

*LOCAL RULES OF PROCEDURE*

COMMON PLEAS COURT  
JACKSON COUNTY, OHIO  
GENERAL AND DOMESTIC DIVISIONS

EFFECTIVE SEPTEMBER 2, 2003

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## RULE 1

### APPLICABILITY

The rules of practice apply to all cases except where clearly inapplicable.

## RULE 2

### DISCOVERY IN CIVIL CASES

(A) Informal Discovery. Legal counsel shall freely exchange discoverable information and documents upon informal request made at least two weeks prior to the date and time set for discovery cutoff. The purposes of this rule are to reduce the expense to the parties of discovery, and to avoid filing unnecessary formal interrogatories and requests for documents.

(B) Stipulation. If the attorney to whom an informal request for information or documents has been made complies with such a request, the attorney who makes the informal request may prepare a stipulation setting forth the information or document provided to him or her in response to such request. The stipulation shall be signed by participating legal counsel in order to preserve the fruits of discovery, and if otherwise admissible, the stipulation may be entered as evidence at trial or in motion practice. Legal counsel are expected to respond to an informal discovery request or to a request for stipulation, or to object thereto, within fourteen days (14) after the request is made. In the event that an attorney fails to cooperate with informal discovery procedures and/or stipulations as to discoverable matter, so that formal discovery must be conducted, then upon motion the non-cooperative legal counsel or party may be charged with all expenses of formal discovery, including attorney fees.

(C) Informal Discovery Not Filed. Informal discovery requests and responses shall not be filed with the Clerk. Interrogatories and requests for documents, and responses thereto, shall not be filed except for use in motion practice or at trial. This rule for informal discovery does not pertain to depositions taken to perpetuate testimony or to support motion practice, and such depositions must be filed in accordance with the Ohio Civil Rules.

(D) Compulsion and Protection. Legal counsel shall make diligent efforts to resolve discovery problems informally by discussing such problems with opposing legal counsel either in person or by telephone. The Court may summarily deny any motion to compel discovery, or motion for protective order, or the like, where the moving legal counsel fails to accompany the motion with a certification of his efforts to resolve the discovery problem with opposing counsel informally.

## RULE 3

### PRETRIAL PROCEDURE IN CIVIL CASES

(A) Discretionary Pretrial Conference. Unless otherwise ordered by the Court, no civil case is required to be pretried. Any party may, in writing, request a pretrial conference. Alternatively, the Court may itself schedule a preliminary pretrial conference. Legal counsel may, upon his or her own initiative, arrange for the preliminary pretrial conference to be conducted by telephone. Formal Pretrial Conference, however, may not be conducted by telephone.

(B) Formal Pretrial Conference.

(1) The Court may schedule a Formal Pretrial Conference for a date and time after discovery has been completed. Attendance is mandatory at such a conference, and the order scheduling the Formal Pretrial Conference may require each legal counsel to prepare a written report concerning the following matters:

(a) The identification of counsel who will be trial counsel and who is fully authorized to act and negotiate on behalf of each party.

(b) A concise description of the factual issues to be decided at the time of trial.

(c) A concise description of the legal issues to be decided at trial.

(d) A list of all expert witnesses expected to be called by each party.

(e) A list of all non-expert witnesses to be called by each party.

(f) A list of all exhibits which are expected to be offered by each party into evidence at the time of trial.

(g) An itemization of all special damages to be claimed at the time of trial.

(h) A description of any special trial procedure to be requested, including:

(i) whether the case is one where the issue of liability should be tried separately from the issues of causation and damages; or

(ii) whether or not a jury view will be requested; or

(iii) whether or not a jury trial, if previously demanded, will now be waived.

(i) A statement of the status of settlement negotiations.

(2) If an insurance company is involved in the case, the carrier's legal counsel shall arrange, in advance, for an authorized adjuster to be available for consultation by telephone at the time of the Formal Pretrial Conference. At the request of any trial attorney in the case or upon its own motion, the Court may order an authorized representative of a party's insurance company to appear in person at the conference. In a case where one or more parties have demanded a jury, legal counsel may expect to discuss settlement in detail at the Formal Pretrial Conference. In a case where no jury has been demanded, legal counsel shall have the option not to disclose settlement posture.

(3) It shall be the duty of legal counsel to come to a Formal Pretrial Conference fully prepared and authorized to negotiate toward settlement of the case. Failure to comply with pretrial procedural obligations may result in imposition of sanctions similar to the sanctions specified in Ohio Civil Rule 37 for failure to comply with discovery obligations.

(C) Final Pretrial Conference. On its own motion, the Court may schedule a Final Pretrial Conference shortly before the jury is summoned for trial. Legal counsel may be required to attend such a conference, and can expect to discuss techniques to streamline the trial presentation. The techniques may include stipulating facts, organizing and numbering exhibits, and eliminating unnecessary or repetitive testimony. Legal counsel shall also be expected to discuss whether instructions of law other than standard form instructions will be necessary.

## RULE 4

### CONDUCT OF TRIALS

(A) Voir Dire.

(1) The Court will conduct a preliminary voir dire which should not be repeated by counsel.

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

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

(4) Jurors may not be questioned concerning anticipated instructions or theories of law.

(5) Jurors may not be asked what kind of verdict they might return under hypothetical circumstances.

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

(7) Counsel may not question a potential juror in such a way as to extract a promise or commitment from him or her. For this reason, most hypothetical questions will not be allowed in voir dire.

(B) Trial.

(1) Counsel may examine witnesses while sitting at the trial table or while standing at a lectern, unless identifying or discussing exhibits. Counsel may not approach a witness closely without first obtaining consent from the Court to do so.

(2) No grounds for objection should be stated in front of the jury unless requested by the Court. If counsel desires to state grounds, or to argue the admissibility of evidence, he or she should do so at a bench conference.

(3) Legal counsel should not argue between themselves in front of the jury.

(4) No attorney participating in a pending trial shall make statements to the press or public outside the Courtroom regarding the case.

(5) If legal counsel intends to introduce more than five exhibits during a hearing or trial, then he or she (and not the Court Reporter) shall mark the exhibits in advance.

## RULE 5

### FILING FEES, NOTICE POSTING, AND COURT COSTS

(A) Filing Fee Deposit. Filing fees, which are deposits to secure court costs, shall be established from time to time by General Order of the Court. A filing fee may be established for a jury demand, to secure the costs of jury procedure.

(B) Notice Posting. The two additional public places in the County designated for posting of notices pursuant to Ohio Civil Rule 4.4(A)(2) are as follows:

- (1) Entrance way of municipal building for City of Jackson
- (2) Entrance way of municipal building for City of Wellston

(C) Cost Bill. In a case where the deposit is sufficient to satisfy the court costs incurred and where court costs are assessed against a party other than the depositor, the Clerk of Courts will send a copy of the cost bill to the assessed party. The deposit will then be returned to the depositing party after the assessed party pays the entire amount owing for court costs.

(D) Recovery of Court Costs. The party who requests publication of service of process, or sale order, or the like, shall be responsible, *in advance of publication*, to the newspaper publishing the notice for the costs of publication. If court costs are then assessed against a different party, the responsible party may recover from that party the cost of publication, in the manner provided by law. Similarly, the party who demands a jury shall be responsible to pay all jury fees in the action. If court costs are then assessed against a different party, the responsible party may recover from that party the cost of jury fees, in the manner provided by law. Legal counsel as officers of the Court shall insist that their clients pay the cost of publication or jury fees, as the case may be, for which their clients are responsible. The Court may utilize the contempt sanction to enforce orders to pay court costs.

(E) Clerk's Responsibility. In no event shall the Clerk be required to take any steps to collect court costs except to send a cost bill to the party against whom costs are finally assessed.

## RULE 6

### RECORDING AND TRANSCRIPTION OF PROCEEDINGS

(A) Recording Proceedings. In criminal cases, all hearings and trials and grand jury testimony will be recorded. In civil cases, all jury trials will be tape recorded. Other proceedings will be recorded only upon the request of a party or attorney in the case. Court personnel will not record or transcribe depositions or any other proceeding conducted by a person other than a trial judge, except that all grand jury testimony shall be recorded.

(B) Transcription Service. Court personnel will transcribe recorded proceedings at the rate of \$2.00 per page for the original transcript and \$1.00 per page for copies, plus the cost of transcript covers. Advance payment may be required. Transcription services may be subordinated to other court duties, as the needs of the Court may require. Requests for transcription other than for an appellate record will in most cases be subordinated to transcription services to prepare appellate records. All requests for court transcripts must be made in writing.

(C) Appellate Transcripts. Legal counsel shall order appellate transcripts in writing in accordance with the Rules of Appellate Procedure. In the order for appellate transcript, legal counsel shall identify which proceedings shall be transcribed, and which portions

of proceedings (as, for example, the voir dire portion of a jury trial) need not be transcribed.

(D) Attorney's Responsibility for Transcription Fee. The attorney who orders a transcript, or whose client orders a transcript, shall be responsible for the transcription fee, except that in criminal cases neither an indigent defendant or his attorney shall be required to pay a transcription fee.

## RULE 7

### REMOVAL OF COURT FILES FROM CLERK'S OFFICE

No person may remove any case file from the office of the Clerk of Court, except for short periods with the Clerk's permission to copy file contents on a copier located within the Courthouse. A case file may not be removed from the Courthouse at all, for any reason except fire or other calamity, without prior written leave ordered by the Court.

## RULE 8

### PARTITION CASES

(A) Waiting Period for Order of Sale. When a party in a partition case elects to purchase at the appraised value, legal counsel shall not submit an order of sale of the subject property until twenty-one (21) days after the report of appraisal is filed in the case. Legal counsel are expected to inform all parties in a partition case whose addresses are known of the amount of the appraisal.

(B) Attorney Fees. Attorney fees allowed in partition cases as costs therein shall be predicated either upon the appraised value of the property, if partitioned, or upon proceeds of sale, if sold, and shall not exceed the following:

Seven percent (7%) of any sum not exceeding \$10,000; Four percent (4%) of any sum more than \$10,000 but not more than \$15,000; and Three percent (3%) of any sum exceeding \$15,000.

If an action for partition is terminated other than upon the merits, the trial attorney for plaintiff may be allowed a fee for the reasonable value of his services, commensurate with the time and labor required and expended, the novelty and difficulty of the questions involved, and the skill requisite to perform the service properly. The Court shall tax in costs the fees so allowed in favor of the trial attorney for plaintiff, unless the Court awards some part thereof to the other trial attorneys in the case for services for the common benefit of all parties.

RULE 9

ORDERS TO CONFIRM SALES

(A) Confirmation Orders. The Court does not consider a judicial sale to be complete until the sale proceeds are paid in to the Sheriff, or at least are fully arranged for payment. Accordingly, legal counsel presenting to the Court a draft Order to Confirm a Judicial Sale shall first comply with the following requirements:

(1) In a case where a lienholder or interest owner is the purchaser, the Sheriff must receive an amount of money sufficient to pay court costs, Sheriff's charges, real estate tax then due and payable, liens prior to the purchaser's lien, and amounts payable to persons other than the purchaser and prior lienholders; or

(2) In a case where someone other than a lienholder or interest owner is the purchaser, the Sheriff must receive the full amount of the purchase bid; or

(3) Alternatively, legal counsel may submit a letter from an officer of a financial institution providing the purchase money stating that the unpaid portion of the purchase bid will be paid over to the Sheriff forthwith upon confirmation of the sale.

(4) Unusual situations not contemplated by this rule may be presented for confirmation by motion and supporting documentation.

(B) Certification of Notice of Judicial Sale. Legal counsel are encouraged to file a certification that notice of judicial sale had been mailed to all lien and interest holders of record prior to the sale.

RULE 10

APPROVAL OF APPOINTED ATTORNEY FEES AND EXPENSES IN CRIMINAL CASES

(A) Attorney Fees. Set forth below is a schedule of fees which may be approved for attorneys who have been appointed to represent indigent defendants in criminal cases. Payment of attorney fees shall be approved on the basis of \$50.00 per hour of representation, up to the following limits:

<u>Offense</u>	<u>Upper Limit</u>
Aggravated Murder (with specs)	\$12,500/ 1 lawyer \$25,000/maximum- more than 1 lawyer

Aggravated Murder (w/o specs)	\$4,000/1 lawyer \$8,000/2 lawyers
Murder	\$4,000
Felonies (Degrees 1-2)	\$2,000
Third Degree Felonies	\$1,000
Fourth & Fifth Degree Felonies	\$750
Postconviction Proceedings:	
With Evidentiary Hearing	\$500
Without Hearing	\$300
Habeas Corpus, Parole, and all other proceedings not elsewhere classified	\$300
Contempt of Court	\$150

Additional payment may be made upon specific request and with approval of the trial court.

(B) Attorney Expenses. Extraordinary or unusual expenses must be approved by the Judge before they are incurred, and all expenses must be itemized when presented for payment. Allowable expenses may include expert witness fees, polygraph examination costs, parking and meal expenses, long distance telephone calls, copying, and the like.

(C) Application for Appointed Attorney Fees and Expenses. Appointed attorneys will present their Applications for payment of fees and expenses in the form reasonably required by the County Auditor or by the state agency for reimbursement. The Affidavit of Indigency shall be attached to the Application. An appointed attorney shall present his or her Application for payment within seven days after an appealable final order is filed in the case. The appointed attorney may present his Application after each such order is filed, if there are two or more such orders filed in the case.

## RULE 11

### CASE MANAGEMENT PROGRAM

(A) Responsibility for Case Management. The trial judge shall be responsible to ensure the readiness of cases for pretrial and trial, and to maintain and to improve the timely disposition of cases.

(B) Case Management Scheduling. The Court may routinely on its own motion in a particular action schedule a cut-off date for discovery and then a cut-off date for summary judgment motions.

(C) Pretrial Conferences. The Court may routinely on its own motion schedule pretrial conferences as described in Local Rule 3. Legal counsel are expected to know by the time of the Formal Pretrial Conference whether the case will settle or proceed to trial.

(D) Policy. It shall be the policy of this Court that at all times each case on the docket shall have pending either a discovery cut-off date, or a motion cut-off date, or a deadline for legal counsel to report to the Court, or an assignment for pretrial conference, hearing, or trial. This policy shall apply to every criminal, domestic, or general civil action in which a final, appealable order has not been entered as to pending issues.

(E) Child Support Orders. The following percentage of all actions to establish a support requirement or to modify a previously issued support order shall be completed within the following time limits:

(1) ninety percent of all the actions shall be completed within three months after they were initially filed;

(2) ninety-eight percent of all of the actions shall be completed within six months after they were initially filed;

(3) one hundred percent of all of the actions shall be completed within twelve months after they were initially filed.

## RULE 12

### ATTACHMENTS TO INITIAL FILINGS

In every action for divorce, legal separation or dissolution, there shall be filed with the complaint or petition a PERSONAL HISTORY FORM (D.R. Form 2), with a copy of each to the defendant. The defendant shall file similar statements at the time of filing the answer or counterclaim and serve copies on the plaintiff. If minor children are

involved, the HEALTH INSURANCE DISCLOSURE AFFIDAVIT (D.R. Form 3) and the INFORMATION FOR PARENTING PROCEEDING (D.R. Form 4 - or any form that complies with ORC 3109.27) shall also be filed with the initial filings. Each party shall supplement all information so provided on any of these forms as additional information becomes available.

On or before sixty (60) days after the filing of any answer in any divorce action or legal separation action, each party shall file D.R. Form 1 and serve the opposing party. If, prior to the expiration of the sixty (60) days, the parties advise the Court in writing that the parties have resolved all outstanding issues and request a final uncontested hearing date, the requirement of filing D.R. Form 1 shall be waived.

The information contained in said statements shall be treated and considered in the action as though it were obtained in answer to questions propounded by the Court to the party filing such statements and shall be the subject of cross-examination.

Upon the filing of a post-decree motion for custody or support, the parties shall file D. R. Form 6.

## RULE 13

### TEMPORARY ORDERS

At the commencement of an action for a divorce or legal separation involving custody and support of minor children, the plaintiff shall file ex parte with the complaint an Entry to be approved by the Court pertaining to temporary custody, temporary support, temporary spousal support and visitation in accordance with the following rules:

Temporary support orders shall issue as follows:

(1) Plaintiff shall calculate, pursuant to the statutory child support schedule, the amount of support that should be allocated to each parent based on their respective incomes. This calculation shall be sworn to by the Obligee by Affidavit and filed with the motion for temporary child support.

(2) If the minor children are living in the same household with both parents, each parent shall be ordered to pay all household expenses and provide adequate support for said minor children in the direct proportion of their gross incomes or in accordance with their past practice, without any provision as to custody.

(3) If plaintiff does not seek custody of the minor children, it shall still be plaintiff's responsibility to establish a temporary custody and support order as provided in paragraph one or two above.

(4) Spousal support may be awarded as merited by individual case assessment based on D.R. Form 7, in obtaining ex parte orders. Interim attorney fees may also be awarded where the disparity in income between the parties is significant. If neither party is seeking temporary spousal support, D. R. Form 7 shall not be required.

(5) All temporary support orders shall designate the exact date on which the order shall commence.

(6) The order shall also provide that the parties maintain their current medical, dental and optical insurance policies. Also the order shall provide for the maintenance of policies of insurance on the household, motor vehicles and lives of the parties currently in effect at the time of the filing.

(7) Temporary visitation orders shall issue ex parte pursuant to Local Rule 19 unless for good cause shown an alternative visitation schedule is sought.

After the entry pertaining to temporary custody, temporary support, etc. has been filed and served upon the adverse party in accordance with this rule, either party may file an appropriate motion for modification or relief therefrom. Said motions for relief shall be granted priority on the docket and scheduled for hearing at the earliest available setting by the Assignment Commissioner.

## RULE 14

### EX PARTE ORDERS FOR EXCLUSIVE USE OF MARITAL RESIDENCE

(A) Motions for temporary restraining orders ordering a spouse to move from the established home of the parties will not be granted without a hearing thereon after notice to the opposing party, unless there is demonstrated to the trial Judge that there is urgent need for an immediate order to protect the physical well being of the movant or minor children of the movant.

Orders to remove a spouse from the marital residence shall designate in the caption "ORDER OF REMOVAL" for the benefit of the local police jurisdiction that will enforce the order. An order to remove will be granted only upon testimony of the person seeking an order of removal. A hearing on an ex-parte removal shall be held no later than seven (7) days after granting. A notice of hearing shall be included in an "Order of Removal".

(B) An ex parte temporary restraining order can be obtained preventing a party from returning to the premises if such a party has been absent for more than 30 continuous days immediately preceding the filing of the motion. Absence from the premises means the party is no longer residing at the premises.

The motion seeking an ex parte temporary restraining order preventing a party from returning to the premises must be accompanied by an affidavit setting forth the approximate date on which the absent party left the premises, the number of days (months) of continuous absence immediately preceding the filing of the motion and any reason for the absence which is known to the movant. Any motion to dissolve an ex parte temporary restraining order granted pursuant to this Rule shall be set for hearing within 14 days of the date the motion to dissolve is filed.

## RULE 15

### ENTRIES AND DECREES

All journal Entries, Magistrate's Decisions and final Decrees in actions of divorce or legal separation, excepting temporary entries under Rule 20, shall be filed as follows:

(A) Any judgment, entry, order or decree endorsed by all counsel may be left with the Court staff. If appropriate, it will be signed by the trial Judge and delivered to the Clerk's Office for filing.

(B) After the Court has announced its decision on any matter requiring an entry, order or decree, counsel for the prevailing party shall prepare the appropriate entry and forward it to opposing counsel within ten (10) days. Opposing counsel shall sign the entry. If opposing counsel objects to the entry as to form or because it does not accurately embody the Court's decision, counsel shall indicate objections by affixing the words "Subject to Objection" under counsel's signature. Counsel shall then prepare his or her own entry, sign it and mail the original to the prevailing attorney along with the entry previously mailed to him or her by the prevailing attorney. The prevailing attorney shall then present both entries to the trial Judge. The trial Judge shall approve and file one or the other of the submitted entries or shall prepare and file his own entry. In the event that a motion for separate findings of fact is filed prior to the filing of the entry, the entry will be held in abeyance until said separate findings of fact have been prepared and filed.

(C) As an alternative to paragraph (B) of this section, the prevailing party may prepare the entry and mail copies to all opposing counsel. The original and copies shall bear a certificate attesting that copies have been furnished to opposing counsel and notifying them that:

(1) The proposed entry will be presented for approval to the Court on the date and time specified in the notice, not to be sooner than fourteen (14) days following said notice; and,

(2) All parties objecting to said entry may present their objections to the Court at the specified time; and,

(3) Failure to appear at the specified time will be construed by the Court as acquiescence to the filing of said entry. At the appointed time, the Court shall hear objections to the entry and shall approve or disapprove the entry.

(D) Nothing in this rule precludes the trial Judge from preparing and filing his own entry at any time.

(E) All final, appealable orders shall contain the following language:

Pursuant to Civil Rule 56(B) the Clerk of Courts is directed to serve this judgment upon all parties not in default and to note service upon the docket.

(F) All Magistrate's Decisions shall contain the following language:

Pursuant to Civil Rule 53(D), any party to this matter may serve and file written objections to the Decision of the Magistrate within fourteen (14) days of the filing thereof. The objections must be specific and state with particularity the grounds thereof. The Court may then, upon due consideration, adopt, reject or modify the Decision of the Magistrate, hear any additional evidence, return the Decision to the Magistrate with instructions, or hear the matter itself.

If there are no objections filed, a separate Judgment Entry shall be submitted approving the Magistrate's Decision and shall contain the following language at the beginning of same:

Pursuant to Civil Rule 53, the Court ADOPTS the Magistrate's Decision and enters judgment as follows:

The ending of the Judgment Entry shall contain the following language:

The Court approves the Decision of the Magistrate, no objections having been filed herein, and enters the same as a matter of record and includes the same as the Court's Judgment herein. The Court further finds there is no error of law or fact in the Magistrate's Order. The Court incorporates by reference the Magistrate's Order, and makes the same the judgment of the Court. SO ORDERED.

## RULE 16

### CONTINUANCES

Requests for continuances shall be granted only in compliance with Rule 41 of the Rules of Superintendence for the Courts of Ohio. Prior to requesting a continuance,

counsel shall contact opposing counsel, if any, to determine whether opposing counsel objects to the granting of a continuance and shall report opposing counsel's position on the written motion seeking a continuance. The motion shall include a statement of the efforts made to contact opposing counsel and counsel's agreement or opposition to the request. Counsel seeking a continuance shall submit a proposed written entry with a space for a new date and time to be inserted.

## RULE 17

### CHILD SUPPORT ENFORCEMENT AGENCY

The Child Support Enforcement Agency will not make disbursements of child or spousal support in the absence of a journal entry.

When filing any entry containing a child support order and/or spousal support order, counsel shall provide the Clerk of Courts with an extra copy and a request to deliver such copy to the Child Support Enforcement Agency.

## RULE 18

### WITHDRAWAL OF COUNSEL

An attorney seeking to withdraw as counsel in a pending case shall submit a motion with a proposed Entry. If the client has agreed to the withdrawal and has signed the entry, the Court may consider the motion forthwith. If not, the motion shall state that the entry will be signed by the Court unless, within seven (7) days after the motion is served, a hearing is requested by the client.

The motion must include information as to the date and time of any scheduled hearings in the case and that new counsel must be promptly obtained unless new counsel is already in the case. The motion must also state that no continuances of pending hearings shall be granted solely for the reason of a change of counsel or party if pro se.

As an alternative to filing the motion and entry to withdraw as counsel, an entry providing for substitution of counsel may be filed.

Attorneys are also referred to DR2-110 of the Code of Professional Responsibility.

## RULE 19

### STANDARD PARENTING SCHEDULE

This Court encourages parents who are divorcing or divorced to create parenting schedules tailored to the specific needs of their child(ren), taking into account their respective work schedules and the individual needs of the child(ren).

Parents who are unable to agree upon a parenting schedule shall follow the schedule set forth below. This Court-imposed schedule is intended to further two goals: (1) preservation of, or development of, a close relationship between child(ren) and each parent; and (2) consideration of the changing developmental needs of the child(ren).

A. INFANTS: 1 - 2 MONTHS For infants up to two months of age, the non-residential parent may spend time with the baby in the residential parent's home three days per week, for two hours per visit. If the parties cannot agree as to days and time, the following schedule shall be followed: 2:00 p.m. to 4:00 p.m. on each Sunday and each Tuesday and Thursday evening from 6:00 p.m. to 8:00 p.m.

B. INFANTS: 2 MONTHS - AGE 2 (Commencing at age 2 months, parenting time is spent away from residential parent's residence.)

1. Beginning at two months through twelve months, the non-residential parent may spend time with the child away from the residential parent's residence every Tuesday and Thursday evening from 5:30 p.m. to 8:30 p.m. and one day each weekend, alternating between Saturday and Sunday, from 10:00 a.m. to 6:00 p.m.

2. From twelve months to two years, the non-residential parent may spend time with the child as follows: every Tuesday and Thursday evening from 5:30 p.m. to 8:30 p.m., and on alternating weekends from Saturday at 10:00 a.m. to Sunday at 6:00 p.m.

3. Holidays: In odd-numbered years, the non-residential parent may spend time with the child(ren) from 10:00 a.m. to 6:00 p.m. on President's Day, Memorial Day, Thanksgiving and Christmas Eve. In even-numbered years, the non-residential parent may spend time with the child(ren) from 10:00 a.m. to 6:00 p.m. on Easter, July 4<sup>th</sup>, Labor Day and Christmas Day.

4. Older Siblings: If there are older brothers and sisters of the infant child(ren), the parenting time (including holidays) set forth below for children ages two years through twelve years shall govern infant visitation once the infant is two months old.

C. CHILDREN AGE 2 THROUGH 12

1. Weekends: Alternate weekends beginning Friday at 6:00 p.m. and ending Sunday at 6:00 p.m.

2. Weekdays: Every Wednesday (or another day by agreement) from 5:30 p.m. to 8:30 p.m.

3. Holidays:

In odd-numbered years, the residential parent will have the child(ren) on:

Easter: from Saturday at 6:00 p.m. to Sunday at 7:00 p.m.

July 4<sup>th</sup>: from 9:00 a.m. to 11:00 p.m.

Labor Day: from Friday at 6:00 p.m. to Monday at 7:00 p.m.

Christmas: from December 24<sup>th</sup> at 9:00 p.m. to January 1<sup>st</sup> at 6:00 p.m.

In odd-numbered years, the non-residential parent will have the child(ren) on:

President's Day: from Friday at 6:00 p.m. to Monday at 7:00 p.m.

Memorial Day: from Friday at 6:00 p.m. to Monday at 7:00 p.m.

Thanksgiving: from Wednesday night at 6:00 p.m. to Thursday at 7:00 p.m. unless the following weekend is the non-residential parent's regularly scheduled weekend, in which case the parenting time shall continue until Sunday at 6:00 p.m.

Christmas: from December 21<sup>st</sup> or the last day of school, whichever is later, at 6:00 p.m. to December 24<sup>th</sup> at 9:00 p.m.

Spring Break: commencing at 9:00 a.m. the day after school recesses to 6:00 p.m. the day before school resumes.

In the even-numbered years, this schedule will be reversed. If any of the above holidays fall on a Monday following that parent's regular weekend, then the parenting time will be continuous through Monday evening at 7:00 p.m.

Mother's Day: shall be spent with the mother from 9:00 a.m. to 7:00 p.m.

Father's Day: shall be spent with the father from 9:00 a.m. to 7:00 p.m.

Birthdays: Children's birthdays shall be celebrated in the home of the residential parent unless the birthday falls on a scheduled parenting time of the non-residential parent.

4. Extended Parenting Time, Summer Vacations and Travel: The non-residential parent shall have extended parenting time with the child(ren) to coincide with his or her work vacation if possible. The parenting time may extend to two weeks (non-consecutive) for ages two to four years; it may extend to two consecutive weeks for ages four and five years; and it may extend for up to four weeks (with no more than two weeks being consecutive) for ages six through twelve (12) years. The residential parent may also have an extended vacation with the child(ren) not to exceed two weeks. All parenting/vacation time taken under this section must be taken in blocks of time of at least seven days. Each parent must give the other parent thirty days prior written notice of the dates he or she intends to have extended parenting time or vacation with the child or children. In the case of conflict, the schedule of the parent who first gives written notice of the other parent shall prevail. For any vacation or holiday travel, each parent must provide the other parent with destination, times of arrival and departure, and methods of travel. If there are children in different age brackets, the provisions set forth for the oldest age bracket shall govern as to all children, except that there shall be no extended parenting time/vacation for children under two years of age. NOTE: Child support will not be reduced during summer vacation periods specified in this provision.

D. TEENAGERS - AGE 13 THROUGH 15:

1. Weekends and Weekdays: It is recommended that the above schedule for children age two through twelve (12) be continued through age fifteen (15) if possible. However, parents should respect a teenager's need to spend time with peers and in organized activities, and less time with each parent, especially during weekends and summer holidays. Quality of time is more important than a rigid schedule. Flexibility in scheduling is necessary. When possible, it is preferable to consider the teenager's wishes as long as the parents agree. At a minimum, the non-residential parent may spend time with children in this age bracket every Wednesday from 5:30 p.m. to 8:30 p.m. and at least one overnight and day on alternating weekends.

2. Extended Parenting Time, Summer Vacations, Holidays and Travel:  
Follow the schedule as set forth above for children ages six through twelve (12).

E. TEENAGERS - AGE 16 UNTIL 18:

Parenting time for children in this age bracket shall be fixed between the child and the non-residential parent. Parenting time shall not be limited other than as the child and the non-residential parent choose.

F. RULES REGARDING PARENTING TIME:

1. Conflicting Schedules: In the event of any conflict between parenting time schedules, the following is the order of precedence:

- a. Holidays
- b. Vacation periods or extended parenting times
- c. Weekends and mid-week days

For example, one parent may not schedule his or her summer vacation to include July 4<sup>th</sup> if July 4<sup>th</sup> is the other parent's holiday that year. As another example, the residential parent may be entitled to have the children on the Easter holiday even though it falls on the non-residential parent's alternating weekend. In this case, the non-residential parent's weekend shall conclude at 6:00 p.m. on Saturday evening.

2. Illness: Parenting time shall be provided to the non-residential parent even if the child is ill, unless the child is hospitalized or a physician has recommended that the child not be removed from the residential parent's home, in which event immediate notice shall be given to the non-residential parent. Any weekend parenting time that is missed under this provision shall be made up the following weekend.

3. Telephone and Mail: The non-residential parent may have reasonable telephone contact with the child(ren) not to exceed once a day between the hours of 7:00 a.m. and 9:00 p.m. If the children are not available, the child(ren) should return the telephone call. The residential parent shall encourage free communications between the child(ren) and the non-residential parent and shall not do anything to impede or restrict reasonable communications by telephone or mail between the child(ren) and the non-residential parent, whether initiated by the child(ren) or the non-residential parent. Any mail between the child(ren) and either parent shall be strictly confidential and shall not be opened or read by the other parent. This rule applies equally to the non-residential parent when the child(ren) are spending time with the non-residential parent.

4. Cooperation: Both parents shall refrain from criticizing the other parent or arguing with the other parent in the presence of the child(ren).

5. Exchange of Phone Numbers: Each parent must, unless this Court orders otherwise, keep the other parent informed of his and her current telephone number and a telephone number where the child(ren) may be reached.

6. Grace Period: The transporting parent for parenting time shall have a grace period of fifteen (15) minutes for pick up and delivery if both parties live within thirty (30) miles of each other. If the one way distance to be traveled is more than thirty (30) miles, the grace period shall be thirty (30) minutes. In the event the non-residential parent exceeds the grace period, that period of parenting time is forfeited unless prior notification and arrangements have been made and excepting cases where the non-residential parent lives in excess of thirty (30) miles away and suffers an unavoidable

breakdown, or delay en route and the non-residential parent promptly notifies the residential parent by telephone of the delay. Repeated violations by either parent shall be cause for granting a modification of the parenting order.

7. Transportation: In the event that the parents are unable to reach an agreement regarding transportation, the parent receiving the child(ren) shall arrange transportation.

8. Clothing and Supplies for Children Under Age Ten: The residential parent shall send with the child(ren) on parenting time sufficient clothing and outerwear appropriate for the season and for any known, planned activities. For the weekend, this shall consist of a minimum of a coat and shoes appropriate for the weather, two extra sets of play clothes, one dress outfit and underwear, in addition to the clothes the children are wearing at the time of the start of the weekend. In the case of infants, the residential parent shall send with the child(ren) sufficient bottles, formula and diapers and shall inform the non-residential parent of the child's sleeping and eating schedules. The non-residential parent shall return all items that are sent with the child(ren) at the end of his or her parenting time.

9. Child(ren)'s Activities: Scheduled periods of parenting time shall not be delayed or denied because a child has other activities (with friends, work, lessons, sports, etc.). It is the responsibility of the parents to discuss extracurricular activities of the child(ren) in advance, including time, dates and transportation needs, so that the child(ren) are not deprived of activities and maintaining friends. Each parent shall provide the other with copies of any written material (i.e. activity schedules, maps, instructions) that are distributed in connection with the child(ren)'s activities. The parent who has the child(ren) during the time of scheduled activities is responsible for transportation, attendance and/or other arrangements. Both parents are encouraged to attend all their child(ren)'s activities.

## CONCLUSION

Parents are encouraged to allow for flexibility in the foregoing schedule to best suit the changing needs of the child(ren) and the employment schedules of the parents. HOWEVER, absent an order of this Court, the foregoing schedule shall be followed absent a clear, mutual understanding between parents to deviate. Any modification shall be in writing if feasible.

Experts uniformly agree that the absence of conflict between parents is more critical to a child's welfare than the amount of time either parent spends with the child.

## RULE 20

### DOMESTIC FINAL PRE-TRIAL STATEMENTS

Any matters deemed unlikely to settle shall be scheduled for a formal pre-trial. Clients must be present. A pre-trial statement must be filed seven (7) days prior to the hearing containing the following information:

1. Proposed distribution of property and debts - A proposed listing of how each party proposes the Court divide the assets and liabilities of the parties shall be clearly and precisely set forth.
2. Custody and visitation - Each side shall state the following:
  - A. Whether or not there is a dispute as to custody.
  - B. Who shall be the custodial parent and why.
  - C. What visitation schedule the non-custodial parent will receive.
  - D. If visitation for the non-custodial parent is to be other than the Court guidelines, then the parties shall specifically set forth a proposed visitation schedule and the reasons for it.
3. Child support - Each party shall state:
  - A. The child support as calculated under the statutory guidelines.
  - B. Whether or not there are any arrearages, the amount of such arrearages and how they shall be paid.
  - C. If there is a request for a deviation from the guideline support calculation, a recitation of the statutory factors which support such a deviation and the amount of the deviation shall be stated.
4. Stipulations - The parties shall set forth what stipulations they have made or reasonably expect to make.
5. Spousal support - Any party who requests that the Court make an award of spousal support shall state the following:

- A. A proposed calculation demonstrating that the party who is to receive spousal support has an economic need for such an award, and that the party who shall be ordered to pay has the economic ability to do so.
- B. The duration of such a spousal support award.
- C. What statutory factors and/or case law support such an award.

6. Witness list - The parties shall list the witnesses they expect to call at trial. The parties shall be prepared to inform the Court at the hearing the nature of the witnesses' testimony.

7. Exhibits - The parties shall have marked and ready to exchange the Exhibits they reasonably expect to use at trial. Plaintiff's Exhibits shall be numbered, and Defendant's Exhibits shall be lettered. Each party shall be prepared to discuss what Exhibits can be admitted by stipulation.

8. Exchange and filing of the final pre-trial statement - The final pre-trial statement shall be filed with the Court and sent to the other party seven (7) days prior to the hearing. The Court expects that each side will review the pre-trial statements prior to the hearing.

9. Attendance at settlement - Each side shall attend the final pre-trial conference and shall be prepared to discuss the merits and possible settlement of the case.

Counsel shall also file on or before the pre-trial updated D.R. Forms 1 & 3, supplemented with any additional information obtained subsequent to the initial filing. If shared parenting is requested, a written plan must be filed on or before the pre-trial date.

## RULE 21

### MOTION HEARINGS

Counsel for the party or the party, if pro se, who seeks an oral hearing on a motion, shall obtain the date and time for such hearing from the office of the Assignment Commissioner and serve notice of the date and time of the oral hearing on the opposing party.

Any responsive motion must be filed at least seven (7) days prior to the scheduled hearing. If such a motion is filed, the originally scheduled hearing may be

used as a pre-trial and scheduling conference rather than a hearing on the merits. Clients must be present.

## RULE 22

### SPECIAL PROCESS SERVER

(A) One-time Appointment. If a party desires personal service to be made by a special process server pursuant to Civil Rule 4.1, the party or counsel must file with the Clerk 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 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) 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 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 Civil Rules 4 through 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 “applicant has complied with the provisions of Local Rule 22; (name of the 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 Civil Rule 4.1(2) for designation by the Court of a person to make service of process.

## RULE 23

### EXPERT WITNESSES IN DOMESTIC RELATIONS CASES

(A) A party in a domestic relations case may not call an expert witness to testify unless a written report has been procured from said witness. It is counsel's responsibility to take reasonable measures, including the procurement of supplemental reports, to insure that each such report adequately sets forth the expert's opinion. However, unless good cause is shown, all supplemental reports must be supplied not later than thirty (30) days prior to trial. The report of an expert must reflect his opinions as to each issue on which the expert will testify. An expert will not be permitted to testify or provide opinions on issues not raised in his report.

(B) All experts must submit reports. If a party is unable to obtain a written report from an expert, counsel for the party must demonstrate that a good faith effort was made to obtain the report and must advise the Court and opposing counsel of the name and address of the expert, the subject of the expert's expertise together with his qualifications and a detailed summary of his testimony. The Court shall have the power to nonetheless exclude testimony of the expert if good cause is not determined.

## RULE 24

### MEDIATION

(A) Parenting Issues. When any parenting issue is contested, the Court may require mediation. The Court will issue an Order that the parties participate in the mediation process. The Order shall name the mediator and shall set out how mediation fees are to be paid.

At the conclusion of the mediation process, the mediator shall send a report to the parties and their attorneys. The report shall contain only those items agreed to by the parties. If the parties and their attorneys agree that the mediation report is fair and equitable, the agreement shall be submitted to the Court in the form of an agreed Entry. If there is no agreement regarding the fairness of the report, the matter shall proceed through the litigation process and the mediation report may not be entered into evidence or otherwise used in the presentation of the case.

(B) Economic Issues. The parties may agree to mediate any issue in controversy. The parties may secure their own mediator or they may request the Court to make a referral. If mediation is requested by both parties, the Court shall issue an order naming the mediator and setting out how mediation fees are to be paid.

At the conclusion of the mediation process, the mediator shall send a report to the parties and their attorneys. The report shall contain only the items agreed upon by

the parties. If the parties and their attorneys agree that the agreement is fair and equitable, the agreement shall be submitted to the Court in the form of an agreed Entry. If there is no agreement regarding the fairness of the report, the matter shall proceed through the litigation process and the mediation report may not be entered into evidence or otherwise used in the presentation of the case.

## RULE 25

### OBJECTIONS TO MAGISTRATE'S DECISION-TRANSCRIPTS

(A) Ordering Transcripts. If a party intends to object to a Magistrate's Decision pursuant to Civil Rule 53 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 conclusion. At the time of filing objections, the party shall also file a praecipe (see appendix D.R. Form 5) with the Clerk of Courts requesting either a full transcript or designating specific portions thereof. The Clerk shall deliver the praecipe to the appropriate staff person who shall then notify the requesting party or attorney of the estimated cost of the transcript. Within 14 days of the filing of the praecipe, the party shall deposit with the Court Reporter half of the estimated cost of the transcript or \$50.00, whichever is greater. If no deposit is received within 14 days, the Court Reporter shall notify the Judge who may proceed to rule upon the objections.

(B) Filing. Within 40 days of receiving the deposit, the Court Reporter shall file the transcript with the Clerk of Courts. The Court may extend the time for one additional 40 day period upon motion filed within the prescribed time by the attorney or party requesting the transcript and for good cause shown. The Court Reporter immediately shall notify both parties or their counsel, and the Court, in writing, that a transcript has been filed.

(C) Copies. Copies shall be purchased from the official Court Reporter and not be duplicated from the original or opposing counsel's copy. The rule does not prohibit a party who has paid for a copy from duplicating the same for his or her own use at trial, so long as the copy is not provided to the opposing party.

## RULE 26

### ATTORNEY FEES-PROCEDURE FOR REQUESTING IN DOMESTIC CASES

As an alternative to retaining an expert to testify at the final hearing on the issue of reasonableness and necessity of legal services, the party requesting fees may submit an affidavit to opposing counsel, at least two (2) days before the final hearing, setting forth qualifications to the requesting party's attorney, the hourly rate of the attorney, and an itemized statement of the services rendered, with an estimate of the remaining preparation time and time required for attendance at the final hearing.

The affidavit should be offered as an exhibit at the final hearing. The responding party may then indicate at the final hearing whether he or she will stipulate to the reasonableness and necessity of the requesting party's attorney fees. If there is no such stipulation, the Court, upon request, will schedule a follow up hearing at which time the issue of attorney fees will be litigated and the requesting party may present expert testimony on the issue of reasonableness and necessity of fees, including those fees incurred in preparing for and attending the follow-up hearing.