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## RULES OF PRACTICE COMMON PLEAS COURT Madison County, Ohio

The following Revised Rules are adopted, and incorporated in the present Rules, until otherwise provided, pursuant to Section 5(B), Article IV of the Ohio Constitution and Rule 83 of the Ohio Rules of Civil Procedure. All previous Rules are substituted by these Rules.

These Rules are entered on the Journal, V 1 96, pp. I effective Monday, 2 November, 1998. Copies have been filed with the Clerk of the Supreme Court of Ohio. In these Rules, when reference is made to the Supreme Court RULES, the word RULE is capitalized followed by Arabic numerals; reference to Madison County is Rule followed by a Roman numeral and Section number.

**Rule I - Terms of Court**

This Court shall be in continuous session. The term of court is January through December.

**Rule H - Process and Notice**

Section 1. General. Service of process shall be in accordance with the Rules of Civil Procedure (Rules IV and V) or as otherwise required by statute.

Section 2. Domestic Relations. In original domestic relation cases where the Defendant resides in the State of Ohio, service of process shall be by personal service only.

**Section 3. Service by Publication.** Where service by publication is required by law, counsel for the party seeking service of process shall be responsible for effectuating each step under **Civil Rule 4, 4(A)**. No case shall be set for hearing until a copy of the publisher's affidavit of publication is filed with the Clerk of Courts. In domestic relations cases, where the defendant is unknown or where the defendant location is temporarily absent from the state service of process shall be by publication pursuant to R.C. Section 3105.06.

In a divorce, annulment or legal separation proceeding in forma pauperis where service of process by publication is required, such service shall be by posting and mail. Posting, if appropriate, shall be in the office of the Clerk of Courts, the office of the Sheriff and the London City Police Department.

Section 4. All Others. In any case, unless the Clerk of Courts is

requested when summons is issued to attach or include a copy of the filing related to the summons, the attorney of the party and not the Clerk of Court, shall mail or deliver to any other party a copy of said papers or the publication and file his certificate thereof, naming the persons therein with the Clerk who shall note the same on the docket; except as may be otherwise required by Section 2703.16 R.C., if applicable.

### Rule III - Filings

**Section 1. General.** In general all filings are to be made in accordance with the RULES of Civil Procedure unless specifically modified hereafter.

**Section 2. Procedure.** All pleadings shall be kept on file in the Clerk's office and may be taken from said office upon receipt of the attorney of party so removing them.

**Section 3. Format For Pleadings.** Pleadings, Entries and Briefs shall be written on 8 1/2" X 11" paper, with sufficient margin at top, bottom and side of page, and must be double spaced except for real property description or quoted material.

All papers hereafter filed shall have a **three inch blank space** at the top of the first page for the Clerk's endorsements. A flat filing system is in use.

Manuscript covers are not wanted. On the last page of each filing, the name, address, zip code, telephone and attorney registration number of counsel filing the same shall be typed, printed or stamped.

**Section 4. Time.** Rule VI prescribing time is to be strictly enforced. Any requests for extensions of time in which to move or plead shall be presented before rule day with notice served upon opposing counsel according to law. Ex parte extensions shall not be granted.

**Section 5. Counterclaims.** Counterclaims in Domestic Relation cases **must be filed** within four weeks from the date of service of summons on the complaint. Absent good cause shown, leave shall not be granted to file counterclaims out of rule.

### Rule IV - Security of Costs

Section 1. Security Deposit, Domestic.

(A) A security deposit of \$182.00 shall be required in all alimony or divorce actions. A security deposit of \$132.00 shall be required in all dissolution of marriage proceedings.

(B) A security deposit of \$132.00 shall be required with the filing of motions to modify decrees, motions for change of custody, or motions for citations for contempt other than contempt proceedings initiated by the Child Support Enforcement Agency.

(C) Pursuant to O.R.C. 3109.04 a guardian ad litem and/or

home investigation may be ordered by the Court or requested by either party.

A party requesting the appointment of a guardian ad litem or requesting a home investigation shall secure the costs thereof by filing a cost deposit of \$300.00 with the request. Such investigations will be conducted at an hourly rate of \$40-00.

Section 2. Security Deposit, All Others. (A) In all other civil cases complaint or counterclaim, including appeals, \$200.00 is required.

(B) Proceedings in aid of execution, garnishment attachment, execution, and petition to revive or modify judgment or any special matter not otherwise described, \$50.00 must be deposited plus any additional reasonable sum the Clerk may prospectively find necessary.

(C) For habeas corpus or in post conviction remedy cases of one incarcerated in a state penal institution see Section 1, Rule XXIV.

Section 3. Insufficient Deposit. In any section under this rule, on notice from the Clerk that the deposit for costs is insufficient, an order, suasponete, will or may be made requiring additional cost deposit. Further, that this rule is subject to other applicable provisions of Sections 2323.3 0, 2323.31 R.C., and any other applicable Code sections.

Section 4. Affirmative Relief. A party to a case who by counterclaim, motion, application or otherwise seeks affirmative relief from the Court, in manner not constituting a general denial, confession and avoidance, admission and prayer for protection of lien or other interest, is deemed to be a complainant or counter complainant.

### Rule V - Motions in other Civil Cases

**Section 1. General.** Motions shall be decided on the filings without oral argument fourteen days or more after service of the motion on the opposing party. Oral hearings on motions shall be set only where the party seeking same demonstrates such need in writing prior to the expiration of fourteen days.

Section 2. Filing. Motions are to be filed in accordance with CIV. Rule 7(B), of 12, 56, or 59. Such motions will not be assigned for oral argument unless written request is made before expiration of 14 days except as hereafter established.

Oral hearings on motions for summary judgments shall be granted only if the respective parties request same upon the filing of their appropriate affidavits. If requests are not received for oral hearings, motions for summary judgment shall be heard on the pleadings on or after fourteen (14) days of the filing of said motions. The adverse parties shall file all responsive pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts-of evidence, and written stipulations of

facts, if any, within fourteen (14) days of service upon them of the motion for summary judgment. Movant shall attach a notice to his motion for summary judgment that states, in essence "The within motion will come on for non-oral hearing on the filings on or after expiration of fourteen days from the date of service of the motion upon opposing parties and without further notice from the Court."

**Rule VI - Domestic Relations Cases**

Section 1. General. All domestic relations matters provided for in Revised Code Section 3101.01 through 3117.08 be and are referred to a magistrate to be heard on all issues joined. By this section, specific referrals are dispensed with. The Court retains jurisdiction to hear all such matters without a magistrate.

**Section 2. Magistrate Duties.** Subject to approval by the Court by a journal entry, the magistrate shall have the following specific powers and duties and those powers conferred upon him in his official capacity and in the performance of his duties as contained in **Civil Rule 53(C)**:

(A) To hear and determine the issues in all original actions in dissolution, alimony and divorce, and custody or residential -parenting;

(B) To hear and determine all motions for temporary relief in domestic relations cases;

(C) To hear and determine all motions for post decree relief including but not limited to

(1) Motions for modification of decrees;

(2) Contempt for violation of decrees; and,

(3) Motions for enforcement of decrees.

(D) To hear and determine all other issues pertaining to domestic relations cases.

**Section 3. Temporary Orders.** (A) Motions for temporary support, alimony and custody shall be decided on the respective parties' motions, affidavits, child support worksheets and memoranda not less than three weeks after service of summons and the original complaint upon the Defendant. Temporary support will not be established without a worksheet completed and filed. Oral hearings contemplated. under Civil R 75(M) (2) shall not be granted on temporary orders unless the need for same is demonstrated by affidavit showing new facts which have arisen since the original affidavit was filed. Within five days of issuance of temporary spousal or child support, the party receiving such support must file a wage assignment with the Child Support Enforcement Agency (CSEA).

(B) Parenting. Each party in a parenting proceeding, in their first pleading or affidavit attached to that pleading, shall give information required pursuant to R.C. 3109.27. Failure to comply will result in dismissal after notice.

**Section 4. Temporary Relief** The magistrate shall have the power to approve all motions for temporary relief contemplated in **Civil Rule 75** or by statute on affidavits without arguments ex parte. Relief granted shall be endorsed "approved" by the magistrate and made enforceable by the journalization of an entry signed by a judge of the Court of Common Pleas.

(A) All reply motions and affidavits should be filed within seven days of service upon the opposing party or counsel.

(B) All affidavits for temporary child support, spousal support and for allocation of parental rights shall be on the form provided by the Clerk of Courts. All other affidavits for temporary relief contemplated within **Civil Rule 75** shall be positively verified and shall set forth the operative facts including dates and times, which give rise to the relief sought. Should it appear that temporary restraining orders have been improvidently granted without legal or factual basis, the offending party shall be punished in contempt and taxed reasonable attorneys' fees for the party defending such action. Temporary restraining orders shall not be granted for alleged conduct which is remote in time or place. Motions to vacate premises shall not be granted ex parte.

**Section 5. Post Decree Motions.** Motions to modify decrees shall be accompanied by affidavits positively sworn to which set forth the decree which is to be modified and the operative facts which give rise to a substantial change in the circumstances entitling movant to the relief sought.

(A) The Court will not look with favor upon motions for modification of decrees within two years of the journalization of the decree absent a showing of a substantial change in circumstances not contemplated at the time the formal decree was entered.

(B) Movants who file frivolous motions for modification and who fail to sustain their burden of proof shall be taxed the reasonable and necessary attorney fees sustained by the opposing party who prevails.

**Section 6. Contempt.** Citations on contempt for failure to abide a decree shall be accompanied by a positively verified affidavit which sets forth operative facts which give rise to the relief sought and a summons and order to appear.

**Section 7. Final Decree.** (A) Final decrees will not be accepted for filing absent financial data information, health insurance allocation, disclosure affidavit, Department of Human Services application for child support services and wage assignments. Pro Se litigants must present all forms and a final decree before the case will be assigned for hearing. (B) All final entries that establish or modify support will be accompanied by the attached, completed wage assignment if the obligor is employed. If the employer is unemployed, self employed, or receiving other compensation,

one of the other four orders, contained in Section 3113.21(D), will be included in/with the final entry.

(1) Each order for support or modification of support, shall contain a statement requiring all parties to notify the Child Support Enforcement Agency (CSEA) of their current mailing address and current residence address and that they are required to notify the CSEA of any change of either address, until further order of the court.

(C) All domestic matters which come before the Court by default or otherwise uncontested shall be enforced by a decree endorsed by the magistrate as approved" and signed by the judge.

(D) On litigated issues, the magistrate may file a report containing findings of fact and conclusions of law or he may file general findings together with an order that the prevailing party file separate findings of facts and conclusions of law. Under the latter circumstances the magistrate may accept or reject in whole or in part counsel's interpretation of facts and law.

(1) Any objections to the final report shall be made in accordance with **Civil Rule 53**. At the time objections are filed, the objector shall order a transcript of proceedings or partial transcript to demonstrate the basis of the objection. When the final report has been filed and approved by the magistrate and court, counsel shall file a decree in accordance therewith. All contested divorces shall be subject to the assignment entry which shall be strictly construed. Failure to abide the assignment entry shall cause sanction to be applied to the offending party.

**Section 8. Visitation Schedule.** In compliance with R.C. 3109.05.1, standard visitation shall apply to all visitation or companionship rights where shared parenting has not been ordered. The following standard visitation shall be applicable to all orders hereinafter entered:

(A) PARENTS' BIRTHDAYS,  
MOTHER'S/FATHER'S DAY.

The children shall be with the appropriate parent on these days from 10:00 A.M. to 8:00 P.M. or, if a school day, from 5:00 P.M. to 8:00 P.M.

(B) CHILD/REN'S BIRTHDAYS. (1) Companionship shall be exercised on the child/ren's birthdays from 10:00 A.M. to 8:00 P.M. or, if the birthday falls upon a school day, from 5:00 P.M. to 8:00 P.M. If this schedule affects more than one child, all the children shall attend each birthday companionship. If there is one child, the child and the nonresidential parent shall exercise this birthday companionship in odd-numbered years. The child and the

residential parent shall **exercise** this **birthday** companionship in even-numbered years.

(2) If there is more than one child, the **children and the** nonresidential parent shall exercise this birthday companionship upon the birthdays of the first and other odd-numbered children in **odd-numbered** years, and upon the birthdays of the second and other even-numbered children in even-numbered years. The children and the residential parent shall exercise this birthday companionship upon the reverse birthdays of the children.

(C) CHRISTMAS. In odd-numbered years the child/ren and the nonresidential parent shall exercise companionship from 7:00 P.M. on the last day of school (or, if none of the children attend school, from 7:00 P.M., 16 December) to 1:00 P.M., 24 December; and the child/ren and the residential parent shall exercise companionship from 1:00 P.M., 24 December to 7:00 P.M., 1 January. In even-numbered years this companionship shall be reversed.

(D) SPRING BREAK. In odd-numbered years the child/ren and the nonresidential parent shall exercise companionship from 7:00 P.M. on the last day of school before Spring Break to 7:00 P.M. the day before school reconvenes. In parent shall exercise this Spring Break Companionship.

(1) If Good Friday - Easter Weekend does not occur during the child/ren's Spring Break, then in even-numbered years the child/ren and the nonresidential parent shall exercise companionship from 7:00 P.M. the Thursday before Good Friday to 7:00 P.M., Easter. In odd-numbered years the child/ren and the residential parent shall exercise this Good Friday - Easter Weekend Companionship.

(2) If the child is not or none of the children are attending school, then the child/ren and the nonresidential parent shall exercise companionship from 7:00 P.M. the Thursday before Good Friday to 7:00 P.M. the following Friday in odd-numbered years. In even-numbered years the child/ren and the residential parent shall exercise this companionship.

(E) OTHER HOLIDAYS.

(1) MEMORIAL DAY. In odd-numbered years the child/ren and the nonresidential parent shall exercise companionship from 7:00 P.M. the Friday preceding Memorial Day to 7:00 P.M., Memorial Day. The child/ren and the residential parent shall exercise this companionship in even-numbered years.

(2) INDEPENDENCE DAY. In even-numbered years the child/ren and the nonresidential parent shall exercise Independence Day Companionship. In odd-numbered years the child/ren and the residential parent shall exercise this companionship. If Independence Day falls upon a Tuesday, Wednesday, or Thursday, then this companionship shall be from 7:00 P.M., Independence Day Eve to 7:00 P.M., Independence Day. If Independence Day falls upon a Friday or Saturday, then this companionship shall be from 7:00 P.M. the preceding Thursday to 7:00 P.M., Sunday. If Independence Day falls upon Sunday or Monday, then this companionship shall be Monday.

(3) LABOR DAY. In odd-numbered years the child/ren and the nonresidential parent shall exercise companionship from 7:00 P.M. the Friday preceding Labor Day to 7:00 P.M., Labor Day. In even-numbered years the child/ren and the residential parent shall exercise this companionship.

(4) THANKSGIVING. In even-numbered years the child/ren and the nonresidential parent shall exercise companionship from 7:00 P.M. the Wednesday preceding Thanksgiving to 7:00 P.M., Sunday. In odd-numbered years the child/ren and the residential parent shall exercise this companionship.

(F) SUMMER. The child/ren and the nonresidential parent shall exercise companionship for six consecutive weeks during the Summer Vacation of the school district in which the child/ren reside. This companionship shall commence on a Friday at 7:00 P.M. and end on the sixth following Friday at 7:00 P.M. In odd-numbered years the nonresidential parent shall choose the commencement date of summer visitation and notify in writing the residential parent, and, if one or more of the child/ren can read, the

child/ren at least sixty days before this commencement date. In even-numbered years the residential parent shall choose the commencement date of summer visitation and notify in writing the nonresidential parent and, if one or more of the child/ren can read, the children at least sixty days before the commencement date of summer visitation. During this summer companionship the child/ren and the residential parent shall exercise weekend companionship as described below.

(G) WEEKENDS. The child/ren and the nonresidential parent shall exercise companionship on alternate weekends 7:00 P.M., Friday to 7:00 P.M., Sunday commencing the second Friday following journalization of any order or decree of which this schedule is a part. During the child/ren and nonresidential parent's summer companionship the child/ren and the residential parent shall exercise a like weekend companionship beginning the second Friday and the fourth Friday following the commencement of summer companionship.

(H) OTHER COMPANIONSHIP. By agreement, the parents may arrange other and additional companionship, especially to account for days of special significance to the child/ren and one of the parents: for example, family reunions.

(1) If a conflict between two or more of the preceding companionship provisions occurs, then the first listed shall be exercised.

(J) CANCELLATION, MAKE UP. (1) If the nonresidential parent must cancel a companionship period, he or she shall notify the residential parent and the child/ren as soon as possible. The nonresidential parent shall cancel companionship only for an emergency such as a change in his or her work schedule or an illness in his or her household. The nonresidential parent shall not cancel companionship because he or she does not feel like exercising it.

(2) An illness or injury sufficiently serious to keep the child/ren in bed through the companionship period shall be the only reason the residential parent may cancel companionship. If the residential parent must cancel a companionship period, he or she shall notify the nonresidential parent as soon as possible. The



nonresidential parent may, at his or her election, spend up to one hour beginning at the usual commencement time of the companionship period with the ill or injured child. The child/ren who are not ill or injured shall exercise companionship with the nonresidential parent. The parent who cancels a companionship period shall explain it to the child/ren. The canceled companionship period shall be made up within sixty days at the nonresidential parent's option.

- (K) PICK-UP, RETURN. The residential parent shall have the child/ren physically and emotionally ready to go at the commencement of each companionship period. The nonresidential parent shall pick up the child/ren on time or within one-half hour or forfeit that companionship period. The nonresidential parent shall not return the child/ren from companionship early without prior notice and consent of the residential parent, and shall only do so in the event an emergency arises. If the nonresidential parent is unavailable to pick up or return the child/ren, an adult well known to the children may do so. Only licensed drivers may transport the child/ren. No person transporting the child/ren may be under the influence of alcohol or drugs.
- (L) CLOTHING. The residential parent shall send sufficient appropriate clothing with the child/ren each companionship period. The nonresidential parent shall return all such clothing when returning the child/ren. At the conclusion of any companionship period which lasts more than three days (72 hours) the parent returning the child/ren shall return the child/ren's clothing cleaned and folded or hangered ready to put away. For the purpose of this clothing provision the nonresidential parent is **deemed to be the residential parent during Summer Companionship.**
- (M) COMMUNICATION. All mail from one parent to the child/ren shall be confidential and shall not be opened or read by the other parent without the child/ren's prior voluntary consent. Neither parent shall impede reasonable telephone communication between the child/ren and the other parent.
- (N) CHILD/REN'S RECORDS AND ACTIVITIES. The nonresidential parent shall have access to the child/ren at all times, to all the child/ren's activities, and to all records

related to the child/ren on the same terms and conditions as the residential parent. OHIO LAW REQUIRES THIS ACCESS.

(1) This provision is made a part of this Order pursuant to Sections 3109.051(H) (1) and 3109.051(I) and 3109.051(J) (1) and 5104.011(C) (3) (a) of the Ohio

Revised Code. The Keeper of any record related to the child/ren is hereby put upon notice that failure to comply with this order is contempt of court pursuant to Section 3109.051 (H) (2). Any school which sponsors a student activity in which the child/ren participate is hereby put on notice pursuant to Section 3109.052(J) (2).

(2) By separate notice, record holders, schools, day care centers and health care providers may be put on notice with regard to this provision of this Order.

- (O) LOVE AND RESPECT, NO CRITICISM. Each parent shall encourage the child/ren to love, respect, and obey the other parent. Neither parent shall criticize the other parent before the child/ren nor permit the children to associate with any person who criticizes the other parent.
- (P) ADDRESS, TELEPHONE. Each parent shall provide the other parent a current residence address and mailing address, if different, and telephone number. Each parent shall immediately notify the other of any change in this information. The residential parent shall file with the court a notice of his or her intent to relocate with the child/ren to a new residence and provide the complete address of that new residence at least thirty days in advance of such move. The Court shall notify the non-residential parent and the CSEA of the intended move.

**Section 9. Pro Se Filings.** All pro se filings of divorces and dissolutions must comply with Rule 111, Section 2. Preprinted fill-in the blank forms containing check-off provisions will not be accepted for filing. Such preprinted matters must be reduced to material allegations; all surplusage must be removed. -

#### **Rule V11 - Journal Entries**

**Section 1. Preparation.** When the Court does not file its own entry and counsel for the party in whose favor an order, judgment or decree is rendered is ordered or directed to prepare an entry, he shall within ten (10) days thereafter, unless further time is allowed, prepare the entry and submit it to counsel for the adverse party, who shall endorse, note submission or

reject it within twenty-four (24) hours after receipt thereof. If counsel endorse it or note submission, it shall be submitted to the Court and when approved by it shall be filed with the Clerk for entering on the Journal. If counsel are unable to agree on the entry, it shall be submitted to the Court, who shall direct what entry shall be filed. Failure to file a final entry within thirty (30) days after decision or hearing will be considered sufficient basis to dismiss the case without prejudice absent a demonstrated justifiable reason.

**Section 2. When In Default.** No entry need be submitted or a copy thereof sent to any party who is in default and for whom an appearance by counsel has not been entered, except in Domestic Relations cases, warrant of attorney judgments (Section 2323.13 R.C.), or when the Court may otherwise direct the same to be done. Attention is directed to Rule 55(A) regarding notice of default.

**Section 3. Distribution.** Within three working days of the filing of a final Journal entry, the Clerk shall serve the parties or their counsel of record copies of the Journal entry endorsed "Final Appealable Order." All other Journal entries shall be distributed by counsel who prepared them. The Court shall distribute its own orders that are not final appealable orders.

#### **Rule V111 - Case Management Rule**

**Section 1. General.** All cases filed with the Clerk of Courts shall be classified according to designations established by the Ohio Supreme Court. Each case shall be disposed of by trial, settlement, stay or dismissal within the time prescribed by the Ohio Supreme Court: professional tort, 24 months; product liability, 24 months; other tort, 24 months; workers compensation, 12 months; foreclosure, 12 months; administrative appeal, 9 months; complex litigation, 36 months; other civil, 24 months; and criminal, 6 months. Time begins to run upon the filing of a complaint or indictment. The guidelines established for disposition of domestic relations cases are: divorce with children, 18 months; divorce without children, 12 months; dissolution, 3 months; change of custody, 9 months; visitation, 3 months; support enforcement/modification, 18 months; parenting, 9 months and U.I.F.S.A., 3 months. Time begins to run upon filing.

**Section 2. Procedure.** The purpose of case management is to expedite the orderly disposition of pending cases by the establishment of a binding case management schedule. The goal of this section is to improve the quality of trial through more thorough preparation and to facilitate case settlement.

(A) In cases involving professional torts, product liability and other torts, two hundred seventy (270) days after the complaint is filed

counsel shall join all necessary parties, amend pleadings, if necessary, file motions and complete discovery.

Extensions to the time limitation herein established must be made by motions filed within the time stated and only for good cause shown,

Parties may informally agree to continue discovery beyond the stated time, but the court will not consider or decide motions to compel beyond said time limit.

At the conclusion of two hundred seventy days, the matter be assigned for a formal pre-trial conference as described hereinafter.

(B) In workers compensation cases, all discovery must be completed within three months from date of filing of complaint. The case will automatically be assigned for jury trial in the fourth month must be set within the six month limitation.

(C) In all other civil cases, other than administrative appeals, one hundred eighty (180) days after the complaint is filed counsel must join all necessary parties, amend pleadings, file motions and complete discovery. Extensions will not be permitted. If a jury has been demanded by one or more parties, the matter will be assigned for a formal pre-trial conference as described hereinafter. If the matter is to be tried to the court, the matter will be assigned for a date specific without consultation.

**Section 3. Pretrial.** At least seven (7) days prior to the pre-trial conference, trial counsel for each party shall file a pre-trial statement. Each pre-trial statement shall contain a statement from trial counsel each of the following items as are appropriate to the litigation:

(A) Discovery is expected to be complete by the time of pre-trial and, if not completed, counsel shall advise the Court of the additional discovery anticipated to be informally completed.

(B) The Status of Settlement Negotiations - Trial counsel shall current status of settlement negotiations.

(C) Exchange of Medical Expert Reports - Trial counsel for each of the parties shall advise the Court of the expert or medical witnesses that he expects to testify at trial. A copy of each experts' to counsel and the Court pre-trial.

(D) Special damages-Where appropriate, trial counsel shall list all special damages and shall furnish to opposing counsel verification of these damages. Where lost wages or impairment of earning capacity

claimed, the basis on which the claim will be proven (i.e. testimony of the party, employee, etc.), shall be set forth.

(E) Exhibits - Trial counsel shall list those exhibits in existence which he expects to introduce during the trial of the case, such as photographs, plots, deeds, medical bills or expenses, etc. Except for medical, drug and hospital expenses covered in Part 3 hereof, all listed documents shall be available to the Court at pre-trial. Counsel shall also list those exhibits not in his possession, that he expects to introduce at trial such as x-rays, diagrams, etc.

(F) Other matters - Trial counsel shall set forth those additional items or requests which may aid in or affect the trial of the cause such as:

- (1) Request for a view of the scene,
- (2) Any anticipated delay of trial because of a problem in scheduling a witness,
- (3) Pending motions that must be resolved prior to trial,
- (4) Request for sanctions pursuant to Civil Rule 37.

(G) Pre-trial Orders - At the completion of a pre-trial conference, the Court may prepare and file a pre-trial order as set out in Civil Rule 16.

(1) Upon completion of the pre-trial conference, counsel for the parties and the trial judge, through the assignment commissioner, shall select or confirm a trial date. Once selected or confirmed, the trial date shall not be vacated except upon written motion and for good cause shown or upon order of the Court. If a case must be continued, it will not be re-set outside the Ohio Supreme Court guidelines.

(2) In addition to those Sanctions provided in Civil Rule 37, the Court may order the dismissal of an action or the granting of all or part of the relief sought in a complaint or such other order as the Court deems appropriate for failure of trial counsel to comply with the pre-trial order, including the exclusion of certain evidence or the disallowance of the testimony of any witness.

(3) Stipulations or agreements of facts, issues or exhibits by the parties and counsel in a pre-trial order are binding on the parties and are admissible at trial without further proof.

(4) At pre-trial hearings, each counsel shall be present. Parties and insurance representatives, if any, should be available by telephone or means of communication if needed.

## **Rule IX - Procedural matters**

**Section 1. Request For Assignment.** Requests for assignment prior to pre-trials or court initiation shall be made in writing, with notice to opposing counsel or the opposing party, to Robert P. Stapleton, Court Administrator of the Court of Common Pleas, Madison County Courthouse, P.O. Box 527, London, Ohio 43140-0527.

**Section 2. Jury Demand.** Any party demanding 4 jury trial in a civil case shall secure the cost thereof by filing a deposit of \$100.00 not less than ten (10) days from the date said demand has been filed. Failure to comply herewith shall be deemed a waiver of trial by jury.

**Section 3. Jury Management Plan (on file).**

**Section 4. Pretrial Statements.** Counsel are directed to file pre-trial statements at least ten (10) days prior to the commencement of court trials or jury trials. Said statements should contain a statement of the operative facts; a memorandum of applicable law; a list of all witnesses that will be called for trial; a list of all exhibits that will be introduced at trial; and, in the case of a jury trial, proposed jury instructions on the issues joined. Failure to abide by this rule shall cause the offending party to be sanctioned.

**Section 5. View of the Scene.** View of the scene shall only be granted if requested in writing at least ten (10) days prior to the commencement of trial. The party seeking a view shall be responsible for making all arrangements for transporting the jury and securing the costs thereof. Failure to make such arrangements and to notify the Bailiff accordingly at least two (2) days prior to trial shall cause the Court to overrule the request for view. Parties shall not be granted views unless their original request amply demonstrates a need therefore.

**Section 6. Subpoena.** Requests to the Clerk of Courts to issue subpoena shall be filed with the Clerk's office not less than four (4)

working days prior to the commencement of trial. The Clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, fill it in and file a copy thereof with the Clerk before service.

Requests for subpoena filed within four (4) days of trial shall only be issued by the Clerk with leave of Court upon motion and entry. The motion must demonstrate cause why a request was not timely filed.

If a case is continued, settled or dismissed after subpoenas have issued, counsel are responsible for contacting all witnesses not to appear in accordance with the subpoena. If counsel fail to notify witnesses and they appear, counsel shall be personally responsible for the witness fee plus mileage. The Clerk shall not pay witnesses who appear under this provision out of the Court's appropriation.

## **Rule X - Continuances**

**Section 1. Motions For Continuances.** An application for the continuance of a cause shall be by motion, supported by affidavit of someone knowing the facts upon which the application is based; or, in case of sickness, by the certificate of a reputable physician, unless such affidavit or certificate be waived, in which case the professional statement of an attorney of record for the party seeking the continuance may be taken in lieu of such affidavit or certificate. A motion for continuance must be endorsed by the litigant and counsel in accordance with C.P.Supp. 4 1 (A).

(A) All motions for continuances will be decided without argument, and no supplemental or amended affidavit or counter affidavit or statement will be received.

(B) A motion for the continuance of a case, if made after the assignment of the case, for trial, will not be granted if the reason upon which such motion is based was within the knowledge of the party or his attorney when the case was so assigned.

**Section 2. Absent Witness.** If the continuance be asked for on the ground of inability to procure the testimony of an absent witness, the party making the application must state in writing what he expects to prove by such witness, and also by what acts of diligence he has endeavored to procure the testimony of such witness. If the Court finds the testimony material, and that due diligence has been used, such cause may be continued, unless the opposite party consents to the reading of such

affidavit or a stipulation in evidence, in which case the trial may proceed and such affidavit or a stipulation in evidence, in which case the trial may proceed and such affidavit or stipulation be read on the trial, and treated as

## **Rule XI - Dismissals**

**Section 1. General.** Cases which have been on the docket for six (6) months or more without any proceeding taken therein or without apparent action in the file shall be dismissed without prejudice, after notice to counsel of record unless good cause is shown.

**Section 2. Sanction.** Cases in which dismissal is an appropriate sanction will be dismissed with or without prejudice, as circumstances dictate, upon notice to counsel of record.

**Section 3. Settled or Decided.** Cases which have been settled or decided and awaiting entry will be dismissed without prejudice on or after twenty-one (21) days thereof and after actual notice to counsel of record.

## **Rule X11 - Arguments**

**Section 1. Argument.** In the argument of questions incidentally arising in the trial of a case, but one counsel on each side will be heard.

**Section 2. Examination of Witness.** One counsel only on a side will be permitted to examine or cross examine a witness, except in a trial for capital offense.

**Section 3. Closing Arguments.** Except by special permission of the Court, only two counsel on a side will be permitted to make closing arguments to the jury.

## **Rule X111 - Depositions**

A deposition filed with the Clerk shall not be withdrawn except by leave of the Court granted upon motion, and due notice to the proper party or his attorney.

## **Rule XIV - Agreements of Counsel or Parties**

No agreement between parties or attorneys in respect to an proceedings, continuance, trial or settlement of a case shall be binding unless reduced to writing and signed by the proper parties or attorneys as consented to by the Court.

## **Rule XV - Sureties**

**Section 1. General.** No attorney or officer of the Court or clerk or relative shall be received as bail or surety, directly or indirectly, in any matter, cause or proceeding pending in this Court.

**Section 2. Approval of Bonds.** All bonds must be approved by the Court, before filing with the Clerk. In case real estate is offered as security the value of said real estate is to be considered as the duplicate value divided by 40 x 100. A legal description of such real estate must be furnished with the volume and page of the Recorder's deed book where recorded must also appear, together with liens of record.

**Section 3. Preparation of Bonds.** Counsel shall prepare the bond and surety forms and the Clerk shall not do so.

## **Rule XVI - Criminal Procedure**

**Section 1. Bill of Information.** In accordance with **Criminal Rule (A)**, defendants may be prosecuted by a bill of information. However, a plea shall be accepted by the Court to charges contained within a bill of information until and unless the defendant has been served a copy thereof at least twenty-four hours prior to the plea being entered.

**Section 2. Indigent Criminal Defendants.** Counsel shall be appointed to represent indigent criminal defendants and be paid in accordance with the fee schedule approved by the Board of County Commissioners.

Section 3. Retained Counsel. Counsel who are retained by criminal defendants will not be permitted to withdraw from representation for nonpayment of attorney fees within two weeks of trial.

**Section 4. Reimbursement.** Indigent criminal defendants who are placed on community sanctions and who gain employment shall be expected to reimburse the county and state for fees paid.

**Section 5. Pre-trial Motions.** Pre-trial motions contemplated by **Criminal Rule 12(B)** must be filed at least seven days prior to trial. If a criminal defendant seeks to extend said time, he must file a motion and affidavit setting forth all reasons why the pre-trial motion was not timely filed. Motions must be accompanied by a memorandum which states with particularity the grounds upon which it was made and shall set forth the relief or order sought. It shall be supported by citations of authority.

**Section 6. Discovery.** All discovery shall be conducted in accordance with applicable criminal rules and case law within the time frames required by law. Continuances will not be favored because counsel have waited until the last day to request discovery. All discovery and supplements thereto must be exchanged not less than three working days before trial is to commence. Defendant's who seek representative samples of drugs of abuse for independent testing must request them at a time far enough in advance of trial not to interfere with the trial date. Defendants, through retained or appointed counsel, must arrange for drug testing and analysis through experts of their choosing. Because of the time-lag between submission and report from the B.C.I. & I., the Prosecutor is directed to notify defendant of submissions of evidence and to exchange reports upon receipt but not less than three working days before trial. Motions for pleadings of not guilty by reason of insanity, incompetent to stand trial, other mental evaluation and treatment in lieu of conviction must be timely filed so as not to interfere with scheduled trial.

All motions for discovery, notification of intent to use evidence in chief and for bills of particular shall be deemed sustained upon filing, pursuant to the arraignment order, unless the Prosecutor files a motion for protective order or otherwise objects within five working days.

Discovery should be provided within ten days of motion. Failure to provide discovery in accordance with this rule or **Criminal Rule 16** shall cause evidence to be excluded at trial.

Failure to provide all discovery required shall render inadmissible such evidence offered by the offending party. The Prosecutor shall be responsible for gathering all matters subject to discovery from police agencies. It shall not be a defense to a motion for sanction or a motion in limine that the police agency did not timely provide the information to the prosecutor.

Section 7. Subpoena. Subpoena shall not issue to the Sheriff by the Clerk of Courts unless a request therefor has been filed by the Prosecuting Attorney or the defendant at least four working days before trial.

#### **Rule XV11 - Counsel Fees**

**Section 1. Partition.** (A) In partition and other cases hereafter filed wherein it is proper for the Court to tax attorney fees for ordinary services of counsel for all parties, there may be allowed:

Minimum Fee, unless fee would exceed 50 per cent of amount involved, Court then specifically fixes the fee .....	\$150.00
Plus amounts between \$2,500.00 and \$50,000.00 (valuation or sale .....	6%
Plus amounts between \$50,000.00 and \$ 1 00,000.00 (valuation or sale) .....	4%
Plus amounts in excess of \$100,000-00 (valuation or sale) .....	2%

Where a partition suit is filed in contemplation of a divorce, during a divorce or within one year after a divorce has been dismissed or disposed of, attorney's fees shall be based on an hourly rate with a motion and affidavit in support.

(B) Where one coparcener elects to take the real estate at the appraised value, the Court may adjust the fee to a lesser amount but not more than 15 percent of the fee set out in Subsection (a) above.

**Section 2. Cognovitnote.** There shall be taxed a fee of at least \$25.00 when counsel enter appearance and confesses judgment on a cognovitnote. Any such fee to be taxed in and disbursed as costs in the case.

**Section 3. Domestic Relations.** In Domestic Relations, the Court may fix counsel fees prior to final hearing of the case, if it appears from the record that without an allowance for counsel fees a party may be unable to prosecute his or her action.

**Section 4. Other Fees.** (A) In Receivership cases, fees of receivers and their attorneys shall be allowed only upon an application filed in the cause with an affidavit setting forth in detail the services rendered in the case. Written notice of the date and place of the hearing of said application shall be served by counsel upon counsel or parties a reasonable time before the hearing. The Court may direct the method and manner of the service of the notice. In considering the amount to be allowed to counsel for services rendered the Court will apply the fee schedule of the Madison County Bar Association, insofar as circumstances permit.

(B) In Soldiers'and Sailors' Relief Act cases, the minimum fee shall be \$100.00.

(C) Attorneys acting as or appearing for Guardians ad litem or Trustees for suit shall be paid an hourly rate of \$100.00 for all work

performed. Said attorneys shall file itemized statements with the Court at the latter's request before payment is authorized. The Court shall tax the costs thereof to the costs of the suit. Where it appears necessary, the Clerk of Courts shall require whatever cost deposit as may be required prospectively to secure said costs from whichever party is benefitted by services rendered or otherwise, on the Court's own motion, the party who should be taxed the costs because of the nature of the litigation.

### **Rule XVIII - Certification - Title to Real Estate**

**Section 1. Title Binder.** In partition, foreclosure, or any other case requiring an order of sale of real property, the attorney for plaintiff shall procure and file with the Clerk within thirty (30) days after filing of the petition, unless it is contemplated and certified that the plaintiff intends to buy the property back at sale.

A title binder for the premises to insure the same in the amount of the sale price to be paid, issued by a firm authorized to issue such contracts by the Department of Insurance of the State of Ohio.

**Section 2. Fees Procedure.** (A) Attorney Fees for a title binder under this Section shall be allowed at an hourly rate of \$60.00 to be taxed as costs in the case.

(13) Such certifier shall also file within five days from date of sale a statement of "no change" or of "any change" affecting the title, occurring between the date the binder was filed and the Statement herein referred to.

(C) Title binder fees or preliminary certificate in any event shall be taxed as costs and the cost of the title policy and final certificate are to be charged as costs, provided there is a confirmation of sale.

(D) If in a partition action a coparcener elects to take or in a foreclosure where the mortgagee is the purchaser a title policy and final certificate can be waived by the elector or mortgagee in such case provided however that the commitment cancellation charge as set forth in Department of Insurance Regulation (Rate Rule 14) shall be taxed as costs and paid to the issuing agent or company.

(E) An attorney who causes real estate to be sold under this section shall designate an attorney other than himself or someone other than with whom he is associated, to prepare a title binder or attorney's certificate or title.

**Section 3. Purchasing Real Estate.** An attorney or anyone with whom he is associated shall be prohibited from purchasing real estate at Sheriff's Sales if he represented any parties to the litigation resulting in sale. The

only exception hereto shall be those situations where attorneys bid for the real estate at sale for their client.

**Section 4. Restriction on Sale of Real Estate.** No real estate shall be sold under this section unless either a title binder is filed with the Clerk of courts within thirty (30) days of the filing of the original complaint and no order of sale shall issue unless there has been strict compliance herewith unless plaintiff notifies the Court of its intention to buy the property at sale.

The Clerk of Courts is directed to send a copy of this rule to Plaintiff's counsel in each case where the sale of real estate is sought.

### **Rule XIX - Trustee's Accounts**

**Section 1. General.** Every trustee administering a trust in this Court shall render an account of the administration of his trust at least once in each two years, unless upon order of the Court, at its own instance, or upon the motion of any person interested in the trust for good cause shown, such account be required at other times.

**Section 2. Final Account.** Every such trustee shall render a final account within thirty (30) days after termination of such trust or within such period of time as the Court may order.

**Section 3. Procedure.** Such accounts shall be prepared, filed, assigned for hearing, notices published and exceptions taken in such manner as prescribed in Section 2109.30 R.C.

### **Rule XX - Appeal Procedure**

**Section 1. Procedure.** Unless otherwise provided by statute or ordered by the Court or a Judge thereof, briefs, assignments or error and bills of exceptions shall be filed as follows in all cases on appeal on questions of law to the Common Pleas Court:

(A) Counsel for appellant shall, within thirty (30) days after filing notice of intention to appeal, file with the Clerk his assignments of error and briefs and bill of exceptions.

(B) Upon failure of the appellant to file his assignments of error, briefs, or bills of exceptions, as herein required, unless good cause is affirmatively shown to the contrary, the cause will be dismissed for want of prosecution, or otherwise disposed of at the discretion of the Court.

(C) Within fifteen (15) days after the filing of the appellant's assignments of error and briefs and bill of exceptions, but not later than five (5) days before the submission of the cause, counsel for appellee shall file like briefs, and briefs in reply thereto shall be filed within five (5) days thereafter.

(D) Proof of service of a copy of briefs upon opposite parties or their counsel must be filed concurrently.

(E) An application for extension or shortening of time in which to file briefs in any cause must be by motion prior to the time limitations in (a) and (c), above.

Section 2. Leave to Appeal. Where application for leave to appeal is necessary a brief or memorandum must accompany the application. Receipt of service of a copy of such application and brief or memorandum signed by the opposite parties or their counsel must also be filed concurrently.

## **Rule XXI - Court Appointments**

**Section 1. Indigent Defendants.** Indigent Defendants and/or Respondents in criminal or contempt proceedings:

(A) Criminal defendants or contemnors entitled to the appointment of counsel under guidelines established by regulations promulgated by the Ohio Public Defender shall be appointed counsel to represent them by the Judge of the Court of Common Pleas.

Attorneys appointed in such cases must meet the minimum requirements for representation established by the Ohio Public Defender. Appointees shall come from the membership of the Madison County Bar Association and from membership of Bar Associations from contiguous counties.

(B) Appointments will be made in an effort to ensure the equitable distribution of cases among the attorneys who participate within the discretion of the trial court.

(C) Fees for reasonable and necessary legal services rendered shall be in accordance with the fee schedule adopted by the Madison County Board of Commissioners.

**Section 2. Other Appointments.** Guardian Ad Litem; Miscellaneous Appointments. All other appointments shall be made at the discretion of the Judge of the Court of Common Pleas. Fees for reasonable and necessary services rendered shall be made in accordance with Rule IV, Section I (C).

## **Rule XXII - COURT SECURITY**

Confidential, not available for public review

## **Rule XXIII - Civil and/or Temporary Protection Orders**

**Section 1. Forms:** The Ohio Supreme Court has adopted C. P. Sup. R. 10.0 I and 10.02 to standardize forms used in obtaining and granting civil protection orders granted under R.C. 3113.31 and temporary protection orders granted under R.C. 2919.26.

All forms established under the rule making authority of the Supreme

Court, including standardized instruction packets, shall be made available on demand to pro se parties through the Clerk of Courts and the office of the Prosecuting Attorney.

**Section 2. Filings.** Filings by retained counsel should approximate the language and follow the format established in the Supreme Court rules.

Section 3. LEADS. All reporting to the Law Enforcement Automation Data Systems shall be on Form 10-A established under the rule making authority of the Supreme Court.

## **Rule XXIV - Habeas Corpus**

### **Post Conviction Remedy - Mandamus - Extra - Ordinary Writs**

Section 1. Commencement of an Action. An inmate confined in a state penal institution who commences an action in habeas corpus, mandamus, post conviction remedy or any civil action or appeal against a governmental entity or employee shall file with the Court an affidavit that contains a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court. If none, the affidavit should so state.

If the inmate has made such filings as aforesaid, the affidavit should contain the following:

(A) A brief description of the nature of the previous civil action or appeal;

(B) the case name, case number, and the court in which the civil action was brought;

(C) the name of each party to the civil action or appeal;

(D) the outcome of such filings including whether they were found frivolous or malicious and whether an award was made against his account pursuant to R.C. 2323.5 1.

**Section 2. Multiple Filings Within a Year.** If an inmate confined in a state penal institution commences more than three civil actions or appeals within a twelve month period, the Court reserves the right to order independent legal review to determine whether the action is frivolous.

Section 3. Waiver of Costs. If an inmate who commences a civil action for any reason set forth in Section 1, supra, and seeks waiver of prepayment of costs, the inmate must file an affidavit of indigency which:

(A) sets forth the balance in the inmate's account for each of the preceding six months, as certified by the institutional cashier; and

(B) a statement of each and other things of value owned by the inmate at the time of filing. Section 4. In the absence of an affidavit of indigency, a cost deposit of \$50.00 must be filed with the Clerk of Courts at the time an inmate commences an action set forth in Section 1, supra.

**Section 5. Compliances.** (A) A petition for habeas corpus must substantially comply with the requirements of Section 2725.04 R.C. and particularly subsection (d).

(B) The facts of any denial or infringement of rights referred to in Section 2953.21 R.C. must be clearly and definitely stated.

(C) The verification following petitioner's signature, must appear at the end of the petition and not following any brief or memorandum. The facts must be verified not argument or opinion.

(D) A motion for suspension of sentence and probation under Section 2947-061 R.C. heard, without personal appearance of defendant, on the matters contained in the motion or supplementary matters if requested by the Court.

(E) An original and one copy of papers filed is sufficient. Papers should be typewritten, if possible, and double spaced.

**Section 6. Dismissal.** Where it appears from the petition, commitment, indictment or certified papers that no cause of action is stated a writ of habeas corpus or a hearing under Section 2953.21 R.C. will be denied and the petition dismissed. sua sponte.

**Section 7. Brief or Memorandum.** (A) In accord with object of the statutes petitioners are encouraged to file with their petition a brief or memorandum containing statutes or cases relied on which reasonably apply to issues raised by the petition.

(B) Briefs or memorandums are for the purpose of enabling the Court to determine if there are questions of fact requiring a hearing or research by the Court. Hearings are not automatic upon filing of papers which do not meet statutory requirements or fail to raise any controverted question of fact.

**Section 8. Rule and Forms.** A supply of this rule and form of indigency affidavit is supplied to the offices of the several superintendents of penal institutions.

## **Rule XXV - Notary Publics**

**Section 1. General.** For the purpose of assisting this Court in the performance of its duty pursuant to Chapter 147 of the Revised Code of Ohio, the members of the Madison County Bar Association are appointed members at large of a committee to receive applications, conduct examinations and to certify qualifications of residents applying to this Court for appointment to the office of Notary Public for Madison County, Ohio, or as a resident of an adjacent county. The names of those members of the Madison County Bar who wish to receive applications, conduct examinations and to certify qualifications of applications of applicants applying for notary public commissions shall be furnished on a list to the Public, by the Clerk of the Court of Common Pleas.

**Section 2. Appointment.** All members and officers now or hereafter appointed shall serve at the pleasure of the Court.

**Section 3. Application.** (A) All persons applying for the first time or for renewal of Notary Public Commissions shall obtain the required forms from the Clerk of Courts, Madison County, Ohio, (B) a completed application form subscribed to by the applicant and certificate of qualification by a member of the committee, for first time applicants along with a \$5.00 fee, will be filed with the Clerk of Courts for forwarding to the Commission Clerk for the Governor.

(C) Any person applying for the first time for a commission as a Notary Public for Madison County, Ohio, or a person whose previous commission has expired more than six months prior to the date of their application shall be required to take an examination. Each such examination must be accompanied by a fee of \$20.00 in addition to the application and fee set forth in Section 3 (A).

(D) Where a resident of an adjacent county has been certified by a judge of such adjacent county the provisions of Section 3 shall not apply to such applicant.

**Section 4. Distribution of fees.** The fees required shall be accounted for, held and disbursed monthly by the Clerk to the Secretary-Treasurer monthly of the Madison County Bar Association for continuing legal education. The Bar Association shall reimburse the County for supplies, stationary, postage, or other expense and fees and to the members of the committee for their services, and to the Secretary-Treasurer who shall perfect, maintain and preserve a registry of applications, examinations, and complaints against such Notary Public's present or past conduct in office.

**Section 5. Complaints.** (A). Complaints, if any, shall be referred to a member of the committee for investigation by the Court who shall report his findings and recommendations to the Court.

(B) If deemed proper or necessary the Court shall conduct a hearing, upon notice to the party against whom such complaint has been filed, who shall have the right to introduce such testimony or evidence deemed necessary to fully inform the Court in the premises. The Court upon consideration shall make such orders and findings as are just and proper in the circumstances.



JUDGE