

**LOCAL RULES OF PRACTICE AND PROCEDURE  
OF THE  
DOMESTIC RELATIONS DIVISION  
OF THE MAHONING COUNTY COURT OF COMMON PLEAS  
EFFECTIVE FEBRUARY 17, 2009**

**~~Including Amendment Establishing Case Management Plan Effective June 1,  
2010 adopted June 4, 2010~~**

**As Amended Effective February 1, 2012**

**General Rules**

- Rule 1: Adoption, Scope and Construction of Rules
- Rule 2: Court Costs
- Rule 3: Filing and Removal of Papers from Custody of the Clerk
- Rule 4: Assignment of Domestic Relations Cases
- Rule 5: Powers of the Magistrates
- Rule 6: Ex-Parte Communications
- Rule 7: Out of State Counsel

**Pleadings, Motions and Orders**

- Rule 8: General Rules of Pleading
- Rule 9: Service
- Rule 10: Temporary Orders by Affidavit or Oral Hearing
- Rule 11: Additional Ex-Parte Orders
- Rule 12: Contempt and Motions to Show Cause
- Rule 13: Objections to Decision/Motion to Set Aside

**Pre-Trial & Trial Rules**

- Rule 14: Discovery
- Rule 15: Status Conferences
- Rule 16: Pre-Trial Conferences
- Rule 17: Trials
- Rule 18: Court Appointment of Valuation Experts
- Rule 19: Medical Expense Schedule
- Rule 20: Qualified Medical Child Support Order (QMCSO)
- Rule 21: Dissolution of Marriage Hearings
- Rule 22: Divorce Hearings
- Rule 23: Judgment Entries, Decisions & Orders
- Rule 24: ~~Qualified Domestic Relations Court Order (QDRO)~~ *Division of Pension Orders*

- Rule 25: Withdrawal or Substitution of Counsel
- Rule 26: Dismissal of Cases
- Rule 27: Motion for Relief From Judgment

### **Parenting Time and Visitation**

- Rule 28: Parenting Time and Visitation
- Rule 29: Workshop for Parents & Children
- Rule 30: Guardian ad Litem
- Rule 31: Parenting Investigation
- Rule 32: Psychological Evaluations
- Rule 33: Interviews with Children
- Rule 34: Parenting Coordinator
- Rule 35: Consent Entries

### **Dispute Resolution**

- Rule 36: Family Services, Conciliation & Counseling
- Rule 37: Mediation

### **Special Proceedings**

- Rule 38: Domestic Violence
- Rule 39: Registration of a Foreign Decree
- Rule 40: Action on a Foreign Decree
- Rule 41: Concurrent Jurisdiction
- Rule 42: Certification to Juvenile Court

### **Court Administration**

- Rule 43: Conflicts of Interest
- Rule 44: Court Reporters
- Rule 45: Court Security
- Rule 46: Photographing, Recording and Broadcasting of Court Proceedings
- Rule 47: Case Management Plan

**RULES OF THE COURT OF COMMON PLEAS  
DOMESTIC RELATIONS DIVISION  
MAHONING COUNTY, OHIO**

**GENERAL RULES**

**RULE 1**

**ADOPTION, SCOPE AND CONSTRUCTION OF RULES**

**1.01 Adoption, Scope and Construction of Rules**

(A) **Adoption:** The Domestic Relations Court of Mahoning County, Ohio hereby adopts the following Rules for the Court's management of proceedings pursuant to Article IV, Section 5(B) of the Ohio Constitution and Rule 9 of the Ohio Supreme Court Rules of Superintendence for Courts of Common Pleas.

(B) **Scope:** These Rules are intended to supplement and complement the Ohio Rules of Civil Procedure and the Rules of Superintendence of the Supreme Court of Ohio.

(C) **Construction:** These Rules shall be applied, construed and enforced so as to avoid inconsistency with other rules of court and statutes governing proceedings of this Court. In their application, they shall be construed so as to provide fairness and to secure just, expeditious and inexpensive determination of all proceedings. They shall apply to proceedings pending at the time they take effect.

(D) **Citation:** As used in these Rules, "Civ. R." is a reference to the Ohio Rules of Civil Procedure and "Sup. R. \_\_\_\_." is a reference to the Rules of Superintendence for the Supreme Court of Ohio. These Rules shall be cited as "Local Rules" or "Loc.R. \_\_\_\_".

(E) **Court Forms and Website:** The Court shall from time to time develop court forms for the efficient and equitable application of changes in Ohio law and these Local Rules. *The Court may also adopt Uniform Forms developed by the Ohio Supreme Court.* All such forms as well as these local rules shall be posted on the Court's Website which may be found at [www.mahoningdrcourt.org](http://www.mahoningdrcourt.org). It shall be the duty of parties and counsel to regularly monitor the website for changes.

(F) **Effective:** These Rules as originally adopted on March 1, 1998 shall be effective ~~February 1, 2009~~ *February 1, 2012* and supersede all previous rules promulgated by this Court.

## **RULE 2**

### **COURT COSTS**

2.01 **Costs/Deposits:** The Clerk of Court shall not accept any action or proceeding for filing without a deposit as security for costs in the amount set forth in the Schedule of Filing Fees/Deposits as set forth on the Court's Website. The Domestic Violence filings and Mahoning County Child Support Enforcement Agency filings are exempted from this requirement.

2.02 **Indigence:** In the case of indigence, the court cost requirement is met by filing a poverty affidavit, as set forth on the Court's Website, stating that the party is without funds or assets to pay the deposit and a certification by the attorney, if any, that no or nominal attorney fees have been paid. The party must also submit the Court's Affidavit of Income *and* Expenses ~~and Financial Disclosure~~ found on the Court Forms Section on the Court's Website. The filing of a poverty affidavit does not relieve a party from liability for court costs. If, during the course of a proceeding, the Court learns that either party, is, or has become, able to pay the applicable costs, the Court may order either party to pay the deposit within a reasonable time.

2.03 **Responsibility for Costs:** All judgment entries shall contain a provision for payment of costs as ordered by the Court. In the absence of court order, after application of all deposits, the balance of costs shall be divided equally between the parties.

2.04 **Special Assessments:** Pursuant to R.C. 2303.201, the Court has determined that additional funds are necessary to acquire and pay for special projects of the Court, including, but not limited to, the acquisition of additional facilities or the rehabilitation of existing facilities, the acquisition of equipment, the hiring and training of staff, community service programs, mediation or dispute resolution services, the employment of Magistrates, the training and education of Judges, and Magistrates, and other related services. Accordingly, the Court will from time to time, authorize and direct the Clerk of Court to charge additional fees on the filing of each Complaint for Divorce, Legal Separation, Counterclaim, Petition for Dissolution of Marriage and other post decree/divorce Motions.

## **RULE 3**

### **FILING AND REMOVAL OF PAPERS FROM CUSTODY OF THE CLERK**

3.01 **Filing of Papers:** The Clerk of Court shall file and preserve all papers delivered to the Clerk for that purpose. The Clerk shall not accept or journalize on its docket any Entry, Decision or Order until it is signed by the Judge or Magistrate.

3.02 **Removal:** No person, except a Judge, Magistrate, Court Clerk, or their employees, shall remove any documents or case files from the Clerk of Court. Upon request, the Clerk shall allow any person to examine, but not remove, any original document or case file that is maintained by its office. Examination shall be allowed during the regular business hours of the Clerk of Court.

## **RULE 4**

### **ASSIGNMENT OF DOMESTIC RELATIONS CASES**

4.01 **Assignment Commissioner(s):** The Court shall designate Assignment Commissioner(s) for divorce, legal separation, annulment, dissolution of marriage and all other cases filed in this Court. Prior to filing a Petition for Dissolution of Marriage, the parties or attorney shall secure a hearing date from the Assignment Commissioner. The Assignment Commissioner shall assign for final hearing, all uncontested and contested divorces, legal separations, annulments, all other cases filed, and all other pre- and post-divorce motions.

4.02 **Uncontested Status:** A divorce or legal separation case shall be deemed uncontested unless an Answer is filed within twenty-eight (28) days after service of the Summons and Complaint upon Defendant. If the service of notice has been made by publication, Defendant shall file an Answer within twenty-eight (28) days after the completion of service of publication.

4.03 **Divorce Hearing Date:** Pursuant to Civ. R. 75(K), no action for divorce, legal separation, or annulment may be heard and decided until the expiration of forty-two (42) days after the service of process or twenty-eight (28) days after the service of a counterclaim, which under this rule may be designated a cross-complaint, unless the Plaintiff files a written waiver of the twenty-eight (28) day period.

4.04 **Continuances of Final Hearing:** Once a case is assigned for final hearing or trial, it may be continued only by leave of Court for good cause shown.

## RULE 5

### POWERS OF THE MAGISTRATES

5.01 **Authority:** All Magistrates shall be awarded all of the powers set forth in Civ. R. 53, ~~as amended July 1, 2006~~. The Magistrates are further awarded all other powers as set forth in the Journal Entries of this Court and the statutes of this state.

## RULE 6

### EX-PARTE COMMUNICATIONS

6.01 **Ex-Parte Communications:** No attorney or party shall discuss the merits, either orally or in writing, of any litigation with the Judge or Magistrate presiding over the matter without the presence of opposing counsel or the party, if not represented by counsel.

## RULE 7

### OUT OF STATE COUNSEL

7.01 **Out of State Counsel:** Attorneys admitted to practice law in other states, but not in Ohio, may request permission from the Court to appear Pro Hac Vice (*PHV*). The decision of whether to permit representation by out-of-state counsel is a matter within the discretion of the Court. In order to be admitted pro hac vice, said attorney ~~must have as co-counsel an attorney admitted to the bar of the State of Ohio who shall be the "attorney of record" who is officially responsible for the case. must comply with all of the requirements of Rule XII of the Ohio Supreme Court Rules for the Government of the Bar which include the following:~~

*A. Registration: First filing for PHV Registration with the Supreme Court's Office of Attorney Services and receiving the PHV Registration from that office.*

*B. Motion: Filing a motion with this Court for permission to appear pro hac vice attached to which is a copy of the PHV certificate.*

*C. Service: Serving a copy of the motion upon all known parties and attorneys of record and obtaining an order of approval by this court.*

*D. Notice: Providing a Notice of the permission together with a copy of the Order approving with the Office of Attorney Services within 30 days of the order.*

*Permission to appear PHV shall remain effective until the end of the calendar year at which point counsel must seek a renewal of the PHV Registration.*

# PLEADINGS, MOTIONS AND ORDERS

## RULE 8

### GENERAL RULES OF PLEADING

8.01 **Form:** Unless otherwise provided herein, all pleadings, motions, and other filings shall comply in form and content with the Ohio Rules of Civil Procedure, the Rules of Superintendence of the Supreme Court of Ohio and the Local Rules of this Court as set forth below:

(A) **Caption:** All Complaints, Petitions, Answers, Counterclaims, Motions, Orders and Decrees shall state the name, address, and employer, of both parties. To protect privacy, each party's social security number and date of birth shall only be set forth on the "Family Information Sheet" that is located on the Court's Website.

(B) **Subsequent Petition Captions:** In cases commenced by petition, the subsequent captions shall remain the caption of the original petition. Parties shall be designated by their names or as "Mother" and "Father" in the body of subsequent pleadings in cases involving children.

(C) **Paper Size:** All Pleadings, Motions and Orders shall be typewritten or printed on 8½" x 11" paper.

(D) **Attorney Identification:** All Pleadings, Motions and Orders shall include the name of the attorney, the firm name, if any, office address, office telephone number, fax number, if any, and the attorney's Ohio Supreme Court Number.

(E) **Content of Motions:** All motions shall state with particularity the grounds therefore, the relief or order sought and shall identify any prior Order(s) at issue.

(F) **Separate Documents:** All Separation Agreements and Shared Parenting Plans filed with the Court must be submitted as a separate document styled as a "Separation Agreement" or "Shared Parenting Plan" and not included in the body of the pleadings.

8.02 **Initial Filings:** All Complaints, Answers and Counterclaims shall be accompanied by the following court forms which shall be filed with the Clerk of Court and served upon the opposing party or parties: ~~the most recent versions of the~~ The forms are available on the Court's Website which may be found at [www.mahoningdrcourt.org](http://www.mahoningdrcourt.org).

(A) **Mutual Restraining Order**

(B) **Mandatory Discovery Order**

*(C) Affidavit of Income and Expenses (Uniform DR Form—Affidavit 1). The Affidavit must be separately filed with the Clerk of Court in all cases but shall be considered an exhibit by the Court and retained in the Court Exhibit File. No documentation of income shall be attached to the Affidavit.*

*(D) Affidavit of Property (Uniform DR Form—Affidavit 2). The Affidavit must be separately filed with the Clerk of Court in all cases but shall be considered an exhibit by the Court and retained in the Court Exhibit File.*

*(E) Parenting Proceeding Affidavit (Uniform DR Form-Affidavit 3). The Affidavit only needs to be filed if there are minor child(ren) of the parties.*

*(F) Health Insurance Affidavit (Uniform DR Form—Affidavit 4). The Affidavit only needs to be filed if there are minor child(ren) of the parties.*

*(G) Motion and Affidavit or Counter Affidavit for Temporary Orders Without Oral Hearing (Uniform DR Form—Affidavit 5). This Motion only needs to be filed if temporary orders are being sought. No documentation of income shall be attached to the request.*

~~(C) Parenting Declaration Affidavit. The Declaration only needs to be filed if there are minor child(ren) of the parties or if parenting of child(ren) is at issue.~~

~~(D) Request for Affidavit Order. The request only needs to be filed if temporary orders are being sought. No documentation of income shall be attached to the request.~~

~~(E) Affidavit of Income, Expenses and Financial Disclosure. The affidavit must be separately filed with the Clerk of Court in all cases but shall be considered as an exhibit by the Court and retained in the Court Exhibit file. All documentation of income shall be attached to this affidavit.~~

~~(F) Private Health Insurance Questionnaire. The form must be separately filed with the Clerk of Court in all cases with minor children but shall be considered as an exhibit by the court and retained in the Court Exhibit file as is set forth below.~~

~~(G)~~ **(H) Family Information Sheet.** The information sheet must be separately filed with the Clerk of Court in all cases but shall be considered as an exhibit by the Court and retained in the Court Exhibit File as is set forth below.

~~(H)~~ **(I) IV-D Application.** The application shall be fully completed, signed by the party and separately filed with the Clerk of Court only in cases where child or spousal support is being sought but shall be considered as an exhibit by the Court and retained in the Court Exhibit File as is set forth below.

~~(J)~~ **(J) Poverty Affidavit and Financial Disclosure.** The affidavit and disclosure shall first be submitted to the Court for approval prior to filing with the Clerk of Court.

### 8.03 Dissolutions

When a Dissolution is filed, the parties shall complete and provide the following:

~~(A) **Family Information Sheet** (provided on the Court's Website): The information sheet must be separately filed with the Clerk of Court in all cases but shall be considered as an exhibit by the Court and retained in the Court Exhibit file as is set forth below. *Separate Information Sheets must be filed by each party with the Clerk of Court but shall be considered as an exhibit by the Court and retained in the Court Exhibit File. The form is available on the Court's Website.*~~

(B) **Petition for Dissolution.**

(C) **Separation Agreement and Shared Parenting Plan, if applicable.**

(D) **Waiver of Service.**

(E) **Waiver of Counsel** (when one attorney).

~~(F) **Parenting Declaration Affidavit** (both parties) (provided on the Court's Website): The Declaration only needs to be filed if there are minor child(ren) of the parties or if parenting of child(ren) is at issue.~~

~~(G) **Affidavit of Income, Expenses and Financial Disclosure** (both parties) (provided on the Court's Website): The affidavit must be separately filed with the Clerk of Court in all cases but shall be considered as an exhibit by the Court and retained in the Court Exhibit file. All documentation of income shall be attached to this affidavit.~~

~~(H) **Private Health Insurance Questionnaire** (provided on the Court's Website): The form must be separately filed with the Clerk of Court in all cases with minor children but shall be considered as an exhibit by the court and retained in the Court Exhibit file as is set forth below.~~

~~(I) **IV-D Application** (provided on the Court's Website): The application shall be fully completed, signed by the party and separately filed with the Clerk of Court only in cases where child or spousal support is being sought but shall be considered as an exhibit by the Court and retained in the Court Exhibit file as is set forth below.~~

(F) **Parenting Proceeding Affidavit:** *Separate Affidavits must be filed by each party but only if there are minor children of the parties. The form is available on the Court's Website.*

(G) **Affidavit of Income and Expenses:** *Separate Affidavits must be filed by each party with the Clerk of Court but shall be considered as an exhibit by the Court and retained in the Court Exhibit File. No Documentation of income shall be attached to the Affidavit.*

(H) **Health Insurance Affidavit:** *Separate Affidavits must be filed by each party but only if there are minor children of the parties. The Affidavits shall be filed with the Clerk of Court but shall be considered as an exhibit by the Court and retained in the Court Exhibit File. The form is available on the Court's Website*

(I) **Affidavit of Property:** *Separate Affidavits must be filed by each party with the Clerk of Court but shall be considered as an exhibit by the Court and retained in the Court Exhibit File. The form is available on the Court's Website.*

(J) **IV-D Application:** *Separate applications shall be fully completed, signed by the party and filed with the Clerk of Court but only in cases where child or spousal support is being sought. The Application shall be considered as an exhibit by the Court and retained in the Court Exhibit file as is set forth below. The form is available on the Court's Website.*

~~(K)~~ (K) A Decree with a copy of the Separation Agreement, *Shared Parenting Plan (if applicable)* and a guidelines worksheet (if minor children are at issue) shall be presented to the Assignment Commissioner at the time of filing.

#### 8.04 **Special Filings**

(A) **Parenting Declarations Proceeding Affidavit:** In all post-divorce motions seeking a reallocation of parental rights and responsibilities, the parties shall file a Parenting ~~Declaration~~ *Proceeding Affidavit* pursuant to R. C. 3127.23. Motions seeking modification of ~~visitation~~ *parenting time* shall not require a Parenting ~~Declaration~~ *Proceeding Affidavit*.

(B) **Notice of Intent to Relocate:** A Notice of Intent to Relocate must be filed in every case in which the Residential Parent intends to move to a new location either within or outside of the State of Ohio. (Forms are available on the Court's Website.)

(C) **Summons and Order to Appear & Request for Court-Appointed Counsel:** All Motions for Contempt or To Show Cause shall be accompanied by a Summons and Order to Appear and Request for Court-Appointed Counsel, as set forth in the court forms on the Court's Website. The Summons shall be stapled to the front of the motion as the cover page.

~~(D) **Pre-Trial Statement** The Pre Trial Statement required under Local Rule 16.02 shall be considered an exhibit. The statement shall be filed with the Clerk of Court and served on opposing counsel or parties but shall be provided to the Court for maintenance in the Court Exhibit file as set forth below.~~

8.05 **Court Exhibit File:** When a Complaint or Counterclaim for Divorce, Annulment, or Legal Separation, an Answer, or a Petition for Dissolution is filed, the Domestic Relations Court shall keep a separate Court file for the *Affidavits of Income and Expenses, Health Insurance Affidavits, Affidavits of Property Affidavits of Income, Expenses and Financial Disclosure, Private Health Insurance Questionnaire, Family Information Sheets, IV-D Applications* and Exhibits for each case except for Exhibits presented at trials before the Judge or a Magistrate. Copies of these documents shall be time stamped by the Clerk of Court and served upon the parties pursuant to Instructions for Service.

(A) Upon the request of either party or an order of the Court, the Affidavits and Exhibits contained within this file shall be considered as part of "the original papers and exhibits filed in the trial court" for purposes of the record [Appellate Rule 9(a)].

(B) A person may review these files upon signed request to the Court.

8.06 **Mutual Restraining Order:** In all cases after the initial Complaint has been filed, both parties are restrained from the actions set forth in the Court's Mutual Restraining Order. Upon Plaintiff's filing of a Complaint or Defendant's filing of a Counterclaim, the filing party is deemed to have notice of the Mutual Restraining Order.

8.07 **Clerk Shall Require Conformity:** The Clerk of Court may not receive for filing any pleadings which do not conform to this rule.

8.08 **Leave to Plead:** Leave to plead may be obtained only by written motion to the Court and for good cause shown. The motion shall set forth the number of leaves to plead previously obtained and the total length of those leaves.

8.09 **Scheduling:** All motions shall first be scheduled for hearing by the Assignment Commissioner, then filed with the Clerk of Court and shall be subject to either affidavit or evidentiary hearing. The Assignment Commissioner shall refuse to accept for filing any motion which fails to comply with these Rules.

#### 8.10 **Continuances**

(A) **Motions:** All motions for continuance shall be in writing and a copy of the motion shall be immediately provided to the Court's Assignment Commissioner. The movant shall first attempt to secure the consent of opposing counsel, if represented. The motion shall set forth the reason for the continuance, whether consent was obtained or denied and shall state the number of prior continuances. If the motion is granted, the party seeking the continuance must obtain a new hearing date and shall immediately notify the opposing party, counsel, and guardian ad litem, if any. All continuances must be approved by the Court or Magistrate.

(B) **Unavailability of Witness:** When a continuance is requested because a witness is unavailable for a scheduled hearing or trial, the Court may consider alternative methods for receiving the testimony.

(C) **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 a different court, the case that was first set for trial shall have priority, pursuant to Sup. R. 41.

(D) The Court will not consider any motion for continuance unless a copy of the conflicting assignment is attached to the motion and the motion is filed not less than fourteen (14) days prior to trial.

8.11 **Engaged Counsel:** Pursuant to Sup. R. 41(C), if a designated trial counsel has such a number of cases assigned for trial in this or other courts as to cause undue delay in the disposition of such cases, the Judge may impose sanctions against said attorney and may limit the number of cases in which the attorney may serve as counsel in this Court.

8.12 **Determination of Motions without Oral Hearing:** Pursuant to Civil Rule 7(B), the Court may, to expedite its business, determine motions without oral hearing upon the submission of brief written statements of reasons in support and opposition.

## **RULE 9**

### **SERVICE**

9.01 **Service of Pleadings:** A party requesting service by the Clerk of Court must file instructions for service regardless of the form of service requested. Any request for service of a Complaint, Counterclaim, Motion, Order, or other paper requiring service pursuant to the Ohio Rules of Civil Procedure shall be accompanied by a time-stamped copy of the paper to be served.

#### 9.02 **Service of Motions:**

(1) **Pending Cases:** In pending cases, all motions shall be filed with the Clerk of Court and served on counsel for opposing party (or opposing party if not represented); and on the guardian ad litem, where one has been appointed.

(2) **Post Decree:** Any post-decree motion invoking the continuing jurisdiction of the Court shall contain the full names, current addresses and places of employment of both parties in the caption. Notice of the motion invoking continuing jurisdiction shall be served in the manner provided for service of process under Ohio Rules of Civil Procedure 4 through 4.6. If certified mail is utilized, the request for certified mail service shall be made through the office of the Clerk of Court.

9.03 **Process Server (One-Time Appointment):** If a party desires personal service to be made by a special process server pursuant to Civ. R. 4.3(B)(2), that party or counsel must file with the Clerk of Court an Entry appointing a special process server. The following must be stated in the Entry of Appointment:

- (A) The name and address of the person to be appointed as a process server;
- (B) That the person to be appointed as process server is 18 years of age or older;
- (C) That the person to be appointed as process server is not a party or counsel for a party in the action.

9.04 **Process Server (Continuing Appointment):** A person may apply to be designated as a "Standing Special Process Server" for cases filed in this Court by filing an application prescribed by the Court, as set forth on the Court's Website.

9.05 **Service by Publication:**

(A) **When Proper:** In accordance with Civ. R. 4.4, before service by publication can be made, an affidavit of a party or counsel shall be filed with the Court. The affidavit shall state that service of summons cannot be made because the residence of the Defendant is unknown and detail all of the efforts made to determine that the residence cannot be ascertained with reasonable diligence. The Court must give prior approval for service by publication.

(B) **Responsibility:** In all cases when service of process is to be accomplished by publication, it shall be the responsibility of the party to ensure that the publication is accomplished.

(C) **Confirmation:** Upon completion of the last publication of service, the party shall file with the Court an affidavit showing the fact of publication, together with a copy of the Notice of Publication. The affidavit and its exhibits shall constitute the proof of service.

(D) **Posting Locations in Cases of Indigence:** Pursuant to Civ. R. 4.4(A)(2), where the Plaintiff is proceeding in forma pauperis and if the residence of Defendant is unknown, service shall be made by posting and mail. The Court hereby designates the following two (2) additional posting locations in Mahoning County for the purpose of service by publication:

Struthers Municipal Building  
6 Elm St.  
Struthers, Ohio 44471

Mahoning County Court #3  
605 East Ohio Ave.  
Sebring, Ohio 44672

## **RULE 10**

### **TEMPORARY ORDERS BY AFFIDAVIT OR ORAL HEARING**

10.01 ~~Request for Affidavit Order~~ ***Motion and Affidavit or Counter-Affidavit for Temporary Orders Without Oral Hearing.*** Temporary Orders in cases of divorce or legal separation shall be issued on the basis of Affidavits pursuant to Rule 75(N) of the Ohio Rules of Civil Procedure. If a party to a divorce or legal separation wants the Court to issue orders concerning temporary allocation of parental rights and responsibilities, temporary child support, temporary spousal support, or allocation of debts and expenses during pendency, the party requesting temporary orders shall file a ~~Request for Affidavit Order~~ ***Motion and Affidavit for Temporary Orders Without Oral Hearing*** (forms are available on the Court's Website). The ~~Request Motion~~ may

be filed with the initial Complaint, or it may be filed after the Complaint is filed. If there are minor children any ~~Request for Affidavit Order~~ *Motion and Affidavit* shall be accompanied by the Court's *Affidavit of Income and Expenses, Parenting Proceeding Affidavit (if there are minor children), Health Insurance Affidavit Affidavit of Income, Expenses and Financial Disclosure, Parenting Declaration, Private Health Insurance Questionnaire* and IV-D Application (forms available on the Court's Website). **It is the responsibility of the attorney for the party requesting an Affidavit Order Temporary Orders by Affidavit to provide an extra copy of the aforementioned forms to the Domestic Relations Assignment Commissioner at the time of filing.**

**10.02 Affidavit by Opposing Party:** The other party may file a ~~Request for Affidavit Order or Affidavit of Income, Expenses and Financial Disclosure~~ *Motion and Counter Affidavit for Temporary Orders Without Oral Hearing or Affidavit of Income and Expenses* within fourteen (14) days of being served with the ~~Request for Affidavit Order~~ *Motion*. Unless previously filed, any Counter ~~Request~~ *Motion* shall be accompanied by the Court's ~~Affidavit of Income, Expenses and Financial Disclosure, Parenting Declaration~~ *Affidavit of Income and Expenses, Parenting Proceeding Affidavit* and IV-D Application (forms available on the Court's Website). **Any party filing a responsive document as described above shall take a copy of the document(s) to the Domestic Relations Assignment Commissioner so that it may be considered by the Magistrate at the non-oral hearing on affidavit orders.**

**10.03 Scheduling of Hearing:** When the party requesting an Affidavit Order provides a copy of the ~~Request for Affidavit Order~~ *Motion and Affidavit for Temporary Orders Without Oral hearing* to the Domestic Relations Assignment Commissioner, the Assignment Commissioner shall set the ~~Request for Affidavit Order~~ *Motion* for a non-oral hearing on the Magistrate's Docket.

~~10.04 Service on Opposing Party:~~ Any party filing the ~~Request for Affidavit Order~~ shall mail a copy of the ~~Request~~ to the opposing party.

~~10.0504 Evidence and Order:~~ The Court shall consider the sworn affidavits of the parties and may, upon review of same, issue an Order concerning the relief requested. The Court also may, upon review of the affidavits submitted, refuse to issue a 75(N) Order, or may set the matter for an oral hearing.

~~10.0605 Motion for Oral Hearing:~~ Upon the issuance of a 75(N) Order, either party may file a motion for an oral hearing to have the Court consider modification of its prior Order. A motion for an oral hearing must state with particularity the reason why an oral hearing is required. The motion must be filed with the Clerk of Court after the moving party obtains a hearing date from the Domestic Relations Assignment Commissioner. Unless the Judge or Magistrate grants a stay, a motion for oral hearing shall not suspend the Temporary Order.

## RULE 11

### ADDITIONAL EX-PARTE ORDERS

#### 11.01 Ex-Parte Orders

(A) **Civ. R. 75(I):** In addition to Temporary Orders by Affidavit, pursuant to Local Rule 10 and Mutual Restraining Orders, the Court may issue Ex-Parte Orders, with or without bond, pursuant to Civ. R. 75(H), when it is made to appear to the Court by affidavit that:

(1) The opposing party is about to dispose or encumber property, or any part of property, so as to defeat the other party in obtaining spousal support or an equitable division of the marital property.

(2) A party to the action, or a child, is about to suffer physical abuse, annoyance, or bodily injury by the other party.

The Restraining Order may be issued without notice and shall remain in force during the pendency of the action unless the Court or Magistrate otherwise orders. Prior to the issuance of an Ex-Parte Order, the party seeking the same shall make a good faith effort to provide opposing counsel, if any, with REASONABLE notice of the application to the Court for such relief.

(B) **Parenting and Visitation Issues:** ~~No~~ Ex-Parte Orders concerning parenting or visitation shall *not generally* be issued except in emergency situations where third party independent corroboration of the danger is provided by credible testimony from sources including but not limited to the police or a children's services agency. When family violence is involved, domestic violence procedures should be followed. The party seeking the Order shall be present for the ex-parte hearing.

(C) **Notice of Hearing:** When an Ex-Parte Order is granted, a hearing ~~may~~ *shall* be scheduled and held promptly, and as soon as is practicable, to determine whether the Order is required. The party granted the same shall make a good faith effort to provide opposing counsel and unrepresented adverse parties with immediate notice of the hearing date.

(D) **Bond:** The posting of bond is within the discretion of the Court.

(E) **Dissolving of Orders:** A party against whom an Ex-Parte Restraining Order was issued may file a motion, supported by affidavit, requesting that the Order be dissolved. In the absence of agreement of the parties as to the terms and conditions for dissolving such Orders, the matter shall be set for hearing before the Judge or Magistrate.

## RULE 12

### CONTEMPT AND MOTIONS TO SHOW CAUSE

12.01 **Contents of Motion:** All motions shall contain the following:

- (A) A reference to the date and language of the former Order to which the motion relates.
- B) Specific facts, or an affidavit setting forth specific facts, forming the basis for the motion.
- (C) The motion shall contain the Court's official Summons and Order to Appear signed by the Court or Magistrate which shall be stapled to the front of the motion as the cover page.
- (D) Motions for contempt shall be served pursuant to Civ. R. 4 through Civ. R. 4.6. Personal service of a Motion For Contempt or Motion to Show Cause is preferred to ensure that the non-moving party has actual notice of the hearing.
- (E) The Court may dismiss any motion which fails to comply with this rule.

12.02 **Contempt for Unpaid Medical Bills:** A motion alleging contempt for unpaid medical bills shall be accompanied by a fully executed "Explanation of Medical Bills" form set forth on the Court's Website. Copies of the medical bills in dispute shall not be attached to the motion but such bills and other supportive documentation shall be marked as exhibits and submitted as evidence at the hearing. All Motions to Compel Payment of Medical Bills shall be filed within twenty-four (24) months of the initial billing to the moving party.

12.03 **Attorney Fees:** Attorney fees may be awarded in any contempt action involving child support, visitation or spousal support. Absent evidence to the contrary, a fee of **\$500.00** shall be considered a presumptively reasonable fee without the necessity of formal proof.

12.04 **Appointment of Attorney in Contempt Actions:** The Court will appoint counsel to indigent parties upon their completion of the requisite Indigency Certification Form and a finding of inability to pay attorney fees. In accepting the appointment, the attorney shall accept no compensation beyond that awarded by the Court.

12.05 **Payment of Fees:** Within fourteen (14) days of the conclusion of the case, the appointed attorney shall submit the required form for payment of fees.

## RULE 13

### OBJECTIONS TO DECISION/MOTION TO SET ASIDE

13.01 **Magistrate's Decision:** Objections to a Magistrate's Decision must be filed within fourteen (14) days of the date on which the Magistrate's Decision was filed with the Clerk of Court. The opposing party may file an objection or response within ten (10) days after the first objection. The filing of said Objections shall stay the Magistrate's Decision until the ruling of the Judge is rendered.

13.02 **Magistrate's Order:** To appeal a Magistrate's Order, a Motion to Set Aside the Order must be filed within ten (10) days of the date on which the Magistrate's Order was filed with the Clerk of Court. The Order is not stayed unless the Judge or the Magistrate grants a stay.

13.03 **Hearing Date Obtained:** Prior to the filing of Objections or a Motion to Set Aside, a hearing date must be obtained from the Court's Assignment Commissioner. The hearing date shall be set forth in the Objections or Motion and served upon the opposing counsel and party in accordance with the Civil Rules.

13.04 **Transcripts:** Objections or Motions to Set Aside shall be supported by a transcript of all the evidence submitted to the Magistrate relevant to that fact or an affidavit of that evidence if a transcript is not available. A transcript shall not be required if the objection is only to an issue of law. The transcript must be filed by the moving party within thirty (30) days of the filing of the objection unless the Court, in writing, extends the time due to the inability of the reporter to complete the transcript of the testimony.

(A) **Written Request:** The moving party shall file a written Notice requesting the transcript within three (3) days of the filing of the Motion to Set Aside or Objections and furnish a copy of same to the Court. The Notice shall state the name of the Court Reporter preparing the transcript. At the time the transcript is ordered, the attorney or party shall arrange for payment of the court reporter.

(B) **Dismissal for Non-Compliance:** Failure to file a transcript when required shall result in dismissal of the Motion to Set Aside or the Objection.

## **PRE-TRIAL & TRIAL RULES**

### **RULE 14**

#### **DISCOVERY**

##### **14.01 Discovery Procedures**

(A) **In General:** Civil Rules 26 through 37 shall apply to any action. The purpose of this Rule is to encourage prompt and complete discovery to avoid the Court's involvement in the discovery process.

(B) **Mandatory Disclosure:** Each party has the affirmative duty, within seventy-five (75) days of the filing of an Answer or Counterclaim, to disclose to the other party the following information and documents which are included in the Court's Mandatory Discovery Order as set forth on the Court's Website.

(C) **Authorization:** All parties shall sign any authorization necessary for the opposing party to obtain full and detailed wage, benefit and pension information.

(D) **Sanctions:** Failure to comply with this rule may result in sanctions pursuant to Civ. R. 37, including but not limited to contempt citations, award of attorney fees, litigation expenses, possible dismissal of claims, or restrictions on the submission of evidence.

### **RULE 15**

#### **STATUS CONFERENCES**

15.01 **Status Conferences:** The Court may schedule a status conference in parenting cases or in any other action before the Court. Notice shall be sent to all parties pursuant to the Civil Rules. The Judge and Magistrates shall have discretion to conduct a status conference by telephone with both counsel.

### **RULE 16**

#### **PRE-TRIAL CONFERENCES**

16.01 **Purpose:** A pre-trial conference may be held in every contested case. The purpose of the conference is to encourage settlement.

~~16.02 **Pre-Trial Statement:** A Pre-Trial Statement shall be filed prior to the pre-trial and served on the opposing party prior to the scheduled pre-trial conference (Pre-Trial Statement *The Affidavit of Property* is found on the Court's Website).~~

*16.02: **Disclosure of Assets:** Both parties shall make known to the other party all of their assets and debts and, if necessary, shall amend their Affidavit of Property at the Pre-Trial Conference to comply with this requirement.*

16.03 **Attendance by Counsel:** The attorneys who will be present at trial shall attend all pre-trial conferences except with leave of court. A continuance may not be granted on the grounds that the trial attorney is not prepared to go forward if he or she has failed to attend the pre-trial conference. Failure to attend or comply with the requirements of this rule may result in sanctions.

16.04 **Attendance by Parties:** All parties shall be present at the pre-trial conference, except with leave of court.

## **RULE 17**

### **TRIALS**

#### **17.01 Exhibits.**

(A) All exhibits shall be marked prior to trial and indicate whether submitted by Plaintiff or Defendant. Plaintiff shall use numbers and Defendant shall use letters. ~~The exhibit marker shall indicate the date of submission.~~

(B) The Judge and Magistrates may set orders during the pendency of a case imposing time limits for the exchange and submission of all documents and a list of other exhibits to be introduced at the trial or evidentiary hearing.

(C) The Judge and Magistrates may set orders during the pendency of a case imposing time limits for the submission of a list of witnesses, including experts, who will testify at trial or evidentiary hearing.

(D) The Judge and Magistrates may set orders during the pendency of a case imposing time limits for submitting to the Court and opposing counsel all expert witness reports.

17.02 **Trial Briefs/Findings and Conclusions:** The Court may require the parties to file Trial Briefs and/or Proposed Findings of Fact and Conclusions of Law.

17.03 **Attorney Fees:** An award of attorney fees is discretionary with the Court and shall be awarded in accordance with the following protocol and considerations:

(A) A request for attorney fees and expenses to prosecute an action shall be made in writing and shall be included in the body of a motion or other pleading that gives rise to the request for fees.

(B) At the time of the final hearing on the motion or pleading that gives rise to the request for attorney fees, the attorney seeking such fees shall present:

(1) Testimony and an itemized statement describing the services rendered, the time for such services, and the requested hourly rate for in-court time and out-of-court time.

(2) Testimony as to whether the case was complicated by any or all of the following: new or unique issues of law; difficulty in ascertaining or valuing the parties' assets; problems with completing discovery; any other factor necessitating extra time being spent on the case; testimony regarding the attorney's years in practice and experience in domestic relations cases; evidence of the parties' respective income and expenses, if not otherwise disclosed during the hearing.

(C) Expert testimony other than the attorney requesting fees is required to prove both the necessity and reasonableness of attorney fees.

(D) Failure to comply with the provisions of this rule may result in the denial of a request for attorney fees.

(E) Any attorney fee award made by this Court must be entered in favor of a party litigant and not in favor of a party's attorney. Such fee may be ordered payable through the Child Support Enforcement Agency.

17.04 **Exhibits**

(A) Exhibits admitted during trials or hearings before the Judge shall be retained by the Official Court Reporters. Exhibits admitted during trials or hearings before the Magistrate shall be retained by the Court.

(B) Exhibits retained by the Official Court Reporters shall be made available for review and/or copying in accordance with the protocols of that office. Exhibits retained by the Court shall be made available for review during normal business hours upon reasonable advance notice.

(C) Exhibits retained by the Court may be discarded after reasonable notice to the parties after the time for appeal has expired.