

Judge O'Brien's Motion Practice

Service

Court Rule MCR 2.119(C) and local practice require:

- A. Filing of motion at least 7 days prior to hearing. Original and "Judge's Copy" filed with court services.
- B. MCR 2.119(A) requires the filing of a brief if point of law is being argued. A clearly marked "Judge's Copy" of the motion and brief is very much appreciated.
- C. Filing of "Notice of Motion Hearing" and "Proof of Service" with central assignment to schedule hearing.
- D. Service on opposing counsel must be made 9 days prior to hearing by mail, or 7 days prior if by personal service or e-file.
- E. Response to motion must be served 5 days prior to hearing if by mail, or 3 days prior if by personal service or e-file.

Motion

The motion should contain all the facts relied upon and specifically the following:

- A. AT THE BEGINNING OF THE MOTION state the specific relief requested.
- B. If relevant state:
 - 1. Whether the case is pre or post judgment.
 - 2. Whether the parties are separated or residing together.
 - 3. The ages of the children.
 - 4. The current parenting schedule.
 - 5. Employment status and current annual gross income of each party.
- C. Attach any documents relied upon in the motion.

Response

The response should contain all the facts relied upon and specifically the following:

- A. AT THE BEGINNING OF THE ANSWER state the specific relief requested, including any areas of agreement (if relevant).
- B. Respond to the allegations.

- C. If there is a disagreement, or the motion omits any of the following, state:
1. Whether the case is pre or post judgment.
 2. Whether the parties are separate or residing together.
 3. The ages of the children
 4. The current parenting schedule.
 5. Employment status and current annual gross income of each party.
- D. Attach any necessary documents.

Attorney Fees

Fees will be ordered for frivolous motions or unreasonable behavior, failure to follow orders, or failure to comply with discovery, among other reasons. Preparation and argument for a motion takes at least three hours. The average fee in this area is \$175 per hour. A common attorney fee award would be \$500.

Judge's Expectations

The Judge expects the following to happen:

- A. The attorneys will talk to each other (or an unrepresented party) to narrow the issues before arguing to the judge.
- B. Client should be personally present or available by phone.
- C. Consents take priority over contested matters on the docket.
- D. If counsel leave the courtroom to discuss the case, and the case is called while they are out, when they return to the court room, they should tell the clerk they are ready. The case will be called as soon as reasonably possible.
- E. Attorneys must be prepared (with calendars and client calendar) to set future dates.

Argument

- A. Counsel should deliver all documents (including exhibits and proposed orders) to the court officer when checking in. The judge will consider it a waste of time to "approach the bench" on routine matters.
- B. The Court may dispense with argument pursuant to Court Rule.
- C. If argument is permitted, the court may limit time for argument.

- D. Counsel should assume motion briefs have been read and not re-argue matters set forth in the brief.
- E. Arguments should begin with a short statement of the problem, a suggested solution, and a reason the suggested solution is the preferable one.
- F. Counsel should remind clients of this procedure so they will not be disappointed when counsel does not engage in extensive and eloquent oratory.
- G. If no order is entered by the Court at hearing, the attorneys should talk to each other about the Judge's ruling. If they disagree, they should report back to the Court for clarification before they leave the building.