

IN THE COURT OF COMMON PLEAS, JUVENILE DIVISION, GEauga COUNTY, OHIO
Judge Timothy J. Grendell

Information Sheet
Allocation of Parental Rights and Responsibilities

WARNING

This Information Sheet is intended to provide you with an overview of the subject matter, effective as of the date noted in the upper left-hand corner. This Information Sheet is not intended to provide you with all legal information that may be necessary for you to decide upon a course of action, and the information provided may not be error-free, complete, or accurate. Moreover, this Information Sheet may not accurately describe the cited sections of the Ohio Revised Code or cited case law. Finally, this Information Sheet is not intended as a substitute for legal advice from a competent licensed attorney, who is familiar with all of the relevant facts of your case, and therefore the Help Center recommends that you seek legal advice from a competent licensed attorney that you select before taking any action. While the Help Center can provide you with a limited amount of general legal information, neither the Help Center staff nor any other Court employee can give you any legal advice.

Form numbers that are referenced in this information sheet and are preceded by “GCJF” are available on the Court’s website. Form numbers that are preceded by “GC Juv” are available at the Help Center, but most of those forms are included in the **Pro Se Litigation Packages** that our on the Court’s website.

Background

There are three primary concerns that the Court may address when allocating parental rights and responsibilities. They are (1) child custody, (2) child support, and (3) parenting time for the noncustodial parent.

- Child custody. When an unmarried mother gives birth to a child, even if she is living with the biological father, the unmarried mother is the sole residential parent¹ until a court issues an order designating the father as the residential parent or another person as the legal custodian (usually another family member).² However, when a court is called upon to determine which parent should be the residential parent, the court must treat both the mother and the father equally when making the designation, without a preference for either parent.³

¹ This information sheet uses the term “residential parent,” but the intended meaning is that of “residential parent and legal custodian” as used in R.C. 3109.04(A)(1)

² See R.C. 3109.042(A), *Severns v. Foster*, 2019-Ohio-909 (3rd App. Dist.)(2019)

³ R.C. 3109.042(A). But see the exception in R.C. 3109.042(B).

With few exceptions that are discussed below,⁴ an Ohio juvenile court has no power to determine issues regarding custody (including parenting time) of minor children when:⁵

- The parents of the child are married; or
 - The child's parents are not married and there is an existing order for custody or support regarding the child or the child's sibling over which the juvenile court does not have jurisdiction; or
 - The determination of custody or child support is ancillary to the parents' pending action for divorce, dissolution of marriage, annulment, or legal separation.
- Child Support. If the unmarried mother requires child support from the biological father, but the father and child relationship has not been determined or cannot be presumed, then the mother must first seek a determination of paternity. See the Information Sheet titled "Determining Paternity." In addition to filing a complaint with this Court, the mother can seek a determination of paternity by filing the appropriate paperwork with the local Child Support Enforcement Agency (CSEA), which is at 12480 Ravenwood Drive, Chardon, Ohio 44024. After the father's paternity is established, the mother can obtain a child support order from CSEA. However, the father cannot obtain from CSEA an order designating the father as the residential parent or granting the father parenting time. The father can only obtain such parenting time by filing a Complaint or motion with a juvenile court. See the Information Sheet titled "Child Support" for more information.
- Parenting Time. With few exceptions, typically resulting from some fault of the noncustodial parent (i.e., drug addiction, child abuse, etc.) the noncustodial parent is entitled to parenting time, which in the past was referred to as visitation rights. A father is only entitled to parenting time if paternity has been established, typically a notation on the birth certificate. See the Information Sheet titled "Determining Paternity" for more information. Even if the unmarried father's paternity has been established, he has no parenting time rights without a court order. There are three statutes that allow an unmarried father to obtain a parenting time order:
- R.C. 3109.04. The father can file a complaint to allocate parental rights and responsibilities, including child custody and parenting time rights.⁶
 - R.C. 3109.12. The father can file a complaint to obtain a court order for parenting time.
 - R.C. 3109.051. If a legal proceeding is pending in the Court regarding child support, then the noncustodial parent may file a motion to obtain parenting time.

Court Authority to Determine Child Custody and Parenting Time.

Generally, the Court has the power to determine issues of child custody and parenting time if the parents are not married.⁷ However, due to problems arising from a parent transporting a child to another state, and from the conflict and confusion that can arise when two courts in different states are both dealing with the issue of child custody, Ohio enacted what is known as the Uniform Child Custody Jurisdiction and

⁴ See R.C. 2151.234. Also see below the discussion regarding the married parent's right to file a complaint under R.C. 2151.23(A)(1) alleging that a child is abused, neglected, or dependent, or a motion for legal custody if a child is alleged to be a delinquent, unruly, or traffic offender. See the juvenile information sheet titled "Jurisdiction of Ohio Juvenile Courts."

⁵ R.C. 2151.233

⁶ See R.C. 3109.04(A)(1).

⁷ R.C. 2151.23(A)(2)

Enforcement Act, which is set forth in R.C Chapter 3127. This law is complex and beyond the scope of this information sheet.⁸ Nevertheless, there are several fundamental matters to consider. However, the information sheet titled “Jurisdiction of Ohio Juvenile Courts” provides more information.

1. With few exceptions, an Ohio juvenile court has the power to determine child custody only if the child has lived in Ohio with a parent or other legal custodian for at least six months before filing the complaint.⁹
2. The person filing the complaint must also prepare and file an affidavit that discloses to the Court any prior or ongoing legal proceeding in another court pertaining to child custody, (GC JF 1.0 (Jurisdiction Affidavit)).¹⁰
3. This Court is the proper Ohio court to determine child custody if the Child(ren) “is found or was last known to be” in Geauga County.¹¹

If there was a prior legal proceeding or there is a current court proceeding regarding child custody or child support in another court, whether an Ohio court or another state court, then the question of whether this Court can make a child custody determination or issue a child-support order becomes more complicated. For more information see the information sheet titled “Jurisdiction of Ohio Juvenile Courts.”

Identifying the Child(ren). In any private custody case or an abuse, neglect, or dependency case, the minor children are certainly the innocent parties, and their privacy should be protected. Accordingly, the Court requires that in all complaints or motions, and related documents (e.g., affidavits, instructions, etc.) the identity of the minor children is shown only by their initials, and not their names or other contact information. On the other hand, the Court needs to know the full name, date of birth, address, and the names of the children and the parents, including their contact information. You are required to fully inform the court of such information by preparing and filing the form titled GC JF 5.0 (Disclosure of Confidential Information). The Court will store that form in a confidential section of the Court’s file. As that information changes during the legal proceedings, you must inform the Court of such changes by again preparing and filing the form titled GC JF 5.0 (Disclosure of Confidential Child Information).

Identifying Necessary Parties. In a private custody case or an abuse, neglect, or dependency case, Juv. R. 2(Y) defines the necessary parties for a new case. That rule states:

“Party” means a child who is the subject of a juvenile court proceeding, the child’s spouse, if any, the child’s parent or parents, or if the parent of a child is a child, the parent of that parent, in appropriate cases, the child’s custodian, guardian, or guardian ad litem, the state, and any other person specifically designated by the court.

You should note that Juv.R. 2(Y) does not include grandparents as a necessary party simply by virtue of being a grandparent.

Before filing a complaint to start a new legal proceedings, you must determine who are the necessary parties for that new legal proceeding and identify those Persons by preparing and filing with the Court the form titled “GC JF 5.1 (Identity of Necessary Parties).”

⁸ For more information see “Uniform Child Custody Jurisdiction and Enforcement Act – Guide for Court Personnel and Judges” at https://www.ncjfcj.org/sites/default/files/UCCJEA_Guide_Court_Personnel_Judges_Final.pdf

⁹ R.C. 3127.15

¹⁰ R.C. 3127.23(A)

¹¹ R.C. 2151.27(D) and Juv. R. 10(A).

Jurisdiction Affidavit. In some cases, regarding child custody or parenting time, the children are involved with a legal proceeding in another state regarding those issues, which can result in conflicting decisions from this Court and the other state court. To avoid such confusion, Ohio has adopted the *Uniform Child Custody Jurisdiction and Enforcement Act*, which is set forth in R.C. Chapter 3127. To provide this Court with information that it requires to deal with the issues presented by that Act, you are required to prepare and file form titled GC JF 1.0 (Jurisdiction Affidavit) with any complaint that you file concerning child custody or parenting time.

Parent History Affidavit. When the Court is asked to determine child custody or parenting time, the criminal history of a parent (and members of the parent's household) is a relevant factor to consider. Ohio has adopted R.C. 3109.04(M), which requires a parent to prepare and file with the Court the form titled GC JF 2.0 (Parent History Affidavit) when filing a complaint or motion concerning child custody or parenting time. That form provides the Court with the pertinent information. As that information changes during the proceeding, the parent must update that form and file it with this Court.

Allocation of Parental Rights and Responsibilities – No Shared Parenting Plan.¹² If the parents do not file or cannot agree upon a shared parenting plan, or if the Judge will not approve a proposed shared parenting plan, then based upon the testimony of either or both parents, other evidence, and upon a mediation report if any, the Judge will allocate the parental rights and responsibilities of the minor children, including the designation of the residential parent, parenting time (visitation rights), and support obligations, as the Judge determines is in the best interest of the minor children. See the discussion below regarding "Factors in Determining the Best Interest of the Minor Children."

Note: If (i) there is no legal proceeding in the Court, (ii) you want the Judge to determine child custody, parenting time, or child support, and (iii) you do not want to propose your own shared parenting plan, then consider using and filing with the Court form GC Juv 001 (Complaint for Allocation of Parental Rights and Responsibilities for Care of Children and Parenting Time), together with (1) GC JF 5.0 (Disclosure of Confidential Child Information), (2) GC JF 5.1 (Identity of Necessary Parties), (3) GC JF 1.0 (Jurisdiction Affidavit), (4) GC JF 2.0 (Parent History Affidavit), (5) GC JF 7.0 (Instructions for Service), (6) CG Juv 038 (Affidavit) if an emergency order is requested, and (7) a filing fee.

Parenting Time (or parental visitation rights) Only. If a parent only seeks a parenting time order, then consider the following.

Granting of Parenting Time.

- No Legal Proceeding. If there is no legal proceeding in the Court regarding the child(ren), then the father may file a Complaint with the Court to obtain an order granting parenting time; provided that the father's parentage has been established or will be established during the proceeding – see Information Sheet – "Determining Paternity".¹³ The Judge will grant parenting time to the father if the Judge finds that granting parenting time is in the best interest of the child. In determining whether parenting time is in the best interest of the child and what is the appropriate schedule for parenting time, if the parent (typically the father) files the complaint under R.C. 3109.04, then the Judge will consider the factors listed in R.C. 3109.04(F). If the parent files the complaint under R.C. 3109.12, then the Judge will consider the factors listed in R.C. 3109.051(D).

¹² R.C. 3109.04(A)

¹³ R.C. 3109.12(A)

Note: If you want the Judge to grant you parenting time only, then consider using and filing with the Court either form (1) GC Juv 001 (Complaint for Allocation of Parental Rights and Responsibilities) and in the request indicate “*Grant me reasonable parenting time*,” or (2) GC Juv 001D (Complaint – Parenting Time Only), together with (i) GC JF 5.0 (Disclosure of Confidential Child Information), (ii) GC JF 5.1 (Identity of Necessary Parties), (iii) GC JF 1.0 (Jurisdiction Affidavit), (iv) GC JF 2.0 (Parent History Affidavit), (v) GC JF 7.0 (Instructions for Service), and (vi) a filing fee deposit.

- Legal Proceeding. If there is a legal proceeding regarding child support for the child, then the father may file a motion for parenting time.¹⁴ The Judge will grant parenting time to the father if the Judge finds that granting parenting time is in the child’s “best interest,” applying the factors in R.C. 3109.051(D).

Note: If you want the Judge to grant you parenting time, , then consider using and filing with the Court form GC Juv 033 (Motion for Parenting Time), together with (1) GC JF 2.0 (Parent History Affidavit), (2) GC JF 7.0 (Instructions for Service), and (3) a filing fee deposit.

Parenting Time Terms. Ideally, both parents will agree to the parenting time terms, which are in the best interest of the minor children and are acceptable to the Court. As required by R.C. 3109.051(D)(2), the Court as adopted four parenting time Schedules which are titled (1) “Local Parenting Time Schedule,” (2) “Long Distance Parenting Time Schedule,” (3) “Professional Supervised Parenting/Companionship Time Schedule,” and (4) “Non-Professional Supervised Parenting/Companionship Time Schedule.” Those Schedules may assist the parents in determining a parenting time agreement. Additionally, those Schedules will be used by the Court, together with other statutory guidelines, to determine a court order regarding parenting time if the parents cannot agree upon the parenting time terms, or the Court does not accept the parents’ agreement.

The “Local Parenting Time Schedule is applicable if the driving time between the parents is not greater than three hours travel time,¹⁵ otherwise the Long Distance Parenting Time Schedule is applicable. If the Court determines that neither of those parenting time Schedules is in the child’s best interest, depending upon the circumstances, the Court may award parenting time using the Court’s “Professional Supervised Parenting/Companionship Time Schedule,” or the “Non-Professional Supervised Parenting/Companionship Time Schedule.” All of those Schedules are published on the Court’s website. In all events, the Judge, for good cause, may deviate from those Schedules. Moreover, the Judge may order special provisions regarding parenting time if the noncustodial parent is under a protective order arising from domestic violence.¹⁶

Allocation of Parental Rights and Responsibilities – Shared Parenting Plan.¹⁷ Either or both parents may file a complaint (or petition) requesting that the Judge grant the parents equal shared parental rights and responsibilities for the care of the minor children. The parent or parents requesting shared parenting must attach to the complaint (or petition) a proposed shared parenting plan. A shared parenting plan must include provisions relevant to the care of the children, including factors such as living arrangements, child support obligations, the children’s medical and dental care, school placement, and the parent with whom

¹⁴ R.C. 3109.051(A)

¹⁵ Travel time is determined by the fastest drive time route using Google maps.

¹⁶ See R.C. 3113.31, and more specifically R.C. 3113.31(E)(6).

¹⁷ R.C. 3109.04(G)

the children will be physically located during legal holidays, school holidays, and other days of special importance.¹⁸ If one parent does not attach a shared parenting plan, the Judge may order that parent to file a shared parenting plan. In all events, ultimately the Judge will determine what allocation of parental rights and responsibilities is in the best interest of the minor children regardless of what is contained in a proposed shared parenting plan.¹⁹ If the Judge issues a shared parenting order and if it is necessary for the purpose of receiving public assistance, then the Judge shall designate which residence of a parent shall serve as the child's home. The Judge shall determine the parent's child support obligations under a shared parenting order in accordance with R.C. Chapters 3119, 3121, 3123, and 3125.

Joint Filing.²⁰ If the parents jointly request a shared parenting plan, the Judge may determine the plan to be in the best interest of the minor children, approve the shared parenting plan as filed, and issue an order of shared parenting. However, the Judge may object to the plan or certain portions, in which case the Judge will require the parents to make changes. If the parents cannot agree upon changes requested by the Judge, or the Judge rejects the plan, then the Judge will proceed as though a shared parenting plan had not been filed.

Note: If you intend for both parents to file a joint petition requesting a shared parenting plan, consider using form GC Juv 002 (Joint Petition to Approve Shared Parenting Plan), together with (1) GC JF 1.0 (Jurisdiction Affidavit), (2) GC JF 2.0 (Parent History Affidavit) for each parent, (3) GC JF 7.0 (Instructions for Service), and (4) a filing fee.²¹ You must prepare and attached the proposed Shared Parenting Plan, in which case consider using GC Juv 003 (Shared Parenting Plan) and the proposed Vacation Schedule using GC Juv 003A (Shared Parenting Vacation Schedule).

Separate Shared Parenting Plans.²² If each parent requests shared parenting, but each parent files his or her own proposed shared parenting plan, then the Judge shall review both plans, and may approve one of the plans if the Judge determines it to be in the best interest of the minor children. If neither plan is in the best interest of the minor children, then the Judge may request certain changes to either or both plans. The Judge may accept either plan, as changed in accordance with the Judge's request, or may reject both proposed plans and proceed as though a shared parenting plan had not been filed.

Note: If you intend to propose your own shared parenting plan, then consider using and filing with the Court form GC Juv 001 (Complaint For Allocation of Parental Rights and Responsibilities for Care of Children and Parenting Time), together with (1) GC JF 1.0 (Jurisdiction Affidavit), (2) GC JF 2.0 (Parent History Affidavit) for each parent, (3) GC JF 7.0 (Instructions for Service), (4) CG Juv 038 (Affidavit), if emergency order is requested, and (5) a filing fee. You must prepare and attached your proposed Shared Parenting Plan, in which case consider using GC Juv 003 (Shared Parenting Plan).

Note: If after the filing of a Complaint For Allocation of Parental Rights and Responsibilities for Care of Children and Parenting Time you desire to propose your own Shared Parenting Plan, then consider using and filing with the Court form GC Juv 006 (Motion to Approve Shared Parenting Plan). You must prepare and attach your proposed Shared Parenting Plan, in which case consider using GC Juv 003 (Shared Parenting Plan). You must serve a

¹⁸ See the shared parenting plan example on the Court's website.

¹⁹ R.C. 3109.04(A)(1)

²⁰ R.C. 3109.04(D)(1)(a)(i)

²¹ If you have a financial difficulty in paying a filing fee, the Help Center may be able to assist. You may prepare and file an Indigency Application and required financial affidavit.

²² R.C. 3109.04(D)(1)(a)(ii)

copy of that Motion upon all other parties – See Information Sheet titled “Service and Subpoena.”

Only One Plan Filed.²³ If only one parent submits a proposed shared parenting plan, then the Judge may order the other parent to submit a shared parenting plan. The Judge will review both plans and may approve one of the plans if the Judge determines it to be in the best interest of the minor children. If neither plan is in the best interest of the minor children, then the Judge may request certain changes to either or both plans. The Judge may accept either plan, as changed in accordance with the Judge’s request, or may reject both proposed plans and proceed as though a shared parenting plan had not been filed.

When the Judge approves a proposed shared parenting plan, the Judge will incorporate the terms of that plan into a final order granting shared parenting, with immediate effect, but subject to later modification or termination.²⁴

If the Judge determines that appointing either one of the parents as the residential parent is not in the best interest of the minor children, then the Judge may grant legal custody²⁵ to a relative of the minor children.²⁶

Court Interview of a Minor Child.²⁷ Before allocating parental rights and responsibilities, whether during the original or a modification proceeding, the Judge may decide to interview the minor children in the Judge’s chambers to understand the wishes and concerns of the minor children, without the parents being present unless the Judge decides otherwise. Before doing so, the Judge may appoint a guardian ad litem, who will represent the minor children. The Judge will consider the reasoning ability of the minor children. No person may obtain or attempt to obtain from a child a written or recorded statement setting forth the child’s wishes or concerns, and the Judge will not take into consideration any such statement or recording.²⁸

Note: If you want the Judge to interview your minor children, then consider using and filing with the Court form GC Juv 004 (Request in Chambers Interview) and Instruction for Service GC Juv 035. You must serve a copy of that Motion upon all other parties – See Information Sheet titled “Service and Subpoena.”

Pre-Hearing Investigation.²⁹ Before the Hearing, the Judge may cause an investigation to be made as to the character, family relations, past conduct, earning ability, and financial worth of each parent and may order the parents and their minor children to submit to medical, psychological, and psychiatric examinations. The report of the investigation and examinations shall be made available to either parent or the parent's attorney not less than three days before the Hearing, upon written request. The investigator shall sign the report and is subject to cross-examination by either parent during the Hearing concerning the contents of the report. The Judge will consider any finding that

²³ R.C. 3109.04(D)(1)(a)(iii)

²⁴ R.C. 3109.04(D)(1)(d)

²⁵ R.C. 2151.011(A)(21) - "Legal custody" means a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by any section of the Revised Code or by the court.

²⁶ R.C. 3109.04(D)(2)

²⁷ R.C. 3109.04(B)

²⁸ R.C. 3109.04(B)(3)

²⁹ R.C. 3109.04(C)

a parent was convicted of, or pled guilty to, an offence involving child abuse, neglect, sexual abuse of a household member at the time of commission of the crime, or domestic violence.

Note: If you want a copy of the investigation report, then consider using and filing with the Court form GC Juv 005 (Request of Investigative Report).

Award of Emergency Temporary Custody and Parenting Time. In any proceeding pertaining to the allocation of parental rights and responsibilities for the care of a minor child, when requested in the complaint or motion, upon satisfactory proof by affidavit duly filed with the clerk of the court, the Judge, without a hearing and for good cause shown, may make an order of temporary custody³⁰ and parenting time while the action is pending.³¹ See the discussion below.

Modification of Prior Custody Order.³² The law is different depending upon whether the prior court order is based upon a court-approved shared parenting plan.

Modification of Prior Custody Order – No Shared Parenting Plan.³³ If this Court's prior court order awarded sole legal custody to one parent, and the non-custodial parent wants sole legal custody of the minor child(ren), then that parent may file with the Court a motion to modify the prior custody order. Before the Judge will modify that prior custody order, the non-custodial parent (the "Movant") must prove to the Judge the following fundamental requirements. The Movant must overcome a rebuttable presumption that having the custodial parent retain custody is in the child's best interest.³⁴

Fundamental Requirements.³⁵ Under all circumstances, the Judge may not modify a prior court custody order that is not based upon a shared parenting agreement unless the Judge finds, based on facts that (1) have arisen after the prior court order and (2) were unknown to the Court at the time of the prior court order, unless:

- (1) a change has occurred in the circumstances of the child, the child's residential parent, or either parent if subject to a shared parenting order,³⁶ AND
- (2) at least one of the following applies:
 - (i) The residential parent agrees to a change in the residential parent or both parents under a shared parenting order agree to a change in the designation of residential parent, or
 - (ii) The child, with the consent of the residential parent or of both parents under a shared parenting order, has been integrated into the family of the person seeking to become the residential parent, or

³⁰ R.C. 2151.011(A)(55) - "Temporary custody" means legal custody of a child who is removed from the child's home, which custody may be terminated at any time at the discretion of the court or, if the legal custody is granted in an agreement for temporary custody, by the person who executed the agreement.

³¹ R.C. 3109.043

³² R.C. 3109.04(E)

³³ R.C. 3109.04(E)(1)(a)

³⁴ *Haskett v. Haskett*, 2013-Ohio-145 (11th App. Dist.)(2013)

³⁵ R.C. 3109.04(E)(1)(a)

³⁶ A "change in circumstances" is not necessarily a "significant" change in circumstances. See *Davis v. Flickinger*, 77 Ohio St. 3d 415, 1997-Ohio-260, 674 N.E. 2d 1159. For example, the residential parent's interference with visitation may constitute a "change in circumstances. See *Clark v. Smith*, 130 Ohio App.3d 648, 720 N.E.2d 973 (3d App. Dist.)(1998).

(iii) The harm likely to be caused by a change of environment is outweighed by the advantages of the change of environment to the child.

(3) Moreover, if the Court determines that a “change of circumstances” has occurred and that the harm likely to be caused by a change of environment is outweighed by the advantages of the change of environment to the child, then the Court must determine that a change of custody is in the best interest of the child. In making that “best interest” determination, the Court must consider the factors set forth in R.C. 3109.04(F) – see the discussion below.

The statute does not define the phrase “change of circumstances.” However, the appellate courts have defined that phrase in number of cases. The facts arising from an event, occurrence, or situation must have a material and adverse effect upon the child.³⁷ The change in circumstance must be one of substance, not a slight or inconsequential change.³⁸ For example, relocation of a parent alone is not sufficient to constitute a change of circumstances but may be a factor in the determination. The requirement of “change in circumstances” is intended to prevent constant re-litigation of a custody issue that already has been determined by the trial court.³⁹

Note: If you want the Judge to change the current order of this Court regarding child custody, parenting time, or child support and you do not want to propose your own shared parenting plan, then consider using and filing with the Court form GC Juv 007 (Motion for Change of Parental Rights and Responsibilities), together with (1) GC JF 2.0 (Parent History Affidavit) for each parent, (2) GC JF 7.0 (Instructions for Service), (3) CG Juv 038 (Affidavit) if an emergency order is requested, and (4) a filing fee deposit.

Note: You should decide whether you want the Court to terminate any current child support order, and whether the other parent should be ordered to pay you child support.

Proposing a Shared Parenting Plan. If rather than request a change of legal custody, the non-custodial parent would prefer to propose a shared parenting plan, then that parent could file a motion proposing a shared parenting plan.

Note: If you want the Judge to approve a shared parenting plan, then you first need to prepare that plan. Consider a template that the Help Center offers - GC Juv 003. Then consider using and filing GC Juv 008B (Motion to Approve and Order Shared Parenting Plan, together with (1) GC JF 2.0 (Parent History Affidavit), (2) GC JF 7.0 (Instructions for Service), and (3) a filing fee deposit.

It is probably more likely that the Court will approve a shared parenting plan if both parents agree to the plan. See the discussion below regarding a joint request for a shared parenting plan.

Termination of Prior Custody Order – Shared Parenting Plan.⁴⁰ If (i) the prior court order results from a shared parenting plan, resulting in the parents having equal legal custody rights and (ii) one or both parents desire sole legal custody of the minor child(ren), then either or both parents may file a motion to terminate the shared parenting agreement and designate the movant as the residential parent (and presumably grant

³⁷ *Pierson v. Gorell*, 2012-Ohio-3878 (12th App. Dist.); *Thompson v. Thompson*, 2019-Ohio-274 (5th App. Dist.)(2019); and *In re A.P.*, 2019-Ohio-139 (2nd App. Dist.)(2019).

³⁸ *Davis v. Flickinger*, 77 Ohio St.3d 415 (1997).

³⁹ *Thompson v. Thompson*, 2019-Ohio-274 (5th App. Dist.)(2019).

⁴⁰ R.C. 3109.04(E)(2)(c)

parenting time to the other parent).⁴¹ Before the Court will terminate the prior court order and shared parenting plan and proceed to designate one of the parents as the residential parent, the Judge only need determine that such termination of the shared parenting plan is in the best interest of the minor child(ren), applying the R.C. 3109.04(F)(see the discussion below on page 11), and need not apply the “change-in-circumstances” test noted above.

Note: If you want the Judge to terminate the prior court order that is based upon a shared parenting plan, and appoint you as the residential parent, then consider using and filing with the Court form GC Juv 008 (Motion to Terminate Shared Parenting Plan), together with (1) GC JF 2.0 (Parent History Affidavit), (2) GC JF 7.0 (Instructions for Service), (3) CG Juv 038 (Affidavit) if an emergency order is requested, and (4) a filing fee deposit.

Note: You should decide whether you want the Court to terminate any current child support order, and whether the other parent should be ordered to pay you child support.

Amendment of Shared Parenting Plan without changing the equal shared parenting provision.⁴² If a parent wants to modify the terms of a shared parenting plan, **but not** the equal shared parenting time provision, then one or both of the parents may file with the Court a motion to modify the shared parenting plan. Examples are provisions that deal with child support or parenting time.

Note: If you want the Judge to modify one or more terms of a shared parenting plan, other than the term that provides for equal legal custody, then consider using and filing with the Court form GC Juv 008A (Motion to Modify Order and Shared Parenting Plan), together with (1), (2) GC JF 7.0 (Instructions for Service), and (3) a filing fee deposit.

Modification of Prior Order – Shared Parenting Plan – Joint Request.⁴³ If the prior order incorporated a Shared Parenting Plan, then the parents may jointly request that the Judge modify the shared parenting plan, other than a modification of the equal legal custody provision. Except for a modification of the equal legal custody provision, the Judge may accept the proposed modification, reject it, or request changes before approving it. The Judge will not approve the proposed modification to an existing Shared Parenting Plan unless the Judge determines the modification to be in the best interest of the minor children. The Judge may decide to modify an existing shared parenting plan on the Judge’s own motion at any time if the Judge determines that modification to be in the best interest of the minor children.

Note: If both parents want the Judge to modify one or more terms of a shared parenting plan, then consider using and filing with the Court form GC Juv 009 (Joint Motion for Change of Custody and Shared Parenting Plan), together with (1) GC JF 2.0 (Parent History Affidavit), (2) GC JF 7.0 (Instructions for Service), if needed and (3) a filing fee deposit.

If the parents jointly agree that the Court should end the equal legal custody provision and appoint one parent as the residential parent, then they should consider jointly filing a motion to terminate the prior order as discussed above.

Separate Findings of Fact and Conclusions of Law. After a Hearing regarding an initial determination of, or modification of, child custody is concluded, you may request that the Judge issue separate findings of

⁴¹ *Bruns v. Green*, Slip Opinion No. 2020-Ohio-4787 (Supreme Court of Ohio, decided Oct. 8, 2020)

⁴² R.C. 3109.04(E)(2)(b)

⁴³ R.C. 3109.04(E)(2)(b)

fact and conclusions of law that will specifically state the basis upon which the Judge rendered the order.⁴⁴ This may be helpful to you if you dislike the Judge's order and desire to file an appeal. You should file your request as soon as possible following the conclusion of the Hearing. Be aware that the Judge may request that you propose findings of fact and conclusions of law.

Note: If you want the Judge to issue separate findings of fact and conclusions of law, then consider using and filing with the Court, as soon as possible following the conclusion of the Hearing, form GC Juv 031 (Request for Findings of Fact and Conclusions of Law). You must serve a copy of that Request upon all other parties – See Information Sheet titled “Service and Subpoena.”

The Best Interest Test Factors.

- Determining Child Custody or Modification of a Child Custody Order (without a parenting time order). When the Judge must determine the “best interest of a child,” whether to issue an original child custody order or whether to modify a prior child custody order, the Judge shall consider all relevant factors, including those factors listed in R.C. 3109.04(F). If you attend a Hearing to determine child custody issues, then you need to be aware of those factors, and determine which of those factors may apply to your case, and what evidence you can provide to the Judge to support your case. See attached Appendix A1 for a listing of those factors.
- Determining Child Custody or Modification of a Child Custody Order (with a parenting time order). When the Judge must determine the “best interest of a child,” whether to issue an original parenting time order or whether to modify a prior parenting time order, the Judge shall consider all relevant factors, including those factors listed in R.C. 3109.051(D). If you attend a Hearing to determine parenting time issues, then you need to be aware of those factors, and determine which of those factors may apply to your case, and what evidence you can provide to the Judge to support your case. See attached Appendix A2 for a listing of those factors.

Notice to Relocate. If you are the residential parent, and if parenting time has been awarded to the noncustodial parent, then you must give the Court written notice if you intend to relocate to a residence other than your residence noted in the court order granting parenting time.⁴⁵ With a few exceptions, the Court will notify the noncustodial parent. Upon the Court's motion or the motion of either party, the Judge will schedule a hearing to determine how to modify the parenting time order in the best interest of the minor children. You must prepare and file the form GC JF 9.5 – Notice of Intent to Change Address on the Court's Website or at the Help Center.

Access to Records. With a couple of exceptions, the noncustodial parent is entitled to have access to records concerning the minor children under the same terms and conditions available to the residential parent.⁴⁶ Additionally, unless the Judge determines otherwise in the court order, the noncustodial parent, who has parenting time, is entitled to access any child day-care center that is attended by the minor children.⁴⁷ Moreover, the noncustodial parent is entitled to access any student activity under the same terms and conditions available to the residential parent.⁴⁸

Failure to Comply or Interference. If you are the residential parent and you fail to comply with or interfere with any court order that grants parenting time, then you may be held in contempt of court, which may

⁴⁴ See Civ.R. 52 (Ohio Rules of Civil Procedure) and Juv.R. 29(F)(3) (Ohio Rules of Juvenile Procedure). See also, *Walker v. Doup*, 36 Ohio St.3d 229, 522 N.E.2d 1072 (1988).

⁴⁵ R.C. 3109.051(G)(1). For the exceptions, see R.C. 3109.051(G)(2), 3109.051(G)(3), and 3109.051(G)(4).

⁴⁶ R.C. 3109.051(H)

⁴⁷ R.C. 3109.051(I)

⁴⁸ R.C. 3109.051(J)

include an order to pay court costs and reasonable attorney fees incurred by the noncustodial parent.⁴⁹ You cannot refuse or otherwise interfere with the parenting time by the noncustodial parent merely because the noncustodial parent has not paid child support. Likewise, if you are the residential parent and if you have a concern about the parenting time set forth in the court order and the manner in which the noncustodial parent exercises those rights, then your recourse is to file a motion with the Court and seek a revision of the court order. Finally, your continuous and willful denial or interference with the noncustodial parent's parenting time could be grounds for the Judge removing you as the residential parent and designating the noncustodial parent as the residential parent.⁵⁰ However, if you refuse parenting time because permitting parenting time will engender a child, then that may be a defense if the noncustodial parent files a motion for contempt.⁵¹ You should obtain legal advice before refusing parenting time. If you are the noncustodial parent, and the residential parent is denying or interfering with your parenting time, that does NOT give you the right to stop paying child support. Your right to parenting time and your duty to pay child support are totally independent of each other.

Note: If the other parent is not complying with his or her duties regarding the parenting time order, then consider using and filing with the Court form GC Juv 010 (Motion for Enforcement), together with (1) GC JF 7.0 (Instructions for Service), (2) GC JF 5.0 (Disclosure of Confidential Child Information) and GC JF 5.1 (Identity of Necessary Parties), if needed, and (3) a filing fee.

Modification of Parenting Time. If a party desires to modify a parenting time order, that party must file a motion with the Court requesting a modification. Unlike a motion to modify child custody, the party seeking to modify a parenting time order need not prove a "change in circumstances." The party need only prove that the modification is in the best interest of the child, based upon the factors listed in R.C. 3109.051(D).⁵²

Note: If you want the Judge to change the current parenting time order, then consider using and filing with the Court form GC Juv 032 (Motion for Change of Parenting Time), together with (1) GC JF 2.0 (Parent History Affidavit), (2) GC JF 7.0 (Instructions for Service), and (3) a filing fee.

Emergency Order (i.e., Ex Parte Order).

Upon the filing of a complaint or motion that concerns the custody or care of a minor child, the Judge has the authority to issue, promptly and without a notice or Hearing, an emergency order (also referred to as an "Ex Parte Order").⁵³ The emergency order could be a temporary custody, parenting time, or child support order. Before issuing an emergency order, the Judge must be convinced that the best interest and welfare of the minor child require that such order be issued immediately. If the Judge issues an emergency order, then the Court will hold a Hearing to review that order within (i) 72 hours after that order is issued or (ii) before the end of the next court day after the day on which that order is issued, whichever comes first. The Court shall give notice of that review Hearing. If emergency medical or surgical treatment for a minor child appears to be immediately necessary, and if at least one reputable practicing physician certifies that need for such care, then the Judge may issue an emergency order authorizing such care. If you want to request an emergency order, then you need to indicate your intention on the complaint or motion that you file with the Court.⁵⁴ When you file your complaint or motion with the clerk of courts, you should advise the clerk that you are requesting an emergency order. Finally, it is critical that you prepare and file with your complaint or motion an affidavit that clearly states the facts that support your request for an emergency order. Consider using GC Juv 38 – Affidavit.

⁴⁹ R.C. 3109.051(K)

⁵⁰ R.C. 3109.051(D)(13)

⁵¹ See *In re E.J.M.*, 2024-Ohio-3082

⁵² See *In re J.H.*, 2019-Ohio-696 (8th App. Dist.); and *Appleby v. Appleby*, 24 Ohio St.3d 39 (1986).

⁵³ See Juv.R. 13 (Ohio Rules of Juvenile Procedure)

⁵⁴ The Help Center forms GC Juv 001, 007, 020, 022, 024, 025, and 032 have such a provision that you may select.

Rights of Married Parents or Divorced Parents in Juvenile Court.⁵⁵

- Right to File Complaint Under R.C. 2151.27.⁵⁶ Regardless of whether a parent is married or whether the parent is divorced and the domestic court issued a prior child custody order, if a child is (1) abused, neglected, or dependent, or (2) a delinquent, unruly, or a traffic offender,⁵⁷ then a parent may file a complaint with a juvenile court under R.C. 2151.27 and R.C. 2151.23(A)(1) and request that the juvenile court grant that parent legal custody of the child, as permitted by R.C. 2151.353, despite the fact that another court granted legal custody to the other parent or another person. In that case, under Juv. Rule 29(E), the Court shall appoint the county prosecutor or another attorney to assist the Court by presenting evidence to determine whether child abuse, neglect, or dependency exists. The parent must file the complaint in the county where the child has a residence or legal settlement, or in which the violation, unruliness, abuse, neglect, or dependency occurred. If the other parent is indigent and does not waive the right to an attorney, then that parent may have a right to appointed counsel under R.C. Chapter 120. Consider the following key points.
 - The parent filing the complaint must be able to prove, by clear and convincing evidence, that the child is abused, neglected, or dependent as defined by applicable statute.
 - If the Court finds that the child is (1) abused, neglected, or dependent or (2) a delinquent, unruly, or a traffic offender, then the Court must comply with the requirements in R.C. 3109.04 before ordering a change of custody.⁵⁸

Note: If (i) there is no legal proceeding in the Court regarding child custody, (ii) you want the Judge to modify child custody or parenting time set forth in the divorce decree, then consider using and filing with the Court form GC Juv 043B (Complaint AN&D – Parent), together with (1) GC JF 5.0 (Disclosure of Confidential Child Information), (2) GC JF 5.1 (Identity of Necessary Parties), (3) GC JF 1.0 (Jurisdiction Affidavit), (4) GC JF 2.0 (Parent History Affidavit), (5) GC JF 7.0 (Instructions for Service), (6) CG Juv 038 (Affidavit) if an emergency order is requested, (7) GC JF 16.0 Statement of Understanding, and (8) a filing fee.

- Motion for Legal Custody. Likewise, if there is a pending JFS case (i.e., regarding a child who is (1) abused, neglected, or dependent, or (2) a delinquent, unruly, or a traffic offender, then a parent may file a Motion requesting legal custody of the child.

Special Provisions for Active Military Service.

If a parent receives an order for active military service, then there are special provisions set forth in R.C. 3109.04(l).

Criminal Act.

Any person who interferes with the custody rights of the residential parent, without the legal right to do so, could be guilty of a crime.⁵⁹ Interference includes enticing, taking, keeping, or harboring a minor child. Thus, if the noncustodial parent acts in such manner beyond the parental time rights granted by the Judge

⁵⁵ See the juvenile information sheet titled “Jurisdiction of Ohio Juvenile Courts.”

⁵⁶ See *In re Poling*, 64 Ohio St.3d 211 (1992); and *In re Hope Sunnycalb*, 1998 WL 372384 (12th App. Dist. – Butler Cty.)

⁵⁷ See *Heisler v. Heisler*, 2010-Ohio-98 (4th App. Dist. – Hocking Cty.)

⁵⁸ See *In re Cranford*, 1998 WL 716665 (4th App. Dist. – Aaron Cty.), which explains that the Court must apply the same tests outline in R.C. 3109.04 – i.e., the “change-in-circumstances” test, and then the “best interest” test.”

⁵⁹ R.C. 2919.23

regarding parenting time, that noncustodial parent could be found guilty of “interfering with custody.” One defense is if that parent reasonably believed that such action was necessary to preserve the child's health or safety.

Children's Bill of Rights.

The Court has adopted a “Children's Bill of Rights,” which is attached and is on the Court's website. Both Parents should be aware of, and must abide by, those principles set forth for the benefit of their children.

LEGAL PRACTICE IN THE JUVENILE COURT IS RESTRICTED BY LAW TO ATTORNEYS WHO ARE LICENSED BY THE SUPREME COURT OF OHIO AND INDIVIDUALS WHO ARE HANDLING THEIR OWN LEGAL MATTERS. IF AN INDIVIDUAL WISHES TO HANDLE HIS OR HER OWN CASE, THAT PERSON MAY ATTEMPT TO DO SO, HOWEVER DUE TO THE COMPLEXITY OF THE LAW AND THE DESIRE TO AVOID COSTLY ERRORS, MANY PERSONS WHO HAVE MATTERS BEFORE THE COURT ARE REPRESENTED BY AN ATTORNEY.

IF YOU CHOOSE TO REPRESENT YOURSELF AND USE THE COURT'S FORMS, BE AWARE THAT STATE LAW PROHIBITS THE JUDGE, MAGISTRATE, AND EMPLOYEES OF THE GEAUGA COUNTY JUVENILE COURT, INCLUDING THE HELP CENTER STAFF, FROM PROVIDING YOU WITH LEGAL ADVICE. IF YOU NEED LEGAL ADVICE, THEN YOU SHOULD CONTACT AN ATTORNEY OF YOUR CHOOSING.

APPENDIX A1

R.C. 3109.04(F)

(1) In determining the best interest of a child pursuant to this section, 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:

(a) The wishes of the child's parents regarding the child's care;

(b) If the court has interviewed the child in chambers pursuant to division (B) of this section regarding the child's wishes and concerns as to the allocation of parental rights and responsibilities concerning the child, the wishes and concerns of the child, as expressed to the court;

(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;

(d) The child's adjustment to the child's home, school, and community;

(e) The mental and physical health of all persons involved in the situation;

(f) The parent more likely to honor and facilitate court-approved parenting time rights or visitation and companionship rights;

(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;

(h) 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;

(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;

(j) Whether either parent has established a residence, or is planning to establish a residence, outside this state.

(2) In determining whether shared parenting is in the best interest of the children, the court shall consider all relevant factors, including, but not limited to, the factors enumerated in division (F)(1) of this section, the factors enumerated in section [3119.23](#) of the Revised Code, and all of the following factors:

- (a) The ability of the parents to cooperate and make decisions jointly, with respect to the children;
 - (b) The ability of each parent to encourage the sharing of love, affection, and contact between the child and the other parent;
 - (c) Any history of, or potential for, child abuse, spouse abuse, other domestic violence, or parental kidnapping by either parent;
 - (d) The geographic proximity of the parents to each other, as the proximity relates to the practical considerations of shared parenting;
 - (e) The recommendation of the guardian ad litem of the child, if the child has a guardian ad litem.
- (3) When allocating parental rights and responsibilities for the care of children, the court shall not give preference to a parent because of that parent's financial status or condition.

NOTE: There are factors that the Judge may not consider when determining best interest of the child, unless the behavior has a detrimental effect upon a child's physical health or mental, moral or emotional development, or well-being. A few of those are listed below. You should note that some of the factors result from court decisions and are not specifically set forth in the Ohio Revised Code. It is important that you inform yourself of applicable case law regarding all factors that may apply to your case.

- The Judge may not give preference to a parent because of that parent's financial status or condition.
- The Judge may not consider the sexual orientation of a parent, unless there is evidence that such factor has a significant adverse effect upon a child.⁶⁰
- The Judge may not consider a person's sexual activity (even heterosexual activity), unless there is evidence that such factor has a significant adverse effect upon a child. Generally, lifestyle choices of a parent are not relevant.⁶¹
- The Judge's inquiry into the moral conduct of a parent must be limited to a determination that such conduct has a significant adverse effect upon a child.⁶²

⁶⁰ See *Inscoe v. Inscoe*, 121 Ohio App.3d 396, 700 N.E.2d 70 (4th App. Dist.)(1997)

⁶¹ See *Rowe v. Franklin*, 105 Ohio App.3d 176, 663 N.E.2d 955 (1st App. Dist.)(1995) and *In re REX*, 3 Ohio App.3d 198, 444 N.E.2d 482 (3d App. Dist.)(1981).

⁶² See *Whaley v. Whaley*, 61 Ohio App.2d 111, 399 N.E.2d 1270 (4th App. Dist.)(1978).

APPENDIX A2

R.C. 3109.051(D)

(D) In determining whether to grant parenting time to a parent pursuant to this section or section [3109.12](#) of the Revised Code or companionship or visitation rights to a grandparent, relative, or other person pursuant to this section or section [3109.11](#) or [3109.12](#) of the Revised Code, in establishing a specific parenting time or visitation schedule, and in determining other parenting time matters under this section or section [3109.12](#) of the Revised Code or visitation matters under this section or section [3109.11](#) or [3109.12](#) of the Revised Code, the court shall consider all of the following factors:

- (1) The prior interaction and interrelationships of the child with the child's parents, siblings, and other persons related by consanguinity or affinity, and with the person who requested companionship or visitation if that person is not a parent, sibling, or relative of the child;
- (2) The geographical location of the residence of each parent and the distance between those residences, and if the person is not a parent, the geographical location of that person's residence and the distance between that person's residence and the child's residence;
- (3) 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 vacation schedule;
- (4) The age of the child;
- (5) The child's adjustment to home, school, and community;
- (6) If the court has interviewed the child in chambers, pursuant to division (C) of this section, regarding the wishes and concerns of the child as to parenting time by the parent who is not the residential parent or companionship or visitation by the grandparent, relative, or other person who requested companionship or visitation, as to a specific parenting time or visitation schedule, or as to other parenting time or visitation matters, the wishes and concerns of the child, as expressed to the court;
- (7) The health and safety of the child;
- (8) The amount of time that will be available for the child to spend with siblings;
- (9) The mental and physical health of all parties;
- (10) Each parent's willingness to reschedule missed parenting time and to facilitate the other parent's parenting time rights, and with respect to a person who requested companionship or visitation, the willingness of that person to reschedule missed visitation;
- (11) In relation to parenting time, whether 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 the adjudication; 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;
- (12) In relation to requested companionship or visitation by a person other than a parent, whether the person 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 the person, 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 the adjudication; whether either parent previously has been convicted of or pleaded guilty to a violation of section [2919.25](#) of the Revised Code 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 previously has been convicted of an 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 the person has acted in a manner resulting in a child being an abused child or a neglected child;

(13) 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;

(14) Whether either parent has established a residence or is planning to establish a residence outside this state;

(15) 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;

(16) Any other factor in the best interest of the child.