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Jo Ellen Cline
Legislative Counsel
Supreme Court of Ohio
65 South Front Street, 7th Floor
Columbus, OH 43215-3431

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

Dear Jo Ellen,

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

Our specific concern is to the addition of as Staff Note under Rule 53(C) Authority and Rule 19(C) Authority, Notes that were not included in the first publication of the Rules for comment.

In both instances, the Notes cite to Hartt v. Munobe (1993), 67 Ohio St. 3, 6, 1993-Ohio-177, 615 N.E. 2nd 617. The Hartt decision pre-dates the 1995 revision of Civil Rule 53 and Criminal Rule 19, revisions which created the present Magistrate system. The Association believes that a better cite would be to a post-1995 decision, namely Miele v. Ribovich (2000), 90 Ohio St. 3d 439, 2000-Ohio-193.

Citing to Cuyahoga Metro. Hous. Auth. v. Jackson (1982), 67 Ohio St. 2d 129, 130, 201 O.O. 3d 81, 82, 423 N.E.2d 177, 178, the Court in Miele stated as follow: "... the rule's requirements [Civ. R. 53] would hinder the expeditious resolution of forcible entry and detainer actions, thereby defeating the underlying purpose behind these special proceedings. Miele v. Ribovich at 442.

It is our considered opinion that including the proposed Staff Note in the final version of the revised rule could seriously hinder the expeditious resolution of domestic violence and anti-stalking ex parte preliminary civil protection orders. There would seem to be no statute, and/or statutory proceedings, in which an "expeditious" resolution is

more needed than in the issuance of an ex parte preliminary domestic violence and/or anti-stalking civil protection order. The state legislature recognized this need when it chose to require courts to act on the same day the matter is filed with the Court.

There has been an explosion of requests for domestic violence and anti-stalking orders in the past decade. The Ohio Courts Summary, 1996, indicates that 5,526 requests for domestic violence ex parte orders were filed in that year. The Ohio Courts Summary for 2004 indicates that 17,447 such requests were filed in 2004, a three-fold increase in eight years. Anti-stalking orders are not separately reported but we believe inquiries will indicate to the committee that a similar increase has occurred in that category. Obviously, the number of judges available to handle these cases has not increased by the same amount. Courts have managed this increased caseload through the use of magistrates. To now imply that magistrates cannot sign ex parte preliminary orders without counter-signing by a judge is to require approximately 18,000 domestic violence victims, and a comparable number of anti-stalking victims, to go through the process of awaiting a same-day hearing before a magistrate only to have to then start the process of obtaining a signature from a judge.

Ideally, as set forth in our previous Comment to the proposed rule changes, we would ask that the Committee specifically add the authority for a magistrate to issue these orders to the present wording of the rule.

Short of this, we ask that the Staff Notes be changed or removed so that individual courts can determine what procedure best allows them to expeditiously handle this increasing problem.

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

Sincerely,

MARK A. HUBERMAN
OAM PRESIDENT

cc: OAM Board of Directors