

# ALLOCATION OF PARENTAL RIGHTS & RESPONSIBILITIES

## JURISDICTION

1. Upon granting a divorce, dissolution, annulment, or legal separation, the court has jurisdiction to make an order for the care and maintenance of minor children.
  - Failure to allocate parental rights and responsibilities may result in a judgment being viewed as interlocutory as to the termination of the marriage and may not be a final appealable order.
  - When allocating parental rights and responsibilities, the court must make an express order granting or denying parenting time.
2. Parenting Proceeding Affidavit [R.C. 3127.23(A)]
  - Each party to a parenting proceeding in the first pleading or by affidavit must provide the following information:
    - The child's present address and places where the child lived within the last five years;
    - The name and present address of each person with whom the child lived during that five-year period;
    - Information concerning other parenting proceedings, whether previously adjudicated or currently pending, concerning the same child;
    - The name of any person not a party to the proceeding who has physical custody of the child, who claims to be the residential parent or custodian, or who claims to have visitation rights; AND
    - Whether the party has pleaded guilty to or been convicted of a criminal offense involving an act that resulted in a child being abused or neglected; or if a child has been adjudicated abused or neglected, the party was the perpetrator of the act that was the basis or the adjudication.

- The filing of the parenting proceeding affidavit is a mandatory jurisdictional requirement of a parenting proceeding.
  - The requirement is satisfied as long as the affidavit is filed by the hearing.



Each domestic relations court may have a specific version of the affidavit required to be filed in that court.



Pursuant to **R.C. 3127.23(D)**, if a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by the disclosure of identifying information, then the information shall be sealed and may not be disclosed to the other party or the public, unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, and liberty of the party or child and determines that the disclosure is in the interests of justice.



Special rules may apply if the child is of Native-American descent or a parent is an active member of the military.

See Indian Child Welfare Act (ICWA) 25 U.S.C. § 1902, [nicwa.org/Indian\\_Child\\_Welfare\\_Act/ICWA.pdf](http://nicwa.org/Indian_Child_Welfare_Act/ICWA.pdf).

## ALLOCATING PARENTAL RIGHTS AND RESPONSIBILITIES [R.C. 3109.04]



Cases involving non-relative custody must be certified to juvenile court. [R.C. 3109.04(D)(2)]

1. Designate one parent as the residential parent and legal custodian of minor children.
  - Award parenting time to the non-residential parent
  - Order child support to be paid, cash medical support, and award the tax-dependency exemption

2. Adopt a Shared Parenting Plan and order shared parenting where both parents share all or some aspects of physical and legal custody of minor children
  - One or both parents must request shared parenting
  - One or both parents must file a Shared Parenting Plan



The court cannot award shared parenting if no Shared Parenting Plan is filed. Nor can it create its own shared parenting plan.

## **BEST INTEREST OF THE CHILDREN - STANDARD USED TO DETERMINE THE ALLOCATION OF PARENTAL RIGHTS**

1. **Best Interest Factors** [R.C. 3109.04(F)(1)]
  - The parents' wishes regarding the child's care;
  - The wishes and concerns of the child, if interviewed;
  - The child's interaction and relationship with the family members and anyone else significantly affecting the child's life;
  - The child's adjustment to home, school, and community;
  - The mental and physical health of all parties involved;
  - The likelihood that a parent will honor and facilitate parenting time;
  - Whether child-support arrearages exist;
  - Whether a household member was convicted or pled guilty to a criminal act involving neglect or abuse of a child or family member;
  - Whether the residential parent had willfully denied parenting time to the other parent;
  - Whether a parent plans to establish a residence outside the state.
2. Additional factors to consider with shared parenting [R.C. 3109.04(F)(2)]:
  - The ability of the parents to cooperate and make decisions jointly, with respect to the children;
  - The ability of each parent to encourage the sharing of love, affection, and contact between the child and the other parent;
  - Any history of, or potential for, child abuse, spouse abuse, other domestic violence, or parental kidnapping by either parent;
  - The geographic proximity of the parents to each other, as the proximity relates to the practical considerations of shared parenting;
  - The recommendation of the guardian ad litem (GAL), if the child has a guardian ad litem.
3. Additionally, the factors found in R.C. 3119.23 must be considered in determining whether shared parenting is in the best interest of the children.
4. When determining the allocation of parental rights and responsibilities or shared parenting, the court must consider the following facts against the allocation of parental rights or shared parenting [R.C. 3109.04(C)]:
  - A parent previously found neglectful is a factor that weighs against that parent being designated the residential parent and legal custodian or being awarded shared parenting, but it is not determinative;
  - If a parent previously was convicted of domestic violence or a sex offense against any family or household member, he/she is precluded from being designated the residential parent and legal custodian or being awarded shared parenting, unless there is an express finding that it is in the best interest of the child for that parent be designated the residential parent or be awarded shared parenting.

## INTERVIEW CHILD AS TO WISHES AND CONCERNS [R.C. 3109.04(B)]

1. The interview is in the discretion of the court.
  - If a parent requests an interview, then the court must interview the child.
2. The appointment of a guardian ad litem for the child is within the discretion of the court.
  - If a parent requests a guardian ad litem, then the court must appoint a guardian ad litem for the child.
3. Child interview
  - The court must determine the reasoning ability of the child [R.C. 3104(B)(2)(b)]
    - If the court determines that the child does not have sufficient reasoning ability to express the child's wishes and concerns, then the court shall not determine the child's wishes and concerns.
    - If the court determines that the child has sufficient reasoning ability to express the child's wishes and concerns:
      - Determine whether, because of special circumstances, it would not be in the best interest of the child to determine the child's wishes and concerns with respect to allocation.
    - If the court determines that it is not in the best interest of the child to determine the child's wishes and concerns, then the court needs to include written findings of fact and opinion in the order.
      - If it is in the best interest of the child to determine the child's wishes and concerns with respect to allocation, the court shall proceed to make the determination.
  - The interview shall be conducted in chambers [R.C. 3109.04(B)(2)(c)]
    - Participants in the interview should be the judge/magistrate, child, child's

attorney, and any necessary court personnel.

- The judge/magistrate has discretion to permit the attorney for each parent to be present during the interview.



The court may permit the child's GAL to be present during the interview.



The court shall not accept or consider a written or recorded statement or affidavit that purports to set forth the child's wishes and concerns regarding an allocation of parental rights. [R.C. 3109.04(B)(3)].

## SHARED PARENTING [R.C. 3109.04(D)(1)]

1. Either or both parents may request shared parenting when filing a pleading or motion.
  - The parent(s) requesting shared parenting must file with the court a plan for the exercise of shared parenting.
  - The Shared Parenting Plan must be filed at least 30 days prior to the hearing on the issue of parental rights and responsibilities for the care of children.



The court may waive the 30-day filing requirement.

2. A Shared Parenting Plan
  - Shall include provisions covering all factors that are relevant to the care of children, including, but not limited to:
    - Physical living arrangements for children;
    - Child support obligations, cash medical support, and tax dependants;
    - Medical and dental care, and payment;
    - School placement;
    - Parenting time;

- Parenting time for holidays, school breaks, and days of special meaning;
  - When possible, the Shared Parenting Plan shall ensure both parents have frequent and continuing contact with the children.
3. Responsibility of court related to Shared Parenting Plans:
- Parents make joint request or file a joint Shared Parenting Plan
    - Review plan to determine if it is in the best interest of the children.
      - Approve the plan if it is in the best interest of the children.
    - If review of the plan determines that all or part of plan is not in children's best interest:
      - Require the parents to make appropriate changes to the plan to meet the court's objections.
    - If changes are made to meet the court's objections, then approve the plan.
    - If changes do not meet the court's objections or the new plan or changes still are not in the best interest of the children, then the court may reject that portion of the pleading or deny the motion for shared parenting and proceed as if the request for shared parenting in the pleading was not made.
  - Each parent requests shared parenting and each parent files a Shared Parenting Plan:
    - Review each plan to determine if either plan is in the best interest of the children;
      - If one plan is in the best interest of the children, then approve the plan.
- If neither plan is in the best interest of the children:
    - Order each parent to submit appropriate changes to one or both of the filed plans;
    - Select one plan and order each parent to make the changes to that plan;
      - If changes meet court's objections and are in the best interest of the children, then the court may approve the plan with the changes.
      - If changes are not submitted, or submitted but do not satisfy court's requirements, or the changes are not in the best interest of the children:
        - Reject the request for shared parenting;
        - Deny the motion for shared parenting; OR
        - Proceed as if the shared parenting request was not made.
  - If only one parent makes request or only one parent filed a plan, the court may order the other parent to file a plan.
  - The court shall make findings of fact and conclusions of law as to the reasons for the approval or rejection of a shared parenting plan.
  - The court cannot approve more than one Shared Parenting Plan.
  - The court cannot approve a plan unless it determines that the plan is in the best interest of the children.
  - The approved plan shall be incorporated into a final shared parenting decree granting the parents shared parenting of the children.

- The final shared parenting decree shall be issued at the same time as and shall be appended to the final decree of dissolution, divorce, annulment, or legal separation.
- Shared parenting is between parents – not between a parent and a third party.



If parties request parenting time by agreement, then the order should include a minimum schedule.

## PARENTING TIME

1. The court shall make an order permitting the parents to have parenting time with the child at the times and under the conditions that the court directs.
  - When possible, the order permitting parenting time shall ensure the opportunity for both parents to have frequent and continuing contact with the children.
  - The court shall include in its final decree a specific schedule of parenting time.
2. Findings of fact and conclusions of law are necessary if the court determines that it would not be in the best interest of the child to have parenting time with a parent.
3. The Ohio Revised Code requires each court to adopt standard parenting-time guidelines.
  - A court has discretion to deviate from its standard parenting-time guidelines based on the factors set forth below. [R.C. 3109.051(F)(2)]

## COMPANIONSHIP TIME [R.C. 3109.051(B)]

1. The court may grant reasonable companionship or visitation rights to any grandparent, any person related to the child by consanguinity or affinity, or any other person other than a parent if all the following apply:
  - The person seeking companionship time files a motion with the court;
  - The court determines that the person has an interest in the welfare of the child; AND

- The court determines that the granting of the companionship or visitation rights is in the best interest of the child.
2. The motion seeking companionship may be filed during the pendency of the pre-decree proceedings or if the circumstances change at any time after a decree or final order is issued in the case.

## FACTORS TO BE CONSIDERED WHEN GRANTING PARENTING TIME OR COMPANIONSHIP TIME [R.C. 3109.051(D)]

The prior interaction and inter-relationships of the child with the parents, siblings, and other person related by consanguinity or affinity, and with the person who requested companionship or visitation if that person is not a parent, sibling, or relative of the child;

- The geographic location of the residence of each parent and the distance between those residences, and if the person is not a parent, the geographical location of that person's residence and the distance between that person's residence and the child's residence;
- The child's and parents' available time, including, but not limited to each parent's employment schedule, the child's school schedule, and the child's and parents' holiday and vacation schedule;
- The age of the child;
- The child's adjustment to home, school, and community;
- If the court interviewed the child regarding the child's wishes and concerns as to parenting time or companionship or visitation, or as to other parenting time or visitation matters, the wishes and concerns of the child as expressed to the court;
- The health and safety of the child;
- The amount of time available for the child to spend with siblings;
- The mental and physical health of all parties;

- Each parent’s willingness to reschedule missed parenting time and to facilitate the other parent’s parenting-time rights, and with respect to a person who requested companionship, the willingness of that person to reschedule missed time;
- Prior abuse or neglect of a child, prior domestic violence or sexually oriented offenses by any party seeking parenting time or companionship time. [See R.C. 3109.051(B)(11)-(12)];
- Whether the residential parent or one of the parents subject to a shared parenting decree has continuously and willfully denied the other parent’s right to parenting time in accordance with a court order;
- Whether either parent has established a residence or is planning to establish a residence outside this state;
- In relation to requested companionship, the wishes and concerns of the child’s parents; AND
- Any other factors in the best interest of the child.



The court may order supervised parenting time through a third party or an agency as appropriate.

## NOTICE OF INTENT TO RELOCATE

[R.C. 3109.051(G)(1)]

1. If the residential parent intends to move from the residence set forth in the parenting time order, the parent shall file a notice of intent to relocate with the court that issued the order.
  - The court shall send a copy of the notice to the non-residential parent, unless:
    - At the time the parenting time order was entered, the court determined that it was not in the best interest of the child for the non-residential parent to receive a copy of a Notice of Intent to Relocate;

- Upon receipt of a Notice of Intent to Relocate, the court on its own motion or the motion of either parent, may schedule a hearing with notice to both parents to determine whether it is in the best interest of the child to revise the parenting time schedule;
    - The residential parent may file a motion with the court requesting that the non-residential parent not receive a copy of any Notice of Intent to Relocate; [See R.C. 3109.051(G)(4)]
    - Upon the filing of the motion, the court shall schedule a hearing and give both parents notice of the date, time, and location of the hearing. [R.C. 3109.051(G)(4)]
2. Both parents to a shared parenting decree should file a Notice of Intent to Relocate if they move to a residence other than the residence set forth in the shared parenting decree.

## ACCESS TO RECORDS [R.C. 3109.051(H)]

1. The non-residential parent shall be entitled to access to records related to the child under the same terms and conditions as the residential parent is entitled access to those records.
  - Findings of fact and conclusions of law are required in the parenting order if the court determines that it is not in the best interest of the child for the non-residential parent to have the same access to records as the residential parent;
  - The parenting order shall contain the terms and conditions of access to records for both the residential parent and the non-residential parent.
2. The order shall include a notice that any keeper of a record who knowingly fails to comply with the order is in contempt of court.

3. Records include, but are not limited to:
  - Day-care records;
  - School records;
  - School activity records;
  - Medical records.
4. Child Passports
  - Both parents are required to sign a passport application absent an exception. [*For more information, see U.S. State Department at [travel.state.gov](http://travel.state.gov).*]

### **PARENTING CLASSES** [R.C. 3109.053]

1. Parents may be required to attend parenting classes or obtain counseling before the court issues an order allocating parenting rights and responsibilities.

### **CERTIFICATION TO JUVENILE COURT**

[R.C.3109.06]

1. The court, on its own motion or on the motion of any interested party, may certify the case to the juvenile court for further proceedings.
2. If the court finds the parents unsuitable to be allocated parental rights and responsibilities for the care of the child and unsuitable to provide the place of residence to be the legal custodian of the child, then the case may be certified to juvenile court.
3. Upon certification, the juvenile court has exclusive jurisdiction over the parenting issues.

### **MODIFICATION OF A PARENTING ORDER**

[R.C. 3109.04(E)]

*See also Fisher vs. Hasenjager  
116 Ohio St.3d 53 (2007).*

1. The court shall not modify a prior decree allocating parental rights and responsibilities unless it finds, based on facts that arise since the prior decree or were unknown to the court at

the time of the prior decree, that a change in circumstances occurred and a modification is necessary to serve the best interest of the child.

- The change in circumstances must be of:
    - The child;
    - The child’s residential parent; or
    - Either parent subject to a shared parenting order.
2. The court shall retain the residential parent designated by the prior order unless the modification is in the best interest of the child and one of the following apply:
    - The residential parent agrees to a change in the residential parent or both parents under a shared parenting order agree to a change in the designation of residential parent.
    - The child, with the consent of the residential parent or of both parents under a shared parenting order, has been integrated into the family of the parent seeking to become the residential parent.
    - The harm likely to be caused by a change of environment is outweighed by the advantages of the change of environment to the child.
  3. The best interest factors applied are the same factors used in the initial determination of parental rights and responsibilities.
  4. One or both parents may file a motion requesting shared parenting when the prior parenting order is not a shared parenting order.
    - The motion shall include:
      - Request for a modification of the prior order;
      - Request for shared parenting;
      - Shared Parenting Plan.
    - A modification to a shared parenting order must meet the modification requirements as set forth herein and the court must find that the shared parenting plan is in the best interest of the child.

5. Parents under a shared parenting order may jointly modify the terms of the Shared Parenting Plan approved by the court.
  - The modifications may be made at any time;
  - The modifications shall be filed jointly by both parents;
  - The court shall include the modifications in the plan, unless they are not in the best interest of the child.
    - If the modifications are not in the best interest of the child, then the court, in its discretion, may:
      - Reject the modifications; OR
      - Modify the proposed modifications of the plan that are in the best interest of the child. The modifications shall be effective upon the inclusion by the court in the plan.
6. The court may modify the terms of a Shared Parenting Plan incorporated into the shared parenting order upon its own motion at any time if the court determines the modifications are in the best interests of the child or upon the request of one or both parents.
  - Modifications may be made at any time.
  - Modifications must be in the best interest of the children.

7. The court may terminate a prior final shared parenting order upon the request of one or both of the parents or whenever the court determines that shared parenting is not in the best interest of the child.
8. Upon termination of a prior final shared parenting order, the court shall proceed and issue a modified decree for the allocation of parental rights and responsibilities for the care of the children as if no decree for shared parenting had been granted and as if no request for shared parenting had been made.



Check prior orders for dispute resolution clauses. The court also may order dispute-resolution processes on its own.

## **UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (“UCCJEA”)**

[R.C. CHAPTER 3127]

*See UCCJEA Bench Card.*