

RULE 34 – MOTIONS

- 34.1** All Motions, excepting Motions for Judgment by Default and for Temporary Relief in Domestic Relations cases, shall be accompanied by a Brief in Support thereof which shall state the reasons for the Motion and the legal authorities relied upon. When a Motion seeks Post-Judgment Relief, said Motion shall be accompanied by an appropriate deposit, in accord with a schedule adopted by the Clerk, to secure the costs thereof. The Clerk of the Court shall not accept any Motion which is not accompanied by the Brief as required by this Rule, and with respect to Post-Judgment Motions, the appropriate deposit. **(A courtesy copy of all Motions, Responses and Replies shall be submitted directly to the presiding Judge at the time of filing.)**
- 34.2** Unless otherwise Ordered, the non-moving party or their attorney may file an Answer Brief on or before the fourteenth (14th) day following the filing date or service date of the Motion, whichever is later, and the moving party may file a Reply Brief on or before the seventh (7th) day following the filing date or service date of the Answer Brief, whichever is later. No other Briefs shall be accepted by the Clerk of the Court without an Order of the Court. Failure to file a Response Brief may constitute sufficient cause for the Court to grant the relief sought in the Motion filed by the moving party.
- 34.3** All Motions requiring a Brief, as provided for in Rule 33.1 and 33.2, shall be submitted on the Briefs, without oral argument, unless an Oral Hearing is otherwise required to be noticed under the Ohio Rules of Civil Procedure or any other provision of law. In such cases, the moving party, upon filing such Motion, shall provide as a separate part of the Motion a section entitled **Notice of Hearing**, which shall provide a space for the date and time of the Hearing of such Motion to be obtained from the Clerk of the Court. Unless otherwise provided by law or Ordered by the Court, the moving party shall promptly notify the parties or their attorneys of the date and time for the Hearing on the Motion by serving a copy of the Motion, Notice of Hearing, and a Certificate of Service in accordance with the Civil Rules. The endorsement of such Notice on the Motion shall constitute sufficient proof of service of notice.
- 34.4** Notwithstanding anything contained in Rule 33.3 to the contrary, a party may file a Demand for Oral Hearing on a Motion by endorsing such Demand upon the Motion at the time of filing, or by endorsing said Demand on the Answer Brief at

the time of filing, or by so endorsing on the Reply Brief at the time of filing, or by separate instrument filed within the deadlines referred to in 33.2 above. The Clerk of the Court shall immediately notify all parties or their counsel of record, in writing, on forms approved by the Court, of the date and time when the same is to be argued before the Court by sending to them a Notice mailed by regular United States Mail at the addresses of the parties or their attorneys as set forth in the file. An Oral Hearing and Argument shall regularly come before the Court on the first Monday following the expiration of the twenty-eighth (28th) day or on the twenty-eighth (28th) day if such day is a Monday, after the filing of the Motion. A non-moving party may not oppose a Motion by simply filing a **Demand for Oral Argument** without also filing an Answer Brief. **This shall not preclude the Court, in its discretion, to deny an Oral Hearing on said Motion.**

34.5 Subject to the discretion of the Court, any party may request an Expedited Oral Hearing by filing with the Motion a **Demand for Expedited Oral Hearing**, wherein said Demand is in the interest of justice and for good cause shown by Affidavit of the moving party or their attorney, and otherwise warrants an Expedited Hearing. At a minimum, the Affidavit must include the factual basis for expediting the Hearing and the time period within which the moving party believes that the Hearing should held. Upon filing of such Demand, the Clerk of the Court shall immediately notify the Judge by providing a copy of the Demand to the Judge, and upon direction from the Judge, notify all parties or their counsel of record of the date and time for the Expedited Hearing, in the same manner as provided in Rule 33.4, in the event the Court agrees that an Expedited Hearing is necessary. In the event the assigned Judge is not available and will not be available in time to address the Motion during the time period described in the Affidavit, the Clerk of the Court shall immediately notify and seek direction from the non-assigned Judge. The Judge may choose to conduct a telephone conference with the parties or their attorneys to resolve the issue of whether the Motion and the Demand for Expedited Oral Hearing demonstrate the need for immediate action.

34.6 Ex parte orders may be issued (including sua sponte orders from the Court) for scheduling, administrative purposes or emergencies that do not address substantive matters or issues on the merits under circumstances wherein the Judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte order.

34.7 Unless otherwise provided for by law and/or Local Rule 13.8 thru 13.13 and/or Local Rule 33.6 above, **no Motion involving the substantive rights of the parties shall be decided ex parte** during the time periods prescribed for the filing of a Response and/or a Reply, without written or oral notice to the nonmoving parties or their attorney, unless **all** of the following criteria are considered by the Court:

- (A) An Affidavit and/or representations made **on the record** by the attorney representing the moving party, setting forth his or her reasonable efforts to give such notice, including the efforts to reach all non-moving parties or their attorney;
- (B) A finding made upon the attorney's Affidavit and/or representations **made on the record**, that the moving party or their attorney, in fact used, reasonable efforts to notify all non-moving parties or their attorneys that the Motion would be heard, and that the non-moving party or their attorney are incapable of being contacted within the time period set forth in the Affidavit provided for in Rule 33.5 above. In lieu of such a finding, the Court may make such reasonable efforts, itself, or order the moving party to make additional efforts deemed appropriate by the Court;
- (C) Based upon specific facts shown by Affidavit or verified Complaint or by sworn testimony made on the record that immediate injury will result to the moving party within the time period set forth in the Affidavit provided for in Rule 34.5 above, and/or that the risk of harm that is likely to result in waiting until Notice can be given substantially outweighs the risk of harm that is likely to result to the nonmoving party as a result of granting the Motion;
- (D) In an appropriate case, in accord with the discretion of the Court, a moving party may be required to post a Bond in an amount fixed by the Court, to secure to the non-moving party, the damages he may sustain, if it is finally decided that the ex parte order should not have been granted. The party obtaining the ex parte order may deposit, in lieu of such Bond, with the Clerk of Court currency, cashier's check, certified check or negotiable government bonds in the amount fixed by the Court.

- 34.8** The issuance of Temporary Restraining Orders in civil actions shall be governed by the provisions of Civil Rule 65 (A) and this Rule shall not, in anyway, affect or modify the requirements set forth in Civil Rule 65 (A).
- 34.9** Pre-Trial Motions shall not be filed beyond the deadlines imposed by law or by the Court, or within twenty-eight (28) days of Trial without Leave of Court. The Judge may, upon granting such Leave, establish the times for the filing of Briefs, and the submission of the Motion for Hearing.