finds that the counterclaim or crossclaim was without substantial grounds, award reasonable attorney fees by special order to the party against whom the counterclaim or crossclaim was instituted, if that party prevails in the action on the original claim.

RULE 20 – CORPORATION: PRESENTATION OF CLAIM OR DEFENSE IN SMALL CLAIMS

(A) A corporation which is a real party in interest in any action in the Small Claims division may commence such an action and appear therein through an attorney at law. Such a corporation may, through any bona fide officer or salaried employee, file and present its claim or defense in any action in the Small Claims division arising from a claim based on a contract to which the corporation is an original party or any other claim to which the corporation is an original claimant, provided such corporation does not, in the absence of representation by an attorney at law, engage in cross-examination, argument, or other acts of advocacy.

RULE 21 – EXAMINATION OF DEBTOR AND/OR CREDITOR'S FAILURE TO APPEAR

(A) If a debtor appears in court for examination, pursuant to a court order, based upon the application of a creditor, and the creditor fails to appear, the Judge may impose upon the creditor the following sanctions:

(1) Order that there be no further examination of the same party within ninety (90) days from the date set for the examination at which the creditor failed to appear, and/or

(2) Assess damages against the creditor in a sum not to exceed fifty (\$50.00) Dollars. Such damages shall be in the form of a judgment against the creditor, payable to the party who has been ordered to appear.

(B) If debtor fails to appear after notice, the court will order, upon creditor's application, the debtor to appear and show cause why the debtor should not be held in contempt; failure to appear for the "show cause" hearing will result in a warrant for the debtor's arrest.

(1) No order of contempt, nor arrest warrant, shall be issued except upon personal service of notice, by the Bailiff or certified mail, return receipt signed by the debtor, to appear and show cause, upon the debtor against whom the show cause order is sought.

RULE 22 - MOTION FOR RELIEF FROM JUDGMENT

(A) Any motion for relief from judgment filed pursuant to Rule 60 of the Civil Rules must:

(1) State with particularity the grounds for such motion;

(2) State that the Defendant has a good defense;

(3) Be accompanied by an answer tendered for filing should such motion be granted;

(4) Have attached to it affidavits, depositions, or other sworn testimony in support of any operative fact upon which the movant relies in support of such motion.

(B) Any brief, affidavit or other sworn testimony which the Plaintiff wishes the Court to consider must be filed fourteen (14) days after service of the motion for relief from judgment.

(C) Thereafter, the Court may, in its discretion, assign such motion for hearing or rule on the same without hearing based upon the filings in the Court's file.

Rule 23 – CASE MANAGEMENT IN CRIMINAL CASES

(A) The purpose of this Rule is to establish, pursuant to Superintendence Rule 18, a system for criminal case management which will provide for the fair and impartial administration of criminal cases. These rules shall be construed and applied to eliminate unnecessary delay and expense for all parties involved in the court justice system.

(B) Scheduling of events: Scheduling begins after arraignment. Thereafter, the case is managed in five (5) judicial steps.

(1) Pretrials: At arraignment, all first, second and third degree misdemeanors shall be set for pretrial by the Court within forty-five (45) days. All other misdemeanors shall be set for trial, unless the Judge orders otherwise. The pretrial shall be conducted in accordance with Criminal Rule 17.1, and a memorandum of the matters agreed upon should be filed in the case. Any attorney who fails to appear at pretrial without just cause being shown may be punished for contempt. All Defendants must appear for all proceedings, including pretrial, or be subject to bond forfeiture proceedings and the issuance of a warrant unless excused by the Judge upon the Defendant's written request submitted prior to said hearing.

(2) Written Pleas (Criminal Rule 10 (B)): Any written plea of not guilty filed by counsel shall be accompanied by a waiver of the right to a speedy trial under §2945.71 of the Revised Code, written consent of the Defendant pursuant to Criminal Rule 10(B), bond pursuant to the court schedule and if such charge arises out of the use of a motor vehicle, proof of financial responsibility. Except as specifically waived by the court, personal recognizance will only be granted by the Court upon personal appearance of the Defendant, completion of a written questionnaire, approval of the Court, and execution of such bond in the presence of the Clerk.

(3) Motions: All motions shall be made in writing and accompanied by a written memorandum containing the arguments of counsel. Motions must be filed within the time limits set by Ohio Law and the Rules of Criminal Procedure, unless leave is granted by the Court for good cause.

(4) Each case not resolved by pre-trial or other proceedings shall be set for trial to the court. If a jury demand is timely filed, then the case will be moved to the jury trial schedule. Where a jury demand is filed, the Court may set the case for a status hearing and any law enforcement officers or other persons deemed necessary summoned to appear at the Court's discretion. All attorneys shall notify the Court by 12:00 PM on the last working day prior to a jury trial of any change in plea or jury costs will be charged in the case.

(5) Sentencing may occur on the date of plea or at a date thereafter if the Court believes that a presentence investigation is necessary. Pleas to reduced charges by way of plea agreement with the State shall require completion of all plea

“conditions” and the payment of all fines and costs at the time of the plea, unless the Court rules otherwise.

RULE 24 – BONDS

(A) No written plea of “not guilty” to a traffic or criminal matter shall be accepted by the Clerk for filing unless accompanied by a cash or surety bond to assure the presence of the Defendant at all subsequent proceedings. Such bonds are specified in the Court’s schedule of Bonds and Waivers. **Court may waive this requirement for good cause at its discretion.**

(B) The bailiff will set a date for pre-trial or trial, as appropriate and such date will not be continued without a written motion for continuance and approval by the Judge.

RULE 25 – PROBATION

(A) Those persons convicted and sentenced to Probation shall be provided a copy of the Court’s standard conditions of probation. Such standard rules may be supplemented with other requirements as the Court deems necessary for the proper supervision and rehabilitation of the probationer.

(B) Unless otherwise provided, timely reporting to probation shall be mandatory, and failure to report without prior notice and approval by a probation officer or the Court or without just cause shall constitute a violation of probation.

(C) Probation fees will be charged according to the court’s schedule and payment, unless just cause is shown, shall be mandatory.

(D) Probation violation hearings will be scheduled by the Court at those times that are convenient in the schedule. Counsel for those probationers charged with probation violation shall be given adequate notice of the date and time that such hearings are scheduled.

RULE 26- DIVERSION

The Court has established a “diversion” program for certain offenses including some misdemeanor drug offenses, some drivers license violations, some misdemeanor theft charges and/or some other first offenders, according to, and subject to, the terms set forth herein:

(A) The Defendant must plead “guilty” to the offense;

(B) The court will hold the plea and sentence in abeyance;

(C) The Defendant is referred to probation for an interview and to be advised of the particular requirements as set by the court depending on the specific offense and circumstances;

(D) The Defendant must pay the costs set by the Court;

(E) If within six (6) months from the date of the plea, the Defendant has successfully completed the particular requirements, has paid the costs and has not had a similar offense while the matter has been pending, the plea will be vacated and the case will be dismissed.

FACSIMILE FILING COVER PAGE

RECIPIENT INFORMATION

JUDGE PHILIP M. VIGORITO

NEWTON FALLS MUNICIPAL COURT

FAX NUMBER: (330) 872-3899

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SUPREME COURT REG. NO. (if applicable): _____

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