

Chapter 4 - Motion Practice

Rule 4.01 - General

- (A) **Form.** Motions not made during a hearing shall be made in writing and filed with the Clerk. The motion shall include a concise written statement of the relief sought and the supporting grounds.
- (B) **Reactivating Filing.** Reactivating filings invoke the continuing jurisdiction of the court in a specific case. Reactivating filings shall contain the full current addresses of all parties in the caption and shall be served pursuant to Civ.R. 4 through 4.6.
- (C) **Child Support Matters.** Motions regarding child support shall specify the SETS number in the caption, if a SETS account has been created by CSEA.
- (D) **Service.** Service of all motions shall include service to CSEA when necessary and to any Guardian ad litem appointed in the case.

Rule 4.02 - Substantive Motions.

- (A) **Definitions.** Substantive motions relate to the merits of a case or move to modify a prior court order which dispositively ruled upon the merits of an issue.
- (B) **Initial Hearing.** Substantive motions which are properly prepared and filed will be set for an initial hearing by the Court, except as provided herein. It is the responsibility of the moving party to ensure a hearing is set. If no notice of hearing is issued within seven (7) days of the filing of a substantive motion, the moving party shall contact the scheduling department of the Court.
- (C) **No response/brief in opposition** is required unless ordered by the Court.

Rule 4.03 - Procedural Motions.

- (A) **Definition.** Procedural motions address the process or mechanics of a case.
- (B) **No Multi-part Motions.** A party seeking procedural relief shall file a *separate* motion for each type of relief sought except for collateral relief such as a request for attorney's fees and expenses associated with the specific motion. Motions related to discovery are procedural motions. The Clerk shall refuse to file a multi-part procedural motion.
- (C) **Proposed Order.** Every procedural motion filed with the Court shall be accompanied by a proposed order suitable for use *if the motion is granted*. A party opposing the motion may provide the Court with a proposed order *denying the motion*. The proposed order shall be signed by the preparing party and indicate a request for service upon all other parties specifically by name.

Rule 4.04 - Response to a Motion

- (A) **Response period.** If a party files a motion, any other party may file a response to the motion within ten days from the date the motion is filed, unless otherwise provided in these rules or by order of the Court. A response shall be a concise written statement of the reasons, including citation to any authority relied upon.

- (B) **Caption.** A response or brief in opposition to a motion shall be captioned as “Response”, “Response in Opposition” or “Brief in Opposition” and shall **not** be captioned as an “objection” to the motion.
- (C) **No reply.** A reply to a response to a motion shall not be filed by the moving party. The Clerk shall refuse to file a reply to a response to a motion in any form, and motions to waive this rule are prohibited and shall not be filed.
- (D) **No multi-part response.** The Clerk shall refuse to file a response which contains a motion therein.

Rule 4.05 - Court action

The Court may act upon a motion before the deadline for filing a response to the motion, if the interests of justice warrant immediate consideration by the Court.

Rule 4.06 - Motion to Show Cause / Motion for Contempt

- (A) **Form**
 - 1. A motion to show cause/motion for contempt must be filed as a separate document and shall not include any other motion or request for relief other than a request for court costs and attorney fees related to the alleged contempt or a request to reduce to judgment.
 - 2. A motion to show cause/motion for contempt shall not be included in any multi-part motion.
 - 3. A motion to show cause/motion for contempt must identify the specific court order(s) (including the date of the order and the specific provision within the entry) the non-moving party is alleged to have violated.
 - 4. A motion to show cause or motion for contempt shall state with particularity the facts of the alleged contempt and the relief sought by the moving party.
 - 5. Motions which fail to properly state with specificity the order and facts may be denied without hearing.
 - 6. The motion must be supported by an affidavit as to the facts, except for motions filed by CSEA as described herein.
- (B) **Costs.** A motion to show cause or motion for contempt will incur a deposit for court costs for each motion that is filed regardless of the stage of the underlying case as it requires separate service.
- (C) **Summons and Order to Appear**
 - 1. Upon request and with sufficiency established in the motion, the Court will issue a Summons and Order to Appear directing the alleged contemnor to appear before the court to show cause why he or she shall not be held in contempt of court.
 - 2. The summons shall contain the notices required by Revised Code 2705.031(C).
 - 3. The summons and order to appear shall be served by the Clerk by certified mail.
- (D) **Case Management**
 - 1. A motion to show cause/motion for contempt is a separate cause of action and will have a separate case management process from other matters filed or pending.
 - 2. No initial hearing will be held.

3. The hearing date set shall be the final evidentiary hearing and the parties shall be prepared to proceed with evidence.
 4. The evidentiary hearing will be set for 60 minutes with the moving party allocated 30 minutes and alleged contemnor allocated 30 minutes. Cross examination and objections are included in the time allocated to the party conducting the cross examination or levying the objection. No additional time will be provided without leave of Court sought and approved at least seven (7) days prior to the hearing date.
- (E) **Service.** The motion shall be served on the alleged contemnor pursuant to Civ.R. 4 through 4.6. The moving party is responsible to ensure proper service.
- (F) **CSEA Actions.**
1. No affidavit is necessary with the filing of a CSEA motion to show cause.
 2. CSEA actions for failure to pay child support shall contain a statement of the arrearage balance with a specific “as of date” and the currently monthly support amount.
 3. CSEA actions for failure to comply with other administrative orders shall contain a statement of the actions taken by CSEA in an attempt to obtain compliance.

Rule 4.07 - Motion for Temporary Orders / Motion for Interim Orders

- (A) **Initial Action.** A motion which seeks temporary orders or seeks to modify previously issued temporary orders during the pendency of an initial action will be set for hearing by the court. The hearing will be set for 60 minutes with the moving party allocated 30 minutes and the non-moving party allocated 30 minutes. The hearing will proceed as an evidentiary hearing and the parties shall be prepared to present evidence for all orders sought under the motion.

At the court's discretion, the matter may proceed upon oral statements of counsel. A party intending to present exhibits other than a previously filed affidavit, shall provide the exhibits to all parties at least seven (7) days prior to the date of the hearing and shall file a notice of service of exhibits stating the date and manner in which the exhibits were provided. Except in extraordinary circumstances, exhibits will not be accepted by the court without compliance with the exchange and service requirements of this rule.

Cross examination and objections are included in the time allocated to the party conducting the cross examination or levying the objection. No additional time will be provided without leave of Court sought and approved at least seven (7) days prior to the hearing date.

- (B) **Reactivating Action.** A motion which seeks interim support or interim allocation of parental rights and responsibilities/parenting time orders in a case in which there was a prior dispositive order regarding that matter will be set for hearing upon the request for interim orders under the same conditions as interim orders in an initial action.

Rule 4.08 - Emergency and *ex parte* Motions (excluding Domestic Violence Civil Protection Orders)

- (A) Emergency means risk of irreparable injury necessitating an order issued with notice to the adverse party until the Court is able to issue a more enduring order.

- (B) Ex parte orders of custody or parenting time shall not be issued except in emergency circumstances and, if granted, under the least restrictive means. The party requesting such orders shall make every good effort to provide the adverse party with notice of the request for relief or provide explanation in an affidavit of the reasons for failure to provide notice.
- (C) The Court construes a pleading/motion captioned “Emergency” to be a request for *ex parte* relief (asking the Court to take action without notice and/or participation by the other party). Any pleading/motion captioned “emergency” shall be accompanied by an affidavit of the moving party. Failure to include an affidavit of the moving party will result in denial of the motion.
- (D) The Court may or may not hold a hearing or make a ruling on the same day as the filing. Waiting at the Court is at the discretion of the moving party. Court staff will NOT “check in” with the hearing officer to determine “status” of ruling on the motion and will not provide instruction to a moving party to wait or not wait.
- (E) Denial of an “emergency” pleading/motion will close a case unless a motion/pleading has been filed contemporaneously to reactivate a case or the case is already open and pending upon an underlying action. If there is an underlying action pending, the Court in its sole discretion may set the underlying action for a hearing on an expedited basis.
- (F) Granting of an *ex parte* order on an “emergency” pleading/motion, will result in a hearing within ten (10) court days. No continuance of the hearing will be granted upon request of the moving party except in extraordinary circumstances. Counsel with appearance in a matter set for hearing under this provision shall provide substitute counsel if noticed counsel is unavailable for hearing. Continuance will not be granted for unavailability of counsel for the moving party. Failure by the moving party to appear at the hearing may result in sanctions including but not limited to the *ex parte* order being vacated.

Rule 4.09 - Motions/Requests for Attorney Fees

- (A) **General.** A request for attorney fees and/or litigation expenses must state with specificity the citation to the Ohio Revised Code under which the request is made.
- (B) **How made.**
 1. **Prosecute an action.** Requests for attorney fees and litigation expenses to prosecute an action shall be included in the body of the motion or other pleading that gives rise to the request.
 2. **Defend.** Requests for attorney fees and litigation expenses to defend an action shall be made by motion at least 14 days prior to the hearing on the motion being defended.
 3. No oral motion for fees will be entertained unless good cause is shown why the provisions of this rule could not be complied with and jurisdiction is reserved in an order resulting from the hearing.
- (C) **Evidence in Support of Motion.** At the time of the final hearing on the motion or pleading that gives rise to the request for attorney fees, the attorney seeking such fees shall present:
 1. An itemized statement describing the services rendered, the time for such services, and the requested hourly rate for in-court time and out-of-court time;

2. Testimony as to whether the case was complicated by any or all of the following:
 - a. new or unique issues of law;
 - b. difficulty in ascertaining or valuing the parties' assets;
 - c. problems with completing discovery;
 - d. any other factor necessitating extra time being spent on the case;
 3. Testimony regarding the attorney's years in practice and experience in domestic relations cases; and
 4. Evidence of the parties' respective income and expenses, if not otherwise disclosed during the hearing.
- (D)** Expert Testimony is not required to prove reasonableness of attorney fees.
- (E)** Failure to comply with the provisions of this rule shall result in the denial of a request for attorney fees, unless jurisdiction to determine the issue of fees is expressly reserved in any order resulting from hearing.
- (F) Interim Fees and Expenses Exempted.**
1. Upon the court's own motion or motion of either party, interim attorney fees may be awarded without an oral hearing to allow an economically disadvantaged party to be adequately represented, or to adequately represent the interests of a minor child. The court may award such reasonable interim attorney fees as the court deems necessary and upon such terms as are equitable.
 2. Upon request and affidavit and without oral hearing, the Court may for good cause make a temporary order for payment of a party's expenses of suit, including but not limited to, appraisals, business or personal property valuations, DNA testing, psychological evaluations, GAL reports, mediation, or other extraordinary pre-decree expenses.
- (G) Sanctions.** Requests for recovery of attorney fees and costs as a sanction pursuant to R.C. 2323.51 and/or Civ. R. 11, shall be set for hearing.