

**MONTGOMERY COUNTY  
DOMESTIC RELATIONS  
COURT**

**LOCAL  
RULES OF COURT**



**EFFECTIVE  
FEBRUARY 1, 2014**

# RULES OF THE DOMESTIC RELATIONS DIVISION

*Complete and Updated Through February 15, 2013*

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## **GENERAL RULES**

### **RULE 4.01**

#### **ADOPTION, SCOPE AND CONSTRUCTION OF RULES**

(A) The Domestic Relations Division of the Common Pleas Court for Montgomery County, Ohio adopts the following rules for the management of proceedings and other functions of the court pursuant to Rule 5 of the Rules of Superintendence for the Courts of Ohio. The court may amend these rules from time to time as needed or as required by law.

(B) These rules are intended to supplement and complement the Ohio Rules of Civil Procedure, the Rules of Superintendence for the courts of Ohio, and other controlling statutes.

(C) 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. These rules shall be construed so as to provide fairness and to secure just and expeditious determination of all proceedings. These rules shall apply to proceedings pending at the time they take effect, and to future proceedings.

(D) These rules shall be cited as "Mont. D.R. Rule 4.XX."

(E) These rules shall be effective February 15, 2013 and supersede all previous rules promulgated by this court.

(F) These rules may be accessed on the Internet at [www.mcoho.org/dr](http://www.mcoho.org/dr).

### **RULE 4.02**

#### **LICENSE TO PRACTICE LAW/PRO SE LITIGANTS COMPLIANCE WITH OHIO RULES OF CIVIL PROCEDURE**

(A) No lawyer representing a client in any case in this court shall make any appearance or file any document with the Clerk of Courts unless that lawyer is licensed to practice law and is in good standing under Ohio law. A lawyer representing a client has an affirmative duty to notify the court in any pending case if for any reason the lawyer is no longer in good standing. A violation of this rule may result in contempt sanctions against the violator, including assessment of clerk administrative fees and attorney fees. The court may also strike pleadings or vacate proceedings in which the attorney appeared while the attorney was not in good standing to practice law in Ohio.

Nothing in these rules shall be construed so as to prevent a party or parties from representing themselves. Any pleading, motion or other filing signed by a pro se litigant may be submitted to the court to ensure compliance with the Ohio Rules of Civil Procedure and these rules as to form and content only.

(B) Unless otherwise provided herein, all pleadings, motions and other filings shall comply, in form and content, with the Ohio Rules of Civil Procedure and the Local Rules of this court.

**RULE 4.03  
SPECIAL NEEDS/COMPLIANCE  
WITH AMERICAN WITH DISABILITIES ACT  
AND INTERPRETER SERVICES**

Individuals with disabilities, special needs or the need for an interpreter should make requests for reasonable accommodations to the court's purchasing coordinator at (937) 496-7228 at least seven (7) days prior to any scheduled hearing so that arrangements can be made.

If the interpreter service is no longer required or if the parties continue the hearing, the parties must immediately notify the court's purchasing coordinator in order to cancel or reschedule the service. Failure to notify the court's purchasing coordinator of a cancelled or re-set hearing may result in an assessment of the cancellation fee for the interpreter service. Only court appointed interpreters shall be used in court proceedings.

**RULE 4.04  
CLERK ADMINISTRATIVE FEES**

**(A) Fees Deposit.** The Clerk of Courts shall not accept any action for filing without a deposit as security for fees unless waived by statute or court order. The court or Clerk of Courts may require an additional deposit during the pendency of an action. Child Support Enforcement Agency (hereinafter "CSEA") filings and domestic violence filings do not require a deposit as security for costs.

Contact Clerk of Courts office at (937) 496-7625 for current deposit requirements and fee schedule.

**(B) Poverty Affidavit.** The deposit as security for fees shall not be required if a party files a poverty affidavit. [Appendix, Form 1]

If, during the course of a proceeding, the court determines that a party who has filed Poverty Affidavit, is able to pay clerk administrative fees, the court may order that party to pay the fees within a reasonable period of time commensurate with the circumstances.

**(C) Responsibility for Fees.** All entries and orders shall contain a provision for allocating payment of fees. The Clerk shall not accept for filing any decree or post-decree entry or order without the payment of any fees due, unless waived or otherwise modified by the court. In the absence of any provision, the balance of fees shall be paid as follows: (1) by the plaintiff in an uncontested divorce, legal separation or annulment proceeding; (2) equally between the parties in a contested divorce proceeding or dissolution proceeding; or (3) by the movant in a post-decree proceeding. The court or Clerk of Courts may require an additional deposit during the pendency of an action.

**(D) Deposits Applied.** Upon final judgment, the Clerk of Courts is directed to apply the deposits to the administrative fees in the case, regardless of the party against

whom fees are assessed. The Clerk shall thereupon assess the fees against the proper party, and notify that party, reimbursing the administrative fees, when appropriate.

**(E) Special Project Fee.** The Clerk of Courts shall assess a charge of twenty-five dollars (\$25) for each filing of a Complaint for Divorce, Dissolution, Legal Separation or Annulment, post decree motion, petition or any other pleading which requires determination by judgment entry. Said fees shall not be assessed in Domestic Violence cases.

**RULE 4.05**  
**FILING AND REMOVAL OF PAPERS FROM CUSTODY OF THE CLERK**

**(A)** The Clerk is the court's keeper of the record and all papers are filed with the Clerk.

**(B)** Court files may not be removed by members of the public but may be copied (for a fee) or examined in the Clerk's office.

**(C)** Unsealed transcripts of the proceedings, if filed, may be reviewed in the Clerk's office only.

**(D)** Copies of the transcripts of the proceedings may be obtained only from the official court reporter. Cost per page of transcript are set by court order.

**RULE 4.06**  
**ASSIGNMENT OF DOMESTIC RELATIONS CASES**

All initial filings for domestic violence, divorce, legal separation, annulment, dissolution, and foreign cases transferred pursuant to law shall be assigned randomly to one of the two judges by the Clerk at the time the case is filed. All cases previously filed between the same parties, including any previously dismissed cases and domestic violence cases, shall be assigned to the same judge who previously was assigned. Thereafter, full responsibility for that case rests with the assigned judge, whose last name shall appear in the caption of all filings under the case number. If the case or a motion therein is heard by a magistrate, that magistrate will normally continue to be the assigned magistrate on all subsequent matters heard by a magistrate. The magistrate's last name in addition to the assigned judge's name, shall appear in the caption of all filings under the case number. A magistrate may be reassigned on any case at the discretion of the assigned judge.

Judges other than the assigned judge may sign entries of a routine nature in the absence of the assigned judge. Non-routine actions in another judge's case will be taken only when it appears that a genuine emergency exists.

All trials and hearings authorized by Ohio Revised Code Sections 2151.23, 3113.31 and Chapter 3105, may be heard by the judge of this Division to whom the case has been assigned, by one of the judges of the Common Pleas Court of Montgomery County, by a visiting judge, or by any magistrate appointed by this court.

**RULE 4.07**  
**MATTERS REFERRED TO MAGISTRATES**

**(A)** Magistrates shall be appointed by the court to hear cases referred in accordance with Civil Rule 53, and have all powers conferred by said rule. It is the intent of the court that the magistrate shall manage all assigned matters to a written conclusion. Upon the General Order of Reference, magistrates may hear:

- (1) Contested and non-contested divorces, legal separations and annulments (or such issues therein specifically referred by the court);
- (2) Dissolutions;
- (3) Motions to establish, modify shared parenting plans, or terminate child support and/or spousal support;
- (4) Motions to establish or modify allocation of parental rights and responsibilities and/or companionship rights;
- (5) Motions to show cause on prior temporary or permanent court orders;
- (6) Motions concerning foreign decrees and support matters;
- (7) Mistake of fact or appellate proceedings from CSEA administrative orders;
- (8) Oral hearings pursuant to Civil Rule 75(N);
- (9) Motions or requests for clerical corrections pursuant to Civil Rule 60(A);
- (10) Motions to vacate the marital premises;
- (11) Domestic violence *ex parte* and full hearings;
- (12) Motions to dismiss any matter pending before the magistrate;
- (13) Motions for a stay of execution of proceedings before the magistrate;
- (14) Motions to quash or strike before the magistrate;
- (15) Contempt in the actual presence of the magistrate;
- (16) Motions for attorney fees associated with any of the preceding actions;
- (17) The setting of a bond to assure appearance of a party at a subsequent hearing in an action to show cause;

**(B)** Magistrates may hear any other issues pursuant to a special order of reference including but not limited to motions pursuant to Civil Rule 60(B).

(C) Magistrates may hear all other interlocutory matters relating to any matter set forth above, including but not limited to discovery, the issuances of subpoenas, continuances, evidentiary rulings, the conducting of pretrials, administering oaths to and the examination of witnesses, the issuance of an attachment for an alleged contemnor, the setting of bail to secure the alleged contemnor's appearance, the assessment of costs and all other procedural matters.

## ***PLEADINGS AND MOTIONS***

### **RULE 4.08 PLEADINGS AND MOTIONS**

(A) The requirements of this rule apply to pro se litigants and attorneys.

(B) All pleadings, motions, briefs and other papers filed with the Clerk of Courts shall conform with Civ. R. 10. They shall be legibly typewritten or printed on one side only of letter size paper (approximately 8 ½" x 11") and without backing or cover. The face page of all filings shall provide a blank space of at least 2 ½ inches at the top sufficient to permit the Clerk of Courts to add time-stamp imprints and each page shall be numbered.

(C) Cases shall be designated based upon type and the year of filing, and shall be consecutively numbered, as follows:

Divorces	-	20--	-DR-xxxx
Legal Separations	-	20--	-LS-xxxx
Annulments	-	20--	-AN-xxxx
Dissolutions	-	20--	-DM-xxxx
Domestic Violence	-	20--	-DV-xxxx
UCCJEA Filings	-	20--	-UJ-xxxx
Registration of Foreign Support Orders	-	20--	-FSO-xxxx
Registration of Foreign Judgments	-	20--	-OS-xxxx
Conciliation	-	20--	-CN-xxxx

(D) The caption in all pleadings, petitions, motions, briefs and other papers filed shall state the name, address of all the parties, and shall include a brief title identifying the purpose of the motion, the case number assigned, the Support Enforcement Tracking System [hereinafter "SETS"] number if assigned, the name of the assigned judge, and the name of the assigned magistrate. If any information is not known, there shall be a notation to that effect in the appropriate place on the caption.

(E) All motions shall state with particularity the grounds therefore, shall set forth by memorandum or affidavit the relief or order sought and shall identify any prior order(s) at issue.

(F) All papers filed with the Clerk of Courts by an attorney shall bear the attorney's name, Ohio Supreme Court registration number, firm name (if any), office address, telephone number, fax number (if any) and a designation of which party the



attorney represents. All pro se filings shall be signed in conformity with Civ. R. 11.

**(G)** Whenever a document is mailed to the Clerk of Courts for filing, the party or the attorney sending same shall provide a self-addressed return envelope of sufficient size with proper postage affixed.

**(H)** No affidavit or other exhibit may be attached to any filing, except as specifically authorized by these rules, the Civil Rules, specific court order, or permission of the court. Exhibits may be delivered to the assigned judge or magistrate with a time-stamped copy of a filing for consideration in connection with that filing, if such exhibits are simultaneously served upon opposing counsel or an unrepresented party. 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. Depositions may be filed with the Clerk of Courts only by a certified court reporter. A written transcript of a videotaped deposition must be filed with the videotape at least three (3) working days prior to trial.

**(I)** Affidavits signed by minor children shall not be accepted for filing nor admitted into evidence as exhibits. Other exhibits relating to the minor children such as writings, video or tape recordings, shall not be accepted for filing nor admitted into evidence as exhibits pursuant to R.C. Section 3109.04(B)(3).

**(J)** Pleadings may be amended or supplemented as permitted by Civ. R. 15.

**(K)** All documents submitted for filing, including entries for court signature, must contain a distribution list to include both parties, attorneys (if any), court assignment office, bailiff, CSEA, if appropriate, and others as appropriate.

**(L)** The Clerk of Courts may not accept for filing any document which does not conform with the requirements of this rule.

**(M)** Joinder of parties is governed by Civ. R. 75(B). Whenever a party is joined, by proper motion and entry, all subsequent filings must include notice to that party.

#### **RULE 4.09 DOCUMENTS REQUIRED FOR FILING**

In original filings or post decree filings the following documents shall also be filed by each party as set forth below:

**(A) Complaint for Divorce/Legal Separation/Annulment without children:**

Questionnaire [Appendix, Form 22]  
Affidavit of Financial Disclosure [Appendix, Form 2]  
Application for Child Support Services [Appendix, Form 7]

**(B) Complaint for Divorce/Legal Separation/Annulment with children:**

Questionnaire [Appendix, Form 22]  
Affidavit of Financial Disclosure [Appendix, Form 2]  
Information for Parenting Proceeding Affidavit [Appendix, Form 3]  
Application for Child Support Services [Appendix, Form 7]

**(C) Petition for Dissolution without children:**

Questionnaire [Appendix, Form 22]  
Affidavit of Financial Disclosure [Appendix, Form 2]  
Waiver of Service  
Application for Child Support Services [Appendix, Form 7]

**(D) Petition for Dissolution with children:**

Questionnaire [Appendix, Form 22]  
Affidavit of Financial Disclosure [Appendix, Form 2]  
Information for Parenting Proceedings Affidavit [Appendix, Form 3]  
Waiver of Service  
Child Support Computation Worksheet (as required by R.C. 3119.022 and 3119.023 - full worksheet). [Appendix, Forms 23, 24]  
Application for Child Support Services [Appendix, Form 7]

**(E) Petition to Register Foreign Orders:**

Questionnaire [Appendix, Form 22]  
An authenticated copy of the foreign judgment  
Application for Child Support Services [Appendix, Form 7]

**(F) Post decree motion requesting modification of child/spousal support:**

Affidavit of Financial Disclosure [Appendix, Form 2]  
{see also Mont. D.R. Rule 4.41(B)}

**(G) Post decree motion requesting reallocation of parenting rights and responsibilities (“Custody”):**

Information for Parenting Proceeding Affidavit [Appendix, Form 3]  
Affidavit of Financial Disclosure [Appendix, Form 2] {see also Mont. D.R. Rule 4.41(C)}  
Application for Child Support Services [Appendix, Form 7]

**(H) Post decree motion requesting modification of parenting time (“Visitation”):**

Information for Parenting Proceeding Affidavit [Appendix, Form 3]

**(I) Post decree motions to show cause (“Contempt”):**

Affidavit in support  
Notice of Possible Sanctions [Appendix, Form 13]  
Order to Show Cause [Appendix, Form 14]  
{see also Mont. D.R. Rule 4.42}

**(J) Petition for Domestic Violence Civil Protection Order:**  
(If requesting temporary child support)

Application for Child Support Services [Appendix, Form 7]  
Affidavit of Financial Disclosure [Appendix, Form 2]

**RULE 4.10**  
**AFFIDAVIT OF FINANCIAL DISCLOSURE**

**(A) Required Filing.** The court's approved Affidavit of Financial Disclosure [Appendix, Form 2] shall be timely submitted to the court as required by this rule, on the forms provided by the court or computer generated duplications. All Affidavits of Financial Disclosure shall be complete and provide detailed disclosure under oath. Incomplete affidavits may not be accepted or considered by the court. Every party is under an affirmative duty to supplement any Affidavit of Financial Disclosure immediately upon any material change in employment, income, expenses or other information included in the affidavit.

The Supreme Court of Ohio has authorized the use of their Affidavit of Income and Expenses (See Appendix Form 2A). If a party elects to use this form and the party is requesting a temporary custody or support order, the party must file a separate motion for the temporary order.

**(B) Distribution of Affidavit.**

- (1) Divorce, Legal Separation, Annulment:** All complaints for divorce, legal separation, or annulment shall be accompanied by an Affidavit of Financial Disclosure, a copy of which shall be sent by the plaintiff to the defendant. All defendants shall submit to the court an Affidavit of Financial Disclosure within fourteen (14) days of service of summons or with any Answer or Counterclaim if one has not already been submitted, and shall serve a copy on the plaintiff.
- (2) Dissolutions of Marriage:** In petitions for dissolutions of marriage, an Affidavit of Financial Disclosure shall be submitted to the court by each party contemporaneously with the petition.
- (3) Domestic Violence:** In all domestic violence cases where support is an issue, the petitioner shall submit to the court an Affidavit of Financial Disclosure which shall be sent to the respondent. The respondent shall submit to the court and shall send to the petitioner an Affidavit of Financial Disclosure prior to the next hearing on the matter.

- (4) **Post Decree Motions:** In all post decree motions where support is an issue, the moving party shall submit to the court an Affidavit of Financial Disclosure which shall be sent to the non-moving party. The non-moving party shall submit to the court and send to the moving party an Affidavit of Financial Disclosure within fourteen (14) days of service of summons, or three (3) days prior to the next hearing on the matter, whichever is earlier.

**RULE 4.11**  
**SERVICEMEMBERS CIVIL RELIEF ACT**

In any action or proceeding commenced in this court against an unrepresented party who is a member of the military service, the court may appoint an attorney to advise that party pursuant to the Servicemembers Civil Relief Act of 1940, 50 USC 501, *et seq.* as amended, and may set a fee for the attorney's services.

The court may stay the proceedings pending the military member's availability for trial. During that stay, the military member will be ordered to cooperate in all discovery procedures and to notify the court upon his/her return. (See, 50 U.S.C. 521). The military member will be advised of the right to obtain counsel and will be directed to file any motion or responsive pleading with respect to jurisdiction or any other issues.

In any case in which child support payments are owed by a military member, the court may require that individual to make an allotment from his/her pay and allowances for such support. 42 U.S.C. 665(a).

**RULE 4.12**  
**SERVICE BY PUBLICATION**

**(A)** Except in an action governed by division (B) of this rule, if the residence of a defendant is unknown, service shall be made by publication in actions where such service is authorized by law. Before service by publication can be made, an affidavit of a party or his counsel shall be filed with the court. The affidavit shall aver that service of summons cannot be made because the residence of the defendant is unknown to the affiant; shall detail all of the efforts made on behalf of the party to ascertain the residence of the defendant; and shall aver that the residence of the defendant cannot be ascertained with reasonable diligence. {See also Civ. R. 4.4}

Upon the filing of the affidavit, the Clerk of Courts shall cause service of notice to be made by publication in a newspaper of general circulation in the county in which the complaint is filed. If no newspaper is published in the county, then publication shall be in a newspaper published in an adjoining county. The publication shall contain the name and address of the court, the case number, the name of the first party on each side, and the name and last known address, if any, of the person or persons whose residence is unknown. The publication shall also contain a summary statement of the object of the complaint and demand for relief, and shall notify the person to be served that he or she is required to answer within twenty-eight (28) days after publication. The publication shall be published at least once a week for six (6) successive weeks unless publication for a lesser number of weeks is specifically provided by law. Service shall be complete at the date of the last publication.

After the last publication, the publisher or its agent shall file with the court an affidavit showing the fact of publication together with a copy of the notice of publication. The affidavit and copy of the notice shall constitute proof of service.

**(B)** In a divorce, annulment, or legal separation action, if the plaintiff is proceeding *in forma pauperis* and if the residence of the defendant is unknown, service by publication shall be made by posting and mail. Before service by posting and mail can be made, an affidavit of a party or the party's counsel shall be filed with the court. The affidavit shall contain the same averments required by division (A) of this rule and, in addition, shall set forth the defendant's last known address.

Upon the filing of the affidavit, the Clerk of Courts shall cause service of notice to be made by posting in a conspicuous place in the courthouses in which the General and Domestic Relations Divisions of the Court of Common Pleas for the county are located and in two additional public places in the county that have been designated for the posting of notices pursuant to this rule. The notice shall contain the same information required by division (A) of this rule to be contained in a newspaper publication. The notice shall be posted in the required locations for six (6) successive weeks.

The clerk shall also cause the complaint and summons to be mailed by ordinary mail, address correction requested, to the defendant's last known address. The clerk shall obtain a certificate of mailing from the United States Postal Service. If the clerk is notified of a corrected or forwarding address of the defendant within the six (6) week period that notice is posted pursuant to division (B) of this rule, the clerk shall cause the complaint and summons to be mailed to the corrected or forwarding address. The clerk shall note the name, address and date of each mailing in the docket.

After the last week of posting, the clerk shall note on the docket where and when notice was posted. Service shall be complete upon the entry of posting.

#### **RULE 4.13 SERVICE OF PROCESS AND SPECIAL PROCESS SERVERS**

**(A) Process Server (One-Time Appointment).** If a party desires personal service to be made by a special process server pursuant to Civ. R. 4.1, that party or counsel must file with the Clerk of Courts an entry appointing a special process server. The following must be stated in the entry of appointment:

- (1) The name of the person to be appointed as process server;
- (2) That the person to be appointed as process server is eighteen (18) years of age or older; and
- (3) That the person to be appointed as process server is not a party or counsel for a party in the action.

**(B) 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 supported by affidavit setting forth the following information:

- (1) The name, address, and telephone number of the applicant;
- (2) That the applicant is eighteen (18) years of age or older;
- (3) That the applicant agrees not to attempt service of process in any case in which the applicant is a party or counsel for a party; and
- (4) That the applicant agrees to follow the requirements of Civ. R. 4 through 4.6, and any applicable Local Rules, and specific instructions for service of process as ordered by the court in individual cases.

The applicant requesting designation shall also submit an order captioned, "In re The Appointment of (name of applicant) As Standing Special Process Server," and stating as follows: "It appearing to the court that the following applicant has complied with the provisions of Mont. D.R. Rule 4.13, (name of applicant) is hereby designated as a Standing Special Process Server authorized to make service of process in all cases filed in this court, to serve until further order of the court." The clerk shall record such appointment on the court's general docket, and shall retain the original applications and entries. In any case thereafter the Clerk of Courts shall accept a time-stamped copy of such an order as satisfying the requirements of Civ. R. 4.1(B) for designation by the court of a person to make service of process.

**(C) Required Personal Service.** Service of process must be perfected by personal service for the initial filing of a petition for a domestic relations civil protection order and the initial filing of a motion to show cause.

**(D) Service of a Party in Foreign Country.**

- (1) Servicemembers must be served notice in accordance with the Servicemembers Civil Relief Act.
- (2) Service of a party residing in a foreign country that is a signatory of the Hague Convention must be served in accordance with that convention. (see Civ. R. 4.5(A) effective July 1, 2012)
- (3) Service of a party residing in a foreign country that is not a signatory of the Hague Convention must comply with rules of service for that country.

**NOTE:** Additional information may be found at [www.travel.state.gov/law/info/judicial](http://www.travel.state.gov/law/info/judicial).

**RULE 4.14  
ORDERS FOR TEMPORARY CHILD SUPPORT, SPOUSAL SUPPORT,  
INTERIM ATTORNEY FEES AND EXPENSES OF SUIT**

**(A) Temporary Support Order**

Upon the filing of a divorce or legal separation action, the court may issue a temporary order pursuant to Civ. R. 75(N) which may contain orders of temporary

custody, child support, parenting time, and spousal support or such other orders as the court deems appropriate. This temporary order is based on the information contained in the Affidavit(s) of Financial Disclosure which must be filed in divorce or legal separation actions pursuant to Mont. D.R. Rules 4.09 and 4.10. Parties using the Ohio Supreme Court affidavit (appendix Form 2A) shall file a separate motion for an award of temporary orders (see Mont. D.R. 4.10(A)). Copies of the file-stamped temporary orders will be forwarded to the attorneys of record and unrepresented parties.

The order will instruct the CSEA to take no enforcement action absent a court order. Issues pertaining to arrearages may be resolved at an oral hearing, at the pretrial conference or the final hearing.

Unless otherwise ordered, all child support and spousal support shall be paid through Ohio Child Support Payment Central, P.O. Box 182394, Columbus, Ohio 43218-2394. All payments of support shall include the 2% Montgomery County Support Enforcement Agency service fee and be made by cash, certified check or money order and shall also include the assigned SETS number.

Upon a motion filed by a party, a withholding notice for the temporary support ordered may be issued at the court's discretion, without a hearing, for good cause shown.

**(B) Interim Attorney Fee Award**

Upon the court's own motion or motion of either party, interim attorney fees may be awarded without an oral hearing to allow an economically disadvantaged party to be adequately represented, or to adequately represent the interests of a minor child. The court may award such reasonable interim attorney fees as the court deems necessary and upon such terms as are equitable. In matters pending before a magistrate, the magistrate may determine an interim attorney fee request under the procedures provided for magistrate orders.

**(C) Temporary Expenses of Suit**

Upon request and affidavit and without oral hearing, the assigned judge or the assigned magistrate may for good cause shown make a temporary order for payment of a party's expenses of suit, including but not limited to, appraisals, business or personal property valuations, DNA testing, psychological evaluations, GAL reports, mediation, or other extraordinary pre-decree expenses.

**(D) Application for Child Support Services**

Upon the filing of a complaint for divorce, dissolution or legal separation action with or without children, registration of foreign decrees, post decree reallocation of parental rights, or petition for domestic violence civil protection order with request for child support, the moving party shall complete an Application for Child Support Services (JFS Form 07076) [Appendix, Form 7]. The form shall be filed with the Clerk of Courts.

**RULE 4.15**  
**ORAL HEARINGS ON TEMPORARY ORDER**

**(A) Request for Oral Hearings**

Pursuant to Civ. R. 75 (N)(2) an oral hearing may be requested after the filing of a temporary order. The party seeking an oral hearing shall submit a notice of oral hearing to the assignment office for the purpose of scheduling the hearing before a magistrate. Where applicable, counsel for the opposing party shall also be contacted for the scheduling of the oral hearing. The notice of oral hearing shall be filed and served upon opposing counsel or party pursuant to the Ohio Civil Rules.

A party's request for oral hearing shall not suspend the temporary order. Any modifications to the temporary order shall be made by the judge or magistrate order filed in accordance with Civ. R. 53. A magistrate order modifying a temporary order may be effective as of the date of the original order or to any other date deemed appropriate.

**(B) Temporary Custody**

It is the intent of a temporary custody order to provide stability for the children during the pendency of the proceedings. In appropriate circumstances, the court may make an order for the allocation of physical living arrangements in lieu of an order for temporary custody. This allocation shall not be interpreted or captioned as a shared parenting order.

**(C) Inaccurate Affidavits**

If a temporary order is filed based upon false or misleading information placed in the affidavit by the party, then the court may modify the temporary order retroactively to correct the misrepresentation at any time prior to the filing of the final decree. If an oral hearing results from a deliberate, material misrepresentation in an affidavit, an award of attorney fees may be made against the party making the misrepresentation.

**RULE 4.16**  
**MOTION TO VACATE PREMISES**

**(A) Contents of Motion.** A motion to vacate premises shall state with specificity the reasons for the motion and shall be supported by an affidavit. The motion may be set for a hearing.

**(B) When Granted.** A motion to vacate premises may be granted after a hearing if the movant establishes that the opposing party:

- (1) Attempted to cause or recklessly caused bodily injury by acts of physical violence, or;
- (2) Placed a party, by threat of force, in fear of imminent serious physical harm, or;



- (3) Committed any act with respect to a child that would result in the child being an abused child as defined in R.C. 2151.031, or;
- (4) Engaged in conduct or creates an environment which causes or is likely to cause severe emotional and/or mental stress to the spouse and/or minor children of the parties.

## **PRETRIAL AND TRIAL RULES**

### **RULE 4.17 TEMPORARY RESTRAINING ORDERS AND EX PARTE ORDERS**

**(A) Temporary Restraining Orders.** *Ex parte* temporary restraining orders may be requested by either party after the commencement of a divorce, annulment, or legal separation case. Such requests shall be made by separate motion supported by an affidavit of the party. *Ex parte* temporary restraining orders shall be made by separate order and shall be granted for the following purposes:

- (1) **Abuse:** Plaintiff/defendant is hereby restrained from abusing, annoying, harassing, molesting, threatening or injuring plaintiff/defendant and the minor child(ren).
- (2) **Removal of Children:** Plaintiff/defendant is hereby restrained from removing the minor child(ren) from the State of Ohio, except temporarily (14 days or less) for vacation.
- (3) **Property:** Plaintiff/defendant is hereby restrained from damaging, moving, selling, giving away, transferring, disposing of, or encumbering any existing or later-acquired interest of either party in any real or personal property, with the intent to permanently deprive, except plaintiff/defendant's clothing, tools of trade, and personal effects.
- (4) **Vehicle:** Plaintiff/defendant is hereby restrained from interfering with plaintiff/defendant's use of the vehicle currently used primarily by the plaintiff/defendant.
- (5) **Funds & Businesses:** Plaintiff/defendant is hereby restrained from selling, giving away, withdrawing, transferring, or encumbering any funds, account, share, stock, bond, or other existing or later-acquired interest of either party in any asset, business, corporation, partnership, employer, pension fund, bank, trust, or financial institution.
- (6) **Debts:** Plaintiff/defendant is hereby restrained from incurring any debt or making any credit card purchase in plaintiff/defendant's name or on any joint account.
- (7) **Return to Premises:** Plaintiff/defendant, who has been voluntarily absent from the marital premises for the past thirty (30) consecutive days, is

hereby restrained from re-entering the marital premises.

- (8) **Utilities:** Plaintiff/defendant is hereby restrained from terminating, modifying or changing the basic utility service (gas, electric, water, phone and trash) to the marital premises.
- (9) **Insurance:** Plaintiff/defendant is hereby restrained from terminating, modifying, or changing the beneficiaries of any life, health, automobile, or other insurance policy covering any party or minor child(ren), or otherwise violating R.C. 3105.71.
- (10) **Third Parties:** Third-party defendant is hereby restrained from permitting plaintiff/defendant to remove, sell, withdraw, transfer, or encumber any existing or later-acquired asset, real estate, vehicle, funds, account, share, stock, bond, or other interest of either party.

All other motions for temporary restraining orders shall be set for hearing with notice to opposing counsel and/or to unrepresented adverse parties.

**(B) Dissolving of Temporary Restraining Orders.** A party against whom an *ex parte* temporary restraining order was issued may file a motion, supported by an 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. The posting of a bond is within the discretion of the court upon motion by a restrained party.

**(C) Ex Parte Custody and Parenting Time Issues.** *Ex parte* orders of custody or parenting time shall not be issued except in emergency circumstances and, where practicable, only by the assigned judge. The party requesting such orders shall make every good faith effort to provide opposing counsel and unrepresented adverse parties with notice of the application to the court for relief. Any such orders which are granted shall be scheduled forthwith for a hearing on the merits of the *ex parte* order within ten (10) calendar days of the filing date.

The notice of such a hearing shall include the following language:

This matter is hereby set for hearing on \_\_\_\_\_ at \_\_\_\_\_am/pm before Judge/Magistrate \_\_\_\_\_ to determine whether the *ex parte* order granted \_\_\_\_\_ shall remain in effect. Both parties, with or without counsel, shall be present on the above date at the second floor of the Dayton-Montgomery County Courts Buildings, 301 W. Third Street, Dayton, Ohio.

#### **RULE 4.18 DISCOVERY PROCEDURES**

**(A) In General.** Civ. R. 26 through 37 shall apply to any action in this court, including post-decree motions filed pursuant to Civ. R. 75.

**(B) Intent of Local Rule.** It is the intent of this rule to encourage prompt and complete discovery and to avoid the court's involvement in the discovery process.

**(C) Filings Pertaining to Discovery.** Depositions upon oral examination, interrogatories, requests for documents, requests for admission, answers and responses thereto shall not be filed unless upon order of the court, or for use as evidence, or for consideration of a motion in the proceeding. Any discovery filed with the court shall not be considered until proof of service is endorsed thereon or separately filed.

**(D) Motions for Protective Order.** A motion for protective order shall be filed no later than fourteen (14) days prior to the date on which response to a discovery request is due or the date of a scheduled deposition, unless it can be shown that it was not possible to file such a motion within such time period. The motion shall state, with specificity, the basis for the protective order and shall state clearly on its face the date on which a response to the discovery request is due or the date of a scheduled deposition.

**(E) Mandatory Disclosure.** Each party has the affirmative duty to disclose to the other party the following information and documents:

- (1) All pension and profit-sharing plans including the most recent plan summary;
- (2) All COBRA benefits to which the other party may be entitled;
- (3) Copies of all real estate deeds, vehicle titles and registration, unless already in the possession of the other party;
- (4) All appraisals of real estate or personal property or any business property in which the party holds an interest;
- (5) Copies of the last three (3) years individual tax returns, unless already in the possession of the other party;
- (6) Documentary proof of current income from all sources; and
- (7) Copies of the most recent statements on all bank accounts, IRA's, stock accounts, mortgages, credit card accounts, and other debts.

**(F) Disclosure Deadline.** Each party shall make full disclosure no later than seven (7) days prior to the pretrial conference, unless otherwise ordered by the court.

**(G) Authentication.** No objection as to the authentication of any document will be considered when:

- (1) That document was provided to opposing counsel at least fourteen (14) days before the hearing; unless

- (2) The party opposing introduction of the document into evidence files a written objection to the authentication of that document at least seven (7) days before the hearing, setting forth the particular legal objection raised.

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

#### **RULE 4.19 PRETRIAL AND PREHEARING CONFERENCES**

**(A)** A pretrial or prehearing conference will be held in all contested divorce or custody cases, and in other cases at the discretion of the court.

**(B)** The purpose of the conference shall be to achieve an amicable settlement of the controversy and, in the event settlement is not possible, to expedite trial or hearing of the case.

At the time of the conference the attorney shall be prepared to:

- (1) Narrow the disputed legal issues;
- (2) Admit to undisputed facts;
- (3) Stipulate to the authentication of documents and other exhibits to be introduced at trial;
- (4) Submit a Child Support Computation Worksheet;
- (5) Submit written calculations justifying any request for spousal support;
- (6) Exchange reports of expert witnesses; and
- (7) Discuss referral for mediation, counseling, conciliation or investigation.

**(C)** After the conference, the court may issue a pretrial/prehearing order including but not limited to:

- (1) Discovery orders;
- (2) Withholding notices;
- (3) Orders of referral;
- (4) Interim attorney fee orders;
- (5) Orders appointing a guardian ad litem/psychologist with orders allocating costs and setting deadlines for reports (also see Mont. D.R. Rules 4.29

and 4.30);

(6) Orders requiring pretrial statements.

**(D) Attendance; Failure to Appear.**

(1) Trial counsel and parties shall be present at any pretrial or prehearing, unless excused for good reason. Trial counsel shall have complete authority to stipulate to items of evidence and admissions.

(2) Failure of an attorney to be prepared for pretrial or prehearing conference, or to appear, or to cooperate in good faith in the conduct of the pretrial or prehearing conference, may subject said attorney or party to any sanctions provided by Civil Rules, including an award of expenses and/or attorney fees to any party prejudiced by such conduct.

**RULE 4.20  
CONTINUANCES**

**(A) Policy.** No case in which a date has been fixed for pretrial, trial or hearing shall be continued without the authorization of the assigned judge or magistrate. For good cause shown, a case may be continued by an agreed entry or by a written motion with entry setting a new pre-trial, trial, or hearing date. The requesting party or counsel has an affirmative duty to notify all parties and witnesses if the continuance is granted.

**(B) Contents of Motion.** A motion for continuance must contain the following information:

(1) Filing date(s) of the motion(s) before the court;

(2) Subject matter of the motion(s);

(3) Pre-trial, trial or hearing date;

(4) Number of previous continuances granted and at whose request;

(5) Reason for continuance;

(6) Copy of conflicting trial assignment attached, if appropriate. (Criminal case shall have priority.)

(7) Approval of opposing party/counsel was sought and whether or not it was obtained;

(8) Certificate of Service must include the name and address of opposing party or counsel.

**(C) Procedure.** A copy of the motion must be served upon opposing counsel, or the opposing party if not represented, prior to submission to the assigned

judge or magistrate. If the motion is not granted by the assigned judge or magistrate, the case shall proceed as originally scheduled.

The attorney or party, if unrepresented, shall prepare a proposed entry granting the motion for continuance with a space for the new pre-trial, trial or hearing date and submit it to the assigned judge or magistrate along with the motion. The entry shall include a brief statement setting forth the reason for the continuance. This entry shall provide that any relief which ultimately may be granted, may be effective as of the original hearing date, due to the granting of the requested continuance.

**(D) Timely Notice.** Absent good cause, motions for continuances shall be filed no later than seven (7) days prior to the scheduled hearing date. No continuances will be granted within 2 working days of a hearing unless specifically approved by the assigned judge. The party requesting the continuance has an affirmative duty to notify immediately all parties and witnesses of the continuances, if granted.

#### **RULE 4.21 WITHDRAWAL OF COUNSEL**

**(A)** Any withdrawal from employment by counsel is governed by the Code of Professional Responsibility – DR 2-110.

**(B)** In order to withdraw from a case, an attorney shall:

- (1) Submit a motion and proposed entry to the assigned judge or magistrate containing a certificate of service to opposing counsel, if any; the opposing party, if *pro se*; and the withdrawing attorney's client.
- (2) The withdrawal entry shall include the date of the next scheduled hearing and indicate it is necessary for new counsel to be obtained promptly.
- (3) If new counsel has been substituted, the name of said counsel shall be included in the motion and entry.

**(C)** Permission to withdraw may not be granted if there is a hearing set within thirty (30) days of the request, except upon good cause shown.

#### **RULE 4.22 DISMISSAL OF CASES**

**(A) Want of Prosecution**

If the defendant has not been served with the complaint and summons within six (6) months of filing, notice will be sent to counsel for the plaintiff or plaintiff if *pro se* that the case shall be dismissed.

**(B) Voluntary Dismissal**

If a party dismisses the complaint or counterclaim for divorce, legal separation or

annulment, that party shall include an order to terminate any withholding notice and vacate restraining orders that may have been filed.

**RULE 4.23**  
**FILING OF FINAL JUDGMENTS AND DECREES**

**(A) Non-contested matters.** A proposed final judgment and decree shall be presented to the court at the time of hearing for all dissolutions and non-contested divorces, legal separations and annulments.

- (1) If the case is heard by a magistrate, both the assigned judge and the magistrate shall sign the decree.
- (2) Failure to provide a proposed decree may result in resetting of the hearing or dismissal of the case.
- (3) All final decrees shall be filed on or before the fourteenth (14<sup>th</sup>) day after the final hearing or the written decision of the court, unless another date is ordered, and shall comply with section (D) of this rule.
- (4) All separation agreements filed in dissolutions shall be reviewed by the chief magistrate or designee prior to the final hearing. Requested changes to the separation agreement must be made by an amendment to the separation agreement or incorporated into the decree of dissolution and presented to the court at the final hearing. Failure to do so may result in resetting the hearing or dismissal of the case.

**(B) Contested matters.** When the advance preparation of a final judgment and decree is not possible because of contested issues, the court may direct either party or counsel to prepare the decree following the final hearing.

- (1) Unless otherwise directed by the court, counsel for plaintiff shall present a proposed decree to the court and opposing party or counsel within ten (10) days after the final hearing.
- (2) Opposing party or counsel shall have three (3) days to approve or reject the proposed decree. In the event the proposed decree is rejected, the opposing party or counsel shall notify immediately in writing his or her objections.
- (3) Failure of opposing party or counsel to approve or reject any proposed decree will permit the party who prepared the decree to present it for journalization. In such instances the proposed decree shall be submitted in accordance with this rule.
- (4) Failure to timely submit a decree in accordance with this rule may result in the issuance of a citation of contempt to counsel in the case.

- (5) All decrees submitted to the court shall comply with the provisions of section (D) of this rule.

**(C) Shared parenting agreements.** When a shared parenting agreement is read into the record at the final hearing, counsel shall prepare a proposed shared parenting plan and decree and shall submit the plan and decree in accordance with the rules set forth in section (B) above. The proposed decree shall contain a provision waiving the requirement for filing the plan thirty (30) days prior to the final hearing. R.C. 3109.04 (G)

**(D) Items to be submitted with decrees.** All final decrees which involve child or spousal support or where dependent health insurance is ordered for children shall be submitted to the Domestic Relations Compliance Office (DRCO), which will prepare all necessary notices to income provider and/or health care orders. The following items shall be attached to all final decrees as appropriate:

- (1) Long form Child Support Computation Worksheet signed by both parties; (A one page summary worksheet will not be accepted.) [Appendix, Form 23, 24]
- (2) Standard Order of Parenting Time; [Appendix, Form 4]
- (3) Standard Order of Health Care Needs for Dependent Children; [Appendix, Form 5]
- (4) Montgomery County CSEA New Case Number Work Sheet (submit for both child and spousal support cases); [Appendix, Form 6]
- (5) Obligee's Rights and Remedies for Enforcement of Support (submit for both child and spousal support cases). [Appendix, Form 8]

#### **RULE 4.24 REQUIRED LANGUAGE FOR FINAL DECREES AND AGREED ENTRIES**

**(A) General**

Final decrees, separation agreements and multiple issue agreed entries shall have titled sections identifying the content of each section, *e.g.*, **Spousal Support, Allocation of Parental Rights and Responsibilities, Health Insurance Coverage, Child Support, Parenting Time Schedule, Real Estate, Pension/Retirement, Debt Allocation, Personal Property, etc.**

Final decrees and agreed entries that include support or health care orders shall contain the following:

- Identity of employer, payroll address and pay cycles; or
- Identity and address of financial institution and last four (4) digits of the account from which the support obligation is paid; and



- Identity and address of health care provider (medical, dental and optical).

The body of the decree or agreed entry shall clearly identify each party and party designation. Common alternative designations such as mother or father are permissible.

**(B) Support Language**

(1) Child support provisions shall provide the following:

- Monthly amount per child rounded to nearest dollar;
- Effective date of the support obligation;
- If an arrearage exists, state the amount of the arrearage (if known) and the amount of monthly repayment until paid in full;
- If the parties agree to continue child support beyond age nineteen (19), said provision shall be stated in the final decree;
- A statement that support may be terminated as provided in R.C. 3119.88 (Reasons for termination of child support);
- Designation of parent who may claim child(ren) as dependent for federal income tax purposes; (R.C. 3119.82)
- The parents' life insurance benefits, if any, for the benefit of the children shall be included.

(2) Spousal support provisions shall provide the following:

- Monthly amount rounded to nearest dollar;
- Effective date of the support obligation;
- Duration of the obligation;
- Grounds for termination; e.g., death of either party, remarriage of obligee, or other agreed upon grounds;
- If an arrearages exists, state the amount (if known) and amount of monthly repayment until paid in full;
- An unambiguous statement that the court will or will not have continuing jurisdiction to modify spousal support as to amount or term or both; (R.C. 3105.18)
- A statement that spousal support is taxable to the obligee and deductible to obligor.

(3) Method of payment:

Child support payments or spousal support payments made in combination with child support payments shall be made through the Office of Child Support, Ohio Child Support Payment Central (OCSPC), P.O. Box 182394, Columbus, OH 43218-2394 by cash, certified check, or money order, plus the two percent (2%) processing charge until such time as said amounts are withheld by the withholding notice.

When only spousal support is ordered, the parties may, by agreement and with the court's permission, waive payment of the spousal support through the Ohio Child Support Payment Central (OCSPC). The parties must provide an independent record of payments, such as electronic transfers, automatic bank withdrawals or other method approved by the court.

**(C) Withholding Notice Language**

Decrees and agreed entries shall provide for the appropriate notice to withhold as required under R.C. 3121.03 - 3121.0311, 3121.04, and 3121.08 and shall identify the source of the withholding.

**(D) Mandatory Support Order Language** (Use of all these paragraphs - last paragraphs should be in bold face and capital letters.)

All support under this order shall be withheld or deducted from the income or assets of the obligor pursuant to a withholding or deduction notice or appropriate order issued in accordance with Chapter 3119., 3121., 3123., and 3125. of the Revised Code or a withdrawal directive issued pursuant to Sections 3123.24 to 3123.28 of the Revised Code and shall be forwarded to the obligee in accordance with Chapters 3119., 3121., 3123., of the Revised Code.

IT IS FURTHER ORDERED that obligor is restrained from making said payments directly to the obligee. Any payments of support not made through the OCSPC shall be deemed a gift unless the payment is made to discharge an obligation other than support.

IT IS FURTHER ORDERED that the obligor shall notify the CSEA immediately, in writing, of any change in employment status or employer. This duty to notify the CSEA immediately shall continue until further notice of the court. Failure to provide such notification may make the obligor liable for retroactive support that would have been ordered.

IT IS FURTHER ORDERED that the obligor and obligee shall notify the CSEA immediately, in writing of any change in the status of the minor children of the parties which would terminate the duty of obligor to pay child support.

IT IS FURTHER ORDERED that the obligor and obligee shall notify the other party immediately, in writing, of any change in status which would effect child support and/or spousal support.

IT IS FURTHER ORDERED that if the obligee is to receive spousal support from the obligor, the obligee shall notify the CSEA immediately, in writing, of remarriage if the remarriage would terminate the obligation to pay spousal support.

IT IS FURTHER ORDERED that both parties shall take notice of the Obligee's Rights and Remedies for Enforcement of Support, attached hereto, available to the obligee in the event the obligor fails to make payment of support as ordered

herein. [Counsel shall attach a form DR-20 Obligee's Rights and Remedies for Enforcement of Support to each copy of the decree or agreed order. [Appendix Form 8]

**EACH PARTY TO THIS SUPPORT ORDER MUST NOTIFY THE CHILD SUPPORT ENFORCEMENT AGENCY IN WRITING OF HIS OR HER CURRENT MAILING ADDRESS, CURRENT RESIDENCE ADDRESS, CURRENT RESIDENCE TELEPHONE NUMBER, CURRENT DRIVER'S LICENSE NUMBER, AND OF ANY CHANGES IN THAT INFORMATION. EACH PARTY MUST NOTIFY THE AGENCY OF ALL CHANGES UNTIL FURTHER NOTICE FROM THE COURT OR AGENCY, WHICHEVER ISSUED THE SUPPORT ORDER. IF YOU ARE THE OBLIGOR UNDER A CHILD SUPPORT ORDER AND YOU FAIL TO MAKE THE REQUIRED NOTIFICATIONS, YOU MAY BE FINED UP TO \$50 FOR A FIRST OFFENSE, \$100 FOR A SECOND OFFENSE, AND \$500 FOR EACH SUBSEQUENT OFFENSE. IF YOU ARE AN OBLIGOR OR OBLIGEE UNDER ANY SUPPORT ORDER ISSUED BY A COURT AND YOU WILLFULLY FAIL TO GIVE THE REQUIRED NOTICES, YOU MAY BE FOUND IN CONTEMPT OF COURT AND BE SUBJECTED TO FINES UP TO \$1,000 AND IMPRISONMENT FOR NOT MORE THAN 90 DAYS.**

**IF YOU ARE AN OBLIGOR AND YOU FAIL TO GIVE THE REQUIRED NOTICES, YOU MAY NOT RECEIVE NOTICE OF THE FOLLOWING ENFORCEMENT ACTIONS AGAINST YOU: IMPOSITION OF LIENS AGAINST YOUR PROPERTY; LOSS OF YOUR PROFESSIONAL OR OCCUPATIONAL LICENSE, DRIVER'S LICENSE, OR RECREATIONAL LICENSE; WITHHOLDING FROM YOUR INCOME; ACCESS RESTRICTION AND DEDUCTION FROM YOUR ACCOUNTS IN FINANCIAL INSTITUTIONS; AND ANY OTHER ACTION PERMITTED BY LAW TO OBTAIN MONEY FROM YOU TO SATISFY YOUR SUPPORT OBLIGATION.**

**(E) Health Care Provision**

Decrees and agreed entries related to child support shall contain a provision in accordance with R.C. 3119.30 that one or both of the parties shall provide health care coverage for any minor child or, if not available to either party at a reasonable cost, a provision requiring that coverage be obtained if it subsequently becomes available to either party at a reasonable cost.

Health care provisions shall further include language requiring the obligee to be responsible for the first \$100 incurred per child per calendar year of uninsured medical, dental and optical expenses. It shall also specify that remaining uninsured medical, dental, optical, and all psychological expenses for any minor child are to be shared in amounts equal to the parents' percentages of total income from Line 16 of the Child Support Computation Worksheet; the percentages shall be identified with the parent responsible for that percentage.

All health insurance provisions shall refer to the Standard Order of Health Care Needs for Dependent Children [Appendix, Form 5] and direct the parties to take notice

of it; the Standard Order of Health Care Needs for Dependent Children shall be attached to the decree or agreed order and be incorporated by reference.

Use one of the following four (4) options:

(1) Health Insurance Provided by Obligor's Insurance

IT IS THEREFORE ORDERED that obligor shall obtain private health insurance coverage for the dependent children, if coverage is available at a more reasonable cost than coverage available to the obligee.

IT IS FURTHER ORDERED that obligor and obligee shall take notice of the Standard Order of Health Care Needs for Dependent Children attached hereto and incorporated herein by reference.

Obligee shall be responsible for the first \$100 incurred per child per calendar year of **uninsured** medical, dental, and optical expenses.

Costs of the remaining **uninsured** medical, dental, optical, **and** all psychological expenses, shall be shared by obligor and obligee in amounts equal to their percentages of total income found on Line 16 of the Child Support Computation Worksheet, unless otherwise agreed as follows: \_\_\_\_\_.

(2) Health Insurance Provided by Obligee's Insurance

IT IS THEREFORE ORDERED that obligee shall obtain private health insurance coverage for the dependent children, if coverage is available at a more reasonable cost than coverage available to the obligor.

IT IS FURTHER ORDERED that obligor and obligee shall take notice of the Standard Order of Health Care Needs for Dependent Children attached hereto and incorporated herein by reference.

Obligee shall be responsible for the first \$100 incurred per child per calendar year of **uninsured** medical, dental, and optical expenses.

Costs of the remaining medical, dental, optical, **and** all psychological expenses, shall be shared by obligor and obligee in amounts equal to their percentages of total income found on Line 16 of the Child Support Computation Worksheet, unless otherwise agreed as follows: \_\_\_\_\_.

(3) In the event both obligor & obligee have health insurance available

IT IS THEREFORE ORDERED that obligor and obligee shall obtain private health insurance coverage for the dependent children, if coverage is available at a reasonable cost to both obligee and obligor and dual coverage would provide for coordination of medical benefits without unnecessary duplication of coverage.

IT IS FURTHER ORDERED that obligor and obligee shall take notice of the Standard Order of Health Care Needs for Dependent Children attached hereto and incorporated herein by reference.

Obligee shall be responsible for the first \$100 incurred per child per calendar year of **uninsured** medical, dental, and optical expenses.

Costs of the remaining medical, dental, optical, **and** all psychological expenses, shall be shared by obligor and obligee in amounts equal to their percentages of total income found on Line 16 of the Child Support Computation Worksheet, unless otherwise agreed as follows: \_\_\_\_\_.

- (4) In the event neither obligor nor obligee has health insurance available for a reasonable cost

IT IS THEREFORE ORDERED since no health insurance for dependent children is available at a reasonable cost, obligee shall be responsible for the first \$100 incurred per child per calendar year of uninsured medical, dental, and optical expenses.

Costs of the remaining medical, dental, optical, all psychological expenses, **and** prescription medication shall be shared by obligor and obligee in amounts equal to their percentages of total income found on Line 16 of the Child Support Computation Worksheet, unless otherwise agreed as follows: \_\_\_\_\_.

IT IS FURTHER ORDERED that obligor and obligee shall take notice of the Standard Order of Health Care Needs for Dependent Children attached hereto and incorporated herein by reference.

IT IS FURTHER ORDERED that if, after the issuance of this order, private health insurance becomes available for the dependent children at a reasonable cost through a plan offered by the obligor's or obligee's employer or through any other private health insurance plan available to obligor or obligee, said party shall immediately notify the Montgomery County Support Enforcement Agency, 14 West Fourth Street, Room 530, Dayton, Ohio 45422-3080, in writing of the available insurance, company name and address and policy number.

**(F) Cash Medical Support**

When a child support order is issued or modified, the order shall include the amount of cash medical support to be paid by the obligor [R.C. 3119.30(C)]. Any cash medical paid pursuant to R.C. 3119.30(C) shall be paid by the obligor to the obligee, through the Ohio Child Support Payment Central, if the child(ren) is not Medicaid recipients or to be the office of child support to defray the cost of Medicaid expenditures if the children are Medicaid recipients.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that when health insurance **IS** being provided by a party in accordance with this order for the child(ren) named above, the obligor shall pay child support for the minor child(ren) in the amount of \$\_\_\_\_\_ per month, per child, for \_\_\_\_\_ child(ren), \$\_\_\_\_\_ per

month child support arrearage, \$\_\_\_\_\_ per month for spousal support, \$\_\_\_\_\_ per month for spousal support arrearage, plus the 2% SEA processing fee.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that when private health insurance **IS NOT** being provided by a party in accordance with this order for the child(ren) named above, the obligor shall pay child support for the minor child(ren) in the amount of \$\_\_\_\_\_ per month, per child, for \_\_\_\_\_ child(ren), \$\_\_\_\_\_ per month cash medical support, \$\_\_\_\_\_ per month child support arrearage; \$\_\_\_\_\_ per month for spousal support; \$\_\_\_\_\_ per month for spousal support arrearage, plus the 2% SEA processing fee.

If private health insurance coverage is being provided and becomes unavailable or is terminated, the obligor SHALL BEGIN paying cash medical support commencing the first day of the month immediately following the month in which private health insurance coverage became unavailable or is terminated, and SHALL CEASE paying cash medical support on the last day of the month immediately preceding the month in which private health insurance coverage begins or resumes. Cash medical support shall be paid in addition to child support.

**(G) Parentage**

If the issue of a child's parentage has been raised by either party or the court, the decree shall reflect the appropriate finding of paternity or non-paternity. The decree shall identify the child by name and date of birth and shall indicate whether the child was born during or prior to the marriage and how parentage has been determined, e.g., genetic testing, agreement, acknowledgment, adoption, prior marriage if necessary. It should also direct the Ohio Department of Health to create a corrected birth record. [See Appendix, Form 9]

**(H) Parenting Time**

The following language shall be included in all parenting time orders that do not include the Standard Order of Parenting Time:

Out-of-state relocation: Neither party shall relocate the children out of state without first obtaining a modified parenting time order. The parties may submit an agreed entry modifying parenting time to the court. The entry shall include a provision for allocation of transportation expenses. If the parents are unable to agree, the relocating parent shall, prior to relocation, 1) file a motion to modify the parenting time schedule, 2) obtain a hearing date, and 3) proceed in accordance with the resultant court order.

Access to Records: The non-residential parent shall have access to the same records, school activities and any day-care center which the children attend on the same basis that access is available to the residential parent, unless a restrictive order has been obtained from the court.

Notice of Change of Address: Both parents shall given written notice to the other parent immediately upon any change of address or change of phone number, unless a restrictive order has been obtained. A copy of the notice, including the parties names and case number, shall be provided to the Domestic Relations Court, P.O. Box 972, Dayton, OH 45422-2160, Attention: Assignment Commissioner.

**(I) Restoration of Name**

A party requesting restoration of a former name shall submit, within 12 months after the final hearing, a separate proposed entry setting forth the party's complete name before and after the requested change, and the party's date of birth, social security number, and current address.

**(J) Clerk Administrative Costs**

Decrees and agreed entries shall designate which party shall pay administrative costs. (See Mont. D.R. Rule 4.04) In the event costs are to be shared, percentages are to be identified for each named party. The provision allocating administrative costs shall require payment upon filing, unless otherwise provided by the court, and shall direct payment to the Clerk of Courts, Domestic Relations Division, 41 N. Perry Street, Dayton, OH 45422.

**(K) Final Appealable Orders**

Any decree or post-decree decision and judgment or agreed entry shall contain the following language directly beneath signature lines:

**NOTICE OF FINAL APPEALABLE ORDER**

Copies of foregoing order, which may be a final appealable order, shall be served upon the parties by the Clerk in a manner prescribed by Civ.R. 5(B) within three days of entering this judgment upon the journal. The Clerk shall then note the service in the appearance docket pursuant to CIV.R. 58(B). Service shall then be deemed complete.

GREGORY A. BRUSH, Clerk of Courts By: SHARON HARNESS, Date: \_\_\_\_\_

**RULE 4.25  
DIVISION OF PENSIONS**

**(A) Qualified Domestic Relations Order (QDRO)**

Unless otherwise ordered, the participant in a pension or retirement plan ordered to be divided by a court order shall cause a Qualified Domestic Relations Order (or other appropriate order) to be prepared for submission to the court, within thirty (30) days of any Final Judgment and Decree.

Upon notice from the pension plan administrator that the submitted QDRO does not conform to their requirements, the person who prepared the original QDRO shall revise the QDRO to conform with the plan administrator's requirements and refile same

within 30 days.

**(B) Division Of Property Order (DOPO)**

The division of retirement benefits for members of the Ohio Public Employees Retirement System (OPERS), State Teachers Retirement System (STRS), School Employees Retirement System (SERS), Ohio Police And Fire Pension Fund (OP&F), and Ohio Highway Patrol Retirement System (HPRS) shall conform with the requirements of each agency's respective administrative rules.

Specific retirement information may be found for the respective agencies on the Internet at [www.opers.org](http://www.opers.org); [www.strsoh.org](http://www.strsoh.org); [www.ohsers.org](http://www.ohsers.org); [www.op-f.org](http://www.op-f.org) and [www.ohprs.org](http://www.ohprs.org).

Parties **SHALL** use the revised Division Of Property Order form found at Appendix, Form 20 when filing a DOPO. **THIS FORM MAY NOT BE MODIFIED.**

**(C) Survivor Benefits**

**THE MANDATED DOPO FORM DOES NOT INCLUDE SURVIVOR BENEFITS PROTECTION FOR A FORMER SPOUSE, EITHER THE PRE-RETIREMENT OR POST-RETIREMENT. SURVIVOR BENEFITS MUST BE ADDRESSED IN THE FINAL DECREE OR SEPARATION AGREEMENT. PARTIES SHOULD CONTACT THE RESPECTIVE AGENCY TO DETERMINE THE APPROPRIATE METHOD TO ADDRESS SURVIVOR BENEFITS.**

**RULE 4.26  
QUALIFIED MEDICAL CHILD SUPPORT ORDER (QMCSO)**

In all cases involving an employer provided group health plan(s), a Dependent Health Care Order/Qualified Medical Child Support Order (DHCO/QMCSO) shall be issued identifying the medical, dental, optical and other health benefits, if any are available, as well as listing the child(ren) of the parties who shall be designated as the "Alternate Recipients." The parties shall provide the court with all necessary information to allow the issuance of DHCO/QMCSO.

The DHCO/QMCSO shall apply to any and all successor group health plan(s) and shall continue for that period during which the Alternate Recipient(s) is a dependent.

**RULE 4.27  
AWARD OF ATTORNEY FEES**

**(A) Discretionary Attorney Fee Awards.** Pursuant to the court's equitable powers and jurisdiction granted by R.C. 3105.011, and pursuant to the specific authority granted by R.C. 3105.73, the court may award reasonable attorney fees at any stage of proceedings, including appeal, modification, and enforcement cases, if the court determines that a party will be prevented from fully litigating their rights and adequately



protecting their interests, and that the award is equitable. Also, pursuant to the terms of R.C. 3123.17, the court may order either party to pay costs, including attorney fees, whenever the court issues or modifies a child support or spousal support order.

**(B) Enforcement Actions.** The court may award attorney fees, costs, and other expenses of suit to a successful moving party in any enforcement action, regardless of the moving party's own ability to pay such expenses. Such an award is mandatory in any contempt action involving child support [R.C. 3109.05(C)], parenting time [R.C. 3109.051(K)], or spousal support [R.C. 3105.18(G)]. Evidence of payment of attorney fees for the prosecution of the contempt action must be presented.

**(C) Awards For Delay Or Frivolous Conduct.** If the court determines that an action or pleading is frivolous or has been filed to cause delay or harassment, the court may require the offending party to pay reasonable expenses of the other party including attorney fees and costs [Civil Rule 11].

**(D) Discovery Sanctions.** Pursuant to Civil Rule 37 and Mont. D.R. Rule 4.18, the court may impose sanctions that include the award of attorney fees and other litigation expenses upon the failure of a party or counsel to comply with discovery requirements.

**(E) Interim Attorney Fee Award. SEE MONT. D.R. RULE 4.14(B).**

**(F) Reasonable Fee.** In determining the necessity for and reasonableness of attorney fees, the court may use its own knowledge and experience, plus its own observations of time and effort expended, tactics used, discovery cooperation shown, settlement efforts made, and compliance with court orders demonstrated. The court may also consider the amount of attorney fees the opposing party incurred in the same matter.

Absent evidence to the contrary, the following shall be considered a *prima facie* reasonable attorney fee: up to \$350 per hearing conducted or prepared for, in modification and enforcement proceedings; and up to \$1,000 in divorce, legal separation, annulment, appeal, and custody proceedings.

**(G) Attorney Fee Hearing Requirements.**

- (1) If the moving party's request exceeds the *prima facie* reasonable attorney fee amounts set forth in paragraph (F), that party must file a motion to set the matter for hearing.
- (2) Prior to any attorney fee hearing, both parties shall make a detailed written disclosure of attorney fees incurred, including hourly rates charged, time expended, fees paid, the source of fees paid, amounts due, and additional litigation expenses incurred. In order to minimize each party's litigation expenses and litigation in the court generally, counsel shall apply their own experience and make every good faith effort to reach agreement. If fee hearing is necessary, the moving party must provide testimony from an expert witness (another attorney with domestic relations experience) as to the reasonableness of the request, based on Rule 1.5 of the Ohio Rules

of Professional Conduct and *Swanson v. Swanson* (1976), 48 Ohio App. 2d 85.

**(H) Award to Party Only.** Any attorney fee award made by this court must be entered in favor of a party litigant and not directly in favor of a party's attorney. Such awards may be added to support accounts and collected through withholding notices.

Pro se litigants have not incurred attorney fees and therefore are not eligible for an award of attorney fees.

## ***ALLOCATION OF PARENTAL RIGHTS AND RESPONSIBILITIES, AND PARENTING TIME***

### **RULE 4.28 PARENT QUESTIONNAIRES AND INFORMATION SHEET**

The court requires that all parties in divorce or legal separation cases, involving minor children complete and return to the court a Parent Questionnaire and Information Sheet [Appendix, Form 21] prior to the final hearing. In non-contested cases, defendant's completion of the questionnaire is requested but not required prior to the final hearing.

In all matters involving minor children, the parties shall complete the Application for Child Support Services [Appendix, Form 7] pursuant to Mont. D.R. Rule 4.14(D) unless already on file.

### **RULE 4.29 GUARDIAN AD LITEM**

**(A) Appointment.** A party may request the appointment of a guardian ad litem pursuant to R.C. 3109.04 (B)(2)(a). The request may be in writing or by oral motion during any pretrial hearing. If the parties cannot agree, the assigned judge or magistrate shall select the guardian ad litem. The guardian ad litem shall have satisfied the training requirements set forth in the Rules of Superintendence 48(E) and comply with the other provisions of Sup.R. 48. The court's Family Relations Department may be appointed to conduct a Family Investigation. A guardian or Family Investigator appointed by the court need not be an attorney. The role of the guardian or Family Investigator is to perform an investigation and to be an advocate for the child's best interest, not to be the child's attorney. The guardian or Family Investigator may meet the child alone for discussion, observe the child's interaction with each parent, conduct a home visit at both parents' residence and talk with other key individuals such as the child's teacher, neighbors and relatives. The guardian or Family Investigator shall submit a written report of their findings and recommendations to the court and counsel. [See the Guidelines for Guardian Ad Litem Appointments in Appendix, Form 11].

**(B) Fees.** Unless ordered otherwise, the party requesting the appointment shall be responsible for payment of the guardian's fee and shall be required to deposit the fee in advance with the guardian or the Clerk of Courts. The court may reallocate such fees at a subsequent hearing. Attorneys appointed to serve as guardians will be

entitled to compensation for services up to \$750 per case unless higher fees are approved by the assigned judge. These fees shall be billed directly to the parties and paid directly to the appointed guardian. A fee in the amount of \$350, or as otherwise approved by the judge, will be assessed as court costs when the court's Family Relations Department is appointed as Family Investigator.

**(C) Report.** The written report of the guardian ad litem or Family Investigator shall be submitted to the assigned judge or magistrate, with copies to both attorneys, no less than seven (7) days before the scheduled hearing unless otherwise ordered. The report shall not be submitted to the Clerk of Courts for filing.

The report shall be accepted into evidence as the guardian ad litem's direct testimony. He or she may be subject to cross-examination by either party. A party desiring to cross-examine the guardian ad litem shall arrange for their appearance by filing a subpoena and is responsible for any additional fee for that appearance.

#### **RULE 4.30 PSYCHOLOGICAL OR PSYCHIATRIC EVALUATIONS**

**(A) Appointment.** The court may, as part of a pre-trial order, appoint a psychologist or psychiatrist to conduct an evaluation on the issues of custody and/or parenting time in order to assist the court in the determination of the allocation of parental rights. The court will allocate the costs of the evaluation between the parties.

**(B) Report.** In accordance with the Guidelines For Child Custody Evaluation set forth in Appendix, [Form 10] the psychologist or psychiatrist will provide the court with the original written report and recommendations no less than seven (7) days prior to the hearing unless otherwise ordered. Copies shall be mailed to counsel for each party, or a party if unrepresented. The report shall be accepted into evidence as the psychologist's or psychiatrist's direct testimony. He or she may be subject to cross-examination by either party. A party desiring to cross-examine shall arrange for the psychologist's or psychiatrist's appearance at hearing and is responsible for paying the fee for that appearance. The report shall not be submitted to the Clerk of Courts for filing.

#### **RULE 4.31 INTERVIEW OF CHILD BY THE COURT**

All interviews of children shall be pursuant to the criteria set forth in R.C. 3109.04(B)(2) and 3109.051(C). The transcript of the child's interview shall be sealed and not available to any party or attorney without a court order.

#### **RULE 4.32 PARENTING SEMINAR**

The court requires all parents in divorce, legal separation, or dissolution actions, involving minor children, to attend and complete an educational seminar, e.g. "Helping Children Succeed after Divorce."

An order advising the parents of the seminar will be mailed directly to the parties. Each parent shall be responsible for registering for the seminar. The parties' action may not proceed to final hearing until there has been compliance with this rule. This requirement may be waived for good cause shown. Non-compliance by a parent who enters no appearance and does not contest the action will not delay the final hearing.

Out-of-state parties may fulfill the requirement by attending a similar seminar available in their state and provide a copy of the certificate of completion to this court.

Seminar attendance may also be required by order of the court in actions involving post-decree motions for custody of, or parenting time with, minor children.

The court may, when it appears to be in the best interests of the child(ren), order additional parenting education for either party.

**RULE 4.33**  
**SHARED PARENTING**  
**[See Appendix Form 12 for Shared Parenting Plan Outline]**

**(A)** There shall be no award of temporary shared parenting in either pre-decree or post-decree actions. Shared parenting may only be awarded between legal parents.

**(B) (Dissolution) – Joint Request for Shared Parenting.** The joint request for shared parenting and shared parenting plan shall be filed with the petition for dissolution and separation agreement. If approved, a final decree of shared parenting which incorporates said plan will be granted at the same time as the final decree of dissolution is filed.

**(C) (Divorce) - Pre-Decree Joint Request for Shared Parenting.** The parties shall be required to prepare a Final Judgment and Decree of Divorce, a Petition for Shared Parenting, and a separate Final Judgment and Decree of Shared Parenting which shall incorporate a Shared Parenting Plan along with a child support computation worksheet. The Shared Parenting Decree shall contain a waiver of the thirty (30)-day statutory waiting period, if necessary, so that the decrees may be filed at the same time.

**(D) Pre-Decree Separate Request(s) for Shared Parenting.** When only one party requests shared parenting and submits a separate plan to the court, the matter will be scheduled in the same manner as a contested custody case.

**(E) Post-Decree Joint Requests for Shared Parenting.** When a post-decree joint request for shared parenting with a joint plan is filed, a hearing before a magistrate must be scheduled no less than thirty (30) days after the filing. If approved, the magistrate will prepare an agreed Final Decree of Shared Parenting.

**(F) Post-Decree Joint Requests for Shared Parenting (settlement).** When a post-decree contested custody is settled by an agreement to submit a joint shared parenting plan, the magistrate will reset the hearing to provide for the filing of the request and shared parenting plan prior to the hearing.

**(G) Post-Decree Separate Request(s) for Shared Parenting.** When either party requests shared parenting and submits a separate plan to the court, the matter will be scheduled in the same manner as a contested custody case.

**(H) Agreed Modifications of Existing Shared Parenting Plan.** An agreed entry presented to the court to modify some terms of a prior Shared Parenting Plan will be processed in the same manner as other agreed entries. If the entry modifies support or health care, it shall be submitted to the court's Compliance Office with all necessary documents. A hearing on the agreed entry is not required.

**(I) Motions to Modify Existing Shared Parenting Plan.** When a party wishes to modify an existing shared parenting plan, a motion shall be filed and a hearing shall be set in accordance with these rules.

**(J) Application for Child Support Services.** The parties shall ensure that the Application for Child Support Services has been filed pursuant to Mont. D.R. Rule 4.14(D).

#### **RULE 4.34 STANDARD ORDER OF PARENTING TIME**

Unless the parties otherwise agree or the facts of a case warrant a modification thereof (e.g. long distance travel or non-traditional work schedules) the court will adopt the Standard Order of Parenting Time for all cases before the court pursuant to R.C. 3109.051(F)(2). All parenting time orders shall contain paragraphs 18, 19 and 20 of the Standard Order of Parenting Time. [See Appendix, Form 4]

#### ***DISPUTE RESOLUTION***

##### **RULE 4.35 CONCILIATION**

Prior to or during the pendency of an action for divorce, annulment, or legal separation, one or both spouses may file a petition for conciliation. The petition shall be filed with the Clerk of Courts pursuant to R.C. 3117.05. A copy of the petition will be taken to the Parent Education Department of the court where a counselor shall conduct hearings and conferences as required by Chapter 3117 of the Ohio Revised Code.

If the counselor determines, after a conciliation hearing, that the conciliation proceedings were not successful, the counselor shall prepare an order dismissing the conciliation petition. Conciliation case files shall be closed pursuant to R.C. 3117.05(F).

Conciliation proceedings shall stay the final hearing of the case until the process is completed. Petition for conciliation does not stay any temporary order or enforcement of same.

##### **RULE 4.36 MEDIATION**

**(A) Introduction.** This Court incorporates by reference the O.R.C. Chapter 2710, “Uniform Mediation Act” (UMA); R.C. 3109.052, Mediation Order and Rule 16 of the Supreme Court of Ohio Rules of Superintendence. All definitions found in the UMA are adopted by this court.

**(B) Purpose.** To promote greater efficiency and public satisfaction through the facilitation of the earliest possible resolution for domestic relation cases through the use of mediation.

**(C) Scope.** Any action under the jurisdiction of this court may be referred to mediation.

**(D) Case Selection.**

(1) **Referral Process.** The court, on its own motion, or the motion of any of the parties may refer disputed issues pending before the court to mediation in whole or in part by an “Order Scheduling Mediation” which shall, at a minimum indicate the date, time, place and contact information of the mediation. All parties and counsel shall advise the assigned judge or magistrate of any domestic violence allegations known to them to exist or to have existed in the past, or which become known to them following entry of the order but before conclusion of all mediation proceedings, which allegations involve any two or more persons whose attendance is required by the referral order.

If the request for mediation services is not generated from a hearing before a magistrate or judge, an attorney or pro se party may draft a motion and order to be signed by the judge and/or magistrate ordering the parties to court mediation service. After the motion is filed, a time-stamped copy of the motion and order shall be given to the Mediation Services Department.

**(2) Eligibility of Cases**

The Mediation Services Department will determine the eligibility and appropriateness of each referral prior to the commencement of the mediation process and may decline any referral deemed inappropriate.

**(3) Mediator Selection and Assignment.**

The following methods may be used to determine the mediator for the case:

- a. The court randomly assigns a mediator to the case from the court’s roster of approved staff mediators.
- b. Specific appointments may be made by the court taking into consideration the qualifications, skills, expertise, and caseload of the mediator in addition to the type, complexity and requirements of the case.

**(E) Procedures.** In accordance with all applicable provisions of this rule, if a case is deemed appropriate by the court, mediation will be scheduled. A mediator may meet with the parties individually prior to bringing the parties together for any reason including, but not limited to further screening. A mediator may schedule multiple mediation sessions, if necessary and mutually acceptable for the resolution of the issues in part or in their entirety.

- (1) The court shall utilize procedures for all cases that will:
  - a. Ensure that parties are allowed to participate in mediation, and if the parties wish, that their attorneys and other individuals they designate are allowed to accompany them and participate in mediation.
  - b. Screen for domestic violence both before and during mediation.
  - c. Encourage appropriate referrals to legal counsel and other support services for all parties, including victims of and suspected victims of domestic violence.
  - d. Prohibit the use of mediation in any of the following:
    - As an alternative to the prosecution or adjudication of domestic violence;
    - In determining whether to grant, modify or terminate a protection order;
    - In determining the terms and conditions of a protection order; and
    - In determining the penalty for violation of a protection order.

Nothing in this division of this rule shall prohibit the use of mediation in a subsequent divorce or custody case even though that case may result in the termination of the provisions of a protection order.

- (2) Mediation of allocation of parental rights and responsibilities or the care of, or visitation with, minor children shall abide by all provisions set forth in (E)(1) of this rule, mediation may then proceed, when violence or fear of violence is alleged, suspected, or present, only if the mediator has specialized training set forth in "Qualifications" section (F) of this rule and all of the following conditions are satisfied:
  - a. The person who is or may be the victim of domestic violence is fully informed, both orally and in writing, about the mediation process, his or her right to decline participation in the mediation process, and

his or her option to have a support person present at mediation sessions.

- b. The parties have the capacity to mediate without fear of coercion or control.
  - c. Appropriate procedures are in place to provide for the safety of the person who is or may be the victim of domestic violence and all other persons present at the mediation.
- (3) Procedures are in place for the mediator to terminate mediation if he or she believes there is continued threat of domestic violence or coercion between the parties.
- (4) Procedures are in place for issuing written findings of fact, as required by R.C. 3109.052, to refer certain cases involving domestic violence to mediation.

**(5) Party/Non-Party Participation**

- a. Parties who are ordered into mediation in cases shall attend scheduled mediation sessions. The court may order parties to return to mediation at any time in cases.
- b. A judge, magistrate and/or mediator may require the attendance of the parties' attorneys at the mediation sessions if the mediator deems it necessary and appropriate.
- c. If counsel of any party to the mediation becomes aware of the identity of a person or entity whose consent is required to resolve the dispute, but has not yet been joined as a party in the pleadings, they shall promptly inform the mediator as well as the assigned judge or magistrate.
- d. If the opposing parties to any case are 1) related by blood, adoption, or marriage; 2) have resided in a common residence, or 3) have known or alleged domestic violence at any time prior to or during the mediation, then the parties and their counsel have a duty to disclose such information to the mediator and have duty to participate in any screening required by the court.
- e. By participating in mediation a nonparty participant, as defined by R.C. 2710.01(D), agrees to be bound by this rule and submits to the court's jurisdiction to the extent necessary for enforcement of this rule. Any nonparty participant shall have the rights and duties under this rule attributed to parties except as provided by R.C. 2710.03(B) (3) and 2710.04(A) (2).

**(6) Confidentiality/Privilege**



All mediation communications related to or made during the mediation process are subject to and governed by the “Uniform Mediation Act” (UMA) R.C. 2710.01 to 2710.10, R.C. 3109.052, the Rules of Evidence and any other pertinent judicial rule(s). Statements made during the course of mediation assessments or the mediation sessions are confidential except as outlined in R.C. 2710.03 and R.C. 2701.05. In furtherance of the confidentiality set forth in this rule, parties and non-parties desiring confidentiality of mediation communications shall execute a written “Agreement to Mediate” prior to the mediation session. If a new or different person(s) attend a subsequent session, their signatures shall be obtained prior to proceeding further in the process.

(7) **Mediator Conflicts of Interest**

In accordance with R.C. 2710.08(A) and (B), the Mediator assigned by the Court to conduct a mediation shall disclose to the mediation parties, counsel, if applicable, and any nonparty participants any known possible conflicts that may affect the Mediator’s impartiality as soon as such conflict(s) become known to the Mediator. If counsel or a mediation party requests that the assigned Mediator withdraw because of the facts so disclosed, the assigned Mediator should withdraw and request that the assigned Judge or Magistrate appoint another Mediator from the list of qualified Mediators that is maintained by the Court. The parties shall be free to retain the mediator by an informed, written waiver of the conflict of interest(s).

(8) **Termination**

If the assigned Mediator determines that further mediation efforts would be of no benefit to the parties, he or she shall inform all interested parties and the Court that the mediation is terminated using the procedure required by this Court.

(9) **Stay of Proceedings**

All remaining court orders shall continue in effect. No order is stayed or suspended during the mediation process except by written court order. Mediation shall not stay discovery, which may continue through the mediation process in accordance with applicable rules, unless agreed upon by the parties and approved by the judge or magistrate assigned to the case.

(10) Continuances of scheduled mediations shall be granted only for good cause shown.

(11) **Guardian Ad Litem**

A guardian ad litem for the children in the case may participate in mediation. (See also, Mont. D.R. Rule 4.29)

**(12) Mediation Memorandum of Understanding**

The assigned mediator, parties or counsel, if applicable, as agreed by the parties, may immediately prepare a written memorandum memorializing the agreement reached by the parties. The “Mediation Memorandum” may be signed by the parties and counsel (if the “Mediation Memorandum” is signed it will not be privileged pursuant to R.C. 2710.05 (A) (1)). The written “Mediation Memorandum of Understanding” may become an order of the court after review and approval by the parties and their attorney, if applicable. No oral agreement by counsel or with parties or an officer of the court will be regarded unless made in open court.

**(13) Mediator Report**

At the conclusion of the mediation and in compliance with R.C. 2710.06 the court shall be informed of the status of the mediation including all of the following:

- a. Whether the mediation occurred or was terminated;
- b. Whether a settlement was reached on some, all or none of the issues; and
- c. Future mediation session(s), including date and time.

Any agreement reached during mediation shall not be binding upon the parties until approved by the court. The court shall consider the best interests of the children when allocating parental rights and responsibilities and/or establishing a possessory schedule.

**(F) Qualifications**

**(1) General Qualifications and Training**

A mediator employed by the division or to whom the division makes referrals for mediation of allocation of parental rights and responsibilities, the care of, or visitation with, minor children, abuse, neglect and dependency, or juvenile perpetrated domestic violence cases shall satisfy all of the following:

- a. Possess a bachelor’s degree, or equivalent education or experience as is satisfactory to the division, and at least two years of professional experience with families. “Professional experience with families” includes mediation, counseling, casework, legal representation in family law matters, or such other equivalent experience satisfactory to the division.

- b. Complete at least twelve hours of basic mediation training or equivalent experience as a mediator that is satisfactory to the division.
- c. After completing the above training, complete at least forty hours of specialized family or divorce mediation training which has been approved by the Dispute Resolution Section of the Supreme Court.

**(2) Specific Qualifications and Training: Domestic Abuse**

A mediator employed by the division or to whom the division makes referrals for mediation of any case shall complete at least fourteen hours of specialized training in domestic abuse and mediation through a training program approved by the Ohio Supreme Court Dispute Resolution Section. A mediator who has not completed this specialized training may mediate these cases only if he/she co-mediate with a mediator who has completed the specialized training.

**(G) Fees and Costs.** Currently there are no additional fees for mediation services. Fees for mediation through the court's Mediation Services Department shall be determined by the administrative judge if the need arises.

**(H) Sanctions**

If any individual ordered by the court to attend mediation fails to attend mediation without good cause, the court may impose sanctions which may include, but are not limited to, the award of attorney's fees and other costs, contempt or other appropriate sanctions at the discretion of the assigned Judge or Magistrate.

**RULE 4.37  
PARENTING TIME FACILITATION**

Facilitation services may be ordered by the judge and/or magistrate in pre or post-decree cases where the parties have a parenting time issue. The parties may be referred to the Family Relations Department to implement a current parenting time order, to facilitate a dialogue between the parents and/or the children to develop a viable parenting order, and/or to assist the parties by providing them the tools to resolve their own disputes. All parties needed to implement the parenting time schedule will be interviewed.

Fees for these services shall be set by the judge or magistrate.

**RULE 4.38  
RESERVED**

**RULE 4.39**  
**COURT APPOINTMENT OF VALUATION EXPERTS**

Whenever the value of an asset is in dispute, the court may, upon motion of either party or upon the court's own motion and for good cause shown, appoint an expert for the purpose of appraisal.

The order of appointment shall state specifically the property to be valued, the name of the expert, the allocation of any costs or fees, what advancement, if any, is to be made and that the parties are to cooperate fully with the expert.

The final allocation of fees shall be set by the judge or magistrate. Also see Mont. D.R. Rule 4.14(C).

**RULE 4.40**  
**DIVISION OF PERSONAL PROPERTY**

Marital household goods, furniture, furnishings, appliances, tools, and other tangible personal property shall be divided as the parties may agree. If the parties are unable to agree, the court adopts the following as standards for the division of personal property.

**(A)** Personal items. Each party shall be awarded those items brought into the marriage, personally inherited or received as an individual gift. Each party shall also be awarded his/her own books, papers, creations, mementos, jewelry, family heirlooms and other personal possessions. Any family photos, home videos, music collections and similar items shall be equally divided between the parties by agreement or duplicated with each party paying one half of the cost of duplication.

**(B)** Children's items. If there are minor children, all furniture, clothing and toys primarily used by the children, plus any clothes washer and dryer, shall be retained by the residential parent.

**(C)** Remaining personal property. The remaining household goods, furniture, furnishings, appliances, tools and other tangible personal property shall be divided as the parties may agree. If the parties cannot reach an agreement, the parties shall select one of the following two options:

- (1) The parties shall flip a coin with the winner having first choice of one item, the loser having second choice, and the parties alternating selections until all items in dispute are divided; or
- (2) All disputed items shall be appraised with the cost of appraisal to be shared equally by the parties; the plaintiff shall have the first option to keep all disputed items by purchasing defendant's one half interest at one half the total appraised value; upon plaintiff's refusal, defendant shall have the same option.

**(D)** The court may appoint a neutral third party to assist in the division of household goods by alternate selection if deemed necessary. Cost of the service shall be divided equally between the parties.

#### **RULE 4.41 POST-DECREE MOTIONS**

##### **(A) Hearings/Service**

All post-decree motions before a magistrate shall be scheduled for hearing by delivering the motion and notice of hearing or order to appear to the assignment commissioner. If the case has previously been heard by a magistrate, that magistrate shall continue to be the assigned magistrate unless reassigned for good cause by the assigned judge. Upon filing of the motion and notice of hearing or order to appear, service must be obtained upon the opposing party in accordance with the Rules of Civil Procedure and Ohio law.

##### **(B) Motions To Modify Child Or Spousal Support**

- (1) Any motion requesting a modification of an existing child or spousal support order shall set forth the reason for the modification with specificity. The motion shall specify whether the motion is for an increase or decrease of support. All motions requesting modification shall be accompanied by an updated Affidavit of Financial Disclosure. The party seeking a modification shall provide, at hearing, documentation verifying his/her current earnings and his/her most recent federal tax return with W-2's, 1099's, supporting schedules. Failure to file an Affidavit of Financial Disclosure and/or provide appropriate income verification may result in the dismissal of the motion.
- (2) The opposing party shall file a completed Affidavit of Financial Disclosure prior to the hearing and shall submit income documentation set forth in section B(1) at the hearing.
- (3) The moving party shall file an Application for Child Support Services pursuant to Mont. D.R. Rule 4.14(D) unless one is already on file.

##### **(C) Motions To Reallocate Parental Rights And Responsibilities (Change Of Custody)**

Any motion requesting a reallocation of parental rights and responsibilities shall set forth the name and date of birth of the child(ren) for whom the motion is being made. The motion shall further state with specificity the reason(s) for the modification. All motions seeking to reallocate parental rights and responsibilities shall be accompanied by an Affidavit of Financial Disclosure, an Information for Parenting Proceeding Affidavit and Application for Child Support Services (unless already on file). Failure to file an Information for Parenting Proceeding Affidavit may result in dismissal of the motion.

The motion to reallocate parental rights and responsibilities shall be set for pre-hearing and shall include a notice of hearing in the body which includes the following language:

**This motion has been scheduled for a pre-hearing conference and/or uncontested hearing on \_\_\_\_\_, at \_\_\_\_\_m. before Magistrate \_\_\_\_\_. The parties, with or without counsel, shall be present on the above date at the second floor of the Dayton-Montgomery County Courts Building, 301 W. Third Street, Dayton, Ohio.**

**FAILURE TO APPEAR MAY RESULT IN DISMISSAL OF THE MOTION OR UNCONTESTED HEARING ON THE MOTION.**

[Boldfaced type and capitalization shall be used as indicated above.]

The pre-hearing will be conducted for the same purposes as outlined in Mont. D.R. Rule 4.19 and require the same preparation by counsel or pro se litigant, e.g., disputed issues, discovery issues, appointment of guardian ad litem/psychologist, expected time needed for hearing. If service made on the other party is valid, and there is a failure by that party or counsel to appear, an uncontested custody hearing may take place.

**(D) Motions To Modify Parenting Time**

Any motion requesting a modification of the parenting time schedule shall set forth requested changes, and the reasons for the changes. If the request to modify is based upon the relocation of either party then the motion shall also indicate where the relocating party is moving. The motion shall be accompanied by an Information for Parenting Proceeding Affidavit. Failure to file an Information for Parenting Proceeding Affidavit may result in dismissal of the motion.

**(E) Motion For Relief Under Civil Rule 60(B) or R.C. 3119.961**

- (1) Civil Rule 60(B). A party seeking relief from a judgment, or order shall file a motion supported by an affidavit, setting forth the “operative facts” warranting relief from judgment. The motion shall identify the judgment or order from which relief is sought, the date of the judgment or order, and the specific ground(s) supporting relief. The movant shall serve the opposing party with a copy of the motion and affidavit in accordance with the Rules of Civil Procedure. The matter shall not be set for hearing unless authorized by the assigned judge.
- (2) R.C. 3119.961. A party seeking relief from a final judgment or order that determines that he is the father of the child or is required to pay child support for a child may file a motion pursuant to R.C. 3119.961. The motion shall identify the date of the judgment or order, the name and date of birth of the child whose paternity is being questioned, and whether genetic test results have been obtained prior to the motion. The motion shall be set for pre-hearing before a magistrate and the body of the motion

shall contain a notice of hearing. The motion shall be served upon the opposing party in accordance with the Rules of Civil Procedure. The movant may be ordered to deposit additional costs for the purpose of obtaining genetic testing.

**(F) Multi-Branch Motions**

A party seeking multiple relief, e.g., contempt for child support, contempt for failure to pay medical expenses, modification of child support, and modify parenting time, etc., shall set forth each individual claim in separate enumerated branches. The caption shall identify all relief being sought. When scheduling the hearing, counsel or the *pro se* litigant shall be responsible to inform the assignment commissioner of the amount of time needed to hear the entire motion for each claim for relief.

**(G) Counter-Motions**

Except in CSEA cases, a party served with a motion may file a counter-motion and may schedule his/her counter-motion for the same hearing date as the initial motion with approval of the assignment commissioner. Counsel or the *pro se* litigant shall obtain approval from the assignment commissioner before using the same hearing date for his/her counter-motion.

**RULE 4.42  
MOTIONS TO SHOW CAUSE (CONTEMPT)**

**(A) Content of Motion.** Any motion to show cause shall clearly state:

- (1) Each provision of a prior court order with which the party has failed to comply;
- (2) The date of the prior order; and
- (3) The facts regarding the claim of non-compliance; and
- (4) The motion shall be supported by an affidavit signed by the party.

**(B) Notice.** Every summons issued with a show cause motion shall include a Notice satisfying R.C. Section 2705.031 [See Appendix, Form 13]. Initial service shall be personal service upon the contemnor.

**(C) Order.** Every motion to show cause shall be filed with an “Order to Show Cause” [See Appendix, Form 14]

**(D) Motions for Nonsupport.** When a motion to show cause alleging failure to comply with a support order is heard, the CSEA will provide a payment history to the court PRIOR TO the time of hearing. However, if the records of the CSEA are disputed, it is the responsibility of the party disputing the records to compel the attendance of a witness from the CSEA.

**(E) Medical Bills or Other Support Obligations.** When the motion alleges nonpayment of medical/dental bills or support other than periodic payments (*i.e.* private school tuition), the motion shall include an itemization of the bills – as an attachment and shall state whether a demand for payment has been made. [Use Appendix, Form 15 for all healthcare expense requests. Provide a copy to the opposing party and bring the original to the hearing.]

**(F) Interest.** If interest on unpaid periodic support is being sought, the party must include a request for interest in the motion and shall submit a proposed computation of the interest at the time of hearing. (See R.C. 3123.17)

**(G) Indigent Respondents.** In any case in which a party may be subject to incarceration, he or she is entitled to representation. Individuals will be referred to the public defender on all cases prosecuted by the State of Ohio pursuant to Title IV-D of the Social Security Act. In cases in which the public defender has a conflict and those cases filed by private counsel on behalf of an obligee, the court will appoint counsel for **an** ~~that~~ indigent party upon his or her request. Individuals for whom counsel is appointed are required to complete the Financial Disclosure/Affidavit of Indigency form prescribed by the Ohio Public Defender Commission. [See Appendix, Form 16] Final determination of indigency will be made by the court.

#### **RULE 4.43 DISMISSAL OF MOTIONS FOR WANT OF PROSECUTION**

Motions may be dismissed after six (6) months for failure to perfect service [Civ.R. 4(E)] or for want of prosecution [Civ.R. 41(B)(1)] after the filing thereof, if the court finds that the motion has not been served upon the respondent, or that no agreed entry has been filed. Notice to counsel shall be given pursuant to Civil Rule 41(B)(1).

#### **RULE 4.44 OBJECTIONS TO MAGISTRATE DECISION AND MOTION TO SET ASIDE A MAGISTRATE ORDER**

**(A) Content.** Objections to a magistrate decision, filed by a party pursuant to Civil Rule 53(D)(3)(b), shall be specific and state with particularity the grounds thereof. Such objections shall specify whether they are directed to the findings of fact, the conclusions of law, or both. If the objections are to the findings of facts, they must state the specific finding(s) objected to or the specific finding(s) the party asserts was improperly omitted from or included in the decision. The transcript from the hearing must be filed for any objection to findings of fact or an affidavit of evidence must be filed if the transcript is not available.

See Mont. D.R. Rule 4.46 when filing an objection to a magistrate decision pertaining to the granting or denial of a petition for a domestic civil protection order.

**(B)(1) Time.** Objections shall be filed within fourteen (14) days of the filing of the magistrate decision, or the filing of written findings of facts and conclusions of law pursuant to Civil Rule 52, if applicable. Such time period may be extended for good



cause shown. The motion must be filed prior to the expiration of the original fourteen (14) day period and brought to the attention of the judge assigned to the case.

**(B)(2) Stays.** The filing of objections automatically stays the Magistrate Decision, unless the stay is modified by court order.

**(C) Reply.** A party may file a reply in opposition to the objections within ten (10) days of the filing of objections. An extension of time for filing a reply may be obtained for the same reason and upon the same terms as set forth in subsection (B)(1) of this rule. A time-stamped copy of the reply should be delivered to the assigned judge to ensure prompt consideration.

**(D) Transcript Notice.** When a transcript of proceedings before a magistrate is ordered pursuant to this rule and Mont. D.R. Rule 4.45 (Transcripts and Exhibits) for the court's consideration in ruling upon objections, the objections shall state that a transcript of the proceedings has been ordered. Failure to so state or file and serve upon the court reporter a praecipe for a transcript with appropriate deposit, may cause the court to rule on the objections as if no transcript had been ordered.

**(E) Supplemental Objections.** If a party desires to supplement the objections after the transcript is filed, such party shall so state in the objections and request an extension of time. The original objections and the request for extension to supplement the objections, must be filed within the original fourteen (14) day objection period. The supplemental objections shall be filed within fourteen (14) days of the filing of the transcript.

**(F) Hearings on Objections.** No hearing will be held on objections unless specifically ordered by the court. [Civ.R. 53(D)(4)]

**(G) Motion to set aside magistrate order.** Said motion shall comply with the requirements of Civ.R. 53(D)(2)(b). The motion shall state the moving party's reasons with particularity. The motion shall be filed no later than ten (10) days after the magistrate order is filed. The motion to set the magistrate order aside does not stay the effectiveness of the magistrate order. The moving party may petition the court for an order to stay the magistrate order. Transcripts of the proceedings are not required by rule.

#### **RULE 4.45 TRANSCRIPTS AND EXHIBITS**

**(A) Ordering Copy.** If a party intends to object or appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, that party shall provide a transcript of all evidence relevant to such findings or conclusions. The party shall file a praecipe with the Clerk of Courts for the transcript. This shall be served upon the court reporter on the same date as the filing of an objection or a notice of appeal. Within fourteen (14) days of the filing of praecipe, the party shall deposit with the court reporter the cost of the transcript. The cost for preparation of the original transcript is hereby set at \$3.95 per page, payable to the court reporter. Request for an expedited original transcript will be fulfilled at a rate of \$6.00 per page, payable to the

court reporter. Once completed, the original transcript will be filed with the Clerk of Courts as part of the official record. The requesting party will be provided a copy of the transcript. Additional copies may be obtained from the Clerk of Courts at the current public record rate.

If the hearing was recorded, the praecipe shall be served upon the court reporter for the administrative judge. Copies of FTR audio recorded hearings may be obtained at a cost of \$2.25 per disc, payable to the Clerk of Courts.

Once an original transcript is prepared, an electronic copy by electronic transfer may be obtained at no cost.

In proceedings where objections have been filed, if no deposit is received within fourteen (14) days, the court reporter shall notify the assigned judge who may proceed to rule upon the objections. Within forty (40) days of the date of service, the party must cause the transcript to be filed by the court reporter, unless for cause shown, the court upon motion filed within the prescribed time, extends the time for one additional forty (40) day period. Any further requests for extensions in appellate proceedings must be sought from the appropriate court. (See Appellate Rule 9.)

**(B) Filing.** All original transcripts shall be filed by the court reporter with the Clerk of Courts and shall thereby become part of the official record of the case. The court reporter shall immediately notify both parties or their counsel and the court that a transcript has been filed. The ordering party will pay for the original transcript as outlined above. The court will not assess transcript fees as administrative costs.

**(C) Transcript Availability.** A transcript is "available" for purposes of objections [Civil Rule 53(D)(3)(b)(iii)] and appeals [Appellate Rule 9(C)] if a record of the proceedings was preserved by stenographic or audio-electronic means. A transcript is "unavailable" if no such means was used to preserve a record of the proceedings. A statement of the evidence may be accepted by the court as a substitute for an "unavailable" transcript provided such affidavit be either (1) an agreed statement of the evidence; or (2) when an agreement cannot be reached, either or both parties may prepare a statement of the evidence that is submitted to and approved by the judge or magistrate who heard the case.

Upon failure of a party to timely order, deposit payment for, cause to be filed an available transcript, or to timely file a statement of the evidence when appropriate, the court may:

- (1) As to objections, adopt any finding of fact in a magistrate decision without further consideration and rule upon those objections accordingly; or
- (2) As to appeals, overrule a motion for extension of the time for transmitting the record pursuant to Appellate Rule 10(C).

**(D) Exhibits.** Exhibits will be held for a period of one (1) year from the date of the final entry or judgment in the case. Parties desiring return of exhibits should make application to the court within the one year period. All exhibits, court reporter notes and

electronic recordings will be destroyed after a five (5) year time period, unless otherwise ordered by the court.

## ***SPECIAL PROCEEDINGS***

### **RULE 4.46 DOMESTIC VIOLENCE ACTIONS**

**(A) Pleading:** An action seeking an *ex parte* civil protection order may be initiated by filing a petition of domestic violence in accordance with R.C. 3113.31. Any other case involving the petitioner or respondent pending before this or any other court shall be disclosed in the petition. The petitioner must use the forms designated by the Ohio Supreme Court. [See Appendix, Form 26]

**(B) Procedure:**

- (1) The procedure set forth in R.C. 3113.31 *et seq.* shall be followed. If temporary allocation of parental rights and responsibilities of a minor child is sought, a Parenting Proceeding Affidavit shall also be filed. If child and/or spousal support is sought, an Affidavit of Financial Disclosure shall be filed with the court. There are no administrative fees charged for the filing of a petition of domestic violence.
- (2) The petitioner must provide the current address of the respondent in order to perfect service. Personal service shall be ordered through the Montgomery County Sheriff's Office or any other law enforcement agency. The court may authorize the petitioner to attempt service upon the respondent by a special process server upon petitioner's request or when service by the sheriff's office is unsuccessful. Civ.R. 65.1(C)(2) requires personal service be perfected upon the respondent prior to a full hearing on the petition.
- (3) No later than three (3) days prior to the full hearing the respondent shall submit to the court and serve upon petitioner an Affidavit of Financial Disclosure in cases involving a request for temporary child and/or spousal support.
- (4) If petitioner is requesting temporary child and/or spousal support, the petitioner shall prepare and file an Application for Child Support Services [Appendix, Form 7] pursuant to Mont. D.R. Rule 4.14(D). (Unless such form is already on file)
- (5) An *ex parte* hearing will be conducted before a magistrate or judge on the same day as the filing of the petition. At that time, a full hearing on the merits will be scheduled pursuant to statute. The *ex parte* civil protection order remains in effect until a decision is issued subsequent to the full hearing. An *ex parte* order may be dismissed after six months if service has not been perfected. {See, Civ. R. 4(E)}

**(C) Counseling:** Pursuant to R.C. 3113.31(E)(1)(f) the court may order counseling.

**(D) OBJECTION TO A CIVIL PROTECTION ORDER:** Written objections must be filed within fourteen (14) of the filing of the order. Filing the objections does NOT stay the execution of the order. Objections must be supported by a transcript of the proceedings. See Civ.R. 65.1 (effective July 1, 2012) for additional details.

**RULE 4.47**  
**REGISTRATION OF FOREIGN SUPPORT ORDER (UIFSA)**

**(A) When Applicable.** A child support order issued by another state or country may be registered in this court for purposes of enforcement and/or modification in accordance with R.C. 3115.01 *et seq.*

**(B) Procedure.** An action to register a foreign child support order for enforcement purposes only is governed by R.C. 3115.39 through R.C. 3115.45. An action to modify a foreign child support order is governed by R.C. 3115.46 through 3115.51. The pleading must set forth the nature of the remedy sought. The following items shall be included in and/or attached to the petition pursuant R.C. 3115.39:

- (1) A statement listing any agency or person to whom child support payments are to be sent if payments are not to be remitted to the obligee.
- (2) The name, address and social security number of the obligor; the obligor's employer (if known) and a list of any property located in Ohio which is owned by obligor and which is not exempt from execution;
- (3) The name, address, sex, social security number and date of birth of each child for whom support is sought;
- (4) A certified copy of all orders to be registered, including any order which modified a previous order;
- (5) An affidavit of the party seeking registration, or of the custodian of the records, stating the amount of any arrearage;
- (6) A statement notifying the obligor of his or her right to contest the validity and/or enforcement of the foreign child support order pursuant to R.C. 3115.42 (B);
- (7) A notice of hearing.
- (8) An Application for Child Support Services [Appendix, Form 7] pursuant to Mont. D.R. Rule 4.14(D), unless SETS account already assigned.
- (9) A copy of all documents filed shall be sent to the initiating court.

**(C) Spousal Support.** Pursuant to R.C. 3115.01(T) spousal support may be

subject to an action under UIFSA

**(D) Contest of Registration.** The obligor may contest the validity and/or the enforcement of the foreign support order at the hearing or in accordance with R.C. 3115.43.

**(E) Modification of Child Support Order.** If neither party remains a resident of the originating state or the originating state has relinquished jurisdiction, a modification of a foreign child support order is possible and shall be strictly governed by R.C. 3115.48 *et seq.*

**(F) Procedure when both parties reside in Ohio.** When both parties to a support order issued by another state or country reside in the State of Ohio, this court has jurisdiction to enforce or modify the issuing state or country's child support order in a proceeding to register such order. [R.C. 3115.48(A)(1)]

#### **RULE 4.48**

#### **ESTABLISHMENT OF CHILD SUPPORT ORDER – FOREIGN DECREE**

**(A) When Applicable.** In the event a court of another state or country conducts a divorce or similar proceeding dissolving a marriage but does not issue a child support order; a verified petition for a temporary or permanent child support order may be filed in this court pursuant to R. C. 3115.31.

**(B) Procedure.** A petition requesting the establishment of a child support order shall contain a description of the relief sought and shall include the following:

- (1) The name and address of the party seeking establishment of a child support order;
- (2) The name and address of the party from whom the child support is sought;
- (3) A statement indicating either that the party seeking the child support order resides in another state or country, or, that the child support order is being sought by the support enforcement agency of another state;
- (4) An Affidavit of Financial Disclosure or approved UIFSA form;
- (5) Certified copies of any court orders which relate to child custody, paternity, or prior support orders;
- (6) A hearing notice.
- (7) An Application for Child Support Services [Appendix, Form 7] pursuant to Mont. D.R. Rule 4.14(D), unless SETS account already assigned.
- (8) A copy of all documents shall be sent to initiating court.

**RULE 4.49**  
**SPECIAL RULES OF EVIDENCE AND PROCEDURE – FOREIGN SUPPORT**  
**ORDERS**

**(A) Telephonic Presentation of Evidence.** Pursuant to R.C. 3115.27(F), a party and/or witness in another state may be deposed or testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. The witness shall be placed under oath by an appropriate officer physically present with the party and/or witness. The requesting party shall be responsible for making necessary arrangements and notify the court.

**(B) Certified Copy of Payment Records.** A certified copy of any out-of-state payment record provided by the custodian of the records is admissible as evidence of payment history.

**(C) Attorney Fees and Costs.** An obligee who files a petition pursuant to R.C. 3115.01 through 3115.59 is not required to pay administrative fees. If the obligee prevails the court may award the obligee his or her attorney fees, costs, and necessary travel expenses incurred by the obligee and/or the obligee's witnesses. (R.C. 3115.24)

**RULE 4.50**  
**UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT (UCCJEA)**

**(A) When Applicable.** Child custody orders from another state may be filed in accordance with R.C. 3127.01 *et seq.* in order to enforce or modify orders pertaining to custody or parenting time. Orders pertaining to child support or any other monetary obligation of any person are not included in a proceeding under this rule.

**(B) Procedure.** A verified petition requesting enforcement or modification of a parenting decree of another state shall be filed with the clerk. The petition shall set forth the nature of the relief sought. The petition shall also state whether there is a pending parenting proceeding in any other state. In the initial pleading or in an affidavit attached to that pleading, the moving party shall provide the facts to be pleaded pursuant to R.C. 3127.23.

The following shall be attached to the petition:

- (1) A certified copy of the parenting decree;
- (2) An Information for Parenting Proceeding Affidavit [Appendix, Form 3].
- (3) A notice of hearing with a hearing date which is not less than twenty days after the date of service.
- (4) An Application for Child Support Services [Appendix, Form 7] pursuant to Mont. D.R. Rule 4.14(D), unless SETS account already established.

**(C) Notice to Respondent.** Notice of filing of a parenting decree from another state shall be made in accordance with R.C. 3127.07 and 3127.19.

**(D) Motions.** A motion for relief shall be filed at the same time the petition for registration is filed, unless otherwise ordered.

**(E)** A copy of all documents filed shall be sent to the initiating court.

**RULE 4.51**  
**COMBINED ACTIONS – FOREIGN SUPPORT AND PARENTING ORDERS**

An action pursuant to R.C. 3127.01 *et seq.* (UCCJEA) and an action pursuant R.C. 3115.01 *et seq.* (Foreign Support Orders) may be combined in appropriate circumstances.

**RULE 4.52 (RESERVED)**

**RULE 4.53**  
**MISTAKE OF FACT AND EMANCIPATION PROCEEDINGS**

**(A)** The court adopts the date of June 8 in the year a child graduates from high school and reaches eighteen (18) years of age as the presumed date of emancipation, unless otherwise specified by the final judgment and decree. The court shall send a notice to both parties stating the court's intention to emancipate the child and provide for a response procedure from either party as to why the emancipation should not proceed. A hearing will be scheduled by the court if an objection to emancipation is filed. Nothing in this rule prevents either party from filing a motion to emancipate for any other reason allowable by law.

**(B)** Any emancipation granted administratively by entry, which is later found to be erroneous, may be corrected by court order, retroactively.

**(C)** Any objection (mistake of fact) to a proposed emancipation or administrative action by the Montgomery County Support Enforcement Agency shall be filed with the Clerk of Courts with copies mailed to all parties.

**(D)** Objections to an administrative access restriction or withdrawal directive shall be scheduled as set forth in R.C. 3123.35.

**RULE 4.54**  
**PROCEDURES UPON DEATH OF A PARTY**

**(A) Death of Residential Parent**

Upon the death of a residential parent, custody of the parties' minor child(ren) may be awarded to the surviving parent by filing an Entry and Order of Custody Upon Death of a Party signed by the judge, and shall include the following:

(1) The date of the orders awarding custody, the names and dates of birth of the children, the amount of the last child support ordered, and the date of death of the residential parent;

- (2) An assertion there is no other custody proceeding pending in any court;
- (3) An attached certified copy of the death certificate or if a death certificate is not available such other proof of death, as may be approved by the court; and
- (4) Appropriate language awarding custody, terminating child support and wage withholding notices and an order that administrative fees be paid. [See sample in Appendix, Form 17]

No service or hearing is required in this proceeding.

**(B) Dismissal of Pending Divorce, Dissolution, Legal Separation or Annulment Procedures**

Upon the death of a party to a pending divorce, dissolution, legal separation or annulment, the case will be dismissed by filing an Entry and Order of Dismissal Upon Death of a Party which is signed by the judge, and shall include the following:

- (1) Date of the filing of the pending proceeding with an assertion that the case has not been decreed;
- (2) An attached certified copy of the death certificate or if a death certificate is not available, such other proof of death as may be approved by court; and
- (3) Appropriate language dismissing the proceeding and vacating any temporary orders therein.

No service or hearing is required in this proceeding.

***COURT ADMINISTRATION***

**RULE 4.55  
CASE MANAGEMENT PLAN**

**(A) Procedure For Divorce, Legal Separation and Annulment Actions:**

- (1) All pleadings shall conform with the requirements of Mont. D.R. Rule 4.08 and 4.09.
- (2) Service of summons shall be in accordance with Civil Rules 4.1 through 4.6, subject to Mont. D.R. Rule 4.22.
- (3) When service is perfected, a scheduling order setting a date certain for the non-contested hearing will be mailed to the attorney(s) of record and both parties. If there are minor children, the parties are required to complete a Parent Questionnaire, pursuant to Mont. D.R. Rule 4.28 and complete a



parenting seminar, e.g. “Helping Children Succeed After Divorce”, pursuant to Mont. D.R. Rule 4.32.

- (4) Upon the filing of a responsive pleading, the case will be re-designated a contested action. The court will set a pretrial hearing and trial with the assigned judge. Counsel and parties are notified by a scheduling order. Request for continuance shall be in accordance with Mont. D.R. Rule 4.20.
- (5) Upon the expiration of fourteen (14) days after service is perfected, the court will review the parties' Affidavits and may issue a Temporary Order regarding custody, parenting time, child support, spousal support, *etc.* pursuant to Civil Rule 75(N) and Mont. D.R. Rule 4.14.
- (6) A scheduling order for the pretrial conference will be sent to all counsel of record and unrepresented parties not less than fourteen (14) days prior to the conference. Any application for continuance of the conference shall be in accordance with Mont. D.R. Rule 4.20. Counsel attending the pretrial conference must have authority to stipulate on items of evidence and must have full settlement authority. The court may file a pretrial order including all stipulations, admissions, and other matters which have come before it in the pretrial. The court will determine whether or not trial briefs should be submitted by date certain.

#### **(B) Procedure for Dissolution**

Upon the filing of a petition for dissolution together with separation agreement, the assignment office will schedule a final hearing no sooner than thirty (30) days nor later than ninety (90) days from the date of filing. Both parties **MUST** attend the hearing and all matters **MUST** be resolved by a voluntary separation agreement appended to the petition. Any amendment to the original separation agreement shall be presented to the court as an amendment to the separation agreement. Do not present a new separation agreement.

#### **(C) Preparation of Decrees**

The counsel for plaintiff or unrepresented plaintiff shall prepare a final judgment and decree unless otherwise ordered. The decree shall be submitted to the court at the time of the final hearing in dissolutions and non-contested or settled divorces and filed with the Clerk of Courts within fourteen (14) days of the final hearing, or within fourteen (14) days of the decision in any contested case, unless otherwise ordered. All decrees must state who shall pay the administrative fees pursuant to Mont. D.R. Rule 4.04. Failure to file the decree may result in an Order to Show Cause to the party responsible for the preparation of the decree. See also Mont. D.R. Rule 4.23(B)

#### **(D) Procedure for Pre- and Post Decree Motions**

- (1) All pleadings shall conform with the requirements of Mont. D.R. Rule 4.08 and 4.09.

- (2) Service of summons shall be in accordance with Civil Rules 4.1 through 4.6, subject to Mont. D.R. Rule 4.22.
- (3) All motions must be in writing and shall set forth by memorandum or affidavit the relief or order sought and shall identify and any prior order(s) at issue. Agreed entries on motions may be filed at any time.
- (4) All post-decree motions will first be submitted to the assignment office for a date and time of hearing prior to the filing of the motion. It is the responsibility of the moving party to set the hearing for sufficient time based on the complexity of the issues.

**RULE 4.56  
COURT SECURITY POLICY AND PROCEDURES PLAN**

**Security Policy and Procedures Manual.** The court will adopt a Security Policy and Procedures Manual. The manual will include: a physical security plan, routine security operations, a special operations plan, a hostage situation response plan, a high risk trial plan, and emergency procedures (fire, bomb, disaster).

**RULE 4.57  
PHOTOGRAPHING, RECORDING AND  
BROADCASTING OF COURT PROCEEDINGS**

The taking of photographs and/or the making of sound or video recordings in a courtroom or in the corridors adjacent thereto shall not be permitted unless authorized in advance, in writing, by the court.

The taking of photographs and/or making of sound or video recordings, or live broadcasting by radio or television of judicial proceedings shall not be permitted from a courtroom or the corridor adjacent thereto unless authorized in advance, in writing, by the court in accordance with Mont. D.R. Rule 4.58.

The bailiff, or any authorized deputy sheriff, may impound camera, recording, broadcasting and other related equipment, materials and paraphernalia when brought into the courtroom or the corridors immediately adjacent thereto in a manner that is contrary to this rule. Such impounded equipment will then be held by the court subject to future action. Upon impoundment of such equipment, the court will schedule an appropriate hearing at the earliest possible time. This rule does not apply to employees of the court in reference to the use of official recording devices nor to recording devices used pursuant to the Supreme Court of Ohio Rules of Superintendence.

**RULE 4.58  
USE OF ELECTRONIC OR PHOTOGRAPHIC EQUIPMENT IN THE COURTROOM**

In compliance with Rule of Superintendence 12, the court may permit the broadcasting, televising, recording or photographing of court proceedings. The term "proceedings" shall be understood to apply to public hearings by the court.

(A) Request for permission to broadcast, televise, record, or photograph in the courtroom shall be made in writing to the Domestic Relations Legal Director as far in advance as reasonably practicable but in no event no later than twenty-four (24) hours prior to the courtroom session to be broadcast, recorded or photographed unless otherwise permitted by the judge for good cause shown. Request forms may be obtained from the legal director's office. [See Appendix, Forms 18 and 19]

(B) The legal director shall immediately inform the judge assigned to the case of a written media request. The legal director shall also immediately inform the attorneys for all the parties and pro se litigants of the media request. If time does not permit notification by mail then telephonic means or notification in person must be attempted.

(C) In the event the media request is approved, the judge will prepare and sign a journal entry setting forth the conditions of media broadcasting, televising, recording or photographing. This entry shall be made a part of the record of the case. [See Appendix, Form 19]

(D) In the event of a continuance of the court proceeding requested to be broadcasted, televised, recorded or photographed for a period of more than thirty (30) days, a new media request shall be required.

#### **RULE 4.59 COURT APPOINTMENTS**

(A) **Purpose.** The purpose of this rule is to establish, pursuant to Sup.R. Rule 8, a rule governing the appointment by the court of any person or entity designated by the court to represent, act on behalf or in the interests of another, or perform any services in a proceeding before the court.

(B) **Maintenance of Master Lists.** The court will maintain separate lists of persons or entities who may be appointed as attorneys, guardians ad litem, psychologists/psychiatrists (for custody evaluations), and mediators. Appointees will be added to each list upon their request and a demonstration to the court that they possess the requisite skill, expertise and any necessary licensure under these rules and under the laws and regulations of the State of Ohio. All candidates for appointment as a guardian ad litem shall meet the requirements set forth in Sup.R. 48 (see also, Mont. D.R. Rule 4.29). All candidates for appointment as a mediator shall meet the requirements set forth in Sup.R. 16 (see also, Mont. D.R. Rule 4.36). Each list will be reviewed by the judges and staff of the court annually to ensure that all potential appointees continue to meet the established qualifications.

(C) **Selection.** The court and/or parties shall select an appointee, taking into consideration the reported current caseload of the appointee. Any appointee selected shall be compensated as provided in these rules, or if not so provided, by order of the court in the individual case.

## APPENDIX

### Forms:

1. [Poverty Affidavit \[R.C. 2323.30 and 2323.31 & Mont D.R. Rule 4.04\(B\)\]](#)
2. [Affidavit of Financial Disclosure \(DR-10\)](#)
- 2A. [S.Ct Affidavit of Income and Expenses \(Uniform D.R. Form\)](#)
3. [Information for Parenting Proceeding \(R.C. 3109.27\) \(DR-9\)](#)
4. [Standard Order of Parenting Time \(DR-21\)\(effective July 1 ,2011\)](#)
5. [Standard Order of Dependent Health Care Needs \(DR-32\)](#)
6. [Montgomery County CSEA New Case Number Work Sheet \(DR-16\)](#)
7. [Application for Child Support Services \(JFS 07076\)](#)
8. [Obligee's Rights and Remedies for Enforcement of Support \(DR-20\)](#)
9. [Determination of Paternity \(HEA 3029\)](#)
10. [Guidelines For Child Custody Evaluations \(J-18\)](#)
11. [Guidelines For Guardian Ad Litem Appointments \(J-25\)](#)
12. [Shared Parenting Plan Outline - 2001](#)
13. [Notice of Possible Sanctions \(Contempt Proceedings\)](#)
14. [Order To Show Cause](#)
15. [Health Care Reimbursement Form](#)
16. [Financial Disclosure/Affidavit of Indigency](#)
17. [Entry and Order of Custody Upon Death of Party](#)
18. [Request To Record Court Proceedings \(DR- 98\)](#)
19. [Entry Of Permission To Record Court Proceedings](#)
20. [Division of Property Order \(DOPO\)](#)
21. [Parent Questionnaire and Information Sheet \(FRD-10\)](#)
22. [Questionnaire \(DR-8\)](#)
23. [Child Support Computation Worksheet – Sole Custody \(DR-24\)](#)
24. [Child Support Computation Worksheet – Split Custody \(DR-25\)](#)
25. [Ohio Child Support Guidelines – Basic Child Support Schedule \(DR-27\)](#)
26. [Petition for Domestic Violence Civil Protection Order \(DV-4\)](#)

