



# **INTRODUCTION TO DOMESTIC RELATIONS AND FAMILY LAW** **Identifying Issues and Resources for Clients**

Stuart Y. Itani  
Managing Attorney, Family Law Team  
The Legal Aid Society of Columbus  
(614) 737-0115  
[sitani@columbuslegalaid.org](mailto:sitani@columbuslegalaid.org)

<https://www.columbuslegalaid.org/get-help/family/>

Updated December 2019



## **TOPICS COVERED IN THIS OUTLINE**

### **I. Establishment of Parent-Child Relationship**

- A. Generally**
- B. Establishment**
- C. Putative (“Potential”) Father Registry**
- D. Rescinding Paternity**
- E. Resources**

### **II. Child Support and Health Insurance Coverage for Minor Children**

- A. Generally**
- B. Establishment and Calculation of Child Support**
- C. Effective Date of Order**
- D. Modification of Child Support**
- E. Non-compliance with Child Support**
- F. Miscellaneous**
- G. Resources**

### **III. Allocation of Parental Rights and Responsibilities**

- A. Generally**
- B. Jurisdiction for Child Custody Determination**
- C. Venue**
- D. Unmarried Parents v. Married Parents**
- E. Best Interest of the Child: Custody Factors**
- F. Parenting Time**
- G. Shared Parenting**
- H. Resources/Tools for Making Custody Determination**
- I. Rights of Non-custodial Parents**
- J. Parents v. Non-parents**
- K. Modification of Custody and Parenting Time**
- L. Miscellaneous**



## **M. Resources**

### **IV. Abuse, Neglect and Dependency Proceedings**

- A. Generally**
- B. Resources**

### **V. Termination of Marriage**

- A. Generally: Options**
- B. Jurisdiction and Venue**
- C. Grounds for Divorce**
- D. Available Relief: Equitable Division of Marital and Separate Property**
- E. Available Relief: Spousal Support**
- F. Available Relief: Temporary Orders**
- G. Available Relief: Custody Determination**
- H. Divorce and Bankruptcy**
- I. Miscellaneous**
- J. Resources**

### **VI. Protection Orders**

- A. Criminal**
- B. Civil**
- C. Resources**

### **VII. General Resources and Quick Tips**

- A. General Resources for Pro Se Litigants**
- B. Quick Tips for Understanding Local Court Practice**
- C. Online Case Information**



## **I. ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP**

### **A. Generally (R.C. 3111.01 et seq.)**

1. Paternity must be established before most types of orders can be made (including custody and child support orders).
2. Exception: R.C. 3109.043 allows for the court to enter *temporary* orders during the pendency of a case for parenting time or custody for a “putative father” when:
  - a. Child carries the father’s last name;
  - b. Father appears in birth records; or
  - c. Clear “pattern” of parent and child relationship.

### **B. Establishment**

1. Presumed if child born *during* the marriage. Therefore, a husband will be considered the father of the child unless “clear and convincing” evidence to the contrary (i.e. genetic testing). R.C. 3111.03(B).
2. Ways to establish paternity:
  - a. Acknowledgment (R.C. 3111.23): both parents sign; typically done in the hospital, but can be done later (form available through local health department or Department of Job and Family Services); can check to see if paternity is established by contacting Ohio Central Paternity Registry (oh-paternity.com; 888-810-OHIO).
  - b. Effect: Pursuant to R.C. 3111.25, and acknowledgment becomes final and enforceable without ratification by a court unless steps taken to rescind under R.C. 3111.27.
  - c. Child Support Enforcement Agency (CSEA); establish DNA testing.
  - d. Complaint for paternity through court. R.C. 3111.06



### C. Putative (“Potential”) Father Registry

Used by fathers to preserve ability to establish paternity. Must be filed prior to child’s birth or within 15 days of the child’s birth; form can be obtained at Department of Job and Family Services (DJFS).

### D. Rescinding Paternity

1. Rescinding Acknowledgment: 60 days, with some conditions (done administratively through CSEA); 1 year for fraud, duress, or mistake (done through court action). R.C. 3111.27 and R.C. 3111.28.
2. R.C. 3119.961 and R.C. 3119.962 provide some additional, limited relief. Individual seeking rescission must not have known that he was not the father prior to acknowledging; also need to have genetic testing.
3. Civil Rule 60(B) regarding vacating court judgments.

***Note: Establishing paternity is essentially a prerequisite for an unmarried father to obtain custody and parenting time. BUT, establishing paternity, by itself, does not automatically give an unmarried father parenting time rights. See Section III(C), below.***

### E. Resources

1. LASC as Resource

Advice and counsel, only, regarding establishing paternity because other resources available and elementary issue; typically referring callers to other agencies to establish paternity.

2. Additional Resources

- a. Office of Child Support: <http://jfs.ohio.gov/ocs>
- b. Putative Father Registry: 888.313.3100
- c. Ohio Central Paternity Registry: [www.oh-paternity.com](http://www.oh-paternity.com); 888.810.OHIO
- d. Franklin County CSEA, 80 E. Fulton St., Columbus, 43215; Madison County CSEA, 200 Midway St., London, 43140



## II. CHILD SUPPORT AND HEALTH INSURANCE COVERAGE FOR MINOR CHILDREN

### A. **Generally (R.C. 3119.01 et seq.)**

1. Child support is intended as financial support for a minor child. This is distinguished from *spousal* support, which is financial support for the maintenance of a former spouse as part of a proceeding that terminates a marriage. Informal payments or tangible items are *not* considered child support for purposes of satisfying a child support order.
2. Terminology
  - a. Obligor: parent who pays support.
  - b. Obligee: parent who receives support.
  - c. Child Support Guidelines and Worksheet: calculation table/grid used in establishing support.
  - d. Cash Medical Support: additional payment to help defray costs for medical coverage.
3. Assigned v. Unassigned Child Support
  - a. Child support gets “assigned” to the State if obligee receives public assistance.
  - b. If receiving OWF, obligee will NOT receive child support. R.C. 5107.20
  - c. If children receiving Medicaid, obligee will NOT receive the additional cash medical assistance.
  - d. Benefits recipients may be able to avoid requirement of cooperating with CSEA to establish support in situations involving domestic violence.
4. Related issues
  - a. Health insurance coverage for child
  - b. Tax dependency exemptions



## **B. Establishment and Calculation of Child Support**

### **1. Where is Child Support Established?**

#### **a. Child Support Enforcement Agency (CSEA)**

- i. **Initiating Service:** Parent applies for services. When parent receives public assistance (typically cash benefits under OWF), then parent is required to cooperate with the State in establishing a support order, with some exceptions for domestic violence situations.
- ii. **Process and Services:** CSEA to conduct an administrative hearing (though practice has been to dismiss when a court case gets filed). CSEA has parent locator services to help establish address and whereabouts of a prospective obligor.
- iii. **Objections/Review:** When an obligor or obligee disagrees with calculation, objections are filed and reviewed by court (typically juvenile court). R.C. 3111.84

#### **b. Court (R.C. 2151.23; R.C. 3119.22-3119.24)**

- i. Can be initiated through a complaint to establish support, or as part of a custody or divorce proceeding.
- ii. Court also reviews objections to an administrative support order.

**Note:** *There are important distinctions between the way CSEA and courts can calculate child support. See below.*

### **2. How is Child Support Calculated?**

#### **a. Generally**

- i. **Child Support guidelines formula and worksheet:** utilizes parties' gross income; gross income does not include means-tested public assistance (e.g. OWF, SSI). R.C. 3119.01(C)
- ii. **What if obligor or obligee is not working?**



LASC  
The Legal Aid Society of Columbus

R.C. 3119.01(C)(17): Can “impute” income when someone is voluntarily unemployed or underemployed; generally, no imputation if receiving means-tested public assistance unless not imputing would not be in the best interests of the child (R.C. 3119.05(I)(1)).

- b. Consideration of Disability: Need to present benefits information, medical evidence or doctor’s statements.
  - c. Additional Information Used When Calculating Support:
    - i. Health insurance premium expenses for children;
    - ii. Day care expenses;
    - iii. Other biological children in household;
    - iv. Other child support paid;
    - v. Other benefits received by or on behalf of the minor child (e.g. SSD derivative benefits).
  - d. Minimum Support Order: Under R.C. 3119.06, court (not CSEA) can establish a minimum support order; no enforcement action should be taken if obligor is determined to be receiving means-tested public assistance.
5. Health Insurance and Cash Medical Support (R.C. 3119.29 and 3119.30)
- a. Requirements for Obtaining Health Insurance Coverage for Children.
    - i. Must obtain if available at “reasonable cost.”
    - ii. “Reasonable cost” will now be defined as total cost of family coverage (used to be marginal cost or difference between single coverage and family coverage) being equal to, or less than, 5% of parent’s gross income. O.A.C. 5101:12-47-01.
  - b. Cash Medical Support
    - i. Additional payment to help defray costs for medical coverage when no private insurance is being provided.
    - ii. This is “assigned” to the State if the State is providing Medicaid coverage for the children.



c. Uncovered Medical Expenses: Child support orders will also address parents' responsibilities for uncovered medical expenses.

## 6. Important Differences Between CSEA and Court

### a. Calculations:

- i. CSEA, generally, must *strictly* follow child support guidelines; also not the best forum for presenting information on disability if either party is not receiving formal disability payments (SSI, SSD, worker's compensation, etc.).

NOTE: NEW law in 2019 will enable CSEA and Court's to give obligor a 10% credit (not considered a deviation) if obligor has court-ordered parenting time equal to, or greater than, 90 overnights.

- ii. Court, however, can take into account a variety of facts and circumstances and "*deviate*" or adjust the child support obligation. R.C. 3119.22-3119.24. Court may consider: obligor's parenting time with the children, travel expenses associated with exercising parenting time, other child-related expenses.

NOTE: NEW law in 2019 establishes credits and deviation criteria based on # of overnights for parenting time exercised by obligor (different consideration for 3 classifications: 90 and over (at least 10% credit and possibly deviation); 91-146; and 147+)

NOTE: NEW law in 2019 also allows CSEA to incorporate deviations from court orders when CSEA modifies a child support order (if deviation is clear and defined).

### b. Tax Dependency Exemption (R.C. 3119.82):

- i. Court can allocate this between the parents; when allocated to the non-residential parent, the other parent will have to complete an IRS 8332 to release the dependency exemption.
- ii. Historically used for receiving the deduction associated with a dependency exemption. However, IRS has currently suspended the deduction.
- iii. Still used for Child Tax Credit (different than Earned Income



- Tax Credit).
- iv. Earned Income Tax Credit: can only be claimed by the custodial parent, or person with whom child resides more than ½ of the year. Can NOT be explicitly negotiated. However, can draft parenting schedule language that, if followed by the parents, could support parents claiming EITC in alternate years.

**C. Effective Date of Order**

1. Administrative Order: Effective 14 days after administrative hearing.
2. Court Orders:
  - a. Unmarried parents in parentage cases: Can go back to date of birth, except: (A) if filed after 3 years of age; and (b) father had no knowledge and no reason to have knowledge of alleged paternity. R.C. 3111.13(F).
  - b. Married parents: Limited to date of request, or complaint. *Meyer v. Meyer* (1985), 17 Ohio St.3d 222.

**D. Modification of Child Support**

1. Through the CSEA (O.A.C. 5101:12-60-05.1):
  - a. Automatic every 36 months review.
  - b. Earlier review, if:
    - i. unemployed for longer than 30 days;
    - ii. disabled; or
    - iii. 30% reduction or increase in income lasting for more than 6 months.
  - c. Support order will be modified if result is a 10% difference in the support orders.
  - d. Administrative Modification Procedures (R.C. 3119.61 and R.C. 3119.63; OAC 5101:12-60-05.4- 05.5 et seq.):
    - i. Administrative Adjustment Recommendation: Starts as a “paper” review; CSEA reviews updated income information submitted by parties and issues recommendation.



ii. Administrative Hearing: Can be requested after the adjustment recommendation has been made.

a) Administrative Orders: If underlying order was administrative order, then must request hearing within 14 days.

b) Court Order: (i) Must request administrative hearing within 14 days; OR (ii) if court order contains a deviation, or if a deviation is going to be pursued, can skip administrative hearing and request a court hearing within 14 days.

iii. If still unsatisfied, additional appeal rights.

2. Through Court (R.C. 3119.79):

a. Broader review that can occur anytime; more ability to produce testimony (e.g., experiencing disability, but not approved for SSI or SSD); if there was a deviation previously, then court would be the forum to review the deviation.

b. If order was established administratively, court can still modify that order upon motion by a party.

## **E. Non-Compliance with Child Support**

1. Contempt: can be initiated by CSEA or obligee.
2. Obligor is typically entitled to court-appointed counsel.

## **F. Miscellaneous**

1. May be able to secure child support beyond age of 18. See R.C. 3119.86, which includes differences based on the nature of order (administrative versus court).

2. Prohibition on retroactive modification of arrearage. R.C. 3119.83-3119.84

BUT: Can receive CREDIT toward arrearage for Social Security derivative or dependent child benefits received on behalf. Not considered a modification of arrearage under *Williams v. Williams* (2000), 88 Ohio St. 3d. 441.

3. State Hearing Remedies: Can request a state hearing in child support cases under O.A.C. 5101:6-1-01 for CSEA's denial of services, or inaction or failure to take proper action. Typically have 90 days from date of written adverse decision to appeal. However, CSEAs often do not issue written notices, so appeal deadlines may not apply.



#### 4. Arrearage payments:

- i. When ongoing support order, arrearage will be presumptively collected at 20% of current order. R.C. 3123.21
- ii. When no ongoing order, general rule against lowering arrearage payment beyond the last order. Under NEW LAW, will be able to lower arrearage payments further (change to R.C. 3121.26 and R.C. 3123.14).

### **G. Resources**

#### 1. LASC as Resource

- a. Advice and counsel and informational packets for utilizing CSEA services.
- b. Representation for obligees when part of a divorce or custody case
- c. Representation for obligees (recipients) when their child support cases are dismissed because of a custody filing
- d. Limited representation of obligors if asserting a disability
- e. No representation on contempt because court-appointed counsel for obligor; obligees are referred to CSEA

#### 2. Additional Resources

- a. County CSEAs: Franklin County Child Support Enforcement Agency: 80 E. Fulton St., Columbus, 43215; [www.support.franklincountyohio.gov](http://www.support.franklincountyohio.gov); Madison County Child Support Enforcement Agency, 200 Midway St., London, 43140.
- b. Franklin County Common Pleas, Domestic Relations Division and Juvenile Branch CSEA Client Affairs Officers: Last Name A-L: 525.4801; Last Name M-Z: 525-5211.
- c. Self-Represented Resource Center, Franklin County Common Pleas Court, Domestic Relations Division and Juvenile Branch, 373 S. High St., 4<sup>th</sup> Floor.



### III. ALLOCATION OF PARENTAL RIGHTS AND RESPONSIBILITIES

#### A. Generally (R.C. 3109.04)

1. "Best interests of the child"—broad facts and circumstances test applied by the court.
2. When making custody determination, court also makes orders for parenting time/visitation.

#### B. Jurisdiction for Child Custody Determination

##### Uniform Child Custody Jurisdiction and Enforcement Act

1. General: Subject Matter Jurisdiction. Therefore, not waivable.

Based on the residence of the child. Action should be filed in the child's "home state." R.C. 3127.01 et seq. (Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)) defines "home state" and the state of the child's residence for six months prior to the filing of the action.

***Note: Physical presence of a child in a state is not determinative for jurisdiction. For example, if Mother and Child reside in Ohio for 3 years, and move to Indiana in May 2018, Ohio is still considered the "home state" of the child until November 2018. Father could file for custody in Ohio during that time period, and the case would likely be litigated in Ohio. See Rosen v. Celebrezze (2008), 117 Ohio St. 3d 241.***

2. Initial Custody Jurisdiction: R.C. 3127.15
  - a. "Home State" jurisdiction;
  - b.
    1. A court of another state does not have home state jurisdiction;
    - OR
    2. The home state has declined jurisdiction based on this state being more appropriate forum AND:
      - a) child and parent have significant connection



- to Ohio; AND  
b) substantial evidence exists in Ohio.
- c. All courts having jurisdiction have declined jurisdiction on basis that Ohio is appropriate.
  - d. No court would have jurisdiction under above criteria.
3. Temporary Emergency Jurisdiction: R.C. 3127.18
- Even if the state is not the “home state,” state may be able to exercise temporary emergency jurisdiction if the child is located in the state. Used when child is abandoned or emergency protection because child OR sibling OR parent is subject to abuse. The court’s temporary order should specify its duration, but could become a final order if no other orders are obtained an Ohio becomes the home state of child.
4. Jurisdiction to Modify: R.C. 3127.17
- a. State where original order is from will retain jurisdiction if child, or one of the parents still resides in that state.
  - b. Ohio could have jurisdiction to modify order if it would otherwise have jurisdiction to make an initial custody determination under R.C. 3127.15 AND:
    - 1. Other state determines it does not have continuing jurisdiction, or is declining on basis of more convenient forum; OR
    - 2. Ohio determines that child and child’s parents do not reside in the other state.
- Example: Previous court orders from Indiana; mother and child move to Ohio, reside in Ohio for 1 year, and father moves to Michigan. No one lives in Indiana, and child has resided in Ohio over 6 months. Ohio can now modify Indiana orders.
5. Declining Jurisdiction: R.C. 3127.21 and Inconvenient Forum
- a. State with jurisdiction can determine that it is an inconvenient forum.
  - b. Determination can only be made by the state that actually has jurisdiction.



- c. Court can consider a variety of facts, including domestic violence
- d. Court can stay proceedings to give parent an opportunity to commence action in another state.

#### 6. Miscellaneous UCCJEA Issues

- a. R.C. 3127.10: Testimony of out of state witnesses, including the party, can be taken by alternate methods.
- b. R.C. 3127.09: When courts communicate, attorney can ask to participate and a record should be created.

#### 7. Jurisdictional Requirements: Parenting Proceeding Affidavit

R.C. 3127.23 sets forth facts to be pled in child custody proceedings. This includes information about children's residence and the existence of any other relevant court cases. R.C. 3127.23(D) specifically allows for confidentiality of address; Supreme Court form contains this option.

#### 8. Jurisdiction between Juvenile Court and Domestic Relations

- a. Juvenile Court used by unmarried parents.
- b. R.C. 215.23 provides that the juvenile court's jurisdiction is exclusive AND continuing.
- c. Domestic Relations: Used by married parents for custody disputes (separately, or as part of a termination of marriage proceeding).

### C. Venue

#### 1. Juvenile Court: Used by Unmarried parents

Juvenile Rules 10 and 11 establish that a complaint should generally be filed where child is "found or last known to be."

#### 2. Venue in Divorce: Civil Rule 3, which could include county of plaintiff's residence if residing for 90 days. Civil Rule 3(B)(9)

#### **D. Unmarried Parents v. Married Parents**

1. Unmarried Parent: *Mother* has legal custody until a court of competent jurisdiction issues an order that modifies the general rule. R.C. 3109.042.
  - varied enforcement based on police department; some refuse to get involved if the father withholds child without any court order.
  - unmarried mother should typically never file a complaint for custody.
  - unmarried mother can establish terms and conditions of parenting time, absent a court order (particularly in the event of health or safety concerns)
  - unmarried mother should NOT withhold parenting time because of father's failure to provide financial support, including child support.
  - while unmarried mother has right to relocate, she must be cautious about jurisdictional issues (please see earlier sections).
  - father must establish paternity for further orders, though will be able to obtain *some* temporary orders.
  - father typically initiates case by filing in juvenile court.

***Note: Establishing paternity and child support does NOT automatically give an unmarried father parenting time rights.***

2. Married Parents: *Both* are the legal custodians with equal rights until a court determines otherwise. R.C. 3109.03.

#### **E. Best Interests of the Child: Custody Factors (R.C. 3109.04(F)(1))**

1. Wishes of the parents;
2. Wishes of the child (interviewed by the court);
3. Child's interaction/interrelationship with parents, siblings, others;
4. Child's adjustment to home, school and community;
5. Mental and/or physical health of any or all parties involved;
6. Parent more likely to honor and facilitate visitation;
7. Whether a parent failed to make child support payments;
8. Whether a parent has been found guilty of neglect/abuse of a minor child or has been found guilty of domestic violence against a family or household member of the family who is the subject of this action;
9. Whether a parent has continuously and willfully denied visitation;



10. Whether either parent is residing or planning to establish a residence out of State.

***Note: The child's wishes may be a factor that the court considers, but it not the determinative factor. In other words, the child does not decide where she wants to live.***

#### **F. Parenting Time (R.C. 3109.051)**

When making orders of custody, the court will also make orders for parenting time utilizing similar factors from the “best interests of the child” standard”:

1. No parenting time (very rare, usually only in the case of non-appearance).
2. Supervised parenting time (supervised visitation centers; generally, must have health or safety threat to the child).
3. Standard parenting time or beyond: local rule is different for each county.
4. If your local rule is sparse on details, consider using Supreme Court Parenting Guide (<http://www.supremecourt.ohio.gov/publications/JCS/parentingguide.pdf>).

#### **G. Shared Parenting**

1. Shared Parenting: theory of parenting based on joint decision making; does not mean 50/50 parenting time (though it can be); one parent is typically designated residential parent for school placement purposes; one parent can be designated as residential parent for receipt of public benefits. R.C. 3109.04(A)(2); both parents can be designated as residential parent and legal custodian and the above designation do not affect that. R.C. 3109.04(L)(7).

***Note: Shared Parenting does NOT mean \$0 child support (shared parenting is often requested by a potential obligor under the belief that obligor will be able to avoid support).***

2. Additional factors considered by the court (R.C. 3109.04(F)(2)):
  - a. Ability of the parents to cooperate and make decisions jointly;
  - b. Ability to encourage sharing of love, affection, and contact;



- c. History of child abuse, spouse abuse, other domestic violence or kidnapping;
  - d. Geographic proximity;
  - e. Recommendation of the guardian ad litem.
3. Shared parenting must be requested 30 days prior to trial if parties have not otherwise agreed to it (R.C. 3109.04(G)); parties can waive this time limit if they agree.

#### **H. Resources/Tools for Making Custody Determination**

Prior to trial the Court may cause an investigation to be made as to the character, family relations, past conduct, earning ability, financial worth, medical, psychological or psychiatric evaluations of the parents and/or minor children.

1. Home Investigation: free services through the court; home investigator meets with the parents, reviews home, review records, may talk with children.
2. Mediation Services: neutral party assists with establishing terms of a negotiated agreement.
3. Guardian Ad Litem:
  - a. Independent third-party appointed by the court to conduct an investigation and make a recommendation as to best interests of the child. Often times there is a cost (different than guardians appointed in abuse, neglect, dependency case; see below). Court has some discretion in allocation of financial obligation based upon the parties' incomes, and disparities in parties' incomes. Rule of Superintendence 48 and R.C. 3109.04(B)(2)(a).
  - b. R.C. 3109.04(B)(2)(a): *shall* be appointed when a parent requests one IF the court is interviewing the child.
  - c. Civil Rule 75: Procedures that apply in divorce.
  - d. Rule of Superintendence 48: sets forth requirements for GALs, investigations and reporting.
  - e. GAL Recommendation: If GAL recommending something that is contrary to child's stated wishes, then court may also appoint attorney to represent the child.
  - f. Discovery: GAL's file is subject to discovery, but court can enter



protective orders to limit discoverability of GAL files.

## **I. Rights of Non-custodial Parents**

1. The non-residential parent is generally entitled to equal access to:
  - a. school records;
  - b. medical records;
  - a. day-care and childcare facility and records;
  - b. all school or day-care activities. (R.C. 3109.051(H)-(J))
2. Exceptions: The Court finds that it is not in the child's best interest, typically because of an offense against the family.

## **J. Parents v. Non-parents**

1. Custody:
  - a. Initially, biological parents are given preference.
  - b. However, court can award custody to non-parent upon finding that parents are unsuitable or unfit; once finding is made, then the parties are on equal footing and no preference is given. *In Re Perales* (1977), 52 Ohio St.2d 89.
2. Companionship:
  - a. When bio parents unmarried: R.C. 3109.12 allows grandparents to request visitation in juvenile court; must demonstrate that it is in best interests and wishes of parents should be afforded deference.
  - b. When bio parents married: Request can only be made as part of an existing case; for example, a grandparent could intervene in a divorce pursuant to Civil Rule 75(B).
3. Other options: Ohio created kinship power of attorney affidavits and caretaker affidavits to allow grandparents to care for grandchildren without filing a custody action. Used by many grandparents seeking this kind of help to enroll children in school.

## **K. Modification of Custody and Parenting Time**



1. Custody (R.C. 3109.04(E))
  - a. Generally must demonstrate:
    - i. Change in circumstances since previous court order, in the life of the child or residential parent;
    - ii. Requires modification to meet child's best interests; and
    - iii. Harms from change outweigh benefits (court presumes that a change in custody will be disruptive).

***Note: A change in the circumstance of the non-custodial parent, is typically NOT sufficient for changing custody.***

- b. Parent v. Non-parent: If parent lost custody to grandparent, then they stand on equal footing; no more parental preference.
  - c. Standard applies only to modification of final appealable orders, and not modification of temporary orders. *Taylor v. Taylor*, 2012-Ohio-4097.
2. Shared Parenting: Terminating a shared parenting plan may only require a showing that the plan is not in the best interests of the child. R.C. 3109.04(E)(2)(c).
3. Parenting Time: Do not need to show change in circumstances; just need to demonstrate "best interests." R.C. 3109.051(D).

## **L. Miscellaneous**

1. Temporary Orders: Orders established by the court during the pendency of the case.
  - a. Juvenile Court: By general motion.
  - b. Domestic: When part of a divorce proceeding, governed by Civil Rule 75.
  - c. Merger Doctrine and preservation of child support arrearage: Temporary orders merge with final order and do NOT survive; therefore, need to presser child support arrearage that may have accrued under temporary orders.
2. Notice of *Intent* to Relocate

The custodian/residential parent has an obligation to file a notice of



intent to locate with the Court *prior* to moving to permit the Court to hold a hearing to determine whether or not visitation should be modified - the hearing is not mandatory but within the Court's discretion - the obligation to serve the non-residential parent with the notice may be avoided if not in the best interest and the Court makes a specific finding in writing (i.e. domestic violence). R.C. 3109.04(G).

3. Supreme Court Forms: Parenting Proceeding Affidavit and Health Insurance Affidavit

<https://www.sconet.state.oh.us/JCS/CFC/DRForms>

## **M. Resources**

### 1. LASC as Resource

- a. Advice and counsel (typically given when a. father is calling and needs to file in juvenile court; b. not requesting custody (only parenting time); c. factors weigh against the caller); referrals to Self-Represented Resource Center (4<sup>th</sup> Floor, Domestic Relations and Juvenile Division, 373 S. High Street).
- b. Full representation in initial custody case.
- c. Emphasis on cases involving domestic violence, or other vulnerabilities.
- d. Representation in modification proceedings when caller has already been designated the residential parent and legal custodian (i.e. would risk losing the child).

### 2. Additional Resources

- a. Self-Represented Resource Center, Franklin County Common Pleas Court, Domestic Relations Division and Juvenile Branch, 373 S. High St., 4<sup>th</sup> Floor.
- b. Franklin County Common Pleas Court, Domestic Relations Division and Juvenile Branch website: <https://drj.fccourts.org>
- c. Supreme Court of Ohio: Forms available at [www.sconet.state.oh.us](http://www.sconet.state.oh.us).



#### **IV. ABUSE, NEGLECT AND DEPENDENCY PROCEEDINGS**

##### **A. Generally**

1. Children's Services (CS) involved; different than private custody case.
2. Parents are entitled to court-appointed attorney (so Legal Aid does NOT get involved).
3. Case Plans developed and parents have to complete Case Plan.
4. If failure to complete case plan, then permanent custody placement is made.
5. Guardians can be involved (no cost to the parties).
6. Jurisdictional Limitations: R.C. 2151.23; R.C. 3109.06

##### **B. Resources**

1. Court-Appointed Counsel Form (Ohio Public Defender Financial Disclosure Form) is available at:  
[http://www.opd.ohio.gov/Reimbursement/Reim\\_main.htm](http://www.opd.ohio.gov/Reimbursement/Reim_main.htm)
2. LASC is NOT a resource because parents entitled to court-appointed counsel.



## V. TERMINATION OF MARRIAGE

### A. **Generally: Options**

#### 1. Options for Separation:

- a. Divorce: termination of marriage (R.C. 3105.01 et seq.).
- b. Dissolution: parties in complete agreement on *every* aspect; can be converted to divorce if unable to reach agreement (R.C. 3105.61-3105.65).
- c. Legal separation: not divorced, but separated (usually done for religious reasons or health insurance reasons).
- d. Annulment: voiding the marriage as if it never happened (non-consummation; someone was married to another at time; incompetent).

#### 2. Procedure:

- a. Complaint + Affidavit of Income and Expenses, Affidavit of Property (see Supreme Court forms: <https://www.sconet.state.oh.us/JCS/CFC/DRForms>)
- b. After complaint is served, twenty-eight (28) days to file Answer and counterclaim under Civil Rules.
- c. Failure to file answer may limit a defendant's ability to present evidence at a hearing and contest the terms of a divorce.
- d. Hearing: Under Civil Rule 75(K), hearing cannot be held until forty-two (42) days after service of complaint.
- e. Testimony: If other spouse not present, then additional witness is needed to provide some level of corroboration of spouse's testimony under Civil Rule 75(M).

### B. **Jurisdiction and Venue**

#### 1. Jurisdiction:

- a. Domestic Relations Division (R.C. 3105.011)
- b. Must be a resident of the State of Ohio for 6 months (R.C. 3105.03—"Venue"); see also R.C. 3127.01 et seq. to determine if



Ohio has jurisdiction to allocate parental rights and responsibilities for any minor children.

- c. Defendant: Minimum contacts with the State and personal jurisdiction will dictate type of relief available.
2. Venue (R.C. 3105.03): In which county can action be filed?
    - a. Usual Civil Rule 3 provision: where Defendant resides.
    - b. Addition of Civil Rule 3(B)(9): county where plaintiff has been a resident for at least 90 days.

**Note: There could be multiple counties which could provide proper venue for the case.**

3. Personal Jurisdiction and Limitations on Relief
  - a. Personal Jurisdiction over Defendant: If no minimum contacts, then no property division, no spousal support; just divorce and award of property located in state.
  - b. Type of Service: If served by publication, then no personal jurisdiction. Therefore, no child or spousal support orders, or orders for property division.
  - c. Location of Property: Ohio lacks authority to convey property located in another state, but the court does have the authority to order one of the parties to convey out-of-state property.

### **C. Grounds for Divorce**

Must have a ground for divorce pursuant to R.C. 3105.01. This includes:

- (A) Either party had a husband or wife living at the time of the marriage from which the divorce is sought;
- (B) Willful absence of the adverse party for one year;
- (C) Adultery;
- **(D) Extreme cruelty;**
- (E) Fraudulent contract;
- **(F) Any gross neglect of duty;**



- (G) Habitual drunkenness;
- (H) Imprisonment of the adverse party in a state or federal correctional institution at the time of filing the complaint;
- (I) Procurement of a divorce outside this state, by a husband or wife, by virtue of which the party who procured it is released from the obligations of the marriage, while those obligations remain binding upon the other party;
- **(J) On the application of either party, when husband and wife have, without interruption for one year, lived separate and apart without cohabitation;**
- **(K) Incompatibility, unless denied by either party. (consensual, not intended to be litigated).**

#### **D. Available Relief: Equitable Division of Marital and Separate Property**

##### 1. Process:

- a. Classification of Property: Separate or marital.
- b. Valuation of Property: Focus is on valuation of marital items beyond minimal value.
- c. Allocation: Generally, assign each their separate, and then equitable division of marital property. If not equal distribution, then there must be findings to support that allocation is equitable.

##### 2. Definitions: Marital Property: R.C. 3105.171

###### e. Generally:

- i) Each spouse shall be considered to have contributed equally to the production and acquisition of marital property.
- ii) Holding title to the property is not dispositive of determining what is marital or separate property.
- iii) "During the marriage" - date of the marriage through the date of the final hearing or date selected by the Court if former date determined to be inequitable.

###### b. Definitions:

- i) All real and personal property that currently is owned by either or both of the spouses, including, but not limited to, the retirement benefits of the spouses, and that was acquired by either or both of the spouses during the marriage;
- ii) All interest that either or both of the spouses currently has in any real or personal property, including, but not limited to, the

retirement benefits of the spouses, and that was acquired by either or both of the spouses during the marriage;

iii) Except as otherwise provided in this section, all income and appreciation on separate property, due to the labor, monetary, or in-kind contribution of either or both of the spouses that occurred during the marriage;

iv) A participant account, as defined in section 148.01 of the Revised Code, of either of the spouses.

Note: Court does not have jurisdiction over the social security benefits of a spouse, except as may be relevant for purposes of dividing a public pension but social security may be attached for support

3. Definitions: Separate Property: R.C. 3105.171

a. Definition: All real and personal property and any interest in real or personal property that is found by the court to be any of the following:

i) An inheritance by one spouse by bequest, devise, or descent during the course of the marriage;

ii) Any real or personal property or interest in real or personal property that was acquired by one spouse prior to the date of the marriage;

iii) Passive income and appreciation acquired from separate property by one spouse during the marriage;

iv) Any real or personal property or interest in real or personal property acquired by one spouse after a decree of legal separation issued under section 3105.17 of the Revised Code;

v) Any real or personal property or interest in real or personal property that is excluded by a valid antenuptial agreement;

vi) Compensation to a spouse for the spouse's personal injury, except for loss of marital earnings and compensation for expenses paid from marital assets;

vii) Any gift of any real or personal property or of an interest in real or personal property that is made after the date of the marriage and that is proven by clear and convincing evidence to have been given to only one spouse.

b. Intersection with Marital Property: The commingling of separate property with other property of any type does not destroy the identity of the separate property as separate property, except when the separate property is not traceable. **IT MUST BE TRACEABLE TO REMAIN SEPARATE PROPERTY.**



## **F. Available Relief: Spousal Support**

1. Spousal support (R.C. 3105.18): support for the maintenance of the ex-spouse.

a. Establishment: Court considers various conditions, including:

- i. Income of the parties;
- ii. Relative earning abilities of the parties;
- iii. Ages and physical, mental, and emotional conditions of the parties;
- iv. Retirement benefits of the parties;
- v. Length of the marriage;
- vi. Custodial duties towards minor children
- vii. Standard of living of the parties established during the marriage;
- viii. Relative extent of education of the parties;
- ix. Assets and liabilities of the parties;
- x. Contribution of each party to education, training or earning ability of the other party;
- xi. Time an expense necessary for spouse seeking spousal support to acquire education, training or job experience;
- xii. Tax consequences;
- xiii. Lost income production capacity due to martial responsibilities;
- xiv. Any other factor that is relevant and equitable.

b. Modification: Cannot be modified unless the court specifically retains jurisdiction pursuant to R.C. 3105.18(E) and (F).

## **G. Available Relief: Temporary Orders**

Temporary orders (Civil Rule 75)

1. Can be issued regarding each of the above issues; meant to maintain status quo, and to take care of matters while the case pends.
2. Temporary Restraining Orders (TRO): preventing removal of child from jurisdiction, preventing dissipation of assets.



## **H. Available Relief: Custody Determination**

1. R.C. 3105.21 - the court of common pleas shall make an order for the disposition, care, and maintenance of the children of the marriage, as is in their best interests, and in accordance with R.C. 3109.04 (see above).
2. Include count for parentage if child born of the parties, but prior to marriage.
3. If already have custody order through juvenile court, custody won't be addressed in divorce.

## **I. Divorce and Bankruptcy:**

1. If bankruptcy filed while divorce pending, an automatic stay goes into place that halts the divorce proceedings.
2. Does not apply to child custody or visitation matters.
3. Will need to ask bankruptcy court for relief from stay (may not be necessary in a Chapter 7).
4. Cannot discharge debt considered "Domestic Support Obligation" in the nature of alimony, maintenance, or support; "hold harmless" clauses – potentially opens up spouse to an adversarial action in bankruptcy case or contempt in divorce case.

## **J. Miscellaneous:**

1. R.C. 3015.16: Restoration to any name person used prior to marriage.
2. R.C. 310.71: Prohibition on cancellation of health insurance during pendency of divorce action.
3. R.C. 3105.72: Complaint should contain SSN (but check local practice).

## **K. Resources:**

1. LASC as Resource
  - a. Full representation to file a complaint for divorce, or to represent a defendant in a divorce case that has already been filed.
  - b. Emphasis given to cases involving children, marriages longer than 10 years.



- c. Emphasis given to victims and survivors of domestic violence, or clients with other vulnerabilities.
- d. For cases where opposing party may have significant income or assets, we may refer these cases to private attorneys who are willing to obtain their fees during the case from the other party (little or no upfront fee).
- e. If the issues are uncontested, we also have a reduced fee lawyer referral program (\$150 for divorce w/o children; \$250 for divorce w/ children).

## 2. Additional Resources

- a. Self-Represented Resource Center, Franklin County Common Pleas Court, Domestic Relations Division and Juvenile Branch, 373 S. High St., 4<sup>th</sup> Floor.
- b. Supreme Court of Ohio: Forms available at [www.sconet.state.oh.us](http://www.sconet.state.oh.us).



## **VI. PROTECTION ORDERS**

### **A. Criminal (Municipal Court and Common Pleas-General Division)**

1. Stay Away Orders
  - a. General provision requiring the defendant to stay away from the victim; usually a condition of bond or a condition of probation after criminal case concludes.
  - b. Probably not subject to immediate arrest; there would have to be a bond revocation or probation revocation.
  - c. Do not need to appear at criminal arraignment.
2. Temporary Protection Order (TPO)
  - a. Most of the time the victim should attend the arraignment hearing in order to get a TPO; however, it can be granted at later stages in the case.
  - b. Typically only contains provisions requiring the defendant to stay away from the victim.
  - c. Must be some relationship between defendant and victim: family or household member, child in common, other cohabitating type of relationship.
  - d. Immediate arrest if violates, and further criminal charges: violation of protection order (VPO).
  - e. Only lasts the length of the case; usually replaced by a stay away order as part of sentencing.
3. Anti-Stalking Protection Order (SPO)
  - a. Similar to TPO, depending on the type of charge.



- B. Civil** (Common Pleas-Domestic Relations Division; Common Pleas-General Division)
1. Civil Protection Orders (CPO) (R.C. 3113.31 et seq.)
    - a. Does not require criminal charges against “Respondent.”
    - b. “Petitioner” can file on his/her own.
    - c. Filed in domestic relations court.
    - d. Process:
      - i. File petition.
      - ii. Court conducts immediate “ex parte” hearing; only the petitioner/victim present.
      - iii. Full hearing; must obtain service of petition on respondent prior to hearing.
      - iv. In lieu of full hearing, can be obtained with consent of Respondent; resulting CPO functions in the same way, but does not have specific findings of wrongdoing.
    - e. Requirements:
      - i. Involving family or household member, child in common, or other type of cohabitating relationship; NEW: includes dating relationships.
      - ii. Show violence, or threats of violence; and
      - ii. Fear that defendant can cause imminent/immediate harm.
    - f. Provisions:
      - i. Can last up to five (5) years.
      - ii. Requires respondent to stay away, and subject to criminal charges for violation of protection order (VPO) if respondent does not follow.
      - iii. Prevents others from doing what respondent is prohibited from doing (i.e. cannot have friends/family acting on respondent’s behalf).
      - iv. Can provide award of temporary custody and temporary financial support.
      - iv. Can exclude respondent from residence, but does not affect title/lease-interest to premises.
      - v. Divide household goods and furnishings.
      - vi. Can require defendant/respondent to allow petitioner to use a



motor vehicle, and can include provisions allowing them to renew registration for vehicle.  
vii. Can be modified or terminated pursuant to R.C. 3113.31(E).

2. Civil Stalking and Sexually-Oriented Offense Protection Orders (SSOOPO)

- a. Usually reserved for non-family members and situations where there is not domestic violence.
- b. Requirements:
  - i. Need to show pattern of conduct.
  - ii. Fear that defendant may cause harm, or defendant has caused mental distress.

3. Temporary Restraining Orders (TRO)

- a. Usually granted as part of a divorce proceeding.
- b. Prevents someone from destroying property, removing money from bank accounts.
- c. Prevent someone from removing children from the court's jurisdiction.

**C. Resources**

1. LASC as Resource

- a. Representing victims and survivors by filing petitions for CPOs and stalking protection orders.
- b. Representing petitioners who have already filed a petition, but need assistance at the full hearing.
- c. No representation in any criminal proceedings.

2. Additional Resources:

- a. CPO Help Desk (Capital University Legal Clinic), Franklin County Common Pleas Court, Domestic Relations Division and Juvenile Branch, 373 S. High St., 4<sup>th</sup> Floor.
- b. Supreme Court of Ohio: Forms available at [www.sconet.state.oh.us](http://www.sconet.state.oh.us).
- c. Domestic Violence Services: CHOICES, (614) 224-4663 (emergency shelter services, counseling, support groups).



## **VII. GENERAL RESOURCES AND QUICK TIPS**

### **A. Resources for Pro Se Litigants**

1. Self-Represented Resource Center, Franklin County Common Pleas Court, Domestic Relations Division and Juvenile Branch, 373 S. High St., 4th Floor.
2. CPO Help Desk (Capital University Legal Clinic), Franklin County Common Pleas Court, Domestic Relations Division and Juvenile Branch, 373 S. High St., 6th Floor
3. Local Rules, including Parenting Time Schedules:  
<https://drj.fccourts.org>
4. Forms:
  - a. Juvenile and Domestic Relations:  
<https://www.supremecourt.ohio.gov/JCS/CFC/DRForms/>
  - b. Civil Protection Orders:  
[https://www.supremecourt.ohio.gov/JCS/domesticViolence/protection\\_forms/DVForms/](https://www.supremecourt.ohio.gov/JCS/domesticViolence/protection_forms/DVForms/)
5. Child Support Enforcement Agency (CSEA):
  - a. Franklin County Child Support Enforcement Agency: 80 E. Fulton St., Columbus, 43215; [www.support.franklincountyohio.gov](http://www.support.franklincountyohio.gov)
  - b. Franklin County Common Pleas, Domestic Relations Division and Juvenile Branch CSEA Client Affairs Officers: Last Name A-L: 525.4801; Last Name M-Z: 525-5211.

### **B. Tips for Understanding Local Court Practice**

1. Court Structure for Franklin County Domestic Relations and Juvenile Division
  - a. 6th Floor (Courtrooms 61-66): Judges; CPO Help Desk
    - i. Civil Protection Orders
    - ii. Emergency Custody Motions
    - iii. Divorce pre-trials and final divorce hearings



- b. 5th Floor: Magistrates for Abuse/Neglect/Dependency and Child Support
  - c. 4th Floor: Clerk's Office; Hearing Assignment Office; Self-Represented Resource Center
  - d. 3rd Floor (Courtrooms 31-39): Juvenile (31,32,37-39) and Domestic Magistrates (33-36)
    - i. All complaints and motions in Juvenile Cases
    - ii. Motions for temporary orders in divorces
    - iii. Miscellaneous motions in divorces, and post-divorce motions

2. Case Information:

- a. Case number: Contains information about filing and case type.
  - i. General Format: YY Type MM-####
  - ii. Abbreviations:
    - JU: Juvenile
    - DR: Domestic Relations (Termination of Marriage)
    - DV: Domestic Violence (Civil Protection Order)
  - iii. Examples:
    - 16 JU 04-1565: A juvenile case filed in April 2016
    - 15 DV 07-1100: A civil protection order filed in July 2015
- b. Hearing Information: Time and location will give clues as to type of hearing.
  - i. 8:30 AM Hearings
    - Temporary orders in divorces
    - Initial Hearings in Juvenile Custody
  - ii. 9:30 AM Hearings
    - Miscellaneous divorce motions
    - Subsequent or continued hearings in Juvenile cases



- Miscellaneous AM times
  - Pretrials and CPOs
  - Some divorce trials
- iii. 1:30 PM Hearings
- Contested trials (final trial/hearing date)
- c. Case Timeline: Will give you an idea of whether person will be granted a continuance of upcoming hearing.
- i. Juvenile: 9 months
  - ii. Divorce without children: 12 months
  - iii. Divorce with children: 18 months
  - iv. Post-decree motions: 6-9 months
  - v. Civil Protection Orders: Final hearing scheduled 7-10 days after petition is filed.

### **C. ONLINE CASE INFORMATION**

1. Divorces (with or without children): Franklin County Clerk of Court's Website; general case history, including hearing information, and dates when documents filed (cannot view the actual documents)  
  
<http://fcdcfcs.co.franklin.oh.us/CaseInformationOnline>
2. Custody Only: Juvenile Court case information is NOT available online.
3. Civil Protection Orders: NOT available online.
4. Criminal Domestic Violence Cases
  - a. Misdemeanor: Franklin County Municipal Court's Website; general case history, including hearing information, and dates when documents filed (cannot view the actual documents).  
  
<http://www.fcmcclerk.com/case/search>
  - b. Felony: Franklin County Clerk of Court's Website; general case history, including hearing information, and dates when documents filed, and some documents are available for viewing as PDFs.



<http://fcdcfcs.co.franklin.oh.us/CaseInformationOnline>

5. Domestic Violence Police Reports: Not available online. It is also highly likely that there will not be any entries on Columbus Police Department website regarding a call or contact with law enforcement. You will need to contact CPD directly.



Questions? Please contact:

Stuart Y. Itani  
Managing Attorney, Family Law Team  
The Legal Aid Society of Columbus  
(614) 737-0115  
[sitani@columbuslegalaid.org](mailto:sitani@columbuslegalaid.org)

Updated November 2019