

ANNUAL BERNARD I. ROSEN DOMESTIC RELATIONS INSTITUTE

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PREPARATION FOR HEARINGS AND TRIALS

Magistrate Chris Snyder

Summit County Domestic Relations Court

PREPARATION FOR HEARINGS/TRIALS

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RULE 12 TRIALS AND EVIDENTIARY HEARINGS

12.01 Exhibits.

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

(B) The parties shall submit to the court and the opposing party all expert witness reports not less than 30 days prior to the trial or evidentiary hearing absent leave of court.

(C) Not less than seven days prior to the trial or evidentiary hearing, the parties shall submit to the court and the opposing party copies of all documents or other exhibits to be introduced at the trial or evidentiary hearing. At the trial or evidentiary hearing, the court will not admit any exhibits not timely submitted, except for good cause shown.

12.02 Witnesses.

Not less than seven days prior to the trial or evidentiary hearing, the parties shall file with the Clerk of Courts and submit to the court and the opposing party a list of all witnesses who will testify at the trial or evidentiary hearing including each witnesses name and address. At the trial or evidentiary hearing, the court will not admit the testimony of any witnesses not timely listed, except for good cause shown.

12.03 Failure to comply.

Failure to comply with the above may result in sanctions against the non-complying attorney or party.

12.04 Findings and conclusions.

The court may require the parties to file a brief on proposed findings of fact and/or conclusions of law.

RULE 14 POST-DECREE MODIFICATION HEARINGS

14.01 Child support modification.

(A) A motion to modify child support must be accompanied by a completed Affidavit of Income and Expenses and Health Insurance Affidavit.

(B) At hearing the parties shall present evidence or stipulations of income, potential income, and adjustments to income to enable the court to make a proper child support calculation as provided by Revised Code section 3119.01 et seq.

(C) Whenever the court modifies, reviews, or reconsiders a child support order, it will also review, and modify if appropriate, the existing health care order and the existing designation of the right of either parent to claim the child(ren) as dependent(s) for income tax purposes. *See* R.C. §§ 3119.30, 3119.32, 3119.82. 26

(D) Failure of the moving party to provide the required evidence may result in dismissal of the motion.

14.02 Spousal support modification.

(A) A motion to modify spousal support must be accompanied by a completed Affidavit of Income and Expenses.

(B) The moving party shall be prepared to present evidence or stipulations with respect to the following matters:

- (1) jurisdiction of the court to modify spousal support;
- (2) a change of circumstance;
- (3) the relevant factors listed in Revised Code section 3105.18(C)(1)(a) through (n);
- (4) current income, three years tax returns, and other documents as required;
- (5) any other relevant factors.

(C) Failure of the moving party to provide the required evidence may result in dismissal of the motion.

14.03 Modification of parenting orders.

(A) Motions for modification of parenting time and/or reallocation of parental rights and responsibilities shall be heard by the magistrate. The moving party shall file a Parenting Proceeding Affidavit with the motion.

(B) Case Management.

(1) At the initial hearing, which is not evidentiary, the court shall determine whether the motion is contested and the basis of the motion.

(2) The court may order the parties to mediate. If the parties are approved for mediation, the court will set a second hearing before the magistrate.

(3) If the parties do not resolve their parenting issues at either the hearing

or through mediation, the court may order an evaluation through Family Court Services, counseling, parent educational classes, psychological evaluations, drug and alcohol testing, supervised parenting time, and/or the appointment of a guardian *ad litem*. Unless specified otherwise by the court, fees will be assessed equally between the parties and should be deposited with the Clerk's office within 10 days of the order. Failure to comply with court orders regarding any of these matters may negatively affect the outcome of the case for the party who fails to comply.

(4) The court will establish a written case management plan that sets forth additional hearing dates as well as provisions for any services.

(C) Final Settlement Conference. The court shall schedule a settlement conference date 27 unless the case has been settled and finalized at an earlier stage. The purpose of the final settlement conference is to reach a resolution with the benefit of the information that has been developed from the case plan.

(1) Prior to the settlement conference, counsel or any *pro se* party shall review all court-ordered written reports, which shall be made available not less than one week prior to the conference date, and discuss with their clients the options that are available.

(2) The parties and their attorneys shall appear at the settlement conference and shall be prepared to discuss resolution of the pending issues.

(D) Evidentiary Hearing. The court will set an evidentiary hearing date for a date approximately 30 days after the final settlement conference. Counsel and parties shall follow this court's local rule on trials and evidentiary hearings.

RULE 17 CHILD SUPPORT AND HEALTH INSURANCE ORDERS

17.01 Support orders.

(A) Every child or spousal support order shall include the mandatory provisions set forth in Revised Code sections 3121.27 and 3121.29.

(B) The Clerk of Courts will serve a copy of every order for child or spousal support upon the Summit County Child Support Enforcement Agency (CSEA). The CSEA shall prepare the required withholding notices and submit them to the employer or other withholding source.

(C) The caption of every order for child support, or other judgment entry that includes an order for child support, shall state the SETS number, each party's address, obligor's date of birth and the last 4 digits of the obligor's Social Security number..

(D) Child support orders shall contain a child support worksheet, and, if there is a deviation, the reason for the deviation pursuant to the statute should be stated.

17.02 Health Insurance Orders.

Every child support order shall include the health insurance provisions as required by Revised Code sections 3119.30 and 3119.32.

RULE 30 FAMILY COURT SERVICES DEPARTMENT

30.01 Referral.

The court may refer families with child(ren) to Family Court Services to provide and/or coordinate the following services:

- (A) Intervention only, in which the Family Court Services evaluator helps resolve the dispute between parents;
- (B) Referral to mediation and screening process;
- (C) Evaluation;
- (D) Appointment of guardian *ad litem*;
- (E) Shared parenting plan checklist approval;
- (F) Referral to or for:

1. psychological evaluation;
2. chemical dependency and/or drug screening;
3. parenting classes;
4. court educational programs;
5. supervised visitation;
6. other programs as appropriate.

30.02 Report and recommendation.

When referred for an evaluation, the Family Court Services evaluator will produce a report which may include a summary of the collateral information received, a summary of each parent's concerns, strengths and weaknesses, and a recommendation as to the allocation of parental rights and responsibilities.

30.03 Family Court Services file.

(A) The attorneys of record and unrepresented parties will be notified when the evaluation and/or Guardian ad Litem report is complete. Except for psychological or psychiatric reports, attorneys and pro se litigants may read the entire FCS file and all third party reports in the file. The file may be reviewed at Family Court Services between 8 A.M and 4 P.M. The attorney or unrepresented party must sign the Request for Review of Family Court Services file before reviewing the file. The file may not be photocopied, photographed, recorded, transcribed or otherwise copied verbatim. Brief notes may be taken.

1. Psychological or psychiatric reports must be obtained by the parties from the provider.

(B) Attorneys and *pro se* litigants may receive copies only of the recommendation portion of Family Court Services reports and then only after reading the report in its entirety.

(C) The written reports of the Family Court Services evaluator, guardian *ad litem* or any other court ordered reports or assessments contained within this file shall be considered as part of “the original papers and exhibits filed with the trial court” for purposes of Appellate Rule 9(A).

(D) Family Court Services files will be closed at the time agreement has been put on the record; evaluator has given testimony; or the parties have stipulated to the report. All files will be purged within three years of closing date unless a motion and order are filed to retain the file for a longer period.

30.04 Confidentiality.

The court proceeding, the Family Court Services report, Guardian *ad litem* report and recommendations contain information which is **not** to be shared with the minor children. Attorneys are expected to use professional discretion in sharing information with their clients.

RULE 32 EDUCATIONAL PROGRAMS AND INFORMAL PROCEEDINGS PROGRAM

32.01 Remember the Children.

When parents of minor child(ren) file for divorce or dissolution, they shall attend a three-hour program titled “Remember the Children” within 60 days of the date of filing. Final hearing will not be set until the parties have attended this program. This requirement may be waived for good cause only.

32.02 Positive Solutions Program.

In cases when parents of minor child(ren) file for a modification of parenting time, parents may be ordered or referred to attend the court’s nine hour educational series regarding improved communication, conflict reduction and positive co-parenting. Parents are to attend together whenever possible. Parents who fail to attend the assigned class, when ordered without good cause may be sanctioned.

32.03 Working Together Program.

When never married parents file an action regarding allocation of parental rights and responsibilities or parenting time issues with minor child(ren), they shall attend the Working Together Program as their “first hearing.” The program consists of a one hour educational program regarding parents’ rights and responsibilities, as well as issues around child development and positive co-parent cooperation and communication. The educational program is followed by the opportunity to engage in mediation regarding parenting issues with a trained mediator. Results of the program may be one of the following:

(A) *Pro se* parents come to an agreement and enter that agreed entry onto the record. No further action is required.

(B) *Pro se* parents do not come to agreement and an initial hearing is set.

(C) Parties represented by counsel come to an agreement and develop a memorandum of understanding which is sent by the court to the attorneys to use in assisting parents in establishing an agreement or in subsequent hearings

(D) Parties represented by counsel do not come to agreement and proceed to scheduled future hearings.

(E) Filing party fails to appear for program without prior arrangements and the motion or complaint is dismissed.

32.04 Informal Proceedings Program

(A) Eligibility for Services.

1. The Informal Proceedings program is available in post decree cases only. Parties must have a current order issued by or registered with the Summit County Domestic Relations Court that allocates parental rights and responsibilities to be eligible for the Informal Proceedings program.

2. The Informal Proceedings program is available for parties experiencing “minor issues” in implementing or complying with their current order. Examples of minor issues are: transportation, school/extracurricular activities, scheduling issues, vacation time, parent communication problems, etc. The parties may participate in the Informal Proceeding program only once in any 12 month period.

3. The program does not pertain to financial issues or reallocation of parental rights and responsibilities.

4. The Informal Proceedings program is a voluntary process. Neither party can be forced to attend.

5. In any case where there has been a finding of domestic violence, the court will determine whether an Informal Proceeding is in the best interest of the child(ren) and, if so, under what terms and conditions.

6. The Informal Proceeding process may not be used to modify or terminate a civil protection order.

7. A party may not have an open case within the court when filing for an Informal Proceeding. If a motion or complaint is filed prior to the Informal conference, the Informal Proceeding will be cancelled.

(B) Referral Process

1. A party may appear at the Family Court Services Department and request assistance with “minor (parenting) issues” as referenced herein by completing the Informal Family Court Services Proceeding form and submitting the form to the receptionist in Family Court Services. Only one party needs to request an informal proceeding; or

2. A party may access the court website at www.drcourt.org and download the form as a PDF file, fill in the relevant information and mail to Family Court Services.

(C) Informal Proceeding

1. A meeting between the parents and a Family Court Services mediator will be arranged.
2. When parties arrive, they are given a screening tool to complete for the mediator to assess the presence of domestic violence. Parties may then choose to engage in the informal process or decline. The mediator can also choose not to proceed.
3. The mediator will explain the Informal Proceeding process, including the limits of confidentiality.
4. At the meeting the mediator may
 - a) assist the parties in resolving the issue(s);
 - b) refer the parties to an outside mediator;
 - c) instruct the parties on filing an agreed entry which the parties draw up;
 - d) refer the parties to outside community resources;
 - e) refer the parties to their attorneys.
5. The parties have the option of filing a formal motion if the Informal process fails.
6. No record shall be kept of the Informal Proceeding other than the initial request form noting the outcome of the Informal Proceeding.

If the parties cannot resolve their issue informally, the evaluator will notify the referral source. If the parents can resolve their issue, the parents may prepare and sign an agreed entry, present it to the court for approval, and if the court approves the entry, the parents shall file the entry with the Clerk of Courts.

RULE 34 GUARDIANS AD LITEM

34.01 Procedure.

When requested by either party or by the court, Family Court Services, after conferring with the parties, will recommend a guardian *ad litem* to be appointed by the court. This request for a guardian *ad litem* shall be made no later than the status conference date or initial pretrial date in divorce cases or the initial hearing in parentage or post decree cases, absent good cause shown.

34.03 Role.

The role of the guardian *ad litem* is to assist the court in allocating parenting time, with the primary focus being the best interest of the child(ren). Guardians will provide a comprehensive assessment of the parenting issues related to the allocation of parental rights and responsibilities. It is expected that the guardian *ad litem* will attend all court hearings, have a report available and testify if requested.

34.04 Assessment.

Guardians *ad litem* will have full access to court and Family Court Services records. Guardians will also have full access to school, daycare, medical and psychological records and personnel, regarding the child(ren). Confidential information provided to the guardian by counsel should be copied to opposing counsel.

Unless otherwise specified by the court, the guardian *ad litem* will:

- (A) meet with each parent individually;
- (B) meet with child alone as often as time permits;
- (C) observe each child's interaction with each parent;
- (D) explore collateral resources such as grandparents, neighbors, medical and/or mental health providers and school personnel;
- (E) review legal and criminal records; and
- (F) create a written report.

34.05 Guardian ad Litem Reports

(A) The attorneys of record and unrepresented parties will be notified when the Guardian ad Litem report is complete. The report(s) may be reviewed at Family Court Services between 8 A.M and 4 P.M. The attorney or unrepresented party must sign the Request for Review of Family Court Services and/or Guardian *ad litem* Report before reviewing the report. The report(s) may not be photocopied, photographed, recorded, transcribed or otherwise copied verbatim. Brief notes may be taken.

(B) Only the recommendation portion of guardian reports will be copied for attorneys and *pro se* litigants. Any person requesting a copy must first read the report in its entirety.

(C) The written report of the guardian *ad litem* shall be considered as part of "the original papers and exhibits filed with the trial court" for purposes of Appellate Rule 9(A).

(D) Guardian ad litem reports and recommendations contain adult information which is not to be shared with the minor children. Attorneys are expected to use professional discretion in sharing information with their clients.

34.06 Fees.

Fees for guardians *ad litem* will be based upon 16 hours at \$75.00 per hour or \$1200.00 total, unless the guardian *ad litem* is serving at a reduced rate. Unless specified otherwise by the court, fees will be assessed equally between the parties and should be deposited with the Clerk of Court's office within 10 days of the appointment. Fees shall not exceed \$1,200 without prior written approval of the court. Note that a two percent processing fee is collected by the Clerk of Courts and will be added the fees required to be deposited with the Clerk. (For example, a fee of \$1,200 requires \$1,224 to be deposited).

34.07 Appointments.

Appointments of guardians *ad litem* will be recommended by the Family Court Services on a rotating basis. Special needs of a particular case, (e.g. child abuse, medical or psychological issues), may be considered in the appointment of a guardian with specialized qualifications or skills; however, every effort will be made to ensure an equitable distribution of cases. A review of case distribution shall be conducted annually. In cases returning to court and requiring a guardian, every effort will be made to ensure the reappointment of the previous guardian to the case, unless otherwise specified by the court. 54

3119.23 Factors to be considered in granting a deviation.

The court may consider any of the following factors in determining whether to grant a deviation pursuant to section [3119.22](#) of the Revised Code:

- (A) Special and unusual needs of the child or children, including needs arising from the physical or psychological condition of the child or children;
- (B) Other court-ordered payments;
- (C) Extended parenting time or extraordinary costs associated with parenting time, including extraordinary travel expenses when exchanging the child or children for parenting time;
- (D) The financial resources and the earning ability of the child or children;
- (E) The relative financial resources, including the disparity in income between parties or households, other assets, and the needs of each parent;
- (F) The obligee's income, if the obligee's annual income is equal to or less than one hundred per cent of the federal poverty level;
- (G) Benefits that either parent receives from remarriage or sharing living expenses with another person;
- (H) The amount of federal, state, and local taxes actually paid or estimated to be paid by a parent or both of the parents;
- (I) Significant in-kind contributions from a parent, including, but not limited to, direct payment for lessons, sports equipment, schooling, or clothing;
- (J) Extraordinary work-related expenses incurred by either parent;
- (K) The standard of living and circumstances of each parent and the standard of living the child would have enjoyed had the marriage continued or had the parents been married;
- (L) The educational opportunities that would have been available to the child had the circumstances requiring a child support order not arisen;
- (M) The responsibility of each parent for the support of others, including support of a child or children with disabilities who are not subject to the support order;
- (N) Post-secondary educational expenses paid for by a parent for the parent's own child or children, regardless of whether the child or children are emancipated;
- (O) Costs incurred or reasonably anticipated to be incurred by the parents in compliance with court-ordered reunification efforts in child abuse, neglect, or dependency cases;

(P) Extraordinary child care costs required for the child or children that exceed the maximum state-wide average cost estimate as described in division (P)(1)(d) of section [3119.05](#) of the Revised Code, including extraordinary costs associated with caring for a child or children with specialized physical, psychological, or educational needs;

(Q) Any other relevant factor.

If the court grants a deviation based on division (Q) of this section, it shall specifically state in the order the facts that are the basis for the deviation.

3119.231 Deviation where court-ordered parenting time exceeds ninety overnights per year.

(A) If court-ordered parenting time exceeds ninety overnights per year, the court shall consider whether to grant a deviation pursuant to section [3119.22](#) of the Revised Code for the reason set forth in division (C) of section [3119.23](#) of the Revised Code. This deviation is in addition to any adjustments provided under division (A) of section 3119.051 of the Revised Code.

(B) If court-ordered parenting time is equal to or exceeds one hundred forty-seven overnights per year, and the court does not grant a deviation under division (A) of this section, it shall specify in the order the facts that are the basis for the court's decision.