

Instructions for filing a
“MOTION TO SET ASIDE MAGISTRATE’S ORDER”
Civil Rule 53
(to be filed in an existing case)

If you think that the Magistrate has not determined the factual issues or applied the law correctly in your case, you may file an “Objection to a Magistrate’s Decision” or “Motion to Set Aside Magistrate’s Order.”

This packet contains two forms that must be used to file a motion to set aside Magistrate’s Order. The forms enclosed are (A) “MOTION TO SET ASIDE MAGISTRATE’S ORDER” and (B) “CERTIFICATE OF SERVICE.”

***A “Motion to Set Aside Magistrate’s Order” must be filed
no later than 10 days after the Magistrate’s Order is filed.***

These instructions are intended to be a general guide to help you complete the forms, file them with the Court, serve them on the opposing party, and get your request properly before the Court. These instructions are not intended to be a legal analysis of your request and do not guarantee you will be successful in your Motion, but are merely to assist you in preparing and presenting your request.

***It will be helpful to read ALL the instructions prior to completing the forms and you may refer back to them as much as you need. The clerks cannot help you with the forms, but will verify that all sections are completed prior to filing. Incomplete forms will not be accepted.

A. MOTION TO SET ASIDE MAGISTRATE’S ORDER

(Fill out the form completely and entirely)

1. Header & Case Caption:
 - a. Case No.: is the current case number.
 - b. In the Matter of: is the minor child’s name.
 - c. Plaintiff: **Must be the same as the existing case caption.**
 - d. Defendant: **Must be the same as the exiting case caption.**
2. Fill in your name, as the Movant and the file stamp date of the order you are asking to be set aside.
3. **Please note you MUST INCLUDE a copy of the Magistrate’s Order with your motion.**
4. Enter the specific reason(s) for your motion. Use clear and concise language.
5. There is no filing fee.
6. Sign the motion and complete your demographic information at the bottom.

B. CERTIFICATE OF SERVICE

1. Fill in the case caption as indicated above.
2. Enter your name and which document you are serving.
3. Enter the name of the party, their address, how you served them and the date served for each party to the case.
4. Sign and complete your demographic information at the bottom.

Civil Rule 53(2) Magistrate's order; motion to set aside magistrate's order

(a) Magistrate's order

(i) Nature of order

Subject to the terms of the relevant reference, a magistrate may enter orders without judicial approval if necessary to regulate the proceedings and if not dispositive of a claim or defense of a party.

(ii) Form, filing, and service of magistrate's order

A magistrate's order shall be in writing, identified as a magistrate's order in the caption, signed by the magistrate, filed with the clerk, and served by the clerk on all parties or their attorneys.

(b) Motion to set aside magistrate's order

Any party may file a motion with the court to set aside a magistrate's order. The motion shall state the moving party's reasons with particularity and shall be filed not later than ten days after the magistrate's order is filed. The pendency of a motion to set aside does not stay the effectiveness of the magistrate's order, though the magistrate or the court may by order stay the effectiveness of a magistrate's order.

The Court of Common Pleas

JUVENILE DIVISION
HOLMES COUNTY, OHIO

In the Matter of:

Case No. _____
(existing Case No.)

(Child's Name)

JUDGE THOMAS C. LEE

MAGISTRATE _____

Plaintiff (please use current case caption)

vs

Defendant (please use current case caption)

MOTION TO SET ASIDE MAGISTRATE'S ORDER

Now comes _____ (movant), who hereby requests to set aside the Magistrate's Order filed on _____ (date), **attached** and made a part hereof. The reason for my request is as follows:

_____.

Respectfully submitted,

Signature

Address

City State Zip

Phone No.

The Court of Common Pleas

JUVENILE DIVISION
HOLMES COUNTY, OHIO

In the Matter of:

(Child's Name)

Plaintiff (please use current case caption)

vs

Defendant (please use current case caption)

Case No. _____
(existing Case No.)

JUDGE THOMAS C. LEE

MAGISTRATE _____

Instructions: Before submitting documentation/filings to the Court, a copy of the document must be served (by hand, regular or certified mail) to all parties or their attorneys if they are represented. When submitting the original document, you must attach this completed "CERTIFICATE OF SERVICE" form.

CERTIFICATE OF SERVICE

I, _____ (name), hereby certify that a true and accurate copy of the foregoing document _____ (title of document) was served as follows to:

Name of Party: _____

Address: _____

Name of Party: _____

Address: _____

Served by: Regular US Mail

Certified Mail

Hand Delivered

Date Served: _____

Served by: Regular US Mail

Certified Mail

Hand Delivered

Date Served: _____

Name of Party: _____

Served by: Regular US Mail

Address: _____

Certified Mail

Hand Delivered

Date Served: _____

Name of Party: _____

Served by: Regular US Mail

Address: _____

Certified Mail

Hand Delivered

Date Served: _____

Name of Party: _____

Served by: Regular US Mail

Address: _____

Certified Mail

Hand Delivered

Date Served: _____

Respectfully submitted, _____
(Signature of Applicant)

Printed Name: _____

Address: _____

City, State, Zip: _____

Phone No: _____

Email Address: _____