

PREAMBLE

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

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

DOMESTIC RELATIONS PROCEDURES / MAGISTRATE'S OFFICE

Supplemental Identification Information

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

Pretrial Orders

DPR-2 Any Order which is not a Final Judgment, or a Final Resolution of a Post Judgment issue in a pending domestic relations action need only be signed by the Magistrate. Such Entries will be prepared by the Magistrate or one of the attorneys pursuant to the Magistrate's direction and submitted for the Magistrate's signature. Civ. R. 53(C)(3)(b) provides:

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

Magistrate's Decisions

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

DRP-4 When the parties waive the fourteen (14) day Objection period of Civil Rule 53 in writing or in open Court, the Magistrate or the attorneys at the direction of the Magistrate will prepare:

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

DRP-5

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

- (A) The Docket Entry memorializing the Hearing will be prepared by the Magistrate's Office, or by an attorney, as directed by the Magistrate and submitted for the Magistrate's signature.
- (B) The Magistrate's Decision will be prepared by the Magistrate, or by an attorney as directed by the Magistrate and submitted for the Magistrate's signature. The Magistrate's Decision shall conclude by stating each party has a right to object to the Magistrate's Decision within fourteen (14) days of its filing with the Clerk and include conspicuous language stating a party shall not assign as error on appeal the Court's adoption of any finding of fact or conclusion of law in that Decision unless the party timely and specifically objects to that finding or conclusion as required by Civ. R. 53.
- (C) The Magistrate's Decision will be filed with the Clerk and a time-stamped copy will be served on each party and/or attorney of record by the Clerk as required by law.
- (D) Any Objections filed by a party with the Clerk will be docketed by the Clerk and sent to the Magistrate's Office.
- (E) If the Magistrate's Decision was prepared by an attorney at the direction of the Magistrate, that attorney will also prepare a Decree, Judgment or Final Motion Ruling which conforms with the Magistrate's Decision for possible signature by the Judge. If the Magistrate's Decision was prepared by the Magistrate's Office, then the Magistrate will prepare a Decree, Judgment or Final Motion Ruling which conforms to the Magistrate's Decision for possible signature by the Judge.
- (F) The Magistrate's Office will diary the fourteen (14) day Objection period for follow up. After fourteen (14)

days the Magistrate's Office will forward the file, any Objections, and the proposed Judgment, Decree or Final Motion Ruling to the assigned Judge for review.

- (G) If the Judge chooses not to accept the Magistrate's Decision, the Judge will direct an attorney, or the Magistrate to prepare an appropriate Decree, Judgment or special entry memorializing a Final Motion Ruling, or the Judge will prepare his/her own Decree, Judgment or Final Motion Ruling.
- (H) When the Decree, Judgment, or Final Motion Ruling is filed by the Judge with the Clerk of Courts, the Clerk will serve it on each party and/or each attorney of record as required by law.

DRP-6 Any Entry, Order, or Decision the Magistrate directs counsel to prepare and circulate to opposing counsel is to be filed with the Magistrate within fourteen (14) days, or whatever other time the Magistrate may fix. Failure to do so, without having received an extension, may result in the Magistrate's scheduling a Hearing for the attorneys and/or parties to show cause why one or more of them should not be held in contempt, and sanctioned appropriately. If the counsel who prepares an Entry, Order or Decision for the Magistrate submits to the Magistrate a letter (which has been copied to all other counsel) indicating the following:

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

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

DRP-7 Any **Final Orders** recommended by the Magistrate's Decision do not become effective until the Court decides any Objections, and until they are adopted by the Judge issuing the Court's final Judgment entry.

DRP-8 Any **Temporary Orders** issued by the Magistrate Ordering the parties to undertake certain actions pending the Judge's Final Judgment Entry will serve as the interim Order of the Court while awaiting a Court Ruling on any Objections to a Magistrate's Order or Decision. If an objecting party wants any or all parts from such Magistrate's Order or Decision suspended while that party's Objections are being considered by the Judge, then the party may so request in his Objections to the Court. The Court may grant such a request while considering the Objections and without a Hearing. The Court may issue new Interim Orders as the Court finds appropriate. Any Objection requesting Interim Orders different than the Magistrate's Decision should be accompanied by a proposed Entry for the Court's review reflecting the party's proposed Interim Orders.

Transcripts

DRP-9 Magistrate's Hearings will be transcribed on digital audio tape or CD disc. If the objecting party does not indicate a written transcript will be filed, the Court will listen to the tape when considering any Objections.

DRP-10 The objecting party should make specific reference to the specific testimony which purportedly supports that party's Objections. Civil Rule 54(E)(3)(b) provides:

"Any Objection to a finding of fact shall be supported by a transcript of all the evidence submitted to the Magistrate relevant to that fact or an Affidavit of that evidence if a transcript is not available."

DRP-11 Any party has the option of paying to have the tape transcribed and filed with the Court. The party filing the Objection and indicating a written transcript will be filed has forty (40) days from the date the Objection is filed to file the transcript. If the transcript is not filed within forty (40) days, the Court can listen to the tape rather than waiting for the transcript to be filed. If a party is seeking to secure a written transcript, he must so advise the Court in writing when he files his Objection. If either the objecting or responding party seeks to submit a written transcript, that party must advise the Court within fourteen (14) days of the filing of the Objection as to what arrangements have been made to secure a written transcript and when it is expected to be filed.

DRP-12 The following procedure shall be undertaken by the party seeking a written transcript

- (A) The party shall confer with all the Court-Employed Court Reporters to determine **arrangements for filing a transcript.**
- (B) If the Court-Employed Court Reporters are unable to complete the transcript within the time frame **required by this rule, then** the party seeking the transcript is to advise the Clerk of the Magistrate's Office in writing that the Court-Employed Court Reporters are unable to complete the transcript.
- (C) If the Clerk of the Magistrate's Office has time and is able to prepare a transcript, the Clerk will proceed to do so. The Clerk of the Magistrate's Office may charge a reasonable fee for such a service.
- (D) If the Clerk of the Magistrate's Office is unable to prepare the transcript, then the party seeking the transcript may hire a private Court Reporter to transcribe the proceeding.
- (F) The Clerk of the Magistrate's Office will provide the tape or disc of the proceedings to the appropriate Court Reporter when notified by the party in writing

as to which **Court Reporter** will be doing the transcription.

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

Objections to the Court

DRP-13 Objections must be filed with the Clerk and a copy sent to the Magistrate. Civil Rule 53 (E) (3) (b) clearly requires Objections to “be specific and state with particularity the grounds of Objection.” [See Civil Rule 53 (E) (3) (b)] However, the initial timely Objection may be non-specific and without particularity, if the Objection specifically states that such specificity or particularity will be forthcoming in a written brief which shall be filed within a **specific time in the near future** due to good cause. Such good causes may be, but are not limited to:

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

The opposing party has seven (7) days to respond to the Objection or the subsequently filed written brief. [See Civil Rule 53 (E) (3) (a)] The opposing party may seek written extensions from the Court for good cause shown. However, if neither a timely written response nor a timely written extension is filed, the Court will proceed to review and decide the Objection as permitted by

the Court's schedule ten (10) days after the objecting party's brief was filed.
[See Civil Rule 53 (E) (3)]

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

Divorces with Children

DRP-15 If minor children are involved in a Domestic Relations case one or both of the parties must file a IV-D Application before there will be a Hearing before the Magistrate on **any** issue. Before the Magistrate will issue his Decision, one or both of the parties must file a Child Support Guideline, and each must file a Certificate of Attendance at the Divorce and Blended Family Program (DBFP) or its equivalent. **A Child Support Guideline must be filed even if the parties have agreed to deviate from the results of a properly prepared guideline.** All parents of minor children who are parties to a Divorce, Dissolution, Legal Separation, or Post Decree Proceeding involving the custody of children must attend a Divorce education program offered by the Ohio State University Extension, Belmont County, Ohio or an equivalent program. Such **attendance can be waived by Magistrate only for good cause shown.**

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

DRP-17 If one or both parties want the Magistrate to conduct an interview in chambers with one or more children, counsel should contact the Magistrate's Office to schedule such interview in the Magistrate's Office either before or after any

Hearings scheduled before the Magistrate. Counsel is to advise opposing counsel before making the request, and then is to advise opposing counsel as to the date, time, and location of any scheduled interview. If either counsel wants, they may submit questions of areas of concern to the Magistrate for his review before the interview. Such interviews will be tape recorded by the Magistrate.

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

Appeal of Child Support Orders

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

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

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

Property and Finances

DRP-21 If a party seeks to have the Court divide marital property, then a property appraisal form for Divorces (hereinafter PAF) must be filed by each party within fourteen (14) days of the filing of the answer in a Divorce.¹ Such PAF is attached to these rules as Divorce Form 103. The parties can complete it together or separately. The PAF must be notarized and filed with the Court, and exchanged with the opposing counsel or an unrepresented litigant. If neither party files a PAF, the Court will view the record as reflecting the parties have resolved all property division issues. The Court is willing to accept the values presented on this form as being the testimony of the party as a non-expert witness. Obviously, if expert testimony is necessary for the Court to determine a disputed value, such expert witness must be presented at trial with the appropriate appraisal discovery to the other party's counsel before trial. Moreover, each party has the right to cross-examine the other party about any values claimed on the PAF. Any boxes left empty on the PAF means either the box does not apply, or such property does not exist, or the value of such property is zero. A box may be filled with an "R" to reflect that an appraisal of value for that item HAS ALREADY BEEN REQUESTED FROM AN EXPERT, BUT HAS NOT YET BEEN RECEIVED. The party must make the Decision to secure and must request such an appraisal before the PAF is filed. Such an "R" cannot be used if a party has not already requested an expert appraisal, or if the party is just thinking about what value to declare.²After the time for submission of the PAF the Court will not continue Hearings or allow unexpected appraisals into evidence

¹ If leave is requested for good cause shown and before the filing time expires, the Magistrate may extend the filing time to a date certain.

without a specific and clear showing of good cause as to why such appraisal was not declared on the PAF. Counsel is reminded that some parties may need to be reminded that the Court will not be concerned with trifles or items of minimal values even if listed on the PAF. If either party wishes to dispute evaluations by the other party on items not listed on the party's first PAF, then that party may do so within 10 days if the filing of the other party's PAF. See Divorce Form 104. Such "Response" PAF is limited to evaluating only those additional items listed on the other party's original PAF which were not on the responding parties original PAF. Such response "PAF" cannot be used for items which the party initially forgot to include in his/her own PAF and which are not on the other party's initial PAF. In appropriate cases the Court may Order all disputed property sold at auction and the proceeds divided, or may Order the parties to mediation to divide the property.

DRP-22 When a party seeks spousal support or when a party has additional financial issues beyond child support (e.g. debt allocation), that party must file a Financial Affidavit before any Court hearing addressing any spousal support or such financial issue. Such Financial Affidavit must include at least the information outlined in Divorce Form 105. Such Financial Affidavit may be accepted by the Court as the party's testimony if the party authenticates the Affidavit in open Court, and if the party is subject to cross-examination in open Court by the other party.

DRP-23 If Plaintiff files a Financial Affidavit with the Complaint, Defendant must file a Financial Affidavit with the Answer. If Defendant files a Financial Affidavit with the Answer, the Plaintiff must file a Financial Affidavit within fourteen (14) days.

² If leave is requested for good cause shown and before the filing time expires, the Magistrate may extend the filing time to a date certain.

Pro Se Dissolutions, Divorces and DR Motions

DRP-24 The Magistrate will hear Pro Se Dissolutions and Divorces. However, Pro Se litigants must comply with all necessary laws, rules of procedure, and local rules. In particular, Pro Se Dissolutions or Divorces involving children will not be heard unless a IVD Application is filed, a Child Support Guideline is properly prepared and filed, and there has been attendance at the Divorce and Blended Family Program, or an equivalent program. However, the Court reserves the right to deny any Pro Se Dissolution or Divorce, if the Court believes that granting such Pro Se Dissolution or Divorce may not result in a just disposition of the apparent legal issues.

DRP-25 **If a Legal Clinic is operating in Belmont County, any contested Pro Se filing must be discussed by the filing party with the Legal Clinic before the matter will be scheduled for Hearing. The filing party must file with the Clerk a written document within sixty (60) days of the filing from the Legal Clinic that the matter has been reviewed with the Clinic, and the manner in which the party now chooses to proceed before the Court e.g. the party has been advised how to proceed his/her self without counsel, or the party is securing counsel by a date certain. Failure to file such documentation may be sufficient reason to dismiss whatever the party has filed.**

Contempt

DRP-26 Motions for Contempt will not be scheduled for Hearing by the Magistrate unless (1) they clearly refer to the **language** of a specific Court Order which the contemnor violated, and (2) they clearly recite specific actions or non-actions by the alleged contemnor on specific dates which constitute the alleged contempt.

Without specific written allegations, the Magistrate may dismiss the motion without a Hearing.

- DRP-27** If jail time is a possible sanction, the Magistrate will appoint to an indigent, alleged contemnor, counsel at public expense. However, to secure counsel, the alleged contemnor must timely fill out and notarize a financial affidavit which the Magistrate will review to determine if he/she qualifies for Court appointed counsel. **No counsel will be appointed for a Pro Se party seeking to hold another party in contempt.**

Civil Protection Affidavit

- DRP-28** When filing for a Civil Protection Order, the Petitioner must complete the Affidavit attached to the Domestic Relations Procedures as Divorce Form 106 and must attach a true copy of any No Contact Order or the application for a No Contact Order in any other Court.