

Chapter 10 – Domestic Relations

Rule 10.01 – Case Management, Generally

Pursuant to Rule 5(B)(1) of the Rules of Superintendence for the Courts of Ohio, the Court establishes the following rule system for case management, which will provide for the prompt and fair disposal of all cases and motions before the Court. These rules, which may be amended or supplemented from time to time as deemed necessary by the judges, are intended to enable just and efficient resolutions of cases, to reduce delay in the consideration of cases by the Court and to ensure the readiness of cases for pretrial, hearings, trial or other proceedings required by the Court.

Rule 10.02 – Assignment of Domestic Cases

The clerk of courts shall generally assign a case by random assignment to a particular judge, who then becomes primarily responsible for the determination of every issue and proceeding in the case until its termination. However, if a case involves the same parties and subject matter as a case that was previously filed with the Court, the clerk of courts shall assign the case to the same judge who was responsible for the previous case. If more than one case is filed simultaneously with the same parties, the clerk shall assign the cases to the same judge.

The assignment of cases shall be in accordance with the Rules of Superintendence for the Courts of Ohio.

Rule 10.03 – Motions to Consolidate

Consolidation may be appropriate if two or more cases involve a common question of law or fact.

In a domestic relations case, a motion to consolidate shall be filed in the case where service was obtained last. The motion will be determined by the judge assigned to that case or the magistrate. If the motion is granted, the cases will be consolidated into the case where service was obtained first, and later filings will only be permitted in that case.

Rule 10.04 – Trial and Other Event Dates

All assignments of cases set for trial shall be made by the Court or court administrator's office at least two weeks prior to the date set for trial, unless counsel otherwise agree. The order or notice of assignment for trial shall be mailed or delivered to all interested counsel and parties who are without counsel and filed with the clerk of courts. Discovery dates and any other necessary deadlines will be set by the Court. All parties must have discovery completed at least one week prior to the mediation conference. All parties and their counsel are expected to provide meaningful participation in the ADR process. See Chapter 9 of the Local Rules for ADR procedures.

Rule 10.05 – Motion Procedures/Scheduling

A. Scheduling

- 1. Motions for temporary orders** shall be scheduled for non-oral consideration within two to three weeks after the motion is filed. All required documentation shall be filed no later than the Friday before the non-oral consideration date.
- 2. Motions to show cause** will be set for a 30 minute oral hearing, and all parties shall be prepared to present their case on the merits.
- 3. All other motions** shall be set for a ten minute oral hearing, unless the magistrate determines that an oral hearing is unnecessary. At the hearing, the parties shall be prepared to discuss the following: the merits of the motion, the need for an evidentiary hearing, mediation, or guardian ad litem, and any other issues.

B. Motion Assignment Sheet

The motion assignment sheet shall be distributed in accordance with Local Rule 4.05.

Rule 10.06 – Failure to Answer

A divorce or legal separation case shall be deemed to be uncontested unless an answer, motion or stipulation for leave to plead is filed within 28 days after completion of service. When a case has been set for final hearing as an uncontested case, the

defendant may not introduce evidence on his behalf except by leave of Court for good cause shown.

Rule 10.07 – Pre-trial Conference

A. Purpose

The primary purpose of the pretrial conference shall be to achieve an amicable settlement of the controversy in suit.

At the pre-trial conference, the following shall be considered:

1. Settlement of the case;
2. Agreement upon and simplification of the issues;
3. The number of witnesses to approximate the length of trial; and
4. Any other matters that may aid in the disposition of the case.

B. Scheduling and Attendance

A pre-trial conference shall be held in all contested divorce cases. The pre-trial conference shall be scheduled in all cases when a complaint for legal separation, divorce or annulment is filed. All parties, except those joined for the sole purpose of being enjoined from releasing assets during the pendency of the case, and their counsel shall appear at the pre-trial.

Failure of any party or counsel to appear at the pre-trial conference may result in sanctions, including, but not limited to, payment of attorney fees to the adverse party. If neither the defendant nor his or her attorney appears at the pre-trial conference, the Court may hear evidence and decide the case on the pre-trial date. If neither the plaintiff nor his or her attorney appear at the pre-trial conference and no counterclaim has been filed, the Court may dismiss the action.

All requests for continuance of a pre-trial conference shall be made in writing and filed in the case.

C. Preparation for Pre-Trial Conference

All parties must be prepared to discuss the following matters at the pre-trial conference:

1. The witnesses, including expert witnesses, that each party expects to call at the final hearing;
2. The exhibits each party intends to introduce at the final hearing;
3. Contested facts;
4. Legal issues;
5. Any matters upon which the parties are willing to stipulate;
6. Trial time estimates; and
7. Whether any pending motions remain.

D. Pre-Trial Order

Following the pre-trial conference, if settlement has not been achieved, the magistrate will issue a pre-trial order, which sets the matter for trial and summarizes the outcome of the pre-trial conference.

E. Status Conferences

The Court may schedule periodic status conferences to assure the progress of a case and assess readiness for trial.

Rule 10.08 – Objections, Motions to Set Aside and Motions for Stay of Magistrate’s Orders

A. Scheduling

All objections to magistrate’s decisions, motions to set aside, and motions for stay of magistrate’s orders, pursuant to Civ.R. 53, will normally be considered by the Court on the second Monday after filing as follows:

1. Judge Elizabeth Lehigh Thomakos:

The above will be considered non-orally, unless a party requests an oral hearing.

2. Judge Edward Emmett O’Farrell:

The above will be scheduled for oral hearing.

3. If a transcript is requested, the motion will normally appear on the motion docket on the second Monday after the filing of the transcript.

B. Transcripts

Under Civ.R. 53(D)(3)(b)(iii), a party objecting to a factual finding shall file a transcript with the Court within **30 days** after filing objections unless the Court extends the time in writing for preparation of the transcript or other good cause.

If a party not objecting to a factual finding chooses to file a transcript, the party shall file a transcript with the Court within **30 days** after filing objections unless the Court extends the time in writing for preparation of the transcript or other good cause.

Refer to Chapter 5 of the Local Rules for the Court's procedures regarding Court recordings, transcripts, and electronic copies of Court recordings.

If a transcript is unavailable because no recording of the proceedings before the magistrate was made or the recording is no longer available for transcription, the objecting party may prepare a statement of the evidence or proceedings from the best available means, including the objecting party's recollection. The statement shall be served on the other party within 14 days after filing objections, and the other party may serve an objection or a proposed amendment to the statement on the objecting party within ten days after service of the statement. The statement and any objection or proposed amendments shall be submitted to the magistrate, who shall approve and make any necessary amendments within 14 days of receipt.

C. Supplemental Objections

If a party files timely objections prior to the date on which a transcript is prepared, each party may supplement **one** time after filing of the transcript without leave of Court.

Rule 10.09 - Review of Temporary Orders for Spousal Support, Child Support or Parental Rights and Responsibilities, Only

When the Magistrate has conducted a non-oral hearing and issued a temporary order on spousal support, child support or allocating parental rights and responsibilities for the care of children, a party seeking an oral hearing to modify the temporary order, pursuant to Civ. R. 75(N), shall file a motion.

A motion for hearing pursuant to Civ. R. 75(N) shall be captioned “Motion To Modify Rule 75(N) Temporary Orders (Oral Hearing Requested)” and indicate the amount of time requested for hearing.

As stated in Civ. R. 75(N), the request for oral hearing shall not suspend or delay the commencement of spousal support or other support payments previously ordered or change the allocation of parental rights and responsibilities until the order is modified by journal entry after the oral hearing.

Temporary orders issued by the Magistrate which address matters other than spousal support, child support or parental rights and responsibilities, and magistrate’s orders issued after an oral hearing, will be reviewed upon filing a Motion to Set Aside, pursuant to Civ. R. 53(D)(2)(b).

Rule 10.10 – Divorce/Dissolution Filing and Motion Requirements

A. Filing Requirements

All filings for a legal separation, divorce, dissolution, or annulment, that concern minor child(ren) must be supported by a child custody affidavit, child support computation worksheet and the filing of an application for IV-D services with the Child Support Enforcement Agency. All actions for spousal or child support must be supported by a financial affidavit and a Private Health Insurance Questionnaire. Child care costs must be supported by adequate proof of payments made.

The Court may **dismiss filings for a legal separation, divorce, dissolution or annulment with minor children** filed without an application for IV-D services with the Child Support Enforcement Agency.

B. Motion Requirements

1. Generally

All motions must comply with the rules set forth in Chapter 2 of the Local Rules. The Court may dismiss any motions that do not comply with these provisions.

2. Affidavits and Other Required Forms

The following supporting documentation must be filed with certain motions:

- a. Domestic relations motions that concern minor children must be supported by a Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) if the motion reopens the case.
- b. All domestic relations motions that might affect a change in child support must be supported by a child support computation worksheet.
- c. All motions concerning spousal or child support must be supported or opposed by a financial affidavit and a Private Health Insurance Questionnaire.
- d. Motions for allocation of parental rights must be accompanied by an affidavit of the party filing the motion that contains facts sufficient to support the requested relief.
- e. Child care costs must be supported by adequate proof of payments made.

The Court may **dismiss or refuse to consider motions** filed or opposed without the required supporting documentation.

Forms are available from the Court's website and may be available on the Court's brochure rack located outside the magistrate's courtroom.

All parties must update their financial affidavits if there are changes to their financial information.

Any of the above documents not considered case documents under Sup.R. 44 will not be considered public records and will not be available from the clerk of courts.

3. Preparation of Entries

Any party filing a motion shall submit a proposed entry to the magistrate for consideration. All proposed entries that issue or modify a child support obligation shall be accompanied by a completed Child Support and Health Care Determinations Form, which is available from the magistrate's administrative office.

Rule 10.11 – Posting Locations for Service by Publication

When service by publication is made in a divorce, annulment, or legal separation action under Civ.R. 4.4(a)(2), the office of the clerk of courts shall post the service of notice on the bulletin board outside of the magistrate's courtroom, on the bulletin board at the office of the clerk of courts, and in the public area of the Tuscarawas County Job and Family Services' building.

Rule 10.12 – Notice of Intent to Relocate

If the residential parent of minor child(ren) intends to relocate to a residence other than that specified in the parenting time order or decree of this Court, the residential parent must file a Notice of Intent to Relocate in advance of the move in accordance with R.C. 3109.051(G). The Notice of Intent to Relocate must be filed at least 60 days in advance of the relocation.

The Court shall mail a copy of the Notice of Intent to Relocate to the non-residential parent unless the residential parent files a motion objecting for reasons set forth in R.C. 3109.051(G), including alleged domestic violence or abuse of a child. If the residential parent objects to the Court sending a copy of the notice to the non-residential parent pursuant to R.C. 3109.051(G)(4), the Court shall schedule the matter for a hearing and give both parents notice of the date, time and location of the hearing.

Absent an objection, the Court generally will not schedule a hearing on the notice unless one of the parents requests a hearing in writing. If either parent believes that the relocation will require a change in the parties' parenting time schedule or a change in residential parent status, that parent may file a motion to review the parenting time or a motion for change of residential parent or modification of the shared parenting plan.

Rule 10.13 – Waiver of Filing Fee and Court Cost Deposit

A party who is unable to prepay or give security for costs in domestic relations cases shall file a Petition for Waiver of Filing Fee and Court Cost Deposit and an Affidavit in Support of Petition for Waiver of Filing Fee. The Affidavit must be notarized. The Court will rule on the Petition after setting the matter for non-oral consideration. If the Petition is denied, a deposit shall be made in accordance with Court Order. Failure to pay the deposit as ordered may result in dismissal of the case.

Rule 10.14 – Guardian Ad Litem

A. General

The role of the guardian ad litem is to assist the Court in allocating parental rights and responsibilities, with the primary focus being the best interest of the child(ren). The guardian ad litem performs an investigation and advocates for the child(ren)'s best interest.

B. Minimum Duties

A guardian ad litem shall perform the following duties:

1. Interview each parent separately or state in the report why this is impractical or unnecessary.
2. Interview the child(ren) separately or state in the report why this is impractical or unnecessary.
3. Contact any mental health providers involved in the case and evaluate the necessity, if any, of psychological evaluations or counseling.
4. Contact the child(ren)'s school, child care providers, and health care providers, as appropriate.
5. Participate in all pretrials and hearings as the Court directs.
6. File a final report and recommendations with the Court and serve all parties at least seven days before the final hearing unless otherwise ordered by the Court.

C. Report

The report of the guardian ad litem shall be submitted to the Court as a confidential, non-public, court document and shall not be filed with the clerk of courts. The guardian ad litem shall distribute copies of the report to the attorneys for the parties, who shall review the report with their clients. If a party is not represented by counsel, the guardian ad litem shall review the report with the party. Parties shall not be given a copy of the report. The guardian ad litem shall not otherwise distribute the report without the Court's permission.

A guardian ad litem shall testify if requested by the Court or subpoenaed in a case.

D. Fees

At the time of the appointment to the case, the magistrate's order or judgment entry will include the following:

1. A fee rate of \$75.00 per hour for the guardian ad litem;
2. Instructions for an initial deposit of fees with the guardian's trust account as required by the Court; and
3. A description of how fees are to be apportioned among the parties.

The Court will enforce payment of fees on a case-by-case basis including, but not limited to, the following factors:

1. An itemized fee statement submitted by the guardian ad litem;
2. Actual services performed by the guardian ad litem.

Rule 10.15 – Marriage Termination/Parent Education Class

A. Attendance Requirements

All parties in cases involving minor children must attend the Marriage Termination/Parent Education Class. Parties to such an action who do not reside within Tuscarawas or adjacent counties must meet the requirements of the class through private counseling or another approved class offered by a court of the resident's county and obtain the waiver from a class provider. The parent education class may also be completed online. Parties incarcerated in a penal institution or on whom personal or certified mail service cannot be obtained may be exempt from the class at the discretion of the Court.

The Marriage Termination/Parent Education Class must be attended by all parties or waived by a class provider prior to the final hearing in the divorce, dissolution, annulment, or legal separation. Failure to meet this requirement by plaintiffs or petitioners will result in dismissal of the action without prejudice to re-filing. Failure of defendants to attend the class will result in contempt proceedings and appropriate sanctions after proper notice has been given. However, if a defendant fails to enter an appearance and does not contest the action, issuance of the final entry shall not be delayed if he or she fails to attend the class.

B. Class Description

Marriage Termination/Parent Education Classes will be held in person several times per month on dates scheduled by the class providers or will be available online. Pre-registration is required by each party, and classes will be filled in the order they are pre-registered. A fee determined and set by the class providers must be paid by each party upon attendance. In exceptional cases, where a party is unable to pay the fee, a request for a fee waiver may be filed with the Court and will be considered by the magistrate on a case-by-case basis.

C. Proof of Attendance

Upon completion of the Marriage Termination/Parent Education Class, participants shall receive a certificate proving their attendance and payment, unless waived by the magistrate. Parties will be responsible for either filing the certificate with the clerk of courts or presenting the certificate to the Court at the final hearing.

D. Notice

The clerk of courts will provide to each attorney or party filing a domestic relations action an information sheet regarding the requirements of the Marriage Termination/Parent Education Class and the telephone number for pre-registration.

Rule 10.16 – Parenting Time/Standard Parenting Guidelines

The Court has created the following guidelines that may be used in domestic relations cases when parenting time is ordered:

- A. Standard Parenting Guidelines and Rules Governing Companionship Time
- B. Long-Distance Standard Parenting Guidelines and Rules Governing Companionship Time

These forms can be obtained from the Court's brochure rack or the Court's website.

Rule 10.17 – Parenting Coordination

A. Introduction

This rule is adopted in order to comply with Sup.R. 90.01.

“Parenting coordination” is a child-focused dispute resolution process ordered by the Court to assist parties in implementing a parental rights and responsibilities or companionship time order using assessment, education, case management, conflict management, coaching, or decision-making. “Parenting coordination” is not mediation subject to R.C. Chapter 2710, R.C. 3109.052, or Sup.R. 16, or arbitration subject to R.C. Chapter 2711 or Sup.R. 15.

A “Parenting coordinator” (PC) is an individual appointed by the Court to conduct parenting coordination.

B. Scope

At any point after a parental rights and responsibilities or companionship time order is filed, the Court may order parenting coordination, except to determine the following:

1. Whether to grant, modify, or terminate a protection order;
2. The terms and conditions of a protection order;
3. The penalty for violation of a protection order;
4. Changes in the designation of the primary residential parent or legal guardian; or
5. Changes in the primary placement of a child.

C. Appointment

The Court may order parenting coordination for any of the reasons listed in Sup.R. 90.02. The Court may appoint an individual as a PC who meets all of the qualifications listed in Sup.R. 90.05. To maintain eligibility for appointment, a PC shall complete at least three hours per calendar year of continuing education relating to children that has been approved by the Dispute Resolution Section of the Supreme Court.

A PC who meets the qualifications in Sup.R. 90.02 shall be selected using one of the following:

1. Use of a Court employee;
2. Random selection by the Court from the Court's roster of PCs;
3. Specific appointment based on the type of case, the qualifications, and caseload of the PC; or
4. Parties select a PC from the Court's roster of PCs.

The Court shall not appoint a PC who does not possess the qualifications in Sup.R. 90.02 or who has served or is serving in a role that creates a professional conflict including, but not limited to, a child's attorney or child advocate; guardian ad litem; custody evaluator; therapist, consultant, coach, or other mental health role to any family member; or attorney for either party. Parties may not waive this prohibition.

With written consent of the parties, the Court may appoint a mediator to serve as the PC with the same family.

D. Termination or Modification of PC Appointment

Upon motion of a party, for good cause shown, or sua sponte, the Court may terminate or modify the PC appointment.

E. PC Responsibilities

A PC shall comply with Sup.R. 90.10.

A PC shall submit a resume to the Court documenting compliance with Sup.R. 90.05; provide an updated resume to the Court in the event of any substantive changes; and notify the Court of any changes to name, address, telephone number and, if available, electronic mail address contained in the resume.

On or before January 1st of each year, a PC shall report to the Court a list of all continuing education training completed during the previous year pursuant to Section C of this rule, including the sponsor, title, date, and location of each training. A PC shall not be eligible for appointment until this requirement is satisfied. The PC shall complete three hours of continuing education for each calendar year of deficiency.

F. Parenting Coordination Procedures

1. Screening for and disclosure of domestic abuse and domestic violence

All cases shall be screened for domestic abuse and domestic violence by the PC before the commencement of the parenting coordination process and by the PC during the parenting coordination process.

All parties and counsel shall immediately advise the PC of any domestic violence convictions and/or allegations known to them or which become known to them during the parenting coordination process.

When domestic abuse or domestic violence is alleged, suspected, or present, before proceeding, a PC shall do each of the following:

- a. Fully inform the person who is or may be the victim of domestic abuse or domestic violence about the parenting coordination process and the option to have a support person present at parenting coordination sessions;
- b. Have procedures in place to provide for the safety of all persons involved in the parenting coordination process; and
- c. Have procedures in place to terminate the parenting coordination session/process if there is a continued threat of domestic abuse, domestic violence, or coercion between the parties.

2. Disclosure of abuse, neglect, and harm

A PC shall inform the parties that the PC shall report any suspected child abuse or neglect and any apparent serious risk of harm to a family member's self, another family member, or a third party to child protective services, law enforcement, or other appropriate authority. A PC shall report child abuse or neglect pursuant to the procedures set forth in R.C. 2151.421.

3. Attendance and participation

Parties shall attend parenting coordination sessions. Requests to reschedule parenting coordination sessions shall be approved by the PC.

A PC shall allow attendance and participation of the parties and, if the parties wish, their attorneys and any other individuals designated by the parties.

4. Referrals to support services

A PC shall provide information regarding appropriate referrals to resources including legal counsel, counseling, parenting courses or education, and other support services for all parties, including, but not limited to, victims and suspected victims of domestic abuse and domestic violence.

5. Parenting coordination agreements, reports, and decisions

Parties shall sign and abide by agreements reached during a parenting coordination session, which shall be maintained in the parenting coordination file. The PC shall provide a copy to each party and their attorneys, if any.

Upon request by the Court, the PC shall prepare a written report including, but not limited to, all of the following:

- a. Dates of parenting coordination session(s);
- b. Whether the parenting coordination session(s) occurred or was terminated;
- c. Requests to reschedule a parenting coordination session(s), including the name of the requestor and whether the request was approved;
- d. Whether an agreement was reached on some, all, or none of the issues;
- e. Who was in attendance at each session(s);
- f. The date and time of a future parenting coordination session(s); and
- g. Whether any decisions were written and if so, the date(s).

The PC shall first attempt to assist the parties in reaching an agreement that resolves the dispute. If the parties are unable to reach an agreement, the PC shall issue a written decision that is effective immediately. The PC shall provide copies to the parties and their attorneys, if any. The decision shall be immediately filed with the Court and include all of the following:

- a. Case caption, including the case number;
- b. Date of the decision;
- c. The decision of the PC;
- d. Facts of the dispute and facts upon which the decision is based;
- e. Reasons supporting the decision;
- f. The manner in which the decision was provided to the parties; and
- g. Any other necessary information.

6. Objections to a PC's Decision

A party may file written objections to a PC's decision with the Court and serve all other parties to the action within 14 days of the filing date of the decision. If any party timely files objections, any other party may also file objections with the Court and serve all other parties to the action, not later than 10 days after the first objections are filed. A hearing may be scheduled, upon request, at the discretion of the Court. A judge or magistrate shall issue a ruling on the objections within 30 days from the date of the last objection filed.

7. Parenting coordinator evaluations and complaints

A PC shall provide participants with the Parenting Coordinator Evaluation form, provided by the Court, prior to the first parenting coordination session and at the end of the term of the appointment.

The Court shall complete a review of the PC's on the Court's roster in January of each year.

A party to a case appointed to parenting coordination may file a complaint regarding the PC within one year from the termination of the appointment. The complaint shall be submitted to the Court Administrator, and include all of the following:

- a. The case caption and case number;
- b. The name of the PC;

- c. The name and contact information for the person making the complaint;
- d. The nature of any alleged misconduct or violation; and
- e. The date the alleged misconduct or violation occurred.

The Court Administrator shall provide a copy of the complaint to the PC. The PC has 14 days from the date of the receipt of the complaint to respond in writing to the Court Administrator.

The Court Administrator shall conduct an investigation into the allegations and shall issue a response within 30 days from the date the complaint was received.

8. Fees

A PC shall be paid \$75/hour, unless otherwise ordered by the Court. All fees shall be determined by the Court and included in the appointment order. Fees shall be waived for indigent parties.

9. Stay of Proceedings

Unless otherwise provided by court order, referral of a case to parenting coordination stays a case until further notice. The clerk of courts shall not accept for filing any documents while a case is in parenting coordination with the following exceptions:

- a. An objection to a PC's decision;
- b. A motion to lift the stay;
- c. A response to a motion to lift the stay;
- d. An application to dismiss the case;
- e. A notice related to counsel;
- f. A motion for changes in the designation of the primary residential parent or legal guardian; and
- g. A motion for changes in the primary placement of a child.

G. Confidentiality and Privilege

Except as provided by law, communications made as part of parenting coordination, including communications between the parties and their children and the PC, communications between the PC and other relevant parties, and communications with the Court, shall not be confidential. Except as provided by law, parenting coordination shall not be privileged.

H. Public Access

The files maintained by a PC, but not filed with the Clerk of Court or submitted to the Court, shall not be available for public access pursuant to Rules 44 through 47 of the Rules of Superintendence for the Courts of Ohio.

I. Model Standards

PC's shall comply with the "Guidelines for Parenting Coordination" developed by the Association of Family and Conciliation Courts Task Force on Parenting Coordination. Wherever a conflict exists between the "Guidelines for Parenting Coordination" and this rule, this rule shall control.

Rule 10.18 – Tax Dependency Exemptions

Any parent who is not the residential parent and legal custodian and is permitted to claim his or her child(ren) for federal income tax purposes under an order of the Court shall be considered to be substantially current on their child support payments, as required by R.C. 3119.82, if any arrearage created during the calendar year in question is no more than one month's child support obligation.