

Memorandum

To: Domestic Relations Court Parties

From: Barbara Schneider Carter, Administrative Judge

Date: October 19, 2021

Re: Butler County Domestic Relations - Amendments to Local Rules 20-25

The Butler County Common Pleas Court, Division of Domestic Relations is recommending changes to our local rules and we are soliciting comments. Specifically, the court is recommending changes in requesting temporary orders without a hearing.

The Court will accept comments through November 19, 2021. Comments may be forwarded to DRCourtWebResponse@butlercountyohio.org - Attn: Kari Yeomans

**AMENDMENTS TO THE BUTLER COUNTY DOMESTIC RELATIONS
LOCAL RULES OF PROCEDURE**

The following amendments to the Loc.R. 20 through 25

Key to Proposed Amendments:

- 1. Unaltered language appears in regular type. Example: text**
- 2. Language that has been deleted appears in strikethrough. Example: ~~text~~**
- 3. New language that has been added appears in underline. Example: text**

TITLE TWO: ~~EX PARTE ORDERS~~ TEMPORARY ORDERS

DR 20

(A) TEMPORARY ORDERS WITHOUT ORAL HEARING. Upon the filing of a divorce or legal separation action, the court may issue a temporary orders without oral hearing pursuant to Civ. R. 75(N) which may contain orders of temporary custody, child support, parenting time, and spousal support or such other orders as the court deems appropriate. Any request for temporary orders must be filed when the complaint, answer, or counterclaim is filed. Any request for temporary orders without oral hearing must be filed when the complaint, answer, or counterclaim is filed and any temporary orders issued shall be based on the information contained in the Motion and Affidavit for Temporary Orders without Oral Hearing (Form DR Number TBD) which is NOT the same as DR 602 A, 602B, and 602C. The approved DR Number TBD shall be filed with the Clerk of Courts with the complaint, answer, or counterclaim AND a file-stamped copy delivered to the Court along with a file-stamped copy of the complaint, answer or counterclaim.

Any requests for Temporary Orders Without Hearing must be used in conjunction with the filing of a complaint, answer and/or counterclaim, or other responsive pleading. At other times, an amended pleading must be filed. Leave to amend to include relief without hearing will be granted automatically by the Court with no action required by counsel to secure such permission provided that such relief is the only additional relief requested.

(B) COUNTER MOTION AND AFFIDAVIT. The opposing party shall have 14 days from the date of service within which to file a counter motion and Affidavit for Temporary Orders without Order Hearing (Form DR Number TBD). The approved counter Motion and Affidavit shall be filed with the Clerk of Courts AND a file-stamped copy delivered to the Court. The opposing party shall serve the other party/counsel as required by law.

(C) NOTICE OF PERFECTION OF SERVICE. The party requesting a temporary order without hearing must file a Notice of Perfection of Service (Form DR xxxxx) advising the Court that the other party has been served. It is the responsibility of counsel or self-represented party to verify service on the opposing party. No order will be entered before 14 days have elapsed after completion of service.

No sooner than 15 days after service, or upon filing of a Counter Affidavit, whichever occurs first, a completed Notice of Perfection of Service (Form DR Number TBD) must be filed Clerk of Courts (and does not require Case Management Approval) and, a file-stamped copy must be submitted to the Court. Either party may submit the Notice. Only the filing of the Notice will activate the issuance of a temporary order without hearing. The assigned hearing Officer will then make the appropriate orders without oral hearing which will be mailed or emailed to the parties/counsel as necessary.

(D) The Court will set for hearing any motions for a temporary orders not filed with the complaint, answer, or counterclaim.

Residential Parent Status

(A) — When both parties remain in the same home

~~If, at the time the Complaint is filed, both parties are living in the marital residence, — the Plaintiff shall file with the Complaint a motion and *ex parte* order which provides:~~

- ~~(1) A statement that the parents will share the rights and responsibilities regarding their child(ren) in accordance with established practices of the household.~~
- ~~(2) A statement pending further order of the court, each parent shall be the residential parent of the child(ren).~~
- ~~(3) The mandatory language regarding the notice of intent to relocate.~~
- ~~(4) An order of equal access to the child(ren)'s school or medical records or an order limiting a parent's access.~~
 - ~~a. —Any order limiting a parent's access shall contain specific findings of fact which support such limitation.~~
 - ~~b. A notice to the keeper of records regarding failure to comply.~~

(B) — When the parties are separated

If, at the time the Complaint is filed, the parties live in separate households, the Plaintiff shall file with the Complaint a motion and *ex parte* order which provides:

(1) A statement that designates residential parent status to the person who has had actual, physical custody of the children the majority of the time through a regular and routine schedule preceding the filing of the Complaint. This order shall be filed even if the filing party is also filing a motion requesting a change or modification by which he or she seeks to be granted residential parent status.

(2) A parenting time order for the non-residential parent in accordance with the Parenting Guidelines (Form DR610.1), or sets forth a parenting time schedule that the parties have already established.

The Movant must fully and accurately complete the Supreme Court of Ohio Uniform Domestic Relations Form—Affidavit 3 or a Parenting Proceeding Affidavit (Form DR616). The Court has adopted a standard parenting time schedule (Form DR610.1) attached as an appendix to these rules. If the parties have entered into an informal agreement regarding parenting time that is regular and subject to routine, that schedule must be accurately set forth in the Supreme Court of Ohio Uniform Domestic Relations Form—Affidavit 3. The specific parenting time schedule shall be set forth in detail under the “Period of Residence” section in Affidavit 3, including the length of time the parties have followed the parenting time schedule, as well as the school district that the children attended in the current school year. If additional space is needed to set forth the parenting time schedule in detail, a supplemental parenting proceeding affidavit may be prepared to set forth the parenting schedule in detail.

(3) The mandatory language regarding the notice of intent to relocate.

(4) An order of equal access to the child(ren)’s school or medical records **or** an order limiting a parent’s access.

i. Any order limiting a parent’s access shall contain specific findings of fact which support such limitation.

ii.—A notice to the keeper of records regarding failure to comply.

~~(5) If the filing party wishes to restrict or deny parenting time, an *ex parte* order must be obtained from a judge and supported by affidavit. If parenting time is denied or restricted by an *ex parte* order, notice of the restriction, notice of service and notice of hearing shall be served upon the restricted party.~~

~~The Court shall review all affidavits before *ex parte* orders are granted and retains discretion pursuant to Civ.R.75 (N) and O.R.C. 3109.04 *ex seq.* The Court will order sanctions, including costs for misrepresentation, when a parent claims to have custody of a child at a time when no such custody existed.~~

~~A responsive pleading may contain a counter affidavit, such as Supreme Court of Ohio Uniform Domestic Relations Form—Affidavit 5. Any responsive pleading to set aside an *ex parte* order filed consistent with this rule shall be heard by the Court at the earliest possible date.~~

~~(6) If at the time of filing there is a civil protection order that contains an order for parenting, the terms of the civil protection order's parenting order shall be written into the *ex parte* order. A copy of the entire, most recent, civil protection order shall be attached.~~

~~(C) — When the parties separate after the filing of an *ex parte* order~~

~~*Ex parte* orders shall only be issued at the time of initial filing. If circumstances change after the filing of the *ex parte* order, the parties must seek a new order by motion and hearing or submit an Agreed Entry accompanied by a Notice to Case Management (Form C16).~~

~~(D) — When Juvenile Court or another court has jurisdiction over the children, or the children are subject to a parenting order from this Court pursuant to ORC 2301.03(K)~~

~~Every Complaint for Divorce, Annulment, Legal Separation or Petition for~~

~~Dissolution shall include a statement of whether the Juvenile Court, another court or this Court, pursuant to a parenting order, has jurisdiction over any of the children of a marriage. When Juvenile Court, another court or this Court pursuant to a parenting order has jurisdiction of any of the children of a marriage, the pleadings shall identify those children by name, include the case number(s), and what~~

~~allocation of parenting rights and responsibilities (including parenting allocation of parenting time, child support, tax exemptions, and health insurance) are included in the order from Juvenile Court, this Court pursuant to a parenting order or another court. A copy of the order shall be attached.~~

DR 21. — Temporary Child Support Order

(A) — When both parties remain in the same home

~~If both parties remain in the marital residence, the Plaintiff shall file with the Complaint an *ex parte* order, which provides that each parent shall continue to provide support and maintain all current health insurance coverage for the minor children in accordance with the established practices of the household.~~

(B) — When Juvenile Court or this Court pursuant to a child support order through a “DS” case has jurisdiction over any of the children

~~Every Complaint for Divorce, Annulment, Legal Separation or Petition for Dissolution shall include a statement of whether Juvenile Court or this Court, pursuant to a child support order through a “DS” case, has jurisdiction over any of the children of a marriage. When Juvenile Court or this Court, pursuant to a child support order through a “DS” case, has jurisdiction of some, but not all of the children of a marriage, the pleadings shall identify those children by name over which Juvenile Court or this Court pursuant through a “DS” case has jurisdiction and shall state the case number(s).~~

(C) — When the parties are separated

(1) ~~— If the parties live in separate households and one party has been designated the residential parent of the children, the Plaintiff shall file with the Complaint a motion and *ex parte* order which requires the non-residential parent to pay child support.~~

(2) ~~— The filing party shall complete and file Supreme Court Affidavit 4 Health Insurance Affidavit with the child support computation worksheet.~~

(3) ~~— The amount of the child support order shall be calculated pursuant to O.R.C. 3119.01-3119.02, O.R.C. 3119.29-3119.32 and calculation sheets shall be attached to each temporary order.~~

In addition the order shall state the amount of the child support obligation per child, per month.

~~(4) Child support shall be calculated in one (1) of the following manners:~~

~~(a) If an Administrative Order exists and:~~

~~(i) It is not adopted by a court; the filing party shall:~~

~~(1) Attach the administrative order and calculation sheet.~~

~~(2) Provide language adopting the same order as the temporary order of support. The effective date of the order is set forth in the Administrative Order.~~

~~(3) If the administrative order was issued on or before March 27, 2019, provide a statement of the child support obligation stated in Appendix A – Child Support Language.~~

~~(4) If the administrative order was issued after March 27, 2019, the provide a statement of the child support obligation stated in Appendix 1(a) – Child Support and Health Insurance Language for *EX PARTE* ORDERS ONLY.~~

~~(ii) It is adopted by a Juvenile Court then the filing party shall attach the adopted order and calculation worksheet and shall provide the case number of the Juvenile Court case, provide language that the obligation of support is pursuant to the Juvenile Court order and the order is subject to the continuing jurisdiction of the Juvenile Court.~~

~~(iii) It is adopted through the Domestic Relations Court via a DS case pursuant to O.R.C. 2301.03(K), then the filing party shall attach the adopted order and calculation worksheet, shall provide the “DS” case number, provide language that the obligation of support is pursuant to the “DS” case and the order is subject to the continuing jurisdiction of the Domestic Relations Court in the “DS” case, until a final appealable order issues in the “DR” divorce case.~~

~~(b) If the income of the Obligee and Obligor is known, and:~~

~~(i) The combined gross annual income of both parents is \$336,000.00 (three hundred thirty six thousand dollars) or less, child support shall be calculated in accordance with the statutory guidelines and worksheet and stated in total monthly and per child, per month terms.~~

~~(ii) The combined gross annual income of both parents is greater than \$336,000 (three hundred thirty six thousand dollars), child support shall be in accordance with the statutory guidelines and worksheet; **except, the combined child support obligation shall be limited to the amounts set forth in the basic child support schedule for combined gross incomes of \$336,000 (three hundred thirty six thousand dollars).**~~

~~(c) If the income of the Obligee or Obligor is unknown, but the employment — is known, a statement that child support cannot be calculated at this time and the information is being obtained by subpoena *duces tecum*;~~

~~(d) If both the income and employment of the Obligee or Obligor is unknown, a statement that the information cannot be obtained by reasonable means and that child support was calculated in one (1) of the following manners:~~

~~(i) The filing party has made a good faith estimate based upon the past — income information of the Obligee's or Obligor's income and calculated child support in accordance with the guidelines, subject to the limit imposed by subsection (b)(ii) above if the estimated combined gross income of the parties is more than \$336,000 (three hundred thirty six thousand dollars) or~~

~~(ii) The filing party does not know if the Obligee or Obligor has any income and child support is in accordance with the statutory minimum support order and the Obligor shall seek work.~~

~~(iii) If the Obligor has no income, the order will provide that the Obligor seek work and pay the statutory minimum support order (currently \$80.00 (eighty dollars) per month for all children subject to the order). If the Obligor has no income and the filing party believes the~~

Obligor is voluntarily unemployed or underemployed, then the filing party may request a hearing for the Court to impute income.

- (5) —All child support obligations shall be stated pursuant to Appendix 1(a) —Child Support and Health Insurance Language for EX PARTE ORDERS ONLY and contain the following:
- (a) Mandatory language regarding the duty of support continuing beyond the age of majority.
 - (b) Mandatory language requiring withholding order to issue.
 - (c) Mandatory language regarding payment through CSEA directly until a withholding goes into effect.
 - (d) Mandatory language regarding acceptance of payments of support not made through the CSEA shall be deemed a gift.
 - (e) Mandatory language regarding notice to the CSEA of current address.
 - (f) Mandatory language regarding parties' duty to notify CSEA in writing of change in employment or availability of any other sources of income.
 - (g) Mandatory language regarding payment methods.

“To make payments through the Butler County CSEA:

Make cash or credit card payments *only* at the following location: Butler County Child Support Enforcement Agency, Government Services Center, 315 High Street, 7th Floor, Hamilton, Ohio 45011.

Acceptable methods of payment are as follows: Visa, MasterCard, ATM, and Cash payments may be made locally in person only. **Do not send cash by mail. Personal checks will not be accepted by the Butler County CSEA.”**

“To make payments to the Ohio Child Support Payment Central (OCSPC):

~~The Obligor shall send payments to the following location:
Ohio Child Support Payment Central, P.O. Box 182372,
Columbus, Ohio 43218.~~

~~The employer shall send payments to the following location:
Ohio Child Support Payment Central, P.O. Box 182394,
Columbus, Ohio 43218.~~

~~Acceptable methods of payment to OCSPC are as follows:
certified check, cashier's check, personal check, or money
order."~~

- ~~(6) The ex parte order shall specifically identify the deduction order to be issued.~~
- ~~(7) If there is a request for a deviation from guideline child support, the submitting party shall comply with the mandatory language requirements in Appendix 1(a) Child Support and Health Insurance Language for EX PARTE ORDERS ONLY and shall be accompanied by a Notice to Case Management (Form C16). Case Management is responsible for processing.~~
- ~~(8) Temporary child support orders shall be effective the first Friday following service upon the non-filing party.~~
- ~~(9) Upon submission of a filed Complaint containing a previously approved ex parte child support order to the Case Management Office, the Court will forward a copy, along with the completed IV-D application (see Rule DR11) and Withholding Order/Qualified Medical Child Support Order Information Sheet (Form DR201) (see Rule DR7) to the CSEA.~~
- ~~(10) The CSEA will begin administrative enforcement of the temporary order after verifying service in accordance with this Rule.
 - ~~(a) If, upon receipt of a temporary order, the CSEA determines it is unable to administer the order, the CSEA shall promptly send a written notice to the Court, and the parties (or counsel if represented), specifying the issue or issues causing the temporary order to be unenforceable. CSEA will take no further administrative enforcement action on the temporary order absent further direction from the Court.~~
 - ~~(b) CSEA will not administratively modify, or file judicial enforcement actions related to, temporary child support~~~~

~~orders. Any modification or judicial enforcement actions concerning temporary child support orders shall be by motion only.~~

- (11) ~~All temporary child support orders shall include a motion and *ex parte* order addressing the health care insurance and uncovered medical expenses of the children that contains the following:~~
- (a) ~~Mandatory language that the parties shall continue to provide health insurance for the minor children according to the standard practices of the household.~~
 - (b) ~~Mandatory language that the employer of the person required to obtain private health insurance is required to release to the other parent private health insurance coverage information.~~
 - (c) ~~Mandatory language that the person required to obtain private health care insurance coverage for the children obtains new employment; the agency shall comply with the requirements of section 3119.34 of the Revised Code.~~

~~DR 22. Temporary Order for Payment of Debts~~

- (A) ~~If, at the time of the filing, the parties are living in the same household, the plaintiff shall file with the complaint a motion, supported by affidavit and order providing that the parties shall continue to pay their marital debts and obligations in accordance with the established practices of the household.~~
- (B) ~~If, at the time of the filing, the parties are living in separate households, either party may file a motion for a temporary order allocating debts and expenses.~~

~~DR 23. Temporary Spousal Support~~

~~There shall be no *ex parte* orders for temporary spousal support. Spousal support may be awarded only upon motion and hearing or an Agreed Entry.~~

DR 21 25. ORAL HEARINGS ON TEMPORARY ORDERS ~~Relief from Pre-Decree *Ex Parte* Orders~~

- (A) **Request for Oral Hearings.** Pursuant to Civ. R. 75 (N)(2), an oral hearing may be requested after the filing of a temporary order. The party seeking an oral hearing shall submit a request for oral hearing to the

Case Management office for the purpose of scheduling the hearing before a hearing officer. Where applicable, the opposing party or counsel for the opposing party, if represented, shall also be contacted for the scheduling of the oral hearing. After the oral hearing date is scheduled, then the requesting party or counsel for the requesting party shall file request and serve the request upon opposing counsel or party pursuant to the Ohio Civil Rules. A party's request for oral hearing shall not suspend the temporary order.

- (B) **Inaccurate Affidavits.** If a temporary order is filed based upon false or misleading information placed in the affidavit by the party, then the court may modify the temporary order retroactively to correct the misrepresentation at any time prior to the filing of the final decree. If an oral hearing results from a deliberate, material misrepresentation in an affidavit, an award of attorney fees may be made against the party making the misrepresentation.

DR 24 22. Mutual Temporary Restraining Orders

The Domestic Relations Court will issue standing mutual restraining orders (DR FORM14) and attached by the Clerk of Courts at the time a complaint is filed. Plaintiff shall be deemed served with the Mutual Restraining Orders upon the filing of the complaint. The Mutual Restraining Orders shall be served on the defendant-spouse with the summons.

Mutual Restraining Orders shall remain in effect during the pendency of the case unless modified by the court. Any other request for a restraining order shall be awarded only upon motion and hearing. In all cases, upon the filing of the initial complaint for divorce, annulment or legal separation, both spouses shall be restrained from:

- (A) Striking, abusing, harassing, stalking, threatening, or injuring the other spouse.
- (B) Obstructing or interfering with the other spouse's parenting time or communication with the minor child(ren); permanently removing the minor child(ren) from the State of Ohio; concealing the whereabouts of the minor child(ren) from the other spouse; or disparaging, denigrating or otherwise speaking ill of the other spouse to or in the presence or hearing of the minor child(ren).
- (C) Damaging, moving, selling, giving away, transferring, withdrawing, disposing of, pledging, concealing, hiding, assigning or encumbering

any interest which either party may have in real property, personal property, funds, accounts, business interests, safe deposit boxes, investments, household goods, vehicles, without the prior written consent of the other spouse or the Court.

- (D) Interfering with the other spouse's use of the vehicle currently used primarily by him/her.
- (E) Incurring debt on existing lines of credit or credit cards in the name of the other spouse or in the spouses' joint names, unless by prior agreement of the spouses or Order of Court.
- (F) Voluntarily changing the terms or beneficiary of, terminating coverage of, cashing in, borrowing against, encumbering, transferring, canceling or failing to renew any type of insurance, including health, automobile, life, disability, home or fire insurance that provides coverage for a spouse or child(ren) of the parties.
- (G) Claiming any minor child(ren) of the marriage for tax purposes until further order of the Court.
- (H) A spouse who has been voluntarily absent from the marital residence for a period of at least thirty (30) consecutive days, is hereby restrained from re-entering the marital residence.
- (I) Voluntarily liquidating, encumbering, borrowing against, cashing in, changing the beneficiary, terms or conditions of any retirement or pension plan or program that provides any benefit to a spouse or child(ren) of the parties and/or of either or both spouses.
- (J) Withdrawing funds from joint or individual bank, savings and loan association, and/or credit union accounts, retirement or pension funds (including IRA, Keogh, deferred compensation, or 401(k) accounts), trust brokerage houses or other financial institution accounts, except if such accounts are business accounts; provided however, that no stock broker is restrained from buying, selling or otherwise dealing with any stock, bond or other investment for the account of either spouse or both spouses. THE MUTUAL RESTRAINING ORDER IS NOT INTENDED TO RESTRAIN MONIES RECEIVED IN THE FORM OF WAGES AND SHALL NOT PREVENT THE PAYMENT OF ORDINARY AND NECESSARY BUSINESS EXPENSES AND LIVING EXPENSES CONSISTENT WITH THE PRACTICES OF THE PARTIES DURING THE MARRIAGE AND SHALL NOT

PREVENT THE PAYMENT OF NECESSARY AND REASONABLE
ATTORNEY FEES, LITIGATION AND COURT COSTS IN THIS
ACTION.

- ~~(A) — Any party who believes an *ex parte* order filed in accordance with these rules is incorrect or inappropriate may file a motion for relief. The filing party shall obtain the first available hearing date before the assigned magistrate from the Case Management Office. Motions shall contain a notice of the date, time and place of the hearing and shall be served in accordance with Ohio Civil Rule 5.~~
- ~~(B) — Motions for relief from *ex parte* temporary orders shall be given priority upon request on the Court's docket. In the event an *ex parte* order is found to be incorrect or inappropriate, any modification may be made retroactive to the effective date of the order and the Court may grant attorney fees or other relief to the other party.~~

DR 23 EXCLUSIVE OCCUPANCY

- (C) If both parties are residing in the marital residence, a motion for exclusive occupancy may be granted after a hearing if the party requesting exclusive occupancy establishes that the other party:
- (1) attempted to cause or recklessly caused bodily injury;
 - (2) placed the party requesting exclusive occupancy, by threat of force, in fear of imminent serious physical harm;
 - (3) committed any act with respect to a child that would result in the child being an abused child as defined in R.C. 2151.031; or
 - (4) engaged in conduct that creates an environment which causes or is likely to cause emotional and/or mental stress to the party requesting exclusive occupancy and/or to the minor child/ren of the parties.

DR 24 and DR 25 Reserved