

# Local Court Rules of Practice for the Court of Common Pleas of Belmont County, Ohio, Probate/Juvenile Division

Judge Albert E. Davies



## **PREAMBLE**

**These Rules are designed and adopted to provide an orderly means of access to the Court and an efficient system for resolution of disputes within the Court. The purpose of the Rules would be subverted if they are invoked by counsel for mere tactical advantage in a proceeding.**

**The Rules and their divisions are rules of reason. They shall be applied consistent with constitutional requirements, statutes, other court rules, and decisional law in the context of all relevant circumstances. The Rules are to be construed so as not to impinge on the essential independence of judges in making judicial decisions, or as a substitute for substantive law.**

**It is not intended that every transgression from the Rules will result in sanctions against a party or counsel. The imposition of a sanction and the degree of such sanction shall be determined through a reasonable and reasoned application of the Rules and should depend upon such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the transgression on the rights of the parties and the merits of the cause before the Court or the perception of the judicial system by the public.**

**However, in the event sanctions are deemed appropriate, the Trial Judge, in accordance with the inherent powers of the Court and the enumerated powers contained in the Ohio Revised Code, the Ohio Rules of Civil and Criminal Procedure, the Rules of Juvenile Procedure, and the Rules of Superintendence shall have the power to impose sanctions on attorneys, parties, or both, for failure to comply with these Local Rules. Sanctions may be monetary, non-monetary or a combination of monetary and non-monetary. No sanction shall be imposed without providing the offending party and/or attorney an opportunity to be heard, unless the conduct giving rise to the sanction amounts to a direct contempt.**

**Pursuant to the authority granted in Article IV, §5 (B) of the Constitution of the State of Ohio and the Rules of Superintendence for the Courts of Ohio, it is Ordered that the following be the Rules of Practice and Procedure in the Probate and Juvenile Courts of Belmont County, Ohio.**

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## **RULE 1 - TERM OF COURT**

There shall be one term of Court each year commencing January 1, and the Court shall be in continuous operation for the transaction of judicial business.

The term shall be divided into three (3) sessions, namely, Spring, Summer and Fall. The Spring Session will begin in January, the Summer Session in May and the Fall Session in September and each Session shall commence on such dates as shall from time to time be determined by the Court

## **RULE 2 - HOURS OF COURT**

The regularly stated times for holding the Sessions of Court shall be from 8:30 a.m. to 4:30 p.m., except that such hours may be modified by the Judge to meet special circumstances or the exigencies of Trials, Motions, Pleas and/or Dispositions.



## **RULE 3 - REMOVAL OF FILES, PLEADINGS OR OTHER DOCUMENTS, STATISTICAL REPORTING**

- 3.1** No files, pleadings or other documents on file in this Court shall be removed from the Clerk of the Court, except with the permission of the Clerk and under such rules as the Clerk may from time to time prescribe. Provided, however, this Rule shall not apply to:
- (A) The use of such files, pleadings or other documents in Open Court or Judge's Chambers during any Argument, Hearing, Trial or other proceeding in the case to which such files, pleadings or other documents pertain or in which they may be used; and
  - (B) Any removal made pursuant to law.
- 3.2** Notwithstanding anything in Rule 3.1 to the contrary, no file shall be removed from the Clerk of the Court with respect to and involving any case within seven (7) days prior to its scheduled Trial date.
- 3.3** The Clerk of the Court shall document the removal of each file and shall provide the name of the individual who has removed said file, its location and the date of its removal.
- 3.4** Unauthorized removal of files from the Office of the Clerk shall subject the offending party to Contempt of Court and/or the imposition of appropriate sanctions.
- 3.5** Statistical Caseload Report Form D and Form C shall be submitted electronically monthly and quarterly by the Chief Deputy Clerk and Court Administrator, or assigned deputy clerk. Permission is granted for said individuals to share the login credentials assigned to the Belmont County Juvenile and Probate Court for the submission of said forms to the Supreme Court of Ohio. The Court Administrator shall address any issues pertaining to the sharing of the credentials with any other individuals, shall maintain and update the Court of Ohio.

## **RULE 4 - BROADCASTING/PHOTOGRAPHING PROCEEDINGS**

- 4.1** The Judge assigned to the Trial or Hearing may permit the broadcasting or recording by electronic means and the taking of photographs in Court proceedings that are open to the public as provided by Ohio law and in conformity with Rule 12 of the Rules of Superintendence of the Courts of Ohio.
- 4.2** Requests for variance from this Rule shall be submitted to the Judge in writing, and the Court’s ruling on the request shall be made a part of the record.
- 4.3** The Judge shall specify the place or places in the Courtroom where media representatives are to be seated or positioned.
- 4.4** For recording and broadcast purposes, microphones and other electronic equipment necessary for the audio pickup shall be as inconspicuous as possible, but may be visible.
- 4.5** Arrangements between or among media for “pooling” of equipment shall be the responsibility of the media representatives. “Pooling” arrangements are to be made outside the Courtroom and without imposing on the Judge or Court personnel. If disputes arise over arrangements between or among media representatives, the Judge may exclude all contesting representatives from the proceedings.
- 4.6** The Judge may prohibit the use of electronic or photographic equipment that produces distracting sound or light. No artificial lighting other than that normally used in the Courtroom shall be employed.
- 4.7** To the extent practicable, media representatives shall be afforded a clear view of proceedings, but shall not be permitted to move about in the Courtroom during proceedings from the places where they have been positioned by the Judge, except to leave or enter the Courtroom. Provided, however, that once proceedings have commenced, the Judge may restrict media representatives from leaving or entering the Courtroom until an appropriate break in the proceedings is recognized by the Court.

- 4.8** There shall be no audio pickup or broadcast of conferences conducted in a Court facility between attorneys and clients or of conferences conducted at the Bench between counsel and the Judge.
- 4.9** Media representatives shall not be permitted to transmit or record anything other than the Court proceedings from the Courtroom while the Court is in session.
- 4.10** The Judge shall inform Jurors, Victims and Witnesses of their right to object to being filmed, videotaped, recorded or photographed, and media representatives shall honor any such objection. This Rule shall apply not only in the Courtroom but also within the Court facility and grounds.
- 4.11** Any violation of this Rule by a media representative may result in exclusion of that media representative and media source from further proceedings; confiscation of the media equipment then being utilized by the representative pending conclusion of the proceedings and further Hearing; and such other sanctions as the Court may deem appropriate for contempt.
- 4.12** This Rule shall not be construed to grant media representatives any lesser or greater rights than permitted by law.

## **RULE 5 - JURY SERVICE**

- 5.1** Jury Service is a duty of all qualified citizens and shall not be denied or limited, in any way, on the basis of race, national origin, gender, age, religious belief, income, occupation, disability, or any other factor that discriminates against a cognizable group within the jurisdiction of this Court.
- 5.2** The names of potential Jurors shall be drawn from a Jury source list compiled from the poll list of registered voters obtained from the Board of Elections and may be obtained from the Ohio BMV list of Belmont County residents who hold a driver's license. The Jury source list shall be representative and shall be as inclusive of the adult population of Belmont County as is feasible. This Court shall review the Jury source list annually. Should the Court determine, upon review, that the Jury source list is not sufficiently representative and inclusive of the adult population of Belmont County, the Court shall direct appropriate corrective action.
- 5.3** Except as otherwise provided, selection of prospective Jurors from the Jury source list, summoning them for service, assigning them to panels, and calling them for voir dire shall be conducted in a random manner, either manual or automatic, so that every person listed has an equal probability of selection. The method utilized shall be documented by the Clerk of Courts. However, departure from random selection shall be appropriate under the following circumstances:
- (A) To exclude persons ineligible for service in accordance with Rule 5.4;
  - (B) To excuse or defer prospective Jurors in accordance with Rule 5.6;
  - (C) To remove prospective Jurors for cause or, or if challenged peremptorily, in accordance with Rules 5.8 and 5.9;
  - (D) To provide all prospective Jurors with an opportunity to be called for Jury Service and to be assigned to a panel in accordance with Rule 5.13.

**5.4** All persons on the Jury source list shall be eligible for service except:

- (A) Persons under the age of 18 years;
- (B) Persons who are not U.S. citizens;
- (C) Persons who are not residents of Belmont County;
- (D) Persons who are not fluent in the English language; and
- (E) Convicted felons who have not had their civil rights restored.

**5.5** Persons summoned for petit Jury service shall remain on a panel until:

- (A) Their services are no longer deemed necessary by the Court;
- (B) The term of Court has ended;
- (C) Said Juror has been summoned and has reported for service two (2) times without serving;
- (D) Said Juror has served at least two (2) consecutive Trial days in one (1) Trial; or
- (E) Said Juror has served a total of two (2) or more Trial days regardless of the number of Trials.

**5.6** All Persons on the Jury source list shall be exempt, excused or deferred from Jury Service, in the discretion of the Court or the Jury Commissioners or their authorized representative. Request for exemption, excuse, or deferral of service shall be made in writing. **See Appendix A to Local Rule 5.** Exemptions from Jury Service are as follows:

- (A) Over the age of 75, or physically unable to serve, and has made a request to be exempted;
- (B) Death of a spouse or near relative or serious personal or

family illness supported by a physician's certificate of inability to serve;

- (C) The Juror is necessarily absent from the County and will not return in time to serve;
- (C) Cloistered members of a religious organization;
- (E) The Juror previously has been called as a Juror for Trial in a Court of Record in the County within the same Jury year;
- (F) The interest of the public or of the Juror will be materially injured by the Juror's attendance.

Persons on the Jury source list may be temporarily excused for a specified Trial or deferred a specific period of time by the Court, Juror Commissioners and/or their authorized representative, as follows:

- (A) The Juror will be necessarily absent from the County on a temporary basis and will not return in time to serve (must be verified by the Court);
- (B) The Juror is a full-time student at a bona fide educational institution and has requested to be excused;
- (C) The Juror will be on vacation during the period of their respective Jury service.

**5.7** Voir dire examination shall be limited to matters relevant to determining whether to remove a Juror for cause and to determine the Juror's fairness and impartiality. Juror questionnaires may be submitted by the attorneys and may be ordered by the court on an individual case basis.

**5.8** Upon Motion or **Sua Sponte**, if the Court determines during the Jury Selection process that a prospective Juror is unable or unwilling to hear the matter fairly and impartially, the Court shall excuse that person for cause.

- 5.9 The exercise of peremptory challenges shall be governed by the law of the State of Ohio.
- 5.10 During the voir dire examination, counsel shall not argue their case in any manner; nor shall they engage in efforts to indoctrinate the Jurors; nor shall they ask questions concerning anticipated instructions or theories of law, except for general questioning on the validity and philosophy of the burden of proof and presumption of innocence; Jurors shall not be asked what kind of Verdict they would return under any circumstances. Questions that may be put to the panel of the prospective Jurors as a whole must be asked in that fashion.
- 5.11 The responsibility for administering the Jury System shall be vested in a Court Administrator acting under the supervision of the Administrative Judge and in conjunction with the Jury Commissioners. Pursuant to the above authorization, the Court Administrator shall issue the notice summoning prospective Jurors, Juror Questionnaires, and written requests for exemption, excuse or deferral, which documents shall be in a form approved by the Court and delivered by ordinary mail with readily understandable explanations for completion of the forms, return of the forms, and the consequences for failure to do so. Said explanation shall clearly advise each prospective Juror of their right to request an **in-camera hearing** to determine whether their legitimate private interests warrant non-disclosure of their written responses in their Questionnaires. Any person summoned for Jury service who fails to appear without exemption, excuse, or deferral shall be summoned to show cause as to why that person should not be held in contempt.
- 5.12 The Court shall collect and analyze information regarding the performance of the Jury System on an annual basis, but not later than December of each calendar year, in order to evaluate:
- (A) Whether the Jury source list is representative and inclusive;
  - (B) The effectiveness of the qualification and summoning procedures;
  - (C) The responsiveness of individual citizens to Jury duty summons;

- (D) The efficient use of Jurors;
- (E) The cost effectiveness of the Jury Management System.

- 5.13** The Court shall utilize the service of Jurors in such a manner as to achieve optimum use and minimum inconvenience. To that end, the Court shall determine the minimum number of prospective Jurors necessary to accommodate Trial activity. Until a prospective Juror has been selected by the Court to participate in a Trial activity, the information contained in the Juror Questionnaires shall not be subject to release to the public, since the presumption of openness does not apply until the minimum number of Jurors needed to accommodate the prospective Trial has been Ordered by the Court.
- 5.14** The Court shall provide an adequate and suitable environment for Jurors. Clear directions for the time, place, and manner of checking in and information on parking shall be given to prospective Jurors in advance. The Jury deliberation room shall include space, furnishings and facilities conducive to reaching a fair verdict. The safety and security of the deliberation room shall be insured. To the extent feasible, Jury facilities and procedures shall minimize contact between the Jurors, parties, witnesses, counsel and the public.
- 5.15** Persons called for Jury duty shall receive a reasonable fee for their services and expenses in accord with R.C. §2313.34 and appropriate resolution of the Board of County Commissioners of Belmont County, Ohio. Such fee shall be promptly paid.
- 5.16** In accord with R.C. §2313.18, employers shall be prohibited from discharging, laying off, denying advancement opportunities to or otherwise penalizing the employees who miss work because of Jury service. Whoever violates R.C. §2313.18 and/or any provision of this Local Rule shall be punished as and for Contempt of Court pursuant to Chapter 2705 of the Revised Code.
- 5.17** The Court shall be responsible for providing instructions that are readily understood by individuals unfamiliar with the law and the legal system to prospective Jurors appearing pursuant to summons. The Trial Judge shall:



- (A) Provide preliminary instructions to all prospective Jurors;
- (B) Provide instructions at the commencement of voir dire and/or immediately following the empanelling of the Jury to explain the Jurors' role, the Trial procedure, the nature of evidence and its evaluation, the issues to be addressed and basic legal principles; and
- (C) Provide instructions, prior to deliberations, on the law, procedures that the Jury must follow in deliberating, and the method for reporting the results of deliberation.

At the conclusion of the Trial, after the Jury has completed its service, the Trial Judge shall:

- (A) Advise the Jurors that they no longer have a duty of confidentiality;
- (B) Advise the Jurors as to their rights with respect to inquiries from counsel, the press, or others;
- (C) Advise the Jurors as to whether they are discharged from service or whether they will be required to report at another time;
- (D) Advise the Jurors that their service is appreciated;
- (E) Not express approval or disapproval of the result of the Jury's deliberation; and
- (F) Dismiss the Jury.

**5.18** All communication between the Trial judge and the Jurors, from the time prospective Jurors report to the courtroom until the Jury is dismissed, shall be either in writing or on the record. The parties shall be advised of such communications and shall be given an opportunity to be heard.

**5.19** A Jury shall be sequestered only for good cause. Good cause includes insulating members of a Jury from improper information or influence. In a capital case, the Jury shall be sequestered during deliberations of both the guilt phase and the penalty phase of the Trial. The Trial Judge shall have discretion to sequester a Jury on motion or **sua sponte** and shall have the responsibility to set and manage the conditions of sequestration in order to achieve the purpose and to minimize the inconvenience and discomfort of Jurors. Court personnel shall be given training as to escorting and assisting Jurors during sequestration.

APPENDIX A  
LOCAL RULE 5  
IN THE COURT OF COMMON PLEAS  
PROBATE/JUVENILE DIVISION  
BELMONT COUNTY, OHIO

**REQUEST FOR EXCUSE OR DEFERRAL**

The Juror is **INELIGIBLE** for service because: (Please Circle)

- (1) Under the age of 18 years;
- (2) Not a U.S. citizen;
- (3) Not a resident of Belmont County;
- (4) Not fluent in English;
- (5) A convicted felon, and my social security number is \_\_\_\_\_;
- (6) Deceased, please state date of death:\_\_\_\_\_.

I wish to be **EXCUSED** from service and do not want to serve because I: (Please Circle)

- (1) am at least **75** years old; though I may serve, I choose not to serve;
- (2) Medical-have attached a **physician's certificate** to document a serious personal or family illness that renders me unable to serve;
- (3) am a **cloistered** member of a religious order (**does not include clergy of all religions**);
- (4) would suffer serious financial hardship if required to serve and have **attached an explanation** (**absence from employment is not valid excuse under the law**);
- (5) I have been seated on a Jury Panel in the last year. Date seated:\_\_\_\_\_
- (6) Extended absence from County during term \_\_\_\_\_ (**must be verified by Court**).

I request **DEFERRAL** for a specific period of time\_\_\_\_\_ because: (Please Circle)

- (1) I will be out of the country;
- (2) I am a student;
- (3) I will be on vacation (deferral not to exceed two (2) weeks);
- (4) I am serving in the Military.

**STATE OF OHIO  
COUNTY OF BELMONT**

I do hereby solemnly swear or affirm that the answers to the foregoing questions are true and correct to the best of my knowledge and belief and that I understand my right to request a hearing to determine my legitimate privacy interest to warrant the non-disclosure of my responses to the public.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Signature of Prospective Juror  
-OR- Representative

## **RULE 6 – COURT SECURITY**

- 6.1** Pursuant to Rule 9 of the Rules of Superintendence for the Common Pleas Court and Rule 18 of the Rules of Superintendence for the County Courts, a Court Security Policy is hereby established effective July 1, 1995. **See Appendix A to Local Rule 6.**
- 6.2** Pursuant to Ohio Supreme Court Rule of Superintendence 5.01, the Belmont County Juvenile Court establishes the following rule in the use of juvenile restraints for court hearings:
- (A) Children appearing before the Court shall be free of physical restraint during any hearing unless the judge or magistrate before whom the child is appearing makes an individualized determination on the record that there is no less restrictive alternative to the use of physical restraint and that the physical restraint is necessary because of either of the following:
- (1) The child represents a current and significant threat to the safety of the child's self or other persons in the courtroom;
  - (2) There is significant risk the child will flee the courtroom.
- (B) In making the necessary findings to use physical restraints, the judge or magistrate shall consider (1) the nature and severity of the offense for which the child is before the court; (2) the child's prior history with the court; (3) the child's prior and current behavioral history while being held in detention and in the presence of the Court; and (4) any other factors that judge or magistrate deem appropriate in making the individualized determination to apply physical restraints during the hearing.
- (C) The judge or magistrate shall permit the child who is the subject of a juvenile court proceeding, the child's spouse, the child's parent or parents, the child's custodian, guardian, or guardian ad litem, the state, and any other person specifically designated by the court, to be heard on the issue of whether the use of physical restraint is necessary for that particular child at the particular proceeding. This hearing may take place absent the presence of the child as long as the child is represented by an appropriate person and given the opportunity to respond at the time he or she appears in the court room. A child shall not be required to be free of physical restraint during the hearing to determine the necessity of physical restraint.
- (D) This rule applies to court appearances while in the courtroom and shall not be construed to include physical restraints of children when being transported to and from court appearances, throughout common areas or outside of the court or juvenile detention center.

**COURT SECURITY POLICY**

The Common Pleas Court and the County Courts are charged with dispensing justice, resolving disputes, and protecting the constitutional rights of those who appear before the Courts.

Accordingly, appropriate levels of security should exist in the Courts to protect the integrity of Court Procedures, protect the rights of individuals before it, deter those who would take violent action against the Courts or litigants, sustain the proper decorum and dignity of the Courts, and assure that Court facilities are secure for all those who visit and work there.

Therefore, pursuant to Rule 9 of the Rules of Superintendence for the Common Pleas Court and Rule 18 of the Rules of Superintendence for the County Courts, the Court establish as follows:

- (A) The Courts have appointed a Local Security Advisory Committee, consisting of the Common Pleas Judges, the three (3) County Court Judges, the three (3) County Commissioners, the Sheriff, the Police Chief of the City of St. Clairsville, the Prosecutor, the County Auditor, and a member of the Local Bar.
- (B) The Courts have implemented a Local Security Policy and Procedure Plan, which plan addresses the Security Standards adopted by the Supreme Court of Ohio on October 17, 1994.
- (C) The Local Court Security Advisory Committee has adopted a Security Operations Manual, which Manual shall establish written directives for the purpose of ensuring security within the Courts while maintaining accessibility to the community.

## RULE 7 – JUVENILE COURT COSTS

The following costs are a sample of typical and usual costs and are not meant to be all inclusive:

|   |                 |
|---|-----------------|
| Juvenile Delinquency – Felony .....                                 | \$110.00        |
| Juvenile Delinquency – Misd .....                                   | \$79.00         |
| Juvenile Unruly .....   | \$79.00         |
| Juvenile Tobacco .....  | \$52.00         |
| Juvenile Traffic – moving .....                                     | \$87.00         |
| Juvenile Traffic – non-moving.....                                  | \$58.00         |
| Custody, Paternity, Visitation, Motion, Complaint for Support ..... | \$150.00*       |
| Consent to Marry .....  | \$48.00         |
| Contributing/Failure to Send.....                                   | \$125.00        |
| Acknowledgement of Paternity .....                                  | \$25.00         |
| Certified Copies .....  | \$1.00          |
| Computer Fund .....   | \$13.00         |
| Special Projects Fund .....   | \$10.00-\$50.00 |

The Belmont County Sheriff assesses a fee of \$25.00 on warrants issued by the Court. Additionally, mileage charges may be assessed by the Sheriff on warrants. The court adds these fees to court costs on a case and collects the same. Upon collection of the warrant fees, the Court disperses said fees to the Belmont County Sheriff's office on the first of the following month.

\*Additional costs may be assessed throughout the case for motions, GAL fees, etc.

## **RULE 8 – SPECIAL PROJECTS**

- 8.1** Pursuant to R.C. §2303.201 (E) (1), the Court determines that for its efficient operation, additional fees are necessary to acquire and pay for Special Projects of the Court that are permitted by the statute.
- 8.2** Therefore, effective January 1, 2002, it is Ordered that the Clerk of the Court is authorized and directed to charge as court costs a fee of \$10.00 per case or filing for the Special Projects Fund for the Court of Common Pleas, Juvenile Division for all cases and post-judgment motions including, but not limited to delinquency, unruly, juvenile traffic offense, juvenile tobacco offender, domestic relations case or motion, contributing, paternity and other civil causes of action.



## **RULE 9 – COURT PROGRAMS**

### **DIVERSION**

- 9.1** Chief Deputy Clerk and Diversion Coordinator will review delinquency complaints. Complaints which are (1) a first offense (excluding juvenile traffic cases) (2) not a felony (3) not an aggravated offense and (4) no objection is rendered by the prosecutor's office will be referred to the Diversion Coordinator.
- 9.2** The Diversion Coordinator will receive directly from the prosecutor's office any unruly complaints that are also first offenses in which the juvenile is not incarcerated.
- 9.3** The Court may in the Court's sole discretion and with the approval of the prosecuting attorney refer cases to the Diversion Coordinator to further the interest of justice.
- 9.4** Upon the referral of a complaint to the Diversion Coordinator, the Diversion Coordinator shall immediately send a letter to the juvenile and the legal parent(s), custodian(s), or guardian(s) advising said persons of the diversion procedure. A meeting will be scheduled with the juvenile and the parent(s), custodian(s) or guardian(s) at a time to be chosen by the Diversion Coordinator. A fee of seventy-five dollars (\$75.00) will be charged for the services rendered on behalf of the Juvenile Court by the Diversion Coordinator. Said fee shall be payable by money order at the time of the initial conference. This fee may be waived in the Court's discretion and upon the filing of a Financial Affidavit.
- 9.5** The Diversion Coordinator will discuss with the juvenile and parent(s), custodian(s) or guardian(s) a resolution of the complaint in an attempt to avoid formal court intervention. Should the juvenile voluntarily terminate the program, appear to make no or minimal efforts with the recommendations of the Diversion Coordinator, receive a second offense during the intake procedure, or not

follow program requirements then the original complaint will be formally filed with the Court and referred to the judge.

**9.6** The Diversion Coordinator is hereby authorized to develop an Diversion Form, which is to be completed by the juvenile and the juvenile's parent(s), custodian(s), or guardian(s) and delivered to the Diversion Coordinator at the first meeting.

**9.7** All cases referred to the Diversion Coordinator will receive a diversion case number but will not receive a formal case number from the Clerk of the Juvenile Court. The Diversion Coordinator will keep a database of all juvenile referred for the intake procedure and the outcome of the intake process.

### **C-CAP (CONCENTRATED CONDUCT ADJUSTMENT PROGRAM)**

**9.8** The court recognizes that since April 15, 1996 the C-CAP Program has operated to provide intensive monitoring of court involved youth as well as attendance on Saturdays and, during the summer vacation, Monday through Wednesday. C-CAP activities include social skills, community service, academic support and behavior modification.

### **FAMILY DEPENDENCY TREATMENT COURT**

#### **9.9 SPECIALIZED DOCKET (FAMILY DEPENDENCY TREATMENT COURT)**

##### **A. THE BELMONT COUNTY FAMILY DEPENDENCY TREATMENT COURT**

Established in 2005, The Belmont County Family Dependency Treatment Court is a specialized docket designed in accordance with Appendix I, Specialized Docket Standards of the Rules of Superintendence, to offer a therapeutically oriented judicial approach to providing court supervision and appropriate treatment to substance dependent parents of children who have been adjudicated to be abused, neglected or dependent by the Juvenile Court. The Belmont County Family Dependency Treatment Court strives to help each parent become a fully functioning adult by focusing on sobriety, mental health stability, obtaining a stable living environment, obtaining a legal source of income or continued education, completion of the Case Plan objectives and, if appropriate, reunification.

##### **B. REFERRAL PROCESS AND ELIGIBILITY**

Any person may refer a parent to the Belmont County Family Dependency Treatment Court by contacting the Program Coordinator. The Belmont County Family Dependency Treatment Court has developed the following eligibility requirements for participation in the program:

(1) Clinical Criteria

- (a) Substance dependent.
- (b) If mental health issues exist, it is believed that those conditions can be effectively controlled by treatment and/or medication.
- (c) Clients who are actively suicidal, homicidal or delusional will not be admitted until those conditions have been assessed by a certified mental health professional as being adequately controlled by medication and/or mental health treatment.
- (d) Clients whose developmental disabilities or mental health issues are so significant that the individual may not be able to parent despite achieving sobriety will not be admitted.

(2) Legal Criteria

- (a) Abuse, Neglect, Dependency Complaint filed in Juvenile Court with underlying parental substance abuse which has contributed to an inability to effectively and adequately parent.
- (b) Case must be adjudicated prior to starting Family Dependency Treatment Court.
- (c) Treatment is required in the Case Plan.
- (d) Belmont County resident.
- (e) No alleged or substantiated charges of sexual abuse perpetrated by the potential participant.
- (f) No registered sex offenders.
- (g) Individuals with Drug Trafficking convictions on their criminal record will be considered on a case-by-case basis.

The fact that a parent may meet the clinical and legal eligibility requirements does not create a right to participate in the Belmont County Family Dependency Treatment Court. The Judge shall have the discretion to decide admission into the program. The Belmont County Family Dependency Treatment Court is a voluntary program, but in certain circumstances a parent can be ordered to enter the program.

### C. CASE ASSIGNMENT

The Belmont County Family Dependency Treatment Court follows a comprehensive model. While in Drug Court, the parent will appear on a regular basis for status review hearings before the Juvenile Court Judge. The Juvenile Court Judge will oversee the status review hearings as well as the underlying Abuse, Neglect, Dependency case.

### D. ASSESSMENT AND CASE MANAGEMENT

Should the parent appear to meet the legal and clinical eligibility requirements of the Belmont County Family Dependency Treatment Court and continues to express an interest in participating in the program, a drug assessment and alcohol assessment and, if applicable, a mental health assessment with Brite Futures Counseling services. If the parent is accepted into the program, a

participation agreement with the parent will be completed. Treatment services will be promptly made available to the participant based upon the participant's individualized needs as evidenced by the assessments. As described more fully in the Belmont County Family Dependency Treatment Court Program Description, each participant's substance use shall be closely monitored by random, frequent and observed alcohol and other drug testing protocols that meet the requirements set forth in Appendix I Standard 8 of the Rules of Superintendence. Each participant's performance and progress shall be closely monitored by regularly conducted status team meetings and ongoing judicial interaction which shall occur no less frequently than twice monthly while in the initial phases of the program. As the participant promotes phases, judicial interaction shall become less frequent.

#### **E. TERMINATION FROM THE BELMONT COUNTY FAMILY DEPENDENCY TREATMENT COURT**

Should a parent be terminated from the Belmont County Family Dependency Treatment Court either due to an inability to participate (Neutral Termination) or noncompliance with the rules and requirements of the program (Unsuccessful Termination), notice of the termination from the Belmont County Family Dependency Treatment Court shall be placed in the court file. That notice shall delineate the type of termination. The case is then returned to traditional case processing in Juvenile Court.

#### **F. USE OF INFORMATION FROM FAMILY DEPENDENCY TREATMENT COURT**

(1) Pursuant to Evidence Rule 408, statements made in Family Dependency Treatment Court hearings shall be treated as evidence of conduct or statements made in compromise negotiations and are not admissible to prove the underlying cause of action.

(2) Pursuant to Evidence Rule 410, statements made in Family Dependency Treatment Court hearings will be treated as participation in plea discussions and will not be admissible to prove the underlying cause of action.

(3) This Rule does not limit the admissibility of evidence provable by independent, extrinsic evidence.

#### **SUBSTANCE ABUSE INTERVENTION DOCKET (SAID)**

**9.10** The Substance Abuse Intervention Docket (SAID) is an approximate ninety (90) day program designed to provide education and increase awareness of alcohol and other drug prevention treatment. The goal of this early, effective intervention measure is to reduce drug and alcohol use, general discipline problems, criminal activity, absenteeism, and truancy while enabling the offender to become a productive member of the community.

Only juveniles with a drug and/or alcohol first offense that is considered a misdemeanor by the standards of the Ohio Revised Code are eligible to participate. The juvenile must admit the charges stated in the complaint are substantially true and the minor and their parent(s) must be

willing to cooperate and abide by the terms and conditions of an Agreed Order. A participation fee is determined by the Juvenile Court.

If the minor and family choose to participate in the Substance Abuse Intervention Docket and abide by the terms and conditions of the Agreed Order, then the respective case will not be filed in the Belmont County Juvenile Court, nor will it result in a juvenile record.

Involvement in the intervention is approximately ninety (90) days; however, that time may be extended if necessary. The length of time in the program is dependent on a child's progress and compliance with the specific directives outlined in the relevant Agreed Order.

If during the time of court supervision, the juvenile or parent(s) fail to abide by the terms and conditions of the Agreed Order, or the juvenile is charged with an additional unruly or delinquent offense, or fails or refuses drug and alcohol testing, shows no or minimal effort to succeed in the program, or voluntarily withdraws, then the case will be filed in the Belmont County Juvenile Court.

### **INTENSE SUBSTANCE PROBATION (ISP)**

**9.11** The Intense Substance Probation (ISP) program was created in 2010 as an extension of the probation department enabling drug court staff/probation officers to monitor closely youth on probation with drug and alcohol related issues. These probation officers are trained to deal with youth and families facing drug and alcohol addiction issues. Traditional terms of probation apply in addition to more intense monitoring of drug and alcohol usage through various types of drug screens and referrals to drug and alcohol counseling and assessments. The goal is to provide early intervention, education, and determent from continued usage in order to prevent addiction leading to lifelong problems and challenges.

## **RULE 10 - TRAFFIC PROCEDURE**

- 10.1** All eligible first-time traffic offenders will be given the option of participating in the Carteens Program. A financial participation fee is determined by the Juvenile Court and the OSU extension office.
- 10.2** To be eligible to participate in the Carteens Program, the offense must not involve alcohol or drugs of abuse, not be an aggravated offense determined in the sole discretion of the court, if a speeding charge then not more than 20 miles over the posted speed limit, not involve an injury accident, and not objected to by the arresting officer or the prosecuting attorney. Likewise, all bondable offenses as defined by section 2.5 will not be eligible for the Carteens Program.
- 10.3** If a juvenile successfully completes through diversion participation the Carteens Program, the charge will not be filed with the court, nor reported to the Ohio Bureau of Motor Vehicles. The Juvenile Court will keep a database of all Carteens participants.
- 10.4** The Court hereby establishes a traffic bond procedure. If a charge presented to the Court is for one of the following offenses, then the juvenile and parents will be sent appropriate information to allow the juvenile to post a bond rather than appearing in court for the traffic offense. These bondable offenses include O.R.C. Sections 4513.263, 4511.56, 4511.66, 4511.681, 4511.69, 4503.11, 4503.21, 4513.04, 4513.05, 4513.06, 4513.09, 4513.15, 4513.21, 4513.22, 4513.221, 4513.23, 4513.24, 4513.241, 4513.25, 4513.26, 4519.02, 4519.20, or other miscellaneous non-moving traffic offenses. The juvenile charged with one of the above referenced offenses and parents will be sent a Notice of Filing and a Waiver and Admission form (**see attached Appendix A and B**) to sign and return with the appropriate bond. The amount of the bond will be established periodically by the court for each offense. No court appearance will be necessary for any bondable offense. All bondable offenses that are admitted to will be sent in to the Ohio Bureau of Motor Vehicles.

**10.5** The use and filing of a ticket that is produced by computer or other electronic means is hereby authorized in the Belmont County Juvenile Court. The electronically produced ticket shall conform in all substantive respects to the Ohio Uniform Traffic Ticket. If an electronically produced ticket is issued at the scene of an alleged offense, the issuing officer shall provide the defendant with a paper copy of the ticket.

**Appendix A**  
**NOTICE**

*State of Ohio, Belmont County Court of Common Pleas, Juvenile Division*

**TRAFFIC COMPLAINT FILED.**  
**NOTICE OF FINE & COSTS ISSUED.**

Date: \_\_\_\_\_

IN THE MATTER OF:

Case #

ALLEGED TRAFFIC OFFENDER.

TO:

ORC: \_\_\_\_\_  
Description: \_\_\_\_\_

ORC: \_\_\_\_\_  
Description: \_\_\_\_\_

On \_\_\_\_\_, \_\_\_\_\_ filed in this Court a complaint/traffic citation, duly verified according to law, setting forth that the above name child, date of birth: \_\_\_\_\_, appears to be a Juvenile Traffic Offender.

It is therefore ordered by the Court, that this Notice be issued to the above named juvenile and his/her parent(s) informing them that a fine of \$\_\_\_\_\_ and Court costs of \$\_\_\_\_\_ for a total of \$\_\_\_\_\_, will be due in this matter within \_\_\_\_\_ **days** from the above date. The juvenile will also have the option of denying the charge and appearing in Court for a formal hearing by calling the Court at (740) 699-2141 upon receipt of this notice in order to schedule a pretrial hearing.

If you wish to enter an admission to the charge (plead guilty) and pay the fine and Court costs, please send a check or money order in the above amount. Make the check or money order payable to **Albert E. Davies, Juvenile Judge**. Credit Card payments are also accepted in person, over the phone or at [www.BelmontCountyJuvenileCourt.com](http://www.BelmontCountyJuvenileCourt.com).

**You MUST RESPOND with the payment or phone call within twenty (20) days of the receipt of this letter.** Failure to respond to this notice within the listed amount of days may result in the licensing authority of the home state being notified and the driver's license being suspended until the juvenile responds or the fine and costs have been paid, further fine and Court costs and being cited into Court. **YOU WILL BE REQUIRED TO TURN IN YOUR DRIVER'S LICENSE TO THE COURT BY THE ABOVE DATE.** Juveniles cited as passengers who do not have a driver's license will have



their right to obtain a permit or driver's license suspended until all fines and costs due this Court have been paid.

Also enclosed you will find **An Admission Slip** to be signed by you and approved by one (1) of your custodial parent(s) along with a **Proof of Insurance Form** (if no proof was shown to officer at time of arrest). **BOTH OF THESE FORMS ARE TO BE RETURNED TO THE COURT ALONG WITH YOUR PAYMENT.** If you have any questions, please feel free to call the Court at the above number.

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ALBERT E. DAVIES - JUVENILE JUDGE

**Appendix B**  
*BELMONT COUNTY JUVENILE COURT*  
*BELMONT COUNTY COURTHOUSE*  
*ST. CLAIRSVILLE OHIO 43950*  
**WAIVER AND ADMISSION**

IN THE MATTER OF:

Case #

ALLEGED Juvenile Traffic Offender.

TO:

**ORC:**  
**Description:**

In consideration of not appearing in Court, I, the undersigned do hereby enter my appearance on the complaint for the offense alleged in this notice. I **WAIVE** the reading of the complaint and the right to be present at a trial of this action. I hereby enter a plea of **ADMISSION** to the allegations in the complaint and **WAIVE** the right to appeal any error in these proceedings. I understand the nature of the complaint against me. I understand by right to have counsel and I **WAIVE** this right. I **WAIVE** my right to trial before a Judge.

I **ADMIT** to the allegations in the complaint fully aware that my signature to this plea will have the same affect as a judgment of this Court and that a record of it will be sent to Ohio Bureau of Motor Vehicles.

A fine of \$\_\_\_\_\_ and costs of \$\_\_\_\_\_ for a total of \$\_\_\_\_\_. Payment in full is due within **days** of receipt of this notice.

Date:

\_\_\_\_\_  
*Juvenile Signature*

\_\_\_\_\_  
*Parent/Custodian Signature*

\_\_\_\_\_  
*Parent/Custodian Signature*

Pursuant to Rule 22 (C) and upon the admission heretofore entered, it is therefore ordered and adjudged that the above disposition is hereby approved and entered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Albert E. Davies, Juvenile Judge

## **RULE 11 – CRIMINAL/JUVENILE CASE DISCOVERY**

- 11.1** The Court may hold a Pre-Trial Conference (also designated as Status Conference) on all charges, at which time the Court shall review the production of Discovery by the State, set dates for the filing of all Motions (Dispositive Motions, Motions to Suppress, Procedural, etc.), Plea Agreement Deadlines, if deemed necessary, and otherwise address procedural matters. The Court, in its own discretion, or upon request of the State or the Defendant, may set an additional Pre-Trial Conference closer to the date of Trial so as to anticipate last minute matters which pertain to Trial.
- 11.2** The Disclosures, set forth in Criminal Rule 16, shall be made by the Prosecutor in felony cases, on or before the date of the Pre-Trial Conference. No Written Request need be made to obtain such Disclosures under this Rule. If a question of failure to provide complete Disclosure, as required by Criminal Rule 16, arises, the Court shall address the issue at the Pre-Trial Conference or upon the filing of an appropriate Motion for Enforcement of said Discovery, which Motion shall be filed by Defendant not later than fourteen (14) days after the date of the Pre-Trial or the date Discovery is provided, whichever shall later occur.
- 11.3** Upon the Defendant having received the above-mentioned Discovery from the State said Defendant shall make the Disclosures set forth in Criminal Rule 16 not later than fourteen (14) days after the Pre-Trial Conference or after the date of receipt of Discovery from the State, whichever later occurs; however, in no event not later than ten (10) days before Trial. No Written Request by the State is necessary to obtain such Disclosures under this Rule. If Disclosures are not made by Defendant, the prosecution shall apply to the Court for enforcement.
- 11.4** In the event of the failure of either the State or the Defendant to provide Discovery in accord with this Rule, the Court shall decide whether such failure to provide Discovery has resulted from an intentional, negligent, or otherwise inadvertent action and/or the imposition of an appropriate sanction, if any, to include imposition of fines and/or reasonable expenses, including attorneys fees, caused by the failure and/or an order prohibiting the introduction of designated matters into evidence, or whatever reasonable sanction the Court deems appropriate.

## **Rule 11(A) – Mediation**

The Court incorporates by reference herein, R.C. 2710 “Uniform Mediation Act” (UMA), R.C. 3109.052 Mediation of Differences as to Allocation of Parental Rights and Responsibilities, and Rule 16 of the Supreme Court of Ohio Rules of Superintendence.

### **11(A).1 Definitions**

A. Facilitation: “Facilitation” means a process in which a neutral party moderates discussions by ensuring the fluid and orderly exchange of information and ideas from all participants and that is primarily concerned with assisting individuals in refining their communication and organization skills so that they may learn to work more efficiently with one another in a group setting.

B. Mediation: “Mediation” means any process in which a neutral third party helps the parties communicate and negotiate with each other to help them reach a voluntary agreement regarding their dispute.

C. Mediator: “Mediator” means an individual who conducts a mediation.

D. Neutral Evaluation: “Neutral Evaluation” means a process in which the parties to a dispute present their claims or defenses and describe the principal evidence on which their claims or defenses are based to a neutral third party who then shares impressions about the strengths and weaknesses of each matter.

### **11(A).2 Referral**

Any time after filing, the Court may, upon its own motion or upon the motion of a party, refer any case to mediation that the Court deems appropriate. Juvenile cases eligible for mediation involve the allocation of parental rights and the care or visitation with minor children.

### **11(A).3 Responsibilities of Mediator**

A. General Responsibilities: In order to provide a fair mediation process for parties, a mediator who mediates for a court shall remain impartial and neutral and shall comply with all of the following:

1. The “Core Values of Mediation,” as approved by the Supreme Court Dispute Resolution Section in accordance with recommendations established by the Commission on Dispute Resolution;
2. The “Model Standards of Conduct for Mediators” adopted by the American Bar Association, American Arbitration Association, and the Association for Conflict Resolution;
3. For mediation in the juvenile court, the “Model Standards of Practice for Family and Divorce Mediation” adopted by the Association of Family and Conciliation Courts.

B. Conflicts of Interest:

1. A mediator shall avoid any actual or apparent conflicts of interest arising from any relationship or activity, including but not limited to those of employment or business or from professional or personal contacts with parties or others involved in the dispute. A mediator shall avoid self-dealing or association from which the mediator might directly or indirectly benefit, except from compensation for services as a mediator.
2. Upon becoming aware of any actual or apparent conflict or interest, a mediator shall notify the parties as soon as practicable.
3. The requirements of this rule are in addition to and do not supersede the requirements for R.C. 2710.08. Wherever a conflict exists between this rule and R.C. 2710.08, the statute shall control.

C. Legal Advice: A mediator shall not offer legal advice.

D. Satisfaction of Training Requirements:

1. A mediator shall meet the qualifications of and comply with all training requirements of Sup.R. 16.23 and local court rules governing mediators and mediation adopted pursuant to Sup.R. 16.21.
2. A mediator shall meet the qualifications for mediators for each court in which the mediator serves and promptly advise the court of any grounds for disqualification or any issues affecting the ability to serve.
3. Upon request, a mediator shall provide a court form which the mediator receives referrals documentation indicating compliance with all training and education requirements so that the court may meet the requirements of Sup. R. 16.24 (A)(1)(d). The documentation shall include information detailing the date, location, contents, credit hours, and sponsor of any relevant training.

#### **11(A).4 Mediator Education and Training**

A. General:

1. Except as provided in division (A)(2) of this rule, a mediator shall complete “Fundamentals of Mediation Training” approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution.
2. A mediator shall not be required to complete training pursuant to division (A)(1) of this rule if any of the following apply:
  - a. Prior to January 1, 2020, the mediator has completed at least twelve hours of basic mediation training;
  - b. Prior to January 1, 2020, the mediator has served as a full-time mediator for a minimum of three years or mediated at least forty-five cases, in which case the mediator shall complete the “Advanced Mediation Workshop” approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution;
  - c. The mediator is a law student enrolled in a clinical mediation or dispute resolution program at an American Bar Association accredited law school,

- has completed mandatory coursework in fundamental mediation topics, and mediates under the supervision of faculty at the law school.
3. Prior to accepting a referral from a court for disputes involving the allocation of parental rights and responsibilities, the care of or visitation with minor children, a mediator shall meet all of the following qualifications:
    - a. Possess a bachelor's degree, or equivalent educational experience as is satisfactory to the court, and at least two years of professional experience with families, including counseling, casework, legal representation in family law matters, or such other equivalent experience satisfactory to the court;
    - b. Comply with the requirements of division 11(A).3 of this rule;
    - c. Complete "Specialized Family or Divorce Mediation Training" approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution;
    - d. Complete "Specialized Domestic Abuse Issues and Mediation Training" approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution unless either of the following apply:
      - i. The mediator is co-mediating with another mediator who has completed the training;
      - ii. The mediator is a law student enrolled in a clinical mediation or dispute resolution program at an American Bar Association accredited law school, has completed mandatory coursework in fundamental and domestic abuse mediation topics, and mediates under the supervision of faculty at the law school who has completed the training.

#### **11(A).5 Responsibilities of Court**

##### **A. General:**

1. In order to ensure only qualified individuals perform the duties of a mediator and the requirements of Sup. R. 16.20 through 16.25 are met, a court that elects to use mediation shall do all of the following:
  - a. Establish screening procedures for the capacity of parties to mediate;
  - b. Establish procedures for monitoring and evaluation mediation to ensure the quality of the mediators and programs to which cases are referred;
  - c. Develop a process and appoint a person for accepting and considering written comments and complaints regarding the performance of mediators receiving referrals from the court. A copy of comments and complaints submitted to the court shall be provided to the mediator who is the subject of the complaint or comment. The person appointed may forward any comments and complaints to the judge of the court for consideration and appropriate action. Dispositions by the court shall be made promptly. The court shall maintain a written record in the mediator's file regarding the nature and disposition of any comment or complaint and shall notify the person making the comment or complaint and the mediator of the disposition.

- d. Allow mediation to proceed only if the mediator meets the qualifications, education, and training requirements of Sup. R. 16.23;
- e. Prohibit mediation when domestic abuse or domestic violence is alleged, suspected, or present unless all of the following conditions are satisfied:
  - i. Screening is conducted both before and during mediation, for domestic abuse and domestic violence, and for the capacity of the parties to mediate;
  - ii. The person who is or may be the victim of domestic abuse or domestic violence is fully informed about the mediation process, right to decline participation in the mediation process, and of the option to have a support person, in addition to an attorney, present at the mediation sessions;
  - iii. The parties have the capacity to mediate without fear or coercion or control;
  - iv. The court has taken reasonable precautions to create a safe mediation environment for the parties and all other persons involved in the mediation process;
  - v. Procedures are in place for the mediator to terminate a mediation session if there is a threat of domestic abuse, domestic violence, or coercion between the parties;
  - vi. Procedures are in place for issuing written findings of fact to refer certain cases involving domestic violence to mediation, as required by R.C. 3109.052.

**B. General:** A court shall not be responsible for the quality of a mediator selected by the parties without guidance from the court and who does not meet the qualifications, education, and training requirements of Sup.R. 16.23.

#### **11(A).6 Public Access**

The files maintained by a mediator but not filed with a clerk or submitted to a court shall not be available for public access pursuant to Sup.R. 44 through 47.

#### **11(A).7 Fees**

- (a) No additional deposit fees are charged for cases referred to the (Belmont County Mediation Program)
- (b) The Judge or Magistrate shall consider the following approaches to allocating mediation fees, but retain discretion to allocate fees in any manner deemed appropriate:

- (1) The Court may divide fees for mediation services equally based on the family's financial situation and ability to pay
- (2) The Court may approve any agreement reached by the parties regarding the payment of mediation services
- (3) The Court may allocate all fees to one party or the other based on financial ability to pay for services
- (4) The Court may waive mediation fees based on both parties ability to pay for such services

#### **11(A).8 Pro se Cases**

All cases involving pro se litigants shall be automatically referred to the Court's mediation program: Pro se litigants shall be fully and clearly informed by the mediator of what the pro se litigant is and is not required to do in mediation, including the nature of mediation and the purpose for the mediation.

#### **11(A).9 Counsel**

- (a) The parties may waive the presence of any counsel, or the Court also may require counsel for all parties to attend.
- (b) The parties shall have the opportunity to consult or appear with counsel before the Court approves the mediation agreement.

#### **11(A).10 Time Frame for Completion**

- (a) The Court may stay the proceedings for mediation for a period of time not to exceed 45 days.
- (b) The assigned Judge or Magistrate must approve or deny any agreement reached by the parties and reduced to writing within 10 days.
- (c) If either party fails to appear for mediation, if no agreement is reached in mediation, or if the agreements reached is not approved by the Judge or Magistrate, the case shall be scheduled for a pretrial or trial hearing.

#### **11(A).11 Confidentiality**

- (a) Any disclosure made by the parties or information received from any source or person during mediation shall be deemed confidential and shall not be admissible as evidence in any other action before the Court: Mediators shall not disclose or testify about any statements or discussions which occurred during the mediation.
- (b) A written confidentiality agreement shall be executed by all those in



attendance prior to beginning the mediation session. If new or different persons attend a subsequent session, their signatures shall be obtained prior to proceeding further in the process.

### **11(A).12 Sanctions**

If any party fails to attend mediation as ordered by the Court, 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 11(B) – Juvenile Competency**

### **General Purpose**

The purpose of these rules is to expedite proceedings under sections 2152.51 to 2152.59 of the Revised Code, to ensure that proper notice of competency hearings is provided to the appropriate persons, and to ensure that any proceedings on an underlying complaint are stayed pending the determinations under these sections.

### **Expedited Hearings**

Juvenile competency proceedings shall be scheduled and heard on an expedited basis. Hearings in juvenile competency proceedings shall be held in strict compliance with applicable deadlines as established by statute or by this rule.

### **Notice**

Upon the conclusion of each hearing, the court shall provide written notice to the prosecuting attorney, the child's attorney, the child's guardian ad litem, and the child's parents, guardian, or custodian of the date, time and place of the next scheduled hearing. Mailed notice shall not be required for any party or other individual designated in this rule to whom notice of the next hearing was provided in writing upon conclusion of the immediately preceding hearing.

### **Stay of Proceedings**

Upon the filing of a motion for determination regarding a child's competency or upon the court's own motion the court shall stay all delinquency proceedings pending a determination of competency. If, upon a determination of competency, the court determines that the child is not competent but could likely attain competency, the court order staying the delinquency proceedings shall remain in effect until such time as the child attains competency or the proceeding is dismissed.

## **RULE 12 - DOMESTIC RELATIONS / MAGISTRATE'S OFFICE**

### **General**

- 12.1** Domestic Relations filings or cases, include but are not limited to custody issues, paternity, child support matters, visitation rights, and children services cases. No Domestic Relations filing or case shall be filed until the Plaintiff makes a prepayment or deposit with the Clerk in the sum required by the Clerk to secure the costs likely to accrue in such action exclusive of attorney's fees. An indigent party may execute and file with such party's pleading an affidavit of the party's inability to prepay the costs required in this Rule whereupon such pleading shall be filed by the Clerk. In cases wherein the Plaintiff has executed and filed a poverty affidavit, a Defendant filing a Counterclaim shall comply with the provisions of this Rule.
- 12.2** Upon the filing and journaling of the Final Judgment Entry in a Domestic Relations Case, and in the absence of an express agreement to the contrary between the attorney and the client, the attorney representing a party shall no longer be considered counsel of record for such party. Any Post-Judgment Motion filed thereafter shall be served as provided in Civil Rule 75 (I) upon the adverse party.
- 12.3** Unless otherwise expressly Ordered by the Court, all installments of support, whether temporary, permanent, or for an indefinite period, shall be payable by the obligor through the designee of Belmont County Child Support Enforcement Agency of the Department of Job & Family Services (DJ&FS) in addition to an administrative fee equivalent of two percent (2%) as is presently provided in and subject to the future provisions of the Ohio Revised Code.
- 12.4** Pursuant to Juvenile Rule 40 the Court refers to the Magistrate all Domestic Relations cases, all Motions for Ex Parte Orders and/or for Temporary Orders for such cases, all Post Decree Motions for such cases, all matters regarding Child Support Orders, all Petitions for Civil Protection Order, and all Children Services cases, excluding permanent custody hearings filed in the Juvenile Court. **However, a Judge of the Court may exercise his/her discretion to directly handle any matter normally referred to the Magistrate due to special circumstances or the unavailability of the Magistrate.**

Furthermore, the Court or the Magistrate may recuse the Magistrate for good cause shown and the Judge assigned to the case will handle the matter.

**12.5** Notwithstanding the provisions of Rule 33 to the contrary regarding Hearings on Motions, all Post-Judgment Motions filed in Domestic Relations cases will be forwarded to the Magistrate of this Court to schedule a Hearing, or for Ruling without a Hearing, unless the parties agree upon the relief sought in which case an Agreed Judgment Entry is to be prepared and signed by counsel for the parties or by a party who is not represented by counsel. **Any such Agreed Entry will be prepared for signature by both the Judge and the Magistrate.**

**12.6** Unless an Order is issued by the Magistrate or a Judge indicating otherwise, all Domestic Relations cases and filings will be heard by the Magistrate. All documents related to such actions must be filed by the parties or their attorneys with the Clerk of the Court. Any such filings the parties or their attorneys want to immediately bring to the Magistrate's attention must be only copies and must be clearly marked "Copy," and must be directed by the parties or their attorneys to the Magistrate's Office.

#### **Bond for Failure to Appear Before the Magistrate**

**12.7** Juvenile Rule 40 (C) (2) (e) allows the Magistrate to issue an attachment for an alleged contemnor who fails to appear at a scheduled Court Hearing and to set a bond to secure the alleged contemnor's presence in Court in the future. Such a bond may be set pursuant to Criminal Rule 46. Moreover, the Court/Magistrate may also in **addition** set a "special" personal recognizance bond without waiting to secure more of the information outlined in Criminal Rule 46 (C). The Court/Magistrate in its discretion may allow a special personal recognizance bond by fixing an amount not to exceed the arrearages alleged by the Department of Job & Family Services (DJ&FS) which amount the alleged contemnor may post with the DJ&FS. The payment by the alleged contemnor is to be applied against his/her alleged arrearages. Such an act by the alleged contemnor may be accepted by the Court as an act of good faith that he/she is willing to purge himself/herself of any alleged contempt and may be the basis to justify a personal recognizance bond. When such payment to the DJ&FS is made known to the Sheriff's Department by the DJ&FS, then the Sheriff may release the alleged contemnor on his own personal recognizance, but only **after** the Sheriff's Office

relays to the alleged contemnor the date, time, and place of the next scheduled Court Hearing at which the alleged contemnor is expected to appear.

### **Ex Parte Motions**

- 12.8** If an affidavit alleges a situation so dangerous that serious physical harm is likely to a household or family member, or alleges that the Affiant merely requests to continue the **status quo** which has existed for a substantial period of time, the Magistrate may grant an appropriate temporary Ex Parte Order. However, the Magistrate shall schedule an immediate Hearing or provide an opportunity for a Hearing. Such Hearing date can be included in the Ex Parte Entry or in the event no date is provided, such Entry will reflect a Hearing to be expeditiously scheduled, if requested by the other party.
- 12.9** If an Affidavit or testimony established that one of the parties has already been removed from the residence by Court Order, or has left the residence, then the Magistrate may issue an Ex Parte Order granting exclusive possession of the home to the party remaining in the home.
- 12.10** Ex Parte Orders will be granted on Affidavits alone for mutual Orders not to remove the pre-existing residence of the children from Belmont County, Ohio.
- 12.11** The parties may seek a **Standard** Mutual Restraining Order as outlined below in DPR 6 with an Affidavit so as to keep the peace between the parties regardless of a determination of fault, to immediately lessen the possible adverse impact of the Divorce on children, to preserve the marital property for later division, and to preserve the status quo.
- 12.12** Either party may request the Magistrate by Affidavit that both parties are restrained from one, or more, or all of the following:
- (A) Threatening, abusing, annoying, interfering with the other party or the parties' child(ren);
  - (B) Creating or incurring debt (such as credit card) in the name of the other party or in the parties' joint names, or cause a lien or loan to be placed against any of

their real or personal property;

- (C) Selling, disposing of, or dissipating any asset, real or personal property, including without limitation: bank accounts, tax refunds, and money (other than regular income) of either party of a child.
- (D) Removing household goods and furnishings from the marital residence without approval of the Court or other party.
- (E) Changing or failing to renew the present health, life, home, automobile or other insurance coverage; remove the other party as beneficiary on any life or retirement benefits without further Order of this Court.
- (F) Changing or establishing a new residence for the parties' minor children without the written consent of the other party or permission of the Court.
- (G) Lessening the time available for the other party to spend with the parties' minor children so that such time is much less than before the filing of the Divorce complaint.

These restraints may be imposed by the Court's Standard Mutual Restraining Order, which is attached as **Domestic Relations Form 101, Appendix B to Local Rule 12**. Domestic Relations Form 101 may be modified to delete any restraints the party is not seeking. The party securing the Order is deemed to have notice of the Mutual Restraining Order when the Order is filed with the Clerk.

**12.13** All other requested Ex Parte Order will not be granted without scheduling a Hearing. All Ex Parte Hearings will proceed with sworn testimony on the record and other appropriate evidence to show the need for the Order. Local Rule 6 also applies for Motions before the Magistrate. A date for Hearing must be secured from the Magistrate's Office either by the moving attorney or by the Clerk of Courts, and the moving party must make a good faith effort to serve That Hearing date on the opposing party or his/her counsel.

## Domestic Relations Procedures

**12.14** This local Court Rule adopts the Court's promulgated **Domestic Relations Procedures**, which are attached as **Appendix A to Local Rule 12** and have been promulgated by the Court with the assistance of the Magistrate's Office for the more efficient and just processing of Domestic Relations matters.

**Appendix A**  
**Rule 12 DR PROCEDURES**

**PREAMBLE**

The following procedures are promulgated by the Court for Proceedings before the Magistrate and Judges of the Belmont County Court of Common Pleas, Juvenile Division on Domestic Relations matters. However, a Judge or Magistrate may deviate from these procedures if in a particular case a Judge or Magistrate finds the interest of justice requires a different procedure.

These Domestic Relations Procedures have been placed under separate cover from the Local Rules to distinguish them from the Rules and to facilitate future amendments by the Court and the Magistrate's Office.

**DOMESTIC RELATIONS PROCEDURES / MAGISTRATE'S OFFICE**

**Supplemental Identification Information**

**DRP-1** Plaintiff is required to list his/her date of birth on the Complaint, and if known also the Defendant's date of birth. If Defendant files an Answer, and if Plaintiff has not or has inaccurately listed Defendant's date of birth, then Defendant must list his/her own date of birth in the Answer.

**Pretrial Orders**

**DRP-2** Any Order which is not a Final Judgment, or a Final Resolution of a Post Judgment issue in a pending domestic relations action need only be signed by the Magistrate. Such Entries will be prepared by the Magistrate or one of the attorneys pursuant to the Magistrate's direction and submitted for the Magistrate's signature. Juvenile Rule 40(C)(3)(b) provides:

Any person may appeal to the Court from any Order of a Magistrate entered under division (C)(3)(a) of this rule by filing a motion to set the Order aside, stating the party's Objection with particularity. The Motion shall be filed no later than **ten** (10) days after the Magistrate's Order is entered. The pendency of a Motion to set aside does not stay the effectiveness of the Magistrate's Order **unless the Magistrate or the Court grants a stay.**

### Magistrate's Decisions

**DRP-3** When a Magistrate's Decision in a Domestic Relations Action or a Post Judgment Motion is made by the Magistrate, the status (waiver or non-waiver) of the fourteen (14) day period to object the Magistrate's Decision will control how the Magistrate's Decision is prepared.

**DRP-4** When the parties waive the fourteen (14) day Objection period of Juvenile Rule 40 in writing or in open Court, the Magistrate or the attorneys at the direction of the Magistrate will prepare:

- (A) A Docket Entry for the Magistrate's signature memorializing that the Final Hearing has been held.
- (B) A Decision memorializing the Divorce, Dissolution, or Final Motion Ruling which includes the fourteen (14) day waiver for the signature of the Magistrate **and the Judge**.
- (C) If the Judge chooses not to adopt the Magistrate's Decision, the Judge may direct the attorneys or the Magistrate's Office to prepare an appropriate Decree, Judgment, or Special Entry memorializing a Final Motion Ruling, or the Judge will prepare his/her own Decree, Judgment, or Final Motion Ruling.
- (D) When the Decree, Judgment, or Final Motion Ruling is filed with the Clerk of Courts, the Clerk will serve it on each party and each attorney of record as required by law.

**DRP-5** If either one of the parties does not waive the fourteen (14) day Objection in open Court or, if the matter is submitted to the Magistrate for his/her decision after the Hearing, then the entry will be prepared as follows:

- (A) The Docket Entry memorializing the Hearing will be prepared by the Magistrate's Office, or by an attorney, as directed by the Magistrate and submitted for the Magistrate's signature.
- (B) The Magistrate's Decision will be prepared by the Magistrate, or by an attorney as directed by the Magistrate and submitted for the



Magistrate's signature. The Magistrate's Decision shall conclude by stating each party has a right to object to the Magistrate's Decision within fourteen (14) days of its filing with the clerk and include conspicuous language stating a party shall not assign as error on appeal the Court's adoption of any finding of fact or conclusion of law in that Decision unless the party timely and specifically objects to the finding or conclusion as required by Juvenile Rule 40.

- (D) The Magistrate's Decision will be filed with the Clerk and a time-stamped copy will be served on each party and/or attorney of record by the Clerk as required by law.
- (E) If the Magistrate's Decision was prepared by an attorney at the direction of the Magistrate, that attorney will also prepare a Decree, Judgment, or Final Motion Ruling which conforms with the Magistrate's Decision for possible signature by the Judge. If the Magistrate's Decision was prepared by the Magistrate's Office, then the Magistrate will prepare a Decree, Judgment, or Final Motion Ruling which conforms to the Magistrate's Decision for possible signature by the Judge.
- (F) The Magistrate's Office will diary the fourteen (14) day Objection period for follow up. After fourteen (14) days the Magistrate's Office will forward the file, any Objections, and the proposed Judgment, Decree, or Final Motion Ruling to the assigned Judge for review.
- (G) If the Judge chooses not to accept the Magistrate's Decision, the Judge will direct an attorney, or the Magistrate to prepare an appropriate Decree, Judgment, or special entry memorializing a Final Motion Ruling, or the Judge will prepare his/her own Decree, Judgment, or Final Motion Ruling.
- (H) When the Decree, Judgment, or Final Motion Ruling is filed by the Judge with the Clerk of Courts, the Clerk will serve it on each party and/or each attorney of record as required by law.

**DRP-6**

Any Entry, Order, or Decision the Magistrate directs counsel to prepare and circulate to opposing counsel is to be filed with the Magistrate within fourteen (14) days, or whatever other time the Magistrate may fix. Failure to do so, without having received an extension, may result in the Magistrate scheduling a Hearing for the attorneys and/or parties to show cause why one or more of them should not be held in contempt, and sanctioned appropriately. If the counsel who prepares an Entry, Order or Decision of the Magistrate submits to the Magistrate a letter (which has been copied to all other counsel) indicating the following:

- (A) the amount of time given by the Court to file the Entry has expired;
- (B) the Entry has been forwarded to opposing counsel by facsimile or mail on a specified date; and
- (C) opposing counsel has not approved the accuracy of the Entry by signing the Entry and has not notified opposing counsel that there are inaccuracies in the Entry

then the Magistrate may sign the Entry and file it without written approval of the Entry's accuracy by opposing counsel.

**DRP-7**

Any **Final Orders** recommended by the Magistrate's Decision do not become effective until the Court decided any Objections, and until they are adopted by the Judge issuing the Court's final Judgment entry.

**DRP-8**

Any **Temporary Orders** issued by the Magistrate ordering the parties to undertake certain actions pending the Judge's Final Judgment Entry will serve as the interim order of the Court while awaiting a Court Ruling on any Objections to a Magistrate's Order or Decision. If an objecting party wants any or all parts from such Magistrate's Order or Decision suspended while that party's Objections are being considered by the Judge, then the party may so request in his Objections to the Court. The Court may grant such a request while considering the Objections and without a Hearing. The Court may issue new Interim Orders as the Court finds appropriate. Any Objection requesting Interim Orders different than the Magistrate's Decision should be accompanied by a proposed Entry for the Court's review reflecting the party's proposed Interim Orders.

## Transcripts

- DRP-9** Magistrate’s Hearings will be transcribed on digital audio tape or CD disc. If the objecting party does not indicate a written transcript will be filed, the Court will listen to the tape when considering any Objections.
- DRP-10** The objecting party shall make specific reference to the testimony objected to and to any case or statutory law that supports the party’s objection. [Juvenile Rule 40 (E)(3)(b)]
- DRP-11** Any party has the option of paying to have the disc transcribed and filed with the Court. The party filing the Objection and indicating a written transcript will be filed has forty (40) days from the date the Objection is filed to file the transcript. If the transcript is not filed within forty (40) days, the Court can listen to the tape rather than waiting for the transcript to be filed. If a party is seeking to secure a written transcript, he must so advise the Court in writing when he filed his Objection. If either the objecting or responding party seeks to submit a written transcript, that party must advise the Court within fourteen (14) days of the filing of the Objection as to what arrangements have been made to secure a written transcript and when it is expected to be filed.
- DRP-12** The following procedure shall be undertaken by the party seeking a written transcript:
- (A) The party shall confer with all the Court-Employed Court Reporters to determine **arrangements for filing a transcript.**
  - (B) If the Court-employed Court Reporters are unable to complete the transcript within the time frame **required by this rule, then** the party seeking the transcript is to advise the Clerk of the Magistrate’s Office in writing that the Court-Employed Court Reporters are unable to complete the transcript.
  - (C) If the Clerk of the Magistrate’s Office has time and is able to prepare a transcript, the Clerk will proceed to do so. The Clerk of

the Magistrate's Office may charge a reasonable fee for such service.

- (D) If the Clerk of the Magistrate's Office is unable to prepare the transcript, then the party seeking the transcript may hire a private Court Reporter to transcribe the proceeding.
- (E) The Clerk of the Magistrate's Office will provide the tape or disc of the proceedings to the appropriate Court Reporter when notified by the party in writing as to which **Court Reporter** will be doing the transcription.

Failure to expeditiously proceed to secure or to make arrangements to secure a written transcript for filing within the forty (40) days following filing of the Objection may be sufficient reason for the Court to proceed to address any Objection without a written transcript.

### **Objections to the Court**

**DRP-13** Objections must be filed with the Clerk and a copy sent to the Magistrate. Civil Rule 40 (E) (3) (b) clearly requires Objections to be "specific and state with particularity the grounds of Objection." However, the initial timely Objection may be non-specific and without particularity, if the Objection specifically states that such specificity or particularity will be forthcoming in a written brief which shall be filed within a **specific time in the near future** due to good cause. Such good causes may be, but are not limited to:

- (A) The attorney's schedule.
- (B) The parties are discussing, resolving, or settling some or all issues.
- (C) The parties are awaiting another Magistrate's Decision or Order which may make the Objection moot.
- (D) The party is having a written transcript prepared for review and filing.

The opposing party has seven (7) days to respond to the Objection or the subsequently filed written brief. (See Civil Rule 40 (E) (3) (a))The opposing party may seek written extensions from the Court for good cause shown. However, if neither a timely written response nor a timely written extension is filed, the Court will proceed to review and decide the Objection as permitted by the Court's schedule ten (10) days after the objecting party's brief was filed.  
[See Civil Rule 40 (E) (3)]

**DRP-14** The Court requires citations of authorities regarding any disputed legal issue which have not already been briefed in writing before the Magistrate.

### **Domestic Relations Cases with Children**

**DRP-15** If minor children are involved in a Domestic Relations case, one or both of the parties must file an IV-D Application before there will be a Hearing before the Magistrate on **any** issue. Before the Magistrate will issue his/her Decision, one or both of the parties must file a Child Support Guideline. The Magistrate or Judge may require each party to file a Certificate of Attendance at the Divorce and Blended Family Program (DBFP) or its equivalent. **A Child Support Guideline must be filed even if the parties have agreed to deviate from the results of a properly prepared guideline.** All parents of minor children who are parties to a Domestic Relations case involving the custody of children may, in the discretion of the Magistrate or Judge, be required to attend a Domestic Relations education program offered by the Ohio State University Extension, Belmont County, Ohio or an equivalent program.

**DRP-16** If one or both parties want a Guardian Ad Litem (GAL) appointed, counsel should file a written Motion with the Magistrate's Office for such an Appointment prior to Hearings being scheduled or conducted. The **Magistrate** may Order the party or parties who requested a GAL to post a deposit not to exceed \$1,000.00 for payment of the GAL for his/her service.

**DRP-17** If one or both parties want the Magistrate to conduct an interview in chambers with one or more children, counsel should contact the Magistrate's Office to schedule such an interview in the Magistrate's Office either before or after any Hearings scheduled before the Magistrate. Counsel is to advise opposing counsel before making the request, and then is to advise opposing counsel as to the date,

time, and location of any scheduled interview. If either counsel wants, they may submit questions of areas of concern to the Magistrate for his/her review before the interview. Such interviews will be tape recorded by the Magistrate.

**DRP-18**      **A child custody information affidavit must be filed when the plaintiff filed the complaint. (See R.C. 3109.27) Domestic Relations Form 102 attached to these rules is a model of such an affidavit.**

#### **Appeal of Child Support Orders**

**DRP-19**      When an attorney or party appeals to this Court a DJ&FS child support Order or modification Order, or when an attorney or party seeks a child support Order, or modification before this Court, the attorney is to prepare and submit to the Court before, or at the hearing a child support guideline with the figures the appellant contends are appropriate.

#### **Contesting or Seeking the Award of a Tax Exemption for a Child**

**DRP-20**      Awarding the tax exemption to the non-residential parent so the parent will get a greater benefit is not **by itself** a sufficient reason to award the tax exemption to the non-residential parent. Ohio has a long standing presumption in favor of awarding the tax exemption to the residential parent. *See Love v. Rable, 147 Ohio App.3d 63, 70 (Van Wert County, 2001)*. R.C. §3119.82 has codified the circumstances which may support an award of the tax exemption to the non-residential parent.

#### **Pro Se Complaints and DR Motions**

**DRP-21**      The Magistrate will hear Pro Se Complaints. However, Pro Se litigants must comply with all necessary laws, rules of procedure, and local rules. In particular, Pro Se Complaints involving children will not be heard unless an IVD Application is filed, a Child Support Guideline is properly prepared and filed, and when required, there has been attendance at the Divorce and Blended Family Program, or an equivalent program. However, the Court reserves the right to deny any Pro Se Complaint, if the Court believes that granting such Pro Se Complaint may not result in a just disposition of the apparent legal issues.

**DRP-22**      **If a Legal Clinic is operating in Belmont County, any contested Pro Se filing must be discussed by the filing party with the Legal Clinic before the matter will be scheduled for Hearing. The filing party must file with the Clerk a**

**document from the Legal Clinic within sixty (60) days of the original filing indicating that the matter has been reviewed with the Clinic, and the manner in which the party now chooses to proceed before the Court (e.g. the party has been advised how to proceed him/her self without counsel, or the party is securing counsel by a date certain). Failure to file such documentation may be a sufficient reason to dismiss whatever the party has filed.**

### **Contempt**

**DRP-23** Motions for Contempt will not be scheduled for Hearing by the Magistrate unless (1) they clearly refer to the **language** of a specific Court Order which the contemnor violated, and (2) they clearly recite specific actions or non-actions by the alleged contemnor on specific dates which constitute the alleged contempt. Without specific written allegations, the Magistrate may dismiss the motion without a Hearing.

**DRP-24** If jail time is a possible sanction, the Magistrate will appoint to an indigent, alleged contemnor, counsel at public expense. However, to secure counsel, the alleged contemnor must timely fill out and notarize a financial affidavit which the Magistrate will review to determine if he/she qualifies for the Court appointed counsel. **No counsel will be appointed for a Pro Se party seeking to hold another party in contempt.**

### **Civil Protection Affidavit**

**DRP-25** When filing for a Civil Protection Order, the Petitioner must complete the Affidavit attached to the Domestic Relations Procedures as Domestic Relations Form 106 and must attach a true copy of any No Contact Order or the application for a No Contact Order in any other Court.

STATE OF OHIO, COUNTY OF BELMONT  
IN THE COURT OF COMMON PLEAS,  
JUVENILE DIVISION

|                  |              |                           |
|------------------|--------------|---------------------------|
|                  | :            |                           |
| <b>Plaintiff</b> | :            |                           |
|                  | :            | <b>MUTUAL RESTRAINING</b> |
|                  | <b>ORDER</b> |                           |
| Vs.              | :            |                           |
|                  | :            |                           |
|                  | :            | Case No. _____            |
| <b>Defendant</b> | :            |                           |

Pursuant to Local Rule 12, and the Affidavit filed by the Movant, during the pendency of this action or pending further Court Order, **neither** party shall:

1. Threaten, abuse, annoy or interfere with the other party or the parties' children;
2. Create or incur debt (such as a credit card) in the name of the other party or in the parties' joint names or allow a lien or loan to be placed against any of their real or personal property;
3. Sell, dispose of, or dissipate any of their real or personal property, including money (other than regular income) of either party;
4. Remove household goods and furnishings from the marital residence without approval of the Court or other party;
5. Change or fail to renew the present health, life, home, automobile, or other insurance coverage;
6. Remove the other party as beneficiary on any life or retirement benefits without further order of this Court;
7. Change or establish a new residence for the parties' minor children without the written consent of the other party or permission of the Court;
8. Lessen the time available for the other party to spend with the parties' minor children so that such time is much less than before the filing of the Divorce Complaint.



If either party requests a Hearing on any part of this order, that party's counsel is to contact the Magistrate's Office at 740-695-5034 for the scheduling of a Hearing as soon as the Docket permits.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
**Amy Busic - MAGISTRATE**

**Proof of Service**

A copy of the foregoing Mutual Restraining Order has been served on the other party (choose one of the following methods)

\_\_\_\_\_  
(with the Summons), (with the Complaint), (with the Answer), or  
(other (describe))  
this \_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Attorney for Plaintiff / Defendant

Appendix B Form 102

STATE OF OHIO, COUNTY OF BELMONT  
IN THE COURT OF COMMON PLEAS,  
JUVENILE DIVISION

|                    |   |                          |
|--------------------|---|--------------------------|
| _____              | : | <b>AFFIDAVIT</b>         |
| Plaintiff          | : | <b>CHILD CUSTODY</b>     |
| <b>INFORMATION</b> | : |                          |
|                    | : |                          |
| Vs.                | : | Pursuant to R.C. 3109.27 |
|                    | : |                          |
| _____              | : | Case No. _____           |
| Defendant          | : |                          |

\_\_\_\_\_, being duly sworn, states as follows concerning the reallocation of parental rights and responsibilities of the minor child(ren) in this action, to wit: \_\_\_

- Beginning with the child(ren)'s present address, state where the child(ren) lived within the last five (5) years, the names and present addresses of the person with whom the child(ren) lived during that period.

**Places the child(ren) have lived and the duration:**

**Persons with whom child(ren) lived and their present address:**

**At:** \_\_\_\_\_  
**From:** \_\_\_\_\_ **To:** \_\_\_\_\_

**With:** \_\_\_\_\_  
**Now At:** \_\_\_\_\_

**At:** \_\_\_\_\_  
**From:** \_\_\_\_\_ **To:** \_\_\_\_\_

**With:** \_\_\_\_\_  
**Now At:** \_\_\_\_\_

**At:** \_\_\_\_\_  
**From:** \_\_\_\_\_ **To:** \_\_\_\_\_

**With:** \_\_\_\_\_  
**Now At:** \_\_\_\_\_

**At:** \_\_\_\_\_  
**From:** \_\_\_\_\_ **To:** \_\_\_\_\_

**With:** \_\_\_\_\_  
**Now At:** \_\_\_\_\_

**(Please circle the appropriate (have / have not) or (do /do not)) :**

2. I (have / have not) participated as a party, witness, or in any other capacity in any other litigation concerning the custody of the child(ren) in this or any other state. **If so, list where and when.**

\_\_\_\_\_  
\_\_\_\_\_

3. I (do / do not) have any information about any parenting proceeding concerning the child(ren) pending in a Court of this or any other state. **If so, indicate the case number, and the name and address of the Court.** \_\_\_\_\_

\_\_\_\_\_

4. I (do / do not) know of any persons to this proceeding who claim to have physical custody or claims to be the child(ren)'s parent, or is designated as a residential parent and/or legal custodian, or visitation and/or parenting time with respect to the child(ren). **If so, please explain.**

\_\_\_\_\_  
\_\_\_\_\_

5. I (have / do not have) information about whether or not a party to this proceeding has been convicted or pled guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child or in a case in which a child has been adjudicated an abused child or a neglected child, to be the perpetrator of the abuse or neglect that was the basis of the adjudication. **If so, please explain.** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I understand that I have a continuing duty to inform the Court of any parenting proceeding concerning this or any other state of which I obtain information during this proceeding.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name (Affiant)

The Affiant being duly sworn under oath states that the information in this Affidavit is to the best of the Affiant's knowledge true and accurate.

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

**Proof of Service**

A copy of the foregoing Child Custody Information Affidavit has been served on the other party (choose one of the following methods: (with the Summons), (with the Complaint), (with the Answer), or (other (describe)) \_\_\_\_\_  
\_\_\_\_\_ this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Attorney for Plaintiff/Defendant

## Rule 12(A) – Guardian ad Litem’s (G.A.L.’s)

- 12(A).1** This Court shall comply with the requirements of Ohio Superintendence Rule 48 and shall enforce the Rule’s requirements as the same pertains to the Court and all Guardian ad Litem’s.
- 12(A).2** The Court hereby establishes the position of Guardian ad Litem Clerk who shall ensure that the requirements of Super Rule 48 are maintained. In addition to the requirements of Super Rule 48, the Clerk shall:
- (A) establish a list in a random order and appoint G.A.L.’s from said list in an established order. The clerk shall keep track of the number of cases each G.A.L. is assigned to and make the assignment of cases as equitable as possible.
  - (B) the G.A.L. clerk shall cause to be conducted a criminal and civil background check of all G.A.L.’s who are qualified by this court on and after March 1, 2009. The background check shall include an Ohio BCI&I check, Federal criminal background check, and a state and county criminal and civil background check for all states and counties in which the G.A.L. applicant has resided within the last 5 years. This information shall be maintained by the G.A.L. clerk in accordance with Rule 48 and shall be reviewed by the Administrative Judge.
  - (C) during the month of March each year, the G.A.L. clerk shall review the file of each qualified G.A.L. and determine whether the G.A.L.’s have received all necessary trainings, all G.A.L.’s have filed the certification form (**Form Appendix A**), and review any complaints regarding the G.A.L.
  - (D) the clerk shall immediately make the administrative judge aware of any complaints that have been filed against a G.A.L.

- 12(A).3** The administrative judge shall in its discretion act upon any complaint filed against a G.A.L. and take any action which the Judge deems necessary against the G.A.L., including dismissal from a particular case and termination as a court approved G.A.L. All complaints must be in writing and signed by the complainant. **(Form Appendix B)**
- 12(A).4** This Court hereby approves the following six (6) hour local training: Annual Conference on Promoting Healthy Attachments.
- 12(A).5** The Court shall pay attorney G.A.L.'s through the Public Defender Office at the customary rate for assigned counsel. Non-attorney G.A.L.'s shall be paid seventy-five dollars (\$75.00) per case (multiple cases, one (1) family, one (1) fee). Mileage shall also be paid in accordance with the customary rate established by the Belmont County Commissioners.

**Appendix A**

**Guardian ad Litem Certification**

I hereby certify that I am unaware of any circumstance that would disqualify me from serving as Guardian ad Litem.

I have complied with all requirements in Ohio Superintendence Rule 48.

I have attended the following Guardian ad Litem approved trainings:

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Signed this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Guardian ad Litem

**Appendix B**

Guardian ad Litem Complaint Form

I, \_\_\_\_\_, hereby register the following complaint or concern against Court appointed Guardian ad Litem \_\_\_\_\_. This complaint is with regard to the Guardian ad Litem’s duties in case number \_\_\_\_\_. I understand that this complaint or concern will be reviewed by the Administrative Judge, who may, in their sole discretion, act upon this information. The specifics of my complaint are as follows:

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\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

STATE OF OHIO

COUNTY OF BELMONT, SS:

Before me a Notary Public personally appeared \_\_\_\_\_, who being first duly cautioned and sworn, says the facts in the foregoing complaint are true.

\_\_\_\_\_  
Notary Public



## **RULE 13 - LAND SALES**

All land sales which have not been concluded within one (1) year from the date of filing shall be set for pre-trial conference within ten (10) days following the expiration of one year.

- A. The attorney of record and fiduciary must attend the pre-trial conference.
- B. A written status report shall be filed with the Court no later than seven (7) days prior to the pre-trial conference.
- C. The status report shall address the issues as to the efforts being made to sell the real estate and when the case will be closed.

## **RULE 14 - DECEDENT'S ESTATES**

- A. The statutory time frame for filing of an inventory (see O.R.C. 2115.02) and an account (see O.R.C. 2109.03) shall be adhered to and the citation procedure in O.R.C. 2109.301 and/or in Local Rule 28 shall be utilized by the Court if necessary to gain compliance.
- B. The Court shall set all exceptions to an inventory or an account for a pre-trial conference within thirty (30) days after exceptions are filed. At the pre-trial conference the Court shall set the matter for an evidentiary hearing within thirty (30) days thereafter unless the matter is referred to mediation. In the event of a referral to mediation and the matter is not resolved, an evidentiary hearing will be set within thirty (30) days of the Court receiving notice of the unsuccessful mediation.
- C. All decedent's estates, other than estates that remain open due to asbestos claims or estates where a partial account has been filed, that remain open after a period of thirteen (13) months shall be subject to a status conference. The fiduciary and the attorney shall be present and a written status report shall be submitted to the Court at the time of the status conference.
- D. With respect to estates that are subject to a release from administration, waivers that are necessary to be filed shall only be required from named beneficiaries in the testator's last will and testament. Necessary waivers shall be required from all next of kin in intestate estates that are subject to release from administration.

Appendix A

PROBATE COURT OF BELMONT COUNTY, OHIO

IN THE MATTER OF

CASE NO.

**ORDER OF PRIVATE SALE, PERSONAL PROPERTY**

Revise Code, Sec. 2109.45, 2113.40

*To:*

*In obedience to an order and decree of said Court, made this day in the matter of said estate, you are hereby authorized and required to proceed, according to law, to sell at private sale, for the best price obtainable, the following goods and chattels belonging to said estate, to-wit:*

*Said sale to be on the following terms: Cash in hand at time of sale.*

*You will return this Order within one month from this date, and forthwith upon the execution of the same, together with your report thereon endorsed.*

*Witness my hand and the seal of said Court, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.*

---

*Albert E. Davies, Probate Judge*

**REPORT OF PRIVATE SALE**

The State of Ohio, Belmont County, ss:

*The undersigned, \_\_\_\_\_ of said estate, say \_\_\_\_\_ that in obedience to the order of said Court, \_\_\_\_\_ sold said personal property, for the sum of \_\_\_\_\_ Dollars and \_\_\_\_\_ cents, said private sale of property was made after diligent endeavor to obtain the best price for said property, and that the sale reported is for the highest price that could be obtained.*

\_\_\_\_\_  
\_\_\_\_\_

*Sworn to be before me and signed in my presence this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.*

\_\_\_\_\_  
*Notary Public*

**JUDGMENT ENTRY**

*The Court having carefully examined the Report, finds said proceedings in all respects regular and in accordance with law, and therefore approves and confirms the same.*

\_\_\_\_\_  
*Albert E. Davies, Probate Judge*

\_\_\_\_\_  
*Attorney*

## **RULE 15 - WRONGFUL DEATH SETTLEMENTS**

- 15.1** Application to settle wrongful death claims shall be set for hearing with notice to all next of kin, legatees and devisees, except when said application is accompanied by a consent of all next of kin, legatees and devisees and is a partial or final settlement of \$10,000.00 or less. In this case, the Court may approve the settlement without a hearing. This Hearing may be waived by the Court.
- 15.2** All hearings shall be held within thirty (30) days of the filing of the Form 14.0; provided, however, if either a guardian or guardian ad litem is necessary to be appointed, the hearing shall be held within fifteen (15) days after the appointment.

## **RULE 16 - SETTLEMENT OF MINOR'S CLAIM**

An application to settle an injury claim of a minor shall be set for hearing and the injured minor and the applicant shall be present at the hearing; however, if all necessary consents have been secured and filed, then the Court may waive the hearing. Seven (7) day notice of the hearing, as provided in Ohio Civil Rule 73, shall be given to the noncustodial parent or parents, which notice may be waived.

## **RULE 17-GUARDIANSHIPS**

### **17.1 GUARDIANSHIPS OF MINORS**

- A. A separate guardianship must be filed and a corresponding case file established for each proposed ward.
- B. The Court will not accept for filing any guardianship for a minor where the sole purpose of the guardianship is to establish a residency for school purposes. Custody for school purposes is a matter to be heard and determined by the Juvenile Division of the Court of Common Pleas.
- C. A certified copy of the minor child's birth certificate shall be filed with every Form 16.0 – Application for Appointment of a Guardian of a Minor.
- D. Minor's who are not U.S. citizens or residential aliens, are not considered by this Court to be residents or have legal settlement as set forth in Section 211.02(A) of the Revised Code.

### **17.2 EMERGENCY GUARDIANSHIP**

Except for good cause shown, an application for an emergency guardianship shall be filed in person by the applicant and shall contain a current statement of expert evaluation and a supplement for emergency guardian form stating an opinion that an emergency exists and it is reasonably certain that immediate action is required to prevent significant injury to the person or estate of the minor or incompetent. Except for good cause shown, the proposed ward shall be notified as soon as possible of the appointment of the emergency guardian.

### **17.3 COMMENTS/COMPLAINTS**

Comments and complaints regarding guardians shall be filed in writing and made part of the record unless otherwise ordered by the Court. A copy of the filed comment or complaint shall be provided to the guardian who is the subject of the comment or complaint unless otherwise ordered by the Court. Comments and complaints may be addressed by the court investigator or by the court. Allegations of abuse, neglect, and/or exploitation shall be reported pursuant to R.C. 5101.61. If deemed appropriate, the matter may be promptly set for hearing or for further investigation. If set for hearing, the complainant and the guardian shall be notified of the hearing and shall appear unless otherwise ordered by the Court. Upon the conclusion of the hearing or

investigation, both the person making the comment or complaint and the guardian shall be notified of the disposition of the comment or complaint unless otherwise ordered by the Court.

#### **17.4 GUARDIAN BACKGROUND CHECKS**

An applicant for appointment as a guardian must submit to a civil and criminal record check satisfactory to the Court and execute such consent, if any, as may be requested by the Court to authorize the Court to perform that record check. In place of a civil and criminal background check, an Ohio attorney applicant currently in good standing with the Supreme Court of Ohio, may obtain and submit to the Court a Certificate of Good Standing with disciplinary information, issued by the Supreme Court of Ohio.

#### **17.5 STATEMENT OF EXPERT EVALUATION**

Where a physician or clinical psychologist states on a Statement of Expert Evaluation that to a reasonable degree of medical certainty it is unlikely the ward's mental competence will improve, the Court may dispense with the filing of subsequent evaluations.

#### **17.6 GUARDIAN'S REPORT**

All guardians are required to file their Guardian's Report (Form 17.7) as detailed in Section 2111.49 of the Ohio Revised Code on the first anniversary after the date of the issuance of the Letters of Guardianship and bi-annually thereafter.

#### **17.7 CHANGE OF GUARDIAN'S ADDRESS**

A guardian shall inform the Court as to any change of address of the guardian within thirty (30) days of the address change. Failure to notify the Court under this rule may result in the guardian being removed.

#### **17.8 CHANGE OF WARD'S ADDRESS**

A guardian shall notify the Court of a ward's change of residence and the reason for the change no later than ten (10) days prior to the proposed change. A ward's change of residence shall be subject to the Court's approval unless a delay in authorizing the change of residence would affect the health and safety of the ward. In such event, the guardian shall notify the Court in writing within three (3) business days indicating the change of residence and the reasons for the change.

#### **17.9 LEGAL PROCEEDINGS**

The guardian shall seek prior Court approval by judgment entry when filing for a marriage license, a divorce, or another extraordinary action concerning the best interest of the ward.

#### **17.10 SALE OF PERSONAL PROPERTY**



A guardian may not sell any tangible personal property of the ward without prior Court approval. Every application to sell a ward's tangible personal property shall be supported by a written appraisal by a suitable and qualified appraiser.

#### **17.11 POWERS OF ATTORNEY BY GUARDIAN PROHIBITED**

The Court, through this Local Rule, exercises its discretion under R.C. 2111.50(A)(2)(c) and hereby prohibits a guardian appointed by the Court from executing a power of attorney or any other document which purports to appoint an agent to execute any of the duties or responsibilities imposed upon the guardian by law, rule, or order of the Court, unless otherwise approved by a specific order of the Court when exceptional needs are proven to exist.

#### **17.12 TERMINATIONS**

Except for the termination of a guardianship of a minor attaining the age of majority or upon the death of the Ward, a termination of a guardianship shall require notice to all persons designated in R.C. 2111.04 and to any other individuals who received actual notice of the original appointment of the guardian, provided their addresses are known, or with reasonable diligence, can be ascertained. It is the responsibility of the applicant for termination to perfect service pursuant to Civ.R. 73 when a termination is requested. A Certificate of Service with supporting documentation satisfactory to the Court must be filed prior to the consideration of the application.

#### **17.13 GUARDIAN FUNDAMENTALS TRAINING REQUIREMENT/ GUARDIAN CONTINUING EDUCATION**

A guardian holds a unique role with respect to the ward and the guardian has an obligation to obtain an understanding of the fundamentals of that relationship. Formalized training is one means to gain that competency.

Every guardian of a minor ward and every guardian for an adult ward must meet the guardianship fundamentals training requirements under Sup.R. 66.06 by completing, prior to appointment or within six (6) months thereafter, a six (6) hour guardian fundamentals course provided by the Supreme Court of Ohio, or with prior approval of this Court, another entity. Those failing to meet the requirement shall be subject to citation for being in contempt of court and subject to sanctions including, but not limited to, imposition of a fine, denial of compensation, and/or removal. The guardian is responsible for providing to the Court in a timely manner documentation that establishes compliance with the guardian fundamentals training requirement.

A guardian who has completed the guardian fundamentals training program offered by the Supreme Court of Ohio, or a similar course approved by this Court is *exempt* from this training upon providing such documentation supporting the exemption as the Court may require.

The representative of Advocacy and Protective Services, Inc. (APSI) are exempt from demonstrating compliance with the adult guardianship training programs so long as APSI is under contract with the State of Ohio to provide adult guardianship services and its assigned representative has complied with APSI training requirements.

Notwithstanding the foregoing exemption, the Court may require an otherwise exempt guardian or applicant for appointment as guardian, to complete a designated guardianship fundamentals training course or one or more guardian continuing education courses.

After completing the guardian fundamentals course, every guardian shall annually complete a three (3) hour guardian continuing education course provided by the Supreme Court of Ohio, or with prior approval of this Court, another entity.

If a guardian fails to comply with the guardian continuing education requirement, the guardian shall not be eligible for further appointment until the requirement is met. The guardian also may be subject to sanctions and/or removal.

By December 31 of the first calendar year after the year of completion of the guardian fundamental course, or its waiver by Court order, the guardian is responsible for providing to this Court documentation demonstrating compliance with this guardian continuing education requirement, including the title, date, location and provider of the education, or a certificate of completion containing such information.

#### **17.14 COURT INVESTIGATION**

When an Application for Appointment of Guardian for an Incompetent Person is filed, pursuant to Ohio Revised Code §2111.041, an investigation shall be ordered by the Court. The costs for said investigation shall be charged against the estate of the incompetent if the person is determined to be incompetent and a guardian is appointed. If the person is determined not to be incompetent or a guardian is not appointed, then the cost of the investigation shall be charged to the applicant. The fee for the investigation is Fifty Dollars (\$50.00) plus approved mileage costs.

#### **17.15 INDIGENT WARDS**

The applicant or the guardian must file with the Court an Affidavit of Indigency if a waiver of court costs and/or the investigation fee addressed in 17.16 herein is being requested. Further,

such an affidavit must also be filed if payment of compensation from the Indigent Guardianship Fund is being requested. False affidavits are punishable by findings of contempt, prosecution or other sanctions.

#### **17.16 INDIGENT GUARDIANSHIP FUND**

Fees may be paid from the Indigent Guardianship Fund to attorneys for services rendered in establishing, maintaining or terminating a guardianship subject to the limits set forth herein. As set forth in Local Rule 17.16, before payments will be approved from the Indigent Guardianship Fund an Affidavit of Indigency must have been filed in the case.

Fees incurred in establishing a Guardianship – a maximum fee of Five Hundred Dollars (\$500.00) per case for guardianships of the person and a maximum fee of One Thousand Dollars (\$1,000.00) per case for guardianships of the person and estate. In the case of multiple guardianship filings within the same family, the maximum fees apply to all cases collectively.

Fees for a court appointed attorney serving as a Guardian – the hourly rate approved by the Court is a maximum of One Hundred Dollars (\$100.00). Applications for payment of said fees from the Indigent Guardianship Fund must be accompanied by an itemization of services and must receive Court approval before payment will be authorized.

Other expenditures may be approved by the Court from the Indigent Guardianship Fund in the Court's discretion and pursuant to Ohio Revised Code §2111.51

## **RULE 18 – NAME CHANGE AND NAME CONFORMITY PROCEEDINGS**

This Rule governs name change and name conformity proceedings under R.C. Chapter 2717.

### **A. Choosing the Correct Proceeding**

A name change proceeding, name conformity proceeding and birth record correction proceeding serve different purposes. Each action has its own requirements. The Court will determine if the application is the appropriate procedure to accomplish the person's intent based on the circumstances.

A name change proceeding seeks to change all or part of a person's name to a different name going forward.

A name conformity proceeding is solely to correct misspellings, inconsistencies or errors on one or more official identity documents evidencing a person's current legal name. A name conformity corrects errors that occurred in the past. It does not change a person's name, but merely identifies conflicting problems in their official identity documents and corrects those problems by a Court Order so that all of the person's official identity documents are consistent and conformed to prove the applicant's chain of identity and reflect the legal name the person currently uses.

A birth record correction proceeding only corrects clerical errors in the birth record of a person who was born in Ohio. A birth record correction proceeding may not be substituted for a name change proceeding or name conformity proceeding.

### **B. Documentation Requirements on Name Change Proceedings**

An applicant seeking a name change must provide photocopies of the following documents relating to the applicant or minor with the application:

- Birth Certificate
- Social Security Card
- Driver's License or State issued ID Card (if any)

Upon review of the application, the Court may order the submission of other documents the Court deems relevant to the application.

The applicant must redact (black out) social security numbers, driver's license numbers, and driver's license issuance and expiration dates on all documents submitted to protect the privacy and confidential information of the applicant or minor.

### **C. Documentation Requirements on Name Conformity Proceedings**

An applicant seeking to conform a legal name must provide photocopies of all official identity documents relating to the applicant or minor with the application, including:

- Birth Certificate
- Social Security Card

- Driver's License or State issued ID Card (if any)
- Marriage Record (if any)
- Divorce Decree (if any)
- Passport (if any)
- All other documents for which name conformity is sought

Upon review of the application, the Court may order the submission of other documents the Court deems relevant to the application.

The applicant must redact (black out) social security numbers, driver's license numbers, and driver's license issuance and expiration dates on all documents submitted to protect the privacy and confidential information of the applicant or minor.

#### D. Hearings on Adult Name Change and Adult Name Conformity Proceedings

Generally, the Court will not require a hearing and will dispense with notice on an adult name change or an adult name conformity proceeding. The Court may require a hearing if the Court determines that the application presents any irregularities or issues, or if the Court determines that the legal interests of another party may be affected by the proceeding. If the Court requires a hearing, it will determine the manner, scope and content of the hearing notice.

#### E. Hearings on Minor Name Change and Minor Name Conformity Proceedings

In uncontested name change proceedings and name conformity proceedings for a minor in which the consent of both natural parents of the minor is filed simultaneously with the application, the Court generally will not require a hearing and will dispense with notice.

If an application for a name change of a minor or application to conform name of a minor is filed without the written consent of both natural or adoptive parents, or if the Court determines that the application presents any irregularities or issues, the Court will schedule the application for a hearing. Notice of the hearing will comply with paragraph F of this Rule. The applicant must appear at the hearing. The minor may attend the hearing, but is not required to be present unless the Court orders otherwise.

#### F. Service of Notice on Minor Name Changes and Minor Name Conformity Proceedings

Any parent or alleged father who has not consented to a minor's name change or name conformity will be served by the Court with notice of the hearing pursuant to Civ. R. 73. If a parent or alleged father's whereabouts are unknown, the Court will publish notice of the hearing, at the applicant's expense, to the parent or alleged father who has not consented in a newspaper of general circulation in Belmont County, one time at least 30 days before the hearing.

#### G. Contested Proceedings

If any name change proceeding or name conformity proceeding becomes contested, the Court will convert the scheduled hearing date to a pretrial conference, during which the Court will set a new hearing date. At the pretrial conference, the Court will determine whether to excuse a minor who is the subject of the action from appearing at the hearing and whether the Court will conduct an *in camera* interview of the minor before the hearing.

The applicant and the person contesting the application must attend the pretrial conference personally or through their legal counsel.

H. Confidentiality

If an applicant for a name change or name conformity desires the proceeding and the record to be confidential, the applicant must file a request for confidentiality supported by an affidavit or other sufficient proof that notice of the hearing or public access to the record would jeopardize the applicant's personal safety. A proposed entry must accompany the request. If the Court grants the applicant's request, the Court will waive notice and permanently seal the file.

## **RULE 19 – TRUSTS**

Adequate statutory provisions exist to control timeliness of filings. Each case shall be reviewed annually.

## **RULE 20 - INVENTORIES**

- 19.1** On the 90th day from the appointment of the fiduciary in an estate, guardianship, trust, or other non-estate proceeding requiring an Inventory to be filed, a notice will be issued to the attorney for the fiduciary or in the case where no attorney represents the fiduciary, directly to the fiduciary, indicating that an Inventory has not been filed.
- 19.2** If the Inventory is not filed within thirty (30) days after a notice has been issued, a citation will be issued to the fiduciary.
- 19.3** If the Inventory is not filed within thirty (30) days after a citation is issued, proceedings for removal will be instituted by the Court and will be set for hearing within thirty (30) days.
- 19.4** If the Inventory is filed, the Court will record the filing and advance the system to the next statutory filing requirement.
- 19.5** If the fiduciary fails to file the Inventory timely, the fiduciary may be removed and a successor appointed.
- 19.6** An application for an extension of time to file an Inventory may be filed. Extensions may be granted only by leave of the Court and for good cause shown. All extensions to file an Inventory shall not exceed ninety (90) days unless the court approves a longer extension.
- 19.7** Inventory waivers shall only be required for next of kin that are named beneficiaries in the subject Will.



## **RULE 21 - ACCOUNTING BY FIDUCIARY**

- 20.1** Six (6) months after the date of appointment of a fiduciary in an estate and twelve (12) months after the date of appointment of a fiduciary in a trust, guardianship, or other non-estate proceeding requiring an Accounting, a notice will be mailed to the attorney to file an Account within thirty (30) days. In the case of an Account due for an estate, a filing is unnecessary if one of the requirements of ORC Section 2109.301(B)(1) applies. A notice shall be filed with the Court indicating why an Accounting is not timely filed.
- 20.2** If an account is not filed within thirty (30) days after an Accounting is required and notice sent pursuant to Local Rule 20.1, a citation will be issued to the fiduciary and set for hearing within thirty (30) days.
- 20.3** If an Account is not filed within thirty (30) days after a citation is issued, proceedings for removal will be instituted by the Court, to be set for hearing within thirty (30) days.
- 20.4** If the fiduciary fails to file the Account timely, the fiduciary may be removed and a successor fiduciary appointed.
- 20.5** An application for an extension of time to file an Account may be filed. Extensions may be granted only by leave of the Court and for good cause shown. All extensions to file an Account shall not total more than 90 days, unless an exception under ORC Section 2109.301(B)(1) applies.
- 20.6** Vouchers need not be filed with a partial or final Account in an estate unless personal property, other than a motor vehicle, is distributed. Vouchers in other circumstances may be required by the Court on a case by case basis.
- 20.7** Evidence that an Account or supplemental final Account has been sent to each heir or beneficiary pursuant to ORC Section 2109.32(B)(1) and (B)(3) shall be filed with the Court. A local form titled "Certificate of Giving Notice of Account" is available. (also see SPF 13.9) This certificate shall be signed by the fiduciary and attorney.

## **RULE 22 - CERTIFICATE OF GIVING NOTICE OF PROBATE OF WILL**

If a Certificate of Giving Notice of the Probate of a Will is required under ORC Section 2107.19(A)(3) and not filed pursuant to ORC Section 2107.19(A)(4), a notice will be sent to the attorney to file said certificate. If a certificate is not filed within thirty (30) days, then the citation process and penalty provisions of ORC Section 2109.31 shall apply.

## PROBATE RULE 23 - COURT COSTS

### 23.1 Deposits in the amount set forth will be required:

- (A) Full Estate Administration; Appointment of Fiduciary for the purpose of filing a Civil Action; Testamentary Trust; Adoptions; Application for Private Placement; Appointment of Guardian of Minor or Incompetent; Emergency Guardianships; Appointment of a Conservator and Application for Protective Services . . . . . \$200.00
- (B) Release of Estate from Administration with Will..... \$150.00  
Release of Estate from Administration without Will.....\$125.00
- (C) Civil Actions; Declaratory Judgments; Will Contests; Determination of Heirship; Concealment of Assets and all other contested actions . . . . . \$150.00
- (D) Probate of Will Only. . . . . \$ 61.00
- (E) Change of Name/Name Conformity (Adult) ..... \$95.00  
Change of Name/Name Conformity (Minor with publication) .... \$200.00
- (F) Minor's Settlement..... \$50.00
- (G) Application for Summary Release from Administration.....\$100.00  
Application for Summary with Will or Certificate of Transfer.... \$125.00
- (H) Estate-Authenticated copies..... \$37.00 plus pages of record
- (I) No Estate, date of death prior ten years..... \$40.00
- (J) Certification of Notice to Administrator of Medicaid Estate Recovery Program only.....\$28.00
- (K) Will deposit (no Estate) .....\$25.00
- (L) Disinterment Proceedings.....\$46.00
- (M) Application for temporary commissioner.....\$20.00

### 23.2 Court Costs shall be assessed as follows:

- (A) Delayed Registration of Birth.....\$21.00
- (B) Correction of Birth.....\$19.00

|     |   |         |
|-----|---|---------|
| (C) | Certified Copy of Marriage Records..... | \$3.00  |
| (D) | All copies.....                         | \$1.00  |
| (E) | Certified Mail.....                     | \$8.00  |
| (F) | Computer Fund.....                      | \$10.00 |
| (G) | Computerized Legal Research.....        | \$3.00  |
| (H) | Mediation .....                         | \$10.00 |
| (I) | Special Projects.....                   | \$10.00 |
| (J) | Conduct of Business.....                | \$1.00  |

**23.3** Publication Fees

|     |                |          |
|-----|----------------|----------|
| (A) | Adoptions..... | \$700.00 |
| (B) | Estates.....   | \$500.00 |

For Probate proceedings not listed above, please contact the Court. These Court costs may be changed by the Court without amendments of these Local Rules or as required by statute.

## **RULE 24 - COUNSEL FEES**

A. Introduction: The Schedule of compensation set forth below serves as a guide in determination of allowable attorney fees for legal services of an ordinary nature rendered by an attorney for an executor, administrator or other fiduciary accountable to the Probate Court. The fee calculated pursuant to said schedule shall be considered by the Court to be a maximum fee to be charged unless an application for extraordinary fees is filed and approved.

An application for attorney fees shall be accompanied by a computation of attorney fees calculated pursuant to the Schedule of Compensation herein, regardless of whether the attorney is seeking a fee calculated other than pursuant to this schedule. If the attorney fee being sought exceeds the fee as calculated pursuant to the schedule set forth herein, such application shall be accompanied by an itemized statement of time and services rendered by the attorney in addition to the aforesaid computation. The Court may allow the attorney fee requested without hearing provided the fiduciary and the attorney have signed the application stating the services were necessary, beneficial to the estate and that the amount requested is reasonable. In the alternative, the Court may, on its own motion or that of any interested party, set the application for hearing.

B. Schedule of Compensation: When calculating fees under the schedule herein only property that is subject to administration (probate) is to be considered. Therefore, non-probate property (joint and survivorship, transfer/payable on death accounts, other property that is not subject to administration) shall not be included as property upon which attorney fees calculated under the schedule. Provided, however, fees may be includable for time spent on transferring joint with right of survivorship property, transfer on death property, and all other property not subject to probate administration, or accounted for on the final account on a reasonable and normal hourly basis agreed to by the attorney for the estate and the Executor or Executrix. The schedule is as follows:

1. For the first \$100,000.00 at a rate 4.5%;
2. All above \$100,000.00 and not exceeding \$400,000.00 at the rate of 4%;
3. All above \$400,000.00 at the rate of 2.5%.

The tier values set forth above are applicable to the balance of the gross appraised value of all probate real property and probate personal property, or the amount accounting for, whichever is larger.

If by reason of the application of the above percentages to values of property a disparity or injustice results, such disparity or injustice may be reviewed in respect of any account reflecting such compensation or upon exceptions to such an account.

C. Attorney Acting as Executor: When the attorney is also the executor of the estate, no fiduciary fees will be allowed the attorney except as follows:

1. The Last Will and Testament of decedent directs that the fiduciary receive compensation; or
2. An application for fiduciary fees in a specific amount is acceptable to the legatees and devisees named in the Will; or
3. An application for extraordinary fees is presented to the Court setting out reasons, acceptable to the Court, for an allowance of such extraordinary fees.

## **RULE 25 - GUARDIAN'S COMPENSATION**

Requested fees for services rendered by a Guardian shall not exceed five percent (5%) of income.

## **RULE 26 – TRUSTEE’S COMPENSATION**

Except where the instrument creating a trust makes provisions for compensation, a testamentary trustee may charge a fee not to exceed 5% of income. Other compensation for a trustee may be made by application to the court and may be ordered; provided, said compensation is in accordance with compensation typically charged by the trustee and is customary to the community. A hearing on these matters may be held.



## **RULE 27 - INDEX OF DEPOSITED WILLS**

All attorneys and potential fiduciaries shall inspect and examine the index of deposited Wills prior to filing an estate proceeding to determine if the decedent involved in the proceeding had deposited a Will in Belmont County.

## **RULE 28 – DELINQUENCY SANCTIONS**

Pursuant to Sup. R. 78(D), the Court may issue a citation to the attorney of record for a fiduciary who is delinquent in the filing of an account for the attorney to show cause why the attorney should not be barred from (1) being appointed in any proceeding before the Court and/or (2) from serving as an attorney of record in a new estate, guardianship or trust until the delinquent account is filed.

A delinquent fiduciary is subject to citations in contempt, removal and the imposition of sanctions. Further, no expenditure, sale, distribution or fee shall be approved while the fiduciary is delinquent in filing an account.

## **RULE 29 – MEDIATION**

- 29.1** The Court incorporates by reference herein, R.C. 2710 “Uniform Mediation Act” (UMA), R.C. 3109.052 Mediation of Differences as to Allocation of Parental Rights and Responsibilities, and Rule 16 of the Supreme Court of Ohio Rules of Superintendence.

The Court hereby adopts the attached Docket and Journal entry and Orders the Mediation Program to be effective June 1, 2004. The court hereby adopts pursuant to O.R.C. Section 2101.163 a mediation fund with a reasonable fee of ten (\$10.00) dollars to be assessed toward court costs.

### **29.2 Definitions**

- A. Facilitation: “Facilitation” means a process in which a neutral party moderates discussions by ensuring the fluid and orderly exchange of information and ideas from all participants and that is primarily concerned with assisting individuals in refining their communication and organization skills so that they may learn to work more efficiently with one another in a group setting.
- B. Mediation: “Mediation” means any process in which a neutral third party helps the parties communicate and negotiate with each other to help them reach a voluntary agreement regarding their dispute.
- C. Mediator: “Mediator” means an individual who conducts a mediation.
- D. Neutral Evaluation: “Neutral Evaluation” means a process in which the parties to a dispute present their claims or defenses and describe the principal evidence on which their claims or defenses are based to a neutral third party who then shares impressions about the strengths and weaknesses of each matter.

### **29.3 Referral**

Any time after filing, the Court may, upon its own motion or upon the motion of a party, refer any case to mediation that the Court deems appropriate. Probate cases eligible for mediation include civil filings and exceptions to inventory in estate filings.

### **29.4 Responsibilities of Mediator**

- A. General Responsibilities: In order to provide a fair mediation process for parties, a mediator who mediates for a court shall remain impartial and neutral and shall comply with all of the following:
1. The “Core Values of Mediation,” as approved by the Supreme Court Dispute Resolution Section in accordance with recommendations established by the Commission on Dispute Resolution;

2. The “Model Standards of Conduct for Mediators” adopted by the American Bar Association, American Arbitration Association, and the Association for Conflict Resolution;
- B. Conflicts of Interest:
1. A mediator shall avoid any actual or apparent conflicts of interest arising from any relationship or activity, including but not limited to those of employment or business or from professional or personal contacts with parties or others involved in dispute. A mediator shall avoid self-dealing or association from which the mediator might directly or indirectly benefit, except from compensation for services as a mediator.
  2. Upon becoming aware of any actual or apparent conflict or interest, a mediator shall notify the parties as soon as practicable.
  3. The requirements of this rules are in addition to and do not supersede the requirements for R.C. 2710.08. Wherever a conflict exists between this rule and R.C. 2710.08, the statute shall control.
- C. Legal Advice: A mediator shall not offer legal advice.
- D. Satisfaction of Training Requirements:
1. A mediator shall meet the qualifications of and comply with all training requirements of Sup.R. 16.23 and local court rules governing mediators and mediation adopted pursuant to Sup.R. 16.21.
  2. A mediator shall meet the qualifications for mediators for each court in which the mediator serves and promptly advise the court of any grounds for disqualification or any issues affecting the ability to serve.
  3. Upon request, a mediator shall provide a court form which the mediator receives referrals documentation indicating compliance with all training and education requirements so that the court may meet the requirements of Sup. R. 16.24 (A)(1)(d). The documentation shall include information detailing the date, location, contents, credit hours, and sponsor of any relevant training.

## **29.5 Mediator Education and Training**

### **A. General**

1. Except as provided in division (A)(2) of this rule, a mediator shall complete “Fundamentals of Mediation Training” approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution.
2. A mediator shall not be required to complete training pursuant to division (A)(1) of this rule if any of the following apply:
  - a. Prior to January 1, 2020, the mediator has completed at least twelve hours of basic mediation training;
  - b. Prior to January 1, 2020, the mediator has served as a full-time mediator for a minimum of three years or mediated at least forty-five cases, in which case the mediator shall complete the “Advanced Mediation Workshop” approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution;

c. The mediator is a law student enrolled in a clinical mediation or dispute resolution program at an American Bar Association accredited law school, has completed mandatory coursework in fundamental mediation topics, and mediates under the supervision of faculty at the law school.

## **29.6 Responsibilities of Court**

### **A. General**

1. In order to ensure only qualified individuals perform the duties of a mediator and the requirements of Sup. R. 16.20 through 16.25 are met, a court that elects to use mediation shall do all of the following:
  - a. Establish screening procedures for the capacity of parties to mediate;
  - b. Establish procedures for monitoring and evaluation mediation to ensure the quality of the mediators and programs to which cases are referred;
  - c. Develop a process and appoint a person for accepting and considering written comments and complaints regarding the performance of mediators receiving referrals from the court. A copy of comments and complaints submitted to the court shall be provided to the mediator who is the subject of the complaint or comment. The person appointed may forward any comments and complaints to the judge of the court for consideration and appropriate action. Dispositions by the court shall be made promptly. The court shall maintain a written record in the mediator's file regarding the nature and disposition of any comment or complaint and shall notify the person making the comment or complaint and the mediator of the disposition.
  - d. Allow mediation to proceed only if the mediator meets the qualifications, education, and training requirements of Sup. R. 16.23;
  - e. Prohibit mediation when domestic abuse or domestic violence is alleged, suspected, or present unless all of the following conditions are satisfied:
    - i. Screening is conducted both before and during mediation, for domestic abuse and domestic violence, and for the capacity of the parties to mediate;
    - ii. The person who is or may be the victim of domestic abuse or domestic violence is fully informed about the mediation process, right to decline participation in the mediation process, and of the option to have a support person, in addition to an attorney, present at the mediation sessions;
    - iii. The parties have the capacity to mediate without fear or coercion or control;
    - iv. The court has taken reasonable precautions to create a safe mediation environment for the parties and all other persons involved in the mediation process;

- v. Procedures are in place for the mediator to terminate a mediation session of there is a threat of domestic abuse, domestic violence, or coercion between the parties;
- vi. Procedures are in place for issuing written findings of fact to refer certain cases involving domestic violence to mediation, as required by R.C. 3109.052.

B. General: A court shall not be responsible for the quality of a mediator selected by the parties without guidance from the court and who does not meet the qualifications, education, and training requirements of Sup.R. 16.23.

## **29.7 Public Access**

The files maintained by a mediator but not filed with a clerk or submitted to a court shall not be available for public access pursuant to Sup.R. 44 through 47.

## **29.8 Civil Mediation Procedure**

**A. Case Referral:** Cases can be referred to mediation in the following categories:

1. Court Referral: All cases and cases previously filed may be referred by the Court for mediation by the Court's in-house mediator.

2. Submission by Agreement of the Parties: All cases and cases previously filed may be referred for mediation by the Court's in house mediator by agreement of the parties. Appendix "A" shall be submitted to the Court if an agreement to mediate is reached.

**B. Scheduling**

1. Cases referred by the Court or submitted by agreement of the parties will be scheduled for mediation at a mutually agreeable time. The mediation case summary shall be submitted to the court no later than 7 days prior to the scheduled mediation session. (See Appendix "B").

**C. Case Management of Mediation Cases**

For those cases referred to mediation, the Assigned Judge will continue to manage the case in the appropriate manner by setting a future trial date and establishing appropriate deadlines.

**D. Mediation Sessions**

1. The parties themselves shall attend all mediation sessions unless their attendance has been excused by the mediator. **All parties**

**necessary for authority to settle the case must also be present.**

2. Each party may be accompanied at the mediation sessions by the lawyer expected to be primarily responsible for handling the trial of the matter.

3. All statements made in mediation sessions or in telephone discussions which include the mediator shall be treated by the parties, their counsel, the mediator and the Court as confidential, except for the following:

- (a) Information that is statutorily mandated to be reported; or
- (b) Information that, in the judgment of the mediator, reveals a danger of physical harm to either party or to a third party person.

4. The mediator shall inform the Court of whether a case is in mediation, when the next mediation session is scheduled, whether efforts to settle the case through mediation have ceased or continued, whether full or partial agreement has been reached through mediation, and the name of necessary persons who fail to be present for a scheduled mediation session or fail to make a good faith effort in the mediation process. No other information shall be communicated in any manner by the mediator to the Court.

5. If the mediator determines that mediation would be of no benefit to the parties or that an impasse is reached, the mediator shall inform the Court and all parties that the mediation is terminated.

6. Upon reaching a settlement in mediation, Counsel shall be instructed to present a termination entry for approval within 14 days. If the termination entry is not filed within 14 days, a notice shall be sent by the mediator to Counsel informing them that they have 14 days to file the termination entry. If no entry has been filed 14 days after notice has been sent to Counsel, then an administrative dismissal entry shall be sent to the Assigned Judge for approval.

**E. Sanctions**

If a party fails to attend a mediation session without due cause or make a good faith effort to participate in the program, the Court may impose appropriate sanctions, including an award of attorney's fees and other costs, contempt or other appropriate sanction.

**Appendix “A” to Local Rule 29  
BELMONT COUNTY PROBATE COURT**

**Agreement to Mediate**

The undersigned participants in mediation, legal counsel and the mediator agree that all matters discussed during the mediation process shall be kept confidential pursuant to Ohio Revised Code Section 2317.023 and therefore inadmissible in any subsequent civil or administrative proceeding. Exceptions to this agreement regarding confidentiality are:

- 1) Communications made by the mediator if all parties and the mediator consent to the disclosure;
- 2) Communications made by a person other than the mediator if all parties consent to the disclosure;
- 3) Communications which cause a person to know that a felony has been or is being committed.
- 4) Communications where a court determines disclosure does not circumvent Evidence Rule 408 and disclosure is necessary to prevent a manifest injustice and that disclosure is of sufficient magnitude to outweigh the importance of protecting the general requirements of confidentiality in mediation proceedings;
- 5) Communications concerning information that prior to its use in mediation was subject to discovery or admission under law of rule of evidence or was subject to disclosure as a public record pursuant to Section 149.43 of the Ohio Revised Code;
- 6) Communications causing a mandated reporter under Ohio Revised Code Section 2151.421 to suspect child abuse or neglect;
- 7) A written settlement agreement signed by the parties to the mediation.

All participants have been informed of the procedure for addressing possible grievances with the Mediator, with the mediation process itself or with the court as a result of this mediation.



All participants understand and agree that the mediation can be terminated in the following ways:

- 1) A settlement of all issues being mediated.
- 2) Termination by the mediator if the mediator determines continuing the mediation would not be in the best interest of any of the participants.
- 3) Termination by any of the participants if approved by the mediator or if not approved by the mediator, approved by the referring judge.

All participants and legal counsel understand and agree that the mediator is neutral and will not make decisions for the participants. Nothing the mediator says is intended as legal advice, and all participants and legal counsel agree that statements made by the mediator will not be regarded as legal advice.

All participants and legal counsel understand and agree that the mediation is voluntary and that there is no requirement to reach agreement unless there is a desire to voluntarily do so.

**AGREED**, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Participant

\_\_\_\_\_  
Legal Counsel

\_\_\_\_\_  
Participant

\_\_\_\_\_  
Legal Counsel

\_\_\_\_\_  
Participant

\_\_\_\_\_  
Legal Counsel

\_\_\_\_\_  
Mediator

**Appendix "B" to Local Rule 29  
BELMONT COUNTY PROBATE COURT**

**Civil Mediation Program**

**101 West Main Street  
St. Clairsville, Ohio 43950  
Phone: (740) 695-1327 Fax: (740) 695-1327**

**Mediation Case Summary**

*Please complete this form and return it to the Mediation Office no later than 7 days prior to the scheduled mediation session, along with any discoverable documents not in the court file. A copy of the summary should be provided to opposing counsel.*

**CASE CAPTION:** \_\_\_\_\_ **CASE #:** \_\_\_\_\_

**MATERIAL FACTS OF THE CASE:** \_\_\_\_\_  
\_\_\_\_\_

**LEGAL ISSUE TO BE RESOLVED:** \_\_\_\_\_  
\_\_\_\_\_

**DAMAGES:** \_\_\_\_\_  
\_\_\_\_\_

**SETTLEMENT OFFERS TO DATE:** \_\_\_\_\_  
\_\_\_\_\_

**POSITION OF THE PARTIES:** \_\_\_\_\_  
\_\_\_\_\_

**Submitted by:** \_\_\_\_\_, **Counsel for** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

**Date submitted to mediator:** \_\_\_\_/\_\_\_\_/\_\_\_\_ **To opposing counsel:** \_\_\_\_/\_\_\_\_/\_\_\_\_

**\*Attach additional pages if more space is necessary**

**\*\*Confidential material may be submitted if clearly marked and/or sent under separate cover**

## RULE 30 – ATTORNEYS

- 30.1** Any member in good standing of the Bar and who has registered with the Supreme Court of Ohio under and pursuant to Gov. Bar R. VI shall be admitted and authorized to practice in this Court. The attorney responsible for the case shall sign all Pleadings, Motions, and other documents with the designation "Trial Attorney" together with his or her attorney registration number, office address, telephone number, facsimile number (if any), and e-mail address (if any). The Clerk of the Court **shall not** accept for filing any such documents without such designation.
- 30.2** An attorney, who has not been admitted and registered to practice law in the State of Ohio, but who has been licensed and admitted to practice law in the Courts of any other state which extends a similar courtesy or privilege to persons who are admitted and registered to practice law in the State of Ohio, and is in good standing as a member of the Bar in such jurisdiction may, within the Court's discretion, be admitted **Pro Hac Vice** upon complying with the following:
- (A) A Motion to Admit the out-of-state attorney **Pro Hac Vice** along with a Memorandum in Support of the Motion must be filed with the Court as soon as possible, but no later than the date set by the Court for Pre-Trial Conference, by an attorney who is admitted and registered pursuant to Gov. Bar R. VI, who is, and shall be, the responsible attorney in the proceeding;
  - (B) The Motion must be accompanied by an Affidavit of the out-of-state attorney. The Affidavit must contain, at a minimum, the following information:
    - (i) The name, address, and telephone number of the registration agency and disciplinary agency (if different) of all Courts in which the person is admitted;
    - (ii) All matters before Ohio Courts, tribunals, or bodies in which such person is or has been involved in the twenty-four (24) months preceding the filing of the Motion;

- (iii) A statement as to whether the person is in good standing with the Bar of every jurisdiction in which that person is admitted and whether that person has been disciplined in any such jurisdiction within the twenty-four (24) months preceding the filing of the Motion; and
- (iv) A statement that the person shall comply with all laws, rules and regulations of Ohio State and local governments, where applicable, including taxing authorities.

**30.3** Upon review of the Motion, Memorandum, and Affidavit, if it also appears to the Court that the following criteria are met, the Court may grant the Motion:

- (A) There exists a long-standing, close, personal relationship between the party and the out-of-state attorney;
- (B) The out-of-state attorney is the customary attorney for the party in jurisdictions in which the out-of-state attorney is admitted to practice;
- (C) The availability of attorneys admitted to practice in the State of Ohio who are competent to represent the party in the proceeding is limited; and
- (D) The out-of-state attorney has not been admitted to practice in any Court in the State of Ohio Pro Hac Vice on a recurring basis (i.e. more than once).
- (E) In the event the Court finds that, for good cause or reason, justice will be served by granting the Pro Hac Vice Motion.

**30.4** If the Motion is granted, the responsible attorney shall be served with Notices, Pleadings, or any other documents required to be served. Such service shall be binding upon the party and the out-of-state attorney. The responsible attorney shall appear before this Court at all stages of the proceedings and shall be the designated "Trial Attorney" as set out in Rule 29.1 above. The responsible attorney shall sign all Pleadings and affix his or her Ohio Supreme Court Registration Number to all Pleadings. The responsible attorney shall attend the

taking of depositions and other actions that occur in the proceedings which are not actually conducted before the judge. The out-of-state attorney admitted pursuant to this Rule shall be permitted to participate in the proceedings under the supervision of the responsible attorney.

- 30.5** The Clerk of Courts shall reject any Pleading or other document tendered for filing which is not signed or executed in conformity with this Rule, and provide Notice to all counsel of record and, as well, to the party or parties on whose behalf the document was tendered. Any document filed in violation of this Rule shall be expunged and held for naught. However, any party shall have a period of thirty (30) days after receiving Notice from the Clerk to comply with this Rule by filing a Certification signed by a responsible attorney and identifying the documents affected.

## **RULE 31 - CONFERENCE OF PARTIES AND THEIR REPORT; PRETRIAL CONFERENCE AND PROCEDURES**

### **Conference of Parties; Planning for Discovery**

- 31.1** Except in categories of proceedings exempted from the Pre-Trial Conference process under Rule 30.5, or when otherwise Ordered, the parties in every case must, as soon as practicable and in any event no later than one hundred-twenty (120) days after the Pleadings have closed, confer to consider the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures of expert witnesses, and to develop a proposed discovery plan that indicates the parties' views and proposals concerning:
- (A) what should be the timing, form, or requirement for disclosures of experts, including a statement as to when disclosures were made or will be made;
  - (B) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;
  - (C) what changes should be made in the limitations on discovery imposed under the Ohio Rules of Civil Procedure or by these local rules, and what other limitations should be imposed; and
  - (D) any other orders that should be entered by the Court under the Civil Rules.
- 31.2** The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the Court within fourteen (14) days after the conference a Written Report outlining the plan. The Court will thereafter schedule an **initial pretrial conference**. A copy of the **mandatory form** is attached herewith as **Form 1 of Appendix A of Local Rule 30**. It must be completed in such format unless otherwise Ordered by the Court.

### **Initial Pretrial Conference**

**31.3** The Court shall, after receiving the report from the parties under Rule 30.1, or after consulting with the attorneys for the parties and any unrepresented parties by a pretrial conference, telephone, mail, or other suitable means, enter a Initial Pretrial Order that limits the time

- (A) to join other parties and to amend the pleadings;
- (B) to file motions; and
- (C) to complete discovery.

The Initial Pretrial Order may also include:

- (D) modifications of the times for disclosures and of the extent of discovery to be permitted;
- (E) the date or dates for conferences before trial, a final pretrial conference including a referral to Mediation and/or Settlement Conference if appropriate, and trial; and
- (F) any other matters appropriate in the circumstances of the case.

**31.4** The Order shall issue as soon as practicable after the Court receives the report. A schedule so established shall not be modified except upon a showing of good cause and by leave of the Court or, when authorized by Local Rule or by the Civil Rules.

### **Pretrial Conference**

**31.5** All civil cases, excepting domestic relations cases, administrative appeals, land sale proceedings, and adoptions may be assigned for an additional pretrial conference at which the attorneys for all parties shall be present. Notice of the date and time of the pretrial conference shall be given to counsel by the Clerk of the Court in this Court's order issued pursuant to Rule 30.3, or as the Court may otherwise direct.

**31.6** The failure of the Plaintiff's counsel to participate in said conference and/or make a good faith effort to agree upon and submit a proposed discovery plan for submission to the Court as provided for in this Rule may constitute grounds for the dismissal of the action without prejudice and at the costs of the Plaintiff.

- 31.7** The failure of Defendant's counsel to participate in said conference and/or make a good faith effort to agree upon and submit a proposed discovery plan for submission to the Court as provided for in this Rule may result in the approval of the discovery plan submitted by Plaintiff's counsel.
- 31.8** The failure of the Plaintiff's counsel to appear for the Pretrial Conference or to submit the Final Pre-Trial Order, in accord with Rule 30.10, may constitute grounds for the dismissal of the action without prejudice and at the costs of the Plaintiff.
- 31.9** The failure of Defendant's counsel to appear for the Pretrial Conference or to submit the Final Pretrial Order, in accord with Rule 30.10, will result in the approval of the Final Pretrial Order submitted by Plaintiff's counsel.
- 31.10** The Final Pretrial Order shall be prepared by counsel for the parties, signed by said counsel, and filed as **one unified order** on a date certain, which date shall be set by the Court at the Pretrial Conference. A copy of the **mandatory form** is attached herewith as **Form 2 of Appendix A of Local Rule 30**. It must be completed in such format unless otherwise Ordered by the Court.
- 31.11** Counsel for the parties shall attend the Pretrial Conference as scheduled by the Court. The amicable disposition of the case by settlement will be one of the subjects to be considered and counsel should be prepared to discuss settlement.



STATE OF OHIO, COUNTY OF BELMONT  
PROBATE AND JUVENILE COURT

Plaintiff,

Case No.

JUDGE Albert E. Davies

Vs.

Defendant

**REPORT OF PARTIES**

1. Pursuant to Local Rule 31.1, a meeting was held on \_\_\_\_\_, 20\_ at \_\_\_\_\_ a.m./ p.m. and the following were present:

\_\_\_\_\_, Attorney For Plaintiff \_\_\_\_\_

\_\_\_\_\_, Attorney For Plaintiff \_\_\_\_\_

\_\_\_\_\_, Attorney For Plaintiff \_\_\_\_\_

\_\_\_\_\_, Attorney for Defendant \_\_\_\_\_

\_\_\_\_\_, Attorney for Defendant \_\_\_\_\_

\_\_\_\_\_, Attorney for Defendant \_\_\_\_\_

\_\_\_\_\_, Attorney for Defendant \_\_\_\_\_

\_\_\_\_\_, Attorney for Defendant \_\_\_\_\_

2. Recommended Cut-Off Date for filing any Motion to Amend the Pleadings and/or to add parties: \_\_\_\_\_

3. Recommended Discovery Plan:

A. Describe the subjects on which Discovery is to be sought and the nature and extent of Discovery that each party needs to: (1) make a Settlement evaluation, (2) prepare for case Dispositive Motions and (3) prepare for Trial:

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B. What changes should be made, if any, in the limitations on Discovery imposed under the Ohio Rules of Civil Procedure or the Local Rules of this Court:

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C. Additional recommendations or limitations on Discovery:

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D. Describe area in which expert testimony is expected and indicate whether each expert will be specially retained within the meaning of the Ohio Rules of Civil Procedure:

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E. Recommended date for Plaintiff's Expert Designation(s):

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F. Recommended date for Defendant's Expert Designation(s):

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G. Recommended discovery cut-off date: \_\_\_\_\_

4. Recommended Dispositive Motion date: \_\_\_\_\_

5. Recommended date for a Status Conference (if any): \_\_\_\_\_

6. Recommended date for a Final Pre-Trial Conference: \_\_\_\_\_

7. Has a settlement demand been made?      Yes/No      A response?      Yes/No

Date by which a Settlement Demand can be made: \_\_\_\_\_

Date by which a Response can be made: \_\_\_\_\_

8. The earliest Settlement Conference or Mediation referral reasonably likely to be productive is: \_\_\_\_\_

9. Other matters for the attention of the Court: \_\_\_\_\_

Signatures:

Attorney(s) for Plaintiff(s):

Attorney(s) for Defendant(s):

\_\_\_\_\_  
(Ohio Bar # \_\_\_\_\_)  
Trial Attorney for Plaintiff

\_\_\_\_\_  
(Ohio Bar # \_\_\_\_\_)  
Trial Attorney for Defendant

\_\_\_\_\_  
(Ohio Bar # \_\_\_\_\_)  
Trial Attorney for Plaintiff

\_\_\_\_\_  
(Ohio Bar # \_\_\_\_\_)  
Trial Attorney for Defendant

\_\_\_\_\_  
(Ohio Bar # \_\_\_\_\_)  
Trial Attorney for Plaintiff

\_\_\_\_\_  
(Ohio Bar # \_\_\_\_\_)  
Trial Attorney for Defendant



Discovery deadline is \_\_\_\_\_. The discovery deadline pertains to discovery of all lay witnesses, the Court understanding that Experts, who have been identified, may be deposed closer to the Trial date.

1. **WRITTEN DISCOVERY** - Plaintiff (s) first set of **Interrogatories and Request for Production of Documents** to Defendant (s) was **filed** on \_\_\_\_\_. **Defendant (s) Answers and Responses** were **filed** on \_\_\_\_\_. **Defendant (s) Interrogatories and Request for Production of Documents** to Plaintiff (s) was **filed** on \_\_\_\_\_. **Plaintiff (s) Answers and Responses** were **filed** on \_\_\_\_\_. With notification to the Court, the parties are at liberty to agree to vary the time tables of discovery set forth in this Order, provided the same does not delay the date for Dispositive Motions, or the Trial Date of \_\_\_\_\_.
  
2. **DEPOSITIONS** –  
  
Depositions of \_\_\_\_\_ shall be taken by the Defendant (s) on \_\_\_\_\_.  
  
Depositions of \_\_\_\_\_ shall be taken by the Plaintiff (s) on \_\_\_\_\_.
  
3. **PRODUCTION OF DOCUMENTS** - Counsel for Plaintiff(s) shall submit to Counsel for Defendant (s) copies of all reports, records, bills and any other evidence anticipated to be used at Trial in support of Plaintiff (s) claim (s) in a sufficient time frame to enable Defendant (s) to obtain necessary independent evaluations and/or to review such documents to determine settlement options. If Counsel for Plaintiff (s) is unable to provide this information in response to Interrogatories directed to Plaintiff (s) or requests for production of documents directed to Plaintiff (s) within the time allowed for response, the Plaintiff (s) (are / is) under an obligation to secure said information through any means necessary, including use of depositions to enable Defendant(s) to be prepared for Trial on the date scheduled herein. In the alternative, Plaintiff (s) may provide release authorizations to Defendant (s), allowing Defendant (s) to obtain copies of all documents, if such authorizations are utilized, Defendant(s) shall provide copies of

such documentation to Plaintiff (s) at Defendant (s) expense.

### **DISPOSITIVE MOTIONS**

All parties are granted leave to file Dispositive Motions, including Motions for Summary Judgment, without additional leave of Court, provided, however, **all Dispositive Motions** are to be **filed by** \_\_\_\_\_.

### **STATEMENTS/LISTS**

**Plaintiff** (s) Claim (s) are to be set out in a brief summary (without detail). An itemized statement of special damages must be included or be subject to exclusion at Trial.

**Defendant** (s) Claim (s) are to be set out in a brief summary (without detail). **All other parties'** claims are to be set out in the same type of statement where third parties are involved.

1. Uncontroverted Facts - The following facts are established by admission in the pleadings or by stipulations of counsel. (Set out uncontroverted or uncontested facts.)
  
2. Issues of Fact and Law - Contested Issues of Fact remaining for decision are: (set out) Contested Issues of Law in addition to those implicit in the foregoing issues of fact, are: (set out) OR there are no special issues of law reserved other than those implicit in the foregoing issues of fact.

### **LAY WITNESSES**

In the absence of reasonable notice to opposing counsel to the contrary, **Plaintiff** (s) **will call** or **will have available at Trial:** (list)

OR

**Plaintiff** (s) **may call:** (list)

In the absence of reasonable notice to opposing counsel to the contrary, **Defendant(s)** **will call** or **will have available at Trial:** (list)

OR

**Defendant** (s) **may call:** (list)

A final witness list shall be prepared with the names and addresses of all witnesses (including those not previously known to counsel and discovered after discovery cut-off dates and

determined necessary to be used) shall be disclosed to opposing counsel immediately upon discovery, but in no event later than fifteen (15) days prior to Trial. Failure to identify a witness (es) as required herein shall preclude the testimony of such witness (es) except for good cause shown to the Court. **(This is a final witness list and witnesses not expected to testify shall not be included thereon.)**

There is reserved to each party the right to call such Rebuttal Witness (es) as may be necessary, without prior notice thereof to the other party.

### **TESTIFYING EXPERT WITNESSES**

**Plaintiff** (s) is limited to \_\_\_\_\_ Expert Witnesses expected to testify at Trial (including treating physicians, if applicable) whose names have been disclosed to opposing counsel. Such Experts shall be identified on or before \_\_\_\_\_.

**Defendant** (s) is limited to \_\_\_\_\_ Expert Witnesses expected to testify at Trial (including treating physicians, if applicable) whose names have been disclosed to opposing counsel. Such Experts shall be identified on or before \_\_\_\_\_.

**Written Reports**, if any, and curriculum vitae shall be exchanged between parties as soon as available after identification of Experts. In the event a written Expert's report is unavailable, the party expecting to call that Expert at Trial shall clearly state in writing, in a most concise and complete detail, the subject matter upon which said Expert is expected to testify. This requirement does not preclude additional discovery pursuant to Civil Rule 26 (B)(4).

### **SUBROGATION**

If subrogation claims for payment of (medical) expenses have been made against Plaintiff (s), **IT IS ORDERED**, that Plaintiff (s) shall undertake efforts to resolve those claims without the necessity of joining the entities claiming to hold rights of subrogation as parties to this action. In the event said claims are not resolved by \_\_\_\_\_, Plaintiff (s) is Ordered to file an Amended Complaint joining said entities as parties to this action.

Plaintiff (s) is Ordered to provide Defendant (s) with the names and addresses of any entity who may have a claim based upon subrogation and if an agreement is reached by and between Plaintiff and entities holding subrogation rights, Plaintiff (s) shall be Obligated to resolve subrogation matters in the event of Judgment or Settlement of Plaintiff (s) Claim (s), and shall hold Defendant (s) harmless from such claim (s).

### **EXHIBITS**

**All exhibits** that are intended **to be used at Trial, shall be pre-marked and exchanged** with opposing counsel, are to be filed with the Court \_\_\_\_\_ days prior to Trial. Each party shall prepare and submit to the Court a typed Exhibit List (identified by an appropriate

number or letter) \_\_\_\_\_ days prior to Trial. **Failure to pre-mark or identify any exhibit shall be subject to exclusion at Trial.** No objection as to the admissibility of any exhibit for any reason will be entered at Trial unless (a) the document was provided to opposing counsel as Ordered; or (b) the party opposing the introduction of the exhibit files a written objection to the introduction one (1) day prior to trial, setting forth particular legal objections raised. Except for good cause shown, the Court will not permit the introduction of any exhibits unless they have been listed in accord with the provisions of this Pre-Trial Order, with the exception of exhibits to be used solely for the purpose of impeachment.

### **DEPOSITIONS/INTERROGATORIES**

Testimony by deposition of any witness (es) intended to be used at Trial shall be taken in a sufficient time frame to allow the transcripts of said testimony to be filed \_\_\_\_\_ days prior to Trial in order to enable the Court to Rule upon objections without delaying the Trial. Identity of the witness (es) shall be offered by (**deposition / videotape**). **Transcripts of depositions not filed by \_\_\_\_\_ (date) shall not be permitted to be used as evidence.** Use of depositions and/or interrogatories for the sole purposes of impeachment need not be filed prior to Trial.

### **SETTLEMENT ISSUES**

The parties (have / have not) entered into “good faith” settlement negotiations.

Counsel is instructed to telephone the Court to set a date and time for a Settlement Conference, which is to occur during the month(s) of \_\_\_\_\_ / \_\_\_\_\_, \_\_\_\_\_ . Subject to leave of Court, the parties or an agent of the parties (other than counsel) who is authorized to enter into meaningful settlement negotiations shall be present for the Settlement Conference. Counsel is instructed to provide the Court with copies of all depositions, (medical) reports, written reports of (medical) experts, (Independent Medical Examinations), compilations of (medical) specials, bills, lost wages, future projected damages (if any) and all other documents pertinent to settlement issues one (1) week prior to the scheduled Settlement Conference.

If settlement occurs at such a time that the Court is not able to call off a Jury panel which is required to be paid, the Court will assess those costs to either the party who was responsible for the late settlement or to both parties if the Court determines that both parties were responsible for the late settlement.

### **JURY INSTRUCTIONS**

Counsel shall file a proposed Charge on all anticipated issues \_\_\_\_\_ days prior to Trial. There is reserved to Counsel the right to submit supplemental requests for instructions during Trial, or at the conclusion of the evidence, on matters that cannot be reasonably anticipated.

### **JURY VIEW**



A jury view (is / is not) requested.

**MOTIONS IN LIMINE**

All Motions in Limine are to be filed \_\_\_\_\_ days prior to Trial, unless a shorter time is approved by the Court.

**APPLICABLE STATUTORY OR CASE LAW**

All parties will set forth the statutory and/or case law applicable to the issues.

**PROTECTIVE ORDERS**

Before the Court will grant a Motion for Protective Order, the parties must confer and seek to resolve the matter without Court intervention.

**MODIFICATION**

This Final Pre-Trial Order may be modified at the Trial or prior thereto, to prevent manifest injustice. Such modification shall be made by application of counsel or by the Court's own motion.

**MEDIATION**

Mediation may/may not be appropriate in this matter.

**ADDITIONAL ACTION**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

**Judge Albert E. Davies**

\_\_\_\_\_  
ATTORNEY FOR PLAINTIFF (S)

\_\_\_\_\_  
ATTORNEY FOR DEFENDANT (S)

## **RULE 32 - SEPARATION AND EXCLUSION OF WITNESSES**

- 32.1** Except as provided in Rule 31.3, at the request of a party the Court shall Order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the Order of its own Motion. An Order directing the “exclusion” or “separation” of witnesses or the like, in general terms without specification of other or additional limitations, is effective only to require the exclusion of witnesses from the Hearing during the testimony of other witnesses.
- 32.2** The Order of exclusion or separation of witnesses limits out-of-court contact between witnesses or between witnesses and third-parties, while the matter is proceeding in the Courtroom. Violations of this Order shall result in sanctions, including monetary and/or non-monetary sanctions and/or contempt of Court.
- 32.3** This Rule does not authorize exclusion of any of the following persons:
- (A) a party who is a natural person;
  - (B) an officer or employee of a party that is not a natural person designated as its representative by its attorney;
  - (C) a person whose presence is shown by a party to be essential to the presentation of the party’s cause; and
  - (D) in a criminal proceeding, a victim of the charged offense to the extent that the victim’s presence is authorized by statute enacted by the General assembly. As used in this Rule, “victim” has the same meaning as in the provisions of the Ohio Constitution providing rights for victims of crimes.

## RULE 33 – MOTIONS

- 33.1** All Motions, excepting Motions for Judgment by Default and for Temporary Relief in Domestic Relations cases, shall be accompanied by a Brief in Support thereof which shall state the reasons for the Motion and the legal authorities relied upon. When a Motion seeks Post-Judgment Relief, said Motion shall be accompanied by an appropriate deposit, in accord with a schedule adopted by the Clerk, to secure the costs thereof. The Clerk of the Court shall not accept any Motion which is not accompanied by the Brief as required by this Rule, and with respect to Post-Judgment Motions, the appropriate deposit. **(A courtesy copy of all Motions, Responses and Replies shall be submitted directly to the presiding Judge at the time of filing.)**
- 33.2** Unless otherwise Ordered, the non-moving party or their attorney may file an Answer Brief on or before the fourteenth (14th) day following the filing date or service date of the Motion, whichever is later, and the moving party may file a Reply Brief on or before the seventh (7th) day following the filing date or service date of the Answer Brief, whichever is later. No other Briefs shall be accepted by the Clerk of the Court without an Order of the Court. Failure to file a Response Brief may constitute sufficient cause for the Court to grant the relief sought in the Motion filed by the moving party.
- 33.3** All Motions requiring a Brief, as provided for in Rule 32.1 and 32.2, shall be submitted on the Briefs, without oral argument, unless an Oral Hearing is otherwise required to be noticed under the Ohio Rules of Civil Procedure or any other provision of law. In such cases, the moving party, upon filing such Motion, shall provide as a separate part of the Motion a section entitled **Notice of Hearing**, which shall provide a space for the date and time of the Hearing of such Motion to be obtained from the Clerk of the Court. Unless otherwise provided by law or Ordered by the Court, the moving party shall promptly notify the parties or their attorneys of the date and time for the Hearing on the Motion by serving a copy of the Motion, Notice of Hearing, and a Certificate of Service in accordance with the Civil Rules. The endorsement of such Notice on the Motion shall constitute sufficient proof of service of notice.
- 33.4** Notwithstanding anything contained in Rule 32.3 to the contrary, a party may file a Demand for Oral Hearing on a Motion by endorsing such Demand upon the Motion at the time of filing, or by endorsing said Demand on the Answer Brief at the time of filing, or by so endorsing on the Reply Brief at the time of filing, or by

separate instrument filed within the deadlines referred to in 32.2 above. The Clerk of the Court shall immediately notify all parties or their counsel of record, in writing, on forms approved by the Court, of the date and time when the same is to be argued before the Court by sending to them a Notice mailed by regular United States Mail at the addresses of the parties or their attorneys as set forth in the file. An Oral Hearing and Argument shall regularly come before the Court on the first Monday following the expiration of the twenty-eighth (28th) day or on the twenty-eighth (28th) day if such day is a Monday, after the filing of the Motion. A non-moving party may not oppose a Motion by simply filing a **Demand for Oral Argument** without also filing an Answer Brief. **This shall not preclude the Court, in its discretion, to deny an Oral Hearing on said Motion.**

**33.5** Subject to the discretion of the Court, any party may request an Expedited Oral Hearing by filing with the Motion a **Demand for Expedited Oral Hearing**, wherein said Demand is in the interest of justice and for good cause shown by Affidavit of the moving party or their attorney, and otherwise warrants an Expedited Hearing. At a minimum, the Affidavit must include the factual basis for expediting the Hearing and the time period within which the moving party believes that the Hearing should held. Upon filing of such Demand, the Clerk of the Court shall immediately notify the Judge by providing a copy of the Demand to the Judge, and upon direction from the Judge, notify all parties or their counsel of record of the date and time for the Expedited Hearing, in the same manner as provided in Rule 32.4, in the event the Court agrees that an Expedited Hearing is necessary. In the event the assigned Judge is not available and will not be available in time to address the Motion during the time period described in the Affidavit, the Clerk of the Court shall immediately notify and seek direction from the non-assigned Judge. The Judge may choose to conduct a telephone conference with the parties or their attorneys to resolve the issue of whether the Motion and the Demand for Expedited Oral Hearing demonstrate the need for immediate action.

**33.6** Ex parte orders may be issued (including sua sponte orders from the Court) for scheduling, administrative purposes or emergencies that do not address substantive matters or issues on the merits under circumstances wherein the Judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte order.

**33.7** Unless otherwise provided for by law and/or Local Rule 12.8 thru 12.13 and/or

Local Rule 32.6 above, **no Motion involving the substantive rights of the parties shall be decided ex parte** during the time periods prescribed for the filing of a Response and/or a Reply, without written or oral notice to the nonmoving parties or their attorney, unless **all** of the following criteria are considered by the Court:

- (A) An Affidavit and/or representations made **on the record** by the attorney representing the moving party, setting forth his or her reasonable efforts to give such notice, including the efforts to reach all non-moving parties or their attorney;
- (B) A finding made upon the attorney's Affidavit and/or representations **made on the record**, that the moving party or their attorney, in fact used, reasonable efforts to notify all non-moving parties or their attorneys that the Motion would be heard, and that the non-moving party or their attorney are incapable of being contacted within the time period set forth in the Affidavit provided for in Rule 32.5 above. In lieu of such a finding, the Court may make such reasonable efforts, itself, or order the moving party to make additional efforts deemed appropriate by the Court;
- (C) Based upon specific facts shown by Affidavit or verified Complaint or by sworn testimony made on the record that immediate injury will result to the moving party within the time period set forth in the Affidavit provided for in Rule 33.5 above, and/or that the risk of harm that is likely to result in waiting until Notice can be given substantially outweighs the risk of harm that is likely to result to the nonmoving party as a result of granting the Motion;
- (D) In an appropriate case, in accord with the discretion of the Court, a moving party may be required to post a Bond in an amount fixed by the Court, to secure to the non-moving party, the damages he may sustain, if it is finally decided that the ex parte order should not have been granted. The party obtaining the ex parte order may deposit, in lieu of such Bond, with the Clerk of Court currency, cashier's check, certified check or negotiable government bonds in the amount fixed by the Court.

- 33.8** The issuance of Temporary Restraining Orders in civil actions shall be governed by the provisions of Civil Rule 65 (A) and this Rule shall not, in anyway, affect or modify the requirements set forth in Civil Rule 65 (A).
- 33.9** Pre-Trial Motions shall not be filed beyond the deadlines imposed by law or by the Court, or within twenty-eight (28) days of Trial without Leave of Court. The Judge may, upon granting such Leave, establish the times for the filing of Briefs, and the submission of the Motion for Hearing.