

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

### **General**

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

**12.4** Pursuant to Juvenile Rule 40 the Court refers to the Magistrate all Domestic Relations cases, all Motions for Ex Parte Orders and/or for Temporary Orders for such cases, all Post Decree Motions for such cases, all matters regarding Child Support Orders, all Petitions for Civil Protection Order, and all Children Services cases, excluding permanent custody hearings filed in the Juvenile Court. **However, a Judge of the Court may exercise his/her discretion to directly handle any matter normally referred to the Magistrate due to special circumstances or the unavailability of the Magistrate.** Furthermore, the Court or the Magistrate may recuse the Magistrate for good cause shown and the Judge assigned to the case will handle the matter.

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

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

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

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

### **Ex Parte Motions**

**12.8** If an affidavit alleges a situation so dangerous that serious physical harm is likely to a household or family member, or alleges that the Affiant merely requests to continue the **status quo** which has existed for a substantial period of time, the Magistrate may grant an appropriate temporary Ex Parte Order. However, the Magistrate shall schedule an immediate Hearing or provide an opportunity for a Hearing. Such Hearing date can be included in the Ex Parte Entry or in the event no date is provided, such Entry will reflect a Hearing to be expeditiously scheduled, if requested by the other party.

- 12.9** If an Affidavit or testimony established that one of the parties has already been removed from the residence by Court Order, or has left the residence, then the Magistrate may issue an Ex Parte Order granting exclusive possession of the home to the party remaining in the home.
- 12.10** Ex Parte Orders will be granted on Affidavits alone for mutual Orders not to remove the pre-existing residence of the children from Belmont County, Ohio.
- 12.11** The parties may seek a **Standard** Mutual Restraining Order as outlined below in DPR 6 with an Affidavit so as to keep the peace between the parties regardless of a determination of fault, to immediately lessen the possible adverse impact of the Divorce on children, to preserve the marital property for later division, and to preserve the status quo.
- 12.12** Either party may request the Magistrate by Affidavit that both parties are restrained from one, or more, or all of the following:
- (A) Threatening, abusing, annoying, interfering with the other party or the parties' child(ren);
  - (B) Creating or incurring debt (such as credit card) in the name of the other party or in the parties' joint names, or cause a lien or loan to be placed against any of their real or personal property;
  - (C) Selling, disposing of, or dissipating any asset, real or personal property, including without limitation: bank accounts, tax refunds, and money (other than regular income) of either party of a child.
  - (D) Removing household goods and furnishings from the marital residence without approval of the Court or other party.
  - (E) Changing or failing to renew the present health, life, home, automobile or other insurance coverage; remove the other party as beneficiary on any life or

retirement benefits without further Order of this Court.

- (F) Changing or establishing a new residence for the parties' minor children without the written consent of the other party or permission of the Court.
- (G) Lessening the time available for the other party to spend with the parties' minor children so that such time is much less than before the filing of the Divorce complaint.

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

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

### **Domestic Relations Procedures**

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