

**Magistrate Mark A. Huberman, OAM President**  
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November 16, 2005

Richard A. Dove  
Director of Policy and Programs  
Ohio Supreme Court  
30 East Broad St.  
Columbus, OH 43266-0419

RE: Comment on Amendments to Civil Rule 53, Juvenile Rule 40 and Criminal Rule 19

Dear Rick,

As President of the Ohio Association of Magistrates, I am pleased to offer our Association's comments to the recently published proposed amendments pertaining to Civil Rule 53, Juvenile Rule 40 and Criminal Rule 19.

As you are aware, our Association is comprised of more than 460 Ohio Magistrates representing all practice areas who apply these rules on a daily basis. We have, therefore, closely monitored the progress of the amendments to these rules since they will have considerable impact on our duties and responsibilities.

The Association supports the adoption of the major portion of the proposed amendments and believes that they will provide needed clarification of the existing rules and will eliminate several conflicts in interpretations of the current versions that exist among some of the appellate districts.

We are particularly pleased that the Rules Advisory Committee responded favorably to the following proposed changes outlined in our Association's initial comment on February 2, 2004:

1. The Staff Note makes clear that the elimination of specific types of Magistrate Orders was intended to *broaden*, and not limit, the types of Orders that Magistrates may enter.

2. The Rule finally makes clear that it is the responsibility of the Clerk, and not the Court, to serve Magistrate's Orders.

3. The time for Objections was not expanded from 14 to 21 days, but rather provision is made for the extension of time to file Objections if the Clerk delays the service of Decisions.

4. The arbitrary limit of one 28 day extension for the term of interim orders is eliminated.

5. Proper clarification is made that the requirement of "independent review" of Magistrate's Decisions is only triggered when Objections are filed. Where no Objections are filed, the "lesser scrutiny" requires only a general review of the Decision prior to the adoption of the same. This distinction insures that the pre-1995 scrutiny is not being re-introduced into the rule and that the line of cases suggesting the same out of some appellate districts is being rejected.

One modification being urged by our Association is that which is set forth in the letter to you from Judge Russell A. Steiner dated November 10, 2005 in which the Judge recommends that Civil Rule 53(C)(1)(d), and its parallel provisions of Juvenile Rule 40 and Criminal Rule 19, contain a clearer and less ambiguous statement that will enable appointing courts to authorize Magistrates to issue ex parte temporary protection orders without judicial approval.

This is currently the practice in the vast majority of Courts throughout the state and clarification of this rule will ensure the continued efficiency and efficacy of this practice.

Our only additional suggestion is that the Staff Note make clear that the reference to "temporary protection order" includes the Temporary Protection Order (TPO) issued by Municipal and County Courts under R.C. 2919.26, the Domestic Violence Civil Protection Order (CPO) issued by Domestic Relations Courts (and some Juvenile Courts) under R.C. 3113.31, the Civil Stalking Protection Order (CSPO) issued by General Divisions of Common Pleas Courts under R.C. 2903.214; and the Criminal Stalking Protection Order (SPO) issued by Common Pleas, Municipal and County Courts under various sections of R.C. 2903 and R.C. 2911.

In closing, I wish to thank the Court and the Rules Advisory Committee for their work on these important rules amendments and for considering the input of our Association.

Sincerely,

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MARK A. HUBERMAN  
OAM PRESIDENT

