

# THE COMMON PLEAS COURT OF MERCER COUNTY, OHIO

General Division  
(Civil, Criminal, Domestic Relations)

Mercer County Courthouse  
101 North Main Street, Room 301  
Celina, Ohio 45822-1795

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**Jennifer Miller ..... Deputy Clerk**

**Katie Wurster ..... Deputy Clerk**

**Rebecca Simcoe ..... Deputy Clerk**

# LOCAL RULES OF PRACTICE IN THE COMMON PLEAS COURT OF MERCER COUNTY, OHIO

Complete and Updated Through August 1, 2008

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**GENERAL PROVISIONS**

**1.01 Preamble**

These Local Rules shall supplement and complement the Ohio Rules of Civil Procedure, the Ohio Rules of Criminal Procedure, the Rules of Superintendence for the Courts of Ohio, the Ohio Revised Code, and any other applicable authority.

These rules are not to be interpreted in any way that will conflict with the various Ohio Rules. Should any conflict or contradiction be found, the Ohio Rules shall in all cases, prevail over the supplemental Local Rules.

These rules are to assist in establishing a system for the general division case management which will ensure the readiness of cases for trial and pretrial proceedings, will maintain and improve the timely and fair disposition of all cases, provide the court with an efficient means of controlling and monitoring the flow of cases, and minimize the time required by members of the bar, their clients, and parties appearing pro se to resolve the disputes which bring about the matters pending before this Court.

**1.02 Scope and Applicability of Rules**

The Local Rules of Practice hereinafter set forth shall apply to the General Division of the Common Pleas Court of Mercer County, Ohio, effective July 1, 1995, and as amended January 1, 1999, and **August 1, 2008**.

They shall apply in all instances except and when they conflict with the provision of Rules promulgated by the Supreme Court of Ohio, or are clearly not applicable.

The Judge of this Court reserves the right to vary any rules, after hearing, in the interest of justice.

These Rules may be cited as "**Mercer Co. Loc.R. \_\_\_\_\_**."

**1.03 Term of Court**

The Court is in continuous session for the transaction of judicial business. There shall be one term of court of each calendar year, with the term divided into three parts which shall commence on January 1, May 1, and September 1 of each year. All causes and proceedings, civil, criminal, domestic relations, and other matters pending on the last day of a term are continued to the next term without further order of the Court.

**1.04 Hours of Session**

Unless otherwise ordered by the Judge of this Court, the separate sessions of this Court for the trial of cases shall be scheduled on weekdays between the hours of 8:30 a.m. to 5:00 p.m. on Monday, and between 8:30 a.m. to 4:00 p.m. on Tuesday through Friday of each week, except on those days designated by law as a legal holiday. The court shall be in session at such other times as the judge shall prescribe to meet special situations or conditions.

**1.05 Assignment of Days for Proceedings**

In order to assist counsel with effective management of their scheduling calendar and to allow the Court and its staff to better serve the daily needs of counsel and their clients, the Court will notify counsel with offices in Mercer County and any other person who so requests, of days reserved for civil, criminal, and domestic relations proceedings, on or before December 1, of the each year. The Court calendar is subject to constant change.

**1.06 Special Accommodations**

Any person who requires special accommodations because of a disability shall notify the Court of his or her special requirements at least fourteen (14) days before a scheduled court appearance. The Court will comply with all reasonable requests for assistance, including providing interpreters without additional cost, except as described in Mercer Co. Loc.R. 1.07.

**1.07 Interpretive Services**

When interpretive services are needed, the attorney or party requesting an interpreter shall complete Form CM 18 (Request for an Interpreter) and submit it to the Court at least fourteen (14) days before the scheduled hearing. The Court will arrange for an objective interpreter to be present for the hearing and will inform the requesting attorney/party of the name and address of the interpreter selected. It is the responsibility of the requesting party to notify the interpreter, in writing, if there is any change in the date or time of the hearing. Failure to do so will result in the requesting party being responsible for payment of the interpreter's fee for time spent in attempting to attend the rescheduled hearing.

**1.08 Court Attire**

All persons must dress in proper attire when entering a courtroom. No attorney, party or witness shall be permitted to appear in the courtroom or offer testimony while dressed in shorts or "tank tops." It shall be the duty of counsel to advise the parties and witnesses of this rule prior to their appearance in court.

### **1.09 Broadcasting, Televising, and Recording Court Proceedings**

Broadcasting, televising, recording, and photographing by news media during courtroom sessions, including recesses between sessions, shall be permitted under the following conditions:

#### **A. Administration.**

1. Requests shall be made in writing to the Court as far in advance as reasonably practical, but in any event no later than one hour prior to the Court session to be broadcast, televised, recorded, or photographed unless otherwise permitted by the trial judge.
2. The trial judge shall specify the place or places where the operators and equipment are to be positioned.
3. The trial judge may grant the request in writing consistent with Superintendence 12, and this Rule. The written order of the trial judge shall be made a part of the record of the proceedings.

#### **B. Revocation of Permission**

Upon the failure of any media representative to comply with the conditions set by either the trial judge or this rule, the trial judge may revoke the permission to broadcast, televise, photograph, or record the trial or hearing.

### **1.10 Exhibit Release Rules**

#### **A. Scope of Rules**

These Rules are in compliance with C.P.Sup.R. 26(F), and shall be applicable only for those actions wherein an appeal from the trial court is not pending, and the exhibits/depositions/transcripts of the case remain filed with the Mercer County Common Pleas Court more than sixty (60) days after the final judgment.

#### **B. Service of Notice**

All notices required by these Rules to be served upon a party in an action shall be sent by regular U.S. Mail to the party's attorney-of-record at his last known business address.

Service shall be deemed complete for purposes of these Rules upon the date of mailing.

#### **C. Processing Orders Releasing Exhibits, Depositions and/or Transcripts**

Upon the expiration of sixty (60) days after final judgment has been filed the Official Court Reporter/Clerk of Courts shall commence releasing exhibits, depositions and/or transcripts in an action, and shall:

1. Serve notice of the order releasing the exhibits, depositions and/or transcripts as by provided by Local Rule 1.10 B;

2. Keep a record of the dates of the required notice period;
3. Require a Notice of Receipt to be signed by a party or attorney-of-record claiming the exhibits, depositions and/or transcripts within the required notice period.
4. Dispose of such exhibits, depositions, and/or transcripts if a party or the attorney-of-record does not appear to claim the exhibits within the required notice period as provided for by Local Rule 1.10 D;
5. File a Notice of Disposal with the Clerk of Courts if the exhibits, depositions and/or transcripts are disposed of pursuant to these Rules.

D. Disposal of Exhibits/Depositions/Transcripts

When disposal of unclaimed exhibits, depositions and/or transcripts is required pursuant to these Rules, such disposal shall be performed by the Official Court Reporter and/or Clerk of Courts in the manner provided for in the order of the Common Pleas Court releasing the exhibits in the action.

E. Forms

The Official Court Reporter and/or Clerk of Courts of the Common Pleas Court shall use the forms required by these Rules for the Release of Exhibits, depositions and/or transcripts.

F. Extension

Extension of the within retention period for case files may be made on an individual basis.

**RULE 2.00  
COSTS**

**2.01 Costs, Deposits & Fees**

Filing fees and costs in the Court of Common Pleas shall be as set forth in the Filing Fee and Costs Schedule (Appendix A) maintained by the Clerk of Courts. Except as otherwise provided by law, when applicable such deposits may be periodically determined by the Court and published by the Clerk of Court. The current cost deposit amounts are attached hereto and incorporated herein. Counsel and parties are encouraged to periodically check with the Clerk of Court to determine if any changes have been made.

**For a current list of advanced deposits/filing fees at the time of printing, please see APPENDIX A.**

Upon final judgment, the Clerk is directed to apply any monies on deposit to the costs in the case, regardless of the party against whom costs are assessed.

**2.02 Advance Deposits/Filing Fees**

Unless an affidavit of inability to pay or give security for costs as provided for in R.C. 2323.31 and Mercer Co. Local Rule 2.05 hereof is filed, no civil actions or proceedings shall be accepted for filing by the Clerk unless the party or parties offering the same for filing shall first deposit a sum of money to secure the payment of costs. Deposits will be accepted only if they are in the form of a check from a law firm, certified check, money order, or cash. **No personal checks are accepted.**

**2.03 Additional Advance Deposits**

When the Clerk of Court is of the opinion that the deposit for security of costs is or will become inadequate, the Clerk may require the initiating party or parties to advance an amount estimated by the Clerk to be sufficient to secure the costs in excess of the schedule set forth above.

**2.04 Jury Costs - Civil Trial**

A party who has requested a jury trial, shall deposit the sum of One Thousand Dollars (\$1,000) with the Clerk of Court not less than fourteen (14) days prior to the day upon which trial is scheduled to commence.

In the event a panel of jurors appears for service and the trial is continued or postponed due to the failure of a party or his counsel to appear, such party shall be assessed the per-diem cost of the panel unless such failure to appear is the result of extreme emergency or conditions beyond the control of the party or counsel as the same may be determined by the Court.



## **2.05 Affidavit of Inability to Prepay or Give Security for Costs**

When a party files an affidavit of inability to pay a deposit or give security for costs as provided for in R.C. 2323.31, the Clerk of Court shall receive and file such action without deposit or security. Provided however, the Clerk shall not accept for filing an affidavit of a party's inability to make the required deposit or security for costs until the party's counsel certifies in writing that no moneys have been paid to counsel and that, to the counsel's knowledge and belief, the party is unable to make the deposit or security.

## **2.06 Service by Publication**

- A. Counsel for a party desiring service by publication in a civil matter pursuant to Civ.R. 4.4(A)(1) shall submit to the Clerk of Court the proposed legal notice for such publication. The Clerk shall promptly publish the notice in a newspaper of general circulation in Mercer County. **Counsel shall pay the cost of the legal notice directly to the newspaper.**
- 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 as required by Civ.R. 4.4(A)(2). Counsel for a party desiring this service shall submit to the Clerk of Court the proposed legal notice for such publication. The Clerk shall promptly post the notice in a conspicuous place in the Courthouse of Mercer County, Ohio, in the public area of the office of the Sheriff of Mercer County, Ohio, and in the public area of the Celina Police Department. This notice shall be posted in the required locations for six (6) consecutive weeks. Upon the completion of the six (6) weeks, the Clerk shall note on the docket where and when notice was posted. Service shall be complete upon the entry of posting.

## **2.07 Service of Process and Special Process Server**

- A. Process Server (One-Time Appointment). If a party desires personal service to be made by a special process server pursuant to Civ.R. 4.1(B), that party or counsel must file with the Clerk of Courts a motion so requesting with a proposed entry appointing a special process server. The motion shall include the following:
  - 1. The name of the person to be appointed as process server;
  - 2. That the person to be appointed as process server is eighteen (18) years of age or older;
  - 3. That the person to be appointed as process server is not a party or counsel for a party in the action, and
  - 4. The name of the party/counsel that is to pay the process server.

## **2.08 Transcripts of Record**

- A. Any attorney-of-record who desires a written transcript of proceedings for appellate purposes shall submit their request in writing with the Court Reporter responsible for said preparation.

All orders for transcripts shall identify with specificity the testimony or proceedings ordered to be transcribed and shall be directed to the Court Reporter who took the notes of the testimony or other proceedings ordered to be transcribed with a deposit of \$200 per day and/or \$100 per any part day that such testimony or other proceedings required, unless it is

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determined by the Court Reporter that a different sum is appropriate or unless said deposit is waived for good cause shown or as required by law. The transcript shall be retained by the Court Reporter and any balance due on said transcript must be paid in full before the original transcript is filed with the Clerk of Court by the Court Reporter.

B. Pursuant to R.C. 2301.23, 2301.24, and 2301.25, the Court hereby fixes the compensation of the Official Court Reporter and Assistant Court Reporters for making transcripts of notes of testimony given and other proceedings conducted in the Court as follows:

- Original transcript with copy for the ordering party, per 25 line page ..... \$4.20
- Copy of original transcript ordered by another party, per 25 line page ..... \$2.10
- Copy of original transcript ordered by the Court, per 25 line page..... \$1.40

Such compensation shall be paid by the person who ordered the transcript and/or copy thereof at the time of receipt or filing of same, unless payment of said compensation is waived for good cause shown or as required by law, except that copies of the original transcript ordered by the Court shall be taxed as costs pursuant to law.

C. A transcript in the possession of the Clerk of Court shall not be removed from the office of Clerk of Court and shall not be copied. No sealed transcript may be opened except by the Court. Whoever violates this rule shall be subject to contempt proceedings.

**2.09 Fees for Computerization of the Office of the Clerk of Court**

A. Pursuant to R.C. 2303.201(B)(1), the Court hereby determines that, for the efficient operation of the Court, additional funds are required to computerize the office of the Clerk of Court.

B. The Court hereby authorizes and directs the Clerk to charge and collect an **additional** fee of ten dollars (\$10.00) upon the filing of each cause of action or appeal, on the filing, docketing and endorsing of each certificate of judgment, or the docketing and indexing of each aid in execution or petition to vacate, revive, or modify a judgment under R.C. 2303.20(A), (P), (Q), (T), and (U).

C. All moneys collected pursuant to this Rule shall be paid to the Treasurer of Mercer County, Ohio, who shall place the fees in a separate fund to be disbursed only upon the Order of the Court and subject to appropriation by the board of county commissioners, in an amount not greater than the actual cost to the court of procuring and maintaining computer systems for the office of the Clerk of Court.

**2.10 Fees for Computerized Research Services**

A. Pursuant to R.C. 2303.201(A), the Court hereby determines that, for the efficient operation of the Court, additional funds are required to computerize the Court and to make available computerized local research services.

B. The Court hereby authorizes and directs the Clerk to charge and collect an **additional** fee of three dollars (\$3.00) upon the filing of each cause of action or appeal in any of the aforementioned divisions of this Court under R.C. 2303.20(A), (Q), or (U).

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- C. All fees collected under this Rule shall be paid to the Treasurer of Mercer County, Ohio, who shall place the fees in a separate fund to be disbursed only upon an Order of the Court, in an amount not greater than the actual cost to the court of procuring and maintaining computerization of the Court and computerized legal research services.

**2.11 Special Project Fees**

- A. Pursuant to R.C. 2303.201(E)(1), the Court hereby determines that for the efficient operation of the Court, additional funds are necessary to acquire and pay for special projects of the Court.
- B. The Court hereby authorizes and directs the Clerk to charge and collect an **additional** fee upon the filing of each civil or domestic cause of action in this Court under R.C. 2303.201(E)(1), effective January 1, 2006, as follows:

<b>Case</b>	<b>Special Project Fee</b>
Civil	\$100
Domestic	\$ 75
Reopen (Civil & Domestic Relations; Garnishments/Post Judgment)	\$ 50
Expungement	\$100
Domestic Violence – Motion to Amend CPO	\$100

- C. All fees collected under this rule shall be paid to the Treasurer of Mercer County, Ohio, who shall place the fees in a separate fund to be disbursed only upon an order of the Court, in an amount not greater than the actual cost to the Court of a project.

**2.12 Court Costs in Decrees**

Decrees and agreed orders shall designate which party shall pay court costs and judgment shall be granted for the same.

**2.13 Sheriff Candidate Filing Fees**

When a person desires to become a candidate for sheriff of Mercer County, Ohio, pursuant to R.C. 311.01, he or she shall obtain an application from the Common Pleas Court to be filed with the Clerk of Court on the form hereby adopted by the Court [CM 19]. The applicant shall deposit with the Clerk the sum of one-hundred ten dollars (\$110.00) as security for costs.

**RULE 3.00**  
**OFFICE OF CLERK OF COURTS**

**3.01 Discretionary Powers of Clerk of Court**

The Clerk of Court shall have the following discretionary powers:

- A. To apply any monies deposited or any bond posted by a party with the Clerk to the unpaid costs due if the costs are not paid at the termination of the case.
- B. To seek judgment for costs, fines, restitutions, or other moneys due and enforce same as permitted by law.
- C. To make periodical partial distribution of money deposited for the purpose of fines and restitution.
- D. To refuse to file any paper or pleading not in complete conformity with the Rules of The Supreme Court of Ohio and these Rules.
- E. To refuse any check tendered for payment unless certified.

**3.02 Removal of Original Files From Clerk's Office**

- A. The Clerk shall not permit any original file or other document to be removed from the office of Clerk of Court unless:
  - 1. The person requesting to remove the file is an attorney licensed to practice law in the State of Ohio and has an office located in Mercer County, Ohio, and
  - 2. The above qualified attorney complies with the procedural sign-out requirements of the Clerk of Court.
  - 3. Anyone who is permitted to remove any file or other document from the Clerk's office shall return it prior to the closing of the Clerk's office on the same day or immediately upon the request of the Clerk.
  - 4. Transcripts of evidence may not be removed but may be viewed in the Clerk's office only. Transcripts may not be copied. A sealed transcript may only be unsealed with an Order of the Court. The Clerk shall not permit a transcript of testimony to be removed from the Clerk's office.

**3.03 Request for Service**

Any request and/or instructions directing the Clerk of Court to attempt service, including but not limited to, Praecipe, Journal Entry and Orders, shall have complete names and addresses of any individuals and/or entities requiring service of process.

Any Praecipe, Journal Entry or Orders, etc., not in compliance with the above, may relieve the Clerk of Court's office of any responsibility to perfect said service.

**RULE 4.00  
MAGISTRATE**

**4.01 Matters Heard by the Magistrate**

- A. Having previously established the position of Magistrate and having filed Orders of Reference, the Court may permit any matters coming before the Court to be heard by the Magistrate instead of the Court as permitted under Civ.R. 53 and Crim.R. 19.
- B. If all parties and counsel of record consent, the Court may determine whether a jury trial may be referred to the Magistrate for trial purposes.
- C. Upon the Magistrate hearing a matter, if all parties and counsel of record execute the appropriate waiver [CM 12], the Magistrate's Decision required by Civ.R. 53 shall be the entry presented to the Court at the time of hearing.

**4.02 Findings of Fact and Conclusions of Law**

- A. When a party requests the Court to state its findings of fact separately from its conclusions of law under the provisions of Civ.R. 52 and Civ.R. 53, the party requesting such statement shall submit and serve with said request proposed findings of fact and conclusions of law. Within seven (7) days after receipt of such proposed statement of findings of fact and conclusions of law, opposing counsel shall submit and serve proposed findings of fact and conclusions of law.
- B. For want of strict compliance with this Rule on the part of the party requesting this statement of findings of fact and conclusions of law, the Court will enter a general finding.
- C. A party moving for dismissal pursuant to Civ.R. 41(B)(2) shall submit to the Court proposed findings of fact and conclusions of law in writing together with the motion for dismissal.

**4.03 Objections to Magistrate's Decision; Request for Transcript**

When objections to a Magistrate's Decision resulting from an evidentiary hearing are filed, counsel shall file a Praecipe requesting a transcript as required by Civ.R. 53(E)(3)(b), and Mercer Co. Loc.R. 2.08, or unless upon application, the Court determines that there is no need for a transcript.

- A. **Content.** Any objections filed by a party pursuant to Civ.R. 53(E)(3) shall be specific and state with particularity the grounds therefore. Such objections shall specify whether they are directed to the findings of facts of the Magistrate, the conclusions of law of the Magistrate, or both. If the objections are to the findings of facts of the Magistrate, 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.

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- B. **Time.** Objections shall be filed within fourteen (14) days following the filing of the Magistrate Decision, or the filing of written findings of facts and conclusions of law pursuant to Civ.R. 52, if applicable. Such time period may be extended for good cause shown upon written motion only, filed prior to the expiration of the original fourteen (14) day period and brought to the attention of the Judge. If objections are timely served and filed by any party, any other party may serve and file objections within ten (10) days of the date on which the first objections were filed, or within the time otherwise prescribed by this Rule, whichever period last expires.
- C. **Stays.** The filing of objections automatically stays the Magistrate's Decision and Permanent Order, unless the stay is modified by Court Order.
- D. **Brief in Response.** A party may file a brief in opposition to the objections within ten (10) days of the filing of objections. An extension of time for filing a brief may be obtained for the same reason and upon the same terms as set forth in section B. of this rule. A time-stamped copy of the brief should be delivered to the Judge to ensure prompt consideration.
- E. **Transcript Notice.** When a transcript of proceedings before a Magistrate is ordered pursuant to this Rule for the Court's consideration in ruling upon objections, the objections shall state that a transcript of the proceedings has been ordered. Failure to so state or file and serve upon the Court Reporter a request for a transcript with appropriate deposit may cause the Court to rule on the objection as if no transcript had been ordered.
- F. **Supplemental Objections.** If a party desires to support his objection with the transcript or parts thereof, such party shall so state in his objections and request an extension of time in which to supplement the objections. The original objection and the request for extension to supplement the objections, must be filed within the original fourteen (14) days objection period. The supplemental objections become due fourteen (14) days after the filing of the transcript.
- G. **Hearings on Objections.** No hearing will be held on objections unless specifically ordered by the Court.

**RULE 5.00**  
**FILING REQUIREMENTS**

**5.01 Filing Requirements**

- A. All pleadings, motions, briefs and other papers filed with the Clerk shall conform to Civ.R. 10, be legibly typewritten or printed on paper of letter size, 8½" x 11" and without backing or cover.
- B. The case caption in all pleadings, petitions, motions, briefs and other papers filed shall state the name and address of all the parties, and shall include a brief title of its content. If any information is not known, there shall be a notation to that effect in the appropriate place on the caption.
- C. The case caption of all subsequent pleadings, motions, briefs and other papers filed shall also state the case number assigned, and if appropriate, the Support Enforcement Tracking System [hereinafter SETS] number.
- D. All papers filed with the Clerk 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), email address (if any), and a designation of which party the attorney represents. All papers shall be signed in conformity with Civ.R. 11.
- E. 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.
- F. All documents filed containing more than one page shall have numbered pages. The second page and all pages thereafter shall recite the case name and case number and shall identify the document by name. This rule shall not apply to depositions which are bound and filed in booklet form.
- G. In the general and domestic relations, all initial pleadings for new cases filed or terminated cases reactivated shall first be submitted to the Assignment Commissioner or the Court for classification pursuant to the requirements of C.P.Sup.R. 35. The Clerk shall refuse to accept any such pleadings which have not been so classified.
- H. Whenever a document is mailed to the Clerk for filing, the party or the attorney sending same shall provide a self-addressed return envelope of sufficient size with proper postage affixed.
- I. Counsel shall provide a complete copy for the Court of all pleadings, motions, or other filings to the Clerk who shall file-stamp and deliver same to the court forthwith. **These copies shall be clearly marked on the front page as "Court's Copy" or "Judge's Copy".**
- J. Counsel citing a reported or unreported case to the Court in any pleading that counsel desires the Court to take particular notice of, shall attach a complete copy of that case to the Court's copy and all copies served upon another party or counsel.

- K. When counsel files a motion and submits a proposed entry granting said motion, the Clerk is requested to deliver the file jacket to the Court with a copy of the motion and the proposed entry attached.
- L. The Clerk shall refuse to accept for filing any discovery documents or materials unless counsel certifies in writing that the filing is for a specific evidentiary purpose as required by Civ.R. 5(D) or otherwise upon the order of the court.
- M. The Clerk shall refuse to accept for filing any transcribed deposition unless the officer who transcribed the deposition presents it to the clerk for filing or sends it to the Clerk by certified mail for filing, securely sealed in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)." [Civ.R. 30(F)(1)]

#### **5.02 Compliance with Soldiers and Sailors Civil Relief Act**

In any action or proceeding commenced in this Court, if there shall be a default of any appearance by any party, the party seeking judgment shall file with the Court an affidavit setting forth facts showing that the party in default is not in the military service. If unable to file such affidavit, the party seeking judgment shall file an affidavit setting forth that the party in default is either in the military service or that the affiant is not able to determine whether or not such defaulting party is in the military service so that judgment may be entered [50 U.S.C. 520, et. seq.].

#### **5.03 Final Judgment Entries**

- A. At all uncontested hearings, the Court requests counsel to present a proposed entry with supporting orders and sufficient copies to be served on all parties and other entities as required by these Rules.
- B. When the Court renders a decision in a contested manner and requests counsel to prepare an entry, said counsel shall submit the proposed entry to opposing counsel for approval within seven (7) days. Within seven (7) days thereof, opposing counsel shall approve and deliver the entry to the Court. If counsel fails to provide the Court with an entry within fourteen (14) days of the rendering of a decision, the Court may issue Notice of Hearing on Entry [CM 5], and counsel shall appear at said hearing and show cause why they have failed to submit the entry. If the Court receives more than one proposed entry, the Court may issue one of the proposed entries, issue its own entry, or schedule a hearing.
- C. Counsel shall include assessment of costs, where applicable, in all proposed entries to be issued by the Court. If a proposed entry does not provide for the assessment of costs, the Court shall assess costs as it deems appropriate.
- D. In order to facilitate the prompt and timely issuance and service of entries upon counsel, when counsel prepares an entry to be issued by the Court, counsel shall include the following Certificate of Service on the last page of the entry to be signed by the Court or the Clerk:



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This is to certify that a copy of the *(insert the title of the document being served)*  
has been issued by regular U.S. mail to *(insert the names of counsel of record*  
*or the parties, if no counsel of record)*, at their respective addresses on  
\_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_.

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- E. In all cases, counsel shall supply sufficient copies of all documents to be served on all parties and counsel of record.

**5.04 Failure of Service**

If service is not completed within six (6) months as required by Civ.R. 4(E), the Court will serve notice on counsel that unless service is obtained within fourteen (14) days, the case will be dismissed [CM 1].

**RULE 6.00  
CONTINUANCES**

**6.01 Continuance Policy**

- A. A case in which a date has been assigned for any proceeding shall only be continued upon written motion endorsed by the litigant seeking the continuance, and the authorization of the Judge or Magistrate. For good cause shown, a case may be continued by an Agreed Entry, or by a written motion with entry reassigning the proceeding for a date that has been obtained from the Court's Assignment Commissioner. Any relief which ultimately may be granted may be effective as of the original hearing date despite the granting of the requested continuance.
- B. The Court may waive the requirement that the litigant/moving party endorse the motion for a continuance if in the motion counsel states with specificity the reason for the request for the waiver and that counsel has advised the litigant-client of the request for continuance and the reason therefore, has provided a copy of the motion to the litigant-client, and authorizes the Court to serve a copy of the entry granting the continuance on the litigant-client. The entry presented by counsel granting the continuance shall comply with the requirements of Mercer Co. Loc.R. 6.01 A., and in addition, shall state that the Court has waived the requirement that the litigant-client endorse the motion for the continuance for good cause shown and that a copy of the entry be served upon the litigant-client.

**6.02 Contents of Motion**

A motion for continuance must be accompanied by the appropriate entry granting the motion with the date and time from and to which the matter is continued and must contain the following information:

- a. Filing date of the original motion;
- b. Subject matter of the motion;
- c. Pretrial, trial, or hearing date
- d. Number of previous continuances granted and at whose request;
- e. Reason for continuance;
- f. Copy of conflicting trial assignment attached, if appropriate. (Criminal case shall have priority.)
- g. Agreement of opposing party/counsel if obtained, and if not, whether or not an agreement was sought; and
- h. Endorsement of moving party and moving party's attorney, if represented.

**6.03 Continuance Procedure**

A copy of the motion must be served upon opposing counsel, or the opposing party if not represented, prior to its submission with the appropriate entry to the Judge or Magistrate before whom the case will be heard. If the motion to continue the matter is not granted by the Judge or Magistrate, it shall proceed as originally scheduled.

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When counsel requests a continuance for the reason that counsel is scheduled to appear in another case assigned on the same date, the Court will give priority to the case that was first assigned. Provided however, criminal cases shall have priority over civil cases. Counsel shall attach a copy of the conflicting entry or notice assigning the other case to the motion for continuance.

**RULE 7.00  
FACSIMILE FILING**

The provisions of this Local Rule are adopted under Civ.R. 5(E) and Crim.R. 12(B) that were in effect at the time of the adoption of these Rules.

Pleadings and other documents may be filed with the Clerk of Courts by facsimile transmission to (419) 586-5826, subject to the following conditions:

**7.01 Definitions**

As used in these rules, unless the context requires otherwise:

- A. A “facsimile transmission” means the transmission of a source document by a facsimile machine that encodes a document into optical or electrical signals, transmits and reconstructs the signals to **print** a duplicate of the source document at the receiving end.
- B. A “facsimile transmission” means a machine that can send and receive a facsimile transmission.
- C. “**Fax**” is an abbreviation for “facsimile” and refers, as indicated by the context, to facsimile transmission or to a document so transmitted.
- D. Normal business hours are designated as: Monday, 8:30 a.m. until 5:00 p.m.; and Tuesday through Friday, 8:30 a.m. until 4:00 p.m.

**7.02 Applicability**

- A. No fax filings will be accepted at any fax number other than that of the Clerk of Courts. If for some reason a problem exists with their machine, instructions will be given by the Clerk that will include an alternative fax number.
- B. These rules apply to civil, criminal, and domestic relations proceedings in the Mercer County Common Pleas Court.
- C. The following documents may **NOT** be filed by fax transmission:
  - 1. Any filing commencing an action (i.e., a complaint or post-decree motion, a motion for injunction relief) for which the Clerk of Courts must collect an initial deposit against costs for a specific filing fee and/or for which the Clerk of Courts is required to effectuate service and summons; or
  - 2. Any entry which must be signed by the Judge or Magistrate or **any final entry** not requiring the court’s signature but for which a party is obligated to settle up costs with the Clerk of Courts. Notices of Dismissal, Stipulated Entries of Dismissal and the like, however, not requiring a Judge’s signature and not requiring a settling-up with the Clerk of Courts, may be filed by fax subject to the other provisions of this Local Rule.

### 7.03 Original Filing

- A. A document filed by fax shall be accepted as the effective original filing, if the person sending the fax complies with all of the requirements set forth in this Local Rule. The person sending a fax filing need not file any source document with the Clerk of Courts but must, however, maintain in his or her records and have available for production on request by the Court the source document filed by fax, with original signatures as otherwise required under the applicable rules, together with the source copy of the facsimile cover sheet used for the subject filing.
- B. The source document filed by fax shall be maintained by the person making the **filing** until the case is closed and all opportunities for appeals are exhausted.

### 7.04 Cover Page

- A. The person filing a document by fax shall also provide therewith a cover page containing the following information: [see CM Form 20]
  - 1. The name of the court;
  - 2. the title of the case;
  - 3. the case number
  - 4. the title of the document being filed (e.g. Defendant Jones' Answer to Amended Complaint)
  - 5. the date of transmission
  - 6. the transmitting fax number
  - 7. an indication of the number of pages included in the transmission, including the cover page;
  - 8. the name, address, telephone number, fax number, Supreme Court registration number, if applicable, and e-mail address of the person filing the fax document if available; and
  - 9. if applicable, a statement explaining how costs are being submitted.
- B. If a document is sent by fax to the Clerk of Courts without the cover page, the Clerk may deposit the document in a file of failed faxed documents with a notation of the reason for the failure; in this instance, the document **shall not** be considered filed with the Clerk of Courts.
- C. The Clerk of Courts is not required to send any form of notice to the sending party of a failed fax filing. However, if practicable, the Clerk of Courts may inform the sending party of a failed fax filing.

### 7.05 Signature

A party who wishes to file a signed source document by fax shall either:

- A. Fax a copy of the signed source document; or
- B. Fax a copy of the document without the signature but with the notation “/s/” followed by the name of the signing person where the signature appears in the signed source document.

This is used in those instances where the fax transmission is generated by the sending party's computer and therefore the document is not printed and capable of being signed prior to transmission.

- C. A party who files a signed document by fax represents that the physically signed source document is in his/her possession or control.

#### **7.06 Length of Document**

Fax filings shall not exceed ten (10) pages in length. The filer shall not transmit service copies by facsimile.

#### **7.07 Exhibits**

- A. Exhibits may be filed by fax if contained within the initial ten (10) page transmission.
- B. Each exhibit to a fax produced document that cannot be accurately transmitted via fax transmission for any reason must be replaced by an insert page describing the exhibit and why it is missing. Unless the Court otherwise orders, the missing exhibit shall be filed with the Court, as a separate document, not later than five (5) Court days following the filing of the facsimile document. Failure to file the missing exhibits as required by this paragraph may result in the Court striking the document and/or exhibit.
- C. Any exhibit filed in this manner shall be attached to a cover sheet containing the caption of the case which sets forth the name of the Court, title of the case, the case number, name of the judge and title of the exhibit being filed (e.g., Plaintiff Smith's Notice of Filing Exhibit "G" to Plaintiff Smith's Response to Defendants' Motion to Dismiss), and shall be signed and served in conformance with the rules governing the signing and service of pleadings in this Court. [CM 21]
- D. Each transmitted document shall be limited to only one (1) complete document filing per transmission. If more than one document is to be filed in a case then the sender must use separate cover pages for each such filing and must transmit each filing separately. Each transmission shall be no longer than ten (10) pages not including the cover page and must pertain to only one case.
- E. The person sending the fax filing is responsible for service of copies on opposing counsel/parties.

#### **7.08 Fees and Costs**

No additional fee shall be assessed for facsimile filings.

**7.09 Time of Filing**

- A. Fax filings received by the Clerk of Courts' office during normal business hours of a regular workday shall be deemed filed as of that day, at the time printed on the document by the Clerks' fax machine. Each page of any document received by the Clerk will be automatically imprinted with the date and time of receipt. The date and time imprinted on the **last page** of a document will determine the time of filing, provided the document is deemed accepted by the Clerk. The office of the Clerk of Courts will be deemed open to receive fax transmission of documents on the same days and at the same time the court is regularly open for business. Filings received after business hours, on a weekend or a holiday shall be filed as if received on the next regular workday for the Clerk.
- B. **Fax filings may NOT be sent directly to the Court for filing but may only be transmitted directly through the facsimile equipment operated by the Clerk of Courts.**
- C. The Clerk of Courts may, but need not, acknowledge receipt of a fax transmission.
- D. The risks of transmitting a document by fax to the Clerk of Courts shall be borne entirely by the sending party. Anyone using fax filing is urged to verify receipt of such filing by the Clerk of Courts through whatever technological means is available.
- E. The purpose of this rule is to provide an additional service to users of the court. Neither the Clerk of Courts nor the Court assumes any new or additional responsibilities, obligations, or liabilities by virtue of this rule except as expressly provided herein. Further, this rule pertains only to the method of filing; it does **not** override, alter, amend, revoke or otherwise change any local rule or Ohio Rule of Civil Procedure respecting the requirement of , for example, obtaining the consent of parties or counsel or obtaining signatures, or the authorization to sign for opposing counsel as to any filings.

**RULE 8.00**  
**COUNSEL REPRESENTATION**

**8.01 Notification of Representation**

Upon accepting representation of a party in any matter before the Court, counsel shall enter a written appearance either by responsive pleading or Notice of Appearance of Counsel. This allows the Clerk's office to list your name as counsel of record on that specific case so that you will not miss receiving any paperwork relating to the case. The computer system generates notices, etc., by the attorney's name inputted to the case.

**8.02 Withdrawal of Counsel**

- A. The Court will not permit counsel to withdraw from any action at any time within twenty-one (21) days in advance of trial, final pretrial, or evidentiary hearing, except upon good cause shown.
- B. In order to withdraw from a case, an attorney shall:
1. Submit a motion with reasons thereon and proposed entry to the Judge or Magistrate containing a certificate of service to opposing counsel, if any; the opposing party, if *pro se*; and the withdrawing attorney's client.
  2. If there is a scheduled hearing, the entry shall contain a statement indicating it is necessary for new counsel to be obtained promptly.
  3. If new counsel has been substituted, the name of said counsel shall be included in the motion and entry.
- C. If counsel should become unable to represent a party or should formally withdraw from a case, that party shall have fourteen (14) days to secure new counsel. The Court may extend that time period upon application of the party and for good cause shown. If a party fails to procure counsel or fails to request the Court for an extension within said fourteen (14) days, the Court will assign the matter as in any other case, and the case shall proceed accordingly. In such case, notice of assignment mailed to the party without counsel will be deemed notice to that party.
- D. Any counsel who seeks to formally withdraw from a case shall advise the party to the action of this rule by furnishing a written copy of this rule to the party and shall certify to the Court that he/she has complied with this rule.
- E. If counsel for a party dies, the party shall have thirty (30) days in which to procure new counsel. If the party fails to procure counsel within thirty (30) days, or fails to request the Court for an extension, the Court will assign the matter as in any other case, and the case shall proceed accordingly. In such case, notice of assignment mailed to the party without counsel will be deemed notice to that party.



**RULE 9.00  
CIVIL MATTERS**

**9.01 Generally**

- A. After an action has been commenced and initial responsive pleadings have been filed, the Court will assign a **scheduling conference at which all counsel of record shall be present**. The Court will conduct telephonic scheduling conferences only with leave of Court. Counsel requesting the telephonic scheduling conference will arrange the conference call with all counsel of record at a time approved by the Court.
- B. After the scheduling conference, the Court will issue a scheduling order which may include dates by which or upon which certain proceedings shall occur including, but not limited to the following:
1. joinder of new parties and amending of pleadings;
  2. filing and hearing of motions;
  3. identifying lay witnesses and expert witnesses;
  4. completing and terminating discovery;
  5. entering into any alternative dispute resolution proceedings;
  6. commencing of a trial; and
  7. additional pretrials, status reports, and conferences on settlement.

The Court will not modify the scheduling order except upon showing of good cause. Counsel shall have the obligation of notifying the Court of any noncompliance with the scheduling order.

- C. Sixty (60) days after the completion of service, if no responsive pleading has been filed and no action has been taken by plaintiff's counsel, plaintiff's counsel shall pursue default proceedings, request a scheduling conference or pretrial conference, or dismiss the action. Failure to proceed may result in the Court giving notice of pending dismissal. [CM 2]

**9.02 Default Judgment Motions**

- A. Default judgments shall be granted in accordance with Civ.R. 55. Any motions for default judgments must recite that the moving party, either personally or through counsel, has not been contacted by the defaulting party, or if contact has been made, the extent of such contact.
- B. Counsel for the party moving for a default judgment shall obtain a date and time for a hearing from the Court's Assignment Commissioner at (419-586-2122), notice of said hearing shall be included with the motion and provide at least seven (7) days notice of such hearing to the defaulting party. A certificate of service of the motion, and notice upon the defaulting party, shall be endorsed thereon by the moving party. **Counsel for the moving party MUST APPEAR at said hearing or contact local counsel to appear on their behalf. In the event that the moving party fails to comply with the notice requirements of this rule, the Court will assign the motion for hearing.**

- C. Counsel shall comply with the requirements of the Soldiers and Sailors Civil Relief Act as set forth in 50 U.S.C. 520, et. seq. [Mercer Co. Loc.R. 5.02]
- D. Counsel for the party seeking a default judgment shall appear at the hearing with an affidavit in support of the claim for relief and be prepared to present evidence including admissible documentation in support of the claims as the Court may deem necessary or proper in accordance with Civ.R. 55(A), and present a proposed judgment entry to the Court for its issuance.
- E. Failure to comply with this rule shall result in the Court setting a hearing. Failure of counsel for the moving party to appear at said hearing shall result in the pending matter being dismissed.

### **9.03 Summary Judgment Motions**

- A. Motions for summary judgment shall be governed by Civ.R. 56. Upon the filing of a motion for summary judgment, the Court will issue an order [CM 11] setting a hearing date. The opposing party shall have until the day prior to the hearing to file opposing affidavits or other evidence and memoranda. Oral arguments shall be considered waived and the motion submitted unless a written request for oral arguments is received no later than seven (7) days prior to the scheduled hearing.
- B. In any memorandum or argument counsel shall refer to specific pages, paragraphs, and lines of any pleadings, interrogatories, affidavits, depositions, or other documentary evidence which counsel desires the Court to consider.

### **9.04 Confirmation of Sale**

- A. The party moving for confirmation of sale in a foreclosure proceeding shall obtain a date and time for hearing from the Court's Assignment Commissioner at (419-586-2122), notice of which shall be included with the motion and provide at least seven (7) days notice of such hearing. A certificate of service of the motion and notice upon all other parties and counsel of record shall be endorsed thereon by the moving party.
- B. At the time of hearing on the motion for confirmation of sale, counsel shall provide the Court with a proposed judgment entry approved by the sheriff's civil deputy. **Counsel need not appear at said hearing if a proposed entry has been received by the Court prior to the hearing date which has been approved by all necessary parties, including the Mercer County Sheriff's Department Civil Deputy.**

### **9.05 Other Motions**

- A. The Court will decide all other motions without oral arguments unless a party requests a hearing and/or the court determines that a hearing is appropriate. The moving party shall attach to the motion a memorandum in support of the motion setting forth citations of authorities relied upon and further shall submit with the motion a proposed judgment entry. Any party opposing the motion may file a written response within fourteen (14) days of service of the motion. Reply, additional briefs or memoranda may be submitted only with leave of the Court.

- B. When a plaintiff files a voluntary dismissal under Civ.R. 41, the clerk shall enter a dismissal entry on the journal and collect the court costs from the plaintiff.

**9.06 Bankruptcy**

- A. If any party files a proceeding in the U.S. Bankruptcy Court which results in a stay of this Court's proceedings, counsel for the debtor shall immediately file with the Court a notice of same with an attached file-stamped copy of the petition and a proposed order staying proceedings [CM 9] as provided by the provisions of 11 U.S.C. 362.
- B. Counsel for the debtor and/or a creditor shall immediately notify the Court of any action of the bankruptcy court which permits this Court to proceed with the case.

**9.07 Property Appraisers**

Pursuant to Standing Order and Judgment Entry filed by this Court on March 3, 1998, certified appraisers performing appraisals on real property for cases pending before this Court shall be compensated in an amount no less than \$75.00, and that certified appraisers performing appraisals on personal property for cases pending before this Court shall be compensated in an amount not less than \$50.00. In cases where both real and personal property are appraised, the appraiser shall be compensated in an amount not less than \$75.00.

**9.08 Final Pretrials**

- A. At all scheduled final pretrials, counsel of record shall be personally present with their clients and those persons with ultimate settlement authority unless excused for good cause by the court prior to the final pretrial.
- B. Counsel shall be prepared to advise the Court of their efforts to attempt to resolve as many issues as possible.
- C. The Court may order counsel to prepare a pretrial brief containing any of the following information as may be appropriate:
1. concise statement of the general claims and defenses of the parties;
  2. facts established by admissions in the pleadings and discovery;
  3. stipulations of facts;
  4. contested issues of facts;
  5. contested issues of law and citations of authorities therefore;
  6. names and addresses of witnesses, as well as expert witnesses and their qualifications, expected to testify at trial, together with a brief statement of the subject matter of the expected testimony of each witness;
  7. a list of exhibits that counsel intend to offer into evidence, marked as follows:
    - (a) joint exhibits - Roman numerals;
    - (b) plaintiff's exhibits - Arabic numerals; and
    - (c) defendant's exhibits - letters.Counsel shall certify that they have exchanged exhibits and, if possible, provided a copy for the Court;
  8. motions in limine not already filed;

9. any additional motions to be filed;
  10. statement of completed discovery to date and additional discovery required;
  11. a list of specific damages being requested;
  12. anticipated trial time required for each side of the case;
  13. specific jury instructions, including reference to and additional instructions required;
  14. instructions for the bailiff if a view of the scene is requested;
  15. status of settlement negotiations; and
  16. any other information which may assist the court in either settlement negotiations or preparation for trial.
- D. The Court may order counsel to prepare a joint pretrial brief containing any of the foregoing information.
- E. All pretrial briefs shall be submitted **directly to the Court** with copies served upon all other counsel or *pro se* parties not less than seven (7) days prior to final pretrial unless the Court otherwise directs. Pretrial briefs shall **not be filed** with the Clerk.
- F. Failure to submit a pretrial brief or to comply with any other Court orders in a timely manner may result in appropriate sanctions, including exclusion of testimony or exhibits, denial of claims, directed verdict, dismissal of the case, contempt of court, or such other action the Court may deem appropriate.
- G. Counsel is responsible for notifying the Court of any party's failure to cooperate with other parties or to diligently attempt to comply with all pretrial orders of the Court.

#### **9.09 Jury Trials**

Seven (7) days prior to a scheduled jury trial the court will make a list of the prospective jurors together with copies of their jury questionnaires available to counsel. Counsel and the parties shall treat all information in the questionnaires as **confidential** and use the information only for the purpose of impaneling the jury. As soon as the jury has been impaneled, the questionnaires shall be returned to the Jury Administrator.

#### **9.10 Settled Cases**

- A. Counsel shall immediately notify the Court when a case has been settled. If the Court does not receive an entry terminating the case within fourteen (14) days after receipt of notification of settlement, the Court will assign the matter for a hearing on enforcement of settlement [CM 7] at which time all counsel of record and parties and persons with settlement authority shall be present unless a termination entry is received prior to said hearing.
- B. When a Workers' Compensation appeal is settled, due to the necessity of obtaining the approval of the Industrial Commission of Ohio, counsel for appellant shall submit a Notice of Dismissal of Workers' Compensation Appeal [CM 8]. The Clerk shall hold any funds on deposit for costs until counsel submits the appropriate settlement entry approved by the Industrial Commission of Ohio.

### **9.11 Medical Malpractice Cases**

Prior to the fifteenth day of December of each year, plaintiff's counsel in a pending medical malpractice case, which includes a medical claim, dental claim, optometric claim, or chiropractic claim, shall submit to the Clerk of Courts office a Medical Malpractice Report [CM 22] for reporting purposes consistent with R.C. 2303.23. For medical malpractice cases that settle before the fifteenth day of December, plaintiff's counsel shall submit a Medical Malpractice Report [CM 22] within thirty (30) days of the settlement.

### **9.12 Administrative Appeals**

- A. If the matter is an administrative appeal, the Court may assign a scheduling conference or give notice of a briefing schedule [CM 10] in accordance with the following:
1. appellant's brief containing assignments of error shall be due forty-two (42) days after filing of the notice of appeal;
  2. appellee's responsive brief shall be due twenty-eight (28) days after filing of appellant's brief; and
  3. appellant's reply brief shall be due fourteen (14) days after service of appellee's answer brief.
- B. The Court will schedule oral arguments for a date approximately ninety (90) days after the filing of the notice of appeal. Counsel shall notify the Court in writing not less than seven (7) days prior to the date assigned if counsel desires oral arguments. If no request for oral arguments is received, oral arguments shall be considered waived and the matter shall be deemed submitted.

### **9.13 Garnishments**

All Distribution Entries submitted to the Court shall read as follows:

**“Any/all garnishment proceeds currently being held on deposit with the Clerk of Courts shall be distributed to \_\_\_\_\_, less any accrued court costs.”**

## **RULE 10.00 MEDIATION**

### **10.01 Generally**

Upon order of the Court, a civil action filed in this Court may be submitted to mediation as provided in this Rule. By participating in mediation, a non-party participant, as defined by Ohio Revised Code Section 2710.01(D), submits to the Court's jurisdiction to the extent necessary for enforcement of this Rule. Any non-party participant shall have the rights and duties under this Rule as are attributed to parties, except that no evidence privilege shall be expanded.

### **10.02 Definitions**

All definitions found in the "Uniform Mediation Act" (UMA) ORC 2710.01 are adopted by this Court through this local rule including but not limited to the following:

"Mediation" means any process in which a mediator facilitates communication and negotiation between the parties to assist them in reaching a voluntary agreement regarding their dispute.

"Mediator" means an individual who conducts mediation pursuant to an order of this Court, regardless of whether that individual is an employee, an independent contractor or a volunteer.

"Mediation Communication" means a statement, whether oral, in a record, verbal or non verbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.

"Proceeding" means the following: judicial, administrative, arbitral or other adjudicative process, including related pre-hearing and post-hearing motions, conferences, and discovery.

### **10.03 Purpose**

To promote greater efficiency and public satisfaction through the facilitation of the earliest possible resolution for cases through the use of mediation.

### **10.04 Case Selection and Timing for Mediation**

- A. The Court, on its own motion, or the motion of any of the parties may refer disputed issues to mediation in whole or in part by "Notice of Scheduled Mediation" which shall, at a minimum indicate the date, time, place, and contact information of the mediation. All parties and counsel shall advise the 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.

- B. At the initial pretrial conference the parties and counsel shall advise the Court of the results of their discussions concerning mediation. At that time and at subsequent conferences, if necessary, the Court may explore with the parties and counsel the possibility of using mediation. A party opposed to either the referral or the appointed mediator must file a written objection with the Court within seven days of receiving notice of the referral or provider and explain the reasons for any opposition.
- C. Before the initial pretrial conference in a case, counsel shall discuss the appropriateness of mediation in the litigation with their clients and with opposing counsel. Mediation shall not be used as an alternative to the prosecution or adjudication of domestic violence, to determine whether to grant, modify or terminate a protection order, to determine the terms and conditions of a protection order, or to determine the penalty for violation of a protection order.

#### **10.05 Eligibility of Cases**

The Court will determine the eligibility and appropriateness of each referral prior to the commencement of the mediation process and may decline any referral(s) deemed inappropriate.

#### **10.06 Mediator Selection and Assignment**

Specific assignments 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.

- A. **Party/Non-Party Participation.** Parties who are ordered into mediation shall attend scheduled mediation sessions.

By participating in a mediation, a non-party participant, as defined by ORC 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 non-party participant shall have the rights and duties under this Rule as are attributed to parties, except as provided by ORC 2710.03(B)(3) and ORC 2710.04(A)(2).

- B. **Confidentiality / Privilege.** All mediation communications related to or made during the mediation process are subject to and governed by the "Uniform Mediation Act" (UMA) ORC 2710.01 to 2710.10, ORC 3109.052, the Rules of Evidence and any other pertinent judicial rule(s).
- C. **Mediator Conflicts of Interests.** In accordance with ORC 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 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).

- D. 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.

#### **10.07 No Stay of Proceedings**

Stay of Proceedings. All remaining court orders shall remain in effect. No order is stayed or suspended during the mediation process. 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.

#### **10.08 Continuances**

Continuances of scheduled mediations shall be granted only for good cause shown after a mutually acceptable future date has been determined. The case may be continued by the Mediator or the Judge or Magistrate who referred the case. Except as authorized by the Court, the existence of pending motions shall not be good cause for a continuance and no continuance will be granted unless the mediation can be scheduled prior to the final pretrial. If a continuance of a scheduled mediation is requested and the proposed new date is more than 45 days after the initial referral to mediation, then the request must be made to the Judge or Magistrate.

#### **10.09 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 ORC 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.

#### **10.10 Mediator Report**

At the conclusion of the mediation and in compliance with ORC 2710.06 the Court shall be informed of the status of the mediation including all of the following:

- Whether the mediation occurred or was terminated;
- Whether a settlement was reached on some, all or none of the issues;
- Attendance of the parties; and
- Future mediation session(s), including date and time.

#### **10.11 List of Qualified Mediators**

The Court will maintain a list of qualified Mediators.

- A. All those on the list of qualified mediators shall submit to the Court a regularly updated Curriculum Vitae (including a list of training related to the field of dispute resolution and professional or association memberships) which CV shall be provided by the Court to those requesting information on an assigned Mediator's qualifications to mediate a dispute pursuant the requirements set forth in ORC 2710.08(C).



- B. The Court will review applications of the person seeking to be added to the list of qualified Mediators in accordance with the procedures adopted by the Court.
- C. Nothing in this rule shall limit the use of a mediator not on the Court's list if agreed upon by all parties, and is in compliance ORC Section 2710.

#### **10.12 Fees and Costs**

All costs shall be determined by the Court, if applicable. The parties may agree between themselves to apportion the costs of the mediation. Unless otherwise agreed by the parties, the mediation costs shall be shared equally. In the event that the parties cannot agree, the Court shall determine the apportionment of the mediation costs to the parties. The Court may waive costs for the parties who are unable to pay. Mediation shall not be ordered where a party is indigent unless the mediation is available at no cost to the party.

#### **10.13 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 any other appropriate sanctions at the discretion of the Judge or Magistrate.

#### **10.14 Mediation Privilege**

Mediation communications are privileged as described in ORC 2710.03-2710.05.

#### **10.15 Client Defined Confidentiality**

If the parties wish mediation communication to be confidential they will effect a written confidentiality agreement prior to mediation.

#### **10.16 Mediator's Duty**

The Mediator shall inform the Court who attended the mediation, whether the case settled, and whether efforts to settle the case through mediation are being continued or if the case is being returned to the Court for further proceedings. No other information shall be directly or indirectly communicated by the Mediator to the Court, unless all who hold a mediation privilege, including the Mediator, have consented to such disclosure. The Mediator shall keep mediation communications confidential, unless all who hold a mediation privilege, including the Mediator, have consented to such disclosure.

#### **10.17 Duties of Attorneys/Parties**

- A. Trial counsel, all parties and, if applicable, the principal insurance adjuster(s), all with authority to settle, shall personally attend all mediation sessions prepared to discuss all relevant issues, including settlement terms. A party other than a natural person must be represented by a person other than counsel.
- B. If counsel or any mediation party becomes aware of the identity of a person or entity whose consent is required to resolve the dispute, but who has not yet been joined as a party in the

pleadings, they shall promptly inform the mediator as well as the assigned Judge of such fact.

- C. If the opposing parties to any case have either resided in a common residence or are related by blood, adoption, or marriage, and have known or alleged domestic abuse at any time prior to the mediation, then the parties or their counsel have a duty to disclose such information to the mediator. Such party shall have a duty to participate in any screening required by the Supreme Court of Ohio's Rules of Superintendence Rule 16 both prior to, and, in the mediator's discretion, during the mediation session(s).

**10.18 No Advice**

The efforts of the mediator shall not be construed as giving legal advice. The Court may have materials for legal or other support services available in the community. The mediator is authorized to provide such resource information; however, such distribution shall not be construed as a recommendation of or referral to such resource. The recipient of that information is charged with the duty to evaluate those resources independently.

**10.19 Administrative Dismissal**

If the parties fail to dismiss a settled case within the later of sixty (60) days or the time noted in the entry that gave the Court notice of the settlement, then the Court may dismiss the case administratively. Upon such administrative dismissal, court costs shall be paid from the funds deposited. If court costs exceed the funds deposited, each party shall bear their own costs.

**RULE 11.00  
GRAND JURY**

**11.01 Grand Jury Proceedings**

- A. The Grand Jury shall convene at 9:00 a.m. on the third Thursday of each month and other such times as requested by the Prosecuting Attorney, or as otherwise ordered by the Court.
- B. Criminal cases bound over to the Court on which no action is taken by the Grand Jury within sixty (60) days shall be dismissed by the Prosecuting Attorney forthwith without prejudice.
- C. Pursuant to Crim.R. 6 and C.P.Sup.R. 11, all Grand Jury proceedings, with the exception of deliberations and voting, shall be recorded. Such recording, whether stenographically or electronically recorded, shall not be disclosed unless ordered by the Court.
- D. Pursuant to Crim.R. 6(E) any indictment issued by the Grand Jury shall be kept secret until the defendant is in custody or has been released pursuant to Crim.R. 46. The Clerk of Courts shall seal all indictments, the indictments shall not be docketed by name until after the apprehension of the accused, and no person shall disclose the finding of the indictments except when necessary for the issuance of a warrant or summons.

Should a person involved in the process of issuance or execution of a warrant or summons believe that public disclosure of the indictment is necessary to effect service of the summons or warrant, that person may apply to the Court for relief from this Rule.

This Rule shall not be interpreted as a prohibition of communication between Peace Officers, Law Enforcement Officers or Agencies, or Court Personnel in an attempt to execute a summons or warrant issued by the Grand Jury.

LOCAL RULES OF PRACTICE IN THE  
COMMON PLEAS COURT OF MERCER COUNTY, OHIO

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<p>RULE 12.00 CRIMINAL MATTERS</p>
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12.01 Discovery

The discovery process shall be consistent with Crim.R. 16 and current law.

12.02 Time Within Which Trial Must Be Held

- A. The Prosecuting Attorney shall certify in writing to the Court the last day of the time period within which the defendant shall be brought to trial as required by R.C. 2945.71 at least 35 days prior to the last day to timely convene trial.
  
- B. Thereafter, the Prosecuting Attorney shall forthwith in writing certify to the Court any changes in the last day of the time period within which the defendant shall be brought to trial as required by R.C. 2945.71.

12.03 Pretrials, Hearings, and Entries

- A. An initial pretrial shall be assigned at the time of the arraignment for the purpose of establishing time periods for discovery and for motion hearings, pretrials, and trial.
  
- B. Counsel are requested to meet prior to the time of the pretrial to resolve as many issues as possible.
  
- C. Defense counsel shall have defendant present for all proceedings unless excused by the Court. If the defendant is incarcerated out-of-the-county, it is the responsibility of defense counsel

to file a motion requesting the defendant be conveyed to Mercer County [CM 15] with a proposed entry at least one (1) week prior to that proceeding [CM 16].

- D. The investigating law enforcement officer need only be present for proceedings as requested by counsel or if so ordered by the Court.
- E. If counsel is requested to prepare an entry, counsel shall submit it to the Court within three (3) business days of the request.

#### 12.04 Post-Conviction Motions

- A. Upon the filing of any post-conviction motion pursuant to R.C. 2953.21, the Assignment Commissioner will schedule the matter for a conference or a hearing to be withheld within sixty (60) days after said motion is filed.
- B. Mercer Co. Loc.R. 12.01 and Mercer Co. Loc.R. 12.03 shall apply to all post-conviction motions.

#### 12.05 Assigned Counsel

- A. All attorneys in private practice in Mercer County with the exception of the Prosecuting Attorney, his assistants, the City Law Director, his assistants, and the CSEA Attorney, shall be entered on the list of counsel available for appointment. Appointments shall be made by the Court on a rotating basis, except that appointments may be made out of rotation in order to avoid conflicts of interest, conflicts with counsel's schedule, conflicts with the Court's schedule, and in instances where the gravity and complexity of the offense requires counsel with greater experience than the person next on the list.
- B. Assigned counsel shall receive compensation for professional services and be reimbursed for expenses in accordance with R.C. 2941.51. Upon the completion of the service, it shall be the duty of such assigned counsel to submit an itemized statement of the services rendered and the time spent in connection with such services in the preparation and trial or other disposition of same, and any out-of-pocket expenses incurred therein. The Court shall determine the

amount of compensation within the statutory limit thereon, in accordance with schedule of fees adopted by the Board of County Commissioners of Mercer County. No fees in excess of the maximums prescribed therein shall be approved unless prior to incurring such expenses, counsel shall make application to the Court and obtain prior approval therefore by judgment entry.

NOTE: Pursuant to RC 120.33(A)(4), all requests for reimbursement are due to the Office of the Ohio Public Defender within ninety (90) days after the end of the month in which the case was finally disposed of or terminated. To provide sufficient processing time for the request at the county level and the state level, the request is due to the Court within 30 days after the end of the month in which the case was finally disposed of or terminated. Failure to comply shall result in reimbursement amounts being reduced by a rate equal to the Ohio Public Defender's current reimbursement rate, with the exception of capital murder cases.

Example: A case is terminated on January 5, 2000. The request is due to the office of the Ohio Public Defender by April 30, 2000.

This standard is subject to the following exception:

Trial Level Court - If the attorney intends to file a notice of appeal, a motion for a new trial, a motion for shock probation, or a motion for judicial release, the Motion, Entry, and Certification form is due to the Office of the Ohio Public Defender within ninety (90) days after the end of the month in which the last action or hearing indicated on the form was held.

- C. It is intended that counsel assigned to represent indigent defendants shall themselves investigate cases to which they have been assigned. In addition, the Office of the Ohio Public Defender has a staff of attorneys and investigators who can assist private appointed counsel and also the availability of psychologists, psychiatrists, social workers and other experts for use by private appointed counsel. Therefore, no co-counsel will be appointed nor will investigators or other experts be furnished except when the defendant has been charged with aggravated murder or murder and the Office of the Ohio Public Defender has declined, in writing, to furnish such assistance and/or for the purpose of providing the opportunity for training and experience

for such co-counsel. In the event that investigators or other experts are allowed by the Court, the bills for same shall be filed using the Ohio Public Defender's Expert Form.

**12.06 Qualifications for Assigned/Appointed Counsel**

The Court hereby adopts the minimum qualifications for assigned counsel as outlined in Sup.R.20.

- A. Where the Defendant is charged in with a capital case, the Court hereby adopts the minimum qualifications for assigned counsel as outlined in Sup.R. 20.
- B. Where the defendant is charged with a misdemeanor, appointed counsel shall possess the professional ability to properly represent the defendant as determined by the Court within its sound discretion.
- C. Assignment will be distributed as widely as possible among members of the bar who meet the qualifications for assignment.
- D. Counsel desiring to receive appointments shall complete and submit to the Court a completed application to participate in assigned counsel system. Counsel shall submit updated applications as appropriate. [CM 12]
- E. To assist the Court in complying with the requirements of Crim.R. 44, each defendant charged with a crime in this Court shall be provided with a copy of the application for assigned counsel [CM 13] when served with process. This form is to be returned and filed in the Clerk's Office along with a \$25.00 application.
- F. Upon accepting an appointment assigned by the Court to represent a defendant, counsel shall forthwith file an Acknowledgment of Representation [CM 14] The Court will not approve counsel's request for payment of fees unless said acknowledgment has been filed and a copy attached to the request for payment.

12.07 General Statement of Policy of Determining Indigency

- A. When required by rule or law to appoint counsel for indigent persons, the criteria for determining indigency shall include: ownership and ready availability of real or personal property; all household income, inheritance, expectancies, and other assets; number and age of dependents; outstanding debts, obligation, and liabilities; and any other relevant considerations.
- B. The pivotal issue in determining indigency shall be not whether the applicant ought to be able to employ counsel, but instead whether the applicant is, in fact, able to do so.
- C. The court shall consider the possible sources of income, assets, and liabilities listed on the Financial Disclosure/Affidavit of Indigency Form as approved by the Ohio Public Defender Commission [CM 13 and Incorporated Attachment].

12.08 Income Standards for Determining Indigency

A. Presumptive Eligibility

- 1. Without other substantial assets, individuals whose income is not greater than 125 percent of the current poverty threshold established by the United States Office of Management and Budget may be presumed to require the appointment of counsel. An individual whose income is between 125 percent and 187.5 percent of the federal poverty guidelines may still be presumed to require the appointment of counsel if any of the following apply:
  - a. Applicant's household income, minus allowable expenses, yields no more than 125 percent of the federal poverty income guidelines.
  - b. Allowable expenses are the cost of medical care, childcare, transportation, and other costs required for work, or the cost associated with the infirmity of a



resident family member incurred during the preceding 12 months, and child support actually paid from household income.

- c. The applicant has liabilities and/or expenses, including unpaid taxes, the total of which exceeds the applicant's income.
2. Presumptive ineligibility. Applicants having liquid assets that exceed one thousand dollars (\$1,000) for misdemeanor cases and five thousand dollars (\$5,000) in felony cases shall be presumed to be not indigent. For purposes of this Rule, "liquid assets" are defined as those resources that are in cash or payable upon demand. The most common types of liquid assets are cash on hand, savings accounts, checking accounts, trusts, stocks, and mortgages. Applicants with an income over 187.5 percent of the federal poverty level shall be deemed not indigent.
3. The poverty income thresholds (125% - 187.5%) are updated annually by the United States Office of Management and Budget and may be found in the Federal Register. These income thresholds are based on gross income. They will be available, on request, from the Ohio Public Defender Commission, or you can find the information at: [http://www.opd.ohio.gov/reimb/rm\\_guide.htm](http://www.opd.ohio.gov/reimb/rm_guide.htm)
4. Applicants being detained in a state institution shall have only their own income and assets considered, as they have no "household" for purposes of this Rule.

B. Other Factors

1. Seriousness of charge weighted against possession of liquid assets. In determining whether a defendant is indigent, the seriousness of the charge shall be taken into consideration. A defendant may be found not indigent if the individual possesses liquid assets in excess of the assigned/appointed counsel fees paid for a case of equal seriousness in the county in which the charges are brought. In lieu of using the assigned/appointed counsel fee, other methods of determining fees for competent counsel may be used, including a survey of attorneys representing defendants in criminal cases.

2. The equity value in the applicant's principal residence and other valuable assets may be included in the consideration.
  3. Release on bail shall not prevent a person from being determined indigent.
  4. Counsel shall not be denied solely because an applicant's friends or relatives have resources adequate to retain counsel.
- C. Partial Reimbursement. The ability to contribute a portion of the cost of adequate legal representation shall not preclude eligibility for assigned/appointed counsel. All programs developed to seek reimbursement for the cost of assigned/appointed counsel from the defendant shall be subject to guidelines established for such programs in other commission rules. Programs established for those who fall above income/asset levels shall be approved by the Ohio Public Defender Commission.
- D. Redetermination. A preliminary determination of ineligibility for legal representation shall not foreclose a redetermination of eligibility when, at a subsequent stage of a proceeding, new information or changes in circumstances concerning the financial inability to retain competent counsel becomes available.
- E. Waiver. In determining indigency in individual cases, the court has the authority to waive these guidelines in unusual or meritorious situations. In such situations, the waiver decision shall be documented and included in the client's file. However, despite the income and assets of the individual requesting court-appointed counsel, the determination of indigency shall be based upon the law set forth in *State v. Tymcia* (1975), 42 Ohio St.2d 39, which states, "To make the right of court appointed counsel a factual reality, the determination of need must turn, not upon whether an accused ought to be able to employ counsel, but whether he is, in fact, able to do so." *Id.* at 45.
- F. Verification Procedures. All information contained on Financial Disclosure/Affidavit of Indigency Forms is subject to verification through investigation by the Mercer County Adult Probation Department on a random basis at the discretion of and upon order of the Court.

- G. Confidentiality. Rules, regulations, and procedures concerning the determination of initial eligibility and/or continued eligibility shall not require assigned/appointed counsel or public defenders to make any disclosures concerning the client's financial status beyond disclosures mandated by the binding ethical rules of the jurisdiction, the Court's determination of indigency, and R.C. 120.38.
- H. Other Prohibitions. The procedure whereby it is determined whether or not a person is entitled to have publicly provided counsel shall not deter a person from exercising any constitutional, statutory, or procedural right. Specifically, such rights shall not be deprived by any means, including, but not limited to the following:
1. By such stringency of application of financial eligibility standard as may cause a person to waive representation of counsel rather than incur the expense of retained counsel; and
  2. By unnecessarily conditioning the exercise of the right to counsel on the waiver of some other constitutional, statutory, or procedural right.
- I. Requests for Specific Appointed Counsel. When a defendant makes a request for a specific appointed counsel pursuant to R.C. 120.33(A), such a request shall be acted upon promptly.

#### 12.09 Restitution

If restitution is ordered, monies deposited shall be applied by the Clerk first to the restitution, second to court costs, third to assigned counsel fees, and fourth to fines, with the balance, if any, refunded to the Defendant, unless otherwise ordered by the Court

#### 12.10 Specialized Docket

This Court, as a part of its criminal division, created a specialized docket known as the "Drug Court" program in accordance with Sup.R. 36.20 through 36.29 on January 1, 2013. Persons convicted or sentenced to community control who qualify for Drug Court will participate in the services provided as established by the Drug Court Program Description.

- A. The creation of the Drug Court Program aims to:
1. Reduce drug and alcohol dependency recidivism in the court.
  2. To increase the number of participants in the Drug Court Program who complete treatment.
  3. To improve the lives of the participants, thereby improving the lives of the people in the community in which they live.
- B. Prior to acceptance into the Drug Court Program, each person shall have been referred by a judge, probation officer, prosecutor, or defense attorney and the participant shall have filed a Request for Admittance [CM 28] with the Clerk of Court. The judge will either admit or deny a participant to Drug Court. Each participant shall then undergo an assessment by a representative from Foundations and the Drug Court Officer. To be eligible for consideration of participation in the Drug Court Program a person must meet certain minimum requirements outlined in the Drug Court Policy and Procedures manual.
1. Clinical Eligibility Criteria
    - a. Diagnosed as substance dependent. The participant must have completed a drug/alcohol assessment by a certified licensed provider.
    - b. Must be able to understand and comply with program requirements.
  2. Other Eligibility Criteria
    - a. No physical or mental health issues, which might hinder participation in the program. (will be reviewed on a case by case basis)
    - b. Must be a resident of Mercer County.

- c. The defendant is receptive to receiving treatment.
- d. Judge has the sole discretion in the admissibility to Drug Court.
- e. Must be a case assigned to the Mercer County Common Pleas Court.

3. Legal Criteria

- a. Intervention in Lieu of Conviction or;
- b. Charged with a pending Mercer County felony offense less serious than a felony of the second degree which is not a drug trafficking offense unless the prosecuting attorney does not object to a person's participation in the Drug Court program, a sex offense, or has a mandatory prison sentence or;
- c. The defendant is on Community Control with a Notice of Violation pending or; on agreement of the defendant; or on recommendation of the Probation Officer.
- d. Sentenced to Drug Court as part of Community Control placement and/or through Judicial Release

Ordinarily, a conviction of sex crimes, crimes involving children as victims, crimes involving the use of a weapon, crimes of violence involving a victim with a serious injury, and drug trafficking cases (upon objection of the Prosecutor) will result in ineligibility. The judge has the discretion to decide who participates in the Drug Court Program.

- C. Each participant, upon acceptance into the Drug Court Program, shall sign a Participation Agreement and Waiver. Each participant, upon entry, shall also be given a copy of the Drug Court Handbook.
- D. Participants in the Drug Court Program will progress through Orientation, Phase I, Phase II, and Phase III as provided for in the Program Description. The phases provide for a graduated level of services and contact with the Treatment Team, decreasing with progression through

the program. Participants will attend Drug Court status review hearings in court before the judge weekly or as otherwise provided for in the Program Description.

E. Termination. Participants may be unsuccessfully terminated upon:

1. Ongoing noncompliance or multiple violations of the Drug Court Program;
2. Serious violation of the Drug Court Program;
3. New serious criminal conviction; or
4. Resistance to treatment.

Participants may be neutrally discharged upon:

1. Serious medical or mental health condition;
2. Death;
3. Other factors that will impede the participant's requirements for successful completion

F. Statements made in Drug Court hearings shall be treated as evidence of conduct or statements made in compromise negotiations and are not admissible to prove the underlying cause of action, as set forth in Evidence Rule 408. Statements made in Drug Court hearings will be treated as statements made in the course of plea discussions in which the defendant or the defendants' counsel was a participant, and will not be admissible to prove the underlying cause of action, as set forth in Evidence Rule 410. This does not limit the admissibility of evidence provable by independent, extrinsic evidence.

**RULE 13.00**  
**NOTARIES PUBLIC**

The Ohio Secretary of State's office commissions and maintains records of all notaries public in Ohio. The Notary Modernization Act takes effect on September 20, 2019. Under the new law, all applications for notary commissions, renewals, online authorizations and updates to contact information must submit an application electronically to the secretary of state. This law eliminated the need to record the notary commission with the county or any other office, the commission's status is maintained on our public database.

More information may be found at <https://www.ohiosos.gov/notary/#gref>

**RULE 14.00**  
**SPECIAL PROCEEDINGS**

**14.01 Domestic Violence Actions**

- A. Pleading: An action seeking an *ex parte* civil protection order may be initiated by filing a petition of domestic violence in accordance with R.C. 3113.31(C). 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.
- B. Procedure:
1. The procedure set forth in R.C. 3113.31 *et seq.* shall be followed. If custody of a minor child is sought, a Parenting Proceeding Affidavit [Affidavit 3] shall also be filed. If child and/or spousal support is sought, an Affidavit of Income and Expenses [Affidavit 1] shall be filed with the Court. The Clerk of Courts shall not collect a cost deposit for the filing of a petition of domestic violence.
  2. Service shall be ordered through the Mercer 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 all in accordance with Mercer Co. Loc.R. 2.07.
  3. No later than seven (7) days prior to the full hearing, the respondent shall submit to the Court and serve upon petitioner an Affidavit of Income and Expenses [Affidavit 1] in cases involving custody of a child and a request for child and/or spousal support.
  4. 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 the statute. The *ex parte* civil protection order does remain in effect until a decision is issued pursuant to the full hearing.
- C. Counseling: Pursuant to R.C. 3113.31(E)(1)(f) the court may order counseling. An anger management, mental health treatment or substance abuse treatment program may be ordered in addition to batterer intervention treatment.



**RULE 15.00  
DOMESTIC RELATIONS  
FILING REQUIREMENTS**

**15.01 Documents Required for Filing**

In original filings or post decree filings the following documents shall also be filed as set forth below:

**A. Complaint for Divorce/Legal Separation/Annulment without children:**

- Complaint
- Uniform Domestic Relations Form – Affidavit 1 – Affidavit of Income and Expenses – **Filed and docketed with the Clerk’s Office and kept in the Confidential Family File**
- Uniform Domestic Relations Form – Affidavit 2 – Affidavit of Property – **Filed and docketed with the Clerk’s Office and kept in the Confidential Family File**
- Domestic Relations Restraint Order [SO 1]

**B. Complaint for Divorce/Legal Separation/Annulment with children (also includes Complaint for Paternity):**

- Complaint
- Uniform Domestic Relations Form – Affidavit 1 – Affidavit of Income and Expenses – **Filed and docketed with the Clerk’s Office and kept in the Confidential Family File**
- Uniform Domestic Relations Form – Affidavit 2 – Affidavit of Property – **Filed with the Clerk’s Office and kept in the Confidential Family File**
- Uniform Domestic Relations Form – Affidavit 3 – Parenting Proceeding Affidavit
- Uniform Domestic Relations Form – Affidavit 4 – Health Insurance Affidavit
- DR 3 (or DR 4) – Child Support Worksheet
- DR 7 – Notice of Parenting Program
- DR 8 – Medical Healthcare Form – **Not Filed with the Clerk’s Office but Submitted Directly to the Court**
- DR 10 – IV-D Application – **Not Filed with the Clerk’s Office but Submitted Directly to the Court**
- SO 1 – Domestic Relations Restraint Order

**C. Petition for Dissolution without children:**

- Petition
- Uniform Domestic Relations Form – Affidavit 1 – Affidavit of Income and Expenses – **Filed and docketed with the Clerk’s Office and kept in the Confidential Family File. Both parties must file individually or a joint affidavit may be filed.**
- Uniform Domestic Relations Form – Affidavit 2 – Affidavit of Property – **Filed and docketed with the Clerk’s Office and kept in the Confidential Family File. Both parties must file individually or a joint affidavit may be filed.**
- DR 5 – Waiver of Magistrate’s Decision
- DR 9 – Waiver of Counsel (if applicable)
- DR 11 – Waiver of Service of Summons

- Separation Agreement

D. **Petition for Dissolution with children:**

- Petition
- Uniform Domestic Relations Form – Affidavit 1 – Affidavit of Income and Expenses – **Filed and docketed with the Clerk’s Office and kept in the Confidential Family File. Both parties must file individually or a joint affidavit may be filed.**
- Uniform Domestic Relations Form – Affidavit 2 – Affidavit of Property – **Filed and docketed with the Clerk’s Office and kept in the Confidential Family File. Both parties must file individually or a joint affidavit may be filed.**
- Uniform Domestic Relations Form – Affidavit 3 – Parenting Proceeding Affidavit
- DR 3 (or DR 4) – Child Support Worksheet
- DR 5 – Waiver of Magistrate’s Decision
- DR 7 – Notice for Parenting Program
- DR 8 – Medical Health Care Form – **Not Filed with the Clerk’s Office but Submitted Directly to the Court**
- DR 9 – Waiver of Counsel (if applicable)
- DR 10 – IV-D Application – **Not Filed with the Clerk’s Office but Submitted Directly to the Court**
- DR 11 – Waiver of Service of Summons
- Separation Agreement
- Parenting Time Plan/Shared Parenting Plan

E. **Petition to Register Foreign Orders:**

- Complaint
- Two authenticated copies of the foreign judgment

F. **Post-decree motion requesting modification of child/spousal support:**

- Motion
- Uniform Domestic Relations Form – Affidavit 1 – Affidavit of Income and Expenses – **Filed and docketed with the Clerk’s Office and kept in the Confidential Family File**
- Uniform Domestic Relations Form – Affidavit 3 – Parenting Proceeding Affidavit
- Uniform Domestic Relations Form – Affidavit 4 – Health Insurance Affidavit
- DR 3 (or DR 4) – Child Support Worksheet
- DR 8 – Medical Health Care Form – **Not Filed with the Clerk’s Office but Submitted Directly to the Court**
- DR 10 – IV-D Application – **Not Filed with the Clerk’s Office but Submitted Directly to the Court**
- Affidavit in Support of Motion

G. **Post-decree motion requesting modification of parental rights:**

- Motion
- Uniform Domestic Relations Form – Affidavit 1 – Affidavit of Income and Expenses – **Filed and docketed with the Clerk’s Office and kept in the Confidential Family File**
- Uniform Domestic Relations Form – Affidavit 3 – Parenting Proceeding
- Uniform Domestic Relations Form – Affidavit 4 – Health Insurance Affidavit

- DR 3 (or DR 4) – Child Support Worksheet
- DR 8 – Medical Health Care Form – **Not Filed with the Clerk’s Office but Submitted Directly to the Court**
- DR 10 – IV-D Application – **Not Filed with the Clerk’s Office but Submitted Directly to the Court**
- Affidavit in Support of Motion

H. **Post-decree motion requesting modification of parenting time:**

- Motion
- Uniform Domestic Relations Form – Affidavit 3 – Parenting Proceeding
- Affidavit in Support of Motion

I. **Post-decree motions to show cause:**

- Motion
- Affidavit in Support
- Order to Show Cause Containing Notice

**15.02 Financial Disclosure Affidavits**

A. Required Submission. The Supreme Court Uniform Domestic Relations Form – Affidavit 1 – Affidavit of Income and Expenses is acceptable to file in all Domestic Relations proceedings. All Affidavits of Income and Expenses shall be complete and provide detailed disclosure under oath.

1. Divorce, Legal Separation, or Annulment: All complaints or motions filed shall be accompanied by an Affidavit of Income and Expenses [Affidavit 1] within 14 days of service of summons or with any answer or counterclaim if one has not already been submitted.
2. Dissolutions of Marriage: In petitions for dissolutions of marriage, an Affidavit of Income and Expenses [Affidavit 1] shall be filed with the Clerk of Court by each party at the time of filing the petition.
3. Post-Decree: In all post-decree motions where support is an issue, the movant shall file an Affidavit of Income and Expenses [Affidavit 1] which will be kept in the Confidential Family File. The respondent shall file an Affidavit of Income and Expenses [Affidavit 1] within 14 days of service of summons.

**15.03 IV-D Application**

- A. A IV-D Application [DR 10] shall be submitted directly to the Court where it will be kept in the Family File in all complaints for divorce, dissolution, or legal separation involving minor children.
- B. The Decree of Divorce or Legal Separation shall include a provision protecting any ADC Child Support arrearage.

#### **15.04 Temporary Child Support and Spousal Support**

Upon the filing of a divorce or legal separation actions, the Court may issue a temporary order pursuant to Civ.R. 75(N) which will contain orders on temporary custody, child support, parenting time, and spousal support, or such other orders as the Court deems appropriate. A withholding order for the temporary support ordered may be issued by the Court, without a hearing, at its discretion for good cause shown. Copies of the file-stamped temporary orders will be forwarded to any attorneys of record and unrepresented parties.

#### **15.05 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 and may be made by separate order and may be granted for extenuating circumstances.
- B. Custody and Visitation Issues. No *ex parte* orders of custody or visitation shall be issued except in emergency circumstances. The Court will visit the issue on a temporary basis after service upon the opposing party and the passage of fourteen (14) days after service has occurred. 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.

**RULE 16.00**  
**DOMESTIC RELATIONS**  
**DISCOVERY PROCEDURES**

**16.01 General**

- A. Civ.R. 26 through 37 shall apply to any action in this Court, including post-decree motions filed pursuant to Civ.R. 75(J).
- B. Policy of Local Rule. It is the policy of this Rule to encourage prompt and complete discovery and to avoid the Court's involvement in the discovery process.
- C. Filing Pertaining to Discovery. Depositions upon oral examination, interrogatories, requests for documents, requests for admission, and answers and responses thereto shall not be filed unless upon order of the Court.
- D. Motions for Protective Order. The motion shall state, with specificity, the basis for the protective order and shall clearly state 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 without further order of the Court:
  - 1. All pensions 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 three (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.

**RULE 17.00  
DOMESTIC RELATIONS  
PRETRIAL CONFERENCE**

**17.01 General**

- A. When Held. A pretrial conference will be held in all contested matters, and in other cases at the discretion of the Court. Counsel shall confer prior to the Court conference and be prepared to meet with the Court at the appropriate time.
- B. Purpose. The purpose of the conference shall be to achieve an amicable settlement of the controversy and, in the event that settlement is not possible, to expedite trial or hearing of the case.
- C. Pretrial Orders. After the conference, the Court may issue a pretrial order containing:
1. Discovery orders;
  2. Withholding orders;
  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;
  6. Orders requiring pretrial statements; and/or
  7. Discuss referral for mediation, counseling, conciliation, or investigation
- D. Attendance; Failure to Appear.
1. Trial counsel and parties shall be present at any pretrial, unless excused for good reason, and shall have complete authority to stipulate to items of evidence and admissions. Only legal counsel need to appear at attorney conferences.

**RULE 18.00  
DOMESTIC RELATIONS  
DISMISSAL OF CASES**

**18.01 Want of Prosecution**

The Rule of Superintendence shall apply to all cases for want of prosecution.

**18.02 Voluntary**

If a party dismisses their action they shall include an order to terminate any withholding orders and vacate restraining orders, if appropriate. If a post-decree motion is being dismissed, a Judgment Entry of Dismissal shall accompany said motion.

**RULE 19.00  
DOMESTIC RELATIONS  
FILING OF FINAL JUDGMENTS AND DECREES**

**19.01 Non-Contested Matters, Dissolutions**

- A. A proposed final judgment and decree shall be presented to the Court at the time of hearing for all dissolutions and non-contested divorces, legal separations, annulments, along with a Waiver of Magistrate's Decision.
- B. All separation agreements and other pleadings filed in dissolutions are reviewed by the Magistrate prior to the setting of the final hearing.

**19.02 Contested Matters**

The Court may direct counsel to prepare the decree following the final hearing as stated in the Court's written decision.

- A. Unless otherwise directed by the Court, counsel shall present a proposed decree to opposing counsel within fourteen (14) days after the written decision.
- B. Opposing counsel shall have seven (7) days to approve or reject the proposed decree. In the event both counsel have not approved the entry, both shall appear at the CM5 hearing to be held 21 days after the written decision.
- C. Shared parenting agreements. When a shared parenting agreement is read into the record at the final hearing, counsel shall prepare the shared parenting plan and decree and shall submit the plan and decree in accordance with the rules.
- D. Counsel shall include assessment of costs, where applicable, in all proposed entries to be issued by the Court and include judgment for the same.
- E. In order to facilitate the prompt and timely issuance and service of entries upon counsel, when counsel prepares an entry to be issued by the Court, counsel shall include the following Certificate of Service on the last page of the entry to be signed by the Court or the Clerk:

This is to certify that a copy of the **(state the title of the document being served)** has been issued by regular U.S. mail to **(list the name of counsel of record or the parties, if no counsel of record)**, at their respective addresses on \_\_\_\_\_, 20\_\_\_\_.

- F. In all cases, counsel shall supply sufficient copies of all documents to be served on parties, counsel of record, and, if appropriate, the Mercer County Child Support Enforcement Agency, and forward a copy to the Court.



**RULE 20.00  
DOMESTIC RELATIONS  
REQUIRED LANGUAGE FOR DECREES AND AGREED ORDERS**

**20.01 General**

Decrees and agreed orders shall provide the following:

- A. Full names of parties; and
- B. Current addresses of parties.

**20.02 Support Language**

Child support provisions shall provide the following:

- A. Monthly amount per child;
- B. Effective date;
- C. If arrearages are present, monthly amount of payment;
- D. Payments shall be made through the Office of Child Support, Ohio Child Support Payment Central (OCSPC), P.O. Box 182372, Columbus, Ohio, 43218-2394, plus two percent (2%) administrative fee until such time as said amounts are withheld by the withholding notice.
- E. Withholding order language consistent with current law.

**20.03 Withholding Notice Language**

Withholding Order language shall be consistent with current law and shall include all required notices pursuant to Ohio statute.

**20.04 Health Care Provision**

Decrees and agreed orders related to child support shall contain a provision in accordance with current Ohio law.

**20.05 Reasonable and Ordinary Uninsured Medical Expenses**

- A. The amount of \$100.00 per year per child shall be deemed reasonable and ordinary medical expenses of a minor child, consistent with Ohio statute.
- B. Expenses remaining thereafter shall be deemed extraordinary and shall be allocated between the parties on a case by case basis.
- C. Medical expenses shall be defined as hospital, doctor visits, dental, orthodontic, laboratory testing, optical, optometric, pharmaceutical, psychiatric and psychological expenses pre-approved by both parents, ordered by the Court, or reasonable and necessary under the circumstances. Medical expenses do not include those for purely cosmetic reasons.

**RULE 21.00**  
**DOMESTIC RELATIONS**  
**PARENTING TIME**

**21.01 Guardian Ad Litem**

- A. Appointment. A party may request the appointment of a guardian ad litem pursuant to current law and the request must be in writing. The Court may also appoint a guardian ad litem on its own motion. No motion for the appointment of Guardian Ad Litem shall be granted except by leave of Court once the matter has been set for trial.
- B. Fees. Upon granting of a motion, the Court shall require deposit by the parties pursuant to order.
- C. The Guardian Ad Litem shall be selected and appointed solely by the Court in accordance with the qualifications and guidelines established by the Court.
- D. Unless otherwise provided, it is the responsibility of each party involved in the litigation to timely contact the Guardian Ad Litem and to provide the Guardian with information relating to the minor children.
- E. Report. The written report of the guardian ad litem shall be submitted to the Judge or Magistrate. The same will be kept in the Family File. The report is NOT to be submitted to the Clerk of Courts for filing. The court will then disseminate the report to counsel and/or the parties in compliance with the Superintendence Rules.
- F. The report shall be admitted into evidence pursuant to Ohio law and the Rules of Superintendence. The final Judgment Entry shall contain a provision for the discharge of the Guardian Ad Litem at the conclusion of the matter on which the Guardian Ad Litem was appointed unless otherwise directed by the Court.

## 21.02 Parenting Program

This Rule shall apply to all matters filed regarding parenting time.

- A. Authority and Attendance. The Court requires all parents in divorce, legal separation, or dissolution actions, and post-decree matters if ordered by the Court, involving minor children, to attend and complete an educational program, e.g., "A-Ok Parenting Program," approved by the Court. The Court may order attendance at post-decree matters.
- B. An order advising the parents of the program will be mailed directly to the parties. Each parent shall be responsible for registering for the program to be attended. The parties' action may not proceed to final hearing until there has been compliance with this rule; provided that non-compliance by a parent who enters no appearance and does not contest the action will not delay the final hearing. This requirement may be waived for good cause shown. [Notice to Attend A-Ok Parenting Program, DR 7]
- C. Waiver. A waiver of attendance may be granted by the Court within its discretion but only upon written application and evidence of extreme hardship presented or for other good cause.

**RULE 22.00  
DOMESTIC RELATIONS  
ATTORNEY FEES**

**22.01 Attorney Fees**

The amount of \$250.00 shall be deemed to be a reasonable, necessary, and appropriate amount for attorney fees for representation in cases upon which a finding of contempt has been made or a motion to impose jail sentence from a previous finding in contempt is heard. Any request for attorney fees in excess of \$250.00 shall require a presentation of evidence as to the reasonableness and necessity of said fees in accordance with Ohio law. Except for those matters in which attorney fees are statutorily mandated, it is the discretion of the Court whether to award attorney fees in such action. This is not applicable to fees for court-appointed counsel which shall be paid upon proper application to the Court.

**RULE 23.00**  
**DOMESTIC RELATIONS**  
**HEALTH INSURANCE INFORMATION**

**23.01 General**

A separate Medical Healthcare Form shall accompany all Judgment Entries in divorces, dissolutions or re-opened on behalf of the minor children. See prescribed DR 8 Form. The form will be forwarded to the Mercer County Child Support Enforcement Agency by the Court, but will not be filed in the Clerk of Courts case file because of the private nature of the information on this form.

**RULE 24.00**  
**DOMESTIC RELATIONS**  
**POST-DECREE MOTIONS**

**24.01 General**

When counsel or a party files a motion that requests a hearing or requires a hearing, counsel shall obtain a date and time for said hearing from the Assignment Commissioner. The Court, at its discretion, may use said scheduled time as a pretrial, or attorney conference on the motion. Said date shall not be earlier than 21 days after service.

**24.02 Motions to Modify Child or Spousal Support**

- A. Any motion requesting a modification of an existing child or spousal support order shall be accompanied by an updated Affidavit of Income and Expenses [Affidavit 1]. The party seeking a modification shall provide at the 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 submit an Affidavit of Income and Expenses [Affidavit 1] directly to the court and/or provide appropriate income verification may result in the dismissal of the motion.
- B. The opposing party shall submit a completed Affidavit of Income and Expenses [Affidavit 1] directly to the court to be placed in the Family File and the above income documentation to the Court within 14 days of service upon the opposing party.

**24.03 Motions to Reallocate Parental Rights and Responsibilities**

Any motion requesting a reallocation of parental rights and responsibilities shall set forth the name and year of birth of the child(ren). All motions seeking to reallocate parental rights and responsibilities shall be accompanied by an Affidavit of Income and Expenses [Affidavit 1] submitted directly to the Court and a Parenting Proceeding Affidavit [Affidavit 2] filed with the Clerk of Court.

**24.04 Motions to Modify Parenting Time**

Any motion requesting a modification of the parenting time schedule shall be accompanied by a Parenting Proceeding Affidavit [Affidavit 2].

**24.05 Motions to Show Cause (Contempt)**

- A. Notice. Every summons issued with a show cause motion shall include a Notice satisfying Ohio statutes.
  
- B. Order. Every motion to show cause shall be filed with an "Order to Show Cause." The same shall be submitted to the Clerk of Court with the filing of the motion. The notice of hearing/show cause order shall be served with the motion and citation pursuant to the Civil Rules.

**RULE 25.00  
DOMESTIC RELATIONS  
CHILD RELOCATION**

**25.01 General**

- A. Prior to the relocation of the residential parent, or either parent in a shared parenting plan, to a residence other than that specified in the visitation order or decree of the Court, the relocating parent must serve a Notice of Intent to Relocate [DR 6] in advance notice of the move upon the other parent by certified mail. Said notice shall be filed with the Clerk of Courts. Included in said notice shall be the last known address of all the parties, a new residential address of the parent, and the telephone number and the name and address of the school in the district in which the child(ren) shall attend, if applicable. The residential parent must comply with ORC 3109.051(G) requiring filing of this notice.
  
- B. Upon receipt of said notice the other parent may petition this Court for hearing on visitation and companionship rights. If no such pleading is filed within fourteen (14) days from service of the notice the relocation shall proceed as set forth in the notice.



**RULE 26.00  
DOMESTIC RELATIONS  
SEEK WORK PROGRAM**

**26.01 General**

The purpose of the Seek Work Program is to assist individuals in finding employment that are court-ordered to pay child support. All parties who are not working shall take part in the Seek Work Program unless excused by the Court. The following rules shall apply to the Seek Work Program:

- A. A party ordered to participate in the Seek Work Program shall report to the courtroom of the Juvenile/Probate Court at the courthouse every Tuesday morning at 8:45 a.m.
- B. The Mercer County Child Support Enforcement Agency will provide the individual ordered to the Seek Work Program with the program rules, regulations, and release.
- C. Failure to comply with the rules of a participating agency by missing any scheduled appointments, classes, sessions with Gateway Outreach Center, Mercer County Job and Family Services, or any other agency participating in the Seek Work Program may result in a Show Cause Order being issued requiring them to show why they have failed to comply with the orders of the Court.

**RULE 27.00  
DOMESTIC RELATIONS  
MEDIATION**

**27.01 Introduction**

The Mercer County Common Pleas Court General Division adopts Local Rule 27.00 in conjunction with Local Rule 10, effective January 1, 2007. Through Rule 27.00 the Mercer County Common Pleas Court incorporates by reference the ORC 2710 "Uniform Mediation Act" (UMA), ORC 3109.052 Mediation of Differences as to Allocation of Parental Rights and Responsibilities and Rule 16 of the Supreme Court of Ohio Rules of Superintendence. Upon order of the Court, a domestic relations matter filed in this Court may be submitted to mediation as provided in this Rule.

**27.02 Procedures**

- A. In accordance with all applicable provisions of this Rule, if a case is deemed appropriate 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.
- B. The Court shall utilize procedures for all cases that will:
1. 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.
  2. Screen for domestic violence both before and during mediation.
  3. Encourage appropriate referrals to legal counsel and other support services for all parties, including victims of and suspected victims of domestic violence.
  4. Prohibit the use of mediation in any of the following:
    - a. As an alternative to the prosecution or adjudication of domestic violence;
    - b. In determining whether to grant, modify or terminate a protection order;
    - c. In determining the terms and condition of a protection order; and
    - d. 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.

- C. Mediation of allocation of parental rights and responsibilities or the care of, or visitation with, minor children or delinquency of status offense case shall above by all provisions set forth in 27.02 B. 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 27.03 of this Rule and all of the following conditions are satisfied:
1. 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 at mediation sessions.
  2. The parties have the capacity to mediate without fear of coercion or control.
  3. 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.
  4. 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.
  5. Procedures are in place for issuing written findings of fact, as required by ORC 3109.052, to refer certain cases involving domestic violence to mediation.

### **27.03 Mediator Qualifications**

To be a Court Approved Mediator the following qualifications apply:

- A. **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:
1. 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.
  2. Complete at least twelve hours of basic mediation training or equivalent experience as a mediator that is satisfactory to the division.
  3. 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.

B. **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-mediate with a mediator who has completed the specialized training.

**27.04 Guardian Ad Litem**

A *guardian ad litem* for the child shall be appointed by the Court in all cases involving a child who was the subject of a prior abuse or neglect action, in all cases where one of the parties was the perpetrator of an act which resulted in an adjudication that any other child was abused or neglected and in other cases where the mediator believes it to be in the best interest of the child. A *guardian ad litem* appointed in these shall participate in mediation.

**27.05 Model Standards**

Mediators providing services for the Court shall comply with the Model Standards of Practice for Family and Divorce Mediation, and the Special Policy Considerations for the State Regulation of Family Mediators and Court Affiliated Programs as set forth in Rule 16 of the Supreme Court of Ohio Rules of Superintendence for the Courts of Ohio.

**RULE 28.00**  
**CERTIFICATE OF QUALIFICATION FOR EMPLOYMENT**

**28.01 CERTIFICATE OF QUALIFICATION FOR EMPLOYMENT**

The purpose of this local rule is to define the specific local court requirements and processes that support a Petitioner's application for a Certificate of Qualification for Employment (CQE) as set forth in Revised Code 2953.25 and related rules established by the Ohio Department of Rehabilitation and Corrections (DRC).

**28.02 PROCEDURES**

- A. In order to request a CQE, the Petition for Certificate of Qualification for Employment (RC 2953.25) [CM 30] shall be filed with the Clerk of Courts by the Petitioner, after completing the petition process online through the DRC ([www.drccqe.com](http://www.drccqe.com)). For security purposes, the Clerk and the Court do not avail computers to the public for internet access.
1. The Petitioner shall provide the DRC Electronic Petition Number and attach a printed receipt of electronic Petition.
  2. All Petitions shall be accompanied by the Department of Rehabilitation and Corrections CQE Summary (CQE Summary).
- B. Before any action is required to be taken on the Petition, the Petitioner must pay a deposit in the amount of \$100.00. The Petitioner may file a Request for Waiver of Fees [CM 31] along with an Affidavit of Indigency or other relevant information for the court's consideration if requesting a reduction in the filing fees.

- C. All social security numbers and other information that must be excluded from public record shall be redacted in accordance with the rules of this court and the Rules of Superintendence. Records or information received by a court to assist the court with making its decision” under Section 2953.25 of the Revised Code, including information included on a petition, shall retain their character as public or non-public records, as otherwise provided in law.
- D. The Clerk of Court shall assign the Petition a miscellaneous civil case number and randomly assign the matter to a trial judge.
- E. The court shall obtain a criminal history for the Petitioner, either through the investigation ordered in support of the Petition (see Order for Investigation [CM 34]) or otherwise.
- F. The Court shall attempt to determine all other courts in the state in which the Petitioner has been convicted of or plead guilty to an offense through review of the Petitioner's criminal history or other investigation.
  - 1. The court or investigating officer shall submit a list of these courts to the Clerk of Court for purposes of notification and request for information.  
[CM 38]
- G. The Clerk of Court shall send a Notice to Court Regarding Petition for Certificate of Qualification for Employment [CM 32] and Response to Request for Information Regarding Petition for Certificate of Qualification for Employment [CM 33] to each court so identified. Such notice shall be sent via ordinary U.S. mail.
- H. The Clerk of Court shall also send a Notice [CM 32] and a Response to Requests [CM 33] to the Prosecuting Attorney of the county in which the Petition was filed.
- I. The Judge or Magistrate shall review the Petition, criminal history, all filings submitted by the prosecutor or victim in accordance with the rules adopted by the division of parole and community services, and all other relevant evidence.

1. The Judge or Magistrate may order any report, investigation or disclosure by the Petitioner that it believes is necessary to reach a decision (see Order for Investigation [CM 34] and Order for Additional Information [CM 35]).
- J. Once all information requested has been received, a Judge shall decide whether to Grant [CM 36] or Deny [CM 37] the Petition within sixty (60) days, unless Petitioner requests and is granted an extension of time.
1. The decision to grant or deny a Petition may be referred to a Magistrate, and then sent to the Judge for a final Judgment Entry and Order. All notice and objection periods regarding a magistrate's decision would apply as set forth in the civil rules.
- K. The Clerk shall provide a written notice to the Petitioner of the court's decision and judgment entry.
1. If denied, the notice shall include conditions, if any, placed on subsequently filings and language that a final appealable order has been filed.
  2. The Clerk shall also notify the DRC of the disposition of the petition as required under the Administrative Rules, and if granted order the DRC to issue the CQE to Petitioner.

LOCAL RULES OF PRACTICE IN THE  
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**APPENDIX A**

Filing Fee: Court Cost Deposit (R.C. 2303.20),  
and Special Project Fees (R.C. 2303.201 (E)(1))

CIVIL MATTERS	DEPOSIT
Administrative Appeal	\$350.00
Foreclosure	\$350.00
Professional Torts	\$350.00
Product Liability	\$350.00
Workers' Compensation	\$350.00
Other Civil	\$350.00
Other Torts	\$350.00
Third-Party Complaint	\$200.00
Counterclaim / Cross-Claim	\$200.00
Writ of Possession	\$200.00
In cases where there are over two (2) defendants, for each defendant an additional:	\$ 25.00
Amended Complaint - for each additional defendant	\$ 25.00
OTHER MATTERS	
Writ of Execution	\$500.00
Debtor's Examination	\$100.00
Garnishment	\$150.00
Third District Court of Appeals	\$150.00



<b>DOMESTIC RELATIONS</b>	
Divorce	\$350.00
Dissolution	\$350.00
Post Decree / Post Judgment Motions	\$250.00
Notice of Intent to Relocate	CALL TO CONFIRM
<b>DOMESTIC VIOLENCE</b>	
Motion to Amend CPO	\$150.00
<b>CRIMINAL</b>	
Expungement (includes \$50 fee pursuant to R.C. 2953.32(C)(3))	\$200.00
<b>MISC. FEES</b>	
Issuing Certificate of Judgment	\$ 6.00
Filing Certificate of Judgment	\$ 30.00
Releasing Certificate of Judgment	\$ 5.00
Foreign Judgment	\$ 35.00
COPIES: per page	\$ .25
certificate and seal	\$ 2.00
COPIES BY FAX (outgoing): first page	\$ 3.00
each additional page	\$ 1.00
New Notary Application: \$31.00 to Clerk of Court + \$15.00 to Secretary of State	\$ 46.00
Notary Renewal: \$6.00 to Clerk of Court + \$15.00 to Secretary of State	\$ 21.00

**APPENDIX AB**  
**JURY USE AND MANAGEMENT PLAN**

**AB.01 Conducting of Drawing of Jurors**

Pursuant to R.C. 2313.21, the court hereby adopts the procedure of using automated data processing for conducting the drawing of jurors, as authorized by and in accordance with R.C. Chapter 2313.

**AB.02 Opportunity for Service**

- A. The opportunity for jury service shall not be denied or limited on the basis of race, national origin, gender, age, religious belief, income, occupation, disability, or any other factor that discriminates against a cognizable group in the jurisdiction.
- B. Jury service is an obligation of all qualified citizens of Mercer County, Ohio.

**AB.03 Jury Source List**

- A. Pursuant to court order, a jury source list shall be obtained from the Board of Elections' list of registered voters in the form of a computer printout. The court shall designate a key number based on the total number of registered voters and the number of jurors needed for year of service.
- B. The jury source list shall be as representative and shall be as inclusive of the adult population in the jurisdiction as is feasible.
- C. The court shall review the jury source list for its representativeness and inclusiveness of the adult population in the jurisdiction as is feasible.
- D. Should the court determine that improvement is needed in the representativeness or inclusiveness of the jury source list, appropriate corrective action shall be taken.

**AB.04 Random Selection Procedures**

- A. Potential jurors shall be drawn from a jury source list which shall constitute a list of all registered voters in Mercer County, by the use of random selection procedures using automated data processing equipment in conformity with R.C. Chapter 2313 as adopted by Mercer Co. Loc.R. Appendix AB.01 hereinbefore set forth.
- B. Between December 4 and December 17 of each year, the jury commissioners, duly appointed by the court pursuant to R.C. 2313.01, shall convene and select a sufficient number of prospective jurors for grand and petit juries for the calendar year.
- C. In December of the preceding year and in April and August of each calendar year, the jury commissioners shall convene and complete, by use of automated data processing equipment, a list of prospective jurors for grand and petit juries for the part term of court next ensuing for that calendar year.

**LOCAL RULES OF PRACTICE IN THE  
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- D. In the event the number of prospective jurors is insufficient to meet the needs for the court in the calendar year, the jury commissioners shall reconvene as necessary to select additional prospective jurors in accordance with R.C. 2313.26.
- E. The lists for prospective jurors shall be reviewed and unsuitable names purged from such lists, in accordance with the powers provided to jury commissioners by R.C. 2313.26. If, in the opinion of the court, this jury source list is not representative of the adult population of the jurisdiction, additional source lists shall be utilized as authorized by law.
- F. Departures from random selection shall be permitted only as follows:
  - 1. To exclude persons ineligible for service.
  - 2. To excuse or defer prospective jurors.
  - 3. To remove prospective jurors for cause or if challenged peremptorily.
  - 4. To provide all prospective jurors with an opportunity to be called for jury service and to be assigned to a panel.
- G. All prospective jurors shall be notified by regular mail that their name has been drawn and placed upon the list for jury service. Each prospective juror shall be required to complete and return a juror questionnaire within seven (7) days of the receipt of said notice.
- H. All prospective jurors shall be notified of the requirement of their service by the issuance of a summons directing them to appear on a specific date for a particular case. Said summons shall be phrased so as to be readily understood by an individual unfamiliar with the legal process and shall be delivered by ordinary mail.

**AB.05 Eligibility for Jury Service**

All persons shall be eligible for jury service except those who:

- A. Are less than 18 years of age;
- B. Are not citizens of the United States;
- C. Are not residents of the jurisdiction in which they have been summoned to serve; to wit, Mercer County.
- D. Are not able to communicate in the English language; or
- E. Have been convicted of a felony and have not had their civil rights restored.

**AB.06 Term of and Availability for Jury Service**

- A. The time that persons are called upon to perform jury service and to be available shall be the shortest period consistent with the needs of justice.
- B. Jurors shall be available during the part term for which the jurors have been summoned.

**AB.07 Exemption, Excuse, and Deferral**

- A. There shall be no excuses or exemptions from jury service except those authorized by R.C. 2313.16.
- B. Any requests for exemptions, excuses, and deferrals and their disposition shall be in writing.

**AB.08 Voir Dire**

- A. Voir dire examination shall be limited to matters relevant to determining whether to remove a juror for cause and to determine the juror's fairness and impartiality.
- B. To reduce the time required for voir dire, basic background information regarding panel members shall be made available in writing to counsel for each party no sooner than seven (7) days prior to commencement of trial.
- C. The trial judge shall conduct a preliminary voir dire examination. Counsel shall then be permitted to question panel members for a reasonable period of time.
- D. The judge shall ensure that the privacy of prospective jurors is reasonably protected and the questioning is consistent with the purpose of the voir dire process.
- E. Counsel shall return the jury questionnaires to the jury administrator immediately upon the conclusion of voir dire examination.
- F. All voir dire examinations shall be held on the record.
- G. Rules on voir dire:
  - 1. The case may not be argued in any way while questioning the jurors.
  - 2. Counsel may not engage in efforts to indoctrinate jurors.
  - 3. Jurors may not be questioned concerning anticipated instructions or theories of law. This does not prevent general questions concerning the validity and philosophy of reasonable doubt or the presumption of innocence.
  - 4. Jurors may not be asked what kind of verdict they might return under any circumstance.
  - 5. Questions are to be asked collectively of the entire panel whenever possible.

**AB.09 Removal from the Jury Panel for Cause**

If the judge determines during the voir dire process that any individual is unable or unwilling to hear the particular case at issue fairly and impartially, that individual shall be removed from the panel. Such a determination may be made on motion of counsel or by the judge.

**AB.10 Peremptory Challenges**

Rules determining procedure for exercising peremptory challenges shall be in accordance with the Ohio Civil and Criminal Rules adopted by The Supreme Court of Ohio and applicable statutory authority.

**AB.11 Administration of the Jury System**

- A. The responsibility for administration of the jury system shall be vested exclusively in the Mercer County Court of Common Pleas.
- B. All procedures concerning jury selection and service shall be governed by Ohio Rules of Court and the laws of the State of Ohio.

**AB.12 Notification and Summoning Procedures**

- A. The notice summoning a person to jury service and the questionnaire eliciting essential information regarding that person shall be phrased so as to be readily understood by an individual unfamiliar with the legal and jury systems and be delivered by ordinary mail.
- B. Jurors who fail to report for service shall be brought before the court to explain why they did not appear. Sanctions will be imposed as warranted.

**AB.13 Monitoring the Jury System**

The court shall review the performance of the jury system annually in order to evaluate the fairness, effectiveness, and efficiency of the jury system.

**AB.14 Juror Use**

- A. The court shall employ the services of prospective jurors so as to achieve optimum use with a minimum of inconvenience to jurors.
- B. The court shall determine the minimally sufficient number of jurors needed to accommodate trial activity.

**AB.15 Jury Facilities**

- A. The court shall provide an adequate and suitable environment for jurors and otherwise accommodate the needs of the jurors in a pleasant manner.
- B. To the extent feasible, juror facilities shall be arranged to minimize contact between jurors, parties, counsel, and the public.

**AB.16 Juror Compensation**

- A. Persons called for jury service shall promptly receive a reasonable fee for their service pursuant to statutory authority.
- B. Employers shall be prohibited from discharging, laying-off, denying advancement opportunities to, or otherwise penalizing employees who miss work because of jury service.

**AB.17 Juror Orientation and Instruction**

- A. The court bailiff shall be responsible for providing information concerning jury service to jurors in a uniform and efficient manner using a combination of written, oral, or audiovisual materials.
- B. The trial judge shall:
1. Give preliminary instructions to all prospective jurors;
  2. give instructions directly following impanelment of the jury to explain the jury's role, the trial procedures, the nature of evidence and its evaluation, the issues to be addressed, and the basic relevant legal principles;
  3. prior to the commencement of deliberations, give instructions to the jury on the law, on the appropriate procedures to be followed during deliberations, and on the appropriate method for reporting the results of its deliberations, which instructions shall be made available to the jurors during deliberations; and
  4. before dismissing a jury at the conclusion of a case, the trial judge shall:
    - (1) release the jurors from their duty of confidentiality;
    - (2) explain their rights regarding inquiries from counsel or the press;
    - (3) either advise them that they are discharged from service or specify where they must report; and
    - (4) express appreciation to the jurors for their service, but not express approval or disapproval of the result of the deliberation.
- C. All communications between the judge and members of the jury panel from the time of reporting to the courtroom for voir dire until dismissal shall be in writing or on the record in open court. Counsel for each party shall be informed of such communication and given the opportunity to be heard.

**AB.18 Jury Size and Unanimity of Verdict**

Jury size and unanimity in civil and criminal cases shall conform to existing Ohio law.

**AB.19 Jury Deliberations**

- A. Jury deliberations shall take place under conditions and pursuant to procedures that are designed to ensure impartiality and to enhance rational decision-making and shall conform to existing Ohio law.
- B. The judge shall instruct the jury concerning appropriate procedures to be followed during deliberations.
- C. A jury shall not be required to deliberate after a reasonable hour unless the trial judge determines that evening or weekend deliberations would not impose an undue hardship upon the jurors and are required in the interest of justice.
- D. Training shall be provided to personnel who escort and assist jurors during deliberation.

**AB.20 Sequestration of Jurors**

- A. A jury shall be sequestered only for good cause, including but not limited to insulating its members from improper information or influences.
- B. The jury shall be sequestered after a capital case is submitted to the jury in conformity with existing Ohio law.
- C. The trial judge shall have the discretion to sequester a jury on the motion of counsel or on the judge's initiative and shall have the responsibility to oversee the conditions of sequestration.
- D. The bailiff shall be responsible for ensuring that standard procedures are followed to achieve the purpose of sequestration and minimize the inconvenience and discomfort of the sequestered jurors.
- E. Training shall be provided to personnel who escort and assist jurors during sequestration.

**AB.21 Enforcement of Rules**

The court reserves the right within its sound discretion to enforce these rules and otherwise use and manage the jury system to ensure justice.

**APPENDIX AC  
COURT SECURITY**

**AC.01 Standards for Court Security**

The Mercer County Common Pleas Court is charged with dispensing justice, assisting parties in resolving disputes, and protecting the constitutional rights of those who appear before the court.

Accordingly, appropriate levels of security should exist in the court to protect the integrity of the court procedures, protect the rights of individuals before it, sustain the decorum and dignity of the court, and assure that court facilities are secure for all persons who appear, including but not limited to, parties, witnesses, counsel, visitors, and court staff.

Therefore, pursuant to and in accordance with Rule 9 of the Rules of Superintendence for the Common Pleas Court, the Court has adopted a Court Security Plan pursuant to the provisions of the Ohio Court Security Standards provided by the Supreme Court of Ohio, and has been filed with the Administrative Director of the Supreme Court of Ohio.