

ANNUAL BERNARD I.ROSEN DOMESTIC RELATIONS INSTITUTE

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SO YOU THINK YOU HAVE AN AGREEMENT?

Finalizing Agreements in Domestic Relations Courts

Magistrate Scot Stevenson

Summit County Domestic Relations Court

Akron Bar Association

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So you think you have an agreement?

Finalizing agreements in Domestic Relations court.

- I. **Domestic Relations Courts properly favor agreements between parties.**
 - a. **Reduces emotions of divorce and stress of trial.** As practitioners and judicial officers who deal with divorces and family conflict issues every day, it is easy to forget the stress of these cases for the parties. Divorces are the second highest stressor behind death of a spouse according to the Holmes-Rahe stress scale. Resolving matters through agreements helps minimize this stress.
 - b. **You and your client control outcome.** If parties resolve case themselves, they can select a compromise they can at least be satisfied with as an agreement. They may have more flexibility to reach agreement different than Court might be willing to order by thinking outside the box. For example, you might negotiate more time to refinance house in exchange for larger share of equity than Court is likely to order at trial.
 - c. **Clients more likely to follow and accept their own resolutions.** Experience sees parties as more willing to accept their own parenting plans rather than those imposed by Courts.
 - d. **Brings quicker closure and reduces repeated objections and appeals.** If Court has trial, parties may wish to object or appeal which stops them from getting closure on their marriage and prolongs the stress for all involved.
 - e. **Reduces attorney fees.** And hopefully attorney stress of having trial and considering objections/appeal.
 - f. **Judicial economy.** Resolving cases promptly allows Courts to move on to other matters to the benefit of those parties.

II. Presenting agreement to Court

- a. **Enter on record or have signed before you cancel hearing.** Do not attempt to cancel hearing before agreement is SIGNED by all parties. You don't have agreement if not on record or signed by all parties.

- b. **Request to read onto record if Court seems reluctant.** While in practice, I recall some Courts would just take attorneys word case settled and allow parties to leave, do not do this. Request to read agreement into the record. While on record at a minimum ask parties:
 1. if parties read agreement, or listened carefully if read onto record;
 2. if they have any questions;
 3. if they understand agreement;
 4. signed agreement voluntarily;
 5. if they believe agreement is fair and equitable and best interests of children; and
 6. if they want the Court to adopt the agreement.

- c. **Motivate clients to sign before hearing to save trip to courthouse and attorney fees.** Better practice is to have signed agreement before clients get to Court, so that you do not have to chase parties after hearing.

- d. **If reading on record be as precise as possible, attempt to make sure all bases covered.** Take a minute and write outline and review with opposing counsel and client. Often shared parenting plans and separation agreements included large amounts of boilerplate try to at least summarize those provisions while reading agreement.

- e. **If agreement is on the record it can adopted pursuant to local rule 28.** Use local rule 28. I know that we don't want to be 'that attorney' and we are normally collegial, but agreements read on record are final. The rule is attached for your review. Please read the rule which is attached, but basic outline of procedure under rule:
 1. Party ordered to prepare order submits order to opposing party;
 2. Wait seven days to see if opposing side objects;
 3. If opposing party does not object then submit to Court with certification submitted to other side without response; or,

4. If opposing party rejects order, opposing party should submit objections to the Court so that Court is aware of objections. While rule states opposing party “may” submit objections to Court, Court would be unaware of objections if party submits order without objections resolved. Also request review hearing with Court on objections if necessary; and
 5. If there objections to your proposed order, you should not submit order to Court without informing Court of objections.
- f. **Get transcript of hearing on CD if necessary.** Request from Court administrator Ken Teleis he will get for you at no charge.
- g. **Volunteer to draft agreement to control language for you and your client.** Drafting agreement gives you certainty agreement is correct and on time.

III. Drafting agreements

- a. **Just because you read the agreement into the record your work is not finished.** Court will usually assign one of the attorneys to prepare.
- b. **Bring partially drafted agreements to Court.** If at all computer literate, can make corrections in attorney lobby and have signed while in Court. You can also have your staff correct back at office once agreement reached and email and print out in attorney lobby. Best practice is to have document to sign in Court:
 1. avoids “buyer’s remorse;
 2. stops attempts to renegotiate after settlement; and
 3. Allows parties to read and understand all terms including boilerplate terms better than if agreement read into record.
- c. **Make sure you have correct forms.** Check local rules and forms on each court’s website to see if that Court has its own.

- d. **Attached is new child support language.** Please make sure to use current language. This language is not included in Supreme Court forms on Court's website as of 11/1/2019.
- e. **If deviating from Guidelines, must give reasons for deviation pursuant to statute.**
- f. **In Divorces make sure you have findings of fact from Supreme Court form, including:**
 - 1. Grounds;
 - 2. Jurisdiction;
 - 3. Children, if any;
 - 4. Whether currently pregnant;
 - 5. Whether restored name;
 - 6. Full disclosure of assets and liabilities; and
 - 7. Whether active duty military.
- g. **If setting support or custody issues, somewhere detail circumstances at time of agreement.**
This makes it easier if party seeks to modify Court can tell whether the circumstances have changed.
- h. **In case of potential uncooperative party.** If believe other party may not cooperate to transfer items, can attempt to draft decree in way that it can be submitted to proper authority to transfer possession.

IV. Filing agreement

- a. **Do so timely.** Court doesn't want to be tracking parties down 3 months after hearing to get signed. Clients want closure and case is not done until filed. Your client may not be able to file other action until you have filed agreement per Court policy and you are unable to file contempt on order that is not on docket.
- b. **Need support guidelines, FIN plan, Shared Parenting plan, or any other exhibit that you reference in agreement.** Must file separately from signature page if filing electronically. Can attach if filing paper copy for signature. Still can file paper copy for signature if that is best way for you to file.

- c. **If separation agreement and shared parenting plan signed by parties, final decree or order may be signed by just attorneys.** Still advise you at least have agreement reviewed by parties so they can double check for errors, as occasionally see attorneys not catching errors in changing from one divorce to the next, and having their approval in case of later conflict.

- d. **If entry is closing case Judge and Magistrate must sign.** If interim order either Judge or Magistrate may sign. Please prepare signatures accordingly.

V. Withdrawing from case while agreement pending

- a. **The Court is reluctant to allow.** Desire that portion of case to be finished before withdraw. If you negotiated the agreement, Court would prefer you stay on to see agreement is accurate.
- b. **Reluctant to permit withdrawal if only for lack of payment after trial.**
- c. **The Court recognizes difficult ethical ground if client refuses to sign.** If ordered to prepare agreement and client won't permit, outline in motion to withdraw ethical considerations require you to withdraw and cannot fulfill order to draft agreement. Attach a copy of transcript of hearing detailing agreement. If not preparing agreement, in motion to withdraw, inform Court there are conflicts between you and client that require withdrawal if client refuses to sign.
- d. **When case is resolved and order is final, file notice of withdrawal if you do not want noticed of future filings.**

VI. Agreed Continuances

- a. Under local rule 23 which is attached, parties are to contact the opposing party to in order to seek approval for a continuance. This applies even when opposing side is Pro Se. Also contact Guardian Ad Litem as well.
- b. If opposing side does not agree, Court is to arrange conference call. You may attempt to initiate conference call once you file motion to continue that is opposed.

RULE 28 JUDGMENT ENTRIES PREPARED BY ATTORNEYS/PARTIES

28.01 Preparation by party.

The court may order either party to prepare the judgment entry. When so ordered, the party shall prepare a proper judgment entry and submit it to the opposing party within 14 days, unless the time is extended by the court.

(A) The opposing party shall have seven days in which to approve or reject the judgment entry. In the event of rejection, the opposing party may file with the court, at the time of the rejection, a written statement of all objections to the judgment entry.

(B) If the opposing party fails to take any action on the judgment entry within seven days, the preparer may present the entry for journalization by certifying that the judgment entry was submitted to the opposing party and that no response was made.

(C) Agreed judgment entries may be presented to the court on or before the date of hearing. A party who does not have the proper agreed judgment entries prepared shall use the standard form agreed entry provided by the court.

(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 shall be stated.

(E) All judgment entries shall contain each party's complete address.

28.02 Signature by both parties.

All judgment entries and orders shall be signed by both attorneys of record and by any party not represented by an attorney or shall include the certification provided for in Local Rule 28.01(B). Certain types of orders are excepted from this requirement, including, but not limited to, CSEA orders, *ex parte* restraining orders, orders appointing process server, escrow orders, and orders permitting withdrawal as counsel.

28.03 Service of agreed judgment entries.

The party preparing the agreed judgment entry shall serve a copy of the time-stamped entry by regular mail upon opposing counsel or unrepresented party, Family Court Services, any guardian *ad litem*, and the Child Support Enforcement Agency, if applicable.

SUPPORT LANGUAGE FOR NEW GUIDLINES

CHILD SUPPORT AND HEALTH INSURANCE

1. The effective date of this Order for Child Support and Medical Support is
DATE.
2. Party name is the Child Support Obligor.
3. The children whois/arethe subjectsof this support order is/are:
4. HI OBLIGOR NAMEandHI OBLIGOR NAME is/are the Health Insurance
Obligor(s).
5. The Child Support Obligor shall pay:\$amount per month, plus 2%
processing charge for current child support; **\$CASH MEDICAL
AMOUNT** per month, plus 2% processing charge for cash medical support
for a total of **\$TOTAL AMOUNT**, plus 2% processing charge per month.
A copy of the child support worksheet showing the support calculation and
any deviation is attached hereto and made a part hereof.
6. This is a minimum support amount of \$80.00 per month pursuant to ORC
3119.06.
7. It has been determined that a support amount of less than \$80.00 per month
is appropriate based on findings made pursuant to ORC 3119.06.
8. This support order replaces and supercedes any temporary support order
issued in this matter.
9. The duty of support imposed pursuant to this order shall continue beyond
the child's eighteenth birthday only if the child continuously attends a

recognized and accredited high school on a full-time basis on and after the child's eighteenth birthday. The order shall not remain in effect after the child reaches age nineteen. The obligor shall continue to pay support under the order, including during seasonal vacation periods, until the order terminates.

10. **PAYMENT ON ARREARS OR OTHER BALANCES:** The Child Support Obligor shall pay \$**ARREARAGE PAYMENT IF APPLICABLE** per month, plus 2% processing charge as payment on arrears.

11. The Child Support Obligor shall continue to pay any other existing orders which are not expressly modified herein.

12. Pursuant to ORC section 3121.27, all support under this order shall be withheld or deducted from the income or assets of the Child Support Obligor pursuant to a withholding or deduction notice or appropriate order issued in accordance with ORC Chapters 3119., 3121., 3123., and 3125. or a withdrawal directive issued pursuant to ORC sections 3123.24 to 3123.38 and shall be forwarded to the Child Support Oblige in accordance with ORC Chapters 3119., 3121., 3123., and 3125. For any time period when support is not withheld or deducted from the Obligor's income or assets, the Child Support Obligor shall make payment directly to

Ohio Child Support Payment Central
P.O. Box 182372
Columbus, OH 43218

13. The Child Support Obligor shall make payments by certified check, money

order, personal check, or traveler's check until the payments are withheld by an income withholding or deductions notice. Include the case number and order number on all payments.

14. Pursuant to ORC section 3121.28, the Child Support Obligor and Child Support Obligees are hereby notified that, regardless of the frequency or amount of support payments to be made under the order, the CSEA shall administer the support order on a monthly basis, in accordance with ORC sections 3121.51 to 3121.54.
15. If payments are to be made other than on a monthly basis, the required monthly administration of the support order shall not affect the frequency or the amount of the support payments to be made under the support order.
16. Pursuant to ORC section 3121.45, any payment of money by the Child Support Obligor to the Child Support Obligees that is not made through Ohio Child Support Payment Central or the CSEA administering the support order shall not be considered a payment of support under the support order and, unless the payment is made to discharge an obligation other than support, shall be deemed to be a gift.

EXTRAORDINARY MEDICAL EXPENSES

17. In accordance with ORC section 3119.30 or 3119.32, the **Child Support Obligor CS OBLIGOR NAME** shall pay **OBLIGOR PERCENT%** and the **Child Support Obligees OBLIGEE NAME** shall pay **OBLIGEE PERCENT%** of the costs of the uninsured medical expenses incurred for a

child during a calendar year that exceeds the total cash medical support amount owed by the parents during that year. At this time, the total cash medical support is \$AMOUNT per year.

HEALTH INSURANCE COVERAGE

18. Select one from below

19. Neither party shall be the health insurance obligor because the child support obligee is a non-parent individual or agency that has no duty to provide medical support, and the obligor does not have health insurance available at a reasonable cost; **OR**

20. Health Insurance Parent shall secure and maintain health insurance for the children named above, and shall hereafter be referred to as the health insurance obligor for the following reason:

The child support obligee is rebuttably presumed to be the appropriate parent to provide health insurance coverage for the children.

The child support obligor already carries health insurance coverage for the child that is reasonable in cost.

The child support obligor already has health insurance coverage in place for the child that is not reasonable in cost, but the child support obligor wishes to be named the health insurance obligor.

The child support obligor can obtain health insurance coverage for the child that is reasonable in cost, through an employer or other source;

OR

21. **c. OBLIGOR NAME and OBLIGEE NAME** shall each be a health insurance obligor because both parents wish to be named health insurance obligors and already have health insurance coverage in place or have health insurance coverage available for the children.

22. The Child Support Obligees shall immediately notify and the Child Support Obligor may notify the CSEA of any reason for which the child support order should terminate. A willful failure to notify the agency as required is contempt of court.

23. **Select one from below**

a. Primary care services are available under the plan within 30 miles of the children's residence.

b. Primary care services are not located within 30 miles of the children's residence but residents in all or part of the children's immediate geographic area customarily travel farther than 30 miles for primary care services.

24. The obligee is dependent upon public transportation; therefore, health insurance must also provide primary care services that are available by public transportation in order to be considered accessible.

25. Private health insurance coverage is not available at a reasonable cost to the obligor or obligee at the time of the issuance of this order. Therefore, in accordance with ORC section 3119.30 (B)(2), if private health insurance coverage for the children named above becomes available at a reasonable cost to the obligee, then the obligee shall obtain private health insurance

coverage not later than 30 days after it becomes available at a reasonable cost, and inform the CSEA when coverage has been obtained.

26. If private health insurance becomes available to the obligor at a reasonable cost, the obligor shall inform the child support enforcement agency and may seek a modification of health insurance coverage from the court with respect to a court child support order, or from the agency with respect to an administrative support order.

NOTICE TO THE HEALTH INSURANCE OBLIGOR

27. Within thirty days after the issuance of this support order, the Health Insurance Obligor must designate the children named above as covered dependents under any health insurance policy, contract, or plan for which the Health Insurance Obligor contracts.

28. The individuals who are designated to be reimbursed for medical expenses for the children named above are:

Name: OBLIGOR NAME

Address: OBLIGOR ADDRESS

Name: OBLIGEE NAME

Address: OBLIGEE ADDRESS

29. Within thirty days after the issuance of this order, the Health Insurance Obligor shall provide to the CSEA documentation that verifies coverage is being provided as ordered.

30. The Health Insurance Obligor may be required to pay extraordinary medical expenses for the children named above.

31. The Health Insurance Obligor's employer is required to release to the other parent, any person subject to an order issued under ORC section 3109.19, or the CSEA on written request any necessary information on the private health insurance coverage, including the name and address of the health plan administrator and any policy, contract, or plan number, and to otherwise comply with ORC section 3119.32 and any order or notice issued under ORC section 3119.32.

32. If the Health Insurance Obligor obtains new employment, the CSEA shall comply with the requirements of ORC section 3119.34, which may result in the issuance of a notice requiring the new employer to take whatever action is necessary to enroll the children named above in private health care insurance coverage provided by the new employer, when insurance is not being provided by any other source.

33. Within thirty days of the date of this support order, the Health Insurance Obligor must provide to the other party information regarding the benefits, limitations, and exclusions of the coverage, copies of any insurance forms necessary to receive reimbursement, payment, or other benefits under the coverage, and a copy of any necessary insurance cards.

NOTICE TO REPORT REASON WHY SUPPORT ORDER SHOULD

TERMIATE PURSUANT TO ORC SECTIONS 3119.87 AND 3119.88

34. The Child Support Obligea shall immediately notify and the Child Support Obligor may notify the CSEA of any reason for which the child support order should terminate. A willful failure to notify the agency as required is

contempt of court.

NOTICE TO CHILD SUPPORT OBLIGOR AND OBLIGEE
PURSUANT TO ORC SECTION 3121.29

35. 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 ACTION AGAINST YOU: IMPOSITION OF LIENS AGAINST YOUR PROPERTY; LOSS OF YOUR PROFESSIONAL OR OCCUPATIONAL LICENSE, DRIVER'S LICENSE, OR RECREATIONAL LICENSE, WITHHOLDING FROM YOUR INCOME; ACCESS RESTRICTION AND DEDUCTION FROM YOUR ACCOUNTS IN FINANCIAL INSTITUTIONS; AND ANY OTHER ACTION PERMITTED BY LAW TO OBTAIN MONEY FROM YOU TO SATISFY YOUR SUPPORT OBLIGATION.

23.01 Form of motion

(A) A party filing a motion for continuance of any hearing shall either submit an electronic motion via the court's e-filing system, or if not e-filing, shall hand deliver to the judge or magistrate assigned to hear the matter a copy of the motion filed and a proposed order (if not e-filing).

1. The motion shall include:

- a. the reason for the request for a continuance;
- b. a statement whether other continuances of the hearing have been previously granted and if so when;
- c. whether opposing counsel or the opposing party agrees or disagrees to the proposed continuance;
- d. whether the client is aware of the request for continuance; and
- e. a certification of service of the motion upon opposing counsel or unrepresented party and all interested parties to the hearing, including, but not limited to, Family Court Services, the guardian *ad litem* and the CSEA.

2. The proposed order (if not e-filing) shall include the following checklist:

- a. a statement that the continuance is granted along with a place where the new hearing date may be entered;
- b. a statement that the continuance is denied;
- c. a statement that no further continuances shall be granted (if applicable).

23.02 Procedure

A. If opposing counsel does not approve of the request for a continuance, the assigned judge or magistrate shall arrange a conference call to discuss the matter and shall rule accordingly. If either counsel is not available for said conference call, the motion may be granted or denied at the discretion of the court.

B. Temporary hearings shall be rescheduled to be heard within 14 days of the original hearing date absent extraordinary circumstances. Initial hearings on parenting issues shall be rescheduled within 21 days of the original hearing date absent extraordinary circumstances. No second initial hearing shall be continued without the permission of the assigned judge.

C. Any continuance of any hearing shall be at the total discretion of the court.