MONTGOMERY COUNTY DOMESTIC RELATIONS COURT

LOCAL RULES OF COURT

EFFECTIVE
JANUARY 1, 2020

RULES OF
THE DOMESTIC RELATIONS DIVISION

Complete and Updated Through January 1, 2020

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GENERAL RULES

RULE 4.01
ADOPTION, SCOPE AND CONSTRUCTION OF RULES

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

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

(C) These rules shall be applied, construed and enforced so as to avoid inconsistency with other rules of court and statutes governing proceedings of this court. These rules shall be construed so as to provide fairness and to secure just and expeditious determination of all proceedings. These rules shall apply to proceedings pending at the time they take effect, and to future proceedings.

Pursuant to The Supreme Court of Ohio 6/26/2015 Administrative Actions, 2015-Ohio-2568, effective immediately, pursuant to Article IV, Section 5 of the Ohio Constitution and Rule 84 of the Ohio Rules of Civil Procedure, that all references to husband, wife, father, mother, parent, spouse, and other terms that express familial relationships contained in the Rules of Superintendence for the Courts of Ohio and related forms and the Uniform Domestic Relations Forms of the Ohio Rules of Civil Procedure be construed as gender neutral where appropriate to comply with the decision of the United States Supreme Court in Obergefell v. Hodges, Case No. 14-556, rendered June 26, 2015.

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

(E) These rules shall be effective January 1, 2020 and supersede all previous rules promulgated by this court.

(F) These rules may be accessed on the Internet at www.mcohio.org/dr.

RULE 4.02
LICENSE TO PRACTICE LAW/ SELF-REPRESENTED PARTIES COMPLIANCE WITH OHIO RULES OF CIVIL PROCEDURE

(A) No lawyer representing a client in any case in this court shall make any appearance or file any document with the Clerk of Courts unless that lawyer is licensed to practice law and is in good standing under Ohio law. A lawyer representing a client has an affirmative duty to notify the court in any pending case if for any reason the lawyer is no longer in good standing. A violation of this rule may result in contempt sanctions against the violator, including assessment of clerk administrative fees and attorney fees.

The court may also strike pleadings or vacate proceedings in which the attorney appeared while the attorney was not in good standing to practice law in Ohio.

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

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

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

Individuals with disabilities, special needs or the need for an interpreter should make requests for reasonable accommodations to the court's purchasing coordinator at (937) 224-8747 at least 7 days prior to any scheduled hearing so that arrangements can be made.

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

Service animals are permitted to be present in the public areas and courtrooms in the Domestic Relations Court in compliance with the Americans with Disabilities Act (ADA). The ADA and Ohio law defines a service animal as "any animal or animal assistant that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability." This rule does not include emotional support animals who are not trained to perform specific tasks for their handlers. You may be asked by authorized staff members if your animal is a service animal, and which tasks the animal is trained to perform. If any animal is disruptive, you may be required to remove the animal from the courthouse.

RULE 4.04
CLERK ADMINISTRATIVE FEES AND COURT COPIES

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

Contact Clerk of Courts office at (937) 225-5066 for current deposit requirements and fee schedule.

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

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

(C) Responsibility for Fees. All entries and orders shall contain a provision for allocating payment of fees. The balance of any fees shall be paid as follows: (1) by the plaintiff in an uncontested divorce, legal separation or annulment proceeding; (2) equally between the parties in a contested divorce proceeding or dissolution proceeding; or (3) by the movant in a post-decree proceeding. The court or Clerk of Courts may require an additional deposit during the pendency of an action.

(D) Deposits Applied. Upon final judgment, the Clerk of Courts is directed to apply the deposits to the administrative fees in the case, regardless of the party against whom fees are assessed. The Clerk shall thereupon assess the fees against the proper party, and notify that party, reimbursing the administrative fees, when appropriate.

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

(F) Court Copies. Copies of documents not yet filed by self-represented parties, provided by the Court's Compliance Office, may be obtained at a fee.

RULE 4.042
COURT COSTS AND SPECIAL FEES

A. FILING FEE:

1. No civil action or proceeding shall be accepted for filing unless there is deposited as security for costs as set forth in D.R. Rule 4.04.
2. A convenience fee of 3.0% ("Conv. Fee") shall be added to all eFiled cases and shall be paid at the time of filing, along with the deposit. This Conv. Fee applies to cases filed by Self Represented parties who are not registered users of the Court's eFile system and file in accordance with D.R. Rule 4.05.
3. If the party initiating the civil action is unable to give security or a cash deposit as provided under this Rule, then said party shall file a Poverty Affidavit along with the complaint or other filing requiring a filing fee as set forth in D.R. Rule 4.04.
   a. The affidavit shall be accepted by the Clerk and the collection of costs shall be postponed until the case is terminated.

b. The Court may review the Poverty Affidavit and make a determination whether the filer is, in fact, indigent. The Court may refer the Poverty Affidavit to the Magistrate to make the determination.

B. COURT LEGAL RESEARCH/COMPUTERIZATION FEE:

1. Pursuant to R.C. § 2303.201(A)(1), the Court has determined that, for the efficient operation of the Court, additional funds are necessary to computerize the Court and to obtain legal research services.
2. As authorized under R.C. § 2303.201(A)(1), the Clerk shall charge an additional fee of $6.00 on the filing of each cause of action or appeal under divisions (A), (Q), and (U) of R.C. § 2303.20.
3. All fees collected pursuant to this Subsection shall be used for procuring and maintaining computerization of the Court and computerized legal research services.
4. All fees collected pursuant to this Subsection shall be paid to the Montgomery County Treasurer ("Treasurer"), who shall place the funds from the fee in a separate fund to be disbursed upon an order of the Court.

C. CLERK COMPUTERIZATION/TECHNOLOGY ADVANCE FEE:

1. Pursuant to R.C. § 2303.201(B)(1), the Court has determined that, for the efficient operation of the Court, additional funds are necessary to make technological advances in order to computerize the office of the Clerk.
2. As authorized under R.C. § 2303.201(B)(1), the Clerk shall charge an additional fee of $20.00 on the filing of each cause of action or appeal.
3. All fees collected pursuant to this Subsection shall be used for procuring and maintaining technology and computer systems for the office of the Clerk.
4. All fees collected pursuant to this Subsection shall be paid to the Treasurer, who shall place the funds from the fees in a separate fund to be disbursed upon an order of the Court.

D. ADDITIONAL FEES:

1. Electronic Filing and Storage of Case Records Fee:
   a. Pursuant to R.C. § 2303.201(E)(1), the Court has determined that, for the efficient operations of the Court, additional funds are necessary to pay for the costs of eFiling and storage of case records and related materials.
   b. As authorized under R.C. § 2303.201(E)(1), the Clerk shall charge, in addition to all other costs, a fee of $35.00 on the filing of each action or proceeding.
   c. All fees collected pursuant to this Subsection shall be used for special projects related to eFiling and storage of case records and related materials.
   d. All fees collected pursuant to this Subsection shall be paid to the Treasurer, who shall place the funds from the fee in a separate eFiling fund to be disbursed upon an order of the Court.

2. Special Project Fee:
    a. Pursuant to R.C. § 2303.201(E)(1), the Court has determined that, for the efficient operations of the Court, additional funds are necessary to acquire and pay for special projects (mediation) of the Court.
    b. As authorized under R.C. § 2303.201(E)(1), the Clerk shall charge, in addition to all other costs, $25.00 at the time of filing.
    c. All fees collected pursuant to this Subsection shall be used for mediation related expenses consistent with R.C. § 2303.201(E)(1).
    d. All fees collected pursuant to this Subsection shall be paid to the Treasurer, who shall place the funds from the fee in a separate general special project fund to be disbursed upon an order of the Court.
3. Domestic Parent Education Seminar Fee:
    a. Pursuant to R.C. § 2303.201(E)(1), the Court has determined that, for the efficient operations of the Court, additional funds are necessary to acquire and pay for special projects (domestic parent education seminar) of the Court.
    b. As authorized under R.C. § 2303.201(E)(1), the Clerk shall charge, in addition to all other costs, $10.00 at the time of filing.
    c. All fees collected pursuant to this Subsection shall be used for domestic parent education seminar related expenses consistent with R.C. § 2303.201(E)(1).
    d. All fees collected pursuant to this Subsection shall be paid to the Treasurer, who shall place the funds from the fee in a separate general special project fund to be disbursed upon an order of the Court.
4. Domestic Family Services Fee:
    a. Pursuant to R.C. § 2303.201(E)(1), the Court has determined that, for the efficient operations of the Court, additional funds are necessary to acquire and pay for special projects (domestic family services) of the Court.
    b. As authorized under R.C. § 2303.201(E)(1), the Clerk shall charge, in addition to all other costs, an amount to be determined by the Court when applicable.
    c. All fees collected pursuant to this Subsection shall be used for domestic family services related expenses consistent with R.C. § 2303.201(E)(1).
    d. All fees collected pursuant to this Subsection shall be paid to the Treasurer, who shall place the funds from the fee in a separate general special project fund to be disbursed upon an order of the Court.
5. Domestic Relations Family Investigation Fee:
    a. Pursuant to R.C. § 2303.201(E)(1), the Court has determined that, for the efficient operations of the Court, additional funds are necessary to acquire and pay for special projects (domestic relations family investigation) of the Court.
    b. As authorized under R.C. § 2303.201(E)(1), the Clerk shall charge, in addition to all other costs, an amount to be determined by the Court when applicable.
    c. All fees collected pursuant to this Subsection shall be used for domestic relations family investigation related expenses consistent with R.C. § 2303.201(E)(1).

d. All fees collected pursuant to this Subsection shall be paid to the Treasurer, who shall place the funds from the fee in a separate general special project fund to be disbursed upon an order of the Court.

RULE 4.05
FILING OF COURT DOCUMENTS AND REMOVAL OF PAPERS FROM CUSTODY OF THE CLERK

Except as otherwise provided in Subsection (J) of this Rule, all domestic relations cases, including all pleadings, motions, briefs, memoranda of law, deposition transcripts, transcripts of proceedings, orders or other documents, shall be filed electronically through the Court's authorized electronic filing system ("eFile system"). Paper courtesy copies of documents filed electronically shall not be delivered to the Court. The Court's authorized eFile system is hereby appointed the agent of the Clerk for the purpose of filing, receipt, service and retrieval of electronic documents.

A. DEFINITION OF TERMS: The following terms in this Rule shall be defined as follows:

1. Document: A filing made with the Clerk in either electronic format or paper form, becoming the Court's official record.
2. Electronic Filing ("eFile"): The electronic transmission, acceptance, and processing of a filing. A submission consists of data, one or more documents, and images. This definition of eFile does not apply to facsimile or email.
3. Court Initiated Filings: Official Court documents entered into the docket or register of actions, such as notices or orders. The term "Court initiated filings" is a simplification to indicate that documents will be submitted as part of the electronic court record, but could be submitted using exactly the same process as external filings if the Court so desires.
4. Electronic Service ("eService"): The electronic transmission of an original document to all case participants who are registered users of the Court's eFile system via the eFile system. Upon the completion of any transmission to the eFile system, an electronic receipt shall be issued to the sender acknowledging receipt by the eFile system.
5. Case Management System ("CMS"): The Court CMS manages the receipt, processing, storage and retrieval of data associated with a case and performs actions on the data.
6. Document Management System ("DMS"): A DMS manages the receipt, indexing, storage and retrieval of electronic and non-electronic.
7. Court Electronic Record: Any document that the Court receives in electronic form, records in the CMS and stores in its DMS. This includes Court initiated filings as well as pleadings, other documents and attachments created by parties or their counsel and filed by the Clerk in the Court's official docket. It does not include physical exhibits brought into the courtroom for the Court's edification that cannot be captured in electronic form.

8. Clerk Review: A review of Documents by the Clerk in accordance with Court rules, policies, procedures, and practice. The Clerk may review the data and documents electronically submitted to ensure compliance with Court rules, policies, procedures and practices before creating a docket entry or before docketing the case.
9. System Error: When the Court's eFile system is not operational.
10. Public Access Terminal: A terminal located in the Clerk's office for use by the public during regular business hours. Users shall be charged for printed copies of documents at rates permitted by law.

B. SERVICE OF COURT INITIATED FILINGS:

Subject to the provisions of this Rule, the Court shall eFile all Court Initiated Filings. Service of Court Initiated Filings shall be made via eService to all registered users of the eFile system or to all non-registered users of the eFile system in accordance to Civil Rules.

C. REGISTRATION IN eFILE SYSTEM:

1. All counsel of record shall register with the Court's eFile system to file, serve, receive, review, and retrieve copies of eFiled pleadings, orders and other documents in the case. Self Represented parties may, but are not required to, register with the Court's eFile system.
2. The Court shall not accept or file any pleadings or instruments in paper form except as provided in Subsection (J) of this Rule.
3. If a party or counsel of record does not have internet access, the party or counsel of record may use the Clerk's Public Access Terminal to register to use the Court's eFile system and to eFile documents.

D. CONFIDENTIAL AND UNIQUE ELECTRONIC IDENTIFIER:

1. The Court's eFile system shall assign an individual who has registered pursuant to Subsection (C) of this Rule a confidential and unique electronic identifier that shall be used to file, serve, receive, review, and retrieve eFiled pleadings, orders, and other documents in the case.
2. Each person to whom a unique identifier has been assigned shall be responsible for the security and use of such identifier.
3. All eFiled documents shall be deemed to be made with the authorization of the party who is assigned the specific unique electronic identifier, unless the party proves to the satisfaction of the Court, by clear and convincing evidence, that the contrary is demonstrated.

E. OFFICIAL COURT RECORD: For documents that have been eFiled pursuant to Subsection (G) of this Rule or documents filed in paper format pursuant to Subsection (J) of this Rule that have been scanned and uploaded to the eFile system by the Clerk, the electronic version constitutes the Official Court Record. eFiled Documents have the same force and effect as those filed by traditional means.

F. FORM OF DOCUMENTS:

1. Format: All pleadings, motions, briefs, and other documents shall be formatted in accordance with the following:
   a. Typewritten or printed, double spaced, on 8 ½" x 11" paper, not less than 11-point and not greater than 12-point regular type font, paginated sequentially.
   b. Filings prepared in a pleading format shall reserve a blank space of at least 3 inches at the top of the first page for endorsements and shall have appropriate side and bottom margins of not less than one inch.
   c. Forms approved by the Court shall reserve an adequate space in the top right-hand corner for endorsements or file stamps and shall have appropriate side and bottom margins proportional with the format of the form or document.
   d. A filed document shall not contain links to other documents or references to the CMS, unless they are incorporated into the filed documents. External links are prohibited.
2. Portable Document Format (".pdf"):
   a. Except as provided in Subsection (F)(2)(b) of this Rule, all eFiled documents, pleadings, and papers shall be filed with the Clerk in .pdf.
   b. A proposed order, proposed entry, or document containing a notice of hearing shall be submitted in Word [.doc] format and reference the specific motion to which it applies.
3. Size of eFiled Documents:
   a. Individual documents included in a submission shall not exceed 10 megabytes in size.
   b. Any combination of documents eFiled in one submission shall not exceed 30 megabytes in size.
4. Signatures:
   a. Attorney/Filing Party Signature: eFiled documents that require the signature of the attorney or filing party shall be signed with a conformed signature of "/s/ [name]." The correct format for an attorney's conformed signature is as follows:
      <u>/s/Attorney Name</u>
      Attorney Name
      Bar Number 1234567
      Attorney for [Plaintiff/Defendant] XYZ Corporation
      ABC Law Firm
      Address
      Telephone
      Fax and/or E-mail address
   b. The conformed signature on an eFiled document is deemed to constitute a signature on the document for the purposes of signature requirements imposed by the Ohio Rules of Superintendence, Rules of Civil Procedure, and any other law.
   c. Multiple Signatures: When a stipulation or other document requires two or more signatures, the filer shall:

i. confirm that the content of the document is acceptable to all persons required to sign the document;
ii. indicate the agreement of other counsel or parties at the appropriate place in the document, usually on the signature line; and
iii. eFile the document, indicating the signatories, e.g., /s/ Jane Doe, /s/ John Smith, etc.

d. Original Signatures: Documents requiring an original signature, such as an affidavit or other notarized documents shall be eFiled as a .pdf.
   i. The filer shall maintain the signed document in the filer's records and have it available for production upon request of the Court.
   ii. The signed document shall be maintained until the case is closed and the time for appeal has expired or the appeals have been heard or denied and all opportunities for post judgment relief are exhausted.

e. Signature of Judge or Magistrate: eFiled documents may be signed by a Judge or Magistrate via a digitized image of his or her signature combined with a digital signature. All orders, decrees, judgments and other documents signed in this manner shall have the same force and effect as if the Judge or Magistrate had affixed his or her signature to a paper copy of the order and journalized it. All proposed orders, decrees, judgments and other documents to be signed by a Judge or Magistrate shall be submitted to the eFiling system in Word format.

G. TIME, EFFECT AND PROCESS OF eFILING:

1. Submission: Any filing may be eFiled with the Clerk 24 hours a day, 7 days a week.
2. Receipt: Upon receipt, the Court's eFile system shall issue a confirmation that the submission has been received. The confirmation shall include the date and time of receipt and serve as proof of receipt.
3. Clerk Review: After Clerk Review, a filer will receive notification from the Clerk that the submission has been accepted or rejected by the Clerk.
   a. If the submission is rejected, the document shall not become part of the Court record and the filer shall be required to re-submit the document to meet the requirements. The re-submitted document shall receive a new submission date and time.
   b. If the submission is accepted, the document shall be docketed and filed.
4. Official Time Stamp: Upon acceptance, the submission shall be deemed filed and shall receive an electronic stamp that includes the date and time that the filer submitted the document to the Court's eFile system as well as the unique confirmation number of the filing.
5. System Errors: If a submission is not received by the Court because of a System Error, the Court may, upon satisfactory proof, enter an order permitting the document to be filed *nunc pro tunc* to the date it was submitted.

H. SERVICE:

1. Instructions for Service: For all documents that require service by the Clerk or documents for which a party is requesting that service be made by the Clerk, Instructions for Service shall be filed as a separate document. The Clerk shall not accept Instructions for Service that do not designate the names and addresses of the parties to be served. If the address of the party to be served is unknown, the filer shall substitute "unknown" for the address.
2. Complaint and Related Documents in Domestic Relations Cases:
   a. Upon filing the original complaint or any counterclaim or third party complaint, in addition to the Instructions for Service required by Subsection (H)(1) of this Rule, the filer shall include the address of the plaintiff(s) and defendant(s) in the caption of the document. If the address of any plaintiff or defendant is unknown, the filer shall substitute "unknown" for the address in the caption.
   b. Unless an attorney or party has obtained permission signed by the assigned Judge to defer service of summons for a specific period of time, the Instructions for Service filed with the original complaint or any counterclaim or third party complaint shall indicate a method of service pursuant to Civ. R. 4.
   c. The Clerk shall issue a summons and process the method of service in accordance with the Ohio Rules of Civil Procedure.
3. Documents Filed Subsequent to Complaint:
   a. In accordance with Civ. R. 5, unless the filer requests service by the Clerk and files the Instructions for Service required by Subsection (H)(1) of this Rule, the filer, not the Clerk, shall be responsible for serving all documents filed subsequent to the original complaint on all parties or their attorneys.
      i. When a submission is deemed filed pursuant to Subsection (G) of this Rule, the eFile system shall generate a Notification of Electronic Filing to the filer and any other party who is a registered user of the eFile system. The Notification of Electronic Filing shall constitute service under Civ. R. 5.
      ii. eService of documents subsequent to the complaint shall be considered valid and effective service and shall have the same legal effect as an original paper document.
      iii. The filer shall serve a paper copy of the document on all Self Represented parties who are not registered users of the Court's eFile system in accordance with Civ. R. 5.
   b. Entries and Orders:
      i. The Court's eFile system shall generate a Notification of Electronic Filing for all entries and orders signed by the Judge or Magistrate. This Notification of Electronic Filing shall constitute service under Civ. R. 5 for all Electronic Filing users. The Clerk shall serve a paper copy of the document on all Self Represented parties who are not registered users of the Court's eFile system in accordance with Civ. R. 5
      ii. After the order or entry has been signed and filed, the filer, not the Court or Clerk, shall serve on all Self Represented parties who are not registered

users of the Court's eFile system copies of all entries and orders submitted to the Court for signature in accordance with Civ. R. 5.

c. Certificate of Service:
   i. Proof of service of all documents required or permitted to be served shall be made in compliance with Civ. R. 5(B)(3).
   ii. The Certificate of Service shall be signed in accordance with applicable Ohio court rules and laws, including these Rules, and shall contain the following language for each party entitled to service:

   "I hereby certify that on [date] this document was eFiled via the Court's eFile system which shall send notifications of this filing to the following: [list parties or their counsel who are registered users of the Court's eFile system].

   I hereby certify that on [date] I served this document in accordance with [Civ. R. 5] on the following: [list Self Represented parties with addresses who are not registered users of the Court's eFile system]."

4. Service Date and Time to Respond or Act:
   a. For Self Represented parties who are registered users of the Court's eFile system and counsel of record, service shall be deemed complete at the time the Notification of Electronic Filing is generated by the Court's eFile system. Documents filed after 5:00 p.m. local time shall be served on the next business day.
   b. The time to respond to the served documents or perform any right, duty, or act shall be strictly governed by the applicable Rules of the Court. Self-Represented parties who are not registered users of the Court's eFile system and who are served by regular U.S. mail shall receive a three-day extension of time to respond or perform any right, duty, or act. Parties and counsel of record served via eService ***are not entitled to the three-day extension.***
5. Failure of eService: If the eFile system fails to generate the Notification of Electronic Filing, the party to be served may be entitled to an order extending the date for any response or the period within which any right, duty or act must be performed.

I. PERSONAL AND PRIVATE INFORMATION IN DOCUMENTS FILED WITH THE CLERK:

1. Definition: Personal and private information includes, but is not limited to, social security numbers, financial account numbers, names of minors, information protected by law from public disclosure, and driver's license or other personal identification numbers.
2. Exclusion: The filer shall not include personal and private information in any document filed with the Court unless such inclusion is necessary and relevant to the case. This requirement extends to and includes exhibits or addenda attached to filings.

3. Redaction: If personal and private information is necessary and must be included in a document, the filer shall redact the personal and private information from the document in the following manner:
   a. For social security numbers, financial account numbers, and drivers' license or other personal identification numbers, all but the last four digits of the number shall be redacted.
   b. For any other personal or private information, the information shall be replaced with "[REDACTED]".
4. Responsible Party: The filer is responsible for redacting personal and private information. The Clerk shall not review each document for compliance with this Rule; however, the Clerk may refuse to accept any document that contains personal and private information that has not been redacted or submitted in accordance with this Rule.
5. Entries and Orders: Personal and private information required to be included in entries and orders shall be redacted in the matter set forth in Subsection (I)(3) of this Rule. In the event that the redacted information is insufficient for an entry or order, the entries and orders, including the unredacted personal and private information, shall be filed in accordance with D.R. Rule 4.051.

J. EXCEPTIONS TO eFILING:

1. Petitions for domestic violence may be initiated by submitting information through the Montgomery County Domestic Relations Court eFiling portal. However, the case will not be approved and filed until the party appears at the Domestic Relations Court (during normal business hours) and signs in with the Domestic Violence Public Coordinator and completes the process. A Petition for Civil Protection Order submission will be held in the eFiling system for three (3) business days for approval. If the party does not appear during that time frame, the submission will be deleted.
2. Documents filed under seal or *in camera* shall be filed in accordance with D.R. Rule 4.051.
3. Self-Represented parties who are not registered users of the Court's eFile system may file documents in paper form with the Clerk in person, by U.S. Mail, or by using the Clerk's Public Access Terminal. Documents filed in accordance with this Rule shall be deemed filed and shall become the Court's Official Record when they are entered by the Clerk in the Court's eFile system.

K. COLLECTION OF FILING DEPOSIT AND FEES: The eFile system accepts payment of deposits and fees electronically. Alternatively, the eFile system can accommodate the filing of a Poverty Affidavit. In order to achieve valid filing status, any document requiring payment of a filing deposit or fee to the Clerk shall be filed in the same manner as any other eFiled document.

L. REMOVAL:

1. No person, except a Judge or Magistrate of the Court or an authorized Court employee, shall remove any documents or case files from the Clerk's custody.
2. Examination: Upon request, during regular business hours, the Clerk shall allow any person to examine, but not remove, any original document or case file that is maintained by the Clerk.
3. Transcripts of Testimony: The inspection, examination, and duplication of transcripts of testimony shall be governed by D.R. Rule 4.45.

RULE 4.051
FILING SEALED AND *IN CAMERA* DOCUMENTS

A. DEFINITION OF TERMS:

The terms "public access", "direct access", and "remote access" as used herein are governed by the definitions contained in Sup. R. 44(I), (J) and (K).

B. SEALED DOCUMENTS:

1. Motion
   a. The Clerk shall not accept any document to be filed under seal unless a motion to make the filing has been made and approved by the Court.
   b. The motion and proposed order shall designate the requested level of access.
   c. The motion and proposed order shall be filed pursuant to D.R. Rule 4.05.
   d. The documents that are petitioned to be filed under seal shall not be attached to the motion, as the motion will not be sealed.
2. Levels of Access
   a. No Remote Access by Public
      i. Access to the docket and documents via the Clerk's Public Records Online ("PRO") and the Court's eFile system is limited to Judge, Court staff, Clerk staff, parties, and counsel of record.
      ii. Public access to documents will be available only through the Clerk's office, during regular business hours.
      iii. The public may access the docket through PRO.
   b. No Remote or Direct Access by Public
      i. Access to documents via PRO and the Court's eFile system is limited to Judges, Court staff, Clerk staff, parties, and counsel of record.
      ii. No public access to documents through the Clerk's office.
      iii. The public may access the docket through PRO.
   c. Judicial Access Only
      i. No access to documents is permitted by Court staff, Clerk staff, parties, counsel of record, or the public. The documents will be limited to judicial access only.

ii. Only the docket will be available through the Court's eFile system and the PRO system.

3. Method of Filing: If a motion to file documents under seal is granted, the documents subject to the order shall be filed as follows:
   a. No Remote Access by Public: The documents shall be eFiled pursuant to D.R. Rule 4.05.
   b. No Remote or Direct Access by Public: The documents shall be eFiled pursuant to D.R. Rule 4.05.
   c. Judicial Access Only
      i. The documents shall be filed with the Clerk, secured in a sealed envelope, with the face of the envelope containing the case caption, a descriptive title of the document (unless such information has been included among the information sealed), the date of the order permitting the item to be sealed, and a conspicuous notation stating "DOCUMENTS UNDER SEAL – JUDICIAL ACCESS ONLY."
      ii. The Clerk shall file stamp the face of the envelope, enter on the docket that the document was filed under seal with "Judicial Access Only," and retain the envelope in the Clerk's office.
      iii. The Court's eFile system shall send a notice that a document with "Judicial Access Only" was filed. The filer shall notify Self Represented parties not registered with the Court's eFile system that a document with "Judicial Access Only" was filed.
      iv. The filer is required to serve paper copies of the sealed document on all parties in the case.

C. *IN CAMERA* DOCUMENTS:

1. Unless otherwise ordered by the assigned Judge, documents submitted for *in camera* review shall be submitted directly to the assigned Judge and not filed with the Clerk.
2. If the assigned Judge orders that documents submitted for *in camera* review be filed with the Clerk, the filer shall follow the procedures set forth in Subsection (B)(3)(c) of this Rule.

RULE 4.06
ASSIGNMENT OF DOMESTIC RELATIONS CASES

All initial filings for domestic violence, divorce, legal separation, annulment, dissolution, and foreign cases transferred pursuant to law shall be assigned randomly to one of the two Judges by the Clerk at the time the case is filed. All cases previously filed between the same parties, including any previously dismissed cases and domestic violence cases, shall be assigned to the same Judge who previously was assigned. Thereafter, full responsibility for that case rests with the assigned Judge, whose last name shall appear in the caption of all filings under the case number. If the case or a motion

therein is heard by a Magistrate, that Magistrate will normally continue to be the assigned Magistrate on all subsequent matters heard by a Magistrate. The Magistrate's last name in addition to the assigned Judge's name, shall appear in the caption of all filings under the case number. A Magistrate may be reassigned on any case at the discretion of the assigned Judge.

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

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

RULE 4.07
MATTERS REFERRED TO MAGISTRATES

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

(1) Contested and non-contested divorces, legal separations and annulments (or such issues therein specifically referred by the court);

(2) Dissolutions;

(3) Motions to establish**,** modify shared parenting plans, or terminate child support and/or spousal support;

(4) Motions to establish or modify allocation of parental rights and responsibilities and/or companionship rights;

(5) Motions to show cause on prior temporary or permanent court orders;

(6) Motions concerning foreign decrees and support matters;

(7) Mistake of fact or appellate proceedings from CSEA administrative orders;

(8) Oral hearings pursuant to Civil Rule 75(N);

(9) Motions or requests for clerical corrections pursuant to Civil Rule 60(A);

(10) Motions to vacate the marital premises;

(11) Domestic violence *ex parte* and full hearings;

(12) Motions to dismiss any matter pending before the Magistrate;

(13) Motions for a stay of execution of proceedings before the Magistrate;

(14) Motions to quash or strike before the Magistrate;

(15) Contempt in the actual presence of the Magistrate;

(16) Motions for attorney fees associated with any of the preceding actions;

(17) The setting of a bond to assure appearance of a party at a subsequent hearing in an action to show cause;

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

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

RULE 4.08
PLEADINGS AND MOTIONS

A. GENERAL REQUIREMENTS

1. The requirements of this rule apply to Self-Represented parties and attorneys.
2. All pleadings, motions, briefs and other papers filed with the Clerk of Courts shall conform to Civ. R. 10**.** They shall be legibly typewritten or printed on one side only of letter size paper (approximately 8 ½" x 11") and without backing or cover. The face page of all filings shall provide a blank space of at least 3 inches at the top sufficient to permit the Clerk of Courts to add time-stamp imprints and each page shall be numbered.
3. Cases shall be designated based upon type and the year of filing, and shall be consecutively numbered, as follows:

Divorces	-	20-- -DR-xxxx
Legal Separations	-	20-- -LS-xxxx
Annulments	-	20-- -AN-xxxx
Dissolutions	-	20-- -DM-xxxx
Domestic Violence	-	20-- -DV-xxxx
UCCJEA Filings	-	20-- -UJ-xxxx
Registration of Foreign Support Orders	-	20-- -FSO-xxxx
Registration of Foreign Judgments	-	20-- -OS-xxxx
Custody/Support (married) Cases	-	20-- -CS-xxxx

4. The caption in all pleadings, petitions, motions, briefs and other papers filed shall state the name, address of all the parties, and shall include a brief title identifying the purpose of the motion, the case number assigned, the Support Enforcement Tracking System [hereinafter "SETS"] number if assigned, the name of the assigned Judge, and the name of any assigned Magistrate. If any information is not known, there shall be a notation to that effect in the appropriate place on the caption.
5. All motions shall state with particularity the grounds therefore, shall set forth by memorandum or affidavit the relief or order sought and shall identify any prior order(s) at issue.
6. All pleadings filed with the Clerk of Courts by an attorney shall bear the attorney's name, Ohio Supreme Court registration number, firm name (if any), office address, telephone number, fax number (if any) and a designation of which party the attorney represents. All filings made by Self-Represented parties shall be signed in conformity with Civ. R. 11. [See Loc. R. 4.05(F)]
7. Whenever a document is mailed to the Clerk of Courts for filing, the party sending same shall provide a self-addressed return envelope of sufficient size with proper postage affixed.
8. No affidavit or other exhibit may be attached to any filing, except as specifically authorized by these rules, the Civil Rules, specific court order, or permission of the court. Exhibits may be delivered to the assigned Judge or Magistrate with a time-stamped copy of a filing for consideration in connection with that filing, if such exhibits are simultaneously served upon opposing counsel or an unrepresented party. Depositions upon oral examination, interrogatories, requests for documents, requests for admission, and answers and responses thereto shall not be filed unless on order of the court, or for use as evidence, or for consideration of a motion in the proceeding. Depositions may be filed with the Clerk of Courts only by a certified court reporter. A written transcript of a videotaped deposition must be filed with the videotape at least 3 working days prior to trial.
9. Affidavits signed by minor children shall not be accepted for filing nor admitted into evidence as exhibits. Other exhibits relating to the minor children such as writings, video or tape recordings, shall not be accepted for filing nor admitted into evidence as exhibits pursuant to R.C. Section 3109.04(B)(3).
10. Pleadings may be amended or supplemented as permitted by Civ. R. 15.
11. All documents submitted for filing, including entries for court signature, must contain a distribution list to include both parties, attorneys (if any), court assignment office, bailiff, CSEA, if appropriate, and others as appropriate.
12. The Clerk of Courts may not accept for filing any document which does not conform to the requirements of this rule.
13. Joinder of parties is governed by Civ. R. 75(B). Whenever a party is joined, by proper motion and entry, all subsequent filings must include notice to that party.

B. PLEADINGS:

1. Initial Pleadings:
   a. The caption of all initial pleadings shall contain the information required by Civ. R. 10(A).
   b. The eFile system shall generate a Civil Case Questionnaire Form based on the information provided to the eFile system when the initial pleading is filed.
2. Pleadings Filed Subsequent to the Initial Pleading:
   All pleadings filed subsequent to the initial pleading shall specify:
   a. the case number;
   b. the name of the assigned Judge or the name of the Judge who heard the case and the Magistrate, if applicable;
   c. the signature of the attorney or Self Represented party who is making the filing; and
   d. A Certificate of Service.
3. Personal and Private Information in Pleadings and Exhibits:
   a. In accordance with D.R. Rule 4.05(I), a filer shall not include personal and private information in any document filed with the Court, unless such inclusion is necessary and relevant to the case.
   b. If personal and private information is necessary and must be included in a document, the filing party must file the document in accordance with D.R. Rule 4.05(I),

C. MOTIONS:

1. Moving Parties:
   a. All moving parties shall file and serve their motions with the following:
      i. A brief written memorandum that shall:
         a) state with particularity the grounds in support of the motion;
         b) set forth the relief or order sought; and
         c) specify the citations of the authorities upon which the motion is based.
      ii. A proposed order or entry filed in accordance with D.R. Rule 4.05. Substantive motions do not require a proposed order or entry to be filed unless otherwise ordered by the Court.
   b. If a memorandum in opposition is filed in accordance with Subsection (B)(2) of this Rule, a moving party may file a reply memorandum within 7 days from the date on which the memorandum in opposition is filed.
2. Opposing Parties: All parties who oppose motions may file and serve a memorandum in opposition to the motion that has been filed and served against them. Memoranda shall be filed and served within 14 days from the date on which the motion was served.
3. Other Memoranda: No other memoranda shall be filed without leave of the Court.
4. Limitation upon Length of Memoranda:
   Memoranda in support of, or in opposition to, any motion or application to the Court shall not exceed 20 pages and otherwise shall comply with D.R. Rule 4.05. The

page limitation may be modified by the Court for good cause shown and upon such conditions as set by the Court.

5. Motions for Relief from Judgment or Order under Civ. R. 60(A) and 60(B) shall be filed separately and should not be included in any multi-branch motion.

RULE 4.09
DOCUMENTS REQUIRED FOR FILING

In original filings or post decree filings the following documents shall also be filed by each party as set forth below and each filing shall include an Application for Child Support Services whether or not there are minor children:

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

Affidavit of Financial Disclosure [Appendix, Form 2]
Application for Child Support Services (original and one copy) [Appendix, Form 7]

(B) Complaint for Divorce/Legal Separation/Annulment <u>with</u> children:

Affidavit of Financial Disclosure [Appendix, Form 2]
Information for Parenting Proceeding Affidavit [Appendix, Form 3]
Application for Child Support Services (original and one copy) [Appendix, Form 7]

(C) Petition for Dissolution without children:

Attach copy of Separation Agreement to Petition
Submit Original Separation Agreement separately
Affidavit of Financial Disclosure [Appendix, Form 2]
Waiver of Service
Application for Child Support Services (original and one copy) [Appendix, Form 7]

(D) Petition for Dissolution <u>with</u> children:

Attach copy of Separation Agreement to Petition
Submit Original Separation Agreement separately
Affidavit of Financial Disclosure [Appendix, Form 2]
Information for Parenting Proceedings Affidavit [Appendix, Form 3]
Waiver of Service
Child Support Computation Worksheet (as required by R.C. 3119.022 and 3119.023 - full worksheet). [Appendix, Forms 23, 24]
Application for Child Support Services (original and one copy) [Appendix, Form 7]

(E) Petition to Register Foreign Orders:

An authenticated copy of the foreign judgment
Application for Child Support Services (original and one copy) [Appendix, Form 7]

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

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

(G) Post decree motion requesting reallocation of parenting rights and responsibilities ("Custody"):

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

(H) Post decree motion requesting modification of parenting time ("Visitation"):

Information for Parenting Proceeding Affidavit [Appendix, Form 3]

(I) Post decree motions to show cause ("Contempt"):

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

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

Application for Child Support Services (original and one copy) [Appendix, Form 7]
Affidavit of Financial Disclosure [Appendix, Form 2]

RULE 4.10
AFFIDAVIT OF FINANCIAL DISCLOSURE

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

material change in employment, income, expenses or other information included in the affidavit.

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

(B) Distribution of Affidavit.

(1) **Divorce, Legal Separation, Annulment**: All complaints for divorce, legal separation, or annulment shall be accompanied by an Affidavit of Financial Disclosure, a copy of which shall be sent by the plaintiff to the defendant. All defendants shall file an Affidavit of Financial Disclosure within 14 days of service of summons or with any Answer or Counterclaim if one has not already been filed, and shall serve a copy on the plaintiff.

(2) **Dissolutions of Marriage**: In petitions for dissolution~~s~~ of marriage, an Affidavit of Financial Disclosure shall be filed by each party contemporaneously with the petition.

(3) **Domestic Violence**: In all domestic violence cases where support is an issue, the petitioner shall file an Affidavit of Financial Disclosure which shall be sent to the respondent. The respondent shall file an Affidavit of Financial Disclosure prior to the next hearing on the matter.

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

RULE 4.11
SERVICEMEMBERS CIVIL RELIEF ACT

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

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

In any case in which child support payments are owed by a military member, the court may require that individual to make an allotment from his/her pay and allowances

for such support. 42 U.S.C. 665(a).

RULE 4.12
SERVICE BY PUBLICATION

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

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

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

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

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

The clerk shall also cause the complaint and summons to be mailed by ordinary mail, address correction requested, to the defendant's last known address. The clerk shall obtain a certificate of mailing from the United States Postal Service. If the clerk is notified of a corrected or forwarding address of the defendant within the 6 week period

that notice is posted pursuant to division (B) of this rule, the clerk shall cause the complaint and summons to be mailed to the corrected or forwarding address. The clerk shall note the name, address and date of each mailing in the docket.

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

RULE 4.13
SERVICE OF PROCESS AND SPECIAL PROCESS SERVERS

(A) PROCESS SERVERS

1. One-time Appointment:
   If a party desires personal service to be made by a special process server pursuant to Civ. R. 4.1, that party or counsel must file with the Clerk an entry of appointment providing:
   a. The name of the person to be appointed as process server;
   b. That the person to be appointed as process server is 18 years of age or older; and
   c. That the person to be appointed as process server is not a party in the action or counsel for a party in the action.

2. Standing Appointment:
   a. A person may be designated as a "Standing Special Process Server" for cases filed in the Court by filing a combined affidavit and order. The affidavit shall set forth the following information:
      i. The name, address, and telephone number of the person to be appointed as a Standing Special Process Server;
      ii. That the person is 18 years of age or older;
      iii. That the person agrees not to attempt service of process in any case the server is a party or counsel for a party; and
      iv. That the person agrees to follow the requirements of Civ. R. 4-4.6, any applicable local rule, and specific instructions for service of process as ordered by the Court in individual cases.
   b. The Administrative Judge authorizes the appointment order for a Standing Special Process Server.
   c. The order shall be captioned: "In Re: The Appointment of [Name of Person Requesting Appointment] as Standing Special Process Server" and state the following:

      "It appearing to the Court that the following person has complied with the provisions of D.R. Rule 4.08 (C)(2) [Name of Person Requesting Appointment] is hereby designated as a Standing Special Process Server authorized to make service of process in all cases filed in this Court and to serve until further order of the Court."

d. The Clerk shall record such appointment on the Court's general docket and shall retain the original affidavit and order. In any case thereafter, the Clerk shall accept a time-stamped copy of such affidavit and order as satisfying the requirements of Civ. R. 4.1(B) for designation by the Court of a person to make service of process.

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

(C) Service of a Party in Foreign Country.

(1) Servicemembers must be served notice in accordance with the Servicemembers Civil Relief Act.

(2) Service of a party residing in a foreign country that is a signatory of the Hague Convention must be served in accordance with that convention. (see Civ. R. 4.5(A) effective July 1, 2012)

(3) Service of a party residing in a foreign country that is not a signatory of the Hague Convention must comply with rules of service for that country.

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

(A) Temporary Support Order

Upon the filing of a divorce or legal separation action, the court may issue a temporary order pursuant to Civ. R. 75(N) which may contain orders of temporary custody, child support, parenting time, and spousal support or such other orders as the court deems appropriate. This temporary order is based on the information contained in the Affidavit(s) of Financial Disclosure which must be filed in divorce or legal separation actions pursuant to Mont. D.R. Rules 4.09 and 4.10. Parties using the Ohio Supreme Court affidavit (appendix Form 2A) shall file a separate motion for an award of temporary orders (see Mont. D.R. 4.10(A)). Copies of the file-stamped temporary orders will be forwarded to the attorneys of record and unrepresented parties.

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

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

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

(B) Interim Attorney Fee Award

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

(C) Temporary Expenses of Suit

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

(D) Application for Child Support Services

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

RULE 4.15
ORAL HEARINGS ON TEMPORARY ORDER

(A) Request for Oral Hearings

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

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

(B) Temporary Custody

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

(C) Inaccurate Affidavits

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

RULE 4.16
MOTION TO VACATE PREMISES

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

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

(1) Attempted to cause or recklessly caused bodily injury by acts of physical violence, or;

(2) Placed a party, by threat of force, in fear of imminent serious physical harm, or;

(3) Committed any act with respect to a child that would result in the child being an abused child as defined in R.C. 2151.031, or;

(4) Engaged in conduct or creates an environment which causes or is likely to cause severe emotional and/or mental stress to the spouse and/or minor children of the parties.

PRETRIAL AND TRIAL RULES

RULE 4.17
TEMPORARY RESTRAINING ORDERS AND *EX PARTE* ORDERS

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

affidavit of the party. *Ex parte* temporary restraining orders shall be made by separate order and shall be granted for the following purposes:

(1) **Abuse**: Plaintiff/defendant is hereby restrained from abusing, annoying, harassing, molesting, threatening or injuring plaintiff/defendant and the minor child(ren).

(2) **Removal of Children**: Plaintiff/defendant is hereby restrained from removing the minor child(ren) from the State of Ohio, except temporarily (14 days or less) for vacation.

(3) **Property**: Plaintiff/defendant is hereby restrained from damaging, moving, selling, giving away, transferring, disposing of, or encumbering any existing or later-acquired interest of either party in any real or personal property, with the intent to permanently deprive, except plaintiff/defendant's clothing, tools of trade, and personal effects.

(4) **Vehicle**: Plaintiff/defendant is hereby restrained from interfering with plaintiff/defendant's use of the vehicle currently used primarily by the plaintiff/defendant.

(5) **Funds & Businesses**: Plaintiff/defendant is hereby restrained from selling, giving away, withdrawing, transferring, or encumbering any funds, account, share, stock, bond, or other existing or later-acquired interest of either party in any asset, business, corporation, partnership, employer, pension fund, bank, trust, or financial institution.

(6) **Debts**: Plaintiff/defendant is hereby restrained from incurring any debt or making any credit card purchase in plaintiff/defendant's name or on any joint account.

(7) **Return to Premises**: Plaintiff/defendant, who has been voluntarily absent from the marital premises for the past 30 consecutive days, is hereby restrained from re-entering the marital premises.

(8) **Utilities**: Plaintiff/defendant is hereby restrained from terminating, modifying or changing the basic utility service (gas, electric, water, phone and trash) to the marital premises.

(9) **Insurance**: Plaintiff/defendant is hereby restrained from terminating, modifying, or changing the beneficiaries of any life, health, automobile, or other insurance policy covering any party or minor child(ren), or otherwise violating R.C. 3105.71.

(10) **Third Parties**: Third-party defendant is hereby restrained from permitting plaintiff/defendant to remove, sell, withdraw, transfer, or encumber any existing or later-acquired asset, real estate, vehicle, funds, account, share, stock, bond, or other interest of either party.

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

(B) Dissolving of Temporary Restraining Orders. A party against whom an *ex parte* temporary restraining order was issued may file a motion, supported by an affidavit, requesting that the order be dissolved. In the absence of agreement of the parties as to the terms and conditions for dissolving such orders, the matter shall be set for hearing. The posting of a bond is within the discretion of the court upon motion by a restrained party.

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

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

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

RULE 4.18
DISCOVERY PROCEDURES

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

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

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

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

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

(1) All pension and profit-sharing plans including the most recent plan summary;

(2) All COBRA benefits to which the other party may be entitled;

(3) Copies of all real estate deeds, vehicle titles and registration, unless already in the possession of the other party;

(4) All appraisals of real estate or personal property or any business property in which the party holds an interest;

(5) Copies of the last 3 years individual tax returns, unless already in the possession of the other party;

(6) Documentary proof of current income from all sources; and

(7) Copies of the most recent statements on all bank accounts, IRA's, stock accounts, mortgages, credit card accounts, and other debts.

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

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

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

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

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

RULE 4.19
PRETRIAL AND PREHEARING CONFERENCES

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

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

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

(1) Narrow the disputed legal issues;

(2) Admit to undisputed facts;

(3) Stipulate to the authentication of documents and other exhibits to be introduced at trial;

(4) Submit a Child Support Computation Worksheet;

(5) Submit written calculations justifying any request for spousal support;

(6) Exchange reports of expert witnesses; and

(7) Discuss referral for mediation, counseling, conciliation or investigation.

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

(1) Discovery orders;

(2) Withholding notices;

(3) Orders of referral;

(4) Interim attorney fee orders;

(5) Orders appointing a guardian ad litem/psychologist with orders allocating costs and setting deadlines for reports (also see Mont. D.R. Rules 4.29 and 4.30);

(6) Orders requiring pretrial statements.

(D) Attendance; Failure to Appear.

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

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

RULE 4.20
CONTINUANCES

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

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

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

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

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

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

(5) Reason for continuance;

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

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

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

(C) Procedure. A copy of the motion must be served upon opposing counsel, or the opposing party if not represented, prior to submission to the assigned Judge or Magistrate. If the motion is not granted by the assigned Judge or Magistrate, the case shall proceed as originally scheduled.

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

RULE 4.21
WITHDRAWAL OF COUNSEL

Any withdrawal from employment by counsel is governed by the following Rule 1.16 of the Ohio Rules of Professional Conduct:

(a) Subject to divisions (c), (d), and (e) of this rule, a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if any of the following applies:

(1) the representation will result in violation of the Ohio Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client;

(3) the lawyer is discharged.

(b) Subject to divisions (c), (d), and (e) of this rule, a lawyer may withdraw from the representation of a client if any of the following applies:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is illegal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation, financial or otherwise, to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client;

(7) the client gives informed consent to termination of the representation; (8) the lawyer sells the law practice in accordance with Rule 1.17;

(9) other good cause for withdrawal exists.

(c) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.

(d) As part of the termination of representation, a lawyer shall take steps, to the extent reasonably practicable, to protect a client's interest. The steps include giving due notice to the client, allowing reasonable time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules. Client papers and property shall be promptly delivered to the client. "Client papers and property" may include correspondence, pleadings, deposition

transcripts, exhibits, physical evidence, expert reports, and other items reasonably necessary to the client's representation.

(e) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned, except when withdrawal is pursuant to Rule 1.17, (Sale of Law Practice).

RULE 4.22
DISMISSAL OF CASES

(A) Want of Prosecution

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

(B) Voluntary Dismissal

If a party dismisses the complaint or counterclaim for divorce, legal separation or annulment, that party shall include an order to terminate any withholding notice and vacate restraining orders that may have been filed.

RULE 4.23
FILING OF FINAL JUDGMENTS AND DECREES

(A) Non-contested matters. A proposed final judgment and decree shall be submitted through eFiling to the Court 14 days prior to the hearing for <u>all</u> dissolutions and any non-contested divorces, legal separations and annulments.

(1) If the case is heard by a Magistrate, both the assigned Judge and the Magistrate shall sign the decree.

(2) Failure to file the final decree may result in the Court issuing a notification of deadline to file or a Notice of Potential Dismissal. The case may be dismissed should the decree not be filed within the time frame designated by the assigned Judge.

(3) All separation agreements filed in dissolutions shall be reviewed by the chief Magistrate or designee prior to the final hearing. Requested changes to the separation agreement must be made by an amendment to the separation agreement or incorporated into the decree of dissolution and presented to the court at the final hearing. Failure to do so may result in resetting the hearing or dismissal of the case.

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

(1) Unless otherwise directed by the court, counsel for plaintiff shall present a proposed decree to opposing party or counsel within 10 days after the final hearing.

(2) Opposing party or counsel shall have 3 days to approve or reject the proposed decree. In the event the proposed decree is rejected, the opposing party or counsel shall notify the other party or counsel immediately in writing his or her objections.

(3) Failure of opposing party or counsel to approve or reject any proposed decree will permit the party who prepared the decree to present it for Court approval and filing. In such instances the proposed decree shall be submitted through eFiling.

(4) Failure to timely submit a decree in accordance with this rule may result in the issuance of a citation of contempt to counsel in the case or dismissal of the case.

(5) All decrees submitted to the court shall comply with the provisions of section (D) of this rule Mont. D.R. Rule 4.24.

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

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

(1) Child Support Computation Worksheet signed by both parties which shall separately reflect the child support, cash medical, and processing fee plus the total of these and shall match the Court's child support Order. [Appendix, Form 23, 24]

(2) Standard Order of Parenting Time; [Appendix, Form 4]

(3) Standard Order of Health Care Needs for Dependent Children; [Appendix, Form 5]

(4) Montgomery County CSEA New Case Number Work Sheet (submit for both child and spousal support cases); [Appendix, Form 6]

(5) Obligee's Rights and Remedies for Enforcement of Support (submit for both child and spousal support cases). [Appendix, Form 8]

RULE 4.24
REQUIRED LANGUAGE FOR FINAL DECREES AND AGREED ENTRIES

(A) General

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

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

- Identity of employer, payroll address and pay cycles; or
- Identity and address of financial institution and last 4 digits of the account from which the support obligation is paid; and
- Identity and address of health care provider (medical, dental and optical).

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

FINAL DECREES INVOLVING <u>REAL PROPERTY</u> SHALL CONTAIN A COMPLETE <u>LEGAL DESCRIPTION</u> OF ALL REAL ESTATE.

(B) Support Language

(1) Child support provisions shall contain the following:

- A total current monthly support amount including child support, cash medical support, and processing fee with the Child Support Computation Worksheet attached and incorporated;
- All Child Support Computation Worksheets attached shall separately reflect the child support, cash medical, and processing fee plus the total of these and shall match the Court's child support Order.
- Effective date of the support obligation;
- If an arrearage exists, state the amount of the arrearage (if known) and the amount of monthly repayment until paid in full;
- If the parties agree to continue child support beyond age 19, said provision shall be stated in the final decree;
- A statement that support may be terminated as provided in R.C. 3119.88 (Reasons for termination of child support);
- Designation of parent who may claim child(ren) as dependent and/or credit for federal income tax purposes; (R.C. 3119.82)

- The parents' life insurance benefits, if any, for the benefit of the children shall be included.

(2) Spousal support provisions shall provide the following:

- Monthly amount including processing fee;
- Effective date of the support obligation;
- Duration of the obligation;
- Grounds for termination; *e.g.*, death of either party, remarriage of obligee, or other agreed upon grounds;
- If an arrearage~~s~~ exists, state the amount (if known) and amount of monthly repayment, including processing fee, until paid in full;
- An unambiguous statement that the court will or will not have continuing jurisdiction to modify spousal support as to amount or term or both; (R.C. 3105.18)

An example of support language:

> **Obligor is ordered to pay a total current child support obligation in the amount of $@ per month. This amount includes child support, cash medical support, and processing fee as found on the last line of the Child Support Computation Worksheet, which is attached and incorporated as part of this order. Additionally, Obligor is ordered to pay $@ per month on the child support arrearage, including processing fee, $@ per month for spousal support, including processing fee, and $@ per month on the spousal support arrearage, including processing fee. This support order is effective @.**

(3) Method of payment:

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

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

(C) Withholding Notice Language

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

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

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

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

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

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

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

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

IT IS FURTHER ORDERED that both parties shall take notice of the Obligee's Rights and Remedies for Enforcement of Support, attached hereto, available to the obligee in the event the obligor fails to make payment of support as ordered herein. [Counsel shall attach a form DR-20 Obligee's Rights and Remedies for Enforcement of Support to each copy of the decree or agreed order. [Appendix Form 8]

EACH PARTY TO THIS SUPPORT ORDER MUST NOTIFY THE CHILD SUPPORT ENFORCEMENT AGENCY IN WRITING OF HIS OR HER CURRENT MAILING ADDRESS, CURRENT RESIDENCE ADDRESS, CURRENT RESIDENCE TELEPHONE NUMBER, CURRENT DRIVER'S LICENSE NUMBER, AND OF ANY CHANGES IN THAT INFORMATION. EACH PARTY MUST NOTIFY THE AGENCY OF ALL CHANGES UNTIL FURTHER NOTICE

FROM THE COURT OR AGENCY, WHICHEVER ISSUED THE SUPPORT ORDER.

IF YOU ARE THE OBLIGOR UNDER A CHILD SUPPORT ORDER AND YOU FAIL TO MAKE THE REQUIRED NOTIFICATIONS, YOU MAY BE FINED UP TO $50 FOR A FIRST OFFENSE, $100 FOR A SECOND OFFENSE, AND $500 FOR EACH SUBSEQUENT OFFENSE. IF YOU ARE AN OBLIGOR OR OBLIGEE UNDER ANY SUPPORT ORDER ISSUED BY A COURT AND YOU WILLFULLY FAIL TO GIVE THE REQUIRED NOTICES, YOU MAY BE FOUND IN CONTEMPT OF COURT AND BE SUBJECTED TO FINES UP TO $1,000 AND IMPRISONMENT FOR NOT MORE THAN 90 DAYS.

IF YOU ARE AN OBLIGOR OR OBLIGEE AND YOU FAIL TO GIVE THE REQUIRED NOTICES TO THE CHILD SUPPORT ENFORCEMENT AGENCY, YOU MAY NOT RECEIVE NOTICE OF THE CHANGES AND REQUESTS TO CHANGE THE CHILD SUPPORT AMOUNT, HEALTH CARE PROVISIONS, OR TERMINATION OF THE CHILD SUPPORT ORDER. IF YOU ARE AN OBLIGOR AND YOU FAIL TO GIVE THE REQUIRED NOTICES, YOU MAY NOT RECEIVE NOTICE OF THE FOLLOWING ENFORCEMENT ACTIONS AGAINST YOU: IMPOSITION OF LIENS AGAINST YOUR PROPERTY; LOSS OF YOUR PROFESSIONAL OR OCCUPATIONAL LICENSE, DRIVERS LICENSE, OR RECREATIONAL LICENSE; WITHHOLDING FROM YOUR INCOME; ACCESS RESTRICTION AND DEDUCTION FROM YOUR ACCOUNTS IN FINANCIAL INSTITUTIONS; AND ANY OTHER ACTION PERMITTED BY LAW TO OBTAIN MONEY FROM YOU TO SATISFY YOUR SUPPORT OBLIGATION.

(E) Health Care and Medical Expenses Provisions

Decrees and agreed entries related to child support shall contain a provision in accordance with R.C. 3119.30 that one or both of the parties shall provide health care coverage for any minor child. The child support obligee is rebuttably presumed to be the appropriate parent to provide health care coverage for the child(ren) subject to the child support order. The order shall specify that the obligee must provide the health care coverage unless rebutted pursuant to division (B)(1) of section 3119.30. If health care coverage is not available to either party at a reasonable cost, a provision shall be included requiring that coverage be obtained if it subsequently becomes available to either party at a reasonable cost.

All health care coverage provisions shall refer to the Standard Order of Health Care Needs for Dependent Children [Appendix, Form 5] and direct the parties to take notice of it; the Standard Order of Health Care Needs for Dependent Children shall be attached to the decree or agreed order and be incorporated by reference.

When a child support order is issued or modified, the order shall include a cash medical support amount consistent with division (B) of section 3119.302 of the Revised Code for each child subject to the order. The cash medical support amount shall be

ordered based on the number of children subject to the order and split between the parties using the parents' income share.

Any cash medical support paid pursuant to division (C) of section 3119.30 shall be paid through the Ohio Child Support Payment Central (OCSPC) by the obligor to either the obligee if the children are not Medicaid recipients or to the department of Medicaid when a Medicaid assignment is in effect for any child under the support order to defray the cost of Medicaid expenditures.

Health care provision shall further include language requiring the obligee to be responsible for the first $388.70 incurred per child per calendar year of uninsured ordinary medical, dental, and optical expenses. It shall also specify that remaining uninsured extraordinary medical, dental, optical, and all psychological expenses for any minor child are to be shared in amounts equal to the parents' percentages of total income from Line 17 of the Child Support Computation Worksheet. The parent responsible for each percentage must be indentified.

Use <u>one</u> of the following four (4) options:

(1) <u>Health Care Coverage Provided by Obligor's Insurance</u>

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

Each parent is responsible for a cash medical support obligation to be applied towards ordinary medical expenses (copayments and deductibles, and uninsured medical-related costs) for the child(ren) of the order. The cash medical support obligation is $388.70 per child per year. The obligor's share of the cash medical support obligation is included in the total monthly child support order.

Once the obligee pays $388.70 per child per year (ordinary medical expenses), any additional uninsured medical expenses for that child are extraordinary medical expenses. Extraordinary medical expenses are to be paid by the parents in amounts equal to the parents' income share found on Line 17 of the Child Support Computation Worksheet: Obligor @% and Obligee @%, unless otherwise agreed as follows: @.

If the party responsible for health care coverage cannot obtain coverage at a reasonable cost, the Court orders that public health care will satisfy this coverage requirement.

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

(2) <u>Health Care Coverage Provided by Obligee's Insurance</u>

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

Each parent is responsible for a cash medical support obligation to be applied towards ordinary medical expenses (copayments and deductibles, and uninsured medical-related costs) for the child(ren) of the order. The cash medical support obligation is $388.70 per child per year. The obligor's share of the cash medical support obligation is included in the total monthly child support order.

Once the obligee pays $388.70 per child per year (ordinary medical expenses), any additional uninsured medical expenses for that child are extraordinary medical expenses. Extraordinary medical expenses are to be paid by the parents in amounts equal to the parents' income share found on Line 17 of the Child Support Computation Worksheet: Obligor @% and Obligee @%, unless otherwise agreed as follows: @.

If the party responsible for health care coverage cannot obtain it at a reasonable cost, the Court orders that public health care will satisfy this coverage requirement.

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

(3) <u>In the event both obligor & obligee have health care coverage available</u>

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

Each parent is responsible for a cash medical support obligation to be applied towards ordinary medical expenses (copayments and deductibles, and uninsured medical-related costs) for the child(ren) of the order. The cash medical support obligation is $388.70 per child per year. The obligor's share of the cash medical support obligation is included in the total monthly child support order.

Once the obligee pays $388.70 per child per year (ordinary medical expenses), any additional uninsured medical expenses for that child are extraordinary medical expenses. Extraordinary medical expenses are to be paid by the parents in amounts equal to the parents' income share found on Line 17 of the Child Support Computation Worksheet: Obligor @% and Obligee @%, unless otherwise agreed as follows: @.

If the party responsible for health care coverage cannot obtain it at a reasonable cost, the Court orders that public health care will satisfy this coverage requirement.

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

(4**)** <u>In the event neither obligor nor obligee has health care coverage available for a reasonable cost</u>

THE COURT FINDS no health care coverage for dependent children is available at a reasonable cost. The child support obligee is rebuttably presumed to be the appropriate parent to provide health insurance coverage for the children subject to the child support order. The obligee must provide health care coverage unless it is unavailable at a reasonable cost.

Each parent is responsible for a cash medical support obligation to be applied towards ordinary medical expenses (copayments and deductibles, and uninsured medical-related costs) for the child(ren) of the order. The cash medical support obligation is $388.70 per child per year. The obligor's share of the cash medical support obligation is included in the total monthly child support order.

Once the obligee pays $388.70 per child per year (ordinary medical expenses), any additional uninsured medical expenses for that child are extraordinary medical expenses. Extraordinary medical expenses are to be paid by the parents in amounts equal to the parents' income share found on Line 17 of the Child Support Computation Worksheet: Obligor @% and Obligee @%, unless otherwise agreed as follows: @.

If the party responsible for health care coverage cannot obtain it at a reasonable cost, the Court orders that public health care will satisfy this coverage requirement.

IT IS FURTHER ORDERED if, after the issuance of this order, group health care coverage becomes available for the dependent child(ren) at a reasonable cost through a plan offered by the Obligor's or Obligee's employer or through any other group health insurance plan available to Obligor or Obligee, said party shall enroll the child(ren) in that plan within 30 days of it becoming available and immediately notify the Montgomery County Support Enforcement Agency, 1111 S. Edwin C. Moses Blvd., P.O. Box 8744, Dayton, Ohio 45422, in writing of the available insurance, company name, address, and policy number. If the obligor requires a modified court order to enroll the child(ren), the obligor shall see such modification through the Court or the Montgomery County Support Enforcement Agency.

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

(F) Reserved

(G) Parentage

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

(H) Parenting Time

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

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

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

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

All other provisions of the Standard Order of Parenting Time that are not specifically addressed shall be incorporated by reference.

This Court's Standard Order of Parenting Time has been determined to provide 90 overnights per year to the non-residential parent for purposes of the child support calculation.

(I) Restoration of Name

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

(J) Clerk Administrative Costs

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

(K) Final Appealable Orders

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

NOTICE OF FINAL APPEALABLE ORDER

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

MIKE FOLEY, Clerk of Courts By: SHARON HARNESS,Date:_____

RULE 4.25
DIVISION OF PENSIONS

(A) Qualified Domestic Relations Order (QDRO)

Unless otherwise ordered by the assigned Judge, the participant in a pension or retirement plan ordered to be divided by a court order shall cause a Qualified Domestic Relations Order (or other appropriate order) to be prepared for submission to the court, within 30 days of any Final Judgment and Decree. Failure to file the Qualified Domestic Relations Order within the time frame designated by the assigned Judge may result in the matter being set for hearing. Otherwise, either party may file a motion to have the issue set before the Court.

Upon notice from the pension plan administrator that the submitted QDRO does not conform to their requirements, the person who prepared the original QDRO shall revise the QDRO to conform with the plan administrator's requirements and refile same within 30 days.

(B) Division Of Property Order (DOPO)

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

Unless otherwise ordered by the assigned Judge, the participant in these pension or retirement plans shall cause a Division of Property Order (or other appropriate order) to be prepared for submission to the court, within thirty (30) days of any Final Judgment and Decree. Failure to file the Division of Property Order within the time frame designated by the assigned Judge may result in the matter being set for hearing. Otherwise, either party may file a motion to have the issue set before the Court.

Specific retirement information may be found for the respective agencies on the Internet at www.opers.org; www.strsoh.org; www.ohsers.org; www.op-f.org and www.ohprs.org.

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

(C) Survivor Benefits

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

RULE 4.26
QUALIFIED MEDICAL CHILD SUPPORT ORDER (QMCSO)

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

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

RULE 4.27
AWARD OF ATTORNEY FEES

(A) Discretionary Attorney Fee Awards. Pursuant to the court's equitable powers and jurisdiction granted by R.C. 3105.011, and pursuant to the specific authority granted by R.C. 3105.73, the court may award reasonable attorney fees at any stage of proceedings, including appeal, modification, and enforcement cases, if the court determines that a party will be prevented from fully litigating their rights and adequately protecting their interests, and that the award is equitable. Also, pursuant to the terms of R.C. 3123.17, the court may order either party to pay costs, including attorney fees, whenever the court issues or modifies a child support or spousal support order.

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

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

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

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

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

Absent evidence to the contrary, the following shall be considered a *prima facie* reasonable attorney fee: up to $500.00 per hearing conducted or prepared for, in modification and enforcement proceedings; and up to $1,000.00 in divorce, legal separation, annulment, appeal, and custody proceedings.

(G) Attorney Fee Hearing Requirements.

(1) If the moving party's request exceeds the *prima facie* reasonable attorney fee amounts set forth in paragraph (F), that party must file a motion to set the matter for hearing.

(2) Prior to any attorney fee hearing, both parties shall make a detailed written disclosure of attorney fees incurred, including hourly rates charged, time expended, fees paid, the source of fees paid, amounts due, and additional litigation expenses incurred. In order to minimize each party's litigation expenses and litigation in the court generally, counsel shall apply their own experience and make every good faith effort to reach agreement. If fee hearing is necessary, the moving party must provide testimony from an expert witness (another attorney with domestic relations experience) as to the reasonableness of the request, based on Rule 1.5 of the Ohio Rules of Professional Conduct and *Swanson v. Swanson* (1976), 48 Ohio App. 2d 85.

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

Self-represented parties have not incurred attorney fees and therefore are not eligible for an award of attorney fees.

ALLOCATION OF PARENTAL RIGHTS AND RESPONSIBILITIES, AND PARENTING TIME

RULE 4.28

APPLICATION FOR CHILD SUPPORT SERVICES

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

RULE 4.29
GUARDIAN AD LITEM

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

(B) Fees. Unless ordered otherwise, the party requesting the appointment shall be responsible for payment of the guardian's fee and shall be required to deposit the fee in advance with the guardian or the Clerk of Courts. The court may reallocate such fees at a subsequent hearing. Attorneys appointed to serve as guardians will be entitled to compensation for services up to $1,000.00 per case unless higher fees are approved by the assigned Judge. These fees shall be billed directly to the parties and paid directly to the appointed guardian. A fee in the amount of $500.00, or as otherwise approved by the Judge, will be assessed as court costs when the court's Family Relations Department is appointed as Family Investigator.

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

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

RULE 4.30
PSYCHOLOGICAL OR PSYCHIATRIC EVALUATIONS

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

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

RULE 4.31
INTERVIEW OF CHILD BY THE COURT

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

RULE 4.32
PARENTING SEMINAR

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

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

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

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

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

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

A true copy of the Shared Parenting Plan shall be attached to the petition/request and original Shared Parenting Plan should be filed separately for future attachment to the Decree of Shared Parenting.

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

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

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

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

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

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

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

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

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

(J) Application for Child Support Services. The parties shall ensure that the

Application for Child Support Services has been filed pursuant to Mont. D.R. Rule 4.14(D).

RULE 4.34
STANDARD ORDER OF PARENTING TIME

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

DISPUTE RESOLUTION

RULE 4.35
CONCILIATION

Pursuant to R.C. 3117.05, the Court offers Conciliation services. Prior to or during the pendency of an action for divorce, annulment, or legal separation, one or both of the spouses may request conciliation. If the request for conciliation occurs prior to filing an action, the spouse may contact the Family Relations Department by phone or in person for an appointment during regular business hours. If the request for conciliation comes during the pendency of a case, a motion and entry shall be prepared and submitted to Family Relations Department. Conciliation Counseling can be scheduled with counselors at the Court, if the spouses do not elect to find a counselor in the community.

Conciliation proceedings shall stay the final hearing of the case until the process is completed, or 90 days, whichever comes first. A petition for conciliation does <u>not</u> stay any temporary order or enforcement of same.

RULE 4.36
MEDIATION

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

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

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

(D) Case Selection.

(1) **Referral Process.** The court, on its own motion, or the motion of any of the parties may refer disputed issues pending before the court to mediation in whole or in part by an “Order Scheduling Mediation” which shall, at a

minimum indicate the date, time, place and contact information of the mediation. All parties and counsel shall advise the assigned Judge or Magistrate of any domestic violence allegations known to them to exist or to have existed in the past, or which become known to them following entry of the order but before conclusion of all mediation proceedings, which allegations involve any two or more persons whose attendance is required by the referral order.

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

(2) Eligibility of Cases

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

(3) Mediator Selection and Assignment.

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

a. The court randomly assigns a mediator to the case from the court's roster of approved staff mediators.

b. Specific appointments may be made by the court taking into consideration the qualifications, skills, expertise, and caseload of the mediator in addition to the type, complexity and requirements of the case.

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

(1) The court shall utilize procedures for all cases that will:

a. Ensure that parties are allowed to participate in mediation, and if the parties wish, that their attorneys and other individuals they designate are allowed to accompany them and participate in mediation.

b. Screen for domestic violence both before and during mediation.

c. Encourage appropriate referrals to legal counsel and other support services for all parties, including victims of and suspected victims of domestic violence.

d. Prohibit the use of mediation in any of the following:

- As an alternative to the prosecution or adjudication of domestic violence;
- In determining whether to grant, modify or terminate a protection order;
- In determining the terms and conditions of a protection order; and
- In determining the penalty for violation of a protection order.

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

(2) Mediation of allocation of parental rights and responsibilities or the care of, or visitation with, minor children shall abide by all provisions set forth in (E)(1) of this rule, mediation may then proceed, when violence or fear of violence is alleged, suspected, or present, only if the mediator has specialized training set forth in "Qualifications" section (F) of this rule and all of the following conditions are satisfied:

a. The person who is or may be the victim of domestic violence is fully informed, both orally and in writing, about the mediation process, his or her right to decline participation in the mediation process, and his or her option to have a support person present at mediation sessions.

b. The parties have the capacity to mediate without fear of coercion or control.

c. Appropriate procedures are in place to provide for the safety of the person who is or may be the victim of domestic violence and all other persons present at the mediation.

(3) Procedures are in place for the mediator to terminate mediation if he or she believes there is continued threat of domestic violence or coercion between the parties.

(4) Procedures are in place for issuing written findings of fact, as required by R.C. 3109.052, to refer certain cases involving domestic violence to mediation.

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

a. Parties who are ordered into mediation in cases shall attend scheduled mediation sessions. The court may order parties to return to mediation at any time in cases.

b. A Judge, Magistrate and/or mediator may require the attendance of the parties' attorneys at the mediation sessions if the mediator deems it necessary and appropriate.

c. If counsel of any party to the mediation becomes aware of the identity of a person or entity whose consent is required to resolve the dispute, but has not yet been joined as a party in the pleadings, they shall promptly inform the mediator as well as the assigned Judge or Magistrate.

d. If the opposing parties to any case are 1) related by blood, adoption, or marriage; 2) have resided in a common residence, or 3) have known or alleged domestic violence at any time prior to or during the mediation, then the parties and their counsel have a duty to disclose such information to the mediator and have duty to participate in any screening required by the court.

e. By participating in mediation a nonparty participant, as defined by R.C. 2710.01(D), agrees to be bound by this rule and submits to the court's jurisdiction to the extent necessary for enforcement of this rule. Any nonparty participant shall have the rights and duties under this rule attributed to parties except as provided by R.C. 2710.03(B)(3) and 2710.04(A)(2).

(6) **Confidentiality/Privilege**

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

(7) **Mediator Conflicts of Interest**

In accordance with R.C. 2710.08(A) and (B), the Mediator assigned by the Court to conduct a mediation shall disclose to the mediation parties, counsel, if applicable, and any nonparty participants any known possible conflicts that may affect the Mediator's impartiality as soon as such

conflict(s) become known to the Mediator. If counsel or a mediation party requests that the assigned Mediator withdraw because of the facts so disclosed, the assigned Mediator should withdraw and request that the assigned Judge or Magistrate appoint another Mediator from the list of qualified Mediators that is maintained by the Court. The parties shall be free to retain the mediator by an informed, written waiver of the conflict of interest(s).

(8) **Termination**

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

(9) **Stay of Proceedings**

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

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

(11) **Guardian Ad Litem**

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

(12) **Mediation Memorandum of Understanding**

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

(13) **Mediator Report**

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

a. Whether the mediation occurred or was terminated;

b. Whether a settlement was reached on some, all or none of the issues; and

c. Future mediation session(s), including date and time.

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

(F) Qualifications

(1) **General Qualifications and Training**

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

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

b. Complete at least twelve hours of basic mediation training or equivalent experience as a mediator that is satisfactory to the division.

c. After completing the above training, complete at least forty hours of specialized family or divorce mediation training which has been approved by the Dispute Resolution Section of the Supreme Court.

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

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

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

(H) Sanctions

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

RULE 4.37
PARENTING TIME FACILITATION

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

Fees for these services shall be set by the Judge or Magistrate.

RULE 4.38
RESERVED

RULE 4.39
COURT APPOINTMENT OF VALUATION EXPERTS

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

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

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

RULE 4.40
DIVISION OF PERSONAL PROPERTY

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

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

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

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

(1) The parties shall flip a coin with the winner having first choice of one item, the loser having second choice, and the parties alternating selections until all items in dispute are divided; or

(2) All disputed items shall be appraised with the cost of appraisal to be shared equally by the parties; the plaintiff shall have the first option to keep all disputed items by purchasing defendant's one half interest at one half the total appraised value; upon plaintiff's refusal, defendant shall have the same option.

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

RULE 4.41
POST-DECREE MOTIONS

(A) Hearings/Service

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

(B) Motions To Modify Child Or Spousal Support

(1) Any motion requesting a modification of an existing child or spousal support order shall set forth the reason for the modification with specificity. The motion shall specify whether the motion is for an increase or decrease of support. All motions requesting modification shall be accompanied by an updated Affidavit of Financial Disclosure. The party seeking a modification shall provide, at hearing, documentation verifying his/her current earnings

and his/her most recent federal tax return with W-2's, 1099's, supporting schedules. Failure to file an Affidavit of Financial Disclosure and/or provide appropriate income verification may result in the dismissal of the motion.

(2) The opposing party shall file a completed Affidavit of Financial Disclosure prior to the hearing and shall submit income documentation set forth in section B(1) at the hearing.

(3) The moving party shall file an Application for Child Support Services pursuant to Mont. D.R. Rule 4.14(D) unless one is already on file.

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

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

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

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

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

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

(1) Civil Rule 60(B). A party seeking relief from a judgment, or order shall file a motion supported by an affidavit, setting forth the “operative facts” warranting relief from judgment. The motion shall identify the judgment or order from which relief is sought, the date of the judgment or order, and the specific ground(s) supporting relief. The movant shall serve the opposing party with a copy of the motion and affidavit in accordance with the Rules of Civil Procedure. The matter shall not be set for hearing unless authorized by the assigned Judge.

(2) R.C. 3119.961. A party seeking relief from a final judgment or order that determines that he is the father of the child or is required to pay child support for a child may file a motion pursuant to R.C. 3119.961. The motion shall identify the date of the judgment or order, the name and date of birth of the child whose paternity is being questioned, and whether genetic test results have been obtained prior to the motion. The motion shall be set for pre-hearing before a Magistrate. The motion shall be served upon the opposing party in accordance with the Rules of Civil Procedure. The movant may be ordered to deposit additional costs for the purpose of obtaining genetic testing.

(3) Motions for Relief from Judgment or Order under Civ. R. 60(A), 60(B) and R.C. 3119.961 shall be filed separately and shall not be included in any multi-branch motion.

(F) Multi-Branch Motions

A party seeking multiple relief, *e.g.*, contempt for child support, contempt for failure to pay medical expenses, modification of child support, and modify parenting time, etc., shall set forth each individual claim in separate enumerated branches. The caption shall identify all relief being sought. When scheduling the hearing, counsel or the self-represented party shall be responsible to inform the assignment commissioner of the amount of time needed to hear the entire motion for each claim for relief or if a pretrial should be set. Motions for Relief from Judgment or Order under Civ. R. 60(A) and 60(B) shall be filed separately and should not be included in any multi-branch motion.

(G) Counter-Motions

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

RULE 4.42
MOTIONS TO SHOW CAUSE (CONTEMPT)

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

(1) Each provision of a prior court order with which the party has failed to comply;

(2) The date of the prior order; and

(3) The facts regarding the claim of non-compliance; and

(4) The motion shall be supported by an affidavit signed by the party.

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

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

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

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

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

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

RULE 4.43
DISMISSAL OF MOTIONS FOR WANT OF PROSECUTION

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

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

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

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

(B)(1) Time. Objections shall be filed within 14 days of the filing of the Magistrate Decision, or the filing of written findings of fact~~s~~ and conclusions of law pursuant to Civil Rule 52, if applicable. Such time period may be extended for good cause shown. The motion must be filed prior to the expiration of the original 14 day period and brought to the attention of the Judge assigned to the case.

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

(C) Reply. A party may file a reply in opposition to the objections within 10 days of the filing of objections. An extension of time for filing a reply may be obtained for the same reason and upon the same terms as set forth in subsection (B)(1) of this rule.

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

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

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

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

RULE 4.45
TRANSCRIPTS AND EXHIBITS

(A) Ordering Copy. If a party intends to object or appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, that party shall provide a transcript of all evidence relevant to such findings or conclusions. The party shall file a praecipe with the Clerk of Courts for the transcript on the same date as the filing of an objection or a notice of appeal. Within 14 days of the filing of praecipe, the party shall deposit with the court reporter the cost of the transcript. The cost for preparation of the original transcript is hereby set at $3.95 per page, payable to the court reporter. Request for an expedited original transcript will be fulfilled at a rate of $6.00 per page, payable to the court reporter. Once completed, the original transcript will be filed with the Clerk of Courts as part of the official record. The requesting party will be provided a copy of the transcript. Additional copies may be obtained from the Clerk of Courts at the current public record rate.

Copies of FTR audio recorded hearings may be obtained at a cost of $2.25 per disc, payable to the Clerk of Courts.

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

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

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

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

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

(1) As to objections, adopt any finding of fact in a Magistrate Decision without further consideration and rule upon those objections accordingly; or

(2) As to appeals, overrule a motion for extension of the time for transmitting the record pursuant to Appellate Rule 10(C).

(D) Exhibits. The cost of the transcript does not include a copy of the exhibits. Parties desiring a copy of the exhibits shall contact the Court to determine how to obtain copies at their own expense. Exhibits will be held for a period of 1 year from the date of the final entry or judgment in the case. Parties desiring return of exhibits should make application to the court within the one year period. All exhibits, court reporter notes and electronic recordings will be destroyed after a 5 year time period, unless otherwise ordered by the court.

SPECIAL PROCEEDINGS

RULE 4.46
DOMESTIC VIOLENCE/DATING VIOLENCE ACTIONS

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

(B) Procedure:

(1) The procedure set forth in R.C. 3113.31 *et seq.* shall be followed. If temporary allocation of parental rights and responsibilities of a minor child is sought, a Parenting Proceeding Affidavit shall also be filed. If child and/or spousal support is sought, an Affidavit of Financial Disclosure shall be filed with the court. There are no administrative fees charged for the filing of a petition of domestic violence.

(2) The petitioner must provide the current address of the respondent in order to perfect service. Personal service shall be ordered through the Montgomery County Sheriff's Office or any other law enforcement agency. The court may authorize the petitioner to attempt service upon the respondent by a special process server upon petitioner's request or when service by the sheriff's office is unsuccessful. Civ.R. 65.1(C)(2) requires personal service be perfected upon the respondent prior to a full hearing on the petition.

(3) No later than 3 days prior to the full hearing the respondent shall submit to the court an Affidavit of Financial Disclosure in cases involving a request for temporary child and/or spousal support.

(4) If petitioner is requesting temporary child and/or spousal support, the petitioner shall prepare and file an Application for Child Support Services [Appendix, Form 7] pursuant to Mont. D.R. Rule 4.14(D). (Unless such form is already on file)

(5) An *ex parte* hearing will be conducted before a Magistrate or Judge on the same day as the filing of the petition. At that time, a full hearing on the merits will be scheduled pursuant to statute. A victim advocate is permitted to accompany the petitioner or respondent during the *ex parte* or full hearing. The *ex parte* civil protection order remains in effect until a decision is issued subsequent to the full hearing. A petition and ex parte order may be dismissed after six months if service has not been perfected or if the petitioner fails to prosecute. {See, Civ. R. 4(E)}

(6) All domestic violence/dating violence entries continuing the hearing shall include the following language: "The Ex Parte Order filed on (date) shall remain in full force and effect pending the full hearing."

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

(D) Objection to a Civil Protection Order: Written objections must be filed within fourteen (14) days of the filing of the final order granting the civil protection order or Magistrate Decision dismissing the civil protection order. Filing the objections does NOT stay the execution of the order. Objections must be supported by a transcript of the proceedings. See Civ.R. 65.1 (effective July 1, 2012) for additional details.

(E) Dismissals: Any dismissal entries shall include the statutory language required by R.C. 3113.31(E)(8)(c). Any request for dismissal requires a hearing on the record. The moving party must be present. Cases dismissed prior to or at the full hearing may result in the case being sealed.

RULE 4.47
REGISTRATION OF FOREIGN SUPPORT ORDER (UIFSA)

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

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

(1) A statement listing any agency or person to whom child support payments are to be sent if payments are not to be remitted to the obligee.

(2) The name, address and social security number of the obligor; the obligor's employer (if known) and a list of any property located in Ohio which is owned by obligor and which is not exempt from execution;

(3) The name, address, sex, social security number and date of birth of each child for whom support is sought;

(4) A certified copy of all orders to be registered, including any order which modified a previous order;

(5) An affidavit of the party seeking registration, or of the custodian of the records, stating the amount of any arrearage;

(6) A statement notifying the obligor of his or her right to contest the validity and/or enforcement of the foreign child support order pursuant to R.C. 3115.42 (B);

(7) An Application for Child Support Services [Appendix, Form 7] pursuant to Mont. D.R. Rule 4.14(D), unless SETS account already assigned.

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

(C) Spousal Support. Pursuant to R.C. 3115.01(T) spousal support may be subject to an action under UIFSA

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

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

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

RULE 4.48
ESTABLISHMENT OF CHILD SUPPORT ORDER – FOREIGN DECREE

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

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

(1) The name and address of the party seeking establishment of a child support order;

(2) The name and address of the party from whom the child support is sought;

(3) A statement indicating either that the party seeking the child support order resides in another state or country, or, that the child support order is being sought by the support enforcement agency of another state;

(4) An Affidavit of Financial Disclosure or approved UIFSA form;

(5) Certified copies of any court orders which relate to child custody, paternity, or prior support orders;

(6) An Application for Child Support Services [Appendix, Form 7] pursuant to Mont. D.R. Rule 4.14(D), unless SETS account already assigned.

(7) A copy of all documents shall be sent to initiating court.

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

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

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

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

RULE 4.50
UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT (UCCJEA)

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

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

The following shall be attached to the petition:

(1) A certified copy of the parenting decree;

(2) An Information for Parenting Proceeding Affidavit [Appendix, Form 3].

(3) A notice that a hearing will be set <u>not less than twenty days after the date of service.</u>

(4) An Application for Child Support Services [Appendix, Form 7] pursuant to Mont. D.R. Rule 4.14(D), unless SETS account already established.

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

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

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

RULE 4.51
COMBINED ACTIONS – FOREIGN SUPPORT AND PARENTING ORDERS

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

RULE 4.52 (*RESERVED)*

RULE 4.53
MISTAKE OF FACT AND EMANCIPATION PROCEEDINGS

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

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

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

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

(E) In emancipation cases with multiple children and one or more children are the subject of a child support order, then the Court will set the matter for a hearing on a modification of child support.

RULE 4.54
PROCEDURES UPON DEATH OF A PARTY

(A) Death of Residential Parent

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

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

(2) An assertion there is no other custody proceeding pending in any court;

(3) An attached certified copy of the death certificate or if a death certificate is not available such other proof of death, as may be approved by the court; and

(4) Appropriate language awarding custody, terminating child support and wage withholding notices and an order that administrative fees be paid. [See sample in Appendix, Form 17]

No service or hearing is required in this proceeding.

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

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

(1) Date of the filing of the pending proceeding with an assertion that the case has not been decreed;

(2) An attached certified copy of the death certificate or if a death certificate is not available, such other proof of death as may be approved by court; and

(3) Appropriate language dismissing the proceeding and vacating any temporary orders therein.

No service or hearing is required in this proceeding.

COURT ADMINISTRATION

RULE 4.55
CASE MANAGEMENT PLAN

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

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

(2) Service of summons shall be in accordance with Civil Rules 4.1 through 4.6, subject to Mont. D.R. Rule 4.22.

(3) When service is perfected, a scheduling order setting a date certain for the non-contested hearing will be sent to the attorney(s) of record and/or self-represented parties. If there are minor children, the parties are required to complete a parenting seminar, *e.g.* "Helping Children Succeed After Divorce", pursuant to Mont. D.R. Rule 4.32.

(4) Upon the filing of a responsive pleading, the case will be re-designated a contested action. The court will set a pretrial hearing and trial with the assigned Judge. Counsel and parties are notified by a scheduling order. Request for continuance shall be in accordance with Mont. D.R. Rule 4.20.

(5) Upon the expiration of 14 days after service is perfected, the court will review the parties' Affidavits and may issue a Temporary Order regarding custody, parenting time, child support, spousal support, *etc.* pursuant to Civil Rule 75(N) and Mont. D.R. Rule 4.14.

(6) A scheduling order for the pretrial conference will be sent to all counsel of record and unrepresented parties not less than 14 days prior to the conference. Any application for continuance of the conference shall be in accordance with Mont. D.R. Rule 4.20. Counsel attending the pretrial conference must have authority to stipulate on items of evidence and must have full settlement authority. The court may file a pretrial order including all stipulations, admissions, and other matters which have come before it in the pretrial. The court will determine whether or not trial briefs should be submitted by date certain.

(B) Procedure for Dissolution

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

(C) Preparation of Decrees

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

(D) Procedure for Pre- and Post Decree Motions

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

(2) Service of summons shall be in accordance with Civil Rules 4.1 through 4.6, subject to Mont. D.R. Rule 4.22.

(3) All motions must be in writing and shall set forth by memorandum or affidavit the relief or order sought and shall identify and any prior order(s) at issue. Agreed entries on motions may be filed at any time.

(4) The assignment office shall set a date and time for hearing on all appropriate filed post-decree motions. It is the responsibility of the moving party to set the hearing for sufficient time based on the complexity of the issues.

RULE 4.56
COURT SECURITY POLICY AND PROCEDURES PLAN

Security Policy and Procedures Manual. The court will adopt a Security Policy and Procedures Manual. The manual will include: a physical security plan, routine security operations, a special operations plan, a hostage situation response plan, a high risk trial plan, and emergency procedures (fire, bomb, disaster). Law enforcement officers appearing as parties or witnesses in cases are not authorized to carry a firearm or a concealed weapon and are required to check their weapon(s) upon entry to the court building with the Montgomery County Sheriff. Only Court Services deputies assigned to the Domestic Relations Court in their employment (as security for the Court) are permitted to carry a weapon.

RULE 4.57
PHOTOGRAPHING, RECORDING AND BROADCASTING OF COURT PROCEEDINGS

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

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

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

RULE 4.58
USE OF ELECTRONIC OR PHOTOGRAPHIC EQUIPMENT IN THE COURTROOM

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

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

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

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

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

RULE 4.59
COURT APPOINTMENTS

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

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

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

APPENDIX

Forms:

1. Poverty Affidavit [R.C. 2323.30 and 2323.31 & Mont D.R. Rule 4.04(B)]
2. Affidavit of Financial Disclosure **(DR-10)**

2A. S.Ct Affidavit of Income and Expenses (Uniform D.R. Form)

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