

## **RULE 5: PRETRIAL PROCEDURE**

### **5.01 DIVORCE CHECKLISTS**

In all divorce actions, the parties or their counsel should review the appropriate divorce checklist to verify that their filing is complete. Form 5.01A is used for divorces without minor children and form 5.01B is used for divorces with children.

### **5.02 MANDATORY DISCLOSURE**

A. Each party/spouse in an action for divorce, annulment or legal separation has the affirmative duty to disclose to the other party/spouse all information and documents, such as the following:

1. All pension and profit-sharing plans including the most recent summary plan description and statement of participant's account;
2. All COBRA benefits to which the party/spouse may be enrolled;
3. As to each parcel of real property owned, a copy of any deed, a copy of any promissory note secured by a lien on the property, a copy of any mortgage encumbering the property, a copy of the original purchase agreement, a copy of the most recent statement of any mortgage holder, and a copy of any appraisal of the property. In addition, each spouse shall set forth with particularity any claim of separate property in regard to any parcel of real property owned;
4. As to each vehicle owned, a copy of the RULE, a copy of the lease or purchase agreement, if any, and the most recent statement of account of any lien holder;
5. Copies of the last three (3) years individual tax returns, unless already in the possession of the other party/spouse;
6. Documentary proof of current income from all sources;
7. Copies of the most recent statements on all bank accounts, IRA's, stock accounts, mortgages, credit card accounts, and other debts; and,
8. Particular information about any claim of separate property that the party/spouse intends to advance include the identity of the property, the source of the property, the date of acquisition, and the value of the property.

B. Each party shall make full disclosure no later than thirty (30) days before the final pretrial unless otherwise ordered by the Court.

C. All motions to compel or for sanctions must be filed seven (7) days prior to the pre-trial or other date set by the Court. Each motion shall have attached an affidavit of counsel setting forth the attempts made to obtain compliance with discover requests. The responding party shall have seven (7) days after or until the pre-trial, whichever occurs first, to respond in writing.

D. All depositions shall be conducted in Medina County unless agreed otherwise.

### **5.04 CASE MANAGEMENT CONFERENCE**

The parties and counsel shall be present. Discovery deadlines and the dates and times for the pretrial and trial shall be established. Motions for appointment of a guardian ad litem and motions for psychological evaluations should be filed by the date of this conference, or raised orally at the conference.

#### 5.05 POST-DECREE MOTIONS

The Court shall set all non-emergency post-decree motions, except motions to show cause for the non-payment of support, for a pretrial/settlement conference with the Mediation Magistrate. All post decree motions must include a "Notice of Hearing" in blank form, and the Court will write the hearing date and time on the original and copies before service. A hearing notice will be sent by regular mail to the moving party. All parties and counsel, if represented, shall attend this hearing. The purpose of the hearing is to define the issues and resolve issues by agreement before trial, if possible. In the event mediation/settlement efforts fail, the matter shall be set for pre-trial and trial before a Trial Magistrate.

#### B. MODIFICATION OF PARENTAL RIGHTS AND RESPONSIBILITIES

Motions for modification shall be in writing and served in accordance with the Civil Rules of Procedure. In the event the parties are in agreement, the Court may set the matter for a hearing.

#### C. WITNESS AND EXHIBIT LISTS

No less than seven (7) days before the final hearing set for any post-decree motion, each party shall file a list of witnesses and exhibits the party expects to use at the hearing. Witnesses or exhibits not identified at least seven (7) days in advance will not be allowed at the hearing without written agreement of counsel (or pro se parties) or order of the Court.

#### 5.06 PRE-TRIAL CONFERENCE

A. Except as otherwise provided, pre-trial conferences shall be set for all post decree motions as set forth in Paragraph 5.05(A) and in all pending divorce cases. Parties and counsel must be present. Stipulations and issues in dispute will be finalized.

B. Except as otherwise ordered, final witness and exhibit lists must be filed by the pre-trial date. All exhibits and witnesses, including experts, shall be specifically identified and copies of exhibits shall be provided to opposing counsel. Witnesses or exhibits not timely identified will not be allowed at trial without agreement of counsel or order of the Court.

C. Expert reports must be served on all parties no later than thirty (30) days before trial, unless otherwise agreed by the parties or ordered by the Court.

D. Unless otherwise ordered by the Court, discovery shall be completed by the pre-trial.

#### 5.07 TRIAL BRIEFS

At final trial in every divorce, annulment or legal separation action, each party in a divorce, legal separation or annulment action shall submit a trial brief in the manner provided by form 5.07. Failure to file a trial brief as required may result in dismissal of the action.

#### 5.08 OBJECTIONS

A notice of objection to Magistrates' decisions shall be filed no later than fourteen (14) days from the date of the decision. The notice shall state with particularity the grounds for objections. Unless waived in writing on the initial notice, objections shall be set for oral hearing. Notice may be supplemented by or responded to by a brief due at the time of hearing. Written transcripts must be filed with Court prior to oral hearing.

5.09 OBJECTION TO MAGISTRATE'S DECISION (ADOPTED FEBRUARY 5, 2010)

A. Objections to a Magistrate's Decision shall be filed and served upon the opposing party within 14 days after the Decision is filed. The opposing party may file an objection or response within 10 days after the first objection is filed. If the Magistrate's Decision was adopted by a Judgment Entry within the 14 days after the Decision was filed, the Court may, for good cause shown, stay the effectiveness of judgment entry upon Motion of the objecting party.

B. All objections shall be specific and state the grounds of objection with particularity. Any objection to a finding of fact shall be supported by a transcript of the evidence submitted to the Magistrate or an Affidavit of the Evidence if a transcript is not available.