

New Judges
Orientation: Part I
Domestic Relations Track

December 10 - 11, 2024
Thomas J. Moyer Ohio Judicial
Center
Columbus



THE SUPREME COURT *of* OHIO
JUDICIAL COLLEGE

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New Judges Orientation: Part I – Domestic Relations Track
December 10-11, 2024 – Thomas J. Moyer Ohio Judicial Center, Columbus

AGENDA

TUESDAY, DECEMBER 10

9:10 Magistrate Rules, Self-Represented Litigants, and Limited Scope Representation

(Fundamentals of Family Law – 2)

- Magistrate Rules: Ohio Civ.R. 53; Ohio Civ.R. 60.B; Ohio Civ.R. 65.1; Ohio Civ.R. 75
 - (Fundamentals of Family Law – Slides 3-28)
- Self-Represented Litigants and Limited Scope Representation (including settlement of cases):
 - (DR Resource Guide – Parenting p. 20)
- Dispute Resolution (10 minutes)

10:10 Domestic Relations Judge Statutory Jurisdiction – An Overview

- Ohio Rev. Code § 2301.03 – Designation domestic relations, juvenile, and probate duties

10:25 Termination of Marriage

(Fundamentals of Family Law – Slides 38-95)

(DR Resource Guide – Termination of Marriage)

- a. Jurisdiction/Venue
 - (Fundamentals of Family Law – Slides 38-39)
 - (DR Resource Guide – Termination of Marriage pp. 2-3)
- b. Required Affidavits - UCCJEA Military
 - (Fundamentals of Family Law – Slides 42, 102-110; 200-204)
 - (DR Resource Guide – Special Issues pp. 1-9)
- c. Grounds, etc.
 - (Fundamentals of Family Law – Slides 44, 46-50)
 - (DR Resource Guide – Termination of Marriage p. 3)
- d. Property
 - (Fundamentals of Family Law – Slides 51-62)
 - (DR Resource Guide – Property Division)
- e. Roadblocks:
 - i. Bankruptcy
 - (DR Resource Guide - Property Division p. 9)
 - (DR Resource Guide – Spousal Support p. 5)
 - ii. Competence
 - (Fundamentals of Family Law – Slide 46)
 - iii. Active Military Duty
 - (Fundamentals of Family Law – Slide 236)
- f. Special Issues
 - i. Conciliation

- ii. Collaborative Law
 - iii. Statutory vs Supreme Court Time Guidelines
 - iv. Conversion from Dissolution to Divorce or from Divorce to Dissolution
 - v. Failure of Service Within Six Months
 - (DR Resource Guide – Termination of Marriage pp.1-2)
 - g. Spousal Support
 - (Fundamentals of Family Law – Slides 35, 57-58, 63-95)
 - (DR Resource Guide – Spousal Support)
 - h. ADR processes for settlement
- 10:40 Break
- 10:50 Termination of Marriage** (*cont.*)
- 12:05 Lunch
- 1:00 Basics of Financial Issues**
 - (DR Resource Guide – Property Division)
 - (DR Resource Guide – Spousal Support)
- 3:00 Break
- 3:15 Administrative, Case Management, and Time Guidelines**
- 4:30 Conclude

Note: Photos at 4:30 for judges with last names A-L.

WEDNESDAY, DECEMBER 11

8:30 Parenting – Decisions in the Best Interest of the Child

(Fundamentals of Family Law – Slides 96-139; 184-197)

(DR Resource Guide - Parenting pp. 21-48)

- Statute - Child Support and Parenting – Ohio Civ.R. 75(N). (Focus on parenting now and Child Support later today.)
- Supervised Parenting Issues
 - (DR Resource Guide – Parental Rights & DV p. 7)
- ADR Use in Parenting Issues
 - (DR Resource Guide – Parental Rights & DV pp. 9-10)
- Parenting Coordination
 - (DR Resource Guide – Parental Rights & DV p. 10)
 - (DR Resource Guide – Third Party Stakeholders pp. 7-10)
- Settlement Week
- Neutral Evaluation
- GALs
 - (Fundamentals of Family Law – Slides 169-183)
 - (DR Resource Guide – Parental Rights & DV p. 9)
 - (DR Resource Guide – Third Party Stakeholders pp. 1-7)
- Parentage
 - (DR Resource Guide - Parenting – pp. 28-39)
- Custody Evaluations
 - (Fundamentals of Family Law – Slides 119-199)
 - (DR Resource Guide – Third Party Stakeholders pp. 10-13)
- Interviewing kids
 - (Fundamentals of Family Law – Slides 34, 141-144, 169)
 - (DR Resource Guide – Parenting pp. 22-23)
- Counsel for kids
- The Statute
- Family Law Reform Implementation (FLRI)

10:15 Break

10:30 Parenting – Decisions in the Best Interest of the Child, (*cont.*)

12:00 Lunch

1:00 Questions about Parentage

1:15 Child Support

(Fundamentals of Family Law – Slides 261-269)

(DR Resource Guide – Parenting pp. 1-16)

2:15 Break

- 2:30 Domestic Abuse and Civil Protection Orders**
(Fundamentals of Family Law – Slides 24 - 31)
(DR Resource Guide – Domestic Violence & Protection Orders pp. 1-14)
- 3:45 Questions and Discussion**
- 4:00 Conclude**

Faculty:

- Hon. Randall Fuller, *Delaware County Domestic Relations Court*
- Hon. Denise McColley, (ret.) *Henry County Domestic Relations/Juvenile Court*
- Ms. Rebekah Smith, CPA, CVA, MAFF, CFF, *Director of Forensic and Dispute Advisory Services, GPQ Consulting, LLC*

Note: Photos at 4:00 for judges with last names M-Z

NOTE:

Additional Judicial College courses are available online for self-study hours, please visit
<https://www.supremecourt.ohio.gov/JudicialCollegePublicCalendar/#/online>

To register for a Judicial College course or to view upcoming course offerings, please visit
<https://www.supremecourt.ohio.gov/JudicialCollegePublicCalendar/#/catchall>

FACULTY BIOGRAPHIES

RANDALL FULLER became the first judge of the unified Common Pleas Court of Delaware County, Ohio, Domestic Relations Division in 2017.

Judge Fuller currently serves as President of the Ohio Association of Domestic Relations Judges. He also serves on the Board of Trustees for the Supreme Court of Ohio Judicial College and on the Executive Committee of the Ohio Judicial Conference. He is a member of the Board of Directors for the Association of Family and Conciliation Courts (AFCC), an international family law organization, and is on the Board of Directors and a Past President of the Ohio Chapter of AFCC. Fuller serves on several Ohio Judicial Conference committees including Domestic Relations Law and Procedure, Court Technology and the Judicial Advisory Group. Fuller frequently presents for the Ohio Judicial College to Judges and Magistrates. He also assists with training of new judges at New Judge Orientation and serves as a mentor to a new judge.

He has testified multiple times before the Ohio House of Representatives, Civil Justice Committee, and the Ohio Senate, Judiciary Committee, on behalf of the Ohio Judicial Conference and the Ohio Association of Domestic Relations Judges. Judge Fuller has implemented several successful court programs including Settlement Week, Co Parent Coaching, Neutral Evaluations and Family Assessments.

DENISE MCCOLLEY was judge of the Henry County Family Court from 2005 through 2022. Prior to her election, she served as magistrate of Henry County and Fulton County Common Pleas Courts for eight years and, prior to that, engaged in private practice for fifteen years. During her last seven years in private practice, she maintained a private mediation practice. During her career she has held many positions in law-related organizations. She is a former president of the Association of Family and Conciliation Courts, the Henry County Bar Association, and the Ohio Association of Domestic Relations Judges. She was also a member of the Ohio Task Force for Family Law and Children, the Ohio Lawyers' Assistance Program Judicial Advisory Group, the Ohio Judicial College Board of Trustees, the American Bar Association Pro Bono Child Custody Project Advisory Committee, the Ohio Association of Juvenile Court Judges Board and the Ohio State Bar Association's Board of Governors and House of Delegates. She presently serves as a member of the Ohio Judicial Conference's Juvenile Law and Procedure and Domestic Relations Law and Procedure Committees and is an immediate past co-chair of the Supreme Court's Advisory Committee on Children and Families. She is an advanced Practitioner member of the Association for Conflict Resolution Academy of Family Mediators. She received the Association of Family and Conciliation Courts John E. VanDuzer Distinguished Service Award (2008) and President's Award (1999), the Ohio State Bar Foundation Public or Government Service Award (2001), the Ohio Association of Magistrates Judicial Award (2008), the Northwest State Community College Foundation Making a Difference Award (2017), the Ohio State University Alumni Association Pay it Forward Award (2017), and was named to the Napoleon

Schools Distinguished Alumni Hall of Fame (2017). Judge McColley received her B.S. and M.Ed. from Bowling Green State University and her J.D. from The Ohio State University.

REBEKAH SMITH is a Director and Member of GBQ Consulting focusing on the areas of litigation consulting, forensic accounting, economic damages, and business valuations. She has been involved in forensic accounting cases related to misappropriation of assets, tracing of marital assets, and tracing of business assets and funds. Her experience includes an investigation of a public company's accounting practices for the Securities and Exchange Commission and the Department of Justice. She was also the court appointed expert in a forensic accounting project involving 10 years of business and accounting records and approximately 20 related business entities.

Not only has she investigated several embezzlement and fraud cases for government entities, but she has also testified in a criminal proceeding related to embezzlement, bank fraud and wire fraud. She is a lecturer and instructor on business economic damages, forensics, and business valuation. She is the lead instructor for the Master Analyst in Financial Forensics (MAFF) training presented by National Association of Certified Valuators and Analysts (NACVA). She also developed and instructs for NACVA's Advanced Business and Intellectual Property Damages week-long course. Rebekah is the past chair and current Member of NACVA's Executive Advisory Board which is the oversight board for all of NACVA. She is also a past chair and member of the Litigation Forensics Board which has the responsibility for evaluation the content of NACVA's litigation and forensics-related curriculum and to oversee credentialing criteria for the MAFF designation. She was also on the Editorial Board of the National Litigation Consultants Review, a national litigation publication. Rebekah received her bachelors in Accounting at Bowling Green State University. She also has professional accreditation as Certified Public Accountant, Certified in Financial Forensics, Master Analyst in Financial Forensics, Certified Valuation Analyst, and Certificate of Education Achievement in Business Valuation.

Domestic Relations Resource Guide

[https://www.supremecourt.ohio.gov/courts/
services-to-courts/domestic-relations-resource-guide/](https://www.supremecourt.ohio.gov/courts/services-to-courts/domestic-relations-resource-guide/)





Domestic Relations Resource Guide

The *Domestic Relations Resource Guide* is a resource for Domestic Relations judicial officers. This guide follows the Supreme Court of Ohio Judicial College Domestic Relations Judicial Officer Curriculum. It is intended to serve as a starting point in identifying relevant statutes, case law, and rules used in the practice of domestic relations law. There are active hyperlinks to these materials and other helpful resources incorporated throughout the guide.

Section I: Substantive Law

A. [Termination of Marriage](#)

1. Concept of Marriage
2. Validity of Marriage
3. Common Law Marriage
4. Service
5. Divorce
6. Dissolution of Marriage
7. Annulment
8. Legal Separation

B. [Property Division](#)

1. Determine "During the Marriage"
2. Determine the Marital Estate: Marital Property vs. Separate Property
3. Valuation of Assets
4. Valuation of Debts
5. Equal Division of Property Unless Inequitable
6. Separation Agreements
7. Bankruptcy
8. Tax Considerations: Effect of Taxes on Property Division
9. Practice and Procedure for Property Division

C. [Spousal Support](#)

1. Overview of Spousal Support
2. Temporary Spousal Support (*Pendente Lite*)
3. Establishment
4. Modification and Enforcement

D. [Parenting](#)

1. Child Support
2. Parental Rights and Responsibilities (PRR)
3. Parentage
4. Contempt

E. [Special Issues](#)

1. Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)
2. Overlap Duties With Domestic Relations and Other Courts
3. Grandparents Caring for Their Grandchildren With and Without Agreement by the Parents
4. Judicial Interviews of a Child

F. [Third Party Stakeholders](#)

1. Guardians ad Litem (GAL)
2. Parenting Coordinators
3. Custody Evaluators

Section II: Domestic Abuse

Acknowledgments

This guide was developed under the guidance and oversight of the Subcommittee on Family Reform Implementation to the Supreme Court Advisory Committee on Children & Families. The Subcommittee and the Supreme Court wish to extend special recognition to the members of this workgroup who dedicated their time, experience, expertise, and energy to drafting this guide. The workgroup members are: Hon. Diane M. Palos (*Chair*), *Cuyahoga County Domestic Relations Court*; Hon. James Brown, *Franklin County Domestic Relations/Juvenile Court*; Mag. Deborah Drexler, *Allen and Mercer County Courts of Common Pleas*; Mag. Rosalind Florez (Ret.), *Hamilton County Domestic Relations Court*; Mag. Penny

Gates, *Clermont County Domestic Relations Courts*; Eric Johnson, *Sowald Sowald Anderson Hawley & Johnson*; Mag. Laurie Koerner, *Lake County Domestic Relations Court*; Hon. Frank Janik, *Lorain County Domestic Relations/Juvenile Court*; Mag. C. William Rickrich, *Licking County Domestic Relations Court*; and Mag. Jennifer Svec, *Wayne County Common Pleas Court*.

Domestic Relations Resource Guide Termination of Marriage





Domestic Relations Resource Guide - Section I: Substantive Law

A. Termination of Marriage

1. Concept of Marriage

Marriage is a legal and personal relationship. [R.C. 3101.01](#), et seq. set forth statutory provisions for the creation of marriage. Ohio recognizes marriages from other states and countries if valid in the jurisdiction where solemnized (comity, full faith and credit).

2. Validity of Marriage

a. Capacity to Marry [\[R.C. 3101.01\]](#)

- A person must be 18 years of age or older. If age 17, the minor(s) must obtain the consent of the juvenile court. [\[R.C. 3101.02\]](#)
- A person cannot be currently married to another person.
- A person must have the mental capacity to enter into a legal contract as marriage has been deemed to be a contractual relationship.
- The persons to be married cannot be more closely related than second cousins.

b. Same Sex Marriage

Valid in all states [[Obergefell v. Hodges, 135 S.Ct. 2584 \(2015\)](#)]; however, [R.C. 3101.01\(B\)](#) states that marriage is between only one man and one woman and a same sex marriage has no legal force and is not recognized by this state.

3. Common Law Marriage

After Oct. 10, 1991, common law marriage is prohibited to establish marriage in Ohio. [\[R.C. 3105.12\]](#) A common law marriage may be valid if it occurred prior to that date or the parties lived in a state which recognized common law marriage, provided the parties otherwise had the capacity to marry.

See [Nestor v. Nestor, 15 Ohio St.3d 143 \(1984\)](#) for the necessary elements of common law marriage, which must be proved by [clear and convincing evidence](#).

- Parties agreed that they were married
- Cohabitated as husband and wife
- Reputation in community as husband and wife
- Parties must have capacity to marry

4. Service

Service must be perfected to invoke the jurisdiction of the court, otherwise the judgment is void. Lack of service may be raised at any time, at any stage of the proceedings, even on appeal. A party need not meet the requirements of [Civ.R. 60\(B\)](#) to attack a void judgment (common law motion to vacate). See [Civ.R. 4.1](#) to [Civ.R. 4.6](#).

a. Special Service Cases

- If the case involves an indigent party and the other party's residence is unknown, service may be perfected by posting in the courthouse(s) in which the general and domestic relations divisions of the county common pleas court are located and two other locations as designated by local rule, or it may be posted in a designated section of the clerk of court's website. The notice must be posted for six weeks. [\[Civ.R. 4.4\]](#)
- If the defendant lives out-of-state: [\[Civ.R. 4.3\]](#)
 - At the time of service, the person to be served is a nonresident of the state or an absent resident of the state;
 - The person, as defined in [Civ.R. 4.3\(A\)](#), to be served caused the event out of which the claim arose as set forth in [Civ.R. 4.3\(A\)\(1-10\)](#).
 - Specific to termination of marriage [\[Civ.R. 4.3\(A\)\(8\)\]](#), living in the marital relationship within this state notwithstanding subsequent departure from this state, as to all obligations arising out for spousal support, custody, child support, or property settlement, if the other party to the marital relationship continues to reside in this state.
- If the defendant lives in a foreign country, [Civ.R. 4.5](#) controls.

b. Common Service Problems

- Who has signed the receipt of service
- Mail is returned unclaimed or refused
- Acceptable proof of delivery
- Covid-19 issues [\[CUC Props. VI v. Smartlink Ventures, Inc., 1st Dist. Hamilton No. C-210003, 2021-Ohio-3428 \(2021\)\]](#) – return receipts from service through certified mail marked with “C19” or “COVID-19” do not constitute valid service. The mail carrier is not permitted to substitute himself as an agent of the intended recipient.]

5. Divorce

a. Jurisdiction, Venue, and Miscellaneous

- The plaintiff must be a resident of Ohio for six months immediately preceding the filing of the complaint. [\[R.C. 3105.03; Barth v. Barth, 113 Ohio St.3d 27 \(2007\)\]](#) The plaintiff must be a resident of the county at least 90 days immediately preceding the filing of the complaint. [\[Civ.R. 3\(C\)\]](#). This requirement may be waived if both parties consent.
- The court may have only *in rem* jurisdiction if the defendant has no connection to the state. The court has authority to grant a divorce, but cannot issue any orders on the defendant.
- A court may proceed with the divorce if the plaintiff dismisses the complaint but the counterclaim remains pending.
- The judicial officer should examine the enabling statute of the court to verify the extent of the court's jurisdiction generally.
- The jurisdiction of the court to enter a final judgment may be affected by the death of one spouse while case is pending.
 - Suggestion of death to be filed
 - If death occurs prior to final hearing, case is dismissed
 - After final hearing, waiting for final judgment entry, court has discretion

- Each party must be competent.
 - If a party is incompetent (e.g., dementia, developmental disability, mental illness, or a minor), the court may be required to appoint a guardian ad litem.
 - The domestic relations court has the ability to make competency determination after a hearing.
- A case may be stayed by bankruptcy, mediation, or conciliation.

b. Grounds for Divorce [[R.C. 3105.01](#)]

- Fault Grounds
 - Either party had a spouse living at time of marriage
 - Willful absence of adverse party for one year
 - Adultery (may be only grounds recognized by parties, e.g., Jehovah's Witnesses)
 - Extreme cruelty
 - Fraudulent contract
 - Gross neglect of duty
 - Habitual drunkenness
 - Imprisonment in state or federal institution when complaint is filed
 - Procurement of divorce outside state
- No-Fault Grounds
 - Parties have lived separate and apart for one year
 - Incompatibility, unless denied by either party
- Grounds are not a factor considered by the court in deciding property division, spousal support, or custody.

c. Commencement of Divorce Case

Either spouse may file a complaint for divorce. The non-filing spouse may file a counterclaim without being a resident. The case is commenced if service on the non-filing spouse is perfected within six months unless good cause is shown. [[Civ.R. 4\(E\)](#)]

d. Temporary Orders [[Civ.R. 75\(N\)](#)]

The court may issue temporary orders to provide for temporary spousal support, child support, parenting orders, and division of household expenses. When possible, it is a best practice to conduct a hearing before issuing temporary orders.

e. Final Hearing

- A final hearing on a divorce cannot be heard until expiration of 42 days after service (cannot be waived), 28 days after last publication, or 28 days after service of counterclaim (may be waived). [[Civ.R. 75\(K\)](#)]
- Notice must be given at least seven days in advance of final hearing. [[Civ.R. 75\(L\)](#)]
- Testimony of a party must be supported by other credible evidence.

- Admission of grounds cannot be obtained by fraud, connivance, coercion, or other improper means.
- Parties, notwithstanding marriage, are competent to testify.

6. Dissolution of Marriage

a. Jurisdiction and Venue

One party must be a resident of Ohio for six months immediately before filing the petition for dissolution. [[R.C. 3105.62](#); [Barth v. Barth, 113 Ohio St.3d 27 \(2007\)](#)] Venue may be waived. [[Civ.R. 3\(C\)](#)]

b. Service

For purposes of service, both parties are considered defendants and must be served pursuant to the [Rules of Civil Procedure](#). [[R.C. 3105.62](#)] Parties may sign a waiver of service or be served by the clerk of court. [[Civ.R. 4.7](#)]

c. Commencement of Dissolution

- Both parties must sign the petition for dissolution.
- A separation agreement signed by both parties must be attached to the petition. The contents are outlined in [R.C. 3105.63](#).
- The separation agreement must provide for:
 - Division of all property, including retirement assets, and if agreed, authorization to modify the division of property.
 - Spousal support and if agreed, reservation of jurisdiction. Authorization to modify spousal support as determined by [R.C. 3105.18\(E\)](#) and [R.C. 3105.65](#).
 - If there are minor children, allocation of parental rights and responsibilities must be made including designating residential parent, parenting time, and child support. The parties may file a separate shared parenting plan or parenting plan.

d. Final Hearing Procedures [[R.C. 3105.64](#)]

The final hearing must be scheduled not less than 30 nor more than 90 days after the filing of the petition. Both spouses must appear and acknowledge under oath that they:

- Voluntarily entered into the separation agreement;
- Are satisfied with its terms; and
- Seek dissolution of marriage.
- Both parties must sign the notice of dismissal, but effectively if one fails to appear the case should be dismissed.



PRACTICE TIP:

Questions to ask under oath:

- Does each spouse consider the separation agreement to be fair and equitable?
- Did both parties make a full disclosure of all assets, debts, and income?
- Do both spouses agree that the parenting plan is in the best interests of the minor child(ren)?
- Does either spouse have a bankruptcy petition pending?
- Is either spouse an active member of the military?
- Is either party currently pregnant? The court should have a policy regarding a pregnant spouse.
- Does either spouse wish to be restored to a former name?

e. Court Powers [[R.C. 3105.65](#)]

The court may dismiss the petition if either spouse is not satisfied with the separation agreement or does not want the dissolution. Determine if a motion to convert the action into a divorce has been filed.

- If the court approves the separation agreement, the court shall grant the dissolution.
- Any time before the dissolution is granted, either spouse may convert the action into a divorce action by filing a motion to convert to divorce. The motion to convert shall contain a complaint for divorce, including grounds for divorce. No fees may be charged to convert.

f. Effect of Dissolution

A decree of dissolution has the same effect on property rights, including dower and inheritance as a decree of divorce. The court has continuing jurisdiction over:

- All issues regarding children;
- Modification of spousal support, if the separation agreement contains such a provision, pursuant to [R.C. 3105.18\(E\)\(2\)](#); and
- Modification of property division and retirement orders if both parties consent [[R.C. 3105.65\(B\)](#)].

7. Annulment

An annulment is ordered when the court finds that the marriage was legally defective or invalid due to some impediment or defect that existed at the time of the marriage. An annulment decree declares that the marriage was terminated (voidable marriage) or the marriage never existed (marriage was void).

a. Jurisdiction, Venue, and Service

- The plaintiff must be a resident of Ohio for at least six months and a resident of the county for 90 days immediately preceding the filing of the complaint. [[R.C. 3105.03](#); [Civ.R. 3\(C\)](#)]. This requirement may be waived if both parties consent.
- [R.C. 3105.32](#) sets forth the time periods for which a plaintiff must file a complaint based upon the cause for the annulment.
- Service – See [Civ.R. 4.1-4.6](#)

b. Causes for Annulment [[R.C. 3105.31](#)]

- The plaintiff was under the established legal age for marriage (the complaint must be brought within two years of reaching legal age).
- One party is legally married to another person (the complaint must be brought during the life of either the current spouse or former spouse).
- One party has been adjudicated mentally incompetent (the complaint must be brought by aggrieved party or the incompetent party's guardian before death of either party).
- Consent to the marriage was obtained fraudulently or by force (the complaint must be brought within two years from the date of marriage). This could include mistake, lack of mutual consent, incest, physical health issues, or intoxication.
- The marriage was never consummated (the complaint must be brought within two years from the date of marriage).

c. Court Orders

The court may award temporary orders for spousal support and allocation of parental rights and responsibilities. [\[Civ.R. 75\(N\)\]](#) If a court grants an annulment, it must issue an order for the disposition, care, and maintenance of any minor children. [\[R.C. 3105.21\(A\)\]](#)

8. Legal Separation

a. Jurisdiction and Venue

There is no statutory residency requirement other than to follow the venue requirements in the [Civil Rules of Procedure](#). [\[R.C. 3105.03\]](#) [Civ.R. 3\(C\)\(9\)](#) requires that the plaintiff reside in the county for at least 90 days immediately preceding the filing of the complaint. The parties do not need to be living separate and apart at the time the complaint is filed.

b. No-Fault Grounds for Legal Separation [\[R.C. 3105.17\]](#)

- Living separate and apart without cohabitation and interruption for more than one year
- Incompatibility (unless denied by either party)
- These grounds are often stipulated by the parties.

c. Fault Grounds for Legal Separation [\[R.C. 3105.17\]](#)

- One party had a spouse living at the time of the marriage
- Willful absence of the other party for one year
- Adultery
- Extreme cruelty
- Fraudulent contract
- Gross neglect of duty
- Habitual drunkenness
- Other party imprisoned in a state or federal correctional institution at the time of filing
- An evidentiary hearing with a corroborating witness is required to demonstrate knowledge of the facts and the party.

d. Final Hearing

- The court must order the disposition, care, and maintenance of minor children. [\[R.C. 3105.21\]](#)
- The court may resolve issues involving the division of property and debt; award spousal support; allocate parental rights and responsibilities; and award attorney's fees. [\[R.C. 3105.171; R.C. 3105.18; R.C. 3105.73\]](#)

Additional Resources

- ✓ Supreme Court of Ohio's Bench Card, [Dissolution](#)
- ✓ Supreme Court of Ohio's Bench Card, [Divorce](#)
- ✓ Supreme Court of Ohio's Bench Card, [Legal Separation](#)
- ✓ Supreme Court of Ohio's Bench Card, [Temporary Orders](#)

Domestic Relations Resource Guide Property Division



Domestic Relations Resource Guide - Section I: Substantive Law

B. Property Division

1. Determine "During the Marriage"

The court is required to make a finding in its final judgment entry as to the term of the marriage. [\[R.C. 3105.171\(G\)\]](#)

- The statute contains a presumption defining the term of the marriage (i.e., the date of the marriage ceremony to the date of final hearing). [\[R.C. 3105.171\(A\)\(2\)\]](#)
- The court may specify different dates (i.e., a *de facto* date) if it determines that the use of either or both those dates would be inequitable.
 - *De facto* commencement [\[Bryan v. Bryan, 8th Dist. Cuyahoga No. 97817, 2012-Ohio-3691\]](#)
 - *De facto* termination [\[Rhoades v. Rhoades, 11th Dist. Ashtabula No. 2013-A-0051, 2014-Ohio-1869; Rogers v. Rogers, 10th Dist. Franklin No. 96APF10-1333 & 96APF01-67, 1997 WL 559479 \(Sept. 2, 1997\)\]](#)
 - Factors to consider for a different (*de facto*) termination date:
 - Termination prior to final hearing still may apply even though one party provides support for at least part of the separation
 - The parties separated on less than friendly terms
 - Testimony indicates the marriage was over a year prior to the date of separation
 - One party cohabits with another shortly after separation
 - The parties never engage in intimate relations as married spouses after separation (regardless if on a few occasions the party returns to the marital residence)
 - The parties cease living together and maintain separate residences
 - The date the divorce complaint was filed
 - The parties' discussions of possible termination of their marriage prior to actual separation
 - No financial entanglement (parties use separate bank accounts, separate life insurance, separate credit cards)
 - No meaningful attempts at reconciliation
 - Separate business activities
 - Both parties are involved in extramarital relationships
 - The parties take separate vacations with other sexual partners
 - The parties have not served as a social host for the other
 - The parties have not attended social, business, or school events as a couple since the time of

separation

- The parties cease contributing to each other for each other's benefits as partners would do in a joint undertaking
- Totality of the circumstances and equitable considerations
- Dates should be consistent for all the property absent an explanation for the use of different dates for different assets. [[Kachmar v. Kachmar, 7th Dist. Mahoning No. 08 MA 90, 2010-Ohio-1311](#)]

2. Determine the Marital Estate: Marital Property vs. Separate Property

The court must identify and distribute all the property owned by the parties at the time of the divorce. Each asset and liability must be designated as either "marital" or "separate" (i.e., non-marital).

- The fiduciary nature of the marital relationship does not lend itself to hard and fast rules.
- [R.C. 3105.171\(E\)\(3\)](#) requires each spouse to fully disclose all property and debt; marital, separate, and other assets, debts, income, and expenses – not just marital.

a. Presumptions in play when defining the marital estate:

- The parties are considered to have contributed equally to the acquisition and production of marital assets. Marriage is considered a financial partnership.
- **Marital fault, other than financial misconduct, does not impact property division.**
- The division of property must be made prior to and without regard to any award of spousal support. [[R.C. 3105.171\(C\)\(3\)](#)] It is error to offset property division against spousal support.
- The ultimate goal of property division is to disentangle the parties' economic partnership.
- Property division is not modifiable, except by agreement of the parties. [[R.C. 3105.171\(I\)](#); [Sayegh v. Khoury, 5th Dist. Muskingum No. CT2017-0010, 2017-Ohio-2889](#); [Walsh v. Walsh, 157 Ohio St.3d 322, 2019-Ohio-3723](#)]
 - [Civ.R. 60\(B\)](#) cannot be used to circumvent the prohibition.
- Tracing: commingling separate property with marital property does not destroy the identity of separate property except when the property is not traceable. [[R.C. 3105.171\(A\)\(6\)\(b\)](#)] Transmutation of separate property into marital property has been virtually abolished.
- Title to property does not determine whether property is marital or separate. [[R.C. 3105.171\(H\)](#)]

b. Terms of Art Used in Property Division

1. *Distributive award*: an award from the separate property of one spouse made in order to achieve equity. A distributive award must be made in a fixed amount. It must not be contingent on any future event.
2. *During the marriage*: the beginning and ending dates of the marriage are used for determining whether assets owned by the parties at the time of the divorce are marital or separate and for valuation of those assets.
3. *Marital property*.
 - Property owned on the termination date of the marriage that was acquired through a monetary, in-kind, or labor contribution of a spouse during the marriage
 - Income acquired during the marriage

- Appreciation of assets acquired during the marriage
 - Appreciation of separate property and income from those assets, accrued during the marriage, attributable to the labor, money, or in-kind contribution of either spouse [[Middendorf v. Middendorf, 82 Ohio St.3d 397, 1998-Ohio-403](#)]
 - Retirement benefits and other deferred compensation
4. *Passive income and appreciation*: If a separate asset produces income or appreciates in value, but there is no monetary, in-kind or labor contribution by either party during the marriage, the income or appreciation is separate property. Also, depreciation of separate property creates a separate, non-marital loss.
5. *Personal property*: defined by common law; includes tangible and intangible personal property
6. *Separate property*: [R.C. 3105.171](#) contains provisions pertaining to separate property:
- The commingling of separate property does not destroy its identity as separate property, except when its identity is not traceable. [[R.C. 3105.171\(A\)\(6\)\(b\)](#)]
 - Separate property must be disbursed to its owner, unless the court makes a distributive award. If the court does not award separate property to its owner, the court must make specific findings of fact. [[R.C. 3105.171\(D\)](#)]
 - The burden to show that property is separate property is on the proponent.

c. **Six Categories of "Separate Property" Defined** [[R.C. 3105.171\(A\)\(6\)](#)]

1. Traceable inheritances;
2. Traceable pre-marital property;
3. Traceable passive income and appreciation;
4. Property acquired after a decree of legal separation and property excluded by antenuptial agreement if it can be traced;
5. Compensation for personal injury, if it is not attributable to expenses paid from marital funds. A claim for loss of consortium is the claimant's separate property. The amount of separate property from a personal injury, if not clearly delineated, should be calculated after deducting lost wages, attorney fees and expenses for prosecuting the claim;
6. A gift received by a spouse during the marriage is presumed to be marital property, unless it can be proved otherwise by [clear and convincing evidence](#) to have been given to only one spouse.

3. Valuation of Assets

Valuation of all marital assets is mandatory.

- The final decree must set forth the valuation of assets so that the court of appeals is able to conduct a meaningful review of the division of property. [[Kaechele v. Kaechele, 35 Ohio St.3d 93](#)]
- The value of each marital asset must be determined to carry out the mandates of [R.C. 3105.171\(C\)](#).
- If neither party submits evidence of the value of an asset, the court may order the parties to obtain a valuation. [[Roberts v. Roberts, 10th Dist. Franklin No. 08AP-27, 2008-Ohio-6121](#)]
- Expert testimony may be needed for valuation of certain assets.
- A court may accept testimony of the owner as to the value of an asset. But, see [Raymond v. Raymond, 10th Dist. Franklin No. 11AP-363, 2011-Ohio-6173](#). The husband's opinion of the value of the marital business was not admissible absent a showing that he had knowledge or experience

dealing with the business sufficient to form an intelligent opinion as to value.

- The court must state a rational evidentiary basis for assigning a value to an asset.

a. Real Estate

- Know how to determine the passive appreciation of one spouse's pre-marital equity in real property. Methods vary among appellate districts.
- Develop a method for determining the marital interest in separate real property when there is a reduction in the mortgage balance from marital income during marriage.
- The valuation of commercial real estate may require the opinion of a qualified appraiser.
- The court may not average appraisals or testimony about value. The court must choose one value.
- Methods used:
 - Income capitalization approach
 - Cost approach
 - Market approach

b. Pensions and Retirement Assets

- Identify the parties' retirement assets.
 - Different types of plans, public and private [See table below for examples]
 - Utilize the specialized vocabulary when discussing pensions (e.g., participant, alternate payee, accrued benefit, marital coverture formula, etc.)
 - Vested vs. non-vested retirement assets
 - Qualified vs. non-qualified plan
 - Identify the different kinds of court orders which must be used when dividing retirement assets: e.g., QDRO, DPO, and COAP.
- When dividing retirement assets, the final entry should contain an explanation for the method chosen by the court. Assign responsibility to prepare the appropriate court order according to terms of decree. Set a specific date for submission of the order and ensure the order is submitted.
- The court order dividing a retirement asset cannot violate federal and state law and the limitations imposed when dividing pensions.
- Defined contribution plans: Thrift Saving Plan
- Social security benefits can be considered only when dividing a government pension. [\[R.C. 3105.171\(F\)\(9\)\]](#)

Private Pension/Retirements	Public Pension/Retirement Plans
	Ohio Public Employees Retirement System (OPERS)
Qualified Pre-Retirement Survivor Annuity (QPSA)	Ohio State Teachers Retirement System (STRS)
Pension Benefit Guaranty Corporation (PBGC)	Ohio School Employees Retirement System (SERS)
Deferred Retirement Option Plan (DOPO)	Ohio Police & Fire Pension Fund (OP&FP)
Deferred Retirement Option Plan (DROP)	Ohio State Highway Patrol Retirement System (HPRS)
Partial Lump Sum Option Payment (PLOP)	Civil Service Retirement System (CSRS)
401(k): an employer-sponsored retirement savings plan	Federal Employees Retirement System (FERS)
	Military pensions
	403(B): a retirement plan offered by public schools and other tax-exempt organizations
	457: deferred compensation retirement plan offered by state and local governments, and some nonprofit employers

**PRACTICE TIP:**

Courts are encouraged to use experts when dealing with retirement assets as they keep current with statutory and regulatory changes. Courts have varying practices regarding the use of experts.

Additional Resources

- ✓ Internal Revenue Service, [Types of Retirement Plans](#)
- ✓ Internal Revenue Service, [Qualified Domestic Relations Order](#)
- ✓ Investor Junkie, [7 Most Popular Employer-Sponsored Retirement Plans](#)
- ✓ [Pension Benefit Guaranty Corporation](#)

c. Pension Issues During Trial

- Although the court may understand the limitations inherent when dividing a retirement asset, the record should contain sufficient evidence to explain the details of the pension for the benefit of the parties and the court of appeals.
 - The court must have sufficient evidence to determine the present value of a defined benefit pension, even if the court order divides the pension in kind.
 - The evidence required to determine the present value of a retirement asset:
 - The age of plan participant at time of trial;
 - The age of plan participant at first eligible retirement date;
 - The amount of the accrued monthly benefit earned as of the date of trial;
 - Interest rate used to reduce future stream of income to present date;
 - Whether the monthly benefit will increase due to cost of living adjustments, and if so, the amount of the COLAs; and
 - The mortality tables used by the expert.

- The limitations of a present value calculation make the valuation inherently suspect and speculative. The expert witness should provide detailed evidence to explain the facts they assumed in making the calculation, the method they used to determine the present value and how the valuation may change if different assumptions are made.
- If trial counsel has not solicited sufficient information from the pension evaluator, the rules of evidence permit the court to ask questions of the expert. The court must have sufficient testimony to support its decision about the award of the retirement asset. Further, the evidence must allow for a meaningful review by a higher court, in the event of an appeal.
- When dividing a pension in kind with a QDRO or similar order, the separation agreement or final decree must include language which creates a separate interest QDRO and which also provides for a qualified pre-retirement survivor annuity (QPSA). These provisions are necessary so that the alternate payee will receive his/her share of the pension should the participant die before retirement.
- Qualified domestic relations orders, division of property orders, and court orders acceptable for processing are merely orders in aid of execution. The underlying divorce decree must contain sufficient terms to allow for the creation of a QDRO, DOPO, or COAP, which will be acceptable to the plan administrator. These orders cannot be used to fill in terms which are missing in the decree.

d. Business Interests, Closely-Held Corporations, Partnerships, Farms, etc.

The valuation of a business interest requires the opinion of a qualified expert witness. A court may not adopt an opinion of an expert witness which is not supported by an adequate rationale and evidentiary basis; nor may a court choose a value between the experts' valuations without citing evidence which supports that conclusion.

- Methods commonly used for valuation of a business interest:
 - Income approach: Capitalization of excess earning
 - Asset approach: Liquidation value; value of equipment, inventory, accounts receivable
 - Market approach: Arms-length transaction for sale
- Examples:
 - Key man life insurance
 - Buyout provision in business entity
 - Stock options earned during the marriage
 - A loan owed to one spouse from a wholly owned company

e. Disability Benefits

Disability payments may be income or property – separate or marital. Appellate case law varies per district.

f. Other Assets to be Valued and Awarded to One of the Parties

This is not an exhaustive list:

- Vehicles (consider debt which encumbers the vehicle)
- Household items and personal effects
- Custodial accounts or college savings plans for children of the marriage

- Goodwill of professional practice or other proprietorships or business
- Frozen embryos (This is an evolving area of law. Check your appellate district's case law.)
- Pets and livestock
- Burial plots
- Collectibles
- Airline miles
- Accumulated sick leave and vacation benefits, especially with public employees
- Other health-care related benefits (e.g., health savings accounts, home health care insurance, flexible spending accounts)
- Stock options, limited partnerships, cash surrender value of insurance policy
- Government subsidies (e.g., farm)
- Crypto or other virtual currency or assets

4. Valuation of Debts

The valuation of debt is calculated in the same manner as assets or property. The court must make specific findings as to whether it is marital or separate. Courts assign responsibility for debts of the marriage e.g., credit card debt, student loans, mortgage associated with real estate, automobile loans, etc. Consider requiring refinancing of joint obligations, if possible.

This determination is extremely fact driven and varies with each individual case.

5. Equal Division of Property Unless Inequitable

The division of property must be equal unless an equal division would be inequitable.

Factors which may justify awarding one spouse more than half the marital estate:

- Failing to disclose marital or separate property, income, debts or expenses. [[R.C. 3105.171\(E\)\(5\)](#)]
- Financial misconduct [[R.C. 3105.171\(E\)\(4\)](#)]
- Substance abuse
- Gambling
- Violating a temporary restraining order
- Domestic violence

Factors to consider when dividing property [[R.C. 3105.171\(F\)](#)]

- The duration of the marriage
- The assets and liabilities of the parties
- The desirability of awarding the family home, or the right to reside in the family home for reasonable periods of time, to the spouse with custody of the children of the marriage
- The liquidity of the property to be distributed
- The economic desirability of keeping an asset or an interest in an asset intact

- The tax consequences of the property division
- The costs of sale, only if the asset is ordered sold in the decree
- Any division of property in a separation agreement that was voluntarily entered into
- Retirement benefits
- Any other factor that the court expressly finds to be relevant and equitable

6. Separation Agreements

[R.C. 3105.10\(B\)\(2\)](#) states that a separation agreement may be enforceable if the court determines it would be in the interest of justice and equity to require enforcement.

7. Bankruptcy

Courts must determine the effect of bankruptcy case filing on divorce proceedings. Questions to ask:

- Was there relief from an automatic stay and does the stay apply?
- What is the jurisdiction of bankruptcy court vs. domestic relations court?
- Under what chapter of the Bankruptcy Code was the bankruptcy filed?
- Is this a joint or separate filing?
- Was there an adversary proceeding in the bankruptcy court?
- Has there been a discharge?

8. Tax Considerations: Effect of Taxes on Property Division

See [Internal Revenue Service Publication 504: Divorced or Separated Individuals](#)

9. Practice and Procedure for Property Division

a. Pretrial Conferences

The goals of pretrial conferences are to identify and determine the fair market value of all marital and non-marital property.

- Establish procedures which require that parties disclose and assign values to all property owned by both spouses prior to the final hearing.
- Issue a pretrial order that contains:
 - Temporary restraining orders to maintain status quo and prevent the sale or transfer of property;
 - Deadlines for filing a pretrial statement or financial disclosure statement which identifies all property owned and all liabilities owed by the parties; [\[Civ.R. 16\]](#)
 - Requires an exchange of documents, including income tax returns, bank statements, quarterly pension statements, summary plan description for defined benefit pensions, appraisals of real property, mortgage information, credit card statements and valuation reports;
 - Language to prevent the disclosure of private financial information to persons not associated with the case;
 - A provision that the parties execute and deliver to opposing counsel an authorization for independent verification of retirement assets; and

- Sets time limits for depositions and completion of discovery.
- Create a filing system to protect the private financial information of the parties. Utilize a “family file.” [Sup.R. 44] Establish an understanding with the clerk of court to safeguard parties’ privacy, including information shown on public docket.
- Before the first pretrial, review pretrial statements of both parties for accuracy and completeness. With counsel and the parties present, address property division issues in detail. If appropriate, encourage parties to sign stipulations regarding the ultimate disposition of any assets not in dispute.
- As needed, order parties to get an appraisal for real estate, to determine the present value of retirement assets or to hire any experts which may be needed to determine the fair market value of marital property; decide which spouse pays for the evaluator(s) or if the expense should be divided.
- Issue an order which has specific dates for the exchange of discovery and expert reports. Include consequences and/or sanctions if a party fails to comply with the court order.
- If asked, articulate the court’s philosophy on specific property division issues, e.g., how costs of sale are handled, best method to divide a public employment pension (by use of a Division of Property Order [DPO], or by awarding the entire pension to the member), whether a social security offset is appropriate, how to divide real property that is under water, who pays credit card debt, etc.



PRACTICE TIP:

Be prepared. Best practice is to memorialize what occurred at the pretrial in an order of the court and the responsibilities assigned to each party so that the case makes progress at each pretrial. Set the next court date with parties and counsel present to avoid scheduling conflicts and unnecessary delays. Develop forms for ruling on motions to compel, motions for protective orders, and other discovery problems.

b. Prepare for Trial and Pretrial Orders

- Issue a court order to control the attorneys, the witnesses, the presentation of evidence and the time needed for trial.
- Set the trial date by agreement of counsel, so that the date will not be preempted by another court. State whether the trial will proceed, even if counsel of record is unavailable.
- In the order, include provisions regarding continuances, exchange of witness lists, expert reports, copies of exhibits, pre-marking of exhibits, etc.
- Limit time for trial, by agreement of counsel; state whether the court will continue day-to-day vs. non-consecutive trial dates.
- Order one of the parties to prepare stipulations on issues where parties agree, e.g., shared parenting plan, child support, tax exemption, etc. Order the other party to prepare stipulations regarding statutory factors for property division and/or spousal support.

c. Conducting the Trial

- Post rules which apply during trial, so that the attorneys and parties can comply with your expectations.

- Be prepared. Show counsel and parties that you understand the issues before the court; state them on the record. Research the controlling case law for your appellate district on any disputed property division issues in the case.
- Speak slowly and clearly so you are understood on the record. Before opening statements, introduce yourself, the attorneys and the parties. Throughout the proceedings, remind the participants that it is not too late to compromise and settle.
- Be mindful that you are creating an oral record, not a visual record.
- Take ample notes during trial so you will be able to make the required findings of fact for the final decree. Explain to the parties why you are typing during the trial.

Additional Resources

- ✓ Supreme Court of Ohio Bench Card, [Equitable Division of Property](#)

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C. Spousal Support

1. Overview of Spousal Support

Spousal support is born out of the contract of marriage. Married persons have an obligation to support themselves and their spouse out of property and labor. However, if a married person is unable to do so, the spouse must provide support as that person is able. [\[R.C. 3103.03\]](#)

Courts may award spousal support to either spouse upon the request of either party in an action for divorce or legal separation. [R.C. 3105.18](#) outlines the factors which a court considers to determine the appropriateness, amount, and length of time an award is made. It can be ordered for a period of time or as a permanent, lifetime award.

Spousal support includes payments both for sustenance and for support of the spouse or former spouse. It does not include any payment made as part of a division or distribution of property or a distributive award. [\[R.C. 3105.18\]](#)

"*Spousal support*" replaces the terminology of "alimony" that was previously used and refers to payments from one spouse to another during or after an action for termination of a marriage. Either spouse can be ordered to pay support to the other; the court considers the parties' income and resources, not gender.

2. Temporary Spousal Support (*Pendente Lite*)

[Civ.R. 75](#) allows a party to request a temporary spousal support order while the divorce or legal separation is pending. If the court makes a temporary order, it ends when the divorce or legal separation is over. The court may make a final spousal support order.

There is no specific formula in Ohio for calculating temporary support awards. The court must use its discretion, taking into account each spouse's earning capacity and other resources while the divorce is pending. The court should strive to maintain the financial status quo despite title or ownership.

a. Determining the Award

- No formula or requirement to consider [R.C. 3105.18\(C\)\(1\)](#) factors
- Address immediate needs, balance payor's ability to pay without creating undue hardship to either spouse
- Preserve status quo [\[Kahn v. Kahn, 42 Ohio App. 3d 61 \(2nd Dist. 1987\)\]](#)
- Prioritize debts/expenses
- Provide sustenance to economically disadvantaged spouse
- Courts have the discretion to award spousal support payments be made in cash installments, in the form of health insurance coverage [\[R.C. 3105.71\]](#), or payment of bills (e.g. mortgage, utilities, credit cards, car).

b. Procedure for Establishing Temporary Spousal Support

Temporary spousal support can be ordered expeditiously in order to meet and address immediate needs through the use of affidavits or through evidence. [Civ.R. 75\(N\)\(1\)](#) requires that it be requested in the complaint, answer, counterclaim, or by motion served with the pleading. [\[See Supreme Court](#)

[of Ohio's Uniform Domestic Relations and Juvenile Standardized Forms](#) 5, 6, 7, 8, 9, 10 or other local required forms.] Counter-affidavits may be submitted within 14 days after service of request. [[Civ.R. 75\(N\)\(2\)](#)]

It is within the court's discretion whether to conduct an oral hearing. A hearing provides the opportunity to obtain more accurate information or to encourage parties to engage in settlement negotiations. However, the court may award temporary spousal support based upon satisfactory proof demonstrated through affidavits. [[Civ.R. 75\(N\)\(2\)](#)]

c. Modification of Temporary Spousal Support [[Civ.R. 75\(N\)\(2\)](#)]

A party may request an oral hearing to modify a temporary order. The oral hearing must be scheduled within 28 days after the request to modify. The request for an oral hearing does not suspend or delay commencement of support. The hearing may be an oral or evidentiary hearing. A party may request a modification of temporary spousal support at any time during the pendency of the divorce proceeding. [[Chattree v. Chattree, 8th Dist. Cuyahoga No. 99337, 2014-Ohio-489](#)]

d. Termination of Temporary Spousal Support

Temporary spousal support automatically terminates upon granting of the decree. Any arrears that have accrued during pendency of the case are considered merged into the decree and become uncollectible unless the decree specifies that arrears are preserved and due. [[Colom v. Colom, 58 Ohio St. 2d 245 \(1979\)](#)]

3. Establishment

The standard for determining spousal support is "*appropriate and reasonable*." This is broader than whether it is "necessary." Thus, it must be appropriate and reasonable for one party to receive and also for the other party to pay. There is a statutory presumption that parties are considered to have contributed equally to the production of marital income.

Factors for determining whether spousal support is "*appropriate and reasonable*" and for determining the nature, amount, and duration of spousal support: [[R.C. 3105.18\(C\)\(1\)](#)]

- Income of the parties, from all sources, including, but not limited to, income derived from property awarded as part of the property division in the divorce proceeding;
- Relative earning abilities of the parties;
- Ages and the physical, mental and emotional conditions of the parties;
- Retirement benefits of the parties;
- Duration of the marriage;
- Extent to which it would be inappropriate for a party, because that party will be custodian of a minor child or children of the marriage, to seek employment outside the home;
- Standard of living of the parties established during the marriage;
- Relative extent of education of the parties;
- Relative assets and liabilities of the parties, including, but not limited to any court-ordered payments by the parties;
- Contribution of each party to the education, training, or earning ability of the other party, including, but not limited to, any party's contribution to the acquisition of a professional degree of the other party;
- Time and expense necessary for the spouse who is seeking spousal support to acquire education, training, or job experience so that the spouse will be qualified to obtain appropriate employment provided the education, training, or job experience, and employment is, in fact, sought;

- Tax consequences, for each party, of an award of spousal support;
- Lost income production capacity of either party that resulted from that party's marital responsibilities; and
- Any other fact that the court expressly finds to be relevant and equitable.

These factors are the same regardless of whether the marriage is being terminated. A case can be remanded or reversed based on the discussion of the factors.



PRACTICE TIP:

It is important to note: each case is unique and this analysis is very fact sensitive. All relevant factors must be considered, and some factors may be more important than others or not applicable.

a. Amount of the Award

Spousal support is income-driven; however, there is no mathematical formula like with child support. The purpose of support is to allow the receiving spouse to maintain the standard of living established during the marriage and also to compensate for damage to future earning potential caused by the marriage.

Generally, courts rely heavily on the statutory language and consider the length of the marriage. Support may be an award of property, lump sum payment, or periodic payments. [\[R.C. 3105.18\(B\)\]](#) Attorney's fees may also be awarded as spousal support. [\[R.C. 3105.73\]](#)

Ohio law requires that if child support is ordered along with spousal support, the orders are paid through the Child Support Enforcement Agency (CSEA). If there are no minor children or no child support order, a direct payment between the parties can be negotiated.

Federal tax law reformed spousal support removing the tax deduction for the obligor. This provision expires in 2025 and may be subject to further revisions. The income of the obligee may or may not be reported.

b. Length of the Award and Continuing Jurisdiction

Courts have flexibility in determining the length of a spousal support award. It can end on a specific date, can continue indefinitely, or can terminate upon the occurrence of a specified event (e.g., the recipient's remarriage, cohabitation). [R.C. 3105.18\(B\)](#) requires termination upon the death of either party unless the order requires otherwise. However, it is recommended that the spousal support order include a specific ending date where possible.

The court may retain jurisdiction over the amount and/or duration of spousal support. If the court chooses to retain jurisdiction, the order must contain explicit language to this effect. [\[R.C. 3105.18\(E\)\]](#) Additionally, [R.C. 3105.18\(D\)](#) provides that in actions for legal separation, the court automatically retains jurisdiction to modify the order upon a change in circumstances of either spouse.

c. Writing an Effective Order

The order should:

- Set a commencement date as a specific date or date of an event (e.g., sale of house, emancipation of child, journalization of decision)
- Specify limitations and if court will reserve jurisdiction to modify
- State rationale and purpose of award
- Decide whether payment of temporary support will be credited to the term of the obligation

- Choose whether to set termination date or make an indefinite order with no end date (If the order has no set termination date, the court must retain jurisdiction.)
- Address temporary support arrears
- Specify the method of payment; either directly if the parties have no minor children or through the CSEA if there are minor children [\[R.C. 3121.441\]](#). Include the appropriate processing fee for any CSEA orders.

4. Modification and Enforcement

a. Modification

Awards for spousal support can be modified. Spouses can agree to make the order modifiable; however, if the divorce decree does not expressly state that the court retains jurisdiction, then the order cannot be modified. The party seeking the change has the burden of showing that the modification is warranted.

If the court's jurisdiction has been retained, the court can only order a modification where the party requesting the change can demonstrate there has been a material or substantial *change in the circumstances* of either party that makes the existing award no longer reasonable and appropriate; and the change was not taken into the account by the parties or the court as a basis for the award when it was established or last modified, whether or not the change in circumstances was foreseeable at the time of the original decree. [\[R.C. 3105.18\(F\)\]](#) Appellate districts may treat the foreseeability issue differently.

A *change in circumstance* includes:

- Altered economic conditions, which could include an involuntary decrease in the payor's income, or an increase in either spouse's income or assets (e.g., salary, living expenses, medical expenses);
- Remarriage of the recipient;
- Death;
- Entering into a relationship in another state that would constitute a valid marriage in Ohio;
- Cohabitation in certain situations;
- Retirement; and
- Other circumstances within the court's discretion.

b. Enforcement Actions

The court has the authority to enforce its orders upon a filing and properly served motion to show cause.

- Withholding order from assets
- Action for contempt
 - Indirect civil contempt for non-payment [\[R.C. 2705.02\]](#)
 - Procedural requirements [\[R.C. 2705.031- 2705.10\]](#)
 - Standard of proof is [clear and convincing evidence](#).
 - Appointment of counsel for indigent alleged contemnor [\[Turner v. Rogers, 564 U.S. 431 \(2011\)\]](#)

- Criminal non-support statute [[R.C. 2919.21](#), rarely used]
- Withholding order paid through CSEA [[R.C. 3121.441\(C\)](#)]

c. Antenuptial Agreements

Courts may modify the provisions set forth in an antenuptial agreement if, at the time of the divorce, such provisions are unconscionable. [[Gross v. Gross, 11 Ohio St.3d 99 \(1984\)](#)] The party claiming the unconscionability of the spousal support provision, by way of motion for modification, has the burden of showing its unconscionable effect at the time of divorce, and the court shall use the factors set forth in [R.C. 3105.18](#) to determine the issue of unconscionability and the reasonableness of the spousal support provisions.

d. Bankruptcy

Spousal support is a non-dischargeable debt under [11 U.S.C. 523\(a\)\(5\)](#). See the definition of *domestic support obligation* in [11 U.S.C. 101\(14A\)](#). Courts should look to case law in addressing whether the debt is in the nature of support. Bankruptcy and domestic relations courts have concurrent jurisdiction to determine dischargeability.

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D. Parenting

1. Child Support

A child is entitled to the same amount of expenditure that he/she would have received if the parents and the child continued to reside together. In an intact home, the income of the parents is pooled to spend for the benefit of the household members.

When the family is no longer an intact family, due to the termination of the marriage or a legal separation, the parental responsibility to feed, clothe, and provide necessities for child continues and is translated into a monetary obligation as a child support order. The amount of the support order is based on each parent's income, the number of children, the cost of childcare, the cost of medical insurance, and various other factors. Based on these factors, the amount of child support is based on the child support schedule. [[R.C. 3119.021](#); [R.C. 3119.022](#)]

At least once every four years, the Ohio Department of Job & Family Services (ODJFS) reviews the basic child support schedule to determine if the support orders and worksheets adequately provide for the needs of children who are subject to the child support orders based on economic data, labor market data, etc. [[R.C. 3119.023](#)]

a. Jurisdiction

The domestic relations court has exclusive jurisdiction to order child support when the parties are married or were married to each other. [[R.C. 3105.011\(B\)\(1\)](#)]

Juvenile court shall not exercise jurisdiction under [R.C. 2151.23\(A\)\(2\) and \(11\)](#), [R.C. 2151.23\(B\)\(4\)](#), or [R.C. 2151.231](#). Domestic relations court shall have jurisdiction to determine child support under the following circumstances: [[R.C. 2151.233\(A\)](#)]

- The child's parents are married to each other.
- The child's parents were married to each other, but are not currently, and there is an existing custody or support order regarding the child or another child of the same parents over whom juvenile court does not have jurisdiction.
- The determination is ancillary to the parents' pending action for divorce, dissolution, annulment, or legal separation.

The jurisdictional criteria in [R.C. 2151.233\(A\)](#) does not apply to cases brought under the Uniform Interstate Family Support Act of 2008 (UIFSA) [[R.C. Chapter 3115](#)] or when juvenile court grants custody of the child to a relative or places a child under a kinship care agreement. [[R.C. 2151.234](#)]

Jurisdiction may be transferred from juvenile court to domestic relations court, upon the motion of either court or an interested party, over an action or an order it issued for child support or custody as follows: [[R.C. 2151.235\(A\)](#)]

- If the parents of the child are married to each other and not parties to a divorce, dissolution, annulment, or legal separation.
- If the parents of the child were married to each other but are not currently, and there is an existing custody or support order regarding the child or another child of the same parents over

whom juvenile court does not have jurisdiction.

- To the court exercising jurisdiction over a protection order [\[R.C. 3113.31\]](#) if the child or both parents of the child are subject to both a support order and the protection order.

Any transfer of the support order as stated above requires the consent of the domestic relations court. [\[R.C. 2151.235\(B\)\]](#) Consent of the domestic relations court is not required if the parents of the child have a pending divorce, dissolution of marriage, legal separation, or annulment. [\[R.C. 2151.235\(C\)\]](#) The process for transferring and accepting jurisdiction is set forth in [R.C. 2151.235\(D\) and \(E\)](#).

Other actions involving child support:

- Authority for certain persons/entities to file an action for child support [\[R.C. 2151.231; R.C. 3111.78\]](#)
- During the pendency of abuse, neglect, or dependency case proceeding [\[R.C. 2151.33\(B\)\(2\)\]](#)
- When a child is committed as a result of a delinquency proceeding [\[R.C. 2151.36\]](#)
- Temporary support order during pendency of a parentage action or order establishing parent-child relationship [\[R.C. 3111.111\]](#)
- UIFSA [\[R.C. Chapter 3115; See also Special Issues – UIFSA\]](#)
- Support action brought by grandparent providing support to child born to unmarried and unemancipated minors [\[R.C. 3109.19\]](#)
- Action by a parent objecting to an administrative support order [\[R.C. 3111.84\]](#)
- Action against father once paternity acknowledgment established [\[R.C. 3111.29\]](#)

b. Income for the Purpose of Calculating Child Support

Income is defined as either of the following: the gross income of the parent who is employed to full capacity; or the sum of the gross income of the parent and any potential income of the parent for a parent who is unemployed or underemployed. [\[R.C. 3119.01\(C\)\(9\)\]](#)

c. Gross Income

Gross income is defined as the total of all earned and unearned income from all sources during a calendar year, whether or not the income is taxable, including the following: [\[R.C. 3119.01\(C\)\(12\)\]](#)

- Salaries, wages, overtime pay, and bonuses as described in [R.C. 3119.05\(D\)](#)
- Commissions, royalties, tips
- Rents
- Dividends, interests, pensions
- Severance pay
- Trust income, annuities
- Social Security benefits, including retirement, disability, and survivor benefits that are not means-tested
- Worker's compensation benefits
- Unemployment insurance benefits

- Disability insurance benefits
- Benefits that are not means-tested and that are received by and in the possession of the veteran who is the beneficiary for any service-connected disability under a program or law administered by the United States Department of Veterans Affairs or Veterans Administration;
- Spousal support actually received
- Income of members of any branch of the United States armed services or national guard including:
 - Amounts representing base pay
 - Basic allowance for quarters
 - Basic allowance for subsistence
 - Supplemental subsistence allowance
 - Cost of living adjustment
 - Specialty pay
 - Variable housing allowance
 - Pay for training or other types of required drills
- Self-generated income
- Potential cash flow from any source

Gross income does not include the following: [\[R.C. 3119.01\(C\)\(12\)\]](#)

- Benefits received from means-tested government administered programs, including Ohio Works First; prevention, retention, and contingency; means-tested veterans' benefits; Supplemental Security Income; Supplemental Nutrition Assistance Program; disability financial assistance; or other assistance for which eligibility is determined on the basis of income or assets;
- Benefits for any service-connected disability under a program or law administered by the United States Department of Veterans Affairs or Veterans Administration that are not means-tested, that have not been distributed to the veteran who is the beneficiary of the benefits, and that are in the possession of the United States Department of Veterans Affairs or Veterans Administration;
- Child support amounts received for children who are not included in the current calculation;
- Amounts paid for mandatory deductions from wages such as union dues but not taxes, Social Security, or retirement in lieu of Social Security;
- Nonrecurring or unsustainable income or cash flow items [\[R.C. 3119.01\(C\)\(13\)\]](#);
- Adoption assistance, kinship guardianship assistance, and foster care maintenance payments made pursuant to [Title IV-E Social Security Act of 1980 \(as amended\)](#);
- State kinship guardianship assistance described in [R.C. 5153.163](#) and payment from the kinship support program described in [R.C. 5101.881](#).

The court is to include the lesser of a parent's income from overtime, commissions, and bonuses for the purpose of calculating child support as follows:

- Yearly average of all overtime, commissions, and bonuses received during the three years immediately prior to the date of the calculation;

- Total overtime, commissions, and bonuses received during the year immediately prior to the date of the calculation. [\[R.C. 3119.05\(D\)\]](#)

d. Potential Income

If a parent is determined to be voluntarily unemployed or voluntarily underemployed, “potential income” means both of the following: [\[R.C. 3119.01\(C\)\(17\)\]](#)

- Imputed income that the court or agency determines the parent would have earned if fully employed as determined from the following criteria:
 - Parent's prior employment experience;
 - Parent's education;
 - Parent's physical and mental disabilities, if any;
 - Availability of employment in the geographic area in which the parent resides;
 - Prevailing wage and salary levels in the geographic area in which the parent resides;
 - Parent's special skills and training;
 - Whether there is evidence that the parent has the ability to earn the imputed income;
 - Age and special needs of the child for whom child support is being calculated under this section;
 - Parent's increased earning capacity because of experience;
 - Parent's decreased earning capacity because of a felony conviction;
 - Any other relevant factor.
- Imputed income from any non-income-producing assets of a parent, as determined from the local passbook savings rate or another appropriate rate as determined by the court or agency, not to exceed the rate of interest specified in [R.C. 1343.03\(A\)](#) if the income is significant.
- Imputed income from the lifestyle and expenses paid by a person is often confused with statutory imputation of income. However, the statutory factors are not relevant when the person lives a lifestyle with income but claims little or no income. This is often a self employed person. In these cases, the court makes a forensic analysis of expenditures to determine what must be unclaimed income for that person. To avoid confusion on appeal, it is best to label this a forensic analysis rather than imputation of income.



PRACTICE TIP:

Imputing income is engaging in a legal fiction – the court is going to base a child support or spousal support order on a certain amount of income. This can be challenging the longer the person is un/underemployed. The usual consequence is that a large arrearage accrues because the person does not become employed at his/her previous income. It is easier to impute income in a pre-decree support order and then review the employment situation at the final divorce hearing. The usual consequence *over time* is that a large arrearage accrues because the person cannot or will not be re-employed at the previous income.

If a person has always been a low-income wage earner and is currently not working, you may wish to find the following: “INSERT NAME presented no evidence that the person has any physical or mental health disabilities that inhibit his/her ability to earn a minimum-wage income on a full-time basis. The Court finds that INSERT NAME is voluntarily unemployed and imputes a minimum-wage income in the amount of \$X.”

e. Voluntarily Unemployed or Underemployed

Unless it would be unjust or inappropriate and, therefore, not in the child's best interests, the court shall not determine a parent to be voluntarily unemployed or underemployed and shall not impute income to that parent if any of the following conditions exist: [\[R.C. 3119.05\(I\)\]](#)

- The parent is receiving recurring monetary income from means-tested public assistance benefits, including cash assistance payments under the Ohio works first program established under [R.C. Chapter 5107](#), general assistance under former R.C. Chapter 5113, Supplemental Security income, or means-tested veterans benefits.
- The parent is approved for Social Security disability insurance benefits because of a mental or physical disability, or the court or agency determines that the parent is unable to work based on medical documentation that includes a physician's diagnosis and a physician's opinion regarding the parent's mental or physical disability and inability to work.
- The parent has proven that the parent has made continuous and diligent efforts without success to find and accept employment, including temporary employment, part-time employment, or employment at less than the parent's previous salary or wage.
- The parent is complying with court-ordered family reunification efforts in a child abuse, neglect, or dependency proceeding, to the extent that compliance with those efforts limits the parent's ability to earn income.
- The parent is institutionalized for a period of twelve months or more with no other available income or assets.

A parent who is incarcerated shall not be determined to be voluntarily un/underemployed and the court shall not impute income to that parent. [\[R.C. 3119.05\(J\)\]](#) A parent is "incarcerated" if he/she is serving a sentence for an offense or serving a term of imprisonment, jail, or local incarceration under a sentence imposed by a government entity. [\[R.C. 3109.05\(Q\)\]](#)

f. Averaging Income

When appropriate, the court may average income over a reasonable period of years. [\[R.C. 3119.05\(H\)\]](#) This would apply in a situation where a person is self-employed or a person is employed in a business where the income fluctuates every year, whether the person works for the same employer from year to year or not, as long as the income is generated/accounted for in the same manner.



PRACTICE TIP:

Employee income may change over time. Courts should look at the change in compensation packages when determining the amount of the bonus or commission to include in the support calculation.

g. Social Security Disability/Supplemental Security Income

Supplemental Security Income (SSI) is not gross income for child support purposes. [\[R.C. 3119.01\(C\)\(12\)\(a\)\]](#) A person receiving SSI cannot be found to be voluntarily un/underemployed. [\[R.C. 3119.05\(I\)\(1\)\]](#)

Social Security benefits, including retirement, disability, and survivor benefits that are not means-tested, are income. [\[R.C. 3119.01\(C\)\(12\)\(a\)\]](#) If a parent is receiving Social Security Disability ("SSD"), the minor children will receive benefits ("derivative benefits") from that parent.

These “derivative benefits” are “non-means benefits received by the child(ren) subject to the order.” Those benefits are deducted from the SSD-receiving parent’s annual child support obligation. If the amount of the benefit exceeds that parent’s child support obligation, the support obligation for that parent is zero. [\[R.C. 3119.05\(O\)\]](#)



PRACTICE TIP:

The amount of the derivative benefit is inserted on line 20 of the child support worksheet in the column of the parent who is receiving the SSD, regardless of which parent is the actual payee of the derivative benefit (i.e., if obligor is receiving SSD but the obligee is the payee for the derivative benefit for the children, the derivative benefit belongs in obligor’s column on line 20).

h. Child Care Expense

The cost of child care is to be shared by the parents and is part of the child support calculation. [\[R.C. 3119.05\(P\)\]](#) To be included in a child support calculation, the child care cost must: [\[R.C. 3119.05\(P\)\(1\)\]](#)

- Be necessary for employment or for activities related to employment training;
- Be verifiable by credible evidence;
- Exclude any reimbursed or subsidized child care cost, including any state or federal tax credit for child care available to the parent/caretaker, whether or not claimed;
- Not exceed the maximum statewide average cost estimate as determined in accordance with [45 C.F.R. 98.45](#). These amounts are based on the child(ren)’s age(s).

If the obligor’s income is in the self-sufficiency reserve of the basic support schedule, the obligor’s share of the child care will be equal to the lower of the obligor’s income share of the child care cost or 50% of the child care cost. [\[R.C. 3119.05\(P\)\(2\)\]](#)

i. Health Insurance

When the court issues or modifies a child support order, the court must determine the persons responsible for providing health care coverage for the children who are the subject of the child support order. The obligee is presumed to be the person responsible for providing health insurance coverage, unless that presumption is rebutted. The order must also state that the obligor and obligee are both liable for health care expenses not paid by insurance, according to a formula established by the court. [\[R.C. 3119.30\(A\) and \(B\)\]](#)

This formula is often based on the income percentage of the parties, based on the child support computation worksheet.

Relevant statutory definitions: [\[R.C. 3119.29\]](#)

- “*Health care coverage*” means an order that provides for a combination of health insurance coverage or a public health care plan, and payment of costs of premiums, copayments, and deductibles, or payment for medical expenses incurred on behalf of the child.
- “*Health insurance coverage*” means accessible private health insurance that provides primary care services within thirty miles from the residence of the child subject to the child support order.
- “*Reasonable cost*” means that the cost of health insurance coverage for the children who are the subject of the child support order does not exceed an amount equal to five percent of the annual income of the person who is providing the coverage

**PRACTICE TIP:**

The reason for presuming that the obligee will provide health insurance is that the obligee is usually the parent who takes the children to the health care provider and will need to have access to the health insurance provider. Therefore, it is easier for the obligee if he/she is providing the health insurance and can easily contact the insurance company if there is any issue.

The court may consider the following factors to rebut the presumption when determining if the child support obligor is the appropriate parent to provide health insurance coverage: [\[R.C. 3119.30\(B\)\(1\)\]](#)

- The obligor already has health insurance coverage for the child that is reasonable in cost;
- The obligor already has health insurance coverage in place for the child that is not reasonable in cost, but the obligor wishes to be named the health insurance obligor and provide coverage [\[R.C. 3119.302\(A\)\(2\)\(a\)\]](#);
- The obligor can obtain health insurance coverage for the child that is reasonable in cost through an employer or other source. For employer-based coverage, the court or child support enforcement agency shall consider the length of time the obligor has worked with the employer and the stability of the insurance;
- The obligee is a non-parent individual or agency that has no duty to provide medical support.

**PRACTICE TIP:**

If the obligor, who wishes to provide the health insurance coverage, lives in a different region or state than the children, many of the children's health care providers may not be considered "in network" for the obligor's health insurance coverage. This may be a reason not to order obligor to provide health insurance coverage.

If the cost of health insurance coverage to either parent exceeds a reasonable cost, that parent shall not be ordered to provide health insurance for the child, unless: [\[R.C. 3119.302\(A\)\(2\)\]](#)

- The parent requests to obtain or maintain the health insurance that exceeds a reasonable cost;
- The court determines that it is in the child's best interest for a parent to obtain/maintain health insurance that exceeds a reasonable cost and the cost will not impose an undue financial burden on either parent. The court must include facts and circumstances to support the determination in the court order.

If health insurance is available at a reasonable cost to either parent and the court determines that it is not in the child's best interest to utilize the insurance, the court must include the facts and circumstances to support the determination in the court order. [\[R.C. 3119.302\(A\)\(3\)\]](#)

The total out-of-pocket cost for health insurance premiums to a party who is providing coverage for the child who is the subject of the child support order is the number that is included in the child support calculation. The cost is not pro-rated based on the number of persons who are covered by the health insurance. [\[R.C. 3119.30\(E\)\]](#)

j. **Overnights**

The court must determine the number of overnights of parenting time annually for each parent pursuant to a court order. The court shall reduce a parent's support obligation by ten percent for a parent who has court-ordered parenting time that equals or exceeds 90 overnights annually. [\[R.C. 3119.051\(A\)\]](#) This adjustment may be eliminated at the request of the obligee if the obligor, without just cause, has failed to exercise court-ordered parenting time. [\[R.C. 3119.051\(B\)\]](#)

If court-ordered parenting time exceeds 90 overnights annually, the court must consider whether to grant a deviation beyond the ten percent deviation. [\[R.C. 3119.231\(A\)\]](#) If court-ordered parenting time is equal to or exceeds 147 overnights annually, and the court does not grant a deviation for parenting time, then the court must specify in the order the basis for the decision not to grant a deviation. [\[R.C. 3119.231\(B\)\]](#)

k. Cash Medical Support

A child support calculation on the child support worksheet will include a cash medical support amount. The amount is to be determined by ODJFS pursuant to [R.C. 3119.302\(B\)](#) based on the number of children subject to the order and split between the parties based on income share. [\[R.C. 3119.30\(C\)\]](#) The cash medical support is paid as part of the support order to the obligee unless the children are on Medicaid; in that case, the cash medical support is paid to ODJFS. [\[R.C. 3119.30\(D\)\]](#)

The annual cash medical amount is determined by the U.S. Department of Health & Human Services. [\[R.C. 3119.302\(B\)\]](#) Beginning in 2019, that amount is \$388.70 per child per year for each child of the order. The calculation on the child support worksheet will determine, based on the number of children and the income shares, each parent's percentage of the cash medical support. This amount is each parent's contribution towards ordinary medical expenses for the child(ren). Any amounts over \$388.70 per year for one child (\$777.40 for two children, etc.) will be considered extraordinary medical expenses.

A cash medical support order is administered, reviewed, modified, and enforced as part of the child support order. [\[R.C. 3119.303\]](#)

Both parents may be ordered to provide health care coverage and pay cash medical support if the obligee is a third-party nonparent or is an agency that has no duty to provide medical support. [\[R.C. 3119.30\(E\)\]](#)

l. Child Support Calculation

After the court completes the child support calculation on the child support computation worksheet, the court must address the issue of any deviations—whether there should be, or not be a deviation, and how much of a deviation.

m. Minimum Child Support Order

The court may issue a minimum child support order in the amount of \$80 per month for all the children subject to that order or the court may issue an order of less than \$80 monthly or an order that the obligor is not required to pay any child support. The circumstances may include an obligor's medically verified or documented physical or mental disability or institutionalization in a mental health facility or any other appropriate circumstances. [\[R.C. 3119.06\]](#)

If the court issues a minimum child support order and the obligor is receiving means-tested public assistance, the obligation to pay support is suspended and the arrearage will accrue on a monthly basis, provided the obligor is complying with any seek work orders issued pursuant to [R.C. 3119.06](#) and [R.C. 3121.03\(D\)\(2\)](#).

If the combined annual income of both parents is less than the \$8,400 minimum of the support schedule, the court shall apply the minimum support amount set forth in [R.C. 3119.06](#).

n. Combined Gross Income Greater Than or Less Than Support Income Schedule [\[R.C. 3119.04\]](#)

If the combined annual income of both parents is greater than the maximum annual income on the basic support schedule set forth in [R.C. 3119.021](#) (\$336,467.04 in 2019), the court shall determine the amount of the obligor's support obligation on a case-by-case basis and consider the needs and the standard of living of the child(ren) who is/are the subject of the support order and of the parents. The court will compute a support obligation that is based on no less than the maximum annual income unless the court determines that it would be unjust or inappropriate and, therefore, not in the child(ren)'s best interest. The court will include that determination and the findings to support the determination in the order.

o. Deviations

The court may order child support in an amount that deviates from the support calculation on the worksheet if, based on the factors set forth below, it determines that the basic support calculation would be unjust or inappropriate and, therefore, not in the child's best interest. [\[R.C. 3119.22\]](#) The court must include in the order the amount of child support from the child support calculation, and the findings of fact supporting its determination that a deviation is warranted.

The court may consider the following factors in determining whether to grant a deviation: [\[R.C. 3119.23\]](#)

- Special and unusual needs of the child, including needs arising from the child(ren)'s physical or psychological condition;
- Other court-ordered payments;
- Extended parenting time or extraordinary costs associated with parenting time, including extraordinary travel expenses when exchanging the child for parenting time;
- The financial resources and the earning ability of the child;
- The relative financial resources, including the disparity in income between parties/households, other assets, and the needs of each parent;
- The obligee's income, if the obligee's annual income is equal to or less than 100% of the federal poverty level;
- Benefits that either parent receives from remarriage or sharing living expenses with another person;
- The amount of federal, state, and local taxes actually paid or estimated to be paid by a parent or both parents;
- Significant in-kind contributions from a parent, including direct payment for lessons, sports equipment, school, or clothing;
- Extraordinary work-related expenses incurred by either parent;
- The standard of living and circumstances of each parent and the standard of living the child would have enjoyed had the marriage continued or had the parents been married;
- The educational opportunities that would have been available to the child had the circumstances requiring a child support order not arisen;
- The responsibility of each parent for the support of others, including support of a child(ren) with disabilities who are not the subject of the support order;
- Post-secondary educational expenses paid for by a parent for the parent's own child, regardless of whether the child is emancipated;
- Costs incurred or reasonably anticipated to be incurred by the parents in compliance with court-ordered reunification efforts in child abuse, neglect, or dependency cases;
- Extraordinary child care costs required for the child that exceed the maximum state-wide average cost estimate [\[R.C. 3119.05\(P\)\(1\)\(d\)\]](#) including extraordinary costs associated with caring for a child with specialized physical, psychological, or educational needs;
- Any other relevant factor.

If the court issues a shared parenting order [[R.C. 3109.04](#)], the court shall order child support based on the support calculation on the worksheet unless the court determines that the amount would be unjust or inappropriate and not in the child(ren)'s best interest based on the factors in [R.C. 3119.23](#). The court shall also consider extraordinary circumstances as the basis of a deviation. [[R.C. 3119.24](#)] The court must include in the order the amount of child support from the child support calculation, and the findings of fact supporting its determination that a deviation is warranted.

"Extraordinary circumstances" includes all of the following:

- The ability of each parent to maintain adequate housing for the children;
- Each parent's expenses, including child care expenses, school tuition, medical expenses, dental expenses, and any other expenses the court considers relevant; and
- Any other circumstances the court considers relevant.



PRACTICE TIP:

It is the best practice to express the deviation as a percentage or a dollar amount. The court should use a percentage deviation if the basis of the deviation is overnights or other parenting time issues—something that cannot be objectively determined by a number. The court should use a dollar amount if the basis of the deviation is an objectively determined amount—cost for activities, cost for transportation, etc. If the CSEA conducts an administrative review, the agency cannot apply a deviation if it cannot determine the monetary or percentage value of the deviation. [[R.C. 3119.63\(B\)](#)]

p. Tax Exemptions

Whenever the court issues, modifies, or reviews a child support order, the court shall designate which parent may claim the child who is the subject of the child support order as dependents for federal income tax purposes. [[R.C. 3119.82](#)]

If the parties agree on which parent should claim the child as dependent, the court shall designate that parent as the parent who may claim the child. If the parties do not agree, the court, in its order, may permit the parent who is not the residential parent and legal custodian to claim the child as dependents for federal income tax purposes only if the court determines that this furthers the best interest of the child. With respect to orders, the court must modify, review, or reconsider that the payments for child support are substantially current as ordered by the court for the year in which the child will be claimed as dependent.

In cases in which the parties do not agree which parent may claim the child as dependent, the court shall consider, in making its determination, any net tax savings, the relative financial circumstances and needs of the parents and child, the amount of time the child spends with each parent, the eligibility of either or both parents for the federal earned income tax credit or other state or federal tax credit, and any other relevant factor concerning the best interest of the child.

If the court determines that the non-residential parent may claim the child as dependent for federal income tax purposes, it shall order the residential parent to take whatever action is necessary pursuant to section 152 of the "Internal Revenue Code of 1986," 100 Stat. 2085, [26 U.S.C. 1](#), as amended, to enable the non-residential parent to claim the child as dependent for federal income tax purposes in accordance with the order of the court.

q. Child Support Order

The child support order must contain the following:

- Specific provisions for regular, holiday, and vacation parenting time [[R.C. 3119.08](#)]

- Designation of which parent is the obligor and which parent is the obligee (if a third party is the legal custodian of the child(ren), then each parent is a support obligor and is required to pay support) [[R.C. 3119.07\(C\)](#)]
- Monthly amount of the child support order, including the two percent processing fee [[R.C. 3119.27\(A\)](#)]; do not call the processing fee “poundage”
- Amount of the cash medical support
- Effective date of the support order
- If the support in the order deviates from the support amount on the worksheet, include specific findings to support the deviation based on the statutory factors, state that the basic support calculation would be unjust or inappropriate and not in the child(ren)’s best interest, and express the deviation as a dollar amount or as a percentage.
- Statutory language [[R.C. 3121.27 - 3121.33](#)]
- Designation of which parent is providing health insurance or a finding that private health insurance is not available
- State the formula for dividing any extraordinary medical expenses
- Allocation of the income tax dependent exemptions

r. Duration of a Child Support Order

Child support terminates when the child reaches age 18 or graduates from high school, whichever occurs second. Support will continue up to age 19 as long as the child attends an accredited high school on a continuous and full-time basis. [[R.C. 3119.86\(A\)\(1\)\(c\)](#)]

Support will not continue past age 19 unless specifically provided by court order. Child support will continue beyond the child’s 18th birthday only under the following circumstances: [[R.C. 3119.86\(A\)\(1\)\(a\)-\(c\)](#)]

- The child is attending an accredited high school on a continuous and full-time basis.
- The child is mentally or physical disabled and is incapable of supporting or maintaining themselves (i.e., the child is a *Castle* child). [[Castle v. Castle, 15 Ohio St.3d 279 \(1984\)](#)]
- The child’s parents have agreed to continue support beyond the child’s 18th birthday under the terms of a separation agreement incorporated into a decree of divorce or dissolution.

s. Modification

Motion Filed with the Court

If a party requests that the court modify a child support order, the court must recalculate the amount of support in accordance with the schedule and the child support computation worksheet. If the recalculated amount is ten percent more or ten percent less than the support required to be paid under the existing support order, that difference shall be considered a change of circumstance substantial enough to require a modification of the child support amount. [[R.C. 3119.79\(A\)](#)]

If the court determines that the child’s medical needs are not being met due to inadequate health insurance coverage, such inadequate coverage also constitutes a change of circumstance substantial enough to require a modification of the support order. [[R.C. 3119.79\(B\)](#)]



PRACTICE TIP:

The court is to consider the child support amount in existence, prior to any deviation, for the purpose of evaluating the ten percent deviation.

If the court determines that the support order should be modified due to a substantial change of circumstances that was not contemplated at the time the original support order was issued or at the time of the last modification of the support order, the court shall modify the support required to be paid to comply with the schedule and the worksheet, unless there is a deviation pursuant to [R.C. 3119.22](#).



PRACTICE TIP:

If the court issued a spousal support order at the time the original child support order issued, and the spousal support order, by its terms, terminated prior to the termination of the child support order, such termination was contemplated at the time the original child support order issued and, therefore, will not be a basis for modification of the child support order. The court order should state, at the time the original spousal support order and child support order issue, that termination of the spousal support order is a change of circumstances for the purpose of modifying the child support order.

The court has jurisdiction to order the modified child support order back to the date each party was served with notice of the motion to modify the support order, including jurisdiction to order interim/temporary child support. [\[R.C. 3119.84\]](#)

Administrative Review/Order

The office of child support or child support enforcement agency (CSEA), created within the county department of job and family services, is required to establish and administer rules for the establishment, collection, and enforcement of support orders that meet the requirements of Title IV-D of the Social Security Act and any rules adopted under Title IV-D. The CSEA's responsibilities, duties, and processes are set forth in [R.C. Chapter 3125](#).

If the CSEA issues an administrative recommendation modifying the child support order, the CSEA is required to send each party, by ordinary mail, a copy of the administrative recommendation and a notice that each party has 14 days to request an administrative hearing or a court hearing. [\[R.C. 3119.63\(C\)-\(D\)\]](#) If neither party timely requests a hearing, the administrative recommendation is submitted to the court to be included in a revised court child support order. [\[R.C. 3119.63\(E\)\]](#)

If a party timely requests an administrative hearing, CSEA is to conduct a hearing to determine if the administrative recommendation should be revised. After the hearing, CSEA is to issue to the parties a copy of the revised administrative recommendation and a notice that each party has 14 days to request a court hearing. [\[R.C. 3119.63\(F\)-\(G\)\]](#) If neither party timely requests a court hearing, the administrative recommendation is submitted to the court to be included in a revised court child support order. [\[R.C. 3119.63\(H\)\]](#)

If a party requests a court hearing, the court must provide the parties and CSEA with 30 days' notice of the date and time of the hearing. [\[R.C. 3119.67\]](#) The court shall order the parties to provide the income information and health insurance and health care information listed in [R.C. 3119.68](#).

CSEA is not required to find a ten percent deviation between the current support order and the recalculated support amount. After a court hearing, the court is to determine only if the amount calculated by CSEA is appropriate or not appropriate—there is no ten percent deviation requirement. [\[R.C. 3119.70\]](#)

At an administrative hearing, CSEA must consider, and at a court hearing, the court shall consider the cost of health insurance coverage and a modification of the person required to provide health insurance coverage for the children who are the subject of the support order. [\[R.C. 3119.73\]](#)

The effective date of the revised child support order, after a court hearing on a party's objections to the administrative recommendation, must be the first day of the month following the date on which the administrative review of the order began; this date is also set forth in the administrative recommendation. [\[R.C. 3119.71\(B\)\]](#)

Parent Active Military Service

If a parent who is ordered to pay child support is called to active military service (service for a period of more than 30 days), they may request a review of the child support order; the request must be submitted to CSEA. [\[R.C. 3119.77\(B\)\]](#)

Within three days, CSEA must send the parties notice of the review and the date it will begin. A call to active military service is a change of circumstances substantial enough to require a review of the child support amount. [\[R.C. 3119.771\(A\)\]](#)

If the support is modified, the effective date is the latter of the date of the notice of the review or the first day of the month in which the obligor's active military service begins. [\[R.C. 3119.772\]](#) The obligor must provide written notice of the termination of the active military service to CSEA not later than the last day of the month in which the service ends. [\[R.C. 3119.773\]](#) The modification will terminate and the prior amount of support be reinstated as of the first day of the month following the date that the obligor's active military service ends. [\[R.C. 3119.772\]](#)

Arrearage Payments or Credit Payments

The effective date of a child support order may create an arrearage. An order for payment on any arrearage owed by an obligor is rebuttably presumed to be at least 20 percent of the current support payment. A court may consider evidence of household expenditures, income variables, extraordinary health care issues, and other reasons for a deviation from the 20 percent presumption. [\[R.C. 3123.21\]](#)

Conversely, the effective date of a child support order may create a credit. CSEA does not collect a child support credit in the same manner as an arrearage is collected. Depending on the amount of the credit and the time remaining until the support order terminates, the obligor may request that the support payments terminate early in order to reduce the credit, the obligor may request an offset of a portion of the credit each month against the order, or the obligor may request that the credit "ride" on the account until one of the parties wishes to take some other action.

t. Termination

The party receiving child support must notify, and the party paying child support may notify, CSEA of any reason for which the child support should terminate. A willful failure to notify CSEA is contempt of court. [\[R.C. 3119.87\]](#)

Reasons for terminating a support order include all the following: [\[R.C. 3119.88\]](#)

- The child attains the age of majority if the child no longer attends an accredited high school on a full-time basis and the child support order requires support to continue past the age of majority only if the child continuously attends such a high school after attaining that age;
- The child ceases to attend an accredited high school on a full-time basis after attaining the age of majority, if the child support order requires support to continue past the age of majority only if the child continuously attends such a high school after attaining that age;
- A termination condition specified in the court child support order has been met for a child who reaches nineteen years of age;
- The child's death;
- The child's marriage;
- The child's emancipation;

- The child's enlistment in the armed services;
- The child's deportation;
- Change of legal custody of the child;
- The child's adoption;
- The obligor's death;
- The grandparent to whom support is being paid or a grandparent who is paying support reports that the grandparent's support order should terminate as a result of one of the events described in [R.C. 3109.19\(D\)](#);
- Marriage of the obligor under a child support order to the obligee, if the obligor and obligee reside together with the child.

u. Child Support Enforcement Agency Administrative Process

CSEA's responsibilities include the following: [\[R.C. 3125.01 – 3125.03\]](#)

- The location of absent parents;
- Establishment of parentage;
- Establishment and modification of child support orders;
- Establishment and modification of medical support orders;
- Enforcement of support orders;
- Collection of support obligations; and
- Any other actions appropriate to child support enforcement.

CSEA is also responsible for collecting spousal support orders, if spousal support is ordered to be paid through CSEA. [\[R.C. 3121.441; R.C. 3125.05\]](#)

v. Collection

The court is to issue an order requiring the withholding of support from the obligor's income or assets. [\[R.C. 3121.02\]](#) The court may also require an obligor to post a cash bond. R.C. 3121.03(C) If the obligor is unemployed, has no income, and has no cash assets, the court shall issue an order requiring the obligor to seek employment, to register with [OhioMeansJobs](#) and to notify CSEA when **the party** becomes employed. [\[R.C. 3121.03\(D\)\(1\)\]](#) Other processes and options available to the court and to CSEA for collection of a support order are set forth in [R.C. Chapter 3121](#).



PRACTICE TIP:

In all likelihood, if a person is unable to pay child support, they will be unable to post a bond. If the court requires a person to seek work, then the court should be mindful of enforcing that order—will the obligor return for periodic reports on their efforts, does the obligor need to submit documentary evidence to the court, etc.

w. Contempt

"Default" is defined as a failure to pay child support in an amount that is equal to or greater than the amount due for one month. [\[R.C. 3121.01\(B\)\]](#) If an obligor fails to comply with an administrative child support order, CSEA may request that the court find the obligor in contempt. [\[R.C. 3121.37\]](#)

An obligor may be found in contempt for failure to follow a court order to pay child support. [\[R.C. 2705.02\(A\)\]](#) The person to whom the support is owed, or CSEA, or the prosecuting attorney may initiate an action for contempt. [\[R.C. 2705.031\(B\)\]](#)

In addition to a motion for contempt, the alleged contemnor must be served with a summons to appear in court on a date certain. The summons must include all the following:

- Notice that failure to appear may result in the issuance of warrant for arrest, and in cases involving alleged failure to pay support, the issuance of an order for the payment of support by withholding an amount from the personal earnings of the accused or by withholding or deducting an amount from some other asset of the accused;
- Notice that the accused has a right to counsel, and that if indigent, the accused must apply for a public defender or court appointed counsel within three business days after receipt of the summons;
- Notice that the court may refuse to grant a continuance at the time of the hearing for the purpose of the accused obtaining counsel, if the accused fails to make a good faith effort to retain counsel or to obtain a public defender;
- Notice of the potential penalties that could be imposed upon the accused, if the accused is found guilty of contempt for failure to pay support;
 - 1st Offense: A fine of not more than \$250, a jail sentence of up to 30 days, or both.
 - 2nd Offense: A fine of not more than \$500, a jail sentence of up to 60 days, or both.
 - 3rd or Subsequent Offense: A fine of not more than \$1000, a jail sentence of up to 90 days, or both. [\[R.C. 2705.05\(A\)\]](#)
- Notice that court may grant limited driving privileges under [R.C. 4501.021](#) pursuant to a request made by the accused, if the driver's license was suspended based on a notice issued pursuant to [R.C. 3123.54](#) by CSEA and if the request is accompanied by a recent noncertified copy of a driver's abstract from the registrar of motor vehicles.

If the alleged contemnor is served and fails to appear, the court may issue a bench warrant. [\[R.C. 2705.031\(D\)\]](#) Due to the quasi-criminal nature of the proceedings, the court may not proceed with a hearing on the motion for contempt if the contemnor is not present. If the court issues a bench warrant, the court must also set a bond. If the bench warrant is served on the contemnor, the court must have a bond hearing to determine if the bond is to remain in the same amount or be modified. The alleged contemnor may also waive the bond hearing and proceed with a hearing on the contempt motion. This waiver should be a written waiver.

The alleged contemnor should be advised of the possible penalties and of their right to speak with counsel. Courts should grant a continuance if one is requested to speak with counsel. The alleged contemnor should be provided with an order, signed by the contemnor, of the new hearing date. If the alleged contemnor wishes to proceed with a hearing on the contempt motion, they should sign a waiver of counsel.

Contempt Hearing

When the court proceeds with a hearing on the motion for contempt, the movant (CSEA/obligee/etc.) must establish the following:

- There is a court order requiring payment of support;
- The contemnor knew that the order existed; and
- The contemnor violated the order.

The burden of proof is [clear and convincing](#). Once the burden of proof is met, the contemnor has to show that the contemnor was unable to comply with the order. It is a defense to an allegation of contempt that the alleged contemnor was incarcerated during the period during which support was not paid pursuant to the order. A contemnor's medical condition may be a defense to the contempt allegation.

If the contemnor is found in contempt, the court must issue a purge order. A civil contempt finding renders punishment that is remedial or coercive, not punitive—to provide the contemnor with an opportunity to comply with the order. The purge order cannot be to simply pay support as ordered; the purge order should be to reduce the arrearage to a certain amount by a date certain.

If the contemnor has met the purge order, then he/she has purged the contempt finding and the contempt is dismissed. If the contemnor has not met the purge order, then the court may do one of the following:

- Conduct a purge review hearing to provide contemnor with additional time to meet the purge order;
- Stay the sentence if the contemnor has made significant efforts, and do not continue the hearing; or
- Impose the jail sentence.

Local practices vary in how courts conduct a purge review. As examples, courts may conduct a purge review hearing or a sentencing purge hearing; and other courts do not schedule a hearing.

The imposition of any penalty for contempt does not eliminate the contemnor's obligation to pay any past, present, or future support obligation. The court has jurisdiction to make a finding of contempt for the failure to pay support and to impose the statutory penalties in all cases in which past due support is at issue even if the duty to pay support has terminated. [\[R.C. 2705.031\(E\)\]](#)

If the motion for contempt is brought by the obligee — as opposed to CSEA — and the contemnor is found in contempt, the court needs to address the issue of attorney fees and court costs. The court must assess all court costs arising out of the contempt proceeding against the contemnor and require the contemnor to pay any reasonable attorney's fees of any adverse party and must assess interest on any unpaid amount of child support. [\[R.C. 3109.05\(C\)\]](#) The interest is to be computed at the rate specified in [R.C. 1343.03](#).

2. Parental Rights and Responsibilities (PRR)

Parental rights and responsibilities are a compilation of rights and responsibilities not clearly defined by statute. This is equivalent to the former phrase "*custody and control*"; person with "custody" has "right to ultimate legal and physical control" of child [\[Fisher v. Hasenjager, 116 Ohio St.3d 53, 2007-Ohio-5589\]](#) and [Braatz v. Braatz, 85 Ohio St.3d 40, 1999-Ohio-203\]](#)

Rights typically associated are:

- To physical possession
- To control and manage the child's earnings and property
- To teach moral and ethical standards
- To discipline
- To consent to and make decisions concerning medical treatment, education, worship, and religious training, activities, etc.
- To control the child's associations

- To provide information necessary to assert the above rights

Responsibilities typically associated are:

- To ensure that the child is properly fed, clothed, and provided with necessities of life (basic needs) and health care
- To provide a safe environment
- To pay for the child's commission of tortious acts [[R.C. 2307.70](#), [R.C. 3109.09](#), [R.C. 3109.10](#), [R.C. 4507.07](#)]
- To ensure a child's education

In allocating parental rights and responsibilities, courts need to consider the child's fundamental right to a meaningful relationship with both parents and to have those relationships protected. Courts may designate one party as the child's *residential parent* and *legal custodian*, whereby one parent has complete control over the physical and legal care of that child and then allocate other parental rights and responsibilities between the two parents. [[R.C. 3109.04\(A\)\(1\)](#)] Alternatively, courts can order shared parenting where each parent is the child's residential parent and legal custodian.

a. Jurisdiction

Original Subject Matter Jurisdiction

Upon granting a divorce, dissolution, annulment, or legal separation, the court has the 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. The court must make an express order granting or denying parenting time.

- [R.C. 3105.21](#): Order for disposition, care, and maintenance of children in a cause for divorce, annulment, or legal separation
- [R.C. 3109.11](#): Companionship or visitation for parents or other relatives of deceased parent
- [R.C. 3109.12](#): Companionship or visitation for parents or other relatives of a child born to an unmarried mother
- [R.C. 3111.13\(C\)](#): Parenting rights, responsibilities, parenting time for father after paternity is established
- [R.C. 3113.31\(E\)\(1\)\(d\)](#): Parenting orders in a domestic violence civil protection order proceeding

b. Certification of Jurisdiction to Juvenile Court

If it is in the best interest of the child for neither parent to be designated residential parent, the court may commit the child to a relative of the child or certify to juvenile court. [[R.C. 3109.04\(D\)\(2\)](#)] If the court finds that neither parent is suitable, the consent of juvenile court is not required. [[R.C. 3109.06](#)] There can be differing treatment by various jurisdictions between best interest and unsuitability.

Upon certification, the juvenile court has exclusive jurisdiction. In cases involving certification to juvenile court, the domestic relations court has no statutory authority to issue an order granting custody to a children's services agency. [[State ex rel. Richland Cty. Children Services. v. Richland Cty. Court of Common Pleas, 152 Ohio St.3d 421, 2017-Ohio-9160](#))]

If a court has issued parenting rights and responsibilities and a parent dies, the court's jurisdiction does not abate, but a court may certify the matter to the juvenile court and a juvenile court has exclusive jurisdiction. Additionally, cases involving non-relative custody issues must be certified to juvenile court. [[R.C. 3109.04\(D\)\(2\)](#)]

c. **Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)** [[R.C. Chapter 3127](#)]

This chapter addresses interstate recognition and enforcement of child custody orders.

- [R.C. 3127.15](#): Factors to determine whether the court has jurisdiction to make an initial determination in a child custody proceeding
- [R.C. 3127.09](#): The court may communicate with the non-Ohio court if there is an inter-state proceeding and must provide parties an opportunity to participate.
- [R.C. 3127.17](#): The court may not modify a custody determination from another state unless the court has jurisdiction under [R.C. 3127.15](#) and one of the factors in this section apply.
- [R.C. 3127.21](#) and [R.C. 3127.22](#): Basis for declining jurisdiction—inconvenient forum and/or unjustifiable conduct

Additional Resources

- ☑ Supreme Court of Ohio's Domestic Relations Bench Card, [Uniform Child Custody Jurisdiction and Enforcement Act \(UCCJEA\)](#)

d. **Continuing Jurisdiction**

The court has ongoing jurisdiction to modify parenting orders.

e. **Termination of Jurisdiction**

- Child reaches age 18
- Child is deceased
- Child gets married
- Court relinquishes jurisdiction to another state or country under the UCCJEA
- Case is certified to juvenile court

f. **Case Management**

Case Management and Pretrial Procedure

The goal of case management and pre-trial procedure is to provide a more efficient court processes for the parties. These procedures strive to minimize the emotional trauma and financial hardship caused by uncertainty and parental conflict.

- Ascertain personal jurisdiction (service of process)
- Determine whether to exercise subject matter jurisdiction pursuant to UCCJEA
- Determine necessary parties and availability of parties [Joinder under [Civ.R. 18](#) and [Civ.R. 20](#)]
- Consult standard parenting time guidelines [[R.C. 3109.051\(F\)\(2\)](#)]
- Order parenting education if required by local rule
- Make appropriate court appointments, referrals, and orders to submit and establish appropriate report due dates (e.g., mediation, examination, neutral evaluation, investigation, custody evaluation, etc.) *See also Section F: Third Party Stakeholders*
- Appoint a guardian ad litem for the child if necessary [[R.C. 3109.04\(B\)\(2\)\(a\)](#)]
- Appoint an attorney for the child where applicable [[Civ.R. 75\(B\)\(2\)](#), [Sup.R. 48.02\(A\)](#)]
- Establish a discovery schedule including dates when discovery must be completed and any

motions to compel filed [\[Civ.R. 16\]](#)

Pretrial and Scheduling Orders

Pretrial and scheduling orders are discretionary unless required by local court rule. Courts should consider:

- Time necessary to obtain evidence to fully and fairly present case balanced with parents' and child's need for final resolution within reasonable time
- Time needed for preparation of guardian ad litem report, if appointed
- Applicable Supreme Court time guidelines for case processing [See [Sup.R. 39\(A\)](#) and [Appendix A, Form D](#)]
- Deadline to exchange witness lists and pre-marked exhibits; number of copies to bring to hearing
- Remote hearing protocol and exchange of exhibits to witnesses appearing remotely
- Presentation of testimony and order of witnesses; taking witnesses out of order
- Docket time allotted
- Day-to-day until complete trials vs. non-consecutive trial dates/engaged counsel
- Formal pretrial statements/memoranda/briefs to identify issues
- Continuances
- Preparation for and attendance at trial
- Time for an *in camera* interview

Unless the court orders otherwise, pretrial hearings on motions must be no less than 14 days from service for non-evidentiary hearings and no less than 28 days from service for evidentiary hearings. [\[Civ.R. 6\(C\)\(2\)\]](#)

Addressing Discovery and Evidentiary Issues

- [Rules of Evidence](#) apply
- Privileged communications [\[R.C. 2317.02\]](#)
 - Attorney
 - Physician
 - Clergy
 - Counselor, social worker, therapist
 - Psychologist [\[R.C. 4732.19\]](#)
 - Mediator [\[R.C. 2710.03; R.C. 3109.052\(C\)\]](#)
- Waiver of privilege, mandatory reporters, etc
- Discovery disclosures, motions to compel and protective orders
- Stipulations
- Motions *in limine*

- *In camera* inspection of records
- Noncompliance with trial and discovery subpoenas

Facilitating Settlement

A settlement can make the court process more efficient and less adversarial. Courts should consider:

- Appropriateness of judicial officer participation in settlement conference and use of dispute resolution processes
 - Mediation
 - Neutral evaluation
 - Parent coaching
 - Parenting coordination
- Problem-solving approach and strategies (e.g., collaborative brainstorming, “divide and conquer” large complex problem into smaller solvable parts, building the agreement, parent coaching, etc.)
- Value of involving the attorneys
- Caucusing and communication of settlement positions
- Future-focused, interest-based, reality testing of proposed solutions
- Economics of litigation process
- Value of parties’ self-determination in outcome

g. Special Considerations - Self-Represented Litigants

Litigants have a right to self-representation and access to justice. Courts have a responsibility to provide access to the justice system within the ethical confines of the [Ohio Code of Judicial Conduct](#). However, self-represented litigants are held to the same standard as attorneys.

The courts can provide resources to self-represented parties by:

- Engaging in a customer-focused service attitude
- Providing necessary information and forms, written in plain language, on their websites
- Establishing self-help centers or employing compliance officers to review pleadings
- Understanding how the self-represented litigant experiences the court process (e.g., informed by perceptions, unaware of court procedures and what to expect)

Additional Resources

- ✓ Supreme Court of Ohio, [Access to Justice Resources](#)
- ✓ [Ohio Legal Help](#)
- ✓ [Supreme Court of Ohio’s Uniform Domestic Relations and Juvenile Standardized Forms](#)
- ✓ National Center for State Court, [CourTool Measure 1: Access and Fairness Survey](#)

h. Special Considerations - Active Military Service Members

If one or more of the parents involved is an active-duty service member, consult the [Servicemembers Civil Relief Act \[SCRA\]](#). *Active military service* is defined in [R.C. 3109.04\(J\)\(2\)](#) and *uniformed services* in [R.C. 3109.04\(J\)\(5\)](#).

- [R.C. 3109.04\(I\)](#) sets forth the procedure for an expedited hearing for a parent on active military service in the uniformed services.
 - A parent subject to a parenting rights/responsibilities order who receives an order for active military service must notify the other parent within three days of receiving service order.
 - Upon receipt of notice, either parent may apply for expedited hearing for allocation or modification proceedings.
 - The hearing must be given priority and must be not more than 30 days after receipt of the application for hearing.
 - A parent who receives an order for active military service may request a temporary order for the period of their service for an order:
 - Delegating their parenting time be given to their relative;
 - That the child may be made available for electronic contact; or
 - Other parent must facilitate contact with the child via electronic or telephonic means. [\[R.C. 3109.051\(M\)\]](#)
- A mandatory 90-day stay may be requested in writing with communication of facts as to military duty and date of availability, and communication from commanding officer that leave is not presently authorized. Additional stays may be granted at the court's discretion. [50 U.S.C. 3931(d)]

Additional Resources

- ✓ Mark Sullivan, *The Military Divorce Handbook*, American Bar Association, 3rd Ed. (2019).
- ✓ Ohio Domestic Relations Journal, [Military Divorce: The Death Trap](#), Volume 33, Issue 5.

i. Allocating Parental Rights and Responsibilities and Legal Custody

When allocating parental rights and responsibilities, courts should take a child-centered approach where the *best interest of the child* is the controlling legal principle. Each court must adopt a standard parenting time guideline. [\[R.C. 3109.051\(F\)\(2\)\]](#) See also [Planning for Parenting Time: Ohio's Guide for Parents Living Apart](#).

Courts should consider the statutory best interest of the child factors set forth in [R.C. 3109.04\(F\)\(1\)](#) when determining legal custody and allocating parental rights and responsibilities. In addition to the best interest factors, courts should consider:

- [R.C. 3109.04\(F\)\(2\)](#): Shared parenting
- [R.C. 3109.051\(D\)](#): Parenting time, companionship, or visitation rights

Courts are not to consider:

- A parent's financial status [\[R.C. 3109.04\(F\)\(3\)\]](#)
- Written and recorded statements of child [\[R.C. 3109.04\(B\)\(3\)\]](#) and [R.C. 3109.051\(C\)\]](#)

Special considerations related to deciding the child's best interest:

- Infant, child and adolescent stages of development, and attachment
- Communication and inter-parental conflict
- Parenting and co-parenting abilities

- Managing high conflict personalities
- When children refuse contact: estrangement and parental alienation
- Substance abuse and dependency and its effects
- Mental health (including personality disorders) of adults and children
- Value to child of meaningful father-child, mother-child relationships, shared parenting
- Psychotherapies and the therapeutic process
- Family dynamics, blended families, and stepparent conflict
- Parent reunification (e.g., alienated parent or child)
- Special needs children
- Relocation and long-distance parenting
- Trauma and domestic abuse: rebuttal of presumption
- Psychological testing in child custody evaluations
- Safety and supervised visitation/supervised exchanges and neutral sites
- Social media and modern communication (virtual parenting)
- Parenting skills and parenting skills training programs
- Mental health professionals
- Effective parent education programs [\[R.C. 3109.053\]](#)

j. Communicating with Children - In Camera Interviews

The court may, in its discretion, or, upon a request by either party, shall interview a child in chambers regarding the child's wishes and concerns with respect to the allocation of parental rights and responsibilities. Only the judge, the child's attorney, and any necessary court personnel may be present during the interview. The judge has the discretion to allow an attorney for each parent to be present as well. Additionally, the court may appoint a guardian ad litem or shall do so upon motion by one of the parents. [\[R.C. 3109.04\(B\)\]](#) Appellate courts differ on whether the interview should be recorded or not and the extent to which the court can disclose information revealed in an in camera interview.

Considerations:

- Age/competency/reasoning ability
- Timing of interview, interview procedure and skills
- Making a record
- Findings required when not in the best interest of the child to determine
- Is it "testimony"?
- Confidentiality, sealing, and right of access to record (varies among appellate districts)
- Any special accommodations or cultural/ethnic considerations

When interviewing children, courts should be mindful of age-appropriate interviewing techniques and where possible conduct interviews in a child-friendly environment. Judicial officers should weigh the potential harm from process (i.e., the emotional burden of public expression; value of being heard vs. putting child in center of battlefield).

Tools for Interviewing Children

- *Handbook on Questioning Children*, Anne Graffam Walker, ABA Center on Children and the Law edition, 3rd Ed. (2013)
- [Forensic Interviewing Protocol](#), State of Michigan Governor's Task Force on Children's Justice and Department Of Human Services, 4th Edition
- *Forensic Interviews of Children*, Nancy Walker, Law & Contemporary Problems [Vol. 65: No. 1 Page 149: Winter 2002]
- *Interviewing Children in Child Custody Cases*, Journal of the American Academy of Matrimonial Lawyers [Vol. 18: Page 295: 2002]

k. Parenting Orders

Sole Allocation of Parental Rights and Responsibilities

- One parent is designated the residential parent and legal custodian primarily. The court may allocate other rights and responsibilities between the parents for the care of the child, including but not limited to the support and continuing contact with the child for the non-residential parent. [\[R.C. 3109.04\(A\)\(1\)\]](#)
- When:
 - Neither parent requests shared parenting.
 - At least one parent requests shared parenting but no parent files a shared parenting plan.
 - At least one parent requests and files a shared parenting plan, but no shared parenting plan filed is in best interest of the child.
- Consider factors enumerated in [R.C. 3109.04\(F\)\(1\)](#).
- The parent not awarded the allocation of parental rights and responsibilities is the "parent who is not the residential parent," "parent who is not the residential parent and legal custodian," or "noncustodial parent." [\[R.C. 3109.04\(L\)\(3\)\]](#)
- The court has the power to separate and allocate decision-making domains in a sole parenting order (e.g., medical decisions to mother and educational decisions to father). [\[Sejka v. Sejka, 9th Dist. Medina No. 15CA0091-M, 2017-Ohio-2, Carr v. Carr, 12th Dist. Warren No. CA2015-02-015, 2016-Ohio-6986, Nicola v. Nicola, 11th Dist. Lake, No. 2014-L-057, 2015-Ohio-4017\]](#)

Shared Parenting

The court may allocate shared parenting upon a request by either or both parents. Both parents are awarded all or some of the aspects of physical and legal care of the child. [\[R.C. 3109.04\(A\)\(2\)\]](#)

- At least one parent must file a pleading or motion requesting shared parenting. The requesting parent must also file a shared parenting plan at least 30 days prior to the hearing unless the filing requirement is waived by the court. [\[R.C. 3109.04\(G\)\]](#)
- The court may order the other parent to file a shared parenting plan. [\[R.C. 3109.04\(G\)\]](#)
- Each parent is a "residential parent," "residential parent and legal custodian," or "custodial parent." [\[R.C. 3109.04\(L\)\(6\)\]](#) Caution: IRS conflict with use of term, "custodial parent." [\[R.C.](#)

[3109.04\(L\)\(7\)](#)

- The court may not create its own shared parenting order.

The Shared Parenting Plan [R.C. 3109.04\(G\)](#)

The Shared Parenting Plan must include:

- Physical living arrangements
- Child support obligations
- Provision for child's medical and dental care
- School placement
- Physical location of child during legal and school holidays, and other days of special importance

The court must follow provisions of [R.C. 3109.04\(D\)](#) to determine which shared parenting plan is in the best interest of the child.

- Consider the factors enumerated in [R.C. 3109.04\(F\)\(1\)-\(2\)](#) and approve the plan if it is in best interest of the child.
- Address all factors relevant to the care of the children (school placement, tax issues, receiving public assistance not affecting designation of each).
- Each plan is highly individualized and based upon what best meets the needs of the child.

The Parenting Time Order

The parenting time order must contain age and developmentally appropriate parenting time schedules. [R.C. 3109.051\(A\)](#); [R.C. 3109.051\(F\)\(2\)](#) The order should be detailed and clear, as ambiguity and insufficient detail create an opportunity for control and could lead to ongoing/increased conflict. The order will be read by multiple audiences (e.g., schools, service providers, etc.), including most likely another judicial officer in the future.

Content of Parenting Time Order

- Regular/school year schedule
- Holiday, vacation, school break, days of special importance schedule
- Scheduling, participation, and payment for school and extracurricular activities, conferences, activities
- Transportation duties, exchange locations, use of car seats, and other restrictions
- Communication between parent and child (telephone, email, video-teleconferencing, social networks, restrictions, specific times, unlimited, etc.)
- Communication between parents regarding children (telephone, email, online program (e.g., Our Family Wizard or Share Kids), through a third party, none, etc.)
- Necessary restrictions and limits to ensure safety (smoking/drug/alcohol use before or during parenting time, persons permitted to be present, removing children from county/state/country, passport access, etc.)
- Right to access of non-residential parent to records, daycare, school activities and restrictions to access [R.C. 3109.051\(H\)](#), [R.C. 3319.321\(B\)\(5\)\(a\)](#), [R.C. 3125.16](#), [R.C. 3319.321\(F\)](#), [R.C. 3109.051\(I\)](#)
- Notice of intent to relocate [R.C. 3109.051\(G\)](#), time of filing (consider timing beyond statutory

requirements)

- Must include child support provisions in divorce, annulment or legal separation order [[R.C. 3105.21](#)]; may include child support provisions in parentage time order [[R.C. 3111.13](#), [R.C. 3111.29](#)]
- Consider including mechanism for resolution of future disputes by non-adversarial dispute resolution process

Appellate Review of Parenting Orders [[R.C. 3109.04\(H\)](#)]

- Calendar priority
- “Handle it expeditiously”
- Standard of review: Abuse of discretion
- Parenting proceedings not stayed pending appeal

I. Modifying Parenting Orders

There is a rebuttable presumption in favor of retaining the existing determination. [[R.C. 3109.04\(E\)\(1\)\(a\)](#)]

Modify Existing Sole Residential Parent and Legal Custodian

- The court must find a change in circumstances of child or residential parent based on new facts arising since date of current parenting order or that were unknown to court at the time. [[R.C. 3109.04\(E\)\(1\)\(a\)](#); [Davis v. Flickinger, 77 Ohio St.3d 415 \(1997\)](#)]
- The court must find that a modification of the parenting orders is in the child’s best interest considering the factors listed in [R.C. 3109.04\(E\)\(1\)](#) in addition, the court must find one of the following: [[R.C. 3109.04\(E\)\(1\)\(a\)](#)]
 - Residential parent agrees to a change in the residential parent.
 - The child has become integrated into the family of the person seeking to become the residential parent.
 - The harm likely to be caused by change of environment is outweighed by advantages of change of environment to the child.
- In addition, the court may modify a prior parenting order that is not shared parenting to shared parenting if a shared parenting plan is submitted and the court finds that shared parenting is in child’s best interest. [[R.C. 3109.04\(D\)](#); [R.C. 3109.04\(E\)\(1\)\(b\)](#); [R.C. 3109.04\(F\)](#)]

Modify Shared Parenting Plan

- If the **Decree** of Shared Parenting states each parent is the residential parent and the parties will have shared parenting, the court must find a change of circumstances of a child or either parent, based on new facts arising since the date of the current parenting order or that were unknown to court at the time to modify the plan. [[R.C. 3109.04\(E\)\(1\)\(a\)](#); [Davis v. Flickinger, 77 Ohio St.3d 415 \(1997\)](#), [Fisher v. Hasenjager, 116 Ohio St.3d 53, 2007-Ohio-5589](#), [Braatz v. Braatz, 85 Ohio St.3d 40, 1999-Ohio-203](#), [Bruns v. Green, 163 Ohio St.3d 43, 2020-Ohio-4787](#)]
- If the parenting designation is in the **Shared Parenting Plan**, then a modification of the terms of the shared parenting plan must be based on a finding of what is in child’s best interest [[R.C. 3109.04\(B\)\(1\)](#) and factors listed in [R.C. 3109.04\(E\)\(1\)-\(2\)](#); [Fisher v. Hasenjager, 116 Ohio St.3d 53, 2007-Ohio-5589](#) [Bruns v. Green, 163 Ohio St.3d 43, 2020-Ohio-4787](#)]
- The court must find that a modification is in the child’s best interest and one of the following:

- Both parents agree to a change in the designation of the residential parent. However, in a shared parenting arrangement, each parent is the residential parent. [[R.C. 3109.04\(E\)\(1\)\(a\)\(i\)](#)]
- The child has become integrated into the family of the person seeking to become the residential parent. [[R.C. 3109.04\(E\)\(1\)\(a\)\(ii\)](#)]
- The harm likely to be caused by change of environment is outweighed by advantages of change of environment to the child [[R.C. 3109.04\(E\)\(1\)\(a\)\(iii\)](#)]
- Joint Motion to Modify Shared Parenting Plan [[R.C. 3109.04\(E\)\(2\)\(a\)](#)]
 - The court may approve the plan if in the child's best interest. [[R.C. 3019.04\(F\)](#)]
 - If not in the child's best interest, the court may reject the plan or make proposed modifications.
 - A modification can be made on the court's own motion or at the request of one/both parents if a modification is in child's best interests. [[R.C. 3019.04\(E\)\(2\)\(b\)](#)]

m. Termination of Shared Parenting Plan [[R.C. 3109.04\(E\)\(2\)\(c\)](#)]

- The court may terminate a shared parenting plan upon the request of either or both parents, or whenever the court finds that the plan is no longer in the child's best interest, unless there is a designation of residential parent in the order/decreed and not or in addition to the plan, or in addition to the language in the plan. [[R.C. 3109.04\(E\)\(2\)\(c\)](#); *Bruns v. Green*, 163 Ohio St.3d 43, 2020-Ohio-4787]
- The court may terminate the shared parenting plan if the parents attempt to make modifications and the court rejects the modifications as not being in the child's best interest. [[R.C. 3109.04\(E\)\(2\)\(a\)](#)]
- If the shared parenting plan is terminated, the court will proceed with issuing a modified parenting order as if no parenting order had ever been issued. [[R.C. 3109.04\(E\)\(2\)\(d\)](#)]
- Parent ordered for active military service [[R.C. 3109.04\(I\)](#)]
 - The military parent must notify other parent within three days of receiving notice.
 - Either parent may request expedited hearing to modify parenting order.
 - The court will hold hearing not later than 30 days from receipt of the application.
 - Do not modify order for parental rights and responsibilities unless there is a change of circumstances and modification is necessary to serve the child's best interest.
 - Past/present/future active military service will not constitute a change of circumstances.
 - The court may make temporary orders for duration of active military service.
 - The military parent may participate remotely.
 - The military parent will provide notice to other parent and court of the termination of active military service not later than 30 days from date service ends.

n. Proceedings Involving Non-Parents

Legal Custody to a Non-Parent

If a non-parent relative files a motion to intervene and a motion for custody, the court must first determine if the motion to intervene is appropriate. If so, legal custody may be awarded to the intervenor by agreement of the parties or by the court if it is in the child's "best interest" for neither parent to be designated the residential parent and legal custodian of the child.

The court may certify the matter to juvenile court if the court finds that the parents are unsuitable. The court may certify the record to juvenile court which has exclusive jurisdiction. Consent of the juvenile court is not required. [\[R.C. 3109.06; R.C. 3109.061; *In re Perales*, 52 Ohio St.2d 89 \(1977\); *In re Hockstok*, 98 Ohio St.3d 238, 2020-Ohio-7208\]](#)

The court shall consider:

- Abandonment
- Contractual relinquishment of custody
- Total inability to provide care or support
- Award of custody would be detrimental to child
- Finding of abuse, neglect, or dependency is a *de facto* finding of unsuitability

The requirement of "best interest" versus need to find "unsuitability" varies among districts.

Companionship/Visitation Rights to a Non-Parent If Parents Are/Were Married

A non-parent may file a motion to intervene and a motion for companionship or visitation. The person seeking companionship or visitation rights must be a grandparent, person related to child by consanguinity/affinity or any other person other than a parent and must have an interest in the welfare of the child. [\[R.C. 3109.051\(B\)\(1\)\]](#) If the court determines the motion to intervene is appropriate, the court may grant the companionship or visitation when it is in child's best interest. [\[R.C. 3109.051\(B\)\(1\)\(c\), R.C. 3109.051\(D\); *Troxel v. Granville*, 530 U.S. 57 \(2000\)\]](#)

The court has the discretion to conduct an *in camera* interview regarding the child's wishes and concerns; it may **not** consider the child's written or recorded statement or affidavit. [\[R.C. 3109.051\(C\)\]](#)

Companionship/Visitation Rights to Person If Parents Were Never Married

If the father has a final acknowledgment of paternity, the parents of the father and any relative of the father may file complaint for companionship or visitation. [\[R.C. 3109.12\(A\)\]](#) The court grants companionship or visitation when it is in child's best interest. [\[R.C. 3109.12\(B\), R.C. 3109.051\(D\)\]](#) The marriage or remarriage of either parent does not affect jurisdiction to award companionship or visitation rights to either parent's relatives. [\[R.C. 3109.12\(B\)\]](#)

o. Enforcing Parenting Time and Companionship/Visitation Orders

The court may make a finding of indirect civil contempt for interference with or failure to comply with parenting time or companionship/visitation orders with possible criminal penalties [\[R.C. 2705.02\(A\); R.C. 2705.031\(B\)\(2\)\]](#)

The court may impose the following:

- Sanctions
- Incarceration or fine
- Attorney fees and court costs [\[R.C. 3109.051\(K\)\]](#)
 - Cannot permit escrowing/impounding/withholding child support for violation of parenting time/companionship or visitation order. [\[R.C. 3109.05\(D\)\]](#)
- Purge Order
 - Reasonable compensatory time with child
 - Cannot be to comply with the existing order, with nothing more

- May be creative (e.g., attend parent education, compensatory driving to facilitate contact, pay cost of parenting evaluation or unrecoverable airfare, etc.)
- Not permitted to purge a past violation
- Imposition of sentence upon failure to purge: issue warrant to commit, alternatives to imposition, conduct another review hearing if there has been some effort or obstacle
- If it is impossible to make compensatory time, the court may decline to issue a purge order [[In re Howard, 12th Dist. Butler No. CA 2001-11-264, 2002-Ohio-5451](#)]

3. Parentage

a. Establishment of Parent/Child Relationship

“Parent/child relationship” is the legal relationship that exists between a child and the child’s natural or adoptive parents and others upon whom rights, duties, privileges, and obligations are imposed. [[R.C. 3111.01](#)]

- Maternity: The mother-child relationship.
- Paternity: The father-child relationship.

Maternity is established by:

- Proof that mother gave birth to the child [[R.C. 3111.02\(A\)](#)]
- A legal presumption as a result of embryo donation [[R.C. 3111.97\(A\)](#)]
- Judicial process [[R.C. 3111.01 - 3111.18](#)]
- Adoption [[R.C. Chapter 3107](#)]

Paternity is established by:

- Legal presumption as the result of marriage, unfinalized acknowledgment, artificial insemination, and embryo donation. [[R.C. 3111.03](#); [R.C. 3111.25](#); [R.C. 3111.95](#); [R.C. 3111.97](#)]
- Finalized acknowledgment [[R.C. 3111.25](#)]
- Administrative establishment [[R.C. 3111.38 - 3111.611](#)]
- Judicial process [[R.C. 3111.01 - 3111.18](#)]
- Adoption [[R.C. Chapter 3107](#)]

b. Central Paternity Registry (CPR)

- Operated by vendor under the Ohio Department of Job and Family Services – Office of Child Support Enforcement (ODJFS-OCSE).
- Must maintain birth registry that includes the following information from Acknowledgment of Paternity and administrative or judicial order: [[R.C. 3111.64](#)]
 - Names of parents of child
 - Name of the child
 - Resident address and social security number of each parent
- To contact the CPR: call 888-810-6446, you can fax requests to 614-985-0480 to see if an affidavit has been filed. [[Central Paternity Registry](#)]

c. **Putative Father Registry** [[R.C. 3107.062](#)]

- The registry is operated by a vendor under ODJFS. The registry does not establish paternity but serves as a mechanism for potential fathers to receive notice of future legal proceedings.
- Registration and searches of the registration can be found at: <https://pfr-pub.jfs.ohio.gov/>; (888) 313-3100; OhioPFR@jfs.ohio.gov.

Registration Process [[R.C. 3107.065](#)]

- The putative father must complete the prescribed registration form and submit it to the county department of job and family services.
- The registration form shall include putative father's name, the name of the mother of the person he claims as his child and the address or telephone number at which he wishes to receive notice of any petition that may be filed to adopt a minor he claims as his child. [[R.C. 3107.062](#), [R.C. 3107.11](#)]
- In order to preserve the requirement of his consent to an adoption, a putative father shall register before or not later than fifteen days after the birth of the child. No fee shall be charged for registration.
- Upon receipt of a completed registration form, the department shall indicate on the form the date of receipt and file the form in the putative father registry. The department shall maintain registration forms in a manner that enables it to access a registration form using either the name of the putative father or of the mother.
- ODJFS-OCSE and a CSEA may examine the putative father registry to locate an absent parent for the purpose carrying out its duties under the child and spousal support enforcement programs established under [R.C. Chapter 3125](#). Neither the office nor a CSEA shall use the information it receives from the registry for any purpose other than child and spousal support enforcement. [[R.C. 3111.69](#)]

d. **Establishment of Paternity by Mutual Acknowledgment** [[R.C. 3111.20-3111.35](#)]

Acknowledgment of Paternity is final and enforceable without court ratification when all the following occur: [[R.C. 3111.25](#)]

- Acknowledgment filed with [Office of Child Support](#);
- Information on the Acknowledgment is entered into the Birth Registry;
- Acknowledgment is not rescinded; and
- Acknowledgment is not subject to rescission.

Note: If an Acknowledgment is rescinded, a rebuttable presumption of paternity is created.

Effect of Final and Enforceable Acknowledgment [[R.C. 3111.26](#)]

- The child is considered born to acknowledging man "as though in lawful wedlock." There is no longer a presumption, and it cannot be rebutted.
- The father assumes parental duty of support.
- If the mother is unmarried, the father may request reasonable parenting time and the parents of mother and father, and any relative of mother and father may request reasonable companionship or visitation rights.

Administrative Rescission of Acknowledgment of Paternity [[R.C. 3111.27-3111.28](#)]

- Available to either signing parent.
- Court action is not required.
- Requirements:
 - Time limitation: Within 60 days from date of last signature on the Acknowledgment.
 - Rescinding parent must:
 - Request that the appropriate CSEA determine the parent-child relationship [[R.C. 3111.38](#)]
 - Give the Office of Child Support written notice that timely request has been made and include in notice the name of the CSEA conducting genetic tests to determine parent-child relationship
 - An administrative order must be issued determining whether there is a parent-child relationship.
- The request for rescission begins at CSEA and commences administrative paternity determination process. The parties must comply with genetic testing.

Judicial Rescission of Acknowledgment of Paternity [[R.C. 3111.28](#)]

A judicial rescission is a legal action to rescind a final and enforceable Acknowledgment of Paternity. The final Acknowledgment of Paternity may be “unfinalized” if successfully rescinded in court.

- Basis of action: fraud, duress, or material mistake of fact.
- Standing: The action may be brought by:
 - A man presumed to be the father of the child pursuant to [R.C. 3111.03](#) who did not sign the Acknowledgment
 - Either person who signed the Acknowledgment
 - A guardian or legal custodian of the child
- Time limitation: Challenges must be brought within one year after the acknowledgment becomes final and enforceable.
- An action to rescind is treated as an action to determine the existence or nonexistence of a parent and child relationship.
- Venue is appropriate in juvenile court or the domestic relations division that has jurisdiction under [R.C. 2301.03](#) to hear and determine cases under [R.C. Chapter 3111](#).

e. Establishment by Judicial Process and Order [[R.C. 3111.01-3111.18](#)]

Jurisdiction

- Subject Matter Jurisdiction (Concurrent): [[R.C. 3111.06](#)]
 - The action may be brought in juvenile court or other court with jurisdiction under [R.C. 2101.022](#) or [R.C. 2301.03](#) of the county in which child, child’s mother, or alleged father resides or is found.
 - If the alleged father is deceased, the action may be brought in the county in which proceedings for probate of the alleged father’s estate has been or can be commenced.
 - It may be brought in the county providing support to the child.

- An action to object to an administrative determination of parentage that has not become final may be brought only in the county of CSEA that made the determination.
- If an action for divorce, dissolution, or legal separation is filed, that court has original jurisdiction during pendency of action to determine the parent-child relation of a child presumed to be a child of marriage.
- **Personal Jurisdiction:** A person who has sexual intercourse in this state submits to jurisdiction of courts with respect to a child who may have been conceived by that act of intercourse.
 - May be acquired by any other method provided by [Rules of Civil Procedure](#)
 - May be acquired by service of summons outside state or by certified mail with proof of actual receipt
- **Continuing Jurisdiction:** To modify or revoke order, except that a court may specify that judgment or order for the purchase of an annuity may not be modified or revoked. [\[R.C. 3111.16\]](#)

Priority of Action

- The court must give priority to actions under [R.C. 3111.01-3111.18](#).
- The court must issue an order determining the existence or nonexistence of a parent-child relationship no later than 120 days after date on which the action brought.
- [Supreme Court of Ohio Reporting Forms](#) (Juvenile Form D – Column I and Domestic Relations Form B – Column J) specify a 12-month period for disposition of parentage actions.

When an Action May be Brought

- **Statute of Limitation/Defense:** No later than five years after child's 18th birthday. [\[R.C. 3111.05\]](#)
- If the action is brought during mother's pregnancy, stay contested proceedings, except: [\[R.C. 3111.04\]](#)
 - Service of process is not stayed.
 - Depositions to perpetuate testimony are not stayed.
- An administrative determination of existence or nonexistence of a parent-child relationship must precede court action. [\[R.C. 3111.381\]](#)
 - An administrative determination is not prerequisite:
 - If it is brought by the child's mother to request allocation of parental rights and responsibilities, payment of reasonable expenses of mother's pregnancy and confinement, or support of child.
 - If it is brought by a putative father to request allocation of parental rights and responsibilities.
 - If a probate proceeding commenced for deceased alleged father, the probate court has jurisdiction.
 - If divorce, dissolution, legal separation, or action to establish support has been filed, that court has jurisdiction under [R.C. 2151.231](#) and [R.C. 2151.232](#).
- A Title IV-D application must be delivered to the CSEA if the court requests that CSEA determine existence or nonexistence of parent-child relationship under these exceptions.

- The clerk of court must forward a copy of the complaint to CSEA in the county where the complaint was filed.



PRACTICE TIP:

Parentage determinations may be made in marital termination actions. This claim is most often presented as a separate count in the complaint, counterclaim, or petition.

Standing to Bring Action [\[R.C. 3111.04\]](#)

- Child or child's personal representative
- Child's mother or her personal representative
- Man alleged or alleging himself to be child's father, or alleged father's personal representative
- CSEA of county where child resides if child's mother, father, or alleged father is recipient of public assistance or Title IV-D services, including UIFSA action
- Any interested party may bring an action to establish a mother-child relationship

Necessary Parties [\[R.C. 3111.07\]](#)

- Natural mother
- Each man presumed to be father under [R.C. 3111.03](#)
- Each man alleged to be natural father
- Child, unless good cause shown
 - Counsel shall be appointed if the child's interests conflict with the mother's interests
 - A guardian ad litem and legal counsel may be appointed for the child. [\[Civ.R. 75\(B\)\(2\)\]](#)
- Notice of action pursuant to the [Rules of Civil Procedure](#) and opportunity to be heard must be given to:
 - Parties not subject to the jurisdiction of the court.
 - CSEA of county where action is brought.
- Any public agency or department may intervene for the purpose of collecting or recovering the support.

Proceedings

- These actions are governed by [Rules of Civil Procedure](#) unless a different procedure is specifically provided.
- A pretrial conference is required if the person against whom the action is brought does not admit existence or nonexistence of father-child relationship in his answer [\[R.C. 3111.11\]](#)
- Scheduled at a time set by the court.
- Matters to be addressed at pretrial conference:
 - Notice that each party may file a motion requesting genetic tests
 - Notice of right to retain counsel

- Time needed to obtain genetic testing or other evidence
- Required time parameters for disposition of an action
- Effect of the [Servicemembers Civil Relief Act](#)
- Temporary Support Order [[R.C. 3111.111](#)]: The court must issue a temporary support order requiring alleged father to pay temporary support to natural mother, or guardian or legal custodian of child upon its own or parties' motion.
 - The temporary order will remain in effect until a judgment is issued.
 - The court must order the person receiving support to repay alleged father if alleged father determined not to be natural father of child.
- Admission [[R.C. 3111.08](#)]: The court must enter a judgment if person against whom the action is brought admits in his answer the existence or nonexistence of father-child relationship.
- Default judgment is permitted: [[R.C. 3111.08](#)]
 - On oral or written motion
 - If the person against whom the action is brought fails to plead or otherwise defend against the action
 - Pursuant to the [Rules of Civil Procedure](#)
 - After hearing satisfactory evidence of truth of statements in complaint



PRACTICE TIP:

Pretrial conferences present the court with an early opportunity to order genetic testing when necessary. Speedy resolution of the parentage issue can often facilitate the parties' settlement negotiations and/or mediation efforts.

Evidence of Paternity or Non-Paternity [[R.C. 3111.10](#)]

- Sexual intercourse between mother and the alleged father at any possible time of conception
- An expert's opinion concerning statistical probability of alleged father's paternity, based upon duration of the mother's pregnancy
- Genetic test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity
 - Governed by [R.C. 3111.09](#)
 - The court may order genetic testing upon its own motion.
 - The court shall order genetic testing upon a party's motion.
 - If CSEA is not a party, the clerk of the court must schedule a test within 30 days after the court issues its order.
 - If CSEA is a party, CSEA must schedule test in accordance with ODJFS rules.
 - Failure to cooperate with order for genetic testing:

- If the action is brought by the alleged father and the mother willfully fails to submit to genetic testing or if mother is custodian of child and willfully fails to submit child to genetic testing, on alleged father's motion, the court must issue an order determining existence of parent-child relationship without genetic testing.
- If the action is brought by a mother or child's guardian or custodian and the alleged father willfully fails to submit himself to genetic testing or, if alleged father is custodian of child and willfully fails to submit the child to genetic testing, the court must issue an order determining the existence of a parent-child relationship without genetic testing.
- Failure is not willful if the party shows good cause for failing to submit to testing.

Judgment and Its Effects [\[R.C. 3111.13\]](#)

An order determining the existence or nonexistence of parent-child relationship is determinative for all purposes. The court must send the order to Central Paternity Registry (CPR) in ODJFS-OCSE. [\[R.C. 3111.66\]](#) CPR then sends the order to the [Ohio Department of Health](#) after entry in birth registry.

- The order must include full names, addresses, and social security numbers of mother and father, and full name and address of child unless the court has reason to believe that any person named in the order is a potential victim of domestic violence.
- The order must include provisions for payment of reasonable expert fees, and other costs, including genetic tests in proportions and at times determined by the court. [\[R.C. 3111.13, 3111.14\]](#)



PRACTICE TIP:

Courts should maintain a supply of HEA Form 3029 for parties to complete when settling or deciding parentage cases including orders changing the child's name and calling for a new birth record to be prepared. These items should be mailed to the Ohio Department of Health, Bureau of Vital Statistics, 4200 Surface Road, Columbus, Ohio 43228.

Courts may want to create and maintain form cover letters to include when directing an order or entry and completed HEA Form 3029 to the Central Birth Registry ordering preparation of a new birth record.

Judgment may include a support order if requested by a party, including:

- Payment of all or part of reasonable expenses for pregnancy confinement
- Orders pertaining to the duty of support
 - The support order may be for periodic payment.
 - In the best interest of the child, the court may order purchase of annuity in lieu of periodic payments if the purchase agreement provides for remaining principal to be transferred to the child upon attaining age of majority.
 - The court must follow provisions of [R.C. Chapters 3119, 3121, 3123, and 3125](#).
- Ordering support for time periods prior to adjudication or for pregnancy/confinement expenses (limitations, requirements, defenses):
 - Must consider all relevant factors, including monetary contribution for support either parent made prior to order
 - Must not require payment if:

- The child is over three years old at the time of filing, and
 - The alleged father had no knowledge and no reason to have knowledge of his alleged paternity
 - The mother may establish by [preponderance of the evidence](#) that father had or should have had knowledge of paternity by showing that she performed reasonable and documented effort to contact and notify him of his paternity.
- A party is entitled to obtain a modification of existing order for arrearages. [[R.C. 3111.13\(F\)\(3\)\(c\)](#); but see [Smith v. Smith, 109 Ohio St.3d 285, 2006-Ohio-2419](#) wherein R.C. 3111.13(F)(3) was declared unconstitutional as applied].
 - Enforcement of Support Order [[R.C. 3111.15](#)]
 - The obligation may be enforced in the same or other proceeding by mother, child, or public authority that furnished or is furnishing support.
 - The court may order payment to be made to the mother, clerk of court, or person or agency designated to administer order.
 - Willful failure to support is civil contempt.
 - Any person found in contempt for failure to comply with support order shall be ordered to pay court costs and reasonable attorney fees of an adverse party. [[R.C. 3111.13\(F\)\(1\)](#)]

The father may petition that he be designated the residential parent and legal custodian or for parenting time after an entry of judgment in the separate paternity proceeding. [[R.C. 3111.13\(C\)](#)]

If the parents are not married to each other, the father may file a complaint for reasonable parenting time, and grandparents or other relatives may file a complaint requesting reasonable companionship or visitation rights under [R.C. 3109.12](#).



PRACTICE TIP:

Some courts with domestic relations and parentage jurisdiction permit parties to file petitions for custody or parenting time in the same case as the initial parentage action was filed. Uniform Domestic Relations Form 23/Uniform Juvenile Form 2 provides for a complaint for parentage, to allocate parental rights and responsibilities, and parenting time in one action.

Pursuant to [R.C. 3111.13\(C\)](#), the court may determine the surname by which the child is to be known after establishment of the existence of the parent and child relationship upon a showing that the name determination is in the child's best interest. [[Bobo v. Jewell, 38 Ohio St.3d 330 \(1988\)](#); *In re Willhite*, 85 Ohio St.3d 28 (1999).]



PRACTICE TIP:

In *Bobo*, it directs courts to decide the child's surname applying a best interest standard. *Willhite* authorizes, if not encourages, courts to order hyphenated surnames in appropriate cases.

f. Legal Presumptions of Paternity – “A Legal Fiction” [[R.C. 3111.03](#)]

Paternity presumption is a legally recognized assumption of fact based upon other facts that a man is the father of a child.

Legal Theory and Rationale Behind the Development of Paternity Presumptions

- Common law: To promote legitimacy, protect family integrity and stability, preserve social order

and property rights.

- Developed at a time when paternity was historically difficult to prove because medical testing was not available and testimony regarding paternity was unreliable.
- Proof prior to genetic testing was based upon:
 - Testimony subject to cross-examination
 - Comparison of physical features and characteristics
 - Defense of impossibility: exploration of “access” or lack of “access” by impotence or absence
 - Expert opinion concerning time of conception

Three Primary Presumptions [R.C. 3111.03]

A man is presumed to be the natural father of a child if:

- Two presumptions related to marriage (roots in common law):
 - The child is born during the man’s marriage to mother, or within 300 days after the marriage is terminated (by death, annulment, divorce, dissolution), or after man and mother separate pursuant to a separation agreement.
 - The man and mother attempted marriage before the child’s birth, the marriage was solemnized in apparent compliance with state law, and the marriage is or could be declared invalid, if either of following applies:
 - Marriage can only be declared invalid by a court and child is born during marriage or within 300 days after termination of marriage (by death, annulment, divorce, dissolution); or
 - Attempted marriage is invalid without a court order and the child is born within 300 days after termination of cohabitation.
- Presumption related to acknowledging a child: Acknowledgment of Paternity Affidavit has been filed but has not become final pursuant to statute.
- Primary Presumptions are rebuttable.
 - Burden of proof: by clear and convincing evidence.
 - Must include the results of genetic testing [R.C. 3111.03(B)]
 - When presumptions conflict, the court must determine, based upon logic and policy considerations, which presumption controls. [R.C. 3111.03(B)]

Impact of Presumptions

- The paternity of most marital children is established by marital presumption.
- They may contribute to paternity fraud (i.e., impact on public benefits).
- There could also be social and medical consequences.

Other Presumptions (Maternal and Paternal)

Parentage of children born as result of artificial insemination, embryo donation, or surrogacy (response to 20th century technological changes in the ways a child can be conceived; not common law presumption)

- Artificial Insemination [R.C. 3111.88-3111.96]

- Statutory provisions are only applicable to non-spousal artificial insemination. [\[R.C. 3111.89\]](#)
- Must be performed by or supervised by a physician [\[R.C. 3111.90\]](#)
 - Physician must comply with [R.C. 3111.93](#).
 - Physician must maintain confidential record. [\[R.C. 3111.94\]](#)
- A woman who gives birth as result of artificial insemination is deemed the natural mother. [\[R.C. 3111.02\]](#)
- If a married woman gives birth as result of non-spousal artificial insemination consented to by husband, the husband is conclusively deemed the natural father. [\[R.C. 3111.95\(A\)\]](#)
- A sperm donor is conclusively deemed not to be the natural father. [\[R.C. 3111.95\(B\)\]](#)
- Embryo Donation [\[R.C. 3111.97\]](#)
 - A woman who gives birth as result of embryo donation is conclusively deemed the natural mother. [\[R.C. 3111.97\(A\)\]](#)
 - An embryo donor is not deemed a parent and has no parental responsibilities. [\[R.C. 3111.97\(D\)\]](#)
 - If a married woman gives birth as result of embryo donation consented to by husband, the husband is conclusively deemed to be the natural father. [\[R.C. 3111.97\(B\)\]](#)
 - If a married woman gives birth as result of embryo donation not consented to by husband [\[R.C. 3111.03\(A\)\(1\) or \(2\)\]](#), a presumption arises that the husband is the natural father but it may be rebutted [\[R.C. 3111.97\(C\)\]](#) by [clear and convincing evidence](#) that includes the lack of consent to embryo donation.
 - Other evolving science and changing policy/law.
- Surrogacy
 - Surrogacy, the collaborative process of pregnancy between intended parents and a surrogate carrier, who is impregnated through an embryo transfer, is not specifically part of the Ohio Revised Code. However, legal and properly drafted surrogacy agreements will be enforced in Ohio. Ohio courts are divided on how parentage may be established for children born as a result of surrogacy. Some courts will grant a pre-birth order, while other courts require the filing of a declaratory judgment of parentage immediately after the birth of the child.
 - A pre-birth order may be obtained any time after confirmation of the pregnancy and will allow the hospital to arrange for an original birth certificate which correctly lists the intended parents as legal parents.
 - A declaratory judgment of parentage may be issued immediately after a child is born to avoid confusion over birth records. Hospitals have a 10-day grace period before sending in the paperwork for a new birth certificate which should allow time for the declaratory judgment process to establish the intended parents as legal parents.
 - There are two types of surrogacy:
 - Traditional Surrogacy occurs when the surrogate's eggs are used, making her the biological mother of the child she carries.
 - Gestational Surrogacy occurs when the surrogate has no biological tie to the child she carries (e.g., in vitro fertilization).

- Parentage may be established in the county where the child, child's mother or the child's alleged father resides.



PRACTICE TIP:

A Complaint for Parentage should include affidavits from the Intended Parents, Surrogate Parent(s), a copy of executed Surrogacy Agreement, basis for venue, affidavit from medical specialist who performed the insemination, request to establish parent-child relationship with the Intended Parents, and a request to seal the record. The Decision/Judgment Entry Granting the Complaint will reference all these items to successfully establish parentage and order a birth record for the child.

g. **Relief from Paternity Determination** [[R.C. 3119.961-3119.967](#)]

Relief from paternity determination applies to a final judgment, court order, administrative determination, or order that determines if the person or male minor is the father of child. [[R.C. 3119.961](#)]

Procedure for Relief

- The process is independent of [Civ.R. 60\(B\)](#).
- A motion is filed in the division of the court of common pleas in the county in which an original judgment, court order or child support order was made, or administrative determination or order made.
- If the determination is based on an Acknowledgment that has become final, it must be filed in juvenile court or other court with jurisdiction of county in which person or child subject of acknowledgment resides.
- The court may transfer the case to the county of an adverse party if the location of original venue presents hardship.

The court must grant relief to person or male minor if:

- The court receives genetic test results from test administered no more than six months before filing that finds a zero percent probability of fatherhood.
- The person or male minor has not adopted the child.
- The child was not conceived as a result of artificial insemination in compliance with [R.C. 3111.88-3111.96](#).

The court must not deny relief if person or male minor did not know he was not the natural father at the time any of the following acts occurred, solely because of any of the following acts:

- He was required to support child by child support order.
- He validly signed the birth certificate as informant as provided in [R.C. 3705.09](#) as it existed prior to January 1, 1998.
- He was named in an Acknowledgment of Paternity of the child that a court entered upon its journal pursuant to former R.C. 2105.18, repealed in Am.Sub.H.B. No. 352, 147 Ohio Laws, Part II, 2606.
- He was named in an Acknowledgment of Paternity that has become final.
- He was presumed to be the natural father under [R.C. 3111.03](#) and certain divisions under former R.C. 3111.03.

- He was determined to be the father in a parentage action under [R.C. Chapter 3111](#).
- He otherwise admitted or acknowledged himself to be the child's natural father.

The court must not grant relief if it determined by [preponderance of the evidence](#) that a person knew he was not the natural father before any of the following:

- He was required to support child by child support order.
- He validly signed the birth certificate as informant as provided in [R.C. 3705.09](#) as it existed prior to January 1, 1998.
- He was named in an Acknowledgment of Paternity of the child that a court entered upon its journal pursuant to former R.C. 2105.18, repealed in Am.Sub.H.B. No. 352, 147 Ohio Laws, Part II, 2606.
- He was named in an Acknowledgment of Paternity that has become final.
- He was presumed to be the natural father under [R.C. 3111.03\(A\)\(3\)](#) as it existed prior January 1, 1998, or after that date but prior to March 22, 2001.
- He is presumed to be the natural father under [R.C. 3111.03\(A\)\(1\)-\(3\)](#).
- He otherwise admitted or acknowledged himself to be the child's natural father.

If relief from judgment is granted from an Acknowledgment that has become final, the court must order:

- The Acknowledgment be rescinded and destroyed; and
- ODJFS to remove all information related to the Acknowledgment from the birth registry.

Effects of Granting Relief from Judgment [\[R.C. 3119.964\]](#)

- The court must determine whether any orders granting companionship or visitation rights should be terminated, modified, or continued.
- The court may issue an order canceling support arrears.
- A person or male minor relieved from judgment may bring an action to recover support paid under the terminated child support order.
- Granting a motion for relief does not preclude any person from filing a subsequent action to establish a parent-child relationship between the same child and person or male minor granted relief. [\[R.C. 3119.965\]](#)
 - Only one such action per person/per two-year period
 - The court may determine the existence of parent-child relationship only if a genetic test is done after relief granted shows a statistical probability of the existence of a parent-child relationship.

4. Contempt

There are various types of contempt – criminal, civil, direct, and indirect. Criminal and civil contempt are distinguished by the sanction imposed and the purpose for imposing the sanction. Direct and indirect contempt are distinguished by the location of where the contempt occurred. Direct contempt takes place in the courtroom. An indirect contemptuous act takes place outside the presence of the court.

Criminal Contempt	Civil Contempt
There is a definite, punitive sentence such as a fine or term of imprisonment. A criminal contempt finding is meant to be punitive.	The contemnor is imprisoned or fined until purge is met by doing the act ordered by the court. A civil contempt finding is meant to be remedial.
Primary Interested Party: The dignity or process of the court.	Primary Interested Party: The benefit of the complainant in the underlying action.
Burden of Proof: Beyond a reasonable doubt.	Burden of Proof: Clear and convincing evidence.
	Intent: Willfulness not required
	Purge: Contemnor must be given opportunity to purge by complying with conditions set by the court. However, there are occasions when there is no way to “cure” the contemnor’s violation of the court order. In those situations, declining to issue a purge order is not an abuse of discretion. [In re Howard, 2002-Ohio-5451 ; In re A.A.J., 2015-Ohio-2222.]

a. Acts of Contempt in Court [\[R.C. 2705.02\]](#)

A person guilty of any of the following acts may be punished for contempt:

- Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or officer;
- Misbehavior of an officer of the court in the performance of official duties, or in official transactions;
- A failure to obey a subpoena duly served, or a refusal to be sworn or to answer as a witness, when lawfully required;
- The rescue, or attempted rescue, of a person or of property in the custody of an officer by virtue of an order or process of court held by the officer;
- A failure upon the part of a person recognized to appear as a witness in a court to appear in compliance with the terms of the person's recognizance;
- A failure to comply with an order issued pursuant to [R.C. 3109.19](#) or [R.C. 3111.81](#);
- A failure to obey a subpoena issued by the department of job and family services or a child support enforcement agency pursuant to [R.C. 5101.37](#); or
- A willful failure to submit to genetic testing, or a willful failure to submit a child to genetic testing, as required by an order for genetic testing issued under [R.C. 3111.41](#).



PRACTICE TIPS:

- Contemnors should be warned that they will be found in contempt if the conduct continues.
- Judges should be clear with their magistrates about how to proceed with direct contempt before the magistrate.
- Magistrates should do everything possible to avoid a finding of direct criminal contempt because that in and of itself will impede the hearing.

b. Civil Contempt: Direct [\[R.C. 2705.01\]](#)

Misbehavior in the presence of the court (or near the court) which obstructs the administration of justice. The court must have personal knowledge of the act. The sentence is remedial or coercive in nature (purge condition is given). The contemnor can purge the contempt by complying with the order of the court. This is a summary proceeding. Example of direct civil contempt: a party refuses to testify or refuses to stop talking.

Elements of Direct Civil Contempt include all the following:

- The doing of a forbidden act, or the failure to comply with an order of the court.
- The act impairs the authority or impedes the functioning of the court.
- The act must be committed in the immediate view and presence of the court.
- The contemnor is under a present duty to comply with the court's order, is in present violation of the court's order, and still has the ability to perform the act ordered by the court, or
 - It is still possible to grant the relief originally sought by the court order, or
 - It is still possible to restore order in the courtroom.

NOTE: If the contempt act occurred in front of a magistrate, the summary proceeding must be heard by a judge and not the magistrate.

c. Civil Contempt: Indirect [\[R.C. 2705.02\]](#)

The court's purpose for imposing sanctions is to restore the status quo. The act occurred outside the presence of the court. The court order must specify conduct to be performed on or before a date certain. A written pleading must be filed. Example: a party refuses to produce discovery.

Elements of Indirect Civil Contempt include all the following:

- The doing of a forbidden act, or the failure to comply with an order of the court.
- The moving party must establish that a court order exists, the contemnor had knowledge of the order, and the contemnor violated the order.
- The act must impair the authority or impede the functioning of the court.
- The contemnor is under a present duty to comply with the court's order, is in present violation of the court's order; and still has the ability to perform the act ordered by the court; or it is still possible to grant the relief originally sought by the court order.

Hearing

- A hearing is required.
- The alleged contemnor must be personally served with the summons of contempt, motion, show cause order/order to appear, and the hearing notice.
- The court may issue a warrant to secure the party's appearance or hold the accused in custody. The court cannot proceed with the contempt hearing if the alleged contemnor is not present and may issue a bench warrant if the alleged contemnor does not appear.
- The burden of proof is on the moving party. The standard is [clear and convincing evidence](#).
- Intent of the party accused is irrelevant.
- The court may only consider conduct that occurred prior to/on the date the motion was filed for the purpose of a contempt finding. An alleged contemnor must be afforded due process in a civil contempt proceeding.

- The alleged contemnor must have notice of the charges. If notice is not provided, the court cannot find the alleged contemnor in contempt. [[Fox v. Fox, 2015-Ohio-2728](#)]
- The sentence must have purge condition that can be met to avoid the penalty. (See below when court may decline to issue purge.)

NOTE: The imposition of sentence should be approved by a judge and not a magistrate. The magistrate may issue the Decision with a purge order or report to jail that occurs more than 14 days after the Decision is journalized to provide contemnor with meaningful opportunity to file objections.

d. **Direct Contempt in the Presence of a Magistrate – Contempt Order** [[Civ.R. 53\(D\)\(8\)](#)]

- Contempt sanctions under [Civ.R. 53\(C\)\(3\)\(f\)](#) may be imposed only by a written order that recites the facts and certified that the magistrate saw or heard the conduct constituting contempt.
- A contempt order shall be filed and copies provided forthwith by the clerk to the appropriate judge of the court and to the subject of the order.
- The subject of a contempt order may by motion obtain immediate review by a judge. A judge or the magistrate entering the contempt order may set bail pending judicial review of the order.
- [Civ.R. 53\(D\)\(8\)\(a\)](#) refers to [Civ.R. 53\(C\)\(2\)\(f\)](#) but the language in [Civ.R. 53\(C\)\(2\)](#) does not include any subsections. See instead [Civ.R. 53\(C\)\(3\)\(f\)](#) that refers to magistrates imposing appropriate sanctions for civil or criminal contempt committed in the presence of the magistrate.



Checklist for Civil Contempt Proceedings

In most cases, the judge who presided over the case that gave rise to the contempt charge may conduct the contempt proceedings. There is no right to jury trial.

- ☐ Determine that the affidavit accompanying the *ex parte* motion:
 - States with specificity factual allegations that will support a finding of contempt.
 - Contains the required verification by a person with personal knowledge of the facts alleged.
 - NOTE: In an appropriate case, the court may take judicial notice of its own records when initiating proceedings.
- ☐ Before issuing a bench warrant or an order to show cause, determine that the alleged conduct constitutes civil contempt.
- ☐ Conduct a pretrial hearing.
 - Ask the alleged contemnor how they wish to plead.
 - Set date for trial if necessary.
 - Determine the file contains a motion, affidavit, proof of service showing personal service, and a bench warrant or an order to show cause.
 - Inform the defendant of the charges, that the charge must be proven by a preponderance of the evidence, or that evidence of the alleged contempt must be “clear and unequivocal.”
 - Inform the alleged contemnor of the possible sanctions.
 - Inform the defendant that if indigent, the court may not jail the alleged contemnor unless counsel has been appointed and waived. Appoint counsel if required.
 - Set bond if defendant was arrested on a bench warrant.

- ☐ Conduct a nonjury civil trial at which the following procedures apply:
 - The alleged contemnor is given an opportunity to examine opposing witnesses and produce witnesses.
 - [Ohio Rules of Evidence](#) apply.
 - The contempt is proven by “clear and unequivocal” evidence.
- ☐ State your factual findings and conclusions of law on the record or in a separate written opinion. Include the following:
 - Facts that constitute contempt.
 - The standard of proof applied.
 - A conclusion as to how the contumacious conduct impaired the authority or impeded the functioning of the court.
 - The sanctions imposed.
 - The reasons for imposing the sanctions.
- ☐ If the alleged contemnor is found guilty, impose sanctions.
 - Definite term of jail of not more than 30 days for 1st offense; 60 days for 2nd offense; 90 days for 3rd offense
 - Fine of not more than \$250 for 1st offense; \$500 for 2nd offense; \$1,000 for 3rd offense
 - Costs and expenses of the proceedings
 - Damages to injured party, including attorney fees
- ☐ Sign and enter an order adjudging the contemnor guilty of civil contempt.
 - The order of commitment must specify that the jail term must end when the person performs the required act or duty, or no longer has the power to perform the act or duty, and pays the fine, costs, and expenses of the proceeding.

e. Contempt Actions for Failure to Pay Support or Comply with Parenting Order [\[R.C. 2705.031\]](#)

- A party who has a legal claim to any support ordered for a child, spouse, or former spouse may initiate a contempt action for failure to pay support.
- A party who is granted parenting time rights or visitation pursuant to [R.C. 3109.051](#), [R.C. 3109.12](#), or [R.C. 3109.11](#) may initiate a contempt action for failure to comply with, or interference with, the order or decree.
- In any contempt action initiated for failure to pay support or failure to comply with or interference with parenting time/visitation the court shall issue a summons and an order for the accused to appear.
- The summons must include all the following:
 - Notice that failure to appear may result in the issuance of an order of arrest, and in cases involving alleged failure to pay support, the issuance of an order for the payment of support by withholding an amount from the personal earnings of the accused or by withholding or deducting an amount from some other asset of the accused;

- Notice that the accused has a right to counsel, and that if indigent, the accused must apply for a public defender or court appointed counsel within three business days after receipt of the summons;
- Notice that the court may refuse to grant a continuance at the time of the hearing for the purpose of the accused obtaining counsel, if the accused fails to make a good faith effort to retain counsel or to obtain a public defender;
- Notice of the potential penalties that could be imposed upon the accused, if the accused is found guilty of contempt for failure to pay support or for a failure to comply with, or an interference with, a parenting time or visitation order or decree;
- Notice that the court may grant limited driving privileges under [R.C. 4510.021](#) pursuant to a request made by the accused, if the driver's license was suspended based on a notice issued pursuant to [R.C. 3123.54](#) by the child support enforcement agency and if the request is accompanied by a recent noncertified copy of a driver's abstract from the registrar of motor vehicles.
- If the summons and order to appear is served as required by the [Ohio Rules of Civil Procedure](#) and the accused fails to appear for the court-ordered hearing the court may order the attachment of the accused. [[R.C. 2705.031\(D\)](#)]
- The imposition of any penalty for contempt does not eliminate any obligation of the accused to pay any past, present, or future support obligation or any obligation of the accused to comply with or refrain from interfering with the parenting time or visitation order or decree. [[R.C. 2705.031\(E\)](#)]
- The court shall also have jurisdiction to make a finding of contempt for a failure to comply with, or interference with, a parenting time or visitation order or decree and to impose the penalties set forth in [R.C. 2705.05](#) in all cases in which the failure or interference is at issue even if the parenting time or visitation order or decree no longer is in effect.

f. Criminal Contempt: Direct [[R.C. 2705.01](#)]

Misbehavior occurs in the presence of the court (or near the court) which obstructs the administration of justice or impedes the hearing. Example: during trial, a party continuously speaks out of turn disrupting the proceeding.

The alleged behavior must:

- Require immediate punishment to preserve the court's authority;
- Take place in the presence of the judge in open court; and
- Obstruct the administration of justice by delaying, hindering, or influencing a pending case.

The court must have personal knowledge of the act. It can impose summary punishment. No charges are filed or notice of hearing is required. The Rules of Evidence do not apply. [[Evid.R. 101\(C\)\(4\)](#)] The sentence serves as punishment to vindicate the court and should be unconditional (no purge) and must be commensurate with the completed act of disobedience committed.

Elements of Direct Criminal Contempt include all the following:

- The willful doing of a forbidden act, or the willful refusal to comply with an order of the court;
- That impairs the authority or impedes the function of the court;
- Committed in the immediate view and presence of the court;

- Where the court seeks to punish misconduct that has altered the status quo ante so that it cannot be restored, or the relief sought by the original court order can no longer be obtained; and
- Order in the courtroom cannot be restored unless criminal contempt sanctions are used.



PRACTICE TIP:

Be aware of the case law in your district regarding contempt findings and the ability of a contemnor to purge the contempt.

g. Criminal Contempt: Indirect [[R.C. 2705.02](#)]

The court's purpose for imposing sanctions for indirect criminal contempt is to punish alleged contemnor for past misconduct and civil contempt remedies are inappropriate. The act must include all the following:

- Be a willful doing of a forbidden act or the willful refusal to comply with an order of the court;
- Impair the authority or impede the functioning of the court; and
- Be committed outside the immediate view and presence of the court.

Hearing [[R.C. 2705.03](#)]

- Written charges must be filed with the clerk of courts.
- The accused must be given an opportunity to be heard.
- The court may issue a warrant to secure the party's appearance or hold the party in custody. However, the court cannot proceed with contempt hearing if the alleged contemnor is not present. The court may issue a bench warrant based upon probable cause findings if the alleged contemnor is served with the motion and does not appear.
- Standard of Proof: [Beyond a reasonable doubt](#)
- Intent is an essential element.

Sentence

The sentence serves as punishment to vindicate the court and should be unconditional (no ability to purge). It must be commensurate with the completed act of disobedience committed.



Checklist for Criminal Contempt Proceedings

Different rules may apply in other cases, such as contempt proceeding on an alleged violation of a protection order. In most cases, the judge who presided over the case that gave rise to the contempt charge may conduct the contempt proceedings.

- ☐ Appoint the prosecutor.
- ☐ Determine that the affidavit accompanying the *ex parte* motion:
 - States with specificity factual allegations that will support a finding of contempt.
 - Contains the required verification by a person with personal knowledge of the facts alleged.
 - NOTE: In an appropriate case, the court may take judicial notice of its own records when initiating proceedings.
- ☐ Before issuing a bench warrant or an order to show cause, determine that the alleged conduct constitutes criminal contempt.

- The bench warrant or order to show cause must inform the defendant that they are charged with criminal contempt.

☐ Conduct a pretrial hearing.

- Determine the file contains a motion, affidavit, proof of service showing personal service, and a bench warrant or an order to show cause.
- Inform the defendant of the charges, that the charge must be proven “beyond a reasonable doubt,” and of the possible sanctions.
- Inform the defendant that if indigent, the court may not jail the respondent unless counsel has been appointed and waived. Appoint counsel if required.
- Ask defendant how they wish to plead.
- Set date for trial if necessary. The defendant must be given a reasonable opportunity to prepare a defense.
- Set bond if the defendant was arrested on a bench warrant.

☐ Conduct a nonjury criminal trial at which the following procedures apply:

- The alleged contemnor is given an opportunity to examine opposing witnesses and produce witnesses.
- [Ohio Rules of Evidence](#) apply.
- The privilege against self-incrimination applies.
- The prosecutor or special prosecutor proves “beyond a reasonable doubt” that defendant engaged in a willful disregard or disobedience of the authority or orders of the court.

☐ State your factual findings and conclusions of law on the record or in a separate written opinion. Include the following:

- Facts that constitute contempt.
- A finding that the defendant is guilty of criminal contempt “beyond a reasonable doubt.”
- A conclusion as to how the contumacious conduct impaired the authority or impeded the functioning of the court.
- The sanctions imposed.
- The reasons for imposing the sanctions.

☐ If the alleged contemnor is found guilty, impose sanctions.

- Definite term of jail of not more than 30 days for 1st offense; 60 days for 2nd offense; 90 days for 3rd offense.
- Fine of not more than \$250 for 1st offense; \$500 for 2nd offense; \$1,000 for 3rd offense.
- Costs and expenses of the proceedings.
- Damages to injured party, including attorney fees.

☐ Sign and enter an order adjudging the contemnor guilty of civil contempt.

h. Hearing Required for Contempt Proceedings [\[R.C. 2705.05\]](#)

- In all contempt proceedings the court must conduct a hearing.
- Prior to proceeding with an evidentiary hearing, the court must advise the alleged contemnor of the possible penalties and of their right to speak with counsel prior to the evidentiary hearing and that the alleged contemnor may be entitled to have counsel appointed if meet certain financial criteria.
 - Investigate the charge;
 - Hear any answer or testimony that the accused makes or offers; and
 - Determine whether the alleged contemnor's behavior rises to the level of contempt.
- If contempt is found the following penalties may be imposed:
 - 1st Offense: Fine of not more than \$250, a definite term of imprisonment of not more than 30 days in jail, or both
 - 2nd Offense: Fine of not more than \$500, a definite term of imprisonment of not more than 60 days in jail, or both
 - 3rd or Subsequent Offense: Fine of not more than \$1,000, a definite term of imprisonment of not more than 90 days in jail, or both
- Additional penalties if contempt is found:
 - All court costs arising out of the contempt proceedings against the person
 - Any reasonable attorney fees of the adverse party as determined by the court that arose in relation to the contempt
 - Interest on any unpaid amount of child support pursuant to [R.C. 3123.17](#)
 - Reasonable compensatory parenting time or visitation to the person whose right of parenting time or visitation was affected by the failure or interference if that parenting time or visitation is in the best interest of the child
 - The compensatory time must be included in the order issued by the court; and to the extent possible, the compensatory time shall be governed by the same terms and conditions as the missed time.

NOTE: Penalties for contempt of a Domestic Violence Civil Protection Order are governed by [R.C. 3113.31](#)

i. Judgment Final [\[R.C. 2705.09\]](#)

The judgment and orders of a court or officer made in cases of contempt may be reviewed on appeal. Appeal proceedings shall not suspend execution of the order or judgment until the person in contempt files a bond in the court rendering the judgment, or in the court or before the officer making the order, payable to the state in an amount fixed by the reviewing court, conditioned that if judgment is rendered against such person he will abide by and perform the order or judgment.

j. Family Law Related Contempt Statutes

- [R.C. 2151.34: Protection order against a minor](#)
- [R.C. 2705.031: Initiating contempt action for failure to pay support or comply with visitation order](#)
- [R.C. 2705.05: Hearings for contempt proceedings](#)

- [R.C. 2903.214: Petition for protection order in menacing by stalking cases](#)
- [R.C. 3105.18: Awarding spousal support - modifications of spousal support](#)
- [R.C. 3105.21: Order for disposition, care and maintenance of children](#)
- [R.C. 3109.05: Child support determinations](#)
- [R.C. 3109.051: Parenting time, companionship or visitation rights](#)
- [R.C. 3111.13: Judgment or order](#)
- [R.C. 3113.04: Sentence suspended upon posting bond](#)
- [R.C. 3113.31: Domestic violence definitions; hearings](#)
- [R.C. 3119.44: Contempt](#)
- [R.C. 3119.45: Previous finding of contempt](#)
- [R.C. 3119.69: Notice that willful failure to comply with court order is contempt of court](#)
- [R.C. 3121.371: Contempt for failure to comply with withholding order](#)

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Domestic Relations Resource Guide - Section I: Substantive Law

E. Special Issues

1. Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) [[R.C. Chapter 3127](#)]

a. Jurisdiction

- Custody jurisdiction is an issue of subject matter jurisdiction. [[Rosen v. Celebrezze, 117 Ohio St.3d 241, 2008-Ohio-853](#)]
- Questions regarding proper jurisdiction must be given calendar priority. [[R.C. 3127.06](#)]
- A party's presence in the state for purposes of custody proceeding is itself not sufficient to confer personal jurisdiction for other matters. [[R.C. 3127.08](#)]

Basis for Custody Jurisdiction

1. Home State [[R.C. 3127.15\(A\)\(1\)](#)]

- Child resides in the state for at least six months *preceeding* the commencement of the custody proceeding. [[Rosen v. Celebrezze, 117 Ohio St.3d 241, 2008-Ohio-853.](#)]
- Child or at least one parent must still be physically present in state.

2. Declines Jurisdiction [[R.C. 3127.15\(A\)\(2\)](#)]

- No home state; *or*
- Home state has declined to exercise jurisdiction on the basis that Ohio is a more appropriate forum; and both
 - Child and at least one parent have connection to Ohio beyond mere physical presence, and
 - Substantial evidence of child's care, protection, training, and personal relationships exists in Ohio.

3. Convenient Forum [[R.C. 3127.15\(A\)\(3\)](#)]

- All courts otherwise having jurisdiction under home state or declination jurisdiction have declined to exercise jurisdiction on the basis that Ohio is the more appropriate forum.

4. No other court has jurisdiction [[R.C. 3127.15\(A\)\(4\)](#)]

- Safety net

Temporary Emergency Jurisdiction [[R.C. 3127.18](#)]

This only applies if the child has been abandoned or it is necessary to protect the child because the child, parent, or sibling was threatened with mistreatment or abuse.

- The duration of emergency jurisdiction depends on whether an enforceable custody determination already exists.
 - If no prior custody determination exists: [[R.C. 3127.18\(B\)](#)]
 - Jurisdiction lasts until an order is issued in court having jurisdiction.

- If an Ohio order specifically states, the Ohio order becomes the final custody determination if no action is commenced in a state having jurisdiction, and Ohio becomes the home state.
- If a prior enforceable custody determination exists: [\[R.C. 3127.18\(C\)\]](#)
 - The Ohio order must set forth an adequate period within which to obtain an order from the foreign court.
 - The Ohio order remains in effect until the foreign order is obtained or the stated period expires.
- If the Ohio court becomes aware of another court having jurisdiction, the Ohio court must communicate with the other court and attempt to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order. [\[R.C. 3127.18\(D\)\]](#)

Exclusive, Continuing Jurisdiction [\[R.C. 3127.16\]](#)

The court which enters a controlling custody determination retains exclusive, continuing jurisdiction until it relinquishes jurisdiction or a court (Ohio or foreign) determines that the child and both parents “do not presently reside” in that state.

b. Modification/Existence of Foreign Orders

The Ohio court may not modify a prior foreign custody determination unless Ohio has jurisdiction to make an initial custody determination and one of following applies:

- The foreign court determines: [\[R.C. 3127.17\(A\)\]](#)
 - It doesn’t have exclusive, continuing jurisdiction; *or*
 - Ohio is a more convenient forum under [R.C. 3127.21](#).
- The Ohio court or foreign court determines that the child and both parents “do not presently reside” in the foreign state. [\[R.C. 3127.17\(B\)\]](#)
- Exception: temporary emergency jurisdiction

c. Enforcement of Foreign Custody Orders [\[R.C. 3127.37\]](#)

If the Ohio court enforcing a foreign custody order determines there is a proceeding to modify the order sought to be enforced, it shall immediately communicate with the foreign court.

d. Proceedings Pending in Court of Another State Having Jurisdiction [\[R.C. 3127.20\]](#)

The Ohio court may not proceed if there is a custody action pending in a foreign state at the time of commencement of Ohio action. The Ohio court must stay the action and communicate with the foreign court.

e. Inconvenient Forum [\[R.C. 3127.21\]](#)

Ohio court may decline to exercise jurisdiction “at any time” if it determines it is an inconvenient forum. The issue may be raised by either party, on the court’s own motion, or at the request of the foreign court. [\[R.C. 3127.21\(A\)\]](#) If the Ohio court finds it is an inconvenient forum, the court shall stay proceedings on basis that custody proceedings are “promptly commenced” in the designated state. [\[R.C. 3127.21\(C\)\]](#)

Procedure [\[R.C. 3127.21\(B\)\]](#)

The Ohio court shall allow the parties to submit information and consider all relevant factors. There is no requirement that the court hold a hearing. [\[Martindale v. Martindale, 2016-Ohio-254; Kemp v. Kemp, 5th Dist. Stark No. 2010-CA-00179, 2011-Ohio-177; Esaw v. Esaw, 2003-Ohio-3485\]](#)

Relevant Factors (include but are not limited to):

- Whether domestic violence has occurred and is likely to continue

- Length of time the child has resided outside of the state
- Distance between courts
- Relative financial circumstances of the parties
- Any agreement of the parties as to which state should assume jurisdiction
- Nature and location of evidence required to resolve the pending litigation
- Ability of each court to decide the issue expeditiously
- Familiarity of each court with the facts and issues in the pending litigation

f. Unjustifiable Conduct [[R.C. 3127.22](#)]

Unjustifiable conduct constitutes conduct by a parent or that parent's surrogate that attempts to create jurisdiction in Ohio by removing the child from the child's home state, secreting the child, retaining the child, or restraining or otherwise preventing the child from returning to the child's home state in order to prevent the other parent from commencing a child custody proceeding in the child's home state. [[R.C. 3127.22\(D\)](#)]

If the Ohio court has jurisdiction *because* the person seeking to invoke jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise jurisdiction unless one of the following: [[R.C. 3127.22\(A\)](#)]

- The parents agree Ohio should exercise jurisdiction;
- The foreign court otherwise having proper jurisdiction determines Ohio is the more convenient forum; *or*
- No other court would have jurisdiction.

If the Ohio court declines jurisdiction on basis of unjustifiable conduct, the court may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct including staying the proceeding until a child custody proceeding is commenced in other state. [[R.C. 3127.22\(B\)](#)]

If proceedings are stayed or dismissed, the court shall assess against the party having engaged in unjustifiable conduct necessary and reasonable expenses unless the party establishes that the assessment would be clearly inappropriate. [[R.C. 3127.22\(C\)](#)]

- Expenses" include costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and childcare during the course of the proceedings.

g. Registration of Foreign Orders

- May register the foreign order with or without simultaneous request for enforcement.
- The Ohio court may register foreign custody determination upon receipt of: [[R.C. 3127.35\(A\)](#)]
 - A letter or other document requesting that the child custody determination be registered;
 - Two copies, including one certified copy, of the determination sought to be registered;
 - A statement under penalty of perjury that, to the best of the knowledge and belief of the person seeking registration, the order has not been modified.
- The name and address of each of the following in connection with the order sought to be registered:
 - The person seeking registration

- Any parent who is designated the residential parent and legal custodian of the child
- Any parent who is to have parenting time with respect to the child
- Any person acting as a parent who has been awarded custody or visitation
- Advance deposit or fee
- Upon receipt of above materials, the court shall file custody determination (with one copy of any accompanying documents and information) as a foreign judgment and serve notice of registration request on the named persons. [\[R.C. 3127.35\(B\)\]](#)
- The notice shall include that:
 - The registered child custody determination is enforceable as of the date of the registration in the same manner as a child custody determination issued by a court of this state;
 - A hearing to contest the validity of the registered determination must be requested within thirty (30) days after service of notice;
 - The failure to contest the registration shall result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.
- The court shall provide named persons an opportunity to contest registration.

h. Confirmation of Registered Order

- The court shall confirm the registration of a foreign order *unless* party contesting establishes one of the following: [\[R.C. 3127.35\(D\)\]](#)
 - The issuing court did not have jurisdiction.
 - The order sought to be registered has been vacated, stayed, or modified.
 - The person contesting registration was entitled to but did not receive notice of the child custody proceeding for which registration is sought.
- If there is **no timely contest** to registration, the registration is **confirmed as a matter of law**. [\[R.C. 3127.35\(E\)\]](#)
- The confirmation of a registered order precludes further contest of any matter which could have been asserted. [\[R.C. 3127.35\(F\)\]](#)

[1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents \(Apostille Convention\)](#)

- Countries which are members of the Apostille Convention must accept foreign documents containing an apostille as authentic. ("Apostille" is effectively the international version of a certified copy.)
- The United States is member to this Convention.
- In Ohio, the [Secretary of State](#) is the authorized entity to issue apostilles.

i. Enforcement of Foreign Custody Orders [\[R.C. 3127.36\]](#)

- The court shall recognize and enforce foreign orders if they are entered by a court with proper jurisdiction *and* have not been modified. [\[R.C. 3127.33\(A\)\]](#)

- The court may use any remedy available at law to enforce foreign order, including remedies set out in [R.C. 3127.31 to 3127.47](#).
- Temporary enforcement when Ohio lacks jurisdiction to modify a foreign order [\[R.C. 3127.34\]](#)
- Limited to parenting time/visitation orders (including those lacking a specific schedule)
- The court may enforce Hague Return Orders as if they were a child custody determination. [\[R.C. 3127.32\]](#)

Procedure [\[R.C. 3127.38\]](#)

Petition for enforcement shall:

- Be verified;
- Include original or certified copies of all orders sought to be enforced;
- State jurisdictional basis, if any, of the court issuing the foreign order;
- State whether the order sought to be enforced has been vacated, stayed, or modified (and case information, if applicable);
- Include any commenced proceeding that could affect the current proceeding (i.e., enforcement, domestic violence, adjudication of child as abused/neglected/ dependent, termination of parental rights, adoption) and case information (if applicable);
- State the present physical address of the child and the respondent, if known;
- State whether relief in addition to the immediate physical custody of the child and attorney's fees is sought; and
- State the date and place of registration and confirmation of foreign order, if any.

Upon the filing of the petition, court shall order the respondent to appear in person with or without the child at a hearing. The hearing must be held on the next judicial day after service of the order (or if impossible, on the first judicial day possible).

- The order must include time and place of the hearing and advise the respondent that the court will order that the petitioner may take immediate physical custody per [R.C. 3127.40](#) and that the respondent pay fees, costs, and expenses unless respondent establishes:
 - The foreign order has not been registered and confirmed but the issuing court lacked jurisdiction, the order was vacated, stayed, or modified, or the respondent was not given notice.
 - The foreign order has been registered and confirmed *but* has been vacated, stayed, or modified.

Attorney Fees and Expenses [\[R.C. 3127.42\]](#)

The court shall award reasonable and necessary expenses to the prevailing party in an action to enforce a foreign custody order unless the losing party establishes that the award would be clearly inappropriate.

- "Expenses" include costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and childcare during the course of the proceedings.

j. **Full Faith and Credit** [\[R.C. 3127.43\]](#)

The Ohio court shall afford full faith and credit to foreign custody orders *unless* foreign order has been stayed, vacated, or modified.

k. International Jurisdiction

The UCCJEA expressly treats foreign countries “as if they are states.” [R.C. 3127.04] The United States is a signatory to 1996 Hague Convention on the Protection of Children but [it is not in force](#).

l. International Child Abduction

*Child Abduction Risk Factors*¹

- “Red flag” indicators of abduction risk: there may be an increased likelihood of an abduction if a parent has:
 - Previously abducted the child;
 - Threatened to abduct the child;
 - No strong ties to the child’s home state;
 - Friends or family living out of state or in another country;
 - A strong support network in another country;
 - No job, is able to work anywhere, or is financially independent — in other words is not tied to the area for financial reasons;
 - Engaged in planning activities such as quitting a job; selling a home; terminating a lease; closing a bank account or liquidating other assets; hiding or destroying documents; applying for a passport, birth certificates, school or medical records; or undergoing plastic surgery;
 - A history of marital instability, lack of cooperation with the other parent, domestic violence or child abuse; or
 - A criminal record.
- Six personality profiles of abductors may indicate an increased likelihood of an abduction:
 - Profile 1: Parents who have threatened to abduct or have abducted previously
 - Profile 2: Parents who are suspicious or distrustful because of their belief that abuse has occurred and who have social support for their belief
 - Profile 3: Parents who are paranoid delusional
 - Profile 4: Parents who are severely sociopathic
 - Profile 5: Parents who have strong ties to another country and are ending a mixed-culture marriage
 - Profile 6: Parents who feel disenfranchised from the legal system and have family and social support in another community

Additional Resources

- ✓ [OJJDP Reports: *Early Identification of Risk Factors for Parental Abduction* \(NCJ 185026\)](#)
- ✓ [Family Abductors: Descriptive Profiles and Preventive Interventions \(NCJ 182788\)](#)

Treaties and U.S. Legislation

- [1980 Hague Convention on the Civil Aspects of International Child Abduction](#)
 - Effectively a “forum selection” mechanism with a strong “return” remedy. This can be thought of as an international version of the UCCJEA relative to forum but with much stronger

deterrent and remedial aspects.

- 101 countries have ratified or acceded to the Convention as of 2022.
- The Convention must be in force in both countries at issue to be applicable.
- [International Child Abduction Remedies Act \[22 U.S. Code 9001 et seq.\]\(ICARA\)](#)
 - Provides concurrent original jurisdiction in both federal and state courts. [\[22 U.S.C. 9003\(a\)\]](#)
 - Relaxes evidentiary standards for materials submitted in connection with a return petition. [\[22 U.S.C. 9005\]](#)
 - Provides presumptive award of fees/expenses to prevailing petitioner unless clearly inappropriate. [\[22 U.S.C. 9007\(b\)\(3\)\]](#)
- [Sean and David Goldman International Child Abduction Prevention and Return Act \[22 U.S. Code 9101 et seq.\]\(ICAPRA\)](#)
 - Augments ICARA.
 - Requires the U.S. State Department to issue reports as to the compliance statuses of member countries.
- [International Parental Kidnapping Crime Act of 1993 \[18 U.S.C. 1204\]](#)
 - It is a federal crime to remove a child younger than 16 from the United States, attempt to do so, or retain a child (who has been in the United States) outside the United States with the intent to obstruct the lawful exercise of parental rights.

Hague Convention and ICARA Remedies

- Both have “return” and “access” provisions.
- These are most commonly associated with a return remedy. The return remedy is not available under ICARA for access violations.
- Prima facie case for a mandatory return order:
 - Once a child reaches age 16, the Convention no longer applies.
 - Child is a “habitual resident” in a member nation immediately prior to removal/retention. “Habitual residence” is not defined by the Convention *but* is a pivotal basis for its operation. It is determined by a totality of the circumstances test.
 - [Monasky v. Taglieri, 140 S.Ct. 719 \(2020\)](#)
 - Mixed question of law and fact, but “barely so”
 - Fact-driven inquiry must be “sensitive to the unique circumstances of the case and informed by common sense.”
 - Historical perspectives in US case law
 - Acclimatization of child to a location prior to wrongful removal/retention: See, e.g., [Friedrich v. Friedrich, 983 F.2d 1396 \(6th Cir. 1993\)](#); [Robert v. Tesson, 507 F.3d 981 \(6th Cir. 2007\)](#) (refines *Friedrich*).
 - Shared parental intent to change habitual residence: See, e.g., [Mozes v. Mozes, 239 F.3d 1067 \(9th Cir. 2001\)](#).

- Hybrid of acclimatization/parental intent or totality of circumstances: *See, e.g., Gitter v. Gitter*, 396 F.3d 124, 132-33 (2nd Cir. 2005); *Feder v. Evans-Feder*, 63 F.3d 217, 224 (3d Cir. 1995); *Redmond v. Redmond*, 724 F.3d 729 (7th Cir. 2013); *Sorenson v. Sorenson*, 559 F.3d 871, 874 (8th Cir. 2009).
- “Wrongfully” removed to or retained in another member nation.
 - “Wrongfulness” = in violation of the left-behind parent’s “rights of custody” as **determined by the law of the child’s habitual residence**
 - No *mens rea* requirement
 - “Rights of custody” may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of habitual residence
 - “Rights of custody” are not necessarily coterminous with legal custody as understood in the U.S.
 - Per the Convention itself, includes at minimum the right to determine where the child resides (in the world) [[Hague Convention Article 5\(a\)](#)]
 - “Ne exeat” right (i.e. common law right of a parent to object to the expatriation of a child) sufficient to qualify as “right of custody” [[Abbott v. Abbott](#), 560 U.S. 1 (2010)]
- If the petition is brought within one year of removal or retention, the petition must actually be filed in U.S. court to stop the clock.
- If the petition is brought less than one year from removal/retention, return is mandatory (absent an applicable exception/defense).
- If the petition is brought more than one year from removal/retention, a return order is not mandatory.
- Equitable tolling does not apply to Convention cases. [[Lozano v. Montoya-Alvarez](#), 134 S.Ct. 1224 (2014)]
- Exceptions/Defenses
 - There is no actual exercise of rights of custody. [[Hague Convention Article 13\(a\)](#)] The parent seeking return was not actually exercising rights. This is a low bar.
 - The left behind parent either consents to the removal or retention after the fact, or otherwise acquiesces (in words or conduct) to the alleged wrongful conduct/the child remaining where they are. [[Hague Convention Article 13\(a\)](#)]
 - If more than one year has elapsed from removal/retention, the return order is still presumed to be issued. The court is permitted to deny return if the child is now “well settled.” [[Hague Convention Article 12](#)]
 - If the return would result in child being exposed to a grave risk of harm: [[Hague Convention Article 13\(b\)](#)]
 - The harm can be physical or psychological
 - Issue of fact
 - Ameliorative measures/undertakings generally, only applies *after* a finding that a grave risk of harm exists.

- Trial courts have discretion to decline to order a return outright *or* to fashion measures to ameliorate the risk of harm upon return.
- Trial court may decline to consider ameliorative measures that have not been raised by the parties, are unworkable, draw the court into determinations properly resolved in custodial proceedings, or risk overly prolonging return proceedings. [[Golan v. Saada, 596 U.S.](#) 142 S.Ct. 1880, 213 L.Ed.2d 203 (2022)]
- The denial of fundamental rights and freedoms is determined under the law of the requested nation. [[Hague Convention Article 20](#)] There is very little case law either in the United States or internationally. It is rare.

Conducting Hearings for Return

- Return petitions are to be handled “expeditiously.” The Convention contemplates resolution within six weeks. [[Hague Convention Article 11](#)]
- There is no need to authenticate materials submitted in connection with the petition. [[22 U.S.C. 9005](#)]
- Certain cases might be amenable to resolution without an evidentiary hearing. There is no inherent right to a hearing. [See [March v. Levine, 249 F.3d 462 \(6th Cir. 2001\)](#)] Summary judgment can be appropriate. Use discretion when considering this method.

Burdens of Proof

- Prima facie case: [Preponderance of the evidence](#). [[22 U.S.C. 9003\(e\)\(1\)\(A\)](#)]
- Defenses/exceptions: [[22 U.S.C. 9003\(e\)\(2\)](#)]
 - [Preponderance of the evidence](#) – consent/acquiescence, delay
 - [Clear and convincing](#) – grave risk, denial of fundamental rights/freedoms

Miscellaneous

- Compliance with the return order does not moot appeal regarding same. [[Chafin v. Chafin, 568 U.S. 165 \(2013\)](#)]

Additional Resources

- ✓ [Hague Conference on Private International Law](#)
- ✓ [International Child Abduction Database \(INCADAT\)—case law](#)
- ✓ [US State Department](#)
- ✓ [Passport issuance alert program](#)
- ✓ [Stopping an abduction in progress](#) [1-888-407-4747; [PreventAbduction1@state.gov](#)]
- ✓ [National Center for Missing and Exploited Children \(NCMEC\)](#)

2. UIFSA

Uniform Interstate Family Support Act (“UIFSA”)

UIFSA establishes a process for enforcing and modifying a child support order issued by another state or country. [[R.C. 3115.101](#) through [R.C. 3115.903](#)] There are several provisions in [R.C. Chapter 3115](#) that apply to the registration and/or enforcement of support orders from foreign countries who are members of the Hague Convention pursuant to the [Hague Treaty provisions](#).

a. *Jurisdiction*

In a proceeding to establish or enforce a child support order or to determine parentage, a court or support enforcement agency may exercise personal jurisdiction over a nonresident individual if any of the following apply: [\[R.C. 3115.201\(A\)\]](#)

- The individual is personally served with summons within the State of Ohio;
- The individual submits to jurisdiction in Ohio by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- The individual resided with the child who is the subject of the support proceedings in Ohio;
- The individual resided in Ohio and provided prenatal expenses/support for the child;
- The child resides in Ohio as a result of the acts/directives of the individual;
- The individual engaged in sexual intercourse in Ohio and the child may have been conceived by that act of intercourse;
- The individual asserted parentage in the putative father registry maintained by the Ohio Department of Job and Family Services;
- Any other basis consistent with the Ohio or U.S. Constitutions for the exercise of personal jurisdiction.

Personal Jurisdiction

The bases for personal jurisdiction stated above are not sufficient to acquire personal jurisdiction to modify a support order from another state unless the court finds either of the following: [\[R.C. 3115.201\(B\); R.C. 3115.611\(A\)\]](#)

That all the following are met:

- neither the child, the obligee (individual), nor the obligor (individual) resides in the issuing state;
- the petitioner who is a nonresident of Ohio seeks modification; and
- the respondent is subject to personal jurisdiction in Ohio.

OR

That Ohio is the residence of the child, or of a party (individual) subject to personal jurisdiction in Ohio, and all of the parties (individuals) have filed consents in the issuing state allowing Ohio to modify the support and assume continuing, exclusive jurisdiction.

Ohio may not modify any part of a support order that may not be modified under the law of the issuing state, including duration of the support order. [\[R.C. 3115.611\(C\)-\(D\)\]](#)

If a support order from Ohio is modified by a court or agency in another state that assumed jurisdiction under its UIFSA, then the Ohio court: [\[R.C. 3115.612\]](#)

- May enforce its order only as to arrears and interest accruing before the modification by the other state;
- May provide appropriate relief for violations of the order that occurred prior to the effective date of the modification by the other state;
- Shall recognize the modified order of the other state, upon registration, for the purpose of enforcement.

If all the parties to the support order reside in Ohio and the child does not reside in the state that issued the support order, then Ohio has jurisdiction to enforce and to modify the support order from the issuing state in a proceeding to register that order. [[R.C. 3115.613\(A\)](#)]

b. *Registration of an Order for Enforcement* [[R.C. 3115.601-608](#)]

A support order or income-withholding order issued in another state or a foreign support order may be registered in Ohio for enforcement by filing the documents and records listed in [R.C. 3115.602\(A\)](#) to the court where the movant seeks to register the order. A pleading seeking additional relief may be filed at the same time as the request for registration or filed later. If there are two or more orders in effect, the movant must furnish a copy of every support order asserted to be in effect, specify the order alleged to be the controlling order, and specify the amount of the consolidated arrearage. The movant must give notice to each party whose rights may be affected by the determination. [[R.C. 3115.602](#)]

When the support order or income-withholding order is registered, the court must notify the non-moving party. The notice must be accompanied by a copy of the registered order, documents, and other relevant information. The notice must inform the non-moving party of the following: [[R.C. 3115.605\(B\)](#)]

- A registered support order is enforceable as of the date of registration in the same manner as an order issued by Ohio;
- That a hearing to contest the validity or enforcement of support order from another state must be requested within 20 days after notice [[R.C. 3115.605\(B\)\(2\)](#)];
- That a hearing to contest the validity or enforcement of the registered convention support order [[R.C. 3115.707\(C\)](#)] must be requested within 30 days after notice unless the order is from a foreign country participating in the Hague Convention. If the person contesting the order does not reside in the United States, then a hearing must be requested within 60 days after notice [[R.C. 3115.707](#)];
- Failure to contest the validity or enforcement in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages; and
- The amount of any alleged arrearages.

c. *Contesting the Support Order*

- If the non-moving party fails to contest the validity or enforcement of the registered support order in a timely manner, the order is confirmed by operation of law. [[R.C. 3115.606](#)]
- A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of proving at least one of the following defenses: [[R.C. 3115.607\(A\)](#)]
 - The issuing tribunal lacked personal jurisdiction over the contesting party.
 - The order was obtained by fraud.
 - The order has been vacated, suspended, or modified by a later order.
 - The issuing tribunal has stayed the order pending appeal.
 - There is a defense under the law of this state to the remedy sought.
 - Full or partial payment has been made.
 - The statute of limitations under [R.C. 3115.604](#) precludes enforcement of some or all of the alleged arrearages.
 - The alleged controlling order is not the controlling order.

- If the court finds that a party has established a defense, the court may stay enforcement of a registered support order, or continue the proceeding to obtain additional relevant evidence, and issue other appropriate orders. If the contesting party does not establish a defense, the court shall issue an order confirming the order. [\[R.C. 3115.607\(B\)-\(C\)\]](#)



PRACTICE TIP:

The order issued that confirms registration of the support order for enforcement should state that the registered child support order is confirmed and is enforceable as of the date of registration in the same manner as an order issued by a court of the State of Ohio.

d. *Modification of a Support Order*

A court in Ohio may modify a child support order from another state after the order is registered in Ohio only if, after notice and hearing, the court finds either of the following: [\[R.C. 3115.611\(A\)\]](#)

- All the following are met: (1) neither the child, obligee (individual), nor obligor resides in the issuing state; (2) the moving party who is a nonresident of this state seeks modification; and (3) the responding party is subject to personal jurisdiction in Ohio; OR
- Ohio is the child's residence or is the residence of a party (individual) subject to personal jurisdiction in Ohio, and all the parties (individuals) filed consents for Ohio to modify the support order and assume continuing, exclusive jurisdiction.

Ohio may not modify any part of a child support order that may not be modified under the law of the state that issued the original order, including the duration of the support obligation. When Ohio modifies a support order issued in another state, Ohio has continuing, exclusive jurisdiction. [\[R.C. 3115.611\(C\),\(E\)\]](#)

Note: Courts should be mindful of duration issues such as [Castle](#) child issues.

If all the parties (individuals) reside in Ohio and the child does not reside in the issuing state, Ohio has jurisdiction to enforce and to modify the issuing state's support order in a proceeding to register that order.



PRACTICE TIP:

The order issued that confirms registration of the support order for modification and enforcement should state that the registered child support order is confirmed and is modifiable and enforceable as of the date of registration in the same manner as an order issued by a court of the State of Ohio.

Within 30 days after a modified child support order is issued, the party obtaining the modification shall file a certified copy of the order with the issuing state that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction. [\[R.C. 3115.614\]](#)

3. Civil Protection Orders

a. *Types of Protection Orders*

- Domestic Violence Civil Protection Orders [\[R.C. 3113.31\]](#)
- Dating Violence Civil Protection Orders [\[R.C. 3113.31\]](#)
- Civil Stalking Protection Orders [\[R.C. 2903.214\]](#)
- Sexually Oriented Offense Protection Orders [\[R.C. 2903.214\]](#)

- Juvenile Civil Protection Orders [[R.C. 2151.34](#)]

[See Domestic Violence Section for more information.](#)

Full Faith and Credit [[18 U.S. Code 2265](#)]

Since 1994, the Violence Against Women Act (VAWA) mandates all states, territories, and tribal courts provide Full Faith and Credit to orders of protection, including injunctions against harassment and stalking, issued by courts of other states, territories, and tribes.

b. Elements of an Enforcement Order

A protection order for another jurisdiction that has these elements must be afforded a presumption of enforceability:

- The respondent has been given notice and an opportunity to be heard, or in the case of an *ex parte* order, the respondent will be given notice and an opportunity to be heard within a reasonable time, consistent with the requirements of due process.
- The issuing court had personal and subject matter jurisdiction to issue the order.
- The order has not expired.

c. Enforcement and Penalties

Enforce the terms of the order as written by the issuing jurisdiction, even if the enforcing jurisdiction lacks authority to enter such terms, for example:

- The category of protected persons would not be eligible for relief in the enforcing jurisdiction (e.g., dating partners, same-sex partners);
- The order contains relief unavailable in the enforcing jurisdiction;
- The order has a longer duration than provided for in the enforcing jurisdiction; or
- The order calls for surrender of weapons and the enforcing jurisdiction has no such provision.

d. Protection Order Enforcement

- Full faith and credit required law enforcement to enforce a qualifying domestic civil protection order (DV CPO) issued or approved by any state court regardless of whether the petitioner registered the order.
- A DV CPO supersedes a domestic violence temporary protection order (DVTPO) issued as a pretrial condition of release, if the DV CPO arises out of the same activity as the DV TPO. [[R.C. 2919.26](#)]
- The court should engage in reasonable efforts to ascertain the existence and terms of other protection or parenting order involving the same parties to avoid conflicting orders. [[Sup.R. 10.06](#)]

e. Mutual Orders

Mutual orders, which provide relief against the original petitioner, as well as the respondent are fully enforceable against the respondent. Provisions against the petitioner are not entitled to interstate/tribal enforcement issues unless:

- A cross or counter petition, complaint, or other written pleading was filed by the respondent seeking such a protection order; and
- The court made specific findings that each party was entitled to such an order.

4. Overlap Duties with Domestic Relations and Other Courts

a. Certification of Cases by the Domestic Relations Court to the Juvenile Court

If a domestic relations court determines neither parent should have custody, it should attempt to certify to juvenile court. [Authority to certify: [R.C. 3109.06](#); [R.C. 3109.061](#); [R.C. 3109.04\(D\)\(2\)](#)]

- Certification to the juvenile court can occur with consent of juvenile court or without consent if a finding of unsuitability of parents. [*In re Perales*, 52 Ohio St.2d 89 (1997); *In re Hockstok*, 98 Ohio St.3d 238, 2002-Ohio-7208]
- [R.C. 2151.27](#) and [Juv.R. 10](#) authorize any person who has knowledge of a child who appears to be abused, neglected, dependent or unruly to file a complaint in juvenile court.

b. Certification of Cases by the Juvenile Court to the Domestic Relations Court

- A juvenile court may transfer jurisdiction over an action for child support or custody order it issued to domestic relations court as follows: [\[R.C. 2151.235\(A\)\]](#)
 - When the child's parents are married and are not parties to proceeding described in [R.C. 2151.235\(A\)\(3\)](#).
 - When the child's parents are no longer married to each other and there is an existing custody or support order for child or sibling over which juvenile court does not have jurisdiction.
 - When there is a divorce, dissolution, legal separation, or annulment in which child's parents who are subject to the juvenile court action or order are parties.
 - When there is a domestic violence civil protection order if child or parents are subject to both a child support order and the civil protection order.
- A court receiving an action or order transferred shall have exclusive jurisdiction if all of the following are met: [\[R.C. 2151.235\(B\)\]](#)
 - A domestic relations court, juvenile court, or interested party makes motion to transfer;
 - The court receiving jurisdiction consents to transfer; and
 - The juvenile court certifies all or part of record in action or related order to the court receiving jurisdiction.
- Applies to all orders in effect, and all actions or proceedings pending or initiated on or after March 22, 2019. [\[R.C. 2151.235\(C\)\]](#)



PRACTICE TIP:

Practices in courts that exercise dual jurisdiction in both domestic relations and juvenile may vary on how the certification process occurs administratively.

c. Guardianship of a Minor

The probate court has exclusive jurisdiction to appoint guardians for minors. [[R.C. 2101.24](#); [R.C. 2111.50](#)] Once the guardianship is terminated, the probate court no longer has jurisdiction to determine the child's custody.

d. Child Support Orders

Child Support Order Without Regard to Marital Status of Child's Parents [[R.C. 2151.231](#)]

- A parent, guardian, or custodian with whom the child resides may bring a child support action in juvenile or other court with jurisdiction regardless of parents' marital status. The action cannot be brought against a presumed parent based on a paternity acknowledgment not yet finalized.

- The parties can raise the parentage issue unless it has been adjudicated or the acknowledgment is final.
- The order is effective until a court finds no parentage or the order is terminated under [R.C. 3119.88](#).

Child Support Order Where Acknowledgment of Parentage Is Not Yet Final [[R.C. 2151.232](#)]

- If the paternity acknowledgment has been filed with the birth registry and is not final, either party who signed the acknowledgment may bring a child support action in juvenile court or another court with jurisdiction.
- If the parties raise the parentage issue, the court shall notify the CSEA, and the acknowledgment is considered to be rescinded.
- If the parties do not raise the parentage issue and the child support order is issued before the acknowledgment is filed and became final, the acknowledgment is considered final on the date the child support order is entered.
- A child support order issued after the acknowledgment was final does not affect the acknowledgment.

The juvenile court shall not exercise jurisdiction to determine custody or support of a child when: [R.C. 2151.23\(A\)\(2\), \(A\)\(11\), \(B\)\(4\)](#) or [R.C. 2151.231](#)

- The child's parents are married.
- The child's parents are no longer married to each other and there is an existing custody or child support order for a child or sibling over which the juvenile court does not have jurisdiction.
- The determination is ancillary to the parents' pending divorce, dissolution, annulment, or legal separation action.

Note: [R.C. 2151.233](#) does not affect a juvenile court's authority to issue a custody order under [R.C. 2151.23\(A\)\(1\)](#) granting custody to a relative or placing a child under kinship care agreement.

Juvenile Court Order Affecting a Domestic Relations Child Support Order [[R.C. 2151.236](#)]

When a juvenile court adjudicates a child delinquent, unruly, abused, neglected or dependent who is subject to a support order issued by a domestic relations court and grants custody to a person or entity other than as designated in the domestic relations court order, the juvenile court shall notify the domestic relations court and CSEA. The CSEA shall review the child support order pursuant to [R.C. 3119.60-3119.76](#).

e. Competing Custody Orders

The juvenile court has exclusive jurisdiction over a juvenile, who is the subject of an existing domestic relations custody order, but becomes the subject of an abuse, neglect, dependency, unruly, or delinquency case if the child is not a "ward" of any other court in the state. However, the jurisdiction may be concurrent.

- The juvenile court may determine custody even if custody was previously awarded in the domestic relations case.
- If the juvenile court relinquishes jurisdiction, the custody issues may revert back to domestic relations court. [[Lindenmayer v. Lindenmayer, 197 Ohio App.3d 580, 2011-Ohio-5511](#).]



PRACTICE TIP:

If the juvenile court awards custody to a party and "closes" the case, the juvenile court should specify either the conclusion of its jurisdiction or that it retains continuing jurisdiction.

f. Conflicting Protection Orders

This may occur where the domestic relations court named a child a “protected person” under [R.C. 3113.31](#), and the child then becomes the subject of an abuse, neglect, or dependency case.

- [R.C. 2151.23\(A\)\(14\)](#) grants exclusive jurisdiction of the juvenile court over controlling conduct of parent, guardian, or custodian of alleged delinquent, unruly, or juvenile traffic offender.
- [R.C. 2151.359](#) and [R.C. 2152.61](#) likewise give the juvenile court jurisdiction to control the conduct or relationship of parents, guardians, or custodians harmful or detrimental to the child.
- See [Sup.R. 10.06](#) for guidance on inter-court communications on determining the existence of conflicting orders and ways to avoid conflicting orders.

g. Children with Disabilities

Parents have a common law duty to support beyond the age of majority. [[Castle v. Castle, 15 Ohio St.3d 279 \(1984\)](#); [R.C. 3119.86](#)]

h. Adult Guardianship

Domestic relations courts may intersect with probate court in adult guardianship cases when parents are no longer married to each other and a parent seeks guardianship of a *Castle* child. [[Castle v. Castle, 15 Ohio St.3d 279 \(1984\)](#); [R.C. 3119.86](#)]

5. Grandparents Caring for Their Grandchildren With and Without Agreement by the Parents

Ohio law provides for two legal avenues for grandparents to file documentation with the court that grants the grandparents the legal authority regarding the care, physical custody, and control of their grandchild including the ability to enroll the child in school, to obtain from the school district educational and behavioral information about the child, to consent to all school-related matters, and to consent to medical, psychological, or dental treatment for the child. These documents give a grandparent the legal authority to make decisions and care for the child while the child is in grandparent’s physical possession.

Limitations of Authority: [[R.C. 3109.52](#); [R.C. 3109.69](#); [R.C. 3109.79](#); [R.C. 3109.80](#)]

- The rights and responsibilities of the parent, guardian, or custodian are not affected.
- Does not grant legal custody to the grandparent.
- Does not give the grandparent authority to consent to marriage or adoption.
- Does not affect a payee change to child support.
- Does not affect current child support orders unless the court issues a new child support order or CSEA issues a new administrative order.
- Only one POA or Caretaker Affidavit may be in effect at the same time regarding the same child.

Common Factors to Grandparent POA and Caretaker Authorization Affidavit

- The child must be residing with a grandparent at the time of filing.
- The document must be filed in the juvenile court where grandparent resides or a juvenile or domestic relations court exercising prior jurisdiction over the child.
- The document must be filed with the court no later than five days after its creation or execution and may be sent to the court by certified mail.
- The document must be filed with a UCCJEA child custody jurisdictional statement pursuant to R.C. 3127.23.
- If the grandparent has a previous criminal conviction resulting in neglect or abuse of a child or determined to be a perpetrator in a children services case in which a child was found to be abused or neglected, the court may report the information to the local children's services agency to initiate an investigation.
- If the court believes the Grandparent POA or Caretaker Affidavit is not in the best interest of the child, the court may report the information to local children's services agency, which shall initiate an investigation and submit a report to the court not later than 30 days (may be extended to 45 days by children's services request).
- No filing fee shall be imposed for filing a POA or Caretaker Affidavit.

a. Grandparent Power of Attorney [\[R.C. 3109.51-3109.62\]](#)

A [Grandparent Power of Attorney](#) (POA) is appropriate when a parent, legal guardian, or custodian of the child grants a grandparent power of attorney to a grandparent who has physical possession of their child. Both parent, guardian, or custodian and grandparent agree that grandparent should have the authority to make decisions and care for the child and both execute the grandparent power of attorney.

- The form and content must be identical to the form set forth in [R.C. 3109.53](#).
- Both parent(s) and grandparent must execute the POA, and it must be notarized. [\[R.C. 3109.54\]](#)
- This does not grant legal custody of the child to the grandparent; rather it gives the grandparent the legal authority to make decisions and care for the child while in the grandparent's physical possession.

Both parents must execute the POA when the following apply: [\[R.C. 3109.56\(A\)\]](#)

- The parents are married and living together.
- The child is subject to a shared parenting plan.
- The child is subject to a custody order issued under [R.C. 3109.04](#), unless one of the following applies:
 - The parent who is not the residential parent and legal custodian is prohibited from receiving a notice of relocation in accordance with [R.C. 3109.051](#).
 - The parental rights of the parent who is not the residential parent and legal custodian have been terminated by a juvenile court.
 - The parent who is not the residential parent and legal custodian cannot be located with reasonable efforts.

One parent may execute the POA when the following apply: [\[R.C. 3109.56\(B\)\]](#)

- The parent is designated the residential parent and legal custodian by court order under [R.C. 3109.04](#).
- The parent with whom the child is residing the majority of the school year in cases where no court has issued an order designating a parent as the residential parent and legal custodian of the child.

Notice to Nonresidential Parent of Filing of a Grandparent POA [\[R.C. 3109.55\]](#)

- A person who creates a POA shall send notice of the creation to the parent of the child who is not the residential parent and legal custodian unless one of the following applies:
 - The parent is prohibited from receiving a notice relocation in accordance with [R.C. 3109.051](#).
 - The parent's parental rights have been terminated by order of a juvenile court.
 - The parent cannot be located with reasonable efforts.

- The power of attorney is created by both parents.
- Notice shall be sent by certified mail not later than five days after the POA is created and shall state the name and address of the person who is designated as the attorney in fact.

A parent, guardian, or custodian **MAY** create a POA under the following circumstances: [\[R.C. 3109.57\]](#)

- The parent, guardian, or custodian of the child is any of the following:
 - Seriously ill, incarcerated, or about to be incarcerated;
 - Temporarily unable to provide financial support or parental guidance to the child;
 - Temporarily unable to provide adequate care and supervision of the child because of the parent's, guardian's, or custodian's physical or mental condition;
 - Homeless or without a residence because the current residence is destroyed or otherwise uninhabitable;
 - In or about to enter a residential treatment program for substance use disorder.
- The parent, guardian, or custodian of the child has a well-founded belief that the POA is in the best interest of the child.
- A parent may execute a POA if the other parent of the child is deceased.

A Grandparent POA may **NOT** be created with respect to a child while any of the following proceedings are pending with regard to the child: [\[R.C. 3109.58\]](#)

- A proceeding for the appointment of a guardian for, or the adoption of, the child.
- A juvenile proceeding in which one of the following applies:
 - Temporary, permanent, or legal custody of the child or the placement of the child in a planned permanent living arrangement has been requested.
 - The child is the subject of an *ex parte* emergency custody order issued under [R.C. 2151.31\(D\)](#), and no hearing has been held under [R.C. 2151.314\(A\)](#).
 - The child is the subject of a temporary custody order issued under [R.C. 2151.33](#).
- A proceeding for divorce, dissolution, legal separation, annulment, or allocation of parental rights and responsibilities regarding the child.

Terminating a Grandparent POA [\[R.C. 3109.59\]](#)

- A Grandparent POA terminates on the occurrence of whichever of the following events occurs first:
 - The POA is revoked in writing by the person who created it, and the person gives written notice of the revocation to the grandparent designated and the juvenile court where the POA was filed.
 - The child ceases to reside with the grandparent designated.
 - The POA is terminated by court order.
 - The death of the child.
 - The death of the grandparent designated.

- Not later than five days after a POA is revoked, a copy of the revocation must be filed with the court where the POA is filed.

Notice of Termination/Revocation of POA [\[R.C. 3109.60\]](#)

- When a POA has been revoked or terminated under [R.C. 3109.59](#) (except when the designated grandparent dies), the **grandparent** designated as the attorney in fact shall notify, in writing, all of the following:
 - The school district in which the child attends school;
 - The child's health care providers;
 - The child's health insurance coverage provider;
 - The court in which the POA was filed;
 - The parent who is not the residential parent and legal custodian and who is required to be given notice under [R.C. 3109.55](#); and
 - Any other person or entity that has an ongoing relationship with the child or grandparent such that the person or entity would reasonably rely on the POA.
- The grandparent shall give notice not later than one week after the date the POA terminates.

b. **Caretaker Authorization Affidavit** [\[R.C. 3109.65-3109.73\]](#)

A [Caretaker Authorization Affidavit](#) is appropriate when a grandparent has physical possession of their grandchild, wishes to obtain the rights over their grandchild provided in a Grandparent Power of Attorney, but cannot obtain the consent of the child's parents, legal guardian, or custodian after making reasonable attempts to locate and contact them. It should be noted that only grandparents execute the Caretaker Authorization Affidavit because the child's parents, guardian, or custodian cannot be located. The affidavit does not grant legal custody of the child to the grandparent; rather it gives the grandparent the legal authority to make decisions and care for the child while in the grandparent's physical custody.

Execution of Caretaker Affidavit

- The form of the affidavit shall be identical in form/content as set forth [R.C. 3109.66](#).
- A grandparent may execute Caretaker Authorization Affidavit without parental consent upon attesting to either of the following: [\[R.C. 3109.65\]](#)
 - There have been reasonable but unsuccessful attempts to locate and contact both parents, the child's guardian, or custodian; or
 - A grandparent is not required to locate a parent if the following apply:
 - Does not have to attempt to locate the child's father if paternity has not been established.
 - If the child is the subject of a custody order, a parent:
 - Who is prohibited from receiving relocation notice in accordance with [R.C. 3109.051](#).
 - Whose parental rights have been terminated by a juvenile court.
- A Caretaker Authorization Affidavit is executed when the form is completed, signed, and notarized. [\[R.C. 3109.67\]](#)

Termination of Caretaker Affidavit

A Caretaker Authorization Affidavit terminates on the occurrence of whichever of the following comes first: [\[R.C. 3109.70\]](#)

- Child ceases to live with the grandparent.
- Parent, guardian, or custodian of the child negates, reverses, or disapproves of the grandparent action/decision, and the grandparent voluntarily returns the child to the parent, or fails to file a complaint to seek custody within 14 days after the delivery of written notice of negation, reversal, or disapproval.
- The affidavit is terminated by court order.
- The child dies.
- The grandparent dies.

Notice of Termination of Caretaker Affidavit [\[R.C. 3109.71\]](#)

- A grandparent shall notify, in writing, the following entities upon termination of the Caretaker Authorization Affidavit, other than death of the grandparent:
 - The school district;
 - Health care providers;
 - Health insurance coverage providers;
 - The court where the Caretaker Authorization Affidavit is filed; and
 - Any other person/entity that has an ongoing relationship with the child or grandparent such that the person or entity would reasonably rely on the affidavit.
- The grandparent shall give notice not later than one week after the affidavit terminates.

Negation, Reversal, or Disapproval of Action [\[R.C. 3109.72\]](#)

- The parent, guardian, or custodian may negate, reverse, or disapprove any action or decision made pursuant to the Caretaker Affidavit unless negation, reversal, or disapproval would jeopardize the life, health, or safety of the child.
- The parent, guardian, or custodian must deliver written notice to the caretaker and the person responding to the caretaker's action or decision in reliance on the Caretaker Authorization Affidavit.
- The act to negate, reverse, or disapprove of the action terminates the Caretaker Authorization Affidavit as of the date the caretaker returns the child or upon the expiration of 14 days from the delivery of written notice if the caretaker has not filed a complaint in the interim pursuant to [R.C. 3109.76](#).

c. Grandparent Rights After Revocation of a Grandparent POA or Caretaker Authorization Affidavit [\[R.C. 3109.76\]](#)

- Within 14 days after written notice of revocation of a Grandparent POA or Caretaker Authorization Affidavit or within 14 days after removal of the child from grandparent's home, grandparent may file a complaint for custody under [R.C. 2151.23\(A\)\(3\)](#) or [R.C. 2151.27](#) in the court where the POA or Caretaker Authorization Affidavit is filed if grandparent believes revocation or removal is not in the best interest of the child.
- Pending hearing or decision on the complaint, the court may make temporary orders it considers

necessary to protect the best interests of the child.

- If parent, guardian, or custodian revokes a POA or Caretaker Authorization Affidavit, the grandparent may retain physical custody of the child until the 14-day period for filing a complaint under this section has expired or, if the grandparent files a complaint, until the court orders otherwise.

d. Proceedings that Bar the Execution of a Grandparent POA/Caretaker Authorization Affidavit

A Grandparent POA or Caretaker Authorization Affidavit may **not** be created with respect to a child while any of the following proceedings are pending with regard to the child: [\[R.C. 3109.58; R.C. 3109.68\]](#)

- A proceeding for the appointment of a guardian for or the adoption of the child.
- A juvenile proceeding in which one of the following applies:
 - Temporary, permanent, or legal custody of the child or the placement of the child in a planned permanent living arrangement has been requested.
 - The child is the subject of an *ex parte* emergency custody order issued under [R.C. 2151.31\(D\)](#) and no hearing has been held under [R.C. 2151.314\(A\)](#).
 - The child is the subject of a temporary custody order issued under [R.C. 2151.33](#).
- A proceeding for divorce, dissolution, legal separation, annulment, or allocation of parental rights and responsibilities regarding the child.

e. Prohibited use of a Grandparent POA or Caretaker Authorization Affidavit [\[R.C. 3109.78\]](#)

No person shall create a POA or Caretaker Authorization Affidavit for the purpose of enrolling the child in a school district so that the child may participate in the academic or interscholastic athletic programs provided by the school or district. Such a violation is falsification, a misdemeanor of the first degree. A POA or Caretaker Authorization Affidavit created in violation of this section is void ab initio. A person in charge of school admissions may inquire of the court to verify the filing of such document. [\[R.C. 3109.75\]](#)

f. Immunity [\[R.C. 3109.61; R.C. 3109.73\]](#)

- A person who, in good faith, relies on or takes action in reliance on a Grandparent POA or Caretaker Authorization Affidavit is immune from any criminal or civil liability for injury, death, or loss to persons or property that might otherwise be incurred or imposed solely as a result of the reliance or action. The person is not subject to any disciplinary action from an entity that licenses or certifies the person.
- Any medical, psychological, or dental treatment provided to a child in reliance on a POA or Caretaker Authorization Affidavit shall be considered to have been provided in good faith if the person providing the treatment had no actual knowledge of opposition by the parent, guardian, or custodian.
- Immunity does not extend to persons whose actions are wanton, reckless, or inconsistent with the ordinary standard of care.

g. Military Power of Attorney [\[R.C. 3109.62\]](#)

A Military Power of Attorney executed pursuant to Sec. 574(a) of the National Defense Authorization Act for Fiscal Year 1994, [\[10 U.S.C. 1044b\]](#) grants a person the same authority concerning care, physical custody and control of a child including school and health care decisions, shall be considered a POA created pursuant to [R.C. 3109.51-3109.61](#) as long as the Military POA remains in effect.

**PRACTICE TIP:**

Courts should develop a process with the clerk of courts for reviewing and/or approving a Grandparent POA or Caretaker Authorization Affidavit before they are time stamped and returned to the grandparent submitting the document.

6. Judicial Interviews of a Child

It is within the discretion of the court to interview a child as to their “wishes and concerns with respect to the allocation of parental rights and responsibilities for the care of the child and for the purposes of resolving any issues related to the making of that allocation.” However, if either parent requests a judicial interview of the child, the court must do so. [\[R.C. 3109.04\(B\)\(2\)\]](#); see also *Scassa v. Scassa*, Third Dist., 1998 WL 404209.]

- No written or recorded statement or affidavit of the child’s wishes or concerns is permitted. [\[R.C. 3109.04\(B\)\(3\)\]](#)
- Judicial interviews in third-party companionship or visitation cases, see [R.C. 3109.051\(C\)](#)
- Judicial interviews in permanent custody cases, see [R.C. 2151.414\(D\)\(2\)](#)

a. Requirements for an Interview

- The court may first appoint a guardian ad litem (GAL) upon the motion of either parent. [\[Badgett v. Badgett \(1997\), 120 Ohio App. 3d 448 \(7th Dist. 1997\).\]](#)
- The court must determine the child’s “reasoning ability to express the child’s wishes and concerns with respect to the allocation of parental rights and responsibilities for the care of the child.” [See, for example, *In re Longwell*, Ninth Dist., 995 WL 520558, citing [State v. Frazier \(1991\), 61 Ohio St.3d 247 \(1991\).](#)]
- The court must determine that the interview is in the best interest of the child and then proceed to make a determination.
 - Even if the child has sufficient “reasoning ability,” the court may find the interview is not in the child’s best interest. [\[R.C. 3109.04\(B\)\(2\)\]](#)
- The interview is conducted in chambers with the child, the child’s attorney, the judge, and necessary court personnel. Attorneys for the parents may be permitted at judge’s discretion. [\[R.C. 3109.04\(B\)\]](#)
- Some appellate districts do not require courts to interview children in cases involving the reallocation of parental rights and responsibilities when the evidence fails to establish that a “change in circumstances” has occurred since the most recent parenting decree. [Example: [Rice v. Rice, 5th Dist. Delaware No. 10CA-F1 10091, 2011-Ohio-3099](#)]
- Some appellate districts permit courts to seal the record of a child’s interview. [Example, *Beil v. Bridges*, Fifth Dist. Licking No. 99CA00135, 2000 WL 977221 (July 13, 2000); contra, *Inscoe v. Inscoe*, 121 Ohio App. 3d 396 (4th Dist. 1997).]

b. Purpose of the Interview

The purpose of the interview is to determine a child’s wishes and concerns relative to the allocation of parental rights and responsibilities. This is not a factual substitute for factual findings relative to best interest. Within this scope, the judicial officer could:

- Determine a child’s perception of both parents, other caretakers, and siblings.
- Ascertain a child’s likes and dislikes concerning the home settings.
- Discern what a child does with each parent or other caretaker.

- Discover which parent or other caretaker assists the child with school and activities.

- See and hear the reactions and answers to questions.
- Allow the child to feel they have input in the decision.

c. Considerations for Conducting the Interview

- Timing is important.
 - Interviews with older children soon after the case begins may resolve disputes quickly.
 - Interviews just prior to a hearing allow a judicial officer to hear recent impressions; however, if the matter ends up settled without a hearing, the child has been interviewed unnecessarily.
 - Interviews after the hearing may allow for checking something discerned during the trial or explaining the decision.
 - If the child is in school, schedule the interview for after school hours.
- Do not interview the child at the same time as the parents' or caretakers' hearing.
- If you have previously interviewed a child, review the notes prior to a second interview to become aware of any changes in the child's situation, wishes or concerns.
- It is important the child is as comfortable as possible with the interview process.
 - Younger children: Consider developing a special area or playroom.
 - Children 11 or 12 years old and up may be more comfortable sitting in an office setting than younger children.
 - Some judicial officers prefer the courtroom and wear their robes; others prefer sitting at a conference table in street clothes to make the child more comfortable.

d. Develop a Script and Checklist

Judicial officers should have a well-rehearsed introduction that ensures the child understands the role of the judicial officer, why the interview is occurring, and the extent to which what the child says will be shared. A script or checklist helps avoid missing an important topic and allows the judicial officer ease in interpreting any notes taken during the interview.



PRACTICE TIP:

The judicial officer should introduce themselves, assure the child they are not being asked to choose between adults, and explain that the interview is being recorded. Utilize open-ended questions to explore the child's relationship with adults and other children in each home.

e. In Camera Interviews and Parenting Time/Visitation Contempt Proceedings

Several appellate districts have held that trial courts may consider children's statements made during *in camera* interviews when resolving parenting time/visitation contempt issues. See [Richardson v. Richardson, 5th Dist. Fairfield No. 99CA28, 2000 WL 93679 \(Jan. 8, 2000\)](#); [Sagan v. Tobin, 8th Dist. Cuyahoga No. 86792, 2006-Ohio-2602](#); [In re M.C., 2nd Dist. Champaign No. 2020-CA-24, 2021-Ohio-1668.](#)

[1] Developed from materials provided by the National Centers of Missing and Exploited Children

Domestic Relations Resource Guide Third Party Stakeholders





Domestic Relations Resource Guide - Section I: Substantive Law

F. Third Party Stakeholders

1. Guardians ad Litem (GAL)

a. Definitions [\[Sup.R. 48.01\]](#)

- *Guardian ad litem*: A person appointed by a court to assist the court in determining the best interest of a child. [\[Sup.R. 48.01\(C\)\]](#)
- *Allocation of parental rights and responsibilities*: References in [Sup.R. 48](#) to this term also include cases in which legal custody, parenting time, companionship, or visitation rights are also at issue. "Allocation of parental rights and responsibilities", legal custody, parenting time, companionship, or visitation rights has the same meaning as in [R.C. 3109.04](#) and [R.C. 3109.051](#). [\[Sup.R. 48.01\(A\)\]](#)
- *Attorney for child*: An attorney appointed to act as legal counsel for a child and to advocate for the child's wishes. [\[Sup.R. 48.01\(B\)\]](#)
- *Child*: A person under eighteen years of age. A person who is older than eighteen years of age who is deemed a child until the person attains twenty-one years of age under [R.C. 2151.011\(B\)\(6\)](#) or [R.C. 2152.02\(C\)](#). A child under [R.C. 3109.04](#) or a child with disabilities under [R.C. 3119.86](#) who falls under the jurisdiction of a domestic relations or juvenile court. [\[Sup.R. 48.01\(D\)\]](#)

Authority: [Rules of Superintendence 48](#); [Civ.R. 75](#). See [Supreme Court of Ohio's Judicial Guide to Guardian ad Litem Programs](#)

b. Appointment of Guardian ad Litem [\[Sup.R. 48.02\]](#)

A court appointing a GAL under this rule shall enter an order of appointment, which shall include statements regarding all of the following: [\[Sup.R. 48.02\(A\)\]](#)

- The appointment is to serve as a GAL. In allocation of parental rights and responsibilities cases, a dual appointment as GAL and attorney for the child is prohibited. [\[Sup.R. 48.02\(E\)\]](#)
- Unless otherwise specified by court rule, the appointment remains in effect until discharged by court order.
- The GAL shall be given notice of all hearings and proceedings and shall be provided with a copy of all pleadings, motions, notices, and other documents filed in the case.
- The GAL report shall include the following language:
 - "The guardian ad litem report shall be provided to the court, unrepresented parties, and legal counsel. Any other disclosure of the report must be approved in advance by the court. Unauthorized disclosure of the report may be subject to court action including the penalties for contempt, which include fine and/or incarceration."
- The rate of compensation for the GAL in allocation of parental rights and responsibilities cases.
- The terms and amount of any installment payments and deposits in allocation of parental rights and responsibility cases.

Limited Scope Appointment [[Sup.R. 48.02\(B\)](#)]

A court may appoint a GAL to address a specific issue or issues. The court shall include in the order of appointment the specific issue or issues to be addressed and a statement that the guardian ad litem is relieved of the duties set forth in [Sup.R. 48.03\(D\)](#) that are not applicable to the specific issue or issues.

Discretionary Appointments in Allocation of Parental Rights and Responsibilities Cases [[Sup.R. 48.02\(F\)](#)]

Unless a mandatory appointment is required by rule or statute, a court may make a discretionary appointment of a GAL in allocation of parental rights and responsibilities cases. In making a discretionary appointment, a court should consider all the circumstances of the case, including but not limited to all of the following:

- Allegations of abuse or neglect of the child;
- Consideration of extraordinary remedies, such as supervised visitation, terminating or suspending parenting time or awarding custody or visitation to a non-parent;
- Relocation that could substantially reduce the time of a child with a parent or sibling;
- Wishes and concerns of the child;
- Harm to the child from drug or alcohol abuse by the party;
- Past or present child abduction or risk of future abduction;
- Past or present family violence;
- Special physical, educational, or mental health issues of the child or a party;
- High level of conflict;
- Inappropriate adult influence or manipulation;
- Interference with custody or parenting time;
- A need for more information relevant to the child's best interest;
- A need to minimize the harm to the child from family separation or litigation; and
- Any other relevant factor.

Reappointment [[Sup.R. 48.02\(G\)](#)]

A court should consider reappointing the same GAL for a specific child in any subsequent case determining the child's best interest.

c. **GAL Fee Determinations** [[Sup.R. 48.02\(H\)](#)]

A court appointing a GAL in a case involving allocation of parental rights and responsibilities shall determine the ability of a party to pay a deposit of fees and expenses. The court may reconsider its determination any time before the conclusion of the case. A court shall consider all the following when making this determination:

- Parties' incomes, assets, liabilities, and financial circumstances
- Complexity of the issues
- Anticipated expenses of the GAL, including travel

An attorney GAL may file a motion for payment any time before the conclusion of the case and shall file a motion for payment at the conclusion of the case. The motion shall include an itemization of duties performed, time billed, costs and expenses incurred pursuant to [Sup.R. 48.03\(H\)\(1\)](#).

When allocating the GAL's fees and expenses once a motion is filed, the court shall consider any relevant factor, including any of the following:

- Rate of compensation
- Sources of compensation, including the parties, specialized funds, or pro bono contribution by the guardian ad litem
- Income, assets, liabilities, and financial circumstances of the parties
- Conduct of any party resulting in the increase of the GAL's fees and expenses, without just cause
- Terms and amounts of any installment payments

Unless a hearing is requested by the court or a party within 14 days after a motion for payment is filed, the court shall issue an order providing for the payment of the GAL's fees and expenses as is appropriate.



PRACTICE TIP:

Courts should include the hourly rate to be billed by GALs in their local rule.

Enforcement of Payment [\[Sup.R. 48.02\(I\)\]](#)

If the GAL's fees and expenses exceed the deposits or installment payments ordered and made, the court may do any of the following:

- Issue a lump sum judgment when it determines fees and expenses or at the time of a further proceeding.
- Enforce the payment of fees and expenses through a contempt proceeding.
- Enforce any order for the payment of fees and expenses in any other manner authorized by law.

A court shall not delay or dismiss a proceeding solely because a party fails to pay fees and expenses as required by the court. A party's inability to pay the fees and expenses of the guardian ad litem as ordered shall not delay the filing of a final entry.

d. **GAL Responsibilities** [\[Sup.R. 48.03\(A\)\]](#)

A GAL's responsibilities include, but are not limited to the following:

- Provide recommendations of the child's best interest. These may be inconsistent with the child's wishes or of other parties.
- Maintain independence, objectivity and fairness with the parties and professionals.
- Refrain from *ex parte* communication with the court on the merits of the case.
- Act with respect and courtesy in performing duties.
- Attend hearings relevant to responsibilities.
- Notify the court and parties in writing upon learning recommendations differ from child's wishes.
- If necessary, request timely court reviews or court intervention with written notice to parties.
- If the GAL is an attorney, file pleadings, motions, and other documents, present and question and

cross examine witnesses pursuant to applicable rules.

- Be available to testify. A GAL who is an attorney shall comply with [Prof.R. 3.7](#).
- If the GAL is not an attorney, avoid engaging in conduct constituting unauthorized practice of law.
- If the GAL is not an attorney, ask the court to appoint an attorney to file motions or pleadings and to call and examine or cross examine witnesses.

e. Conflicts of Interest [\[Sup.R. 48.03\(B\)\]](#)

A GAL is to avoid any actual or apparent conflict of interest arising from any relationship or activity, including but not limited to those of employment or business or from professional or personal contacts with parties or others involved in the case. When becoming aware of any actual or apparent conflict of interest, the GAL must immediately notify the court in writing. The court shall take action as it deems necessary.

f. Satisfaction of Training Requirements [\[Sup.R. 48.03\(C\)\]](#)

A GAL shall meet education requirements of [Sup.R. 48.04](#), [Sup.R. 48.05](#) and any local rules. Annually, the GAL shall do both of the following:

- Meet qualifications for each court and advise the court of any ground for disqualification or any issues affecting ability to serve.
- Provide the court with documentation of compliance with education requirements including details of education received.

g. Duties of a GAL [\[Sup.R. 48.03\(D\)\]](#)

Unless relieved by the court, GAL duties include, but are not limited to, the following:

- Become informed of the facts of the case and contact all relevant persons.
- Observe the child with each parent, foster parent, guardian, or physical custodian.
- Interview the child, if developmentally appropriate, with no parent, foster parent, guardian, or physical custodian present.
- Visit the child at the residence or proposed residence of child in accordance with court standards.
- Ascertain the child's wishes and concerns.
- Interview parties, foster parents, guardians, physical custodians, and other significant individuals who may have relevant knowledge of issues in case. A GAL may require these persons to be interviewed individually. If requested, the person's attorney may be present.
- Interview relevant school, medical, mental health child protective services, and court personnel; obtain copies of relevant records.
- Review pleadings and other relevant court documents in the case.
- Obtain and review relevant criminal, civil, educational, mental health, medical, or administrative records pertaining to the child and, if appropriate, the child's family or other parties to the case.
- Request the court order psychological evaluations, mental health, or substance abuse assessments or other evaluations or tests of the parties the GAL deems necessary or helpful to the court.
- Review necessary information and interview other persons as necessary to make an informed recommendation regarding the child's best interest.

h. Identification of a GAL [\[Sup.R. 48.03\(E\)\]](#)

- A GAL shall immediately identify themselves as a GAL when contacting persons.
- A GAL shall inform persons of their role and scope of appointment.
- A GAL shall notify persons that documents obtained by the GAL may become part of court proceedings.

i. Confidentiality [[Sup.R. 48.03\(F\)](#)]

- A GAL shall make no disclosure about the case or investigation, except to parties, their attorneys, in reports to the court, or as necessary to perform their duties, including as a mandated reporter.
- A GAL shall maintain confidentiality of personal identifiers, as defined in [Sup.R. 44](#), and home addresses where there are allegations of domestic violence or risk to the safety of the child or a party.
- Upon motion or application, the court may order disclosure of or access to information necessary to challenge the truth of information from a confidential source. The court may impose conditions necessary to protect witnesses from potential harm.

j. Timeliness [[Sup.R. 48.03\(G\)](#)]

A GAL shall perform their responsibilities in a prompt and timely manner.

k. Recordkeeping [[Sup.R. 48.03\(H\)](#)]

- A GAL shall keep accurate records of time spent, services rendered, and expenses incurred when performing duties.
- In allocation of parental rights and responsibilities cases the GAL shall provide monthly statements of fees and expenses to all parties.
- If ordered by the court or at the conclusion of responsibilities, the GAL shall file an itemized statement and accounting with the court, with copies to parties responsible for payment.

l. Education Requirements [[Sup.R. 48.04-48.05](#)]

- A GAL shall complete the 12 hour pre-service education provided by the Supreme Court of Ohio, the Ohio Court-Appointed Special Advocates (CASA) Guardian ad Litem Association, or with the appointing court's approval, another provider.
 - Of the 12 hours, six hours shall be live education. The remaining six hours may be earned online or live education, teaching, mentoring, or field-training approved by appointing court.
 - A person currently serving as a GAL on January 1, 2021, shall be deemed compliant with the pre-service education and is not required to complete the 12 hours of pre-service education.
- Annually, a GAL must complete six hours of continuing education provided by Supreme Court of Ohio, the Ohio Court-Appointed Special Advocates (CASA) Guardian ad Litem Association, or with the appointing court's approval, another provider.
 - Three of the six hours shall be obtained by attending live education. The remaining three hours may be satisfied by online or live education, training, writing, mentoring, or field activities approved by the appointing court.
 - If a GAL fails to complete six hours of continuing education within any calendar year, the individual shall not be eligible to serve as GAL on any new appointment until the continuing education requirement is satisfied. The court has discretion to continue current GAL appointments.

m. **GAL Reports** [[Sup.R. 48.06](#)]

A GAL shall prepare a final written report with recommendations to the court within the time prescribed by [Sup.R. 48.06\(C\)](#) including activities performed and relevant information considered in reaching recommendations. In allocation of parental rights and responsibilities cases, the GAL shall provide the report to the court, unrepresented parties, and legal counsel not less than seven days before the final hearing date unless the court modifies the due date.

- All reports shall include this warning: *"The guardian ad litem report shall be provided to the court, unrepresented parties, and legal counsel. Any other disclosure of the report must be approved in advance by the court. Unauthorized disclosure of the report may be subject to court action including the penalties for contempt, which include fine and/or incarceration."*
- Oral and written reports shall address relevant issues but are not be considered determinative.
- A GAL shall be available to testify at hearings and may orally supplement their report at the conclusion of the hearing.
- A GAL may provide an interim report at the court's request.
- The court shall consider the GAL's recommendation in determining the child's best interest only when the report or a portion of the report is admitted as an exhibit.

n. **Responsibilities of the Court** [[Sup.R. 48.07](#)]

Each court appointing a GAL shall do all of the following:

- Maintain a public list of approved GAL's while maintaining individual privacy pursuant to [Sup.R. 44-47](#).
- Establish criteria, including all of the requirements of [Sup.R. 48.01-48.07](#), for appointment and removal of GAL and procedures to ensure an *equitable distribution* of workload among GAL's on the list.
 - *Equitable distribution* means a system through which appointments are made in an objectively rational, fair, neutral, and nondiscriminatory manner and are widely distributed among substantially all persons from the list maintained by the court. The court may consider the complexity of the issues, the parties, counsel, and the children involved, as well as the experience, expertise, and demeanor of available GALs.
- Coordinate the application and appointment process, keep files and records, maintain information regarding training, and receive written comments and complaints regarding GALs' performance practicing before the court.
- Maintain files for persons approved for appointment as a GAL. Files shall contain all records and information required by [Sup.R. 48.01-48.07](#) and local rules for selection and service of GALs, including a certificate or other satisfactory proof of compliance with training requirements.
- Require all applicants to submit a resume or information sheet stating the applicant's training, experience, and expertise demonstrating the applicant's ability to successfully perform GAL responsibilities.
- Review a criminal and civil background check and investigation of information relevant to the fitness of the applicant to serve as a GAL.
- Conduct, at least annually, a review of the court's list to determine that all GALs are in compliance with the training requirements and local rules, have performed satisfactorily on all assigned cases during the preceding calendar year, and are otherwise qualified to serve.

- Require all GALs on the court's list to certify annually they are unaware of any circumstances that would disqualify them from serving and to report the continuing education training in compliance with [Sup.R. 48.05](#).
- Develop a process or local rule for comments and complaints regarding the performance of GALs that does all of the following:
 - Designates a person for accepting and considering written comments and complaints;
 - Provides a copy of the comments and complaints to the GAL who is the subject of the comments or complaints;
 - Forwards any comments or complaints to the administrative judge of the court for consideration and appropriate action;
 - Develops a provision for the timely disposition by the court;
 - Notifies the person making the comment or complaint and the subject GAL of the disposition;
 - Maintains a written record in the file of the GAL regarding the nature and disposition of any comment or complaint.

2. Parenting Coordinators

"Parenting coordination" is a court-ordered child-focused dispute resolution process established to assist parties in implementing a parental rights and responsibilities order or companionship time order using assessment, education, case management, conflict management, coaching, or decision-making.

Authority: [Superintendence Rule 16.60-16.66](#). Parenting coordination is not mediation subject to [R.C. Chapter 2710](#) or [Sup.R. 16.14\(F\) and 16.20-16.25](#).

Local Rule: [Sup.R. 16.61](#) requires local courts to adopt a local rule if they choose to utilize parenting coordination.

a. When to Use Parenting Coordination [\[Sup.R. 16.62\(A\)\]](#)

Parenting coordination may be ordered when the court determines one or more of following factors are present:

- Parties have ongoing disagreements about the implementation of a parental rights order or companionship time order and need assistance.
- There is a history of ongoing parental conflict that has been unresolved by previous litigation, and which is adversely affecting a child.
- The parenting time schedule for the parties' child requires frequent adjustments to maintain age-appropriate contact with both parties, and the parties are historically unable to reach agreement on their parenting schedule without court intervention.
- The parties have a child with a medical or psychological condition or disability requiring frequent decisions about treatment or frequent adjustment in the parenting schedule, and the parties are historically unable to reach agreement without court intervention.
- One or both parties has a medical or psychological condition or disability that results in an inability to reach agreements or adjustments in their parenting schedule without assistance.
- Any other factor determined by court.

The court does not need the parties' consent to order a parenting coordinator.

b. Inappropriate Use of Parenting Coordination [Sup.R. 16.62(B)]

The court shall not order parenting coordination to determine any of the following:

- Changes in the designation of the residential parent or legal custodian.
- Changes in the school placement of a child.
- Substantive changes in parenting time.
- The modification of child support, the allocation of tax exemptions or benefits, or the division of uncovered medical expenses.

c. Use of Parenting Coordination When Domestic Abuse or Violence is Alleged, Suspected, or Present [Sup.R. 16.65(A)(5)]

If domestic abuse or violence is alleged, suspected, or present, parenting coordination may proceed only if all of the following conditions are satisfied:

- Screening for domestic abuse, domestic violence, and capacity of parties to engage in parenting coordination is done before and during parenting coordination process.
- The potential victim is fully informed about the parenting coordination process, the right to decline participation, and at the discretion of the parenting coordinator, the right to have other individuals attend and participate in parenting coordination sessions.
- The parties have the capacity to participate in the parenting coordination process without fear of coercion or control.
- Reasonable precautions have been taken by the court to create a safe parenting coordination environment for the parties and all other persons involved in the parenting coordination process.
- Procedures are in place for the parenting coordinator to terminate a parenting coordination session if there is a threat of domestic abuse, domestic violence, or coercion between the parties.

d. Parenting Coordinator Requirements [Sup.R. 16.64]

Parenting coordinators must meet all the following qualifications:

- Be a licensed mental health professional or attorney licensed to practice law in Ohio or otherwise have education and experience satisfactory to the appointing court.
- Possess extensive practical and professional experience in situations involving children including: counseling, casework, legal representation in complex family matters, serving as guardian ad litem or mediator, or other equivalent experience satisfactory to the court.
- Be in compliance with the following training requirements:
 - Satisfied the Fundamentals of Mediation Training requirement in accordance with [Sup.R. 16.23\(A\)](#).
 - Completed Specialized Family or Divorce Mediation Training in accordance with [Sup.R. 16.23\(B\)\(1\)\(c\)](#).
 - Completed Specialized Domestic Abuse Issues in Mediation Training in accordance with [Sup.R. 16.23\(B\)\(1\)\(d\)](#).
 - Completed a Parenting Coordination Training approved by Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution.

- Before accepting appointment as a parenting coordinator in an abuse, neglect or dependency case have also completed Specialized Child Protection Mediation Training in accordance with [Sup.R. 16.23\(B\)\(2\)\(c\)](#).
- Complete at least six hours continuing education each year relating to children, mediation, or diversity, as described in [Sup.R. 16.64\(B\)](#).

e. Parenting Coordinator's Responsibilities [[Sup.R. 16.63](#)]

A parenting coordinator shall:

- Comply with the appointment order.
- Comply with [Guidelines for Parenting Coordination](#) (Revised 2019) developed by the Association of Family and Conciliation Courts Task Force on Parenting Coordination. If there are conflicts between the Guidelines and [Sup.R. 16.60 – 16.66](#), the rules control.
- Avoid any actual or apparent conflicts of interest arising from any relationship or activity, including but not limited to those of employment, business, professional or personal contacts with parties or others involved in the case.
- Upon becoming aware of any actual or apparent conflict of interest, the parenting coordinator shall advise the appointing court and the parties of the action taken to resolve the conflict and if unable to do so, seek direction from the court.
- The parenting coordinator shall avoid serving in multiple roles with the same family, even with the consent of the parties.
- Not offer legal advice.
- Refrain from *ex parte* communication with appointing court regarding substantive matters or issues on the merits of the case.
- Maintain records necessary to document charges for services and expenses and issue invoices for services no less than once per month.
- Meet qualifications and comply with all training requirements of Sup.R. 16.64 and local court rules governing parenting coordination. Document qualifications and training upon request of the court.
- Promptly notify the court of any grounds for disqualification or issues affecting the parenting coordinator's ability to serve.
- Decline or withdraw from an appointment or request assistance if the facts and circumstances are beyond the expertise of the parenting coordinator or if personal circumstances, including, but not limited to medical, mental health or substance misuse or dependence compromise parenting coordinator's ability to perform role.

f. Local Parenting Coordination Rule [[Sup.R. 16.60 – 16.61](#)]

A court or division that elects to use parenting coordination shall adopt a local rule governing parenting coordination that does the following:

- Identifies case types eligible for parenting coordination.
- Identifies case types precluded from parenting coordination, if any.
- Specifies that communications made as part of parenting coordination are not confidential or privileged, except as provided by law.
- Includes procedures for selection and referral of cases to parenting coordination at any point

after an interim or final parental rights and responsibilities or companionship time order is filed.

- Prohibits use of parenting coordination in domestic violence cases under [R.C. 2919.25](#), [R.C. 2919.26](#), [R.C. 2919.27](#), and [R.C. 3113.31](#). Parenting coordination is not prohibited in a juvenile delinquency case or a divorce or custody case even if the case results in the termination of the provisions of a protection order under [R.C. 3113.31](#).
- Establishes procedures for and encourages appropriate referrals to legal counsel, counseling, parenting courses, and other support services for all parties, including victims and suspected victims of domestic abuse and domestic violence.
- Addresses any other issues the court or division considers necessary and appropriate.

g. Court Responsibilities When Using Parenting Coordination [[Sup.R. 16.65\(A\)](#)]

A court using parenting coordination shall do all of the following:

- Establish screening procedures for the capacity of parties to participate in parenting coordination.
- Establish procedures for monitoring and evaluating parenting coordination to ensure the quality of the parenting coordinators to which cases are referred.
- Develop a process and designate a person to accept and consider comments and complaints about the performance of parenting coordinators, and providing an opportunity for the parenting coordinator to submit a written response to the comments or complaints.
- Require parenting coordinators to meet the qualifications, education and training requirements of [Sup.R. 16.64](#).

h. Appointment Order [[Sup.R. 16.65\(B\)](#)]

When ordering parenting coordination, the court shall issue an appointment order that does all the following:

- Includes the name and contact information of the parenting coordinator and the definition and purpose of parenting coordination.
- Specifies the scope of authority of the parenting coordinator.
- Sets out the term of the appointment.
- Allocates responsibility for fees and expenses related to parenting coordination.
- Addresses procedures for decision-making of the parenting coordinator.
- Addresses procedures for objections to parenting coordinator decisions.
- Addresses any other provisions the court considers necessary and appropriate.
- Orders the parties to contact the parenting coordinator within the time period specified by the court.

i. Public Access [[Sup.R. 16.66](#)]

Files maintained by parenting coordinator, but not filed with the clerk or submitted to a court, are not available for public access pursuant to [Sup.R. 44 – 47](#).

3. Custody Evaluators [[Sup.R. 91](#)]

A custody “*evaluation*” is a comprehensive written investigation and assessment of the best interest of the child that includes information regarding the needs, the health, the safety, and the development of the child, custody, parenting time, capacity of the parties to address the needs of the child, companionship, allocation of parenting rights and responsibilities.

- Custody evaluations can be requested by motion of a party, guardian ad litem, counsel for a child, or by the court to aid the court in evaluating the best interest of a child in a contested custody or parenting time case.
- Evaluations can be partial or brief-focused covering a single issue or a full investigation covering multiple issues.
- Evaluations also include interviews with the child(ren), parents, those people residing in the home, information from schools, childcare providers, medical records, clinical tests, law enforcement agencies, and history of abuse.
- Custody evaluators shall prepare and submit the report to the court prior to the hearing. The court will provide attorneys and self-represented litigants with a copy of the report.

Authority: [Rule of Superintendence 91, R.C. 3109.04\(C\)](#)

Local Rule: [Sup.R. 91.03](#) requires local courts to adopt a local rule if they appoint custody evaluators. See [Supreme Court of Ohio's Custody Evaluations Toolkit for Judicial Use](#)

A “***custody evaluator***” is a licensed, objective, impartial, qualified mental health professional the court appoints to perform a child custody evaluation. [\[Sup.R. 91.01\]](#)

- Requires 40 hours of initial training from the Supreme Court of Ohio to qualify for a court appointment
- Requires six hours of continuing education annually
- May be court employees (“court-connected”) or private evaluators
- May be subpoenaed to testify about their reports. The subpoena must be submitted no less than 14 days prior to the trial.
- May not serve as a custody evaluator and guardian ad litem on the same case [\[Sup.R. 91.05\]](#)

a. Custody Evaluator Responsibilities [\[Sup.R. 91.06\]](#)

- Maintain objectivity, provide and gather balanced information from both parties to the case, and control for bias;
- Strive to minimize the potential psychological trauma to child during the evaluation and report writing by performing responsibilities in a prompt and timely manner;
- Protect the confidentiality of the parties and child with collateral contacts and not release information about the case to any individual except as authorized by the court or statute;
- Immediately identify himself or herself as a custody evaluator when contacting individuals in the course of a particular case and inform these individuals about the role of a custody evaluator and that documents and information obtained may become part of court proceedings;
- Refrain from any *ex parte* communications with the court regarding the merits of the case;
- Not offer any recommendations about a party unless that party has been evaluated directly or in consultation with another qualified neutral professional;
- Consider the health, safety, welfare, and best interest of the child in all phases of the process, including interviews with parents, extended family members, counsel for the child, and other interested parties or collateral contacts;

- Not pressure the child to state a custodial preference;
- Inform the parties of the evaluator's reporting requirements, including, but not limited to suspected child abuse and neglect and threats to harm oneself or another person;
- Not disclose any recommendations to the parties, their attorneys, or the attorney for the child before having gathered the information necessary to support the conclusion;
- Be conscious of the socioeconomic status, gender, race, ethnicity, sexual orientation, cultural values, religion, family structures, and developmental characteristics of the parties;
- Upon discovery, notify the court in writing of any conflicts of interest arising from any relationship or activity with parties or others involved in the case. A custody evaluator shall avoid self-dealing or associations from which the custody evaluator may benefit, directly or indirectly, except from services as a custody evaluator.

b. Local Rule [\[Sup.R. 91.03\]](#)

Courts shall adopt a local rule governing the appointment of a custody evaluator. The local rule should set forth the following:

- Qualifications for a custody evaluator;
- A designee to accept and to consider comments and complaints;
- A requirement that a copy of the comment or complaint is provided to the custody evaluator subject of the comment; and
- A requirement the court maintain a record and the disposition of the comment and the complaint.

c. Appointment of Custody Evaluators [\[Sup.R. 91.05\]](#)

Custody Evaluator List

If a court utilizes private custody evaluators, it shall establish and maintain a list of private custody evaluators from which appointments are made. The court must establish criteria to ensure an equitable distribution of the workload among the private custody evaluators on the list. ***Equitable distribution*** is defined as "a system through which appointments are made in an objectively rational, fair, neutral, and nondiscriminatory manner and are widely distributed among all private custody evaluators on the list." [\[Sup.R. 91.05\(B\)\(1\)\]](#) Courts are permitted to consider the complexity of the issues, parties, counsel, and the child involved, as well as the experience, expertise, and demeanor of available private custody evaluators when making the appointment.

Order of Appointment

The court's order of appointment shall include:

- The evaluator's name, business address, licensure, and telephone number;
- The purpose and the scope of the appointment;
- The term of the appointment;
- A provision that a written report is required and oral testimony may be required;
- Any deadlines and court dates;
- A provision for payment of fees, expenses, or hourly rate that will be charged;
- A provision that grants the custody evaluator the right to access information authorized with the appointment; and

- A provision that requires the parties to cooperate with the custody evaluator and provide promptly information requested.

d. **Removal or Resignation** [[Sup.R. 91.05](#)]

- Upon a showing of good cause, the court may remove a custody evaluator.
- Upon a showing of good cause, a custody evaluator may resign prior to the completion of an evaluation after notice to the parties, an opportunity to be heard, and with the approval of the court.

e. **Custody Evaluator Fees** [[Sup.R. 91.05](#)]

Prior to the appointment, the court shall hear the parties' position regarding the allocation of fees and expenses. The court shall further determine who pays the initial deposit, fees, and expenses. The court shall further approve additional expenses or fees as necessary.

f. **Custody Evaluator Report** [[Sup.R. 91.07](#)]

The custody evaluator shall prepare and file with the court a written report at least 30 days prior to the final hearing. The written report must include the following statement: *"The custody evaluator's report shall be provided to the court for distribution to unrepresented parties and legal counsel. Unauthorized disclosure or distribution of the report may be subject to court action including the penalties for contempt which include fines and/or incarceration."*

- The written report shall be subject to the [Rules of Civil Procedure](#) applicable to discovery in civil actions and shall not be available for public access pursuant to [Sup.R. 44-47](#).
- The evaluator's report shall be admitted into evidence at a hearing or trial on the court's motion. A party challenging the report shall subpoena the evaluator to appear no less than 14 days before a hearing or trial. [[Sup.R. 91.01\(F\)\(1\)](#)]

Components of the Custody Evaluator Report

- Demographic information about the parties and child (e.g., name, address, phone number, email address, employment, military history, marital status, household members, living arrangements)
- Contacts that the parties and child have had with the custody evaluator, including by phone/correspondence, e-contacts, and in person
- Relevant background information, including parties' marital history, parenting history, and previous court orders and outcomes
- Description of the collateral contacts and records received
- Referral information/description of the motion(s) pending before the court
- Description of the present situation, including:
 - Each party's concerns, views, and requests
 - The views of the child
 - Parties' co-parenting dynamic
 - Each party's parenting style and relationship with the children
 - Parenting time problems
 - Any critical issues, such as domestic violence, substance abuse, mental health problems, physical health problems, criminal history, child abuse/child protective services involvement, and financial hardship
- Conclusions and recommendations, including a thorough analysis of the information collected and how it impacted the custody evaluator's opinion regarding the allocation of parental rights and responsibilities

Domestic Abuse



Domestic Relations Resource Guide - Section II: Domestic Violence

A. Domestic Abuse

Domestic abuse constitutes any incidents or pattern of behavior directed towards a current or former intimate partner that results in physical, emotional, or psychological harm, sexual or reproductive coercion, economic control, and/or coercive interference with personal liberty. This is a broader concept than domestic violence.

Domestic abuse is repeated and patterned behavior to control aspects of the other person's life that can occur through manipulation, fear, bullying, coercive tactics, physical abuse, and sexual abuse. [See [Power and Control Wheel](#)]

Domestic violence can occur in multiple forms – physical, emotional, economic, stalking and harassment, and sexual – against a family or household member. Within the context of domestic relations, it is governed by [R.C. Chapter 3113](#). Domestic violence also includes instances where the respondent has created a substantial risk to the health and safety of the child when a duty of care owed. [[R.C. 3113.31\(A\)\(1\)\(a\)\(iii\)](#); [R.C. 2151.031\(B\)](#); [R.C. 2919.22\(A\)](#)]

1. Specific Forms of Domestic Abuse²

Physical Violence: Harm to physical safety

- Pushing, kicking, strangling, stabbing
- Holding down, pinning, tying up, preventing escape
- Withholding food, medicine, shelter, sleep

Emotional Abuse: Harm to emotional safety, security, or well-being

- Putdowns, name calling, yelling
- Playing mind games
- Displaying weapons
- Obsessive jealousy, creating chaos, interrupting routine
- Threats to kill, harm, take children, ruin reputation
- Tampering with utilities
- Abusing pets

Isolation

- Preventing partner from seeing family and friends
- Controlling what partner does or who partner talks to
- Disabling vehicles

Intimidation (Blackmail)

- Facial expressions, actions, gestures
- Destroying property
- Abusing pets
- Displaying weapons

Coercive Control: A knowing and harmful course of conduct that makes a person dependent or subordinate by isolating them from sources of support and depriving them of the means necessary for independence, resistance, and escape.

- Undermining/ruining relationships, invading privacy, ruining relationships
- Regulating, monitoring
- Hacking into email, phone records, medical records
- Threatening to leave, hurt self, or hurt partner
- Coercing partner into doing things they do not want to do
- Stalking, stealing, sabotaging, restraining, threatening
- Threatening to ruin reputation

Economic Abuse: Harm to financial security, stability, standing, or self-sufficiency

- Controlling all the money, giving an allowance
- Destroying credit, sabotaging finances
- Accumulating debt, taking out loans
- Preventing victim from working

Using Children

- Threatening to take children away
- Emotionally abusive in front of the children
- Teaching children not to respect person

Minimizing, Denying, and Blaming

- Not taking abuse seriously
- Blaming abusive behavior on victim
- Telling the victim everything is their fault (gaslighting)

Spiritual/Cultural/Ethical Abuse: Harm to cultural, religious, or deeply held beliefs

- Using sacred text to justify abuse, citing scripture to gain compliance
- Insulting the victim within the cultural or faith community
- See [National Domestic Violence Hotline, Abuse and Cultural Context](#)

Using Privilege

- Treating like a servant
- Making all big decisions
- Having different rules for the victim than the partner has for themselves

Sexual Coercion: Unwanted sexual activity that occurs without consent

- Use of force, threats, deception
- Exploitation, trafficking
- Interference with birth control, reproductive care
- Forced prostitution, pornography, illegal drug use

Abuse of Process: Using the court as a harassment tool

- Continuing to file frivolous motions

2. Criminal Domestic Violence

Domestic abuse may or may not rise to the level of criminal domestic violence. Even when it does not constitute a crime, domestic abuse is relevant to many domestic relations issues (e.g., allocation of parental rights and responsibilities, division of property, appointment of guardians ad litem, appropriateness of mediation or other dispute resolution processes, and structuring court appearances to promote safety).

Crimes that may constitute domestic abuse when committed against a family or household member:

- Criminal mischief
- Disorderly conduct
- Burglary
- Caretaker abuse
- Forgery
- Identity theft
- Trespassing
- Stalking

3. Three Main Contexts of Domestic Abuse

a. Coercive Controlling Abuse

- Harmful course of conduct involving multiple tactics, rooted in a deep sense of entitlement
- Coercion and threats
- Minimization, denial, blaming, and gaslighting
- Intimidation
- Isolation
- Using children as pawns

- Privilege (gender, race, class)
- Economic abuse
- Emotional abuse
- Physical and/or sexual violence or threats

b. Violent Resistance of Victim

- Violence used to stop coercive controlling abuse
- Reaction to coercive controlling abuse

c. Abuse Unrelated to Coercive Control

- No power and control tactics being exercised
- May be related to other issues (e.g., mental health problems, alcohol or substance abuse, poor conflict management skills, situational stress)

4. Remedies to Address Domestic Abuse

- Civil Protection Order in Domestic Relations Court [[R.C. 3113.31](#)]
- Domestic Violence Temporary Protection Order [[R.C. 2919.26](#)]
- Criminal Protection Order [[R.C. 2903.213](#)]
- Civil Stalking or Sexually Oriented Offense Protection Order [[R.C. 2903.214](#)]
- Juvenile Civil Protection Order [[R.C. 2151.34](#)]
- Dating Violence Protection Order [[R.C. 3113.31](#)]
- No contact order
 - May be criminally enforceable
 - Distinguishable from protection orders
 - May be issued as a pretrial condition of release or as a condition of probation in criminal cases
- Legal name change in probate court
- New Social Security Numbers
- Criminal victims' compensation
- Safe houses or victim shelter
- Ohio Secretary of State [Safe at Home address confidentiality program](#)

5. Allocation of Parental Rights and Responsibilities

Proceedings in which parental rights and responsibilities may be allocated are divorce, dissolution, legal separation, annulment, paternity, and post-decree modifications of parental rights and responsibilities following a change of circumstances of the residential parent, the child, or, in the instance of a shared parenting order, of either parent. [[R.C. 3109.04\(E\)](#)]

Best interest of the child is the standard used to determine the allocation of parental rights and responsibilities. These factors are prescribed in [R.C. 3109.04\(F\)](#). Domestic violence or domestic abuse in the home may affect how each of the factors is considered.

Best Interest Factors [R.C. 3109.04(F)(1)]

- The wishes of the child's parents regarding the child's care;
- The wishes and concerns of the child, if an *in camera* interview is conducted;
- The child's interaction and interrelationship with the child's parents, siblings, and any other person who may significantly affect the child's best interest;
- The child's adjustment to the child's home, school, and community;
- The mental and physical health of all persons involved;
- The parent more likely to honor and facilitate court-approved parenting time rights or visitation and companionship rights;
- Parents' compliance with child support orders;
- Whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; whether either parent, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of an adjudication; whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to a violation of section [2919.25](#) of the Revised Code or a sexually oriented offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding; whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to any offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim in the commission of the offense; and whether there is reason to believe that either parent has acted in a manner resulting in a child being an abused child or a neglected child;
- 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 an order of the court;
- Whether either parent has established a residence, or is planning to establish a residence, outside this state.

[R.C. 3109.04\(F\)\(2\)](#) also sets forth additional factors to consider when determining whether shared parenting is in the best interest of the child:

- Ability of the parents to cooperate and to make decisions jointly, with respect to the children.
- 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.
- Geographic proximity of the parents to each other, as the proximity relates to the practical consideration of shared parenting.
- Recommendations of the guardian ad litem of the child, if the child has a guardian ad litem.

6. Relevance of Domestic Abuse to Domestic Relations Proceedings

- Safety and well-being of children and the other parent

- Parenting beliefs and practices
- Communication; power and control

7. Obstacles to Obtaining a Full and Complete Understanding

- Role of the judge and the limitations of formal fact finding
- Knowledge and experience of domestic relations professionals
- Inconsistent messaging from the domestic relations court system
- Safety concerns and other disincentives to disclose domestic abuse



PRACTICE TIP:

[R.C. 3109.04\(E\)\(2\)](#) does not define the terms spousal abuse or domestic violence. None of the offenses listed in [R.C. 3109.04\(E\)\(1\)](#) refer back to the criminal code. Each case is different, therefore the manner in which abused parents manage the abuse is different.

Courts should be mindful that parents who have been victims of domestic abuse may seek to allocate decision-making authority over and access to the children in unorthodox manners to protect themselves and their children from further abuse. Courts should consider how domestic abuse informs each of the best interest factors.

Additional Resources

- ✓ [Domestic Violence & Allocation of Parental Rights and Responsibilities Court Guide](#)

²Domestic Abuse Intervention Project, [Power and Control Wheel](#)

Domestic Relations Resource Guide
Termination of Marriage
Property Division
Spousal Support
Parenting
Special Issues
Third Party Stakeholders
Domestic Abuse
Allocation of Parental Rights and Responsibilities
Domestic Violence and Protection Orders

Allocation of Parental Rights and Responsibilities when Domestic Abuse is Present





Domestic Relations Resource Guide - Section II: Domestic Violence

B. Allocation of Parental Rights and Responsibilities When Domestic Abuse is Present

Parenting decisions are complex, especially when domestic abuse is raised in a parenting dispute. When there is a history of domestic abuse, child contact is the most common context for re-assault during the post-separation period. [Stark, Evan. "Rethinking Coercive Control." *Sage Journals*, Vol. 15, Issue 12 (2009).]

Common misconceptions in parenting decisions:

- Joint decision-making is the best.
- Parental involvement is safe for both parents.
- Parents are child-focused or will be if permitted joint decision-making.
- Abuse to the parent is unrelated and does not impact the children.

Common Parenting Assumptions & Domestic Abuse	
Assumption	Research Indicates
Parental involvement is safe for both parents.	<ul style="list-style-type: none">■ Abuse often increases post-separation. [1]
Parent-child relationships are safe and healthy; parents are child-focused.	<ul style="list-style-type: none">■ The child's exposure to domestic violence affects the child's relationship with both parents.■ Abusers often use children to maintain power and control. [1]
All parents can communicate effectively.	<ul style="list-style-type: none">■ Abuse and threats of abuse may make communication impossible. [2]
Abuse of a parent is unrelated to and does not significantly impair the parent-child relationship.	<ul style="list-style-type: none">■ Abuse can significantly impair a victim's parenting. [1, 3, 4]■ Children may resist a relationship with the abuser due to hypervigilance/fear. [5]

- [1] Bancroft, L. and J. Silverman. *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics*, 2002.
- [2] Peter Jaffe, et al. "Children as Victims and Witnesses of Domestic Violence: Lessons Learned from Domestic Violence Death Review Committees." *Juvenile and Family Court Journal*, Vol. 57(3) (2006)
- [3] Stark, Evan. "Rethinking Coercive Control." *Sage Journals*, Vol. 15, Issue 12 (2009).
- [4] Jaffe, P. and C. Crooks & Bala. *Making Appropriate Parenting Arrangements in Family Violence Cases: Applying the Literature to Identify Promising Practices*, 2005.
- [5] Drozd, L. and N. Oldsen. "Is it Abuse, Alienation, and/or Estrangement? A Decision Tree." *Journal of Child Custody*, Vol. 1(3) (2004).

1. Use of Screening Tools and Lethality Assessments

a. What Screening Research Says

- Domestic abuse is often undetected in child custody disputes. [Johnson, Saccuzzo, and Koen. "Child Custody Mediation in Cases of Domestic Violence: Empirical Evidence of a Failure to Protect." *Sage Journals*, Vol. 11, Issue 8 (2005); Holtzworth-Munroe, Applegate, and Beck. "Detecting Intimate Partner Violence in Family and Divorce Mediation: A Randomized Trial of Intimate Partner Violence Screening." *Psychology, Public Policy, and Law*, Vol. 17, No. 2, 241-263 (2011)]
- Practitioners who do not utilize systematic screening methods tend to under detect domestic abuse. [Holtzworth-Munroe, Applegate, and Beck. "Detecting Intimate Partner Violence in Family and Divorce Mediation: A Randomized Trial of Intimate Partner Violence Screening." *Psychology, Public Policy, and Law*, Vol. 17, No. 2, 241-263 (2011)]
- Screening for physical violence alone is insufficient to detect coercive controlling behaviors and often fails to detect serious physical violence, sexual abuse, and threats to kill. [Beck, C.J.A., and Raghavan, C.(2010). Intimate partner violence screening in custody mediation: The importance of assessing coercive control. *Family Court Review*, 48, 555-565.]

b. Lethality Assessment Factors

Lethality assessment factors impact the allocation of parental rights and responsibilities. The factors provide an indication of how past or ongoing domestic violence heightens the risk of harm to the child and parents and may indicate a marked risk for future serious injury or homicide.

These factors include:

- Abuse during pregnancy
- Access to firearms, other weapons, or ammunition (owns or has access to, recently acquired a firearm or ammunition, used or threatened to use a weapon on the other parent)
- Alleged perpetrator's mental state (e.g., signs of depression, alcohol or substance abuse)
- Animal abuse
- Avoidance of consequences (alleged offending parent avoided significant consequences despite contact with the justice system)
- Child abuse, allegation of abuse, kidnapping, endangering
- Controlling behaviors
- Escalating or changing violence

- Jealous or obsessed with the other parent
- Sexual assault, coerced, or forced unwanted sexual contact
- Stalking
- Strangulation
- Threats or attempts to kill other parent or child
- New partner
- Unemployment
- Non-biological children living in the home
- Recent separation

2. Screening for Domestic Abuse Is Different Than a Lethality Assessment

Screening is a process to determine whether domestic abuse is or may be an issue in a case. It attempts to detect the presence or absence of domestic abuse. Screening is not restricted to the items listed on a lethality assessment and does assess for lethality. It should be conducted periodically throughout the case.



PRACTICE TIP:

If a court adopts a domestic abuse screening protocol, the court should take into consideration safety, confidentiality, and due process. Screening should not be done from the bench, by affidavit, or under oath.

A *lethality assessment* is a specialized process to determine whether domestic abuse presents a risk of future harm or death to an abused parent or partner. It is not a comprehensive domestic abuse screening but attempts to detect the presence or absence of risk factors. A lethality assessment does not screen for domestic abuse. The absence of a risk factor based on a lethality assessment analysis does not mean that the situation is necessarily safe.

Note: There are no psychological tests available to determine if someone is a batterer or a victim.

Additional Resources

✓ [Domestic Violence & Allocation of Parental Rights and Responsibilities Court Guide](#)

✓ [Lethality Assessment Resources](#)

3. Each Child's Experiences, Perceptions, and Responses Are Unique

Exposure to domestic violence affects a child's:

- Behavioral development (acting out, withdrawing, caretaking of battered parent, lying to avoid confrontation, nightmares).
- Cognitive and attitudinal development (lower cognitive functioning, poor school performance, lack of conflict resolution skills, limited problem-solving skills).
- Emotional development (anger, depression, shame, confusion, helplessness, self-blame).
- Social development (isolation from friends and family, stormy relationships, difficulty trusting, poor anger management and problem-solving abilities, excessive social involvement to avoid home, bullying).

- Physical development (somatic complaints, short attention span, anxious, tired, frequently ill, poor hygiene, regression in development, self-abuse, high-risk play).

Children who witness violence and coercive control by one parent experience at least the same level of serious effects as those who were direct targets of the abuse.

[UNICEF, Behind Closed Doors: The Impact of Domestic Violence on Children \(2006\)](#)

4. Understanding the Batterer in the Context of Parenting

- Often sees children as objects to own
- Wants to punish the other parent
- So focused on the other parent that they neglect the needs of the children
- More likely to physically abuse their children
- Exposes children to ongoing domestic violence/conflict
- Uses children to control the other parent
- Continuously undermining the other parent
- Creates chaos for the family by repeated court motions
- Creates role model that perpetuates violence and abusive control in future generations
- Emotionally abuses children and the other parent

The batterer can be a good parent when the batterer:

- Admits the abuse and makes attempts to change.
 - Has the desire to improve parenting skills and attempts to take the role as parent seriously.
 - Can be redirected to focus on the needs of the children rather than on controlling the other parent.
- [[The Batterer as Parent](#), Lundy Bancroft]

5. Identifying Abuse

Domestic abuse is often difficult to identify because of:

- Stereotypes of abusers are wrong.
- Abusers present well.
- Abusers elicit sympathy.
- Victims present poorly.
- Victims are hesitant to describe abuse.
- Effects of domestic violence are counterintuitive (e.g., children express love for the abusive parent; victim stays in the relationship with abuser).

6. How to Understand Allegations

- Listen to what the victim or alleged abuser says.
 - Drill down when questioning (listen to what the victim says, ask about behaviors)

- Assess for threat
- Consider lethality factors
- Consider the context of the incident and threat
- Pay attention to how the victim and alleged abuser act (observe demeanor)
 - Demeanor of the alleged abuser
 - Attempts to present as the true victim
 - Claim inflexibility of the other parent
 - Appears vulnerable or attempts to engender empathy with the court
 - Unwilling to understand the other parent's perspective
 - Attempts to create alliances with third parties
 - Patronizes the other parent, attorney, court
 - Minimizes, blames the other party or excuses inappropriate behavior
 - Demeanor of abused
 - Difficulty in presenting evidence due to fear or cognitive impairments as a result of the abuse
 - Demonstrates inappropriate effects resulting from fear, depression, PTSD, or other responses to abuse
 - Appears anxious and unfocused
 - Appears numb, unaffected, or disinterested
 - Acts aggressive or angry when testifying
 - Shows signs of distress when listening to the abuser's testimony
- Consider the behavior of parties in response to questioning
- Focus questions on the alleged abuser's behaviors, not legal conclusions
 - Not "Were you abused?" but "did the alleged abuser put their hands on you?"
 - Not "Were you raped?" but "Have you ever had unwanted or forced sex with the alleged abuser?"

7. Domestic Abuse and Custody Disputes

Considerations for when domestic abuse arises in custody disputes:

- Domestic abuse does not automatically end when the parties separate.
- Domestic violence may overlap with child abuse.
- Children are being exposed to an inappropriate role model.
- The abuse works to undermine the non-offending parent.
- Continuous litigation is a form of ongoing control.

- Extreme cases may lead to homicide, suicide, or abduction.

When considering best interest factors in [R.C. 3109.04\(F\)](#), also consider what lethality factors exist and how the abusive acts/behaviors relate to the best interest factors.

- What are the domestic violence indicators?
- What are the domestic violence considerations?

The best way to protect children is to repeatedly assess the risk to the non-offending parent. That risk predicts the risk to the child.

Questions to consider

- Is the abuse an isolated incident or is there significant violence and coercive control?
- Has responsibility been taken for abuse?
- Is there ongoing treatment?
- Does the child have [protective factors](#)?
- Is the child at risk presently?
- Has the child been traumatized?

Additional Resources

- ✓ [Promoting Protective Factors for Children Exposed to Domestic Violence: A Guide for Practitioners](#)

8. Parenting Orders

a. Shared Parenting

Shared parenting, which involves joint parenting time and/or decision-making, may be appropriate when:

- A low risk of lethality to parent and child is indicated
- No significant history of violence, abuse, or threats
- If there have been violence or threats, the offending parent displays remorse
- Lack of coercive control and substance abuse
- Parents have demonstrated cooperation and ability to communicate
- Parents put the child's need first

b. Parallel Parenting

Parallel parenting is a method of parenting where both parents have as little interaction with one another as possible. It can be successful when clear boundaries are defined. Decision-making responsibilities are allocated between the parents. It is appropriate when:

- There is low-to-moderate risk of lethality to the parent and low risk of lethality to the child indicated.
 - Isolated incidents of violence, no coercive control
 - No current violence
 - Offending parent took responsibility

- Incompatible child-rearing styles
- Each parent has a positive contribution to make but direct contact with other parent creates acrimony.
- Not appropriate for infants, very young children, special needs children.
- Not appropriate if one parent poses a threat to the child or ongoing threat of violence to the other parent.

c. Unsupervised Parenting Time with Safety Measures

This is appropriate when the non-custodial parent poses a moderate to low risk of lethality to the custodial parent and child. The court will need to determine:

- Whether overnights are permitted
- Where pick up and drop off will occur
 - At school or daycare
 - Need an alternative plan for exchange
 - Need an agreed safe third person for exchanges
- Who is responsible for transportation
- Consider general language in shared parenting orders
 - No sharing of address and telephone numbers; how to communicate in case of emergency involving child(ren)
 - Relocation: Contesting the non-offending parent's move can be a way to continue court battles, consider whether the move impacts parenting

d. Supervised Parenting Time

This is ordered when the non-custodial parent poses a high to moderate risk of lethality to the custodial parent and child. The cost of supervised parenting time should be paid by the offending parent.

- There should be clear consequences for missing visits or being asked to leave visitation centers.
- Courts should make the offending parent accountable to the court without the input of the custodial parent or child (e.g., review hearings mandatory for the offending parent and optional for the non-offending parent).

e. When to Suspend Contact

Contact between the non-custodial parent and the child should be suspended when the non-custodial parent poses a high risk of lethality to the other parent and child. Decision-making and allocation of parental rights are awarded to the non-offending parent.

This occurs when:

- Severe current substance abuse or acutely mentally ill without treatment
- Child distress
- Court orders are disobeyed
- Very high lethality indicators are present

- Previous abuse of child or child abduction
- Conviction for serious assault or attempted homicide of a family member
- Child estranged due to past trauma

Set goals for the offending parent to restore contact.

- Counseling
- Completing batterers' intervention program or another recommended program
- Signing HIPPA release to verify counseling and program completion
- No further criminal issues
- Random testing for drugs/alcohol with a prerequisite number of tests
- Completing any terms of probation or court orders
- Attending parenting class
- Completing compliance docket or case management requirements
- Allowing non-offending parent input on modification of parenting time
- Incremental addition of contact by telephone, email, or video conference
- No harassing or disparaging residential parent

Considerations

- Stair stepping plans if contact is supervised or suspended
- Exchanges of the child:
 - Occur at a safe location
 - Include details on time and location
 - Who may be present
 - Allocation of cost, if necessary
- Parenting time schedules, including holidays and days of special meaning, should be as specific as possible.
- Communication
 - Between parents – restriction to written communication, use of a parenting app (e.g., Our Family Wizard), telephone calls limited to emergencies
 - Between parent and children – set parameters, follow language in existing protection orders or no contact orders



PRACTICE TIP:

Judicial officers should make sure that the language in parenting orders is specific with regard to parenting time schedules, exchange locations, communication methods, etc. to minimize confrontation and conflict between the abuser and the victim.

9. Use of Guardians ad litem, Mediation, and/or Parenting Coordination When Domestic Abuse Is Present

a. Guardian ad Litem (GAL)

- If the court is going to interview a child regarding their wishes or concerns with respect to the allocation of parental rights and responsibilities, the court may appoint a GAL or shall appoint a GAL if requested by a party. [\[R.C. 3109.04\(B\)\(1\)\]](#) If appointed, the GAL shall be present during the interview. [See Communicating with Children – In Camera Interviews]
- Upon the request of either parent or upon the court's own motion, the court may appoint a GAL for the child. [\[R.C. 3109.04\(B\)\(2\)\]](#)
- [Civ.R. 75\(B\)\(2\)](#) provides that when essential to protect the best interest of a child, the court may join the child as a party defendant and appoint a guardian ad litem and legal counsel if necessary for the child.
- [Sup.R. 48](#) provides the requirements for those appointed as a GAL in all domestic and juvenile cases. [GAL responsibilities: [Sup.R. 48.03](#); GAL training requirements: [Sup.R. 48.04-48.05](#)]

For more information, See [Third Party Stakeholders](#).



PRACTICE TIP:

Before appointing a guardian ad litem to a case where domestic abuse is alleged or present, consider asking whether the GAL has received any formal training on domestic violence. Encourage GALs to pursue educational opportunities in domestic violence and domestic abuse screening.

b. Mediation

- [R.C. 3109.052\(A\)](#) provides that in a proceeding for divorce, dissolution, legal separation, annulment, or the allocation of parental rights and responsibilities for the care of a child, the court may order the parents to mediate their differences on those matters in accordance with mediation procedures adopted by the court by local rule.
- [Sup.R. 16.21](#) directs courts to adopt a local rule allowing mediation, and if the rule involves mediation in domestic relations and juvenile court proceedings, the rule must prohibit the use of mediation in domestic violence cases pursuant to [R.C. 2919.25](#), [R.C. 2919.26](#), [R.C. 2919.27](#), and [R.C. 3113.31](#). Courts are not prohibited from using mediation in a subsequent divorce or custody case, even though the case may result in the termination of the provision of a protection order pursuant to [R.C. 3113.31](#).
 - Local rules should establish procedures for encouraging appropriate referrals to legal counsel and other support services for all parties.
- Courts that elect to use mediation shall do all the following with respect to alleged or suspected domestic violence or domestic abuse:
 - Establish screening procedures to assess the capacity of the parties to mediate.
 - Prohibit mediation when domestic abuse or domestic violence is alleged, suspected, or present unless all the following conditions are satisfied:
 - Screening is conducted, both before and during the mediation, for domestic abuse and domestic violence and for the capacity of the parties to mediate;
 - The person who is or may be the victim of domestic abuse or domestic violence is fully informed about the mediation process, right to decline participation in the mediation process, and of the option to have a support person, in addition to an attorney, present at the mediation sessions;

- The parties have the capacity to mediate without fear of coercion or control;
- The court has taken reasonable precautions to create a safe mediation environment for the parties and all other persons involved in the mediation process;
- Procedures are in place for the mediator to terminate a mediation session if there is a threat of domestic abuse, domestic violence, or coercion between the parties;
- Procedures are in place for issuing written findings of fact to refer certain cases involving domestic violence to mediation as required by [R.C. 3109.052\(A\)](#).

c. Parenting Coordination

"Parenting coordination" is a court-ordered child-focused dispute resolution process established to assist parties in implementing a parental rights and responsibilities order or companionship time order using assessment, education, case management, conflict management, coaching, or decision-making.

If domestic abuse or violence is alleged, suspected, or present, parenting coordination may proceed only if all of the following conditions are satisfied: [\[Sup.R. 16.65\]](#)

- Screening is conducted, both before and during parenting coordination, for domestic abuse and domestic violence and for the capacity of the parties to engage in parenting coordination;
- The person who is or may be the victim of domestic abuse or domestic violence is fully informed about the parenting coordination process; the right to decline participation in the parenting coordination process; and, at the discretion of the parenting coordinator, the right to have any other individuals attend and participate in parenting coordination sessions;
- The parties have the capacity to participate in the parenting coordination process without fear of coercion or control;
- The court has taken reasonable precautions to create a safe parenting coordination environment for the parties and all other persons involved in the parenting coordination process;
- Procedures are in place for the parenting coordinator to terminate a parenting coordination session if there is a threat of domestic abuse, domestic violence, or coercion between the parties.

For more information, See [Third Party Stakeholders](#)

Additional Resources

- ✓ [Assessing Allegations of Domestic Violence in Child Abuse Cases](#)
- ✓ [Domestic Violence and Children: Questions and Answers for Domestic Violence Project Advocates](#)

Domestic Violence and Protection Orders





Domestic Relations Resource Guide - Section II: Domestic Violence

C. Domestic Violence and Protection Orders

Domestic violence within the context of domestic relations cases is governed by [R.C. Chapter 3113](#). [R.C. 3113.31\(A\)\(1\)](#) defines domestic violence as any of the following acts against a family or household member:

- Attempting to cause or recklessly causing bodily injury
- Placing another by the threat of force in fear of imminent serious physical harm or committing the following acts:
 - Menacing by stalking [\[R.C. 2903.211\]](#)
 - Pattern of conduct of two or more actions or incidents closely related in time
 - Knowingly caused or would cause the petitioner physical harm or mental distress
 - Aggravated trespass [\[R.C. 2911.211\]](#)
- Abusing a child [\[R.C. 2151.031\]](#)
- Committing a sexually oriented offense [\[R.C. 2950.01\]](#)

Domestic violence also includes instances where the respondent has created a substantial risk to the health and safety of the child by violating a duty of care owed to the child. [\[R.C. 3113.31\(A\)\(1\)\(a\)\(iii\); R.C. 2151.031\(B\); R.C. 2919.22\(A\)\]](#)

Unless the child suffers physical or mental injury that harms or threatens to harm the child's health or welfare, a child exhibiting evidence of corporal punishment or other physical disciplinary measures by a parent, guardian, custodian, person having custody or control or person in loco parentis of a child is not an abused child under this division. [*Glancy v. Spradley, 2012-Ohio-4224*; even though "switching" a child left welts on the child's legs, there was no evidence of substantial physical harm to the child's mental health or physical development.]

Overview of Protection Orders			
Type of Order	For Whom	Jurisdiction, Venue & Standard of Proof	Violation, Length of Order, & Objections
<p>Domestic Violence Civil Protection Order (DV CPO)</p> <p>Dating Violence Civil Protection Order (DT CPO)</p> <p>Domestic Violence Juvenile Civil Protection Order (DV JCPO)</p> <p>R.C. 3113.31</p>	<ul style="list-style-type: none"> Domestic violence, menacing by stalking, aggravated trespass, child abuse or sexually oriented offense committed by an adult or juvenile who is a household member or in a dating relationship within 12 months of behavior in question. Criminal charges not required. Custody and support issues may be addressed. Person may seek relief on the person's own behalf. Any parent or adult household member may seek relief on behalf of any other family or household member. 	<ul style="list-style-type: none"> Domestic Relations court if respondent is 18 years or older. Juvenile court if respondent is under 18 years old. <i>Ex Parte</i> order may be solely signed by a magistrate per Civ.R. 65.1. Hearing within 7 or 10 court days if <i>Ex Parte</i> order is issued, depending on whether respondent is ordered to vacate or is evicted from residence. Normal civil action if no <i>Ex Parte</i> order is issued or requested. Venue: County where petitioner currently or temporarily resides. Standard of proof: Preponderance of evidence. 	<ul style="list-style-type: none"> Criminal violation under R.C. 2919.27. Adjudicated a delinquent child under R.C. 2919.27. Contempt of court under R.C. 3113.31. In effect for a specified time up to 5 years and may be renewed. In effect for a specified time not to exceed the respondent's 19th birthday, if respondent was a minor at the time of issuance. Objections may be filed after issuance of final appealable order per Civ.R. 65.1. Service not required for prosecution if actual notice from judicial officer or law enforcement officer. [R.C. 2919.27(D)]

<p>Juvenile Civil Protection Order (JCPO)</p> <p>R.C. 2151.34</p>	<ul style="list-style-type: none"> ■ Felonious assault, aggravated assault, assault, aggravated menacing, menacing by stalking, menacing, aggravated trespass, and sexually oriented offense committed by a juvenile. ■ Criminal charges not required. ■ Any person on behalf of that person. ■ Any parent or adult family or household member may seek relief on behalf of any other family or household member. ■ Any person who the court deems as an appropriate person may seek relief on behalf of a child. 	<ul style="list-style-type: none"> ■ Juvenile court if respondent is under 18 years old. ■ <i>Ex Parte</i> order may be solely signed by a magistrate per Civ.R. 65.1. ■ Hearing within 10 court days if <i>Ex Parte</i> order issued. ■ Normal civil action if no <i>Ex Parte</i> order is issued or requested. ■ Venue: County where petitioner resides. ■ Standard of proof: Preponderance of evidence; clear and convincing for electronic monitoring requests. 	<ul style="list-style-type: none"> ■ Criminal violation under R.C. 2919.27. ■ Adjudicated a delinquent child under R.C. 2919.27. ■ Contempt of court under R.C. 2151.34. ■ In effect for a specified time not to exceed the respondent's 19th birthday. ■ Objections may be filed after issuance of final appealable order per Civ.R. 65.1. ■ Service not required for prosecution if actual notice from judicial officer or law enforcement officer. [R.C. 2919.27(D)]
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<p>Civil Stalking Protection Order (CSPO)</p> <p>Civil Sexually Oriented Offense Protection Order (CSOPO)</p> <p>R.C. 2903.214</p>	<ul style="list-style-type: none"> ■ Menacing by stalking or victims of a sexually oriented offense. ■ Criminal charges not required. ■ Person may seek relief on the person's own behalf. ■ Any parent or adult household member may seek relief on behalf of any other family or household member. 	<ul style="list-style-type: none"> ■ Common Pleas court if respondent is 18 years old or older. ■ <i>Ex Parte</i> order may be solely signed by a magistrate per Civ.R. 65.1. ■ Hearing within 10 court days if <i>Ex Parte</i> order is issued. ■ Normal civil action if no <i>Ex Parte</i> order is issued or requested. ■ Venue: County where petitioner currently or temporarily resides. ■ Standard of proof: Preponderance of evidence. 	<ul style="list-style-type: none"> ■ Criminal violation under R.C. 2919.27. ■ Contempt of court under R.C. 2903.214. ■ In effect for a specified time up to 5 years and may be renewed. ■ Objections may be filed after issuance of final appealable order per Civ.R. 65.1. ■ Service not required for prosecution if actual notice from judicial officer or law enforcement officer. [R.C. 2919.27(D)]
<p>DV Temporary Protection Order (DV TPO)</p> <p>R.C. 2919.26</p>	<ul style="list-style-type: none"> ■ Criminal charges of domestic violence, stalking, criminal damaging or endangering, criminal mischief, burglary, aggravated trespass, sexually oriented offense or any offense of violence [R.C. 2901.01] against a family or household member. ■ Either misdemeanor or felony charge. 	<ul style="list-style-type: none"> ■ Municipal or County Court (generally) or Common Pleas Court General Division ■ Venue: Court that has jurisdiction over criminal case. ■ Standard of proof: The court must find the safety and protection of victim may be impaired by the continued presence of the alleged offender. [R.C. 2919.26(C)] 	<ul style="list-style-type: none"> ■ Criminal violation under R.C. 2919.27. ■ In effect for the duration of criminal case or until a DV CPO [R.C. 3113.31] is issued arising out of the same activities. ■ Remains in effect if the offender is bound over for a felony arising out of the same activities as those of the misdemeanor case. [R.C. 2919.26(D)(4)]

Criminal Protection Order (CrPO) R.C. 2903.213	<ul style="list-style-type: none"> ■ Criminal charges of felonious assault, aggravated assault, assault, aggravated menacing, menacing by stalking, aggravated trespass, menacing or sexually oriented offense against someone who is NOT a family or household member. ■ Excludes domestic violence and offenses of violence against family or household member. ■ Either misdemeanor or felony charge. 	<ul style="list-style-type: none"> ■ Municipal or County Court (generally) or Common Pleas Court General Division. ■ Venue: Court that has jurisdiction over criminal case. ■ Standard of proof: The court must find the safety and protection of victim may be impaired by the continued presence of the alleged offender. [R.C. 2919.26(C)] 	<ul style="list-style-type: none"> ■ Criminal violation under R.C. 2919.27. ■ In effect for the duration of criminal case or until CSPO or CSOPO [R.C. 2903.214] is issued arising out of the same activities. ■ Remains in effect if the offender is bound over for a felony arising out of the same activities as those of the misdemeanor case. [R.C. 2903.21(D)(3)]
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1. Jurisdiction and Venue [\[R.C. 3113.31\(A\)\(2\); Civ.R. 3\(C\)\]](#)

When parties to the case are family or household members or a person in a dating relationship with respondent, domestic relations courts have jurisdiction.

Proper venue lies in the counties with connection to the parties or allegation:

- Where Petitioner resides temporarily or permanently
- Where Respondent resides
- Where incident(s) occurred

Domestic Violence Civil Protection Order Forms [\[Sup.R. 10.01\]](#)

Courts must use the forms promulgated by the Supreme Court of Ohio, which are available on the [Supreme Court's website](#), or substantially similar forms. The clerk of courts must make forms available.

2. Who May Seek Relief [\[R.C. 3113.31\(C\)\]](#)

Any parent or adult household member may seek relief on their own behalf or on behalf of another family or household member. Therefore, a person may file on behalf of another family/household member (i.e., child) IF the petitioner is a family/household member of the on-behalf-of party and the on-behalf-of party is a family/household member of the respondent.

A person who is or was in a dating relationship with respondent may also seek relief. A petitioner's right to relief is not affected by the petitioner's leaving the residence or household to avoid further domestic violence. [\[R.C. 3113.31\(B\)\]](#)

a. Family or Household Member Relationship [\[R.C. 3113.31\(A\)\(3\)\]](#)

A family or household member relationship is necessary to seek relief through a Domestic Violence Civil Protection Order. A person who is or has resided at some point in the past with the respondent constitutes a household member.

- Spouse, former spouse, person living as a spouse.

- Person living as a spouse may include:
 - Cohabiting with or cohabited within 5 years prior to the incident
 - By common law marriage if existed before October 10, 1991
 - Including same sex relationship
 - Sharing of familial or financial responsibilities and consortium
 - See [State v. McClothan, 2014-Ohio-85 \(2014\)](#), [State v. Carswell, 114 Ohio St.3d 2010 \(2007\)](#), [State v. Williams, 79 Ohio St.3d 459 \(1997\)](#).
- A parent, foster parent, or a child of the respondent, or another person related by consanguinity or affinity to respondent.
- A parent or a child of a spouse, person living as a spouse, or former spouse of respondent, or another person related by consanguinity or affinity.
- A person who never resided with the respondent.
 - The natural parent of any child of whom the respondent is the other natural parent or is the putative other natural parent. ("Putative other natural parent" does not require a parentage determination.)
- A person who is or was in a dating relationship with the respondent.
 - A relationship between individuals who have or have had a relationship of a romantic or intimate nature at the time of the conduct in question.
 - Was in a dating relationship with the respondent within the 12-month preceding the conduct in question.
 - Does not include casual acquaintanceship or ordinary fraternization in a business or social context.

3. Special Statutory Proceeding [[Civ.R. 65.1\(A\)](#)]

[Civ.R. 65.1](#) applies to special statutory proceedings under [R.C. 3113.31](#), [R.C. 2151.34](#), and [R.C. 2903.214](#). Any provision of the Rules of Civil Procedure that is inconsistent with those special statutory provisions is superseded and inapplicable to the extent of the inconsistency. The petitioner may be accompanied by a victim advocate. [[R.C. 3113.31\(M\)](#)]



PRACTICE TIP:

Because civil protection order proceedings are designated as special statutory proceedings certain aspects of the Rules of Civil Procedure are inapplicable in domestic violence and dating violence civil protection order cases. For example, a civil protection order is neither a magistrate's order nor a magistrate's decision.

a. Petition for a Domestic Violence Civil Protection Order (CPO) [[C. 3113.31\(C\)](#)]

The Petition for Domestic Violence Civil Protection Order shall contain:

- An allegation that the respondent engaged in domestic violence against a family or household member or a person with whom the respondent was in a dating relationship.
- A description of the nature or extent of the violence.
- The relationship of the respondent to the petitioner, and to the victim if not the petitioner.

- If the petitioner is in a dating relationship with the respondent, facts upon which the court may conclude the dating relationship existed.
- Request for relief.

b. Relief Available [\[R.C. 3113.31\(E\)\]](#)

The court has the authority to:

- Direct the respondent to refrain from abusing or committing sexually oriented offenses against the family or household member, or person with whom respondent is in a dating relationship.
- Evict the respondent and grant exclusive use of the residence to protected parties where the residence is solely owned/leased by petitioner or other family or household member.
- Order the respondent to vacate the residence and grant exclusive use of the residence to the protected parties where the residence is jointly owned/leased by respondent and the petitioner or other family/household member. If the respondent solely owns/leases the residence, the respondent has a duty to support petitioner or other family/household member living in the residence/household.
- Temporarily allocate parental rights and responsibilities if no other court is exercising jurisdiction [\[Hyde v. Smith, 2015-Ohio-1701; Hoyt v. Heindell, 2010-Ohio-6058\]](#) [R.C. 3113.31\(E\)\(1\)](#) has been limited to allow a domestic relations court “to make emergency decisions, on an interim basis, to protect children from imminently dangerous situations.”
- Require the respondent to maintain support if the respondent has a duty to support petitioner or family or household member.
- Order the respondent to refrain from entering the residence, school, business, or place of employment of the petitioner or a family or household member.
- Order the respondent not to cause another person to violate the order.
- Require the respondent, petitioner, victim of domestic violence or any combination of those persons to seek counseling.
- Order the respondent not to remove, damage, hide, harm, or dispose of any companion animal owned or possessed by petitioner.
- Authorize the petitioner to remove a companion animal owned by petitioner from the possession of respondent.
- Require a wireless service transfer. [\[R.C. 3113.45-3113.459\]](#)
 - The court may order wireless service providers to transfer the protected party's phone service from respondent's account to the protected party.
 - This transfers the rights to and billing responsibility for the account to the protected party.
 - [Form 10-E: Wireless Service Transfer Order in Domestic Violence Civil Protection Order](#) shall be served on the wireless service provider's or reseller's agent for service of process as listed with the Secretary of State.
- Any other relief.

If the petitioner requests *ex parte* relief:

- An *ex parte* hearing is held the same day the petition is filed.

- A magistrate may conduct the hearing and grant or deny the order without judicial approval. [[Civ.R. 65.1\(F\)\(2\)](#)] A magistrate granting or denying the order is not subject to [Civ.R. 52\(D\)\(2\) or \(3\)](#).
- Necessary finding: Immediate and present danger of domestic violence to a family or household member or the person with whom the respondent is or was in a dating relationship. [[R.C. 3113.31\(D\)\(1\)](#); [Felton v. Felton, 79 Ohio St.3d 34 \(1997\)](#)]
- Burden of proof: [Preponderance of evidence](#).
- The order is effective upon the magistrate's signature and filing with the clerk of court. An order signed by a magistrate has the same effect as if signed by the judge.
- The order is not subject to [Civ.R. 53\(D\)\(4\)](#).
- The order is valid until a date certain.
- The *ex parte* order is not a final appealable order.
- The *ex parte* order does not terminate due to lack of service or if a continuance of full hearing is granted.

c. **Service** [[Civ.R. 65.1\(C\)](#)]

- The clerk of courts shall cause service to be made on the respondent of a copy of the petition and all other documents required by the applicable protection order statute.
- Initial service and service of any *ex parte* protection order shall be made in accordance with the provision for personal service of process within the state under [Civ.R. 4.1\(B\)](#) or outside the state pursuant to [Civ.R. 4.3\(B\)\(2\)](#).
- Upon failure of initial service or in addition to personal service, service may be made in accordance with any applicable provision of [Civ.R. 4-4.6](#).
- Service by posting where the residence of the respondent is unknown [[Civ.R. 4.4\(A\)\(2\)\(b\)](#)]
 - May be made without the necessity of a poverty affidavit.
 - Requires an affidavit averring that the residence is unknown, all the efforts made to ascertain the residence address, the last known address, that residence cannot be ascertained with reasonable diligence.
 - Posting in the courthouse and two other public places as set forth in local rule. Posting shall not be on the website for the clerk of courts.
 - Notice shall be posted for six consecutive weeks.
- After initial service is completed on a respondent, any additional service on the respondent during the course of the proceedings shall be made in accordance with [Civ.R. 5\(B\)](#).

d. **Full Hearing** [[R.C. 3113.31\(D\)](#)]

The hearing must be scheduled:

- Within seven court days after the *ex parte* hearing is held and an *ex parte* order granted if the respondent is ordered to vacate or is evicted from residence.
- Within 10 court days after the *ex parte* hearing is held if an *ex parte* order is granted and does not include an order for the respondent to vacate or be evicted from residence.
- Scheduled as a normal civil action if an *ex parte* order is denied.

- The court must give the respondent notice of, and an opportunity to be heard at, the full hearing.

Grounds for Continuance of Full Hearing [[R.C. 3113.31\(D\)\(2\)\(a\)](#)]

- Prior to the scheduled full hearing date, the respondent has not been served with the petition or notice of hearing.
- The parties consent to a continuance.
- The continuance is needed to allow either party to obtain counsel.
- The continuance is needed for other good cause shown.

Discovery [[Civ.R. 65.1\(D\)](#)]

- Completed prior to the time set for the full hearing
- Discovery may be had upon the entry of an order containing all the following to extent applicable:
 - Time and place of discovery;
 - The identities of the persons permitted to be present, shall include victim advocate; and
 - Terms and conditions deemed by court necessary to assure the safety of the petitioner, including address confidentiality.

Required Finding – Continued Danger of Domestic Violence

- The Supreme Court of Ohio held that "the trial court must find...that petitioner or petitioner's family or household members are in danger of domestic violence." [[Felton v. Felton, 79 Ohio St.3d 34 \(1997\)](#)]
- Burden of Proof: [Preponderance of evidence](#).
- A magistrate may conduct a hearing and grant or deny the protection order. [[Civ.R. 65.1\(F\)\(3\)\(a\)](#)] Magistrate denial or granting of the order is not subject to [Civ.R. 53\(D\)\(2\) or \(3\)](#).
- Upon review, the court may adopt, or reject, the magistrate's denial or granting of the order. [[Civ.R. 65.1\(F\)\(3\)\(c\)](#)]
 - Determine there is no error of law or defect on the face of the order
 - Modify or reject the magistrate's order; not subject to [Civ.R. 53\(D\)\(4\)\(e\)](#)
 - Effective when signed by the judge and filed with the clerk of court

Granting the Protection Order

- The order is valid for a date certain but not more than five years from the date of issuance or approval.
- A full hearing domestic violence CPO and consent agreement are final appealable orders. [[R.C. 3113.31\(G\)](#)]
- If issued by a magistrate, objections must be filed prior to filing an appeal.
- The filing of objections stays the running time for filing the appeal until the court rules on the objections.

e. **Objections to Domestic Violence CPO** [[Civ.R. 65.1\(F\)\(3\)\(d\)](#)]

- Timely filed objections to the adoption, modifications, or rejection of the magistrate's granting or denial of the order do not stay the execution of the order.
 - Written objections must be filed within 14 days of the filing of the order.
 - The other party may also file objections not later than 10 days after the first objections are filed.
- The party filing objections has the burden to show:
 - An error of law or other defect is evidence on the face of the order.
 - Credible evidence is insufficient to support granting or denying the protection order.
 - An abuse of discretion in including or failing to include specific terms in the protection order.
- Evidentiary objections shall be supported by a transcript of all the evidence submitted or an affidavit of that evidence if a transcript is not available.
 - The transcript or affidavit must be filed with the court within 30 days after filing objections, unless extended by the court in writing.

f. Additional Terms

- Title to real property is not affected by a domestic violence CPO or consent agreement.
- Neither petitioner nor petitioner's family or household members' actions waive or nullify any of the terms of the domestic violence CPO or consent agreement.
- Provisions in a domestic violence CPO or consent agreement that allocate parental rights or award child support will be terminated either on a date certain set forth in the order or on the date that a court of competent jurisdiction makes a new award allocating parental rights, parenting time or child support.
 - Provisions in the domestic violence CPO or consent agreement not modified remain in full force and effect.
 - A child named in a parenting time order may still be a protected party in a domestic violence CPO or consent agreement. [[R.C. 3113.31\(O\)](#); [State v. Price, 118 Ohio St.3d 144 \(2008\)](#)]
 - Minor children may be included as protected parties in a protection order without temporarily allocating parental rights and responsibilities or making a determination of companionship rights.



PRACTICE TIP:

If the respondent is permitted to exercise parenting time with minor children, the domestic violence CPO should be specific regarding how that contact is to occur. Any contact outside the parameters of the CPO by the respondent may be construed as a violation of the domestic violence CPO. Best practice may be to have the petitioner and respondent communicate in writing to minimize potential abuse.

If the court is going to order the protected parties into counseling, intervention, or treatment, the programs should be trauma informed.

g. Modification, Renewal, or Termination of a Protection Order

- A DV CPO may be renewed in the same manner as the original order was issued or approved.

[\[R.C. 3113.31\(E\)\(3\)\]](#)

- Either the petitioner or respondent may file a motion to modify or terminate a DV CPO or consent agreement. [\[R.C. 3113.31\(E\)\(8\)\(b\)\]](#)
- The court that issued the DV CPO or approved the consent agreement retains jurisdiction to modify or terminate. [\[R.C. 3113.31\(E\)\(8\)\(a\)\]](#)
- A motion to modify the termination date of a CPO cannot extend beyond five years from date of original CPO. [\[S.H.B. v. M.W.L., 2021-Ohio-3929\]](#)
- Burden of Proof: [Preponderance of evidence](#).
- Motions referred to a magistrate must be handled in the same manner as any other full hearing of civil protection orders. [\[Civ.R. 65.1\(F\)\(3\)\(e\)\]](#)
- There is no expedited hearing requirement.
- Petitioner's address must remain confidential if requested in the original DV CPO petition.
- The court's adoption of a magistrate's ruling granting or denying a modification, finding of contempt, renewal, or a termination of an existing order is a final appealable order once signed by judge and filed with the clerk of court. [\[R.C. 3113.31\(G\)\(1\); Civ.R. 65.1\(G\)\]](#)

Factors for Modification or Termination of DV CPO or Consent Agreement

- Petitioner consents to modification or termination.
- Petitioner's fear of respondent.
- Current nature of relationship between petitioner and respondent.
- Circumstances of petitioner and respondent (e.g., proximity of workplaces and residences; whether petitioner and respondent have minor children together).
- Whether respondent complied with terms and conditions of DV CPO or consent agreement.
- Whether respondent has continuing involvement with illegal drugs or alcohol.
- Whether respondent has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for an offense of violence since the issuance of the DV CPO or consent agreement.
- Whether any other protection orders, consent agreements, restraining orders, or no contact orders have been issued against respondent.
- Whether respondent has participated in any domestic violence treatment, intervention program, or other counseling addressing domestic violence.
- Whether respondent completed the treatment, program, or counseling.
- Elapse of time since DV CPO or consent agreement.
- Age and health of respondent.
- When the last incident of abuse, threat of harm, or commission of sexually oriented offense occurred.
- Other relevant information concerning the safety and protection of the petitioner or other protected parties.

**PRACTICE TIP:**

Motions to modify, enforce, renew, or terminate a civil protection order issued after a full hearing or a consent agreement shall be made in the manner provided for service under [Civ.R. 4-4.6](#).

After service has been made any additional service required shall be made in accordance with provision of [Civ.R. 5\(B\)](#).

h. Enforcement and Penalties*Protection Order Enforcement* [[R.C. 3113.31\(E\)\(3\)](#)]

- All law enforcement agencies are required to establish and maintain an index for the protection order and the approved consent agreements delivered to the agencies. The index shall note the date and time the DV CPO or consent agreement was received.
- Full faith and credit requires law enforcement to enforce a qualifying DV CPO issued or approved by any state court regardless of whether the petitioner registered the order.
- The qualifying protection order is issued by a court that has jurisdiction over the subject matter and parties, and respondent had reasonable notice and opportunity to be heard. [[18 U.S.C. 2265\(b\)](#)]
- A DV CPO supersedes a DV TPO issued as a pretrial condition of release, if the DV CPO arises out of the same activity as the DV TPO. [[R.C. 2919.26](#)]
- A DV CPO may not supersede a no-contact order if the no-contact order is issued as part of probation.
- Courts should engage in reasonable efforts to ascertain the existence and terms of other protection or parenting orders involving the same parties. [[Sup.R. 10.06](#)]

Violation of DV CPO or Consent Agreement

- Criminal prosecution: If convicted, a party cannot be subsequently punished for contempt of court arising out of the same activity. [[R.C. 2919.27](#); [R.C. 3113.31\(L\)\(1\)\(a\)](#)]
- Contempt of Court [R.C. 3113.31\(L\)\(2\)](#)
 - Does not bar criminal prosecution of the person.
 - A person punished for contempt of court is entitled to credit for the punishment imposed upon conviction or adjudication as a delinquent child for violating a DV CPO.
 - Court has discretion to determine that a respondent did not commit a violation of the DV CPO or consent agreement or was not in contempt of court. [[R.C. 3113.31\(E\)\(7\)\(b\)](#)]
- Failure to pay child support [[R.C. 3113.31\(K\)\(2\)](#)]
 - A respondent, ordered to pay child support in DV CPO or consent agreement, found in contempt for failing to pay child support, imposed a penalty or remedy for the contempt.
 - Respondent must be assessed all court costs and pay reasonable attorney fees of adverse party.

i. Mandatory Firearm Warning [[R.C. 3113.31\(F\)\(2\)](#)]

- The court must provide the firearm disability notice, orally or by form, upon the issuance of a full

hearing DV CPO or consent agreement.

- Requisite statutory firearms warning language is found in [Form 10.04-A: Notice Concerning Possession or Purchase of Firearms](#) and [Form 10-C: Warning Concerning the Attached Protection Order or Consent Agreement](#).
- Firearms disability provisions are found in [18 U.S.C. 922\(g\)\(8\)](#).

National Law Enforcement Database

Courts must complete and file [Form 10-A: Protection Order Notice to NCIC](#) with the local law enforcement agency for entry of the protection order into the National Crime Information Center (NCIC) protection order database.

- Any time a change is made to a protections order, a new [Form 10.04-A: Notice Concerning Possession or Purchase of Firearms](#) is needed, including:
 - Modification of terms or termination date
 - *Ex parte* ordered
 - When service is completed
 - After full hearing

Additional Resources

- ✓ [BCI & NICS Reporting Requirements](#)

j. Limitations on Mutual Orders [R.C. 3113.31(E)(4)]

The court may not issue a protection order that requires the petitioner to do or refrain from doing something that the court requires respondent to do or refrain from doing unless:

- The respondent filed a separate petition for a protection order.
- The petitioner is served with notice of respondent's petition at least 48 hours before the court holds hearing with respect to the respondent's petition or petitioner waives right to notice.
- If the petitioner requested an *ex parte* order, petitioner's hearing is not delayed beyond the statutory time to consolidate the hearing on the petition respondent filed.

After a full hearing on respondent's petition where both respondent and petitioner were given the right to present evidence the court may determine:

- That petitioner committed an act of domestic violence.
- That petitioner has violated a temporary protection order pursuant to [R.C. 2919.26](#).
- That both petitioner and respondent acted primarily as aggressors.
- That neither petitioner nor respondent acted in self-defense.

k. Costs

No costs or fees shall be assessed against petitioners in connection with the filing of a petition or in connection with the filing, issuance, registration, modification, enforcement, dismissal, withdrawal, or service of a DV CPO, or for obtaining a certified copy of the order. [\[R.C. 3113.31\(J\)\(1\)\]](#)

Costs may be issued against respondent in connection with the filing, issuance, registration, modification, enforcement, dismissal, withdrawal, or service of a protection order, consent agreement, or witness subpoena or to obtain a certified copy of the DV CPO or consent agreement.

The court may assess costs if the respondent moves to modify or terminate an existing DV CPO if the motion is denied. [\[R.C. 3113.31\(E\)\(8\)\(e\)\]](#)

i. Sealing the Record [\[R.C. 3113.31\(G\)\(2\)\]](#)

If the court refuses to grant a protection order after the full hearing, the court shall order that the *ex parte* order issued and all of the records pertaining to that *ex parte* order be sealed after either of the following: no party has exercised the right to appeal or all appellate rights have been exhausted.

m. Limits to Online Access of Protection Orders [\[18 U.S.C. 2265\(d\)\(3\)\]](#)

A court shall not make available through remote access pursuant to [Sup.R. 44-47](#), a [Form 10.04-A: Notice Concerning Possession or Purchase of Firearms](#) or any record of a civil protection order case that is likely to reveal the identity or location of a petitioner or another party to be protected or could be protected by a protection order. [\[Sup.R. 10\(C\)\]](#), [\[Sup.R. 10.01\(F\)\]](#) Courts may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes. [\[18 U.S.C. 2265\(d\)\(3\)\]](#)

Domestic Relations Resource Guide	
Termination of Marriage	
Property Division	
Spousal Support	
Parenting	
Special Issues	
Third Party Stakeholders	
Domestic Abuse	
Allocation of Parental Rights and Responsibilities	
Domestic Violence and Protection Orders	

Fundamentals of Family Law



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FUNDAMENTALS OF FAMILY LAW



1

COMMON DOMESTIC RELATIONS TOPICS

- ◆ Magistrates
- ◆ Termination of Marriage
- ◆ Parenting
- ◆ Child Support
- ◆ Domestic Violence
- ◆ Paternity
- ◆ Parenting Time
- ◆ Pension valuation and division
- ◆ Property Division

2

MAGISTRATES

3

CIVIL RULE 53

4

AUTHORITY : SCOPE

Civ. R. 53(C)(1)

- ◆ Motions
- ◆ Conduct non-jury trial
- ◆ Conduct jury trial with unanimous written consent of parties
- ◆ TPO proceedings
- ◆ Other authority vested by statute

5

AUTHORITY: REGULATION OF PROCEEDINGS

- ◆ Issuing subpoenas
- ◆ Ruling on admissibility of evidence
- ◆ Putting witnesses under oath and examining them
- ◆ Calling parties and examining them
- ◆ Issuing an attachment for a contemnor
- ◆ Imposing sanctions for civil or criminal contempt

Civ. R. 53(C)(3)

6

ORDER OF REFERENCE

Civ. R. 53(D)(1)

Purpose and method. A court of record may, for one or more of the purposes described in Civ. R. 53(C)(1), refer a particular case or matter or a category of cases or matters to a magistrate by a specific or general order of reference or by rule.

A court may limit this order.

7

State ex re. Nalls v. Russo, 96 Ohio St.3d 410, 2002-Ohio-4907

“Pursuant to Rule 40 of the Ohio Rules of Juvenile Procedure, Rule 53 of the Ohio Rules of Civil Procedure, and Sections 2151.16 and 2153.08 of the Ohio Revised Code, IT IS SO ORDERED that MARK R. MAJER, Attorney at Law, is appointed as Magistrate of this Court and is empowered and authorized to hear and recommend dispositions on official cases assigned to him as the Court shall direct. Said Magistrate has and shall exercise the power to regulate all proceedings in every hearing before him as if by the Court and to do all acts and to take all measures necessary and proper for the efficient administration of justice and the performance of his duties pursuant to this order.”

8

MAGISTRATE'S ORDER

◆ Without judicial approval:

- To regulate proceedings
- If not dispositive of a claim or defense of a party

The Order must be in writing, captioned as Magistrate's Order, signed, filed with Clerk and served by the Clerk on all parties or their attorneys

◆ Response: Motion to Set Aside

- Reasons stated with particularity
- Filed no later than 10 days after filing of Magistrate's Order
- Magistrate's Order is not stayed automatically

Civ. R. 53 (D)(2)

9

MAGISTRATE'S DECISION

- ◆ Written decision for all referrals
- ◆ May be general unless findings of fact and conclusions of law are timely requested by a party or otherwise by law
 - Request for FOF and COL shall be made before entry of a Decision or within 7 days after the filing
 - If the request is timely made, the Magistrate may require any or all parties to submit proposed FOF and COL
- ◆ The Decision must be in writing, captioned Magistrate's Decision, filed with the clerk, served by the clerk on all parties or their attorneys no later than 3 days after filing

Civ. R. 53 (D)(3)(a)

10

Miele v. Ribovich, 90 Ohio St.3d 439 (2000).

- Without proper service, the time to file objections does not begin to run.
- Lack of service required trial court to allow objections to be considered although they were filed more than fourteen days after filing.

Third Federal Savings & Loan v. Haupt, 2014-Ohio-348.

- Magistrate's Decision never entered into record or served, but adopted by the trial court.
- Failure to serve a Magistrate's Decision is prejudicial error.

11

MAGISTRATE'S DECISION: WARNING

A magistrate's decision shall indicate CONSPICUOUSLY that a party shall not assign as error on appeal the court's adoption of any factual finding or conclusion of law, whether or not specifically designated as a FOF or COL, unless the party TIMELY and SPECIFICALLY objects to that factual finding or legal conclusion as required in Civ. R. (D)(3)(b).

Civ. R. 53 (D)(3)(a)(iii)

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WHAT IS REQUIRED?

Cooper v. Cooper, 2014-Ohio-4991 (3rd Dist.)

- **Failure to include mandatory language** about consequences of filing objections **resulted in reversal of custody decision**

Neu v. Neu, 2015-Ohio-1466 (1st Dist.)

- No prejudice to appellant where magistrate's decision included 14 day notice but not **mandatory language about waiver on appeal** and party filed ten detailed objections

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OBJECTIONS TO MAGISTRATE'S DECISION

◆ In writing within 14 days of the filing

- Other party may file objections within 10 days after the first objections
- Timing begins after decision with FOF and COL if those were timely requested

◆ Must be specific and state grounds with particularity

◆ Objections to FOF require a transcript or affidavit if there is no transcript or using alternate technology if court approves

- Transcript or affidavit must be filed within 30 days, court may extend with good cause

◆ Party waives the assignment of error on appeal any factual finding not objected to

Civ. R. 53 (D)(3)(b)

14

Hamilton v. Hamilton, 2016-Ohio-5900 (10th Dist.):

Failure to file objections and a supporting transcript to the first magistrate's decision or the second one issued with findings of fact and conclusions of law **limits the scope of the appellate court's review to plain error.**

15

ACTIONS ON MAGISTRATE'S DECISION

A Magistrate's Decision is not effective unless adopted by the court

◆ Whether or not objections are filed, a court may:

- adopt or reject a Magistrate's Decision
- in whole or in part
- with or without modification;
- hear a previously-referred matter
- take additional evidence, or
- return a matter to a magistrate

◆ If no objections are filed, a court may:

- adopt a magistrate's decision unless there is error of law or other defect evident on the face of the decision

Civ. R. 53 (D)(4)(a), (b), (c)

16

ACTIONS ON MAGISTRATE'S DECISION

◆ If objections are timely filed, the court may:

- rule on the objections, after undertaking an independent review
- hear additional evidence before ruling on the objections
- ◆ the court may refuse to hear additional evidence, “**unless the objecting party demonstrates that the party could not, with reasonable diligence, have produced that evidence for consideration by the magistrate.**”

Civ. R. 53 (D)(4)(d)

17

ACTIONS ON MAGISTRATE'S DECISION: JUDGMENT

- ◆ Court shall enter a judgment or interim order
- ◆ **Judgment**
 - During the 14 days permitted by Civ. R. 53(D)(3)(b)(i) for the filing of objections to a magistrate's decision
 - Or after the 14 day period has expired
- ◆ **Interim Order**
 - Issued based on magistrate's decision where immediate relief is justified
 - Objections do NOT stay the execution
 - Order shall not extend more than 28 days from the date of entry, subject to incremental extensions of 28 days for good cause
 - Interim shall comply with Civ. R. 54(A), be journalized pursuant to Civ. R. 58(A) and served pursuant to Civ. R. 58(B)

Civ. R. 53 (D)(4)(e)

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A TRIAL COURT MUST ENTER A JUDGMENT

- ◆ *Crawford v. Ribbon Tech. Corp., 143 Ohio App.3d 510 (10th Dist. 2001)*
 - a magistrate may correct an error before the trial court adopts a decision
- ◆ *Clark v. Clark, 2015-Ohio-1420 (3rd Dist.)*
 - without a judgment there is no final, appealable order

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DISQUALIFICATION OF MAGISTRATE

Disqualification **for bias or other cause** is **within the discretion of the court** and may be sought by motion filed with the court

Civ. R. 53 (D)(6)

20

BIAS

Zaryki v. Breen, 206-Ohio-7086 (9th Dist.):

- No transcript was in the record so the appellate court presumed regularity of proceedings;
- A magistrate is not presumed to harbor bias or prejudice

Hurst v. Hurst, 2013-Ohio-2674 (5th Dist.):

- “Bias’ or ‘prejudice’ refers to ‘**a hostile feeling or spirit of ill will on the one hand, or undue friendship or favoritism on the other...as distinguished from an open state of mind....**’”

21

RECORDING OF PROCEEDINGS

Except as otherwise provided by law, all proceedings before a magistrate shall be recorded in accordance with procedures established by the court

Case law requires recording, but allows for failure of equipment

Civ. R. 53 (D)(7)

22

CONTEMPT BEFORE A MAGISTRATE

- ◆ Sanctions imposed under Civ. R. 53(C)(3)(f) may be imposed only by a written order that recites facts and certifies that the magistrate saw or heard the conduct constituting contempt
- ◆ A contempt order shall be filed and copies provided by the clerk to the appropriate judge of the court and to the subject of the order
- ◆ The subject of the order may request immediate review by motion to the judge
- ◆ A judge or the magistrate entering the order of contempt may set the bail pending the judicial review

Civ. R. 53 (D)(8)

23

CIVIL RULE 65.1

How the practices and procedures under 65.1 differ
from those under Civil Rule 53

Generally speaking, the provisions of this rule apply to special statutory proceedings under R.C. 3113.31, R.C. 2151.34, and R.C. 2903.214 providing for domestic violence, stalking, and sexually oriented offense civil protection orders

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DV EX PARTE PROCEEDINGS

The following shall apply when these special statutory proceedings are referred to a magistrate for determination of a petitioner's request for an ex parte protection order:

- ◆ The Magistrate shall conduct ex parte hearing, grant or deny ex parte protection order
- ◆ No judicial approval is required
- ◆ Order is effective when signed and filed with the clerk
- ◆ This is NOT a magistrate's order or decision pursuant to Civ. R. 53(D)(2) or (3) or a judgment or interim order under Civ. R. 53(D)(4)(e)

Civ. R. 65.1(F)(2)

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DV FULL HEARING BY MAGISTRATE

- ◆ Magistrate shall conduct the hearing and deny or grant a protection order
- ◆ This is not a magistrate's decision or order under 53(D)(2) or (3)
- ◆ The court must adopt, modify or reject the order by the magistrate after review
- ◆ The court's adoption, modification, or rejection is effective when signed by the court and filed with the clerk
- ◆ Order or decision is not effective until adopted by the court

Civ. R. 65.1(F)(3)(c)

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OBJECTIONS TO THE ORDER OF THE MAGISTRATE

- ◆ A party may file written objections to the court's adoption, modification or rejection of the magistrate's denial or granting of a protection order within 14 days of the court's order being filed
- ◆ The order is not stayed by the objections
- ◆ Party filing objections has burden of showing an error of law or other facial defect, or that credible evidence was insufficient to support the order, or that magistrate abused discretion by including or failing to include specific terms
- ◆ Objections shall be supported by a transcript as is the case in Civ. R. 53

Civ. R. 65.1(F)(3)(d)

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FINAL, APPEALABLE ORDER

- ◆ Order of the court, with or without objections, is a final, appealable order
- ◆ The timely filing of objections under Civ. R. 65.1(F)(3)(d) shall stay the running of the appeal time until the court rules on the objections

Civ. R. 65.1(G)

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CIVIL PROTECTION ORDER ISSUES: COURT COSTS

Sowers v. Sowers, 5th Dist. No. 2012-CA-17, 2012-Ohio-4786

- Petitioner dismissed petition at the full hearing
- Trial court ordered costs taxed to the petitioner
- Court of Appeals found that the trial court erred
- R.C. 3113.31(J) prohibits charging a petitioner any cost in connection with the filing of a petition

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CIVIL PROTECTION ORDER ISSUES: PRIVILEGE

Lasater v. Vidahl, 9th Dist. No. 26242, 2012-Ohio-4918

- Vidahl had sought and obtained a protection order against Lasater
- Vidahl twice filed police reports, and Lasater was twice arrested, for violating the CPO, but the charges were dismissed both times
- Lasater sued her sister Vidahl alleging that she had placed her in a false light by making reports to the police and making accusations against her in a letter to a magistrate as part of a civil protection order case
- Court of Appeals held that communications between the petitioner and the court were subject to absolute privilege; there is dispute between districts as to whether reports to the police are covered by absolute privilege

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CIVIL PROTECTION ORDER ISSUES: FAMILY OR HOUSEHOLD MEMBER

State v. Blackmon, 5th Dist. No. 2012 CA 00110, 2012-Ohio-5854

- Felony domestic violence case
- Defendant pleaded no contest but argued that the victim was not a family or household member
- Trial court rejected his argument
- Victim was presumed to be the natural daughter of Defendant's brother for 16 years, and they all lived in the same home
- When victim was 16, a blood test determined that Defendant's brother was not her father, but she continued to live with the family
- Court of Appeals reversed and found that victim was not a family or household member

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AVOIDING APPEALS

Some Suggestions

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Avoiding Appeals: Some Suggestions

- ◆ Make sure that separation agreements and/or court orders are clear and enforceable by their own without returning to court.
 - When parties have to return for “interpretation” the court opens itself to reversals.

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Avoiding Appeals: Some Suggestions

Make sure that all pending motions, requests to interview a child, etc., that are addressed by the time of the final hearing, in an order or judgment entry, or the court opens itself to reversal.

Pedraza v. Collier, 2007 – Ohio – 3835. 3rd district

34

Avoiding Appeals: Some Suggestions

Address all statutory issues in decisions

- Best interest factors for allocation of parental rights and responsibilities: ORC 3109.04
- Best interest factors for parenting time: ORC 3109.051
- Factors for spousal support: ORC 3106.18

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Avoiding Appeals: Some Suggestions

- ◆ When writing a decision, make sure to cite the degree of proof necessary for the decision:
 - Preponderance of the evidence
 - Clear and convincing evidence
 - Beyond a reasonable doubt
- ◆ If you find testimony or evidence not to be credible, state that and specify why you find that the testimony or evidence lacks credibility.

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Avoiding Appeals: Some Suggestions

- ◆ Wait for 14 days to rule on the magistrate's decisions
- ◆ Make sure there is service
- ◆ Make sure the waiver language is conspicuous on the decision
- ◆ Enter a judgment

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TERMINATION OF A MARRIAGE

JURISDICTION



38

DIVORCE, DISSOLUTION, ANNULMENT*, LEGAL SEPARATION**

- ◆ Residency in Ohio for six months**
- ◆ Venue in appropriate county
- ◆ Valid marriage*

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OBERGEFELL v. HODGES, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015)

The 14th Amendment requires all states to license marriages between same-sex couples and to recognize all marriages that were lawfully performed out of state

The fundamental right to marry is guaranteed to same-sex couples by both the Due Process Clause and the Equal Protection Clause

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DISSOLUTION OF MARRIAGE

agreement in advance of filing



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DISSOLUTION

PARTIES MUST SIGN AND FILE:

- ◆ Petition for dissolution
- ◆ Separation agreement
- ◆ Any court-mandated affidavits of income, assets and property
- ◆ If children, a Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) affidavit
- ◆ Shared parenting plan or terms for allocation of parental rights and responsibilities in judgment entry of dissolution
- ◆ Judgment entry for dissolution of marriage

R.C. 3105.61-65

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LEGAL SEPARATION

“ALIMONY ONLY”

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FYI

- ◆ Legal Separation does not require 6 month residency for Plaintiff
- ◆ The grounds are the same as in divorce

R.C. 3105.17

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ANNULMENT

R.C. 3105.31 and R.C. 3105.32

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GROUND FOR ANNULMENT

◆ Under Age

- Within 2 years of age of majority, by parent or guardian before age of majority.

◆ Other spouse is legally married to another

- By either party during other spouse's life

◆ Mental Incompetence

- Before death of either party

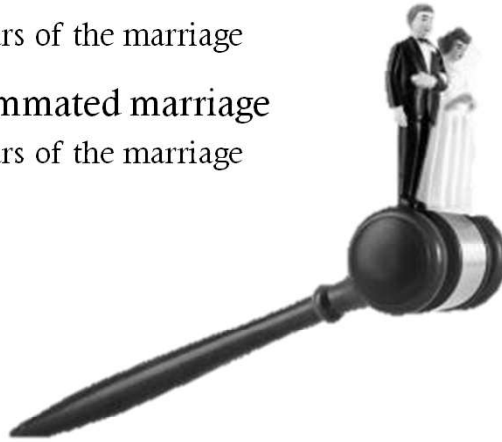
◆ Fraud

- Within 2 years of discovery

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GROUNDS FOR ANNULMENT: Continued

- ◆ Consent by force
 - Within 2 years of the marriage
- ◆ Never consummated marriage
 - Within 2 years of the marriage



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DIVORCE

R.C. 3105.17

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GROUNDS FOR DIVORCE

- ◆ Incompatibility, unless denied by either party
- ◆ Living separate and apart for one year without cohabitation
- ◆ Gross Neglect of Duty
- ◆ Extreme Cruelty
- ◆ Habitual Drunkenness
- ◆ Imprisonment
- ◆ Adultery
- ◆ Willful absence for a year
- ◆ Fraudulent contract
- ◆ Other spouse
- ◆ Divorce outside this state

R.C. § 3105.01

- R.C. § 3105.01

"I MIGHT REMIND YOU, JOHN, THAT 'LORRAINE NEVER STOPS YAKKING' IS NOT YET GROUNDS FOR DIVORCE IN THE STATE OF OHIO."



DIVISION OF PROPERTY

R.C. 3105.171



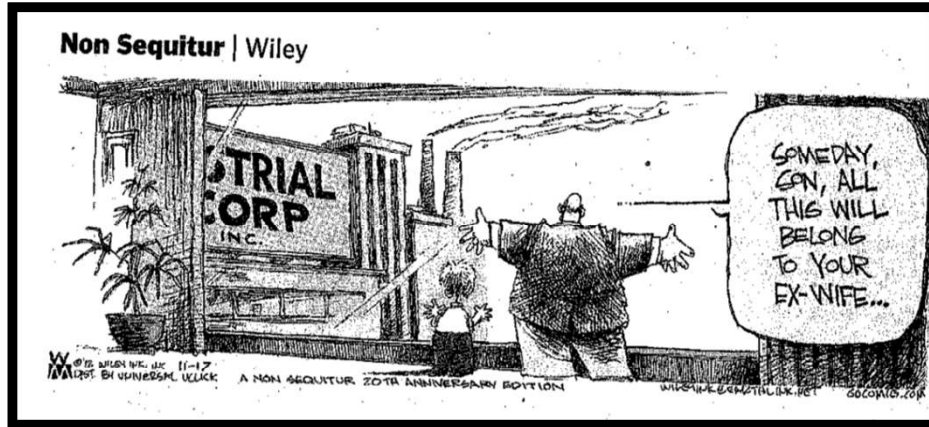
51

DIVISION OF PROPERTY DURING THE MARRIAGE

- ◆ Date of marriage to date of final hearing
R.C. 3105.171 (A)(2)(a)

- ◆ Unless either or both dates would be inequitable R.C. 3105.171(A)(2)(b)
 - *Bryan v. Bryan, 2012-Ohio-3691*

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MARITAL PROPERTY: R.C. 3105.171 (A)(3)(a)

- ◆ All currently owned real and personal property acquired during the marriage including retirement benefits
- ◆ All interest in real or personal property acquired during the marriage including retirement benefits.
- ◆ All income and appreciation on separate property earned during marriage due to:
 - either spouses labor, money or in-kind contribution that causes an increase in the value of separate property
 - ◆ *Middendorf v. Middendorf*, 82 Ohio St.3d 397 (1998) increase to husband's business was marital because the increase was due to the husband's labor contributions that occurred during the marriage.
- ◆ Participant accounts for deferred assets deferred during the marriage

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NON-MARITAL PROPERTY

R.C. 3105.171 (A)(3)(a)

- ◆ Real or personal property
 - Acquired before marriage
 - An inheritance or bequest during marriage
 - Interest in property acquired after legal separation
 - Any property excluded by antenuptial
 - Gift after the marriage proved by clear and convincing evidence to be given only to one spouse
- ◆ Passive income
- ◆ Settlement for personal injury to spouse
- ◆ Comingled assets that can be traced

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MARITAL/SEPARATE PROPERTY

Iacampo v. Iacampo, 11th Dist. No. 2011-G-3026, 2012-Ohio-1790

- ◆ Wife's parents gave her annual gifts, usually \$10K, to her and her brother
- ◆ Parents established mutual fund accounts into which these gifts were to be deposited
- ◆ Some of the checks were first deposited in the parties' joint bank account, then later, but not immediately, wife would write checks to the mutual fund
- ◆ Trial court found deposits to be separate property
- ◆ Court of Appeals: "the act of commingling is no longer determinative. Instead, the traceability of separate property is the paramount concern."

Court of Appeals found that wife satisfied her burden to show the assets are separate property

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DISTRIBUTIVE AWARD

- ◆ Payment from real or personal property made from separate property that is not spousal support
- ◆ To achieve equity
- ◆ Financial misconduct

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DIVISION OF PROPERTY

R.C. 3105.171 (C)

- ◆ Equal, unless inequitable
- ◆ Each contributed to assets
- ◆ Make property division before spousal support award
- ◆ Not modifiable unless by express written permission of both spouses R.C. 3105.171(I)

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FACTORS FOR PROPERTY DIVISION

R.C. 3105.171 (F)

- ◆ Duration of marriage
- ◆ Assets and liabilities
- ◆ Desirability of awarding family home to spouse with children
- ◆ Liquidity of property
- ◆ Desirability of keeping asset intact
- ◆ Tax consequences
- ◆ Costs of sale
- ◆ Agreed upon division by spouses
- ◆ Retirement benefits
- ◆ Other factors

59

Distribution of a Qualified Pension Plan before age 59 ½ is taxable and subject to 10% additional tax

- Exception for QDRO, 26 U.S.C. §72(t)(2)(C)
- QDRO must have the alternate payee's name and address.
- Exception does not apply to distribution from an individual retirement plan that is not part of a "qualified plan."

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THE QDRO EXCEPTION

- Instead of rolling-over the plan, the spouse can cash out the pension plan and avoid the 10% early distributions tax penalty.
- The spouse will still be required to pay the normal taxes associated with their pension distribution, however they will not be penalized for the early withdrawal.

61

TAX IMPLICATIONS OF PROPERTY DIVISION

A property transfer incident to a divorce is not a taxable event

However, if, and when, the property is redeemed, cashed out, or sold, that event would be taxable

62

SPOUSAL SUPPORT

R.C. 3105.18

63

SPOUSAL SUPPORT: Inclusion of Income

Brandner v. Brandner, 12th Dist. No. CA2011-07-136, 2012-Ohio-304

Question: whether money paid to a husband for a non-compete provision of the sale of his business should be excluded from his income calculations in the decision to modify his spousal support obligations.

Husband sold his pharmacy to Walgreens and then worked as a pharmacist for Walgreens. Income decreased from \$220,000 to \$118,000. However, husband also received \$280,000 payment for five year non-compete agreement

The Trial court found the one time payment was excludable from husband's income for child and spousal support purposes.

Court of Appeals: trial court erred in not considering the payment for spousal support purposes

-Statute dealing with spousal support (R.C. 3105.18(C)) does not limit the sources from which income may be derived or the characteristics of income that may be considered for purposes of determining an appropriate award of spousal support

-Child support statute (R.C. 3119.01(C)(7)) specifically excludes "[n]onrecurring or unsustainable income or cash flow"

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STATUTORY INQUIRY

R.C. 3105.18(c)(1)

Appropriate and Reasonable

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STATUTORY FACTORS

R.C. 3105.18(C)(1)

- ◆ Income (a)
- ◆ Relative earning abilities (b)
- ◆ Ages and conditions (c)
- ◆ Retirement benefits (d)
- ◆ Duration of marriage (e)

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STATUTORY FACTORS: CONTINUED

R.C. 3105.18(C)(1)

- ◆ Appropriateness of seeking employment outside home due to minor children (f)
- ◆ Standard of living (g)
- ◆ Relative extent of education (h)

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STATUTORY FACTORS: CONTINUED

R.C. 3105.18(C)(1)

- ◆ Relative assets and liabilities (i)
- ◆ Contribution to education, training, earning ability (j)
- ◆ Time and expense to acquire education, training, or experience (k)

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STATUTORY FACTORS: CONTINUED

R.C. 3105.18(C)(1)

- ◆ Tax consequences (l)
- ◆ Lost income production resulting from marital responsibilities (m)
- ◆ Any other equitable and relevant factor (n)

69

AFTER THE DIVORCE: SOCIAL SECURITY RETIREMENT

Ex-Spouse's Benefits

- A divorced spouse can get benefits on the ex-spouse's Social Security record if the marriage lasted at least 10 years. The divorced spouse must be 62 or older and unmarried.
- The amount of benefits has no effect on the amount of benefits for ex-spouse or ex-spouse's current spouse.
- Also, if divorced for at least two years and both are at least 62, divorced spouse can get benefits even if ex-spouse is not retired.

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AFTER THE DIVORCE: SOCIAL SECURITY RETIREMENT

Ex-Spouse's Widow's Benefits

- Married to ex-spouse at least 10 years.
- Validly divorced (not annulled)
- Age 60 or age 50-59 and disabled
- Not remarried before age 60 or remarried before age 60 and widowed or divorced from subsequent spouse.



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PENSION INFORMATION

- ◆ Erisa 29 U.S.C. Section 1001
- ◆ Retirement Equity Act, 29 U.S.C. 1056
- ◆ R.C. 3105.171.(A)(3)(a)
- ◆ Pension Benefit Guarantee Corporation (PBGC)

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PENSION CASE LAW

Holcomb v. Holcomb, 44 Ohio St.3D 128 (1989)

- Husband's vested pension plan that accumulated during marriage was marital asset, required to be considered when dividing marital assets and liabilities.

Hoyt v. Hoyt, 53 Ohio St.3d 177 (1990)

- Courts should use the coverture fraction to calculate the value of retirement plans

Neville v. Neville, 2003-Ohio-3624

- Social Security benefits may be considered in an equitable distribution of assets

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OHIO PUBLIC PENSIONS

- ◆ OPERS, STRS, SERS, OPFPF
- ◆ ERISA does not apply
- ◆ DOPO (Division of Property Order) is used to divide
- ◆ Certified copy must be sent by Clerk to appropriate retirement plan

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OHIO PENSION CASE LAW

Prior to Statutory Changes these were difficult to divide:

Cosby v. Cosby, 2002-Ohio-4170

- A court may not impose a constructive trust upon the STRS survivor benefits of a surviving spouse in favor of a former spouse who claims entitlement based on an award of retirement benefits in a divorce decree.

Erb v. Erb, 91 Ohio St.3d 503 (2001)

- A court can issue a QDRO on the Ohio Police & Fire Pension Fund to facilitate the division of property.

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FEDERAL EMPLOYEE RETIREMENT PLANS

- ◆ ERISA does not apply to Civil Service Retirement System (CSRS) or Federal Employment Retirement System (FERS)
- ◆ Requires: Court Order Acceptable for Processing (COAP)

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MILITARY PENSIONS

- ◆ Uniformed Services Former Spouses' Protection Act (USFSPA)
- ◆ Division requires: Military Retired Pay Division Order
- ◆ Served on DFAS (Army, Navy, Air Force, and Marines) or Coast Guard Pay and Personnel Center

Daniel v. Daniel, 139 Ohio St.3d 275 (2013)

- An unvested military pension can be divided using the coverture fraction or other some other appropriate method. (However, if the member was not in the military 10 years, there is no direct order on the military branch)

77

TAX IMPLICATIONS:

Spousal Support, Child Support, End of Marriage

78

IRS RECORDS THAT ARE HELPFUL

Form 4506-T: to request transcripts from the IRS

- **Account Transcripts** (reveals the balance owed for the tax year and outcome of audits)
- **Tax Return Transcripts** (reveals line-items of the tax return transcript)
- **Wage and Income Transcripts** (reveals the W2s and the 1099s filed by payors under a person's SSN)

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HEAD OF HOUSEHOLD

Allows higher standard deduction than married filing separate

- ◆ A parent does not need to claim a child to be Head of Household
- ◆ To be Head of Household:
 - Unmarried on last day of year
 - Includes a person who filed a separate return and spouse did not live in home for more than one half the year
- ◆ And paid for more than one half of the cost of maintaining a home for a qualifying child for more than one half a year
 - Includes one of the parents in a never married couple who lived together during the year



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TAX CREDITS FOR CHILDREN



81

FORM 8332

- ◆ For any decree after 2008, Form 8332 must be used in order to claim the dependency exemption.
- ◆ For any decree before 2008 and the claiming of the dependent is contingent on current support, form 8332 must be attached.

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EARNED INCOME TAX CREDIT: WHAT IS IT?

The “EITC” is a refundable tax credit for people who work but do not earn high incomes. The purpose is to reduce the tax burden and supplement the wages of the low to moderate wage earners.

83

HOW MUCH IS IT WORTH?

Earned Income and adjusted gross income (AGI) must each be less than:

- \$42,128 with one qualifying child (\$48,108 married filing jointly)
- \$47,915 with two qualifying children (\$53,865 married filing jointly)
- \$51,464 with three or more qualifying children (\$57,414 married filing jointly)

Tax Year 2021 maximum credit:

- \$6,728 with three or more qualifying children
- \$5,980 with two qualifying children
- \$3,618 with one qualifying child

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RULES FOR CLAIMING THE EITC

(26 U.S.C. §32)

- Earned income
- Relationship: Child must be your son, daughter, stepchild, brother, sister or descendant
- Age: Child must be under 19
- Residency: Child must live with claiming parent for more than 6 months

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CHILD TAX CREDIT

26 U.S.C. §24

- It is a tax credit that allows taxpayers to claim a tax credit of up to \$2,000 per qualifying child, which reduces one's tax liability. Some taxpayers may get a portion of the credit refunded as a cash refund.
- The child must be:
 - Age: under 17 at the end of the year,
 - Exemption: claimed as the taxpayer's dependent
 - Support: child must not have provided over half his own support.

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EXCEPT IN 2021 ADVANCED CHILD TAX CREDIT

- ◆ \$3600 for children ages 5 and under at the end of 2021
- ◆ \$3000 for children 6 through 17 at the end of 2021

87

WHAT IS AN INJURED SPOUSE?

Form 8379 to Claim Status

An injured spouse is a spouse who filed a joint tax return and all or part of his or her portion of the overpayment was, or is expected to be, applied (offset) to his or her spouse's legally enforceable past-due federal tax, state income tax, child or spousal support, or a federal nontax debt, such as a student loan.

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SPOUSAL SUPPORT: ISSUES

◆ Antenuptial agreement

- *Gross v. Gross*, 11 Ohio St. 3d 99 (1984): antenuptial agreement for spousal support must not be unconscionable when applied.

◆ Amount

◆ Duration

- *Kunkle v. Kunkle*, 51 Ohio St. 3d 64 (1990) except in cases involving a marriage of long duration, parties of advanced age or a homemaker-spouse with little opportunity to develop meaningful employment outside the home, where a payee spouse has the resources, ability and potential to be self-supporting, an award of sustenance alimony should provide for the termination of the award, within a reasonable time and upon a date certain.

◆ Modifiability

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SPOUSAL SUPPORT: ISSUES

◆ Retirement

◆ Illness

◆ Remarriage

◆ Cohabitation

◆ Drafting issues

◆ Double dipping

◆ Zero order

◆ Reservation of jurisdiction

90

INCOME FROM PREVIOUSLY DIVIDED PENSION

Kline v. Kline, 8th Dist. No. 96734, 2012-Ohio-479

Parties divorced in 1996 after 30-year marriage. At the time of the divorce, husband's income was over \$100K/year and wife's was \$27K

Husband paid \$2,500/month spousal support

Parties each kept their own pensions free and clear from the other party

Husband retired due to medical conditions and filed a motion to terminate his spousal support

- Income of \$24K from Social Security and \$53K from pension
- Wife's income \$17K from unemployment and \$10K from pension
- Husband argued that wife would be "double dipping" if his spousal obligation considered his pension
- Court of Appeals: the pension cannot fund the support obligation, but the court must still consider the income for purposes of determining the appropriate amount that can be satisfied through other income

91

MODIFYING SPOUSAL SUPPORT

R.C. 3105.18 (F)

CHANGE OF CIRCUMSTANCE: Increase or decrease in
wages, salary, bonuses, living expenses, or medical
expenses

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CHANGE OF CIRCUMSTANCES

R.C. 3105.18(F)(1) and (2)

◆ Increase or involuntary decrease

- Wages
- Salary
- Bonuses
- Living expenses
- Medical expenses
- Other

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AND BOTH OF THE FOLLOWING:

- ◆ Change is substantial and makes existing award no longer reasonable and appropriate
- ◆ Change was not taken into account as basis for existing award when established or last modified
 - **Whether or not it was foreseeable**

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IN DETERMINING A MODIFICATION

- ◆ Consider any purpose expressed in the order or award
- ◆ Enforce any voluntary agreement of the parties

95

ALLOCATION OF PARENTAL RIGHTS AND RESPONSIBILITIES



96

UNMARRIED PARENTS

An unmarried female who gives birth to a child is the sole residential parent and legal custodian of the child until a court of competent jurisdiction issues an order designating another person as the residential parent and legal custodian.

R.C. § 3109.042(A)

97

ALLOCATING PARENTAL RIGHTS & RESPONSIBILITIES

In any divorce, legal separation, or annulment proceeding and in any proceeding pertaining to the allocation of parental rights and responsibilities...the court shall allocate parental rights and responsibilities for the care of the minor children of the marriage.

R.C. 3109.04(A)

98

STANDARD OF REVIEW ON APPEAL

Decisions concerning the allocation of parental rights and responsibilities pursuant to R.C. 3109.04(E) rest within the sound discretion of the trial court.

Miller v. Miller (1988), 37 Ohio St. 3d 71

99

STANDARD OF REVIEW ON APPEAL

Custody determinations are some of the most difficult and agonizing decisions a trial court must make, therefore an appellate court must grant wide latitude in its consideration of the evidence.

Davis v. Flickinger (1997), 77 Ohio St.3d 415

100

STANDARD OF REVIEW ON APPEAL

An appellate court will not reverse a child custody decision that is supported by a substantial amount of competent, credible evidence absent an abuse of discretion.

Bechtol v. Bechtol (1990), 49 Ohio St.3d 21

101

JURISDICTION

Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA)

R.C. 3109.04(A) refers to jurisdictional requirements of R.C. § 3127.01 to 3127.53.

102

HOME STATE

“Home State” means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately preceding the commencement of a child custody proceeding and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month period.

R.C. 3127.01(B)(7)

103

HOME STATE JURISDICTION

R.C. 3127.15(A)-An Ohio court has jurisdiction to make an initial determination in a child custody proceeding only if one of the following applies:.....

104

R.C. 3127.15 (A)(1)

1. This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.

105

R.C. 3127.15 (A)(2)

2. A court of another state does not have jurisdiction under division (A)(1) or a court of the home state of the child has declined to exercise jurisdiction on the basis that this state is the more appropriate forum under section 3127.21 or 3127.22.....

106

HOME STATE

Ohio is not the home state of the children where a mother filed for a legal separation in Ohio 4 months after moving from West Virginia to Ohio with the children. West Virginia had been the home state of the children during the 6 month period before the case was filed. The presence of the children in Ohio for “almost six months is insufficient” to confer home state jurisdiction.

Rosen v. Celebrezze (2008), 117 Ohio St.3d 241.

107

UCCJEA AFFIDAVIT

Each party in a child custody proceeding shall give information as to the child's present address or whereabouts, the places the child has lived in the last 5 years, and the name and address of each person with whom the child has lived during that period.

R.C. 3127.23(A)

108

UCCJEA AFFIDAVIT

This information must be given under oath and also must include information about:

- (1) Whether there has been any other proceeding concerning the custody of the child.
- (2) Whether there are other proceedings such as a dependency, neglect, or abuse cases or domestic violence case
- (3) Whether there is any other person claiming a custody right to the child

R.C. 3127.23(A)(1)-(3)

109

UCCJEA AFFIDAVIT

Ohio Supreme Court has adopted standard form

Note: Ohio Supreme Court form for CPO cases differs from this form (Form 10.01-F)

110

TEMPORARY ORDERS

In any proceeding pertaining to the allocation of parental rights and responsibilities for the care of child,...the court...may make a temporary order regarding the allocation of parental rights and responsibilities for the care of the child while the action is pending.

R.C. 3109.043

111

CIVIL RULE 75

Applies in Divorce....and “related proceedings”

Among other things, provides process for temporary orders

Civ. R. 75(N)

112

Civ. R. 75 (N)

Upon written request, the Court or Magistrate "...may make a temporary order regarding the support, maintenance, and allocation of parental rights and responsibilities for the care of the children of the marriage, whether natural or adopted, during the pendency of the action for divorce, annulment, or legal separation."

113

ALLOCATION OF PARENTAL RIGHTS & RESPONSIBILITIES

Designate one parent the residential parent and legal custodian R.C. 3109.04(A)(1) (sole custody)

Or

Designate both parents the residential parent and issue a shared parenting order R.C. 3109.04(A)(2) (shared parenting)

Or

Commit the child to a relative or certify the case to juvenile court if the court finds that it is in the best interest of the child for neither parent to be designated the residential parent and legal custodian R.C. 3109.04(D)(2)

114

PARENTING IS A CONSTITUTIONAL RIGHT

Parents have a fundamental right to care for and retain custody of their children.

Santosky v. Kramer (1982), 455 U.S. 745.

In re Hockstock (2002), 98 Ohio St.3d 238

115

CUSTODY TO A RELATIVE

The court must find that it is in the BI of the child for “**neither parent to be designated the residential parent and legal custodian**” before committing the child to a relative

R.C. 3109.04(D)(2)

116

PARENTAL UNSUITABILITY REQUIRED

Parental unsuitability must be found when awarding custody of a child to a non-parent, “that a preponderance of the evidence indicates abandonment, contractual relinquishment of custody, total inability to provide care or support, or that the parent is otherwise unsuitable – that is an award of custody would be detrimental to the child.”

In re Perales (1977), 52 Ohio St.2d 89, 6 O.O.3d 293, 369 N.E.2d 1047

In re Hockstock (2001), 98 Ohio St.3d 238.

117

CERTIFICATION OF CUSTODY ISSUE TO JUVENILE COURT

The Court must find that it is in the BI of the child for neither parent to be designated the residential parent.

R.C. 3109.04(D)(2)

118

WHAT IS CUSTODY?

Custody resides in the party or parties who have the right to ultimate legal and physical control of a child.

The custodial parent has “the legal authority to make fundamental decisions about the child’s welfare...”

Braatz v. Braatz (1999), 85 Ohio St.3d 40.

119

WHAT IS PARENTING TIME?

Visitation resides in a noncustodial party and encompasses that party’s right to visit the child.

“In other words, ‘visitation’ is something that is granted to someone who does not have ‘custody.’”

Braatz v. Braatz (1999) 85 Ohio St.3d 40.

120

WHAT IS SHARED PARENTING?

The allocation of parental rights and responsibilities for the care of the children to both parents

And

The issuance of a shared parenting order requiring the parents to share all or some of the aspects of the physical and legal care of the children in accordance with the approved plan for shared parenting.

R.C. 3109.04(A)(2) also R.C. 3109.04(K)

121

COURT MUST MAKE A BEST INTEREST DETERMINATION

R.C. 3109.04(A)(1)

The award of custody must be made “in a manner consistent with the best interest of the children”

R.C. 3109.04(A)(2)

The plan of shared parenting must be “in the best interest of the children”

122

BEST INTEREST OF THE CHILD (SOLE CUSTODY)

R.C. 3109.04(F)(1)whether on an original decree allocating parental rights and responsibilities for the care of children or a modification of a decree allocating those rights and responsibilities, the court shall consider all relevant factors, including, but not limited to:...

123

R.C. 3109.04(F)(1)(a)

The wishes of the child's parents regarding the child's care.

124

R.C. 3109.04(F)(1)(b)

If the court has conducted an *in camera* interview, the wishes and concerns of the child, as expressed to the court.

125

R.C. 3109.04(F)(1)(c)

The child's interaction and interrelationship with the child's parents, siblings, and any other person who may significantly affect the child's best interest

126

R.C. 3109.04(F)(1)(d)

The child's adjustment to the child's
home, school, and community

127

R.C. 3109.04(F)(1)(e)

The mental and physical health of all persons involved in the
situation

128

R.C. 3109.04(F)(1)(f)

The parent more likely to honor and facilitate court-approved parenting time rights or visitation and companionship rights

129

R.C. 3109.04(F)(1)(g)

Whether either parent has failed to make all child support payments, including all arrearages, that are required of that parent pursuant to a child support order under which that parent is an obligor

130

R.C. 3109.04 (F)(1)(h)

Whether either parent or any member of their household has been convicted of or pleaded guilty to a criminal offense involving any act that resulted in a child being an abused child or a neglected child

131

R.C. 3109.04(F)(1)(h)

Whether either parent, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of an adjudication

132

R.C. 3109.04(F)(1)(h)

Whether either parent or any member of their household has been convicted of or pleaded guilty to a violation of section 2919.25 [domestic violence]

133

R.C. 3109.04(F)(1)(h)

Whether either parent or any member of their household has been convicted of a sexually oriented offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim in the commission of the offense.

134

R.C. 3109.04(F)(1)(h)

Whether there is reason to believe that either parent has acted in a manner resulting in a child being an abused or neglected child

135

R.C. 3019.04(F)(1)(i)

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 an order of the court

136

R.C. 3019.04(F)(1)(j)

Whether either parent has established a residence, or is planning to establish a residence, outside of Ohio

137

A trial court **is required to consider the statutory factors**, but it **is not required to set forth its analysis as to each factor in its judgment entry** so long as it is supported by some competent, credible evidence.

Matis v. Matis 2005 Ohio 72 (9th District)

138

ALLOCATING PARENTAL RIGHTS TO ONE PARENT

The Court must allocate parental rights and responsibilities to one parent if:

Neither parent requests shared parenting

Or

One or both parents request shared parenting and “no plan for shared parenting is in the best interest of the children”

R.C. 3109.04(A)(1)

139

COURT DECISION

Matters relating to child custody and visitation cannot be resolved through arbitration.

Only courts are empowered to resolve disputes relating to child custody and visitation.

Kelm v. Kelm (2001) 92 Ohio St.3d 223

140

IN CAMERA INTERVIEW

“...the court, in its discretion, may and, upon the request of either party, shall interview in chambers any and all of the involved children regarding their wishes and concerns with respect to the allocation.”

R.C. 3109.04(B)(1)

141

IN CAMERA INTERVIEW

If an interview takes place:

- The court may appoint a GAL for the child upon its own motion, but SHALL appoint upon the request of either parent
- Must determine the child's reasoning ability

If the child does not have sufficient reasoning ability, the court shall not “determine the child's wishes and concerns with respect to the allocation.”

R.C. 3109.04(B)(2)(a)-(b)

142

CHILD HAS SUFFICIENT REASONING ABILITY

The court “shall 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 the allocation.”

If the court determines that it would not be in the best interest of the child to determine the child's wishes and concerns with respect to the allocation, it shall not determine the child's wishes and concerns with respect to the allocation and shall enter its written findings of fact and opinion in the journal.

R.C. 3109.04(B)(2)(b)

143

THE INTERVIEW

Shall be conducted in chambers

No persons shall be present other than “the child, the child’s attorney, the judge, any necessary court personnel, and in the judge’s discretion, the attorney of each parent.”

R.C. 3109.04(B)(2)(c)

144

COURT INVESTIGATION

Prior to trial, the court may investigate each parent concerning the following:

- Character
- Family relations
- Past conduct
- Earning ability
- Financial worth

R.C. 3109.04(C)

145

R.C. 3109.04(C)

The report shall be signed by the investigator

The investigator shall be subject to cross examination by either parent concerning the subject of the report

Upon written request, the report shall be available not less than 5 days prior to trial

146

WISHES OF THE CHILD

- Not an election
- Just one of the BI factors
- “No person shall obtain or attempt to obtain from a child a written or recorded statement or affidavit setting for the child’s wishes and concerns regarding the allocation of parental rights and responsibilities”
- “No court shall ... accept or consider a written or recorded statement or affidavit that purports to set forth the child’s wishes and concerns....”

R.C. 3109.04(B)(3)

147

COURT ORDERED EXAMS

The court may order the parents and their minor children to submit to medical, psychological, and psychiatric examinations.

R.C. 3109.04(C)

148

Effect of Superintendence Rule 91.01 - 09

- ◆ Be aware of custody evaluation rule becoming effective on 9/1/22.
- ◆ Sets out educational requirements for custody evaluators and standards for custody evaluations

149

ACTS OF DV & CHILD ABUSE

The court shall consider the following when making a custody determination:

Whether either parent has neglected the child (criminal/CSB)

Whether either parent or a member of the household has committed a sexually oriented offense or offense of physical harm against a family or household member (criminal/CSB)

R.C. 3109.04(C)

150

ACTS OF NEGLECT & ABUSE

The Court may grant that parent custody or make a shared parenting order only if it determines that it is in the BI of the child

And

“it makes a specific written findings of fact to support its determination”

R.C. 3109.04(C)

151

WHEN CAN SHARED PARENTING BE ORDERED?

The Court may order shared parenting if at least one parent files a motion for shared parenting and the plan is in the BI of the children.

R.C. 3109.04(A)(2)

152

WHEN IS THE SHARED PARENTING PLAN FILED?

The plan must be filed with the petition for dissolution of marriage

In other cases, at a time “at least thirty days prior to the hearing on the issue of the parental rights and responsibilities for the care of the children.”

R.C. 3109.04(G)

153

WHAT NEEDS TO BE IN THE PLAN?

SPP shall include provisions covering all factors that are relevant to the care of the children, including but not limited to...

- Physical living arrangements
- Child support obligations
- Provisions for medical and dental care
- School placement
- Allocation of legal/school holidays and other days of special importance

R.C. 3109.04 (G)

154

THE BEST INTEREST FACTORS (FOR SHARED PARENTING)

The Court shall consider all relevant factors,
including but not limited to the factors of
R.C. 3109.04(F)(1) [sole custody]

And

All of the factors in R.C. 3109.04(F)(2)

155

THE BEST INTEREST FACTORS (FOR SHARED PARENTING)

R.C. 3109.04(F)(2)(a)

The ability of the parents to cooperate and
make joint decisions concerning the children

156

THE BEST INTEREST FACTORS (FOR SHARED PARENTING)

R.C. 3109.04(F)(2)(b)

The ability of the parents to encourage the
“sharing of love, affection, and contact
between the child and the other parent”

157

THE BEST INTEREST FACTORS (FOR SHARED PARENTING)

R.C. 3109.04(F)(2)(c)

Any history of, or potential for, child abuse,
spouse abuse, other domestic violence, or
parental kidnapping by either parent

158

THE BEST INTEREST FACTORS (FOR SHARED PARENTING)

R.C. 3109.04(F)(2)(d)

The geographic proximity of the parents to each other, as the proximity relates to the practical considerations of shared parenting

159

THE BEST INTEREST FACTORS (FOR SHARED PARENTING)

R.C. 3109.04(F)(2)(e)

The recommendation of the GAL, if a GAL was appointed

160

PROCEDURE FOR JOINT FILING OF A SHARED PARENTING PLAN

The Court shall review the plan to determine if it is in the best interest of the children.

If it is in the BI of the children, then the Court shall approve it

If the plan or any part of the plan is not in the BI,
“the court shall require the parents to make appropriate changes to the plan to meet the court’s objections to it”

R.C. 3109.04(D)(1)(a)(i)

161

CHANGES TO THE JOINT PLAN

If the changes are in the BI of the children, then the court shall adopt the plan.

If the changes don’t meet the court’s objections or are not in the BI of the children, the court may reject the portion of the parents’ plan or deny the request for SP and designate one parent the legal custodian.

R.C. 3109.04(D)(1)(a)(i)

162

PROCEDURE FOR COMPETING SHARED PARENTING PLANS

If each parent files a separate plan, the court shall review each plan filed to determine if either is in the best interest of the children.

If one meets BI, then the court may approve the plan.

If neither meets BI, the court may order “each parent to submit appropriate changes to the parent’s plan or both of the filed plans to meet the court’s objections...”

R.C. 3109.04(D)(1)(a)(ii)

163

PROCEDURE FOR COMPETING SHARED PARENTING PLANS

Process proceeds similarly to the single plan procedure

If a SP is approved, the court “shall enter in the record of the case findings of fact and conclusions of law as to the reasons for the approval or rejection or denial” as in R.C. 3109.04(D)(1)(b)

R.C. 3109.04(D)(1)(a)(ii)

164

If only one parent files a shared parenting plan, the court “in the best interest of the children may order the other parent to file a plan for shared parenting”

R.C. 3109.04(D)(1)(a)(iii)

165

APPROVAL OF SHARED PARENTING PLAN

Approval is discretionary R.C. 3109.04(D)(1)(b)

Whenever possible, the court shall require that the plan ensures the opportunity for both parents to have frequent and continuing contact with the child, unless it not in the BI of the child.

R.C. 3109.04(D)(1)(c)

166

SPP MUST BE ATTACHED TO DECREE

SP decrees are not provisional and must be issued at the same time as and appended to the final decree.

A final SP decree has immediate effect as a final decree on the date of its issuance.

R.C. 3109.04(D)(1)(d)

167

WHAT ABOUT CHILD SUPPORT?

Child support obligations are determined in accordance with R.C. Chapters 3119, 3121, 3123, and 3125.

R.C. 3109.04(A)(2)

168

GUARDIAN AD LITEM

Juvenile Division

- ◆ ORC § 2151.281 – when a GAL should be appointed, ability to file certain civil suits, court's ability to establish compensation, dual rules allowed, duties of GALs, appointment of volunteer
- ◆ Juv. R. 4 – when GAL &/or attorney should be appointed, dual appointments allowed

DR Division

- ◆ ORC §3109.04(B)(2) – If court interviews child, court may &, if either parent requests, court shall appoint a GAL
- ◆ ORC 3109.04(F)(2)(e) – Court to consider GAL recommendations in considering shared parenting
- ◆ Civ. R. 75(B)(2) – If essential to protect child's interest, court may join child & appt GAL & legal counsel, if necessary

169

GUARDIAN AD LITEM

Ohio Superintendence Rules 48.01 – 48.07 (Effective January 1, 2021) – Applicable in all domestic relations and juvenile cases.

A GAL is defined by Sup. R. 48.01(C) as an individual appointed to assist a court in its determination of a child's best interest and is differentiated from an attorney for the child which is described as an attorney appointed to act as legal counsel for a child and advocate for the child's wishes.

170

GUARDIAN AD LITEM

Orders of Appointment – R. 48.02(A)

Limited Scope Appointments – R. 48.02(B)

Dual appointments, under certain circumstances, allowed in abuse, neglect, dependency, unruly, delinquent cases – R. 48.02(C)

Dual appointments not allowed in parental rights and responsibility cases – R. 48.02(E)

171

GUARDIAN AD LITEM

◆ Reappointment of GAL encouraged -- R. 48.02(G)

◆ Requirement of court to determine fees in APRR cases – R. 48.02(H)

◆ Enforcement of payment of GAL fees – R. 48.02(I)

172

GUARDIAN AD LITEM

GAL General Responsibilities -- R. 48.03 (A)

GAL Duties – R. 48.02(D)

Be aware GAL must perform all enumerated duties unless specifically relieved by the court.

GAL Pre-Service Training Requirements -- R. 48.04

GAL Continuing Education Requirements – R. 48.05

GAL Reports—R. 48.06

173

GAL REPORTS

The GAL must submit a written final report

The report must include recommendations to the court

- Must affirmatively state that responsibilities have been met, detail the activities performed, hearings attended, persons interviewed, documents reviewed, experts consulted and all other relevant information considered by the GAL in reaching the recommendations and in accomplishing duties.

R. 48.06(A)

174

GUARDIAN AD LITEM REPORTS

◆ Report MUST include this warning:

The guardian ad litem report shall be provided to the court, unrepresented parties and legal counsel. Any other disclosure of the report must be approved in advance by the court. Unauthorized disclosure or distribution of the report may be subject to court action, including the penalties for contempt, which include fine and/or incarceration.

R. 48.06(A)(2)

175

GAL REPORTS

In APPR proceedings, the GAL shall provide a report to the court, unrepresented parties and legal counsel not less than 7 days before final hearing, unless the due date is modified by the court.

R. 48.06(C)(1)

176

The court shall consider the GAL recommendation in determining best interest of the child only when the report or a portion of the report has been admitted as evidence.

R. 48.06(C)(2)

177

COURT RESPONSIBILITIES (with respect to GALs)

Sup. R. 48.07

- ◆ Maintain public list of approved guardians ad litem
- ◆ Coordinate application and appointment process
- ◆ Maintain files for applicants and approved guardians ad litem

178

COURT RESPONSIBILITIES (with respect to GALs)

- ◆ Establish criteria for GAL appointment and removal
- ◆ Require GAL applicants to submit resumes of training, experience, and expertise demonstrating ability to successfully perform GAL responsibilities.
- ◆ Review a criminal and civil background check

179

COURT RESPONSIBILITIES (with respect to GALs)

- ◆ Conduct at least an annual review of GAL list to assure compliance
- ◆ Require all guardians ad litem to annually certify they are unaware of any disqualifying circumstances
- ◆ Develop process or local rule for comments and complaints

180

GAL NOT MANDATORY

The statutory mandate of the appointment of a GAL is contained in the best interest portion of R.C. 3109.04.

A court is not required to consider the appointment of a GAL unless it going to make a best interest analysis.

Devall v. Schooley, 2009 Ohio 5915 (5th District)

181

THE COURT IS NOT BOUND BY THE GAL'S RECOMMENDATIONS

A trial court is not required to follow the recommendation of the GAL. As the fact finder, the trial court determines the GAL's credibility and the weight to be given to the GAL's recommendation.

Galloway v. Khan 2006 Ohio 6637 (10th District)

182

GAL REPORTS=ONE COMPONENT TO CONSIDER

The trial court should review the report of a
GAL in connection with all other evidence
presented to it.

Smith v. Quigg 2006 Ohio 1495 (5th District)

183

Parenting Time, Visitation and/or Companionship

184

PARENTING TIME ORDER REQUIRED

If SP is not ordered, the court “shall make a just and reasonable order or decree” for the non-residential parent to have parenting time with the child at the time and under the conditions that the court directs unless it would not be in the child’s BI.

R.C. 3109.051(A)

185

FINDINGS OF FACT REQUIRED

If parenting time is denied, the court must make findings of fact and conclusions of law to support the decision.

R.C. 3109.051(A)

186

PARENTING TIME PREFERRED

Whenever possible, the order shall “ensure the opportunity for both parents to have frequent and continuing contact with the child” unless it is not in the child’s BI.

R.C. 3109.051(A)

187

PARENTING TIME SCHEDULE

R.C. 3109.051(A)-The court shall provide in the final decree a specific schedule of parenting time.

Know your court’s standard of companionship
and how deviations affect child support

188

PARENTING TIME – BEST INTEREST

The central focus in matters of parenting time
(visitation) is the
best interests of the child.

Kelm v. Kelm (2001), 92 Ohio St.3d 223.

189

BEST INTEREST FACTORS FOR PARENTING TIME

R.C. 3109.051(D)(1)- (16)

- The prior interaction and interrelationships of the child with the child's parents, siblings and other persons related by consanguinity or affinity (D)(1)
- The geographical location of the residence of each parent and the distance between those residences (D)(2)
- 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 the parents' holiday and school schedule. (D)(3)

190

BEST INTEREST FACTORS FOR PARENTING TIME

R.C. 3109.051(D)(1)- (16)

- The child's age (D)(4)
- The child's adjustment to home, school and community (D)(5)
- The wishes of the child expressed in the *in camera* interview (D)(6)
- The health and safety of the child (D)(7)
- The amount of time that will be available for the child to spend with siblings (D)(8)
- The physical and mental health of all parties (D)(9)

191

BEST INTEREST FACTORS FOR PARENTING TIME

R.C. 3109.051(D)(1)- (16)

- Each parent's willingness to reschedule missed parenting time and to facilitate the other parent's parenting time rights (D)(10)
- Whether either parent previously has been convicted of or pleaded guilty to any criminal offense or act that resulted in a child being an abused or neglected child. (D) (11)-(12)
- Whether the residential parent or one of the parents subject to a SP order has continuously and willfully denied the other parent's right to parenting time in accordance with a court order. (D)(13)

192

BEST INTEREST FACTORS FOR PARENTING TIME

R.C. 3109.051(D)(1)- (16)

- Whether either parent has established a residence or is planning to establish a residence outside of Ohio (D)(14)
- In relation to requested companionship or visitation by a person other than a parent, the wishes and concerns of the child's parents, as expressed by them to the court (D)(15)
- Any other factor in the BI of the child (D)(16)

193

GRANDPARENT VISITATION

In a divorce, dissolution, legal separation, annulment, or child support proceeding that involves a child, 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 of the following apply...**

R.C. 3109.051(B)(1)

194

R.C. 3109.051(B)(1)

- (a) The grandparent, relative or other person files a motion with the court seeking companionship or visitation rights.
- (b) The court determines that the movant has an interest in the welfare of the child
- (c) The court determines that the granting of the companionship or visitation rights is in the BI of the child.

195

WHEN MAY A GRANDPARENT'S MOTION BE FILED?

During the pendency of the action

Or

At anytime after the decree or final order
was issued if the circumstances have
changed

R.C. 3109.051(B)(2)

196

BEST INTEREST FACTORS

R.C. 3109.051 (D)(1)-(16)

Same factors for establishing parenting time between parents

Take the movant into account

197

VISITATION WHEN PARENTS ARE UNMARRIED

The parents of the mother and any relative of the mother may file a complaint requesting reasonable companionship or visitation rights with the child.

If the father has established paternity, he may file a complaint requesting reasonable parenting time rights with the child.

If paternity is established, father's parents and any relative of the father may file a complaint requesting reasonable companionship or visitation rights with the child.

The court may grant parenting time rights or visitation rights if it determines that the granting of parenting time rights or visitation rights are in the BI of the child.

R.C. 3109.12(A)

The court shall consider the BI factors in R.C. 3109.051(D).

R.C. 3109.12(B)

198

VISITATION RIGHTS FOR THE PARENTS OF DECEASED PARENTS

If the father or mother of an unmarried minor child is deceased, the court may grant the parents and other relatives of the deceased reasonable companionship or visitation rights if in the BI of the child- R.C. 3109.11

The R.C. 3109.051(D) BI factors are applied.

199

MODIFICATION OF A PARENTING ORDER

The court shall not modify a prior decree allocating parental rights and responsibilities for the care of children unless it finds, based on facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child, the child's residential parent, or either of the parents subject to a shared parenting decree, and that the modification is necessary to serve the best interest of the child.

R.C. 3109.04(E)(1)(a)

200

JURISDICTION

Civ. R. Pro. 75(J)

The court has continuing jurisdiction which is invoked by “motion filed in the original action” and “service of process under Civ. R. Pro. 4 to 4.6”

201

UCCJEA APPLIES

R.C. 3127.15

The court must have jurisdiction under the UCCJEA to modify a custody order

202

JURISDICTION TO MODIFY ANOTHER STATE'S CUSTODY ORDER

An Ohio Court can modify an out-of-state custody determination if:

It has jurisdiction to make an initial custody determination under R.C. 3127.15(A)(1) or (2);

AND

One of the two statutory factors specified in R.C. 3127.17(A) or (B) is applicable.

McGhan v. Vettel (2009), 122 Ohio St. 3d 227.

203

HOW DO I FILE TO MODIFY AN OUT OF STATE CUSTODY ORDER?

- Motion to register out of state custody order with a certified copy of the order
- An affidavit stating that "to the best of the knowledge and belief of the person seeking registration, the order has not been modified."
- UCCJEA affidavit

R.C. 3127.35(A)

204

NEW EVIDENCE REQUIRED

The court shall not modify a prior decree allocating parental rights and responsibilities for the care of children unless it finds, based on facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of:

The child

Or

The child's residential parent

Or

Either of the parents subject to a shared parenting decree

R.C. 3109.04(E)(1)(a)

205

BEST INTEREST REQUIRED

The modification must be necessary to serve the best interest of the child.

R.C. 3109.04(E)(1)(a)

206

R.C. 3109.04(E)(1)(a)

The court shall retain the residential parent status designated by the prior decree or prior shared parenting decree, unless a modification is in the best interest of the child and one of the following applies....

207

The residential parent agrees to a change in the residential parent or both parents under a shared parenting decree agree to a change in the designation of the residential parent.

R.C. 3019.04(E)(1)(a)(i)

208

The child, with the consent of the residential parent of both parents under a shared parenting decree, has been integrated into the family of the person seeking to become the residential parent.

R.C. 3109.04(E)(1)(a)(ii)

209

The harm likely to be caused by a change of environment is outweighed by the advantages of the change of environment to the child.

R.C. 3109.04(E)(1)(a)(iii)

210

WHAT IS A CHANGE OF CIRCUMSTANCES?

Not defined in the Revised Code

“ Ohio courts have held that the phrase is intended to denote ‘an event, occurrence, or situation which has a material and adverse effect upon a child.’ ”

Devall v. Schooley, 2009 Ohio 5915 (5th District)

211

CHANGE OF CIRCUMSTANCES

The change does not have to be “substantial”, but must be at least be one which is “a change of substance, not a slight or inconsequential change.”

Kirchhofer v. Kirchhofer, 2010 Ohio 3797 (Ninth District)

212

WHAT EVIDENCE IS REQUIRED?

In determining whether a “change” has occurred, the trial court must be given a wide latitude in considering all the evidence.

Davis v. Flickinger (1997) 77 Ohio St.3d 415.

213

CHANGE IN AGE OF CHILD

The advancement of a child from infancy to adolescence is a factor relevant to the statutory change in circumstances requirement.

In re James (2007) 113 Ohio St.3d 420.

214

PARENTING : CHANGE IN CIRCUMSTANCES

Barrett v. Barrett, 9th Dist. No. 26381, 2012-Ohio-5865

- The Trial court found that there had not been a substantial change in circumstances
- Court of Appeals reversed
- Father's conviction for driving under the influence while the child was in the car was a change in circumstances

215

PARENTING : CHANGE IN CIRCUMSTANCES

Eatherton v. Behringer, 3rd Dist. No. 13-12-23, 2012-Ohio-5229

- The Trial court identified change in circumstances to be mother's failure to facilitate father's parenting time
 - Record demonstrated mother was found in contempt based on six separate instances in which her actions interfered with father's parenting time
- The Court of Appeals affirmed
 - Also stated: "a change in circumstances can also include a breakdown in communication between the parents and their inability to communicate and cooperate."

216

MODIFICATION OF PRIMARY PARENTING ORDER & SP

R.C. 3109.04(E)(1)(a) controls when a court modifies an order designating the residential parent and legal custodian.

Fisher v. Hasenjager (2007) 116 Ohio St.3d 53.

217

WHEN MAY A SHARED PARENTING PLAN MAY BE MODIFIED?

The court may modify a SP decree upon its own motion or upon motion of either parent at any time as long as in the BI of the children.

R.C. 3109.04(E)(2)(b)

218

MODIFICATION OF SHARED PARENTING PLAN

R.C. 3109.04(E)(1)(a) controls if the change is the designation of residential parent and legal custodian.

If the change is to another **term** of the plan, then R.C.09.04(E)(2)(b) controls.

Which ONLY requires a BI standard because “the factors contained in a shared-parenting plan are not as critical to the life of a child as the designation of the child’s residential parent and legal custodian.”

Fisher v. Hasenjager (2007) 116 Ohio St. 3d 53

219

UNDERSTANDING *FISHER*

The designation of a residential parent and legal custodian is a MODIFICATION that **REQUIRES** a finding of a change of circumstance **AND** that the change is in the child’s best interest

220

**BUT LET'S SEE *BRUNS v. GREEN*, 2020-
OHIO-4787**

In a TERMINATION of a Shared Parenting Plan, R.C. 3109.04(E)(2)(c) applies and the only standard for termination is Best Interest, no need of change of circumstances

221

***BRUNS v. GREEN*,
2020-OHIO-4787**

“We find that under the plain language of R.C. 3109.04, a trial court is not required to find a change in circumstances, in addition to considering the best interest of the child, before terminating a shared-parenting plan and decree and designating one parent as the residential parent and legal custodian”

But Fisher was not overruled!

222

MODIFYING SOLE PARENTING

One or both of the parents under a decree allocating parental rights and responsibilities that is **not SP** may file a motion requesting that the prior decree be modified to give both parents shared rights and responsibilities for the care of the children.

R.C. 3109.04(E)(1)(b)

223

BEST INTEREST FACTORS

The sole custody BI factors are applied when modifying a decree allocating the parental rights and responsibilities.

R.C. 3109.04(F)(1)

224

WHAT IS REQUIRED FOR MODIFICATION TO SP?

The motion shall include both a request for
modification of the prior decree

And

A request for a shared parenting order that complies
with R.C. 3109.04(G) [the filing of a proposed
shared parenting plan]

R.C. 3109.04(E)(1)(b)

225

MODIFICATION OF SP BY AGREEMENT

Agreed modifications to the SP:

- May be filed jointly
- May be made at any time
- Must be in the BI of the children
- Are at the court's discretion
- May be rejected
- May make modifications
- Are effective upon their inclusion by the court in the plan

R.C. 3109.04(E)(2)(a)

226

TERMINATION OF SHARED PARENTING PLAN

The court may terminate a SP upon the request of
one or both of the parents

OR

“Whenever it determines that shared parenting is not
in the best interest of the children.”

R.C. 3109.04(E)(2)(c)

227

WHAT HAPPENS WHEN SP IS TERMINATED?

Upon the termination of a SP, the court shall
proceed and issue a modified decree for the
allocation of parental rights and responsibilities for
the care of children under R.C. 3109.04(A),(B),
and (C) as if no decree for SP had been granted
and if no request for SP had ever been made.

R.C. 3109.04(E)(2)(d)

228

COMPLIANCE WITH BI REQUIRED

If the change of circumstances standard is met, the court may modify the SP if the BI rules of R.C. 3109.04(A) and (D)(1) are followed.

229

APPEAL

If an appeal is taken from a decision that grants or modifies a decree allocating parental rights and responsibilities, the court of appeals shall give the case calendar priority and handle it expeditiously.

R.C. 3109.04(H)

230

RELOCATION

If the **residential parent** intends to move to a residence other than the residence specified in the parenting time order or decree, the parent shall file a notice of intent to relocate with the court that issued the order or decree.

R.C. 3109.051(G)(1)

231

RELOCATION

The court shall send a copy of the notice to the parent who is not the residential parent.

Upon receipt of the notice, the court, on its own motion or upon motion of the non-residential parent, may schedule a hearing with notice to both parents to determine whether it is in the BI of the child to revised the parenting time for the child.

R.C. 3019.051(G)(1)

232

EXCEPTIONS TO NOTICE REQUIREMENT

If the court determines that the non-residential parent has been convicted of domestic violence or another crime of physical abuse to the residential parent or the child, it shall issue an order stating that the non-residential parent will **not** be given a copy of any notice of relocation.

R.C. 3109.051(G)(2)

233

RELOCATION

R.C. 3109.051(G)(1)
does not apply to shared parenting,
where both parents are residential parents

R.C. 3109.051(G)(1)
applies to sole custody situations

In shared parenting, a motion to modify should be
filed

234

ACCESS TO SCHOOL ACTIVITY, DAY CARE, AND SCHOOL AND MEDICAL RECORDS

Both parents are entitled to access under the same terms and conditions, to any record that is related to the child, unless the court determines that it would not be in the BI of the child.

R.C. 3109.051(H), (I) and (J).

235

CALL TO ACTIVE DUTY

R.C. 3109.04(I)(1) Upon receipt of an order for active military service, a parent who is subject to an order allocating parental rights and responsibilities or who has such an order pending **shall notify the other parent of the order for active military service within three days of receiving the military service order.**

R.C. 3109.04(I)(2) On receipt of the notice described in division (I)(1) of this section, **either parent may apply to the court for a hearing to expedite an allocation or modification proceeding so that the court can issue an order before the parent's active military service begins.** The application shall include the date that the active military service begins.

The court shall schedule a hearing upon receipt of the application and hold the hearing not later than thirty days after receipt of the application, except that the court shall give the case calendar priority and handle the case expeditiously if exigent circumstances exist in the case.

236

MODIFICATION OF A PARENTING TIME ORDER

Modification of visitation rights is governed by R.C.
3109.051(D).

Braatz v. Braatz (1999), 85 Ohio St.3d 40

237

CHANGE OF CIRCUMSTANCES NOT REQUIRED

The party requesting the change in visitation rights
need make no showing that there has been a
change in circumstances in order for the court to
modify those rights.

The court must consider the 16 factors enumerated
in R.C. 3109.051(D) and it “its sound discretion
shall determine visitation that is in the best interest
of the child.”

Braatz v. Braatz (1999) 85 Ohio St.3d 40.

238

EFFECT OF REMARRIAGE

The remarriage of the residential parent does not affect the authority of the court to grant parenting time rights to the non-residential parent or 3rd party.

R.C. 3109.051(E)

239

CHILD SUPPORT

Child Support Orders:

- Court Order
- Administrative Order

240

INCOME SHARES GUIDELINES

- ◆ Income with Self Sufficiency Reserve
 - Average of overtime, commissions, and bonuses
- ◆ Deductions
 - Capped cost of day care less federal and state credits
 - Total cost of health insurance covering children
 - Per capita amount of child support for any other children of either party
- ◆ Presumption that primary parent provides health insurance for the children
- ◆ \$388.70 Cash medical per year per child prorated between the parents

241

FINANCIAL OBLIGATION OF PARENTS

- Duty to support minor children
- Duty to support continues beyond age 18 as long as the child continuously attends on a full-time basis any recognized and accredited high school, until age 19.

R.C. § 3103.03

242

HOW SUPPORT IS DETERMINED

Basic Child Support Schedule created by
Director of Job and Family Services : R.C.
§ 3119.021

Computation Worksheet adopted by Director of
Job and Family Services: R.C. § 3119.022

Definitions: R.C. § 3119.01

243

DEVIATION FACTORS

- Special and unusual needs of the children;
including needs arising from the physical or
psychological condition of the child or children
- Other court ordered payments
- Extended parenting time or extraordinary costs
associated with parenting time
- Financial resources and earning ability of child

R.C. § 3119.23

244

DEVIATION FACTORS

- Relative financial resources, including disparity in income between households, other assets, and the needs of each parent
- The obligee's income, if the obligee's annual income is equal to or less than one hundred percent of the federal poverty level.
- Benefits that either parent receives from remarriage or sharing living expenses with another person

R.C. § 3119.23

245

DEVIATION FACTORS

- Amount of taxes paid
- Significant in-kind contributions for child
- Extraordinary work-related expenses incurred by either parent
- Standard of living of the parents and the standard of living the child would have had if the family was intact

R.C. § 3119.23

246

DEVIATION FACTORS

- Physical and emotional needs of child
- Educational opportunities that would have been available to the child had the circumstances requiring child support order not arisen
- Parent's responsibility to support others, including support of a child with disabilities who are not subject to the support order

R.C. § 3119.23

247

DEVIATION FACTORS

- Post-secondary educational expenses paid for by a parent for the parent's own child or children, regardless of whether the child or children are emancipated
- Costs incurred or reasonably anticipated to be incurred by the parents in compliance with court-ordered reunification efforts in child abuse, neglect, or dependency cases
- Extraordinary childcare costs exceeding the statewide maximum
- Any other relevant factor

R.C. § 3119.23

248

Parenting Time Adjustment

- ◆ < 90 overnights: NO automatic credit
- ◆ 90 + overnights: automatic 10% credit
- ◆ 10% can be removed by the Court
- ◆ Extended parenting RC 3139.231:
 - ◆ 91 to 146 overnights
 - ◆ A court shall CONSIDER a deviation
- ◆ 147 + overnights
 - ◆ A court shall CONSIDER a deviation and issue a FOF if NO deviation

249

CASH MEDICAL SUPPORT

- ◆ Cash Medical not connected to whether insurance is provided
- ◆ Paid by both using % of incomes
- ◆ Applicable to both parents
- ◆ Set amount: \$388.70 / child
- ◆ MAY deviate

250

CHILD SUPPORT ADMINISTERED BY STATE

CSEA is the sole agency responsible for collecting support due under support orders and the disbursement of payments.

R.C. § 3121.43

251

SHARED PARENTING PROVISIONS

- Guideline support
- May deviate if obligation is unjust or inappropriate and not in best interest of child
- Shall consider extraordinary circumstances such as ability of each parent to maintain adequate housing and expenses for childcare, tuition, medical, dental, and other relevant expenses and any other relevant circumstance

R.C. § 3119.24

252

Arrearages

- ◆ 20% of current order
- ◆ PRESUMPTION that payment on arrears = to amount of child support for emancipated child
- ◆ May be rebutted based on
 - Household income and expenditures Including extraordinary health care issues

253

CONSEQUENCES OF NON-PAYMENT

- Contempt
- Criminal penalties
- Liens on property
- Tax intercepts
- Suspension of driver's and professional license
- Report to credit reporting agency

254

CHILD SUPPORT: CONTEMPT

Gibson v. Gibson, 5th Dist. No. 2011-CA-00186, 2012-Ohio-1161

- Trial court had previously reduced child support arrearages to a lump sum
- CSEA then filed a motion to show cause
- Father moved to dismiss the show cause, arguing he could not be found in contempt and jailed because of a civil debt
- Trial court found father in contempt
- Court of Appeals: the lump sum judgment converted the child support obligation to a civil debt, and the United States and Ohio Constitutions preclude debtor's prison, thus the lump sum judgment was not enforceable by contempt

255

MODIFICATION OF SUPPORT ORDER

Court motion filed by either party

Or

Request filed at CSEA by either party

R.C. § 3119.79(A) and R.C. § 3119.61

256

FACTORS WARRANTING MODIFICATION

- New amount is “more than ten percent greater or more than ten percent less” than the current order
- Parent is not voluntarily unemployed or voluntarily underemployed
- A substantial change of circumstances that was not contemplated at the time of the issuance of the current order.

R.C. § 3119.79 and R.C. § 3119.01(C)(11)

257

CHILD SUPPORT: MODIFICATION

Hill v. Hill, 5th Dist. No. 2011 CA 0016, 2012-Ohio-1903

- Dissolution: guideline worksheet calculated support at \$304.76 but parties agreed to a deviation to zero dollars
- Mother filed a request for modification
- Guideline worksheet calculated support at \$323.15
- Trial court found no change in circumstances
- Court of Appeals: Trial Court erred by comparing the pre-deviation guideline obligation from the dissolution decree with the new guideline amount, instead of starting with the actual zero dollar support order

258

Child Support: Child Over the Age of 18 at the Time of the Divorce

There is conflict among the districts as to whether a domestic relations court has jurisdiction to issue custody and support orders for a *Castle* child when the child is over the age of 18 at the time of the divorce

259

Geygan v. Geygan, 10th Dist. No. 11AP-626, 2012-Ohio-1965

- Child of the couple was 35 years old at the time the divorce was filed, but had physical and developmental disabilities since birth
- Mother sought legal custody and child support
- In divorce, trial court ordered custody, visitation, and support orders
- Court of Appeals: *Castle* and R.C. 3119.86(A)(1)(a) (codification of *Castle*) do not directly apply because child over 18
 - General Assembly used language “continue” and “beyond” – could have “stated simply that child support may be imposed for a child who is over the age of 18 . . . It did not.”
- Domestic relations court lacks jurisdiction

260

Donohoo v. Donohoo, 12th Dist. Nos. CA2011-11-080, 081, 2012-Ohio-4105

- Disabled son was 22 at the time of the divorce
- Trial court ordered husband to pay child support
- Court of Appeals: “We disagree with the Tenth District” (the *Geygan* holding)
 - Nothing in R.C. 3119.86 that *prohibits* a domestic relations court from ordering child support for disabled children after the child turns 18
 - Relevant inquiry is whether child is mentally or physically disabled and is incapable of supporting or maintaining himself – if so, the trial court has jurisdiction to order support

261

PARENTAGE

IT’S NOT MINE!!!

- Disestablishment of Parentage
- Be careful what you ask for
- Statute of Limitations
- Must ‘not have known’ at relevant time
- DNA testing – Home Kits/Ct Order/CSEA
- Recovery of Past Support Paid
- Elimination of Arrearages

262

WHEN LEGAL DUTY OF SUPPORT IS ESTABLISHED

- Paternity
 - Presumed if child born during marriage
 - Presumed if child born within 300 days after termination of marriage
 - Acknowledgment of paternity
 - Genetic testing
- Presumption may be rebutted by genetic testing

R.C. § 3111.03

263

POST DECREE ISSUES

- Contempt – Attorney Fees!
- Custody Modification
- Support Modification –
Spousal/Child
- Property Division Modification
- Tax Exemptions

264

HEALTH INSURANCE AFFIDAVIT

Ohio Supreme Court Form

<https://www.supremecourt.ohio.gov/JCS/CFC/DRForms/Affidavit4.pdf>

IN THE COURT OF COMMON PLEAS
DIVISION _____
COUNTY, OHIO

Plaintiff/Defendant 1 _____
vs. and _____
Defendant/Plaintiff 2 _____

Case No. _____
Judge _____
Magistrate _____

Instructions: Check local court rules to determine when this form must be filed. This affidavit is used to establish health insurance coverage that is available for children of the relationship. It is also used to determine child support. Please answer as accurately as possible, and additional pages.

HEALTH INSURANCE AFFIDAVIT
Affiant of _____

Plaintiff/Defendant 1 Defendant/Plaintiff 2

Is your child(ren) currently enrolled in a government-sponsored program (i.e., Healthy Start Program)? ☐ Yes ☐ No

Is your child(ren) enrolled in an individual (non-group or COBRA) health insurance plan? ☐ Yes ☐ No

Is your child(ren) enrolled in a plan found through the exchange/HealthCare Marketplace? ☐ Yes ☐ No

Is your child(ren) enrolled in a health insurance plan through a group/employer or other organization? ☐ Yes ☐ No

If your child(ren) does not currently possess health insurance, health insurance available through a group/employer or other organization? ☐ Yes ☐ No

Does the available insurance cover primary care services within 30 miles of the child(ren)'s home? ☐ Yes ☐ No

Under the available insurance, what is the annual premium you pay for health insurance? \$ _____

Name of group/employer or organization that provides health insurance _____
Address _____
Phone Number _____

Supreme Court of Ohio
Children's Services Division Form - Affidavit 4
Revised 10/2019
Approved under Supreme Court Rule 84
Effective Date: 1/1/2021

Page 1 of 2


OATH OR AFFIRMATION
(Do not sign until Notary Public is present)

I, (print name), _____, swear or affirm that I have read this Affidavit and, to the best of my knowledge and belief, the facts and information stated in this Affidavit are true, accurate, and complete. I understand that if I do not tell the truth, I may be subject to penalties for perjury.

Your Signature _____

STATE OF _____
COUNTY OF _____

Sworn to or affirmed before me by _____ on _____ day of _____, 20____.

Signature of Notary Public _____
Printed Name of Notary Public _____
Commission Expiration Date _____
(Official Seal Here) 

Supreme Court of Ohio
Children's Services Division Form - Affidavit 4
Revised 10/2019
Approved under Supreme Court Rule 84
Effective Date: 1/1/2021

Page 2 of 2

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THE IMPACT OF SOCIAL SECURITY



266

CHILD SUPPORT

Parent Receiving Benefits

- Counts as income in child support computation
- R.C. 3119.01(C)(7):
“Gross income” means...the total of all earned and unearned income from all sources during a calendar year, whether or not the income is taxable, and includes...social security benefits, including retirement, disability, and survivor benefits that are not means-tested....”

267

CHILD SUPPORT

Child Receiving Own Benefits

SSI does not count as a ‘financial resource’ of the child and is not a credit to parent’s child support obligation under the guidelines

Paton vs. Paton, (2001),
91 Ohio St. 3d 94, 2001 Ohio 291,
742 N.E.2d 619

268

CHILD SUPPORT: DERIVATIVE BENEFITS

Child Receiving Derivative Benefits

Counts as credit towards parent on whose record child is receiving, particularly Obligor

Williams vs. Williams (2000),
88 Ohio St. 3d 441, 2000 Ohio 375, 727 N.E.2d 895



269

DIVORCE CONSIDERATIONS

Spousal Support Where Client is Receiving SSI or SSDI

- Tax considerations
- Interrelationship with child support
- Reliability of payments



The Value Scale: Which is More Valuable to You?

270

SPECIAL THANKS TO



For providing many of the slides used in this presentation

Appendix



This image shows a full page of blank, lined paper. It features approximately 28 horizontal black lines spaced evenly across the page, typical of standard notebook paper. The lines are thin and extend from the left edge to the right edge. There are no margins, text, or other markings on the page.

[illegible]

**IN THE COURT OF COMMON PLEAS OF HENRY COUNTY, OHIO
DOMESTIC RELATIONS DIVISION**

Petitioner 1

CASE NO. _____

and

JUDGE DENISE HERMAN MCCOLLEY

Petitioner 2

MAGISTRATE MELISSA PEPER FIRESTONE

NOTICE OF FILING DEFICIENCY DISSOLUTION WITHOUT CHILDREN

A review of the documents filed herein shows that the following must be corrected in order for the Petition for Dissolution to be heard by the Court. Failure to make the necessary amendments or corrections may result in further continuances, delays, or dismissal of the pending action. Ohio law requires that Petitions for Dissolutions must be heard within 90 days of the date of the filing of the Petition. Petitions for Dissolution which cannot be heard within 90 days of the filing date of the Petition will be dismissed, unless one party timely converts the case to an action for Divorce.

This Notice is for the Petition filed _____.

☐ The **Petition** need(s) to be amended for the following reason(s):

☐ Incomplete: _____.

☐ Petition must be signed by both parties and any attorney(s) of record.

☐ Other: _____
_____.

☐ The **Affidavits of Basic Information, Income and Expenses** are: ☐ incomplete ☐ missing.

☐ A fully completed, notarized Affidavit of Basic Information, Income and Expenses must be filed by
☐ Petitioner 1 ☐ Petitioner 2.

☐ Corrections needed: _____
_____.

☐ A fully completed, notarized Amended Affidavit of Basic Information, Income and Expenses must be filed.

- ☐ The **Affidavits of Property and Debt** are: ☐ incomplete ☐ missing.
- ☐ A fully completed, notarized Affidavit of Property and Debt must be filed by ☐ Petitioner 1 ☐ Petitioner 2. All assets and debts, whether separately or jointly owned, must be disclosed.
- ☐ The Separation Agreement references:
- ☐ Real Estate; however, the Real Estate was not disclosed in the Affidavit(s) of Property and Debt.
 - ☐ Titled Vehicles; however, the Titled Vehicles were not disclosed in the Affidavit(s) of Property and Debt.
 - ☐ Financial Accounts; however, the Financial Accounts were not disclosed in the Affidavit(s) of Property and Debt.
 - ☐ Stocks, Bonds, Securities, and Mutual Funds; however, the Stocks, Bonds, Securities, and Mutual Funds were not disclosed in the Affidavit(s) of Property and Debt.
 - ☐ Business Interests; however, the Business Interests were not disclosed in the Affidavit(s) of Property and Debt.
 - ☐ Pension, Profit Sharing, IRA, 401(k), Deferred Compensation, and Other Retirement Plans; however, the Pension, Profit Sharing, IRA, 401(k), Deferred Compensation, and Other Retirement Plans, were not disclosed in the Affidavit(s) of Property and Debt.
 - ☐ Life Insurance Policies with a cash value; however, the Life Insurance Policies with a cash value were not disclosed in the Affidavit(s) of Property and Debt.
 - ☐ Other Property; however, the Other Property was not disclosed in the Affidavit(s) of Property and Debt.
 - ☐ Debts; however, the Debts were not disclosed in the Affidavit(s) of Property and Debt.
- ☐ A fully completed, notarized Amended Affidavit of Property and Debt must be filed. All assets and debts, whether separately or jointly owned, must be disclosed.
- ☐ The **Separation Agreement** is ☐ incomplete ☐ not notarized.
- ☐ The Separation Agreement must be signed by each party.
 - ☐ The Separation Agreement states that “Neither party has any . . .
 - ☐ Real Estate; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Real Estate.
 - ☐ Titled Vehicles; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Titled Vehicles.
 - ☐ Financial Accounts; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Financial Accounts.
 - ☐ Stocks, Bonds, Securities, and Mutual Funds; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Stocks, Bonds, Securities, and Mutual Funds.
 - ☐ Business Interests; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Business Interests.

- ☐ Pension, Profit Sharing, IRA, 401(k), Deferred Compensation, and Other Retirement Plans; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Pension, Profit Sharing, IRA, 401(k), Deferred Compensation, and Other Retirement Plans.
- ☐ Life Insurance Policies with a cash value; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Life Insurance Policies with a cash value.
- ☐ Other Property; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Other Property.
- ☐ Debts; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Debts.
- ☐ The Spousal Support section is incomplete.
- ☐ An amended document must be filed.

☐ **Other:** _____

☐ **Consultation with an attorney is advised.**

 Judge / Magistrate

Documents and requests for service are to be filed with the Henry County Clerk of Courts.

In-person filing: 660 North Perry Street, Suite 302, Napoleon, Ohio 43545

Electronic filing: eservices.henrycountyohio.gov (if you are using this, you must register in advance)

Fax filing: 419-592-5888

Phone: 419-592-5886

- Cc: ☐ Petitioner 1
☐ Counsel for Petitioner 1
☐ Petitioner 2
☐ Counsel for Petitioner 2

**IN THE COURT OF COMMON PLEAS OF HENRY COUNTY, OHIO
DOMESTIC RELATIONS DIVISION**

Petitioner 1

and

Petitioner 2

CASE NO. _____

JUDGE DENISE HERMAN MCCOLLEY

MAGISTRATE MELISSA PEPER FIRESTONE

NOTICE OF FILING DEFICIENCY DISSOLUTION WITH PARENTING PLAN

A review of the documents filed herein shows that the following must be corrected in order for the Petition for Dissolution to be heard by the Court. Failure to make the necessary amendments or corrections may result in further continuances, delays, or dismissal of the pending action. Ohio law requires that Petitions for Dissolutions must be heard within 90 days of the date of the filing of the Petition. Petitions for Dissolution which cannot be heard within 90 days of the filing date of the Petition will be dismissed, unless one party timely converts the case to an action for Divorce.

This Notice is for the Petition filed _____.

☐ The **Petition** need(s) to be amended for the following reasons.

☐ Incomplete: _____.

☐ Petition must be signed by both parties and any attorney(s) of record.

☐ Other: _____
_____.

☐ The **Affidavits of Basic Information, Income and Expenses** are: ☐ incomplete ☐ missing.

☐ A fully completed, notarized Affidavit of Basic Information, Income and Expenses must be filed by
☐ Petitioner 1 ☐ Petitioner 2.

☐ Corrections needed: _____
_____.

☐ A fully completed, notarized Amended Affidavit of Basic Information, Income and Expenses must be filed.

- ☐ The **Affidavits of Property and Debt** are: ☐ incomplete ☐ missing.
- ☐ A fully completed, notarized Affidavit of Property and Debt must be filed by ☐ Petitioner 1 ☐ Petitioner 2. All assets and debts, whether separately or jointly owned, must be disclosed.
- ☐ The Separation Agreement references:
- ☐ Real Estate; however, the Real Estate was not disclosed in the Affidavit(s) of Property and Debt.
 - ☐ Titled Vehicles; however, the Titled Vehicles were not disclosed in the Affidavit(s) of Property and Debt.
 - ☐ Financial Accounts; however, the Financial Accounts were not disclosed in the Affidavit(s) of Property and Debt.
 - ☐ Stocks, Bonds, Securities, and Mutual Funds; however, the Stocks, Bonds, Securities, and Mutual Funds were not disclosed in the Affidavit(s) of Property and Debt.
 - ☐ Business Interests; however, the Business Interests were not disclosed in the Affidavit(s) of Property and Debt.
 - ☐ Pension, Profit Sharing, IRA, 401(k), Deferred Compensation, and Other Retirement Plans; however, the Pension, Profit Sharing, IRA, 401(k), Deferred Compensation, and Other Retirement Plans, were not disclosed in the Affidavit(s) of Property and Debt.
 - ☐ Life Insurance Policies with a cash value; however, the Life Insurance Policies with a cash value were not disclosed in the Affidavit(s) of Property and Debt.
 - ☐ Other Property; however, the Other Property was not disclosed in the Affidavit(s) of Property and Debt.
 - ☐ Debts; however, the Debts were not disclosed in the Affidavit(s) of Property and Debt.
- ☐ A fully completed, notarized Amended Affidavit of Property and Debt must be filed. All assets and debts, whether separately or jointly owned, must be disclosed.
- ☐ The **Separation Agreement** is ☐ incomplete ☐ not notarized.
- ☐ The Separation Agreement must be signed by each party.
- ☐ The Separation Agreement states that “Neither party has any . . .
- ☐ Real Estate; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Real Estate.
 - ☐ Titled Vehicles; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Titled Vehicles.
 - ☐ Financial Accounts; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Financial Accounts.
 - ☐ Stocks, Bonds, Securities, and Mutual Funds; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Stocks, Bonds, Securities, and Mutual Funds.
 - ☐ Business Interests; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Business Interests.

- ☐ Pension, Profit Sharing, IRA, 401(k), Deferred Compensation, and Other Retirement Plans; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Pension, Profit Sharing, IRA, 401(k), Deferred Compensation, and Other Retirement Plans.
- ☐ Life Insurance Policies with a cash value; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Life Insurance Policies with a cash value.
- ☐ Other Property; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Other Property.
- ☐ Debts; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Debts.
- ☐ The Spousal Support section is incomplete.
- ☐ An amended document must be filed.
- ☐ The **Parenting Proceeding Affidavits** are: ☐ incomplete ☐ missing.
 - ☐ A fully completed, notarized Parenting Proceeding Affidavit must be filed by ☐Petitioner 1
☐ Petitioner 2.
 - ☐ The Parenting Proceeding Affidavit requires that the residence addresses for all places where the children have lived for the last FIVE years be stated.
 - ☐ Other: _____
- ☐ A fully completed, notarized Amended Parenting Proceeding Affidavit must be filed.
- ☐ The **Health Insurance Affidavits** are: ☐ incomplete ☐ missing.
 - ☐ A fully completed, notarized Health Insurance Affidavit must be filed by ☐Petitioner 1
☐ Petitioner 2.
 - ☐ A fully completed, notarized Amended Health Insurance Affidavit must be filed.
- ☐ The **Parenting Plan** is ☐ incomplete ☐ missing.
 - ☐ The Parenting Plan must be signed by each party.
 - ☐ The Parenting Plan fails to provide the name(s) and date of birth of the child(ren) on page 1.
 - ☐ A Parenting Time Schedule is not attached to the filed Parenting Plan as required.
 - ☐ The Relocation Notice section must state the name and address of the Henry County Domestic Relations Court.
 - ☐ The required completed Child Support Worksheet:
 - ☐ is not attached to the filed Parenting Plan.
 - ☐ is not properly completed.
 - ☐ The Child Support section on pages 6-12 is ☐ incomplete ☐not properly completed.

- ☐ The Health Insurance Coverage section on pages 12-15 is ☐ incomplete ☐ not properly completed.
- ☐ The Cash Medical Support & Children's Health Care Expenses section on pages 15-16 is ☐ incomplete ☐ not properly completed.
- ☐ The Tax Exemption section on page 16 is ☐ incomplete ☐ not properly completed ☐ fails to state the child(ren)'s name(s).
- ☐ An amended document must be filed.

☐ **Other:** _____

☐ **Consultation with an attorney is advised.**

 Judge / Magistrate

Documents and requests for service are to be filed with the Henry County Clerk of Courts, Domestic Relations Division.

In-person filing: 660 North Perry Street, Suite 302, Napoleon, Ohio 43545
 Electronic filing: eservices.henrycountyohio.gov (if you are using this, you must register in advance)
 Fax filing: 419-592-5888
 Phone: 419-592-5886

Cc: ☐ Petitioner 1
☐ Counsel for Petitioner 1
☐ Petitioner 2
☐ Counsel for Petitioner 2

**IN THE COURT OF COMMON PLEAS OF HENRY COUNTY, OHIO
DOMESTIC RELATIONS DIVISION**

Petitioner 1

and

Petitioner 2

CASE NO. _____

JUDGE DENISE HERMAN MCCOLLEY

MAGISTRATE MELISSA PEPER FIRESTONE

NOTICE OF FILING DEFICIENCY DISSOLUTION WITH SHARED PARENTING PLAN

A review of the documents filed herein shows that the following must be corrected in order for the Petition for Dissolution to be heard by the Court. Failure to make the necessary amendments or corrections may result in further continuances, delays, or dismissal of the pending action. Ohio law requires that Petitions for Dissolutions must be heard within 90 days of the date of the filing of the Petition. Petitions for Dissolution which cannot be heard within 90 days of the filing date of the Petition will be dismissed, unless one party timely converts the case to an action for Divorce.

This Notice is for the Petition filed _____.

☐ The **Petition** need(s) to be amended for the following reason(s):

☐ Incomplete: _____.

☐ Petition must be signed by both parties and any attorney(s) of record.

☐ Other: _____
_____.

☐ The **Affidavits of Basic Information, Income and Expenses** are: ☐ incomplete ☐ missing.

☐ A fully completed, notarized Affidavit of Basic Information, Income and Expenses must be filed by
☐ Petitioner 1 ☐ Petitioner 2.

☐ Corrections needed: _____
_____.

☐ A fully completed, notarized Amended Affidavit of Basic Information, Income and Expenses must be filed.

- ☐ The **Affidavits of Property and Debt** are: ☐ incomplete ☐ missing.
- ☐ A fully completed, notarized Affidavit of Property and Debt must be filed by ☐ Petitioner 1 ☐ Petitioner 2. All assets and debts, whether separately or jointly owned, must be disclosed.
- ☐ The Separation Agreement references:
- ☐ Real Estate; however, the Real Estate was not disclosed in the Affidavit(s) of Property and Debt.
 - ☐ Titled Vehicles; however, the Titled Vehicles were not disclosed in the Affidavit(s) of Property and Debt.
 - ☐ Financial Accounts; however, the Financial Accounts were not disclosed in the Affidavit(s) of Property and Debt.
 - ☐ Stocks, Bonds, Securities, and Mutual Funds; however, the Stocks, Bonds, Securities, and Mutual Funds were not disclosed in the Affidavit(s) of Property and Debt.
 - ☐ Business Interests; however, the Business Interests were not disclosed in the Affidavit(s) of Property and Debt.
 - ☐ Pension, Profit Sharing, IRA, 401(k), Deferred Compensation, and Other Retirement Plans; however, the Pension, Profit Sharing, IRA, 401(k), Deferred Compensation, and Other Retirement Plans, were not disclosed in the Affidavit(s) of Property and Debt.
 - ☐ Life Insurance Policies with a cash value; however, the Life Insurance Policies with a cash value were not disclosed in the Affidavit(s) of Property and Debt.
 - ☐ Other Property; however, the Other Property was not disclosed in the Affidavit(s) of Property and Debt.
 - ☐ Debts; however, the Debts were not disclosed in the Affidavit(s) of Property and Debt.
- ☐ A fully completed, notarized Amended Affidavit of Property and Debt must be filed. All assets and debts, whether separately or jointly owned, must be disclosed.
- ☐ The **Separation Agreement** is ☐ incomplete ☐ not notarized.
- ☐ The Separation Agreement must be signed by each party.
- ☐ The Separation Agreement states that “Neither party has any . . .
- ☐ Real Estate; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Real Estate.
 - ☐ Titled Vehicles; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Titled Vehicles.
 - ☐ Financial Accounts; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Financial Accounts.
 - ☐ Stocks, Bonds, Securities, and Mutual Funds; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Stocks, Bonds, Securities, and Mutual Funds.
 - ☐ Business Interests; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Business Interests.

- ☐ Pension, Profit Sharing, IRA, 401(k), Deferred Compensation, and Other Retirement Plans; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Pension, Profit Sharing, IRA, 401(k), Deferred Compensation, and Other Retirement Plans.
- ☐ Life Insurance Policies with a cash value; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Life Insurance Policies with a cash value.
- ☐ Other Property; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Other Property.
- ☐ Debts; however, the Affidavit(s) of Property and Debt indicate that one or both parties has/have Debts.
- ☐ The Spousal Support section is incomplete.
- ☐ An amended document must be filed.
- ☐ The **Parenting Proceeding Affidavits** are: ☐ incomplete ☐ missing.
 - ☐ A fully completed, notarized Parenting Proceeding Affidavit must be filed by ☐Petitioner 1
☐ Petitioner 2.
 - ☐ The Parenting Proceeding Affidavit requires that the residence addresses for all places where the children have lived for the last FIVE years be stated.
 - ☐ Other: _____

- ☐ A fully completed, notarized Amended Parenting Proceeding Affidavit must be filed.
- ☐ The **Health Insurance Affidavits** are: ☐ incomplete ☐ missing.
 - ☐ A fully completed, notarized Health Insurance Affidavit must be filed by ☐Petitioner 1
☐ Petitioner 2.
 - ☐ A fully completed, notarized Amended Health Insurance Affidavit must be filed.
- ☐ The **Shared Parenting Plan** is ☐ incomplete ☐ missing.
 - ☐ The Shared Parenting Plan must be signed by each party.
 - ☐ The Shared Parenting Plan fails to provide the name(s) and date of birth of the child(ren) on page 1.
 - ☐ A Parenting Time Schedule is not attached to the filed Shared Parenting Plan as required.
 - ☐ The Relocation Notice section must state the name and address of the Henry County Domestic Relations Court.
 - ☐ The required completed Child Support Worksheet:
 - ☐ is not attached to the filed Shared Parenting Plan.
 - ☐ is not properly completed.
 - ☐ The Child Support section on pages 6-13 is ☐ incomplete ☐not properly completed.

- ☐ The Health Insurance Coverage section on pages 13-15 is ☐ incomplete ☐ not properly completed.
- ☐ The Cash Medical Support & Children's Health Care Expenses section on pages 16-17 is ☐ incomplete ☐ not properly completed.
- ☐ The Tax Exemption section on page 18 is ☐ incomplete ☐ not properly completed ☐ fails to state the child(ren)'s name(s).
- ☐ An amended document must be filed.

☐ **Other:** _____

☐ **Consultation with an attorney is advised.**

Judge/Magistrate

Documents and requests for service are to be filed with the Henry County Clerk of Courts, Domestic Relations Division.

In-person filing: 660 North Perry Street, Suite 302, Napoleon, Ohio 43545

Electronic filing: eservices.henrycountyohio.gov (if you are using this, you must register in advance)

Fax filing: 419-592-5888

Phone: 419-592-5886

- Cc: ☐ Petitioner 1
- ☐ Counsel for Petitioner 1
- ☐ Petitioner 2
- ☐ Counsel for Petitioner 2

You are hereby notified that the above-captioned case has been assigned for **DISSOLUTION OF MARRIAGE** hearing on _____ at _____.

It is absolutely necessary that both parties be present for this hearing; otherwise, the action will be dismissed.

With this notice, you are receiving a **NOTICE OF FILING DEFICIENCY** advising you that the documents you filed with this court were deficient and are not acceptable in the ways set out in the notice.

If you have not filed amended documents correcting those deficiencies prior to your hearing date or any date to which the hearing may be continued, your case will be dismissed with court costs taxed against the deposit you have paid. Ohio law requires that a petition for dissolution of marriage be heard within 90 days after the filing of the petition. Therefore, your case cannot be continued beyond that date and, if the required amended documents have not been filed and/or a hearing has not been held by that date, your case will be dismissed unless one party timely and properly converts the case to a divorce.

**IN THE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
PORTAGE COUNTY, OHIO**

PLAINTIFF/PETITIONER 1

CASE NO. _____

JUDGE PAULA C. GIULITTO

vs.

DEFENDANT/PETITIONER 2/RESPONDENT

MILITARY SERVICE AFFIDAVIT
Pursuant to 50 U.S.C. 521

* * *

Now comes _____, affiant herein, and being first duly sworn, states as follows:

I visited the Department of Defense Manpower Data Center website (<https://scra.dmdc.osd.mil>) to inquire about military service. I entered the following identifying information, which I know to be correct because: _____

Name	Date of Birth	Social Security Number (Show only the last 4 digits of full number entered on the website)
		XXX-XX-

A certificate from the Department of Defense Manpower Data Center is attached.

(NOTE: The Servicemembers Civil Relief Act Website is a website maintained by the Department of Defense (DoD). If DoD security certificates are not installed on your computer, you may experience security alerts from your internet browser when you attempt to access the website. Members of the Ohio National Guard under an order of the Governor of this State and members of the National Guard of another state under an order of the governor of that state will not appear in the SCRA Website database.)

☐ _____ is on active duty in the United States military service.

☐ _____ is not now on active duty in the United States military service.

☐ I am unable to determine whether or not _____ is on active duty in the United States military service because: _____

NOTE: The term "military service" includes the following: active duty service as a member of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard; service as a member of the National Guard under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days for purposes of responding to a national emergency; active service as a commissioned officer of the Public Health Service or of the National Oceanic and Atmospheric Administration; any period of service during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause. 50 U.S.C. 3911(2). The term "military service" also includes the following: State active duty as a member of the Ohio National Guard under an order of the Governor for a period of more than 30 consecutive days.

(Do not sign until Notary Public is present.)

Affiant Signature

The Supreme Court of Ohio

JUDICIAL COLLEGE

65 SOUTH FRONT STREET, COLUMBUS, OH 43215-3431

CHIEF JUSTICE
SHARON L. KENNEDY

DIRECTOR
CHRISTY TULL

JUSTICES
PATRICK F. FISCHER
R. PATRICK DEWINE
MICHAEL P. DONNELLY
MELODY J. STEWART
JENNIFER BRUNNER
JOSEPH T. DETERS

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supremecourt.ohio.gov

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THE SUPREME COURT *of* OHIO
JUDICIAL COLLEGE