

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

Information Sheet  
Nonparent Rights

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**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.

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Background

Historically, neither grandparents, nor any other family members, have any legal right of access to the parents' minor children, including no constitutional rights.<sup>1</sup> On the other hand, parents have many legal rights regarding their minor children, including a constitutional right to deny grandparents and other family members access to their minor children, especially if the parents are married. Nevertheless, in recent years, many state legislatures, including Ohio, have granted limited access rights to grandparents, other family members, and in some cases non-family persons.<sup>2</sup> Some nonparent rights to custody or companionship time (i.e., "visitation rights") are acquired directly from a parent. Other such rights may be granted by a juvenile court or the general division of the court of common pleas to the extent permitted by a statute. In any litigation commenced by a nonparent, initially that nonparent must determine three factors before filing a complaint to start a legal proceeding: (1) whether an Ohio juvenile court or an Ohio court of common pleas (general division) has the power (i.e., subject-matter jurisdiction) to determine the matters set forth in the complaint, (2) whether Geauga county is the appropriate county for filing the complaint, and (3) who are all of the persons that are "necessary" parties to the legal proceeding litigation.

Initial Considerations.

Is Ohio the appropriate State to Determine the Complaint? Before filing a complaint, you should read the Information sheet titled "Jurisdiction of Ohio Juvenile Courts." Ohio has adopted the "Uniform Child Custody Jurisdiction and Enforcement Act."<sup>3</sup> The primary concerns are whether Ohio meets the definition of the "Home State" for the child and whether there has been or there is

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<sup>1</sup> *In re Whitaker*, 36 Ohio St.3d 213, 522 N.E.2d 563 (1988).

<sup>2</sup> In at least one case, a state granted too many rights to grandparents in violation of the constitutional rights of the parents. See *Troxell v. Granville*, 530 U.S. 57, 120 S. Ct.2054, 147 L.Ed.2d 49 (2000). But the Supreme Court of Ohio has determined that the Ohio statutes are constitutional. See *Harrold v. Collier*, 107 Ohio St.3d 44 (2005).

<sup>3</sup> RC Chapter 3127.

currently pending a legal proceeding in another state concerning child custody of parenting/companionship time. Likewise, if child support for a nonparent, who has been granted legal custody by a court, is requested, Ohio has adopted The Uniform Interstate Family Support Act of 2008,<sup>4</sup> which must be considered before filing a complaint that seeks a child support order. If there was a prior legal proceeding or there is a current legal proceeding regarding child custody or child support in another court, whether it is another 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. That is the reason why when filing of a complaint or motion you are required to prepare and file form GC JF 1.0 (Jurisdiction Affidavit), which alerts this Court to other legal proceedings concerning the Child(ren).

Is Geauga County the appropriate County to Determine the Complaint? Once it is determined that an Ohio court has jurisdiction to make an initial child custody determination or to issue an initial child-support order the next question is what Ohio county is the proper county to file a complaint regarding those matters? – i.e., what is the proper Ohio county where a hearing should take place. The answer to that question depends upon the nature of the complaint. Ohio has two different venue provisions.

- Abuse, Neglect, or Dependency Proceeding.<sup>5</sup> If the complaint alleges the abuse, neglect, or dependency of a child, then the complaint must be filed the county in which the child has a residence or legal settlement, or in which the abuse, neglect, or dependency occurred.
- Private Custody or other Legal Proceedings.<sup>6</sup> If the complaint does not allege abuse, neglect, or dependency of a child (typically a person is seeking a custody order, parenting time, or companionship time), then the complaint must be filed the county in which the child who is the subject of the complaint is found or was last known to be found. That is not necessarily the county of the child’s residence. It must be noted, however, that if a complaint is filed in a county other than the county of the child residence, then the court where the complaint is filed may transfer the legal proceeding to the child’s county of residence.<sup>7</sup>

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 must 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 parents, including their contact information. You are required to fully inform the Court of such information by preparing and filing form 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 form GC JF 5.0 (Disclosure of Confidential Child Information).

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

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<sup>4</sup> RC Chapter 3115.

<sup>5</sup> R.C. 2151.23.(A)(1). The Court typically refers to a complaint filed under this statute as a “JFS Case.”

<sup>6</sup> R.C. 2151.23(A)(2). The Court typically refers to a complaint filed under this statute as a “Private Custody Case.”

<sup>7</sup> See R.C. 2151.271

*"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.*

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 "GC JF 5.1 (Identity of Necessary Parties)."

### Voluntary Grant of Child Custody.

Background. There are two methods by which an unmarried parent may voluntarily grant legal custody of a child to a grandparent and one method to grant legal custody to another nonparent. The first is a relinquishment agreement and the second is a custody power of attorney. In both cases, that parent may terminate the relinquishment agreement or the custody power of attorney and regain physical custody of the child. By creating and delivering those documents the parent does not permanently surrender legal custody.

Relinquishment Agreement. Ohio law permits parents to voluntarily enter into an enforceable contract to share custody of their minor child with another person.<sup>8</sup> In effect, by doing so the parents temporarily waive their right to child custody, are contractually bound to do so, and the Custodian<sup>9</sup> receives the custodial power granted in that agreement. Such an agreement is enforceable, just like any contract, but it is subject to a court determination after signing that the Custodian is the proper person to assume the care, training, and education of the child. A potential problem with such a contract is that the Custodian may have difficulty with school districts and healthcare providers, who may not recognize the Custodian's contractual rights. If the Custodian has difficulty in that regard, then that contract may serve as a basis for the Custodian to obtain a court order granting legal custody to the Custodian – discussed below. Additionally, the Ohio legislature established the Residential Grandparent Custody Power of Attorney (discussed below), which may be more effective than a Relinquishment Agreement when dealing with a school district or healthcare provider. However, unlike the Relinquishment Agreement, the Residential Grandparent Custody Power of Attorney is only available if the custodian is a child's grandparent, while the custodian under a Relinquishment Agreement may be a relative or other interested and capable person.

**Note:** The Help Center has a template available for the parent and the custodian, which is a form titled GC Juv 051 "Agreement Relinquishing Custody of Minor Children." If the parents and custodian choose to enter into a relinquishment agreement, we highly recommend that all parties first obtain the assistance and advice of an attorney. Moreover, it must be noted that if the custodian is not a relative, and if the parents of the child are married, then the custodian may be unable to enforce the relinquish agreement in juvenile court to obtain a juvenile court order of legal custody. That agreement may not qualify as a "kinship care agreement"<sup>10</sup> as contemplated by R.C. 2151.234, and thus the custodian may have to proceed in the domestic relations division of the common pleas court.

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<sup>8</sup> *In re Mullen* (2011), 129 Ohio St.3d 417, 2011-Ohio-3361, and *In re Bonfield*, 97 Ohio St.3d 387, 2002-Ohio-6660 (2002). See also, *Masitto v. Masitto*, 22 Ohio St.3d 63 (1986) and *In re Hockstok*, 98 Ohio St.3d 238 (2002).

<sup>9</sup> "Custodian" means a person who has legal custody of a minor child.

<sup>10</sup> The Ohio Department of Job and Family Service Fact Sheet describes kinship care as: "Kinship care can be a temporary or permanent arrangement in which a relative or nonrelative adult who has a long-standing relationship with the child and/or

Residential Grandparent Custody Power of Attorney.<sup>11</sup> By signing (and notarizing) a Residential Grandparent Custody Power of Attorney (“RGPOA”), the child’s residential parent<sup>12</sup> may voluntarily and temporarily grant to a grandparent (but not other persons), with whom the child is residing, any of the residential parent’s rights and responsibilities regarding the care, physical custody, and control of the child, including the ability to enroll the child in school, to obtain from the school district educational and behavioral information about the child, to consent to all school-related matters regarding the child, and to consent to medical, psychological, or dental treatment for the child.<sup>13</sup> However, the RGPOA must comply with a statutory form, a copy of which can be obtained on the Court’s website. The following are a few key points to consider:

- The RGPOA may be signed and delivered if one of the following is applicable:<sup>14</sup>
  - The residential parent is seriously ill, incarcerated, or about to be incarcerated;
  - That parent is temporarily unable to provide financial support or parental guidance to the child;
  - That parent is temporarily unable to provide adequate care and supervision of the child because of the parent's, guardian's, or custodian's physical or mental condition;
  - That parent is homeless or without a residence because the current residence is destroyed or otherwise uninhabitable;
  - That parent is in or about to enter a residential treatment program for substance abuse;
  - That parent has a well-founded belief that the RGPOA is in the child's best interest; or
  - If the other parent is deceased.<sup>15</sup>
- A separate RGPOA must be prepared and signed for each child if there is more than one child involved.
- Both parents must sign the RGPOA if (1) they are married and living as husband and wife, (2) the child is the subject of a shared parenting order, or (3) with a few exceptions, the child is the subject of a custody order.<sup>16</sup>
- With few exceptions, the residential parent (or guardian or custodian), who signs the RGPOA, must (i) notify the noncustodial parent, by certified mail, return receipt requested, within five

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family takes over the full-time substitute care of that child when the parents are unable or unwilling to do so. . . . Kinship care includes relationships established through an informal arrangement, legal custody, guardianship order, foster care placement or adoption.”

<sup>11</sup> R.C. 3109.51 through 3109.61

<sup>12</sup> To be more accurate, in addition to a parent, a guardian or custodian (with right of legal custody) of a child may also create a custody power of attorney – see R.C. 3109.52.

<sup>13</sup> R.C. 3109.52

<sup>14</sup> See R.C. 3109.57

<sup>15</sup> R.C. 3109.57

<sup>16</sup> R.C. 3109.56(A)

days after signing the RGPOA, using form GC JF 9.3 - Notice to Nonresidential Parent and (ii) after service of GC JF 9.3 - Notice to Nonresidential Parent. Upon filing of the RGPOA, that residential parent shall notify the Court of such notification by preparing and filing with the Court form GC JF 9.4 – Receipt of Notice to Nonresidential Parent.

- The exceptions to service of GC JF 9.3 - Notice to Nonresidential Parent upon the nonresidential parent are:
  - The nonresidential parent is prohibited from receiving a notice of relocation in accordance with R.C. 3109.051(G)(2).
  - The nonresidential parent's parental rights have been terminated by order of a juvenile court pursuant to Chapter 2151 of the Revised Code.
  - The nonresidential parent cannot be located with reasonable efforts.
  - The RGPOA is signed by both parents.<sup>17</sup>
- If an exception applies, then the residential parent shall still file form GC JF 9.4 – Receipt of Notice to Nonresidential Parent and note the appropriate exception.
- The residential parent (or guardian or custodian) shall prepare and file with the Court, together with the RGPOA, form GC JF 12.5 – Supporting Facts Affidavit.
- Certain pending legal proceedings may prevent the use of a RGPOA.<sup>18</sup>
- Within five days after execution, the RGPOA must be filed with the juvenile court in the county where the grandparent resides.<sup>19</sup>
- The RGPOA may be terminated under the following conditions:
  - The residential parent revokes the RGPOA in writing and delivers a written notice of the revocation to the grandparent designated as the powerholder and to the juvenile court where the RGPOA was filed;
  - The child ceases to reside with the grandparent designated as the powerholder;
  - The RGPOA is terminated by court order;
  - The death of the child who is the subject of the RGPOA; or
  - The death of the grandparent designated as the powerholder.<sup>20</sup>

Not later than five days after the RGPOA is revoked, a copy of the termination of that power of attorney must be filed with the court where that power of attorney is filed.<sup>21</sup>

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<sup>17</sup> See R.C. 3109.55

<sup>18</sup> R.C. 3109.58

<sup>19</sup> R.C. 3109.74(A)

<sup>20</sup> See R.C. 3109.59

<sup>21</sup> See R.C. 3109.59(B)

- If the parents are unmarried, then within 14 days after receiving a notice of termination of the RGPOA, the grandparent may file a Complaint with the Court to obtain a custody order for the minor child if the grandparent believes that retaining custody is in the best interest of the minor child and may retain custody during that 14-day period.<sup>22</sup>
- No person shall create a RGPOA for the purpose of enrolling the child in a school or school district so that the child may participate in the academic or interscholastic athletic programs provided by the school or school district.<sup>23</sup>
- There is a special custody power of attorney for active military members.<sup>24</sup> If an active military person signs a military power of attorney pursuant to section 574(a) of the "National Defense Authorization Act for Fiscal Year 1994," then that military power of attorney is considered a custody power of attorney as long as that military power of attorney remains in effect.

Caretaker Authorization Affidavit.<sup>25</sup> While under a Relinquishment Agreement and the RGPOA a grandparent obtains legal custody<sup>26</sup> due to a voluntary grant by the parent(s), the caretaker authorization affidavit allows a grandparent to exercise certain custody rights without the consent of the parent(s). In effect, the use of the caretaker authorization affidavit arises when both parents have abandon the minor child. If a minor child resides with a grandparent, and that grandparent has made reasonable attempts to locate and contact both of the child's parents (or the child's guardian or custodian), but has been unable to contact such person(s), then the grandparent has the authority to exercise care, physical custody, and control of the child including authority to enroll the child in school, to discuss with the school district the child's educational progress, to consent to all school-related matters regarding the child, and to consent to medical, psychological, or dental treatment for the child by signing and filing with the Court a caretaker authorization affidavit that complies with a statutory form, a copy of which can be obtained on the Court's website.<sup>27</sup> The following are some key points to consider:

- The grandparent may execute a caretaker authorization affidavit without attempting to locate the following parent:
  - If paternity has not been established regarding the child, then the child's father; or
  - If the child is the subject of a custody order, then the following parent:
    - A parent who is prohibited from receiving a notice of relocation in accordance with R.C. 3109.051;

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<sup>22</sup> R.C. 3109.76

<sup>23</sup> R.C. 3109.78

<sup>24</sup> R.C. 3109.62

<sup>25</sup> R.C. 3109.65 through 3109.74

<sup>26</sup> 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.

<sup>27</sup> See R.C. 3109.66 for the statutory form.

- A parent whose parental rights have been terminated by order of a juvenile court pursuant to R.C. Chapter 2151.
- The grandparent should execute a separate caretaker authorization affidavit for each child.
- The grandparent shall prepare and file with the Court, together with the caretaker authorization affidavit, the form “GC JF 12.5 – Supporting Facts Affidavit.”
- Certain pending legal proceedings may prevent the signing, filing, and use of a caretaker authorization affidavit.<sup>28</sup>
- Similar to the RGPOA, the grandparent must file the caretaker authorization affidavit with the juvenile court in the grandparent’s county of residence within five days after signing.<sup>29</sup>
- Once a caretaker authorization affidavit has been signed, notarized, and filed the caretaker may exercise care, physical custody, and control of the child, including enrolling the child in school, discussing with the school district the child's educational progress, consenting to all school-related matters regarding the child, and consenting to medical, psychological, or dental treatment for the child. The caretaker authorization affidavit does not affect the rights and responsibilities of the parent, guardian, or custodian regarding the child, does not grant legal custody to the caretaker, and does not authorize to the caretaker to consent to the marriage or adoption of the child.<sup>30</sup>
- The parent, guardian, or custodian of a minor child may negate, reverse, or otherwise disapprove any action taken or decision made pursuant to a caretaker authorization affidavit unless negation, reversal, or disapproval would jeopardize the life, health, or safety of the child. A parent, guardian, or custodian may negate, reverse, or disapprove a caretaker's action or decision only by delivering written notice of negation, reversal, or disapproval to the caretaker and the person responding to the caretaker's action or decision in reliance on the caretaker authorization affidavit. The act to negate, reverse, or disapprove the action or decision, regardless of whether it is effective, terminates the caretaker authorization affidavit as of the date the caretaker returns the child to the parent, guardian, or custodian or upon the expiration of 14 days from the delivery of written notice of the negation, reversal, or disapproval if the caretaker has not filed a Complaint in the interim pursuant to R.C. 3109.76.
- The caretaker authorization affidavit terminates upon the first to occur of the following events:<sup>31</sup>
  - The child ceases to reside with the caretaker; or
  - The parent, guardian, or custodian of the child who is the subject of the caretaker authorization affidavit acts, in accordance with R.C. 3109.72, to negate, reverse, or otherwise disapprove an action or decision of the caretaker with respect to the child, and the caretaker either voluntarily returns the child to the physical custody of the parent, guardian, or custodian or fails to file a complaint with the Court to seek legal custody

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<sup>28</sup> R.C. 3109.68

<sup>29</sup> R.C. 3109.74

<sup>30</sup> R.C. 3109.69

<sup>31</sup> R.C. 3109.70

within 14 days after the delivery of written notice of negation, reversal, or other disapproval; or

- The caretaker authorization affidavit is terminated by court order; or
  - The death of the child who is the subject of the caretaker authorization affidavit; or
  - The death of the caretaker.
- When a caretaker authorization affidavit terminates pursuant to divisions (A), (B), (C), or (D) of R.C. 3109.70, the caretaker shall notify, in writing, the school district in which the child attends school, the child's health care providers, the child's health insurance coverage provider, the court in which the caretaker authorization affidavit was filed under R.C. 3109.74, and any other person or entity that has an ongoing relationship with the child or grandparent such that the person or entity would reasonably rely on the caretaker authorization affidavit unless notified of the termination. The caretaker shall deliver those notifications no later than one week after the date the caretaker authorization affidavit terminates.<sup>32</sup>
  - Again, similar to the RGPOA, within 14 days after receiving a notice of termination, negation, or declination of the caretaker authorization affidavit (or removal of the child from the caretaker's home by a parent), if the child's parents are not married, then the caretaker may file a complaint with the Court to obtain a custody order for the minor child if the caretaker believes that retaining custody is in the best interest of the minor child, and may retain custody of that child during the 14-day period.<sup>33</sup>
  - No person shall create a caretaker authorization affidavit for the purpose of enrolling the child in a school or school district so that the child may participate in the academic or interscholastic athletic programs provided by the school or school district.<sup>34</sup>

Caretaker Child Support. A grandparent, who has custody of a minor child, by reason of a Residential Grandparent Power of Attorney or a Caretaker Authorization Affidavit, or a nonparent by reason of a Relinquishment Agreement, may have right to obtain a child support order. See the discussion regarding child support for a Caretaker in the juvenile information titled "Child Support," located at the end of that information sheet.

### Nonparent Companionship Rights.

Background. Again, historically grandparents and other relatives have no legal right to visit their grandchildren (or nieces and nephews as applicable) without the parent's permission.<sup>35</sup> If the residential (custodial) parent denied or limited visitation by other family members, then the juvenile court could not grant companionship time (i.e., visitation rights) to a nonparent. However, Ohio has recognized that in a few situations the child's best interest may override the fundamental parental right to determine who may care for or have contact with the parent's child. The Supreme Court of Ohio has referred to those few situations as a "disruptive precipitation event," – e.g., parental death,

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<sup>32</sup> R.C. 3109.71

<sup>33</sup> R.C. 3109.76

<sup>34</sup> R.C. 3109.78

<sup>35</sup> See *In Re Whitaker*, 36 Ohio St. 3d 213 (1988) and *The Constitutional Constraints on Grandparents' Visitation Statutes* (1986), 86 Colum.L.Rev. 118



divorce, etc.<sup>36</sup> Ohio has three statutes that give an Ohio court the power to grant companionship time to a grandparent or other relatives of child,<sup>37</sup> which are:

- R.C. 3109.12 (Unmarried Mother)
- R.C. 3109.11 (Deceased Parent)
- R.C. 3109.051(B) (Child Support Proceeding)

Companionship Time - Unmarried Mother. R.C. 3109.12 allows the parents of an unwed mother or other maternal relatives to file a complaint with a juvenile court (in the county where the child resides) and request companionship rights with respect to an unmarried minor child of an unwed mother, regardless of whether there is a pending legal proceeding regarding child custody or parenting time, and thus commence a new legal proceeding. If there is a pending legal proceeding regarding child custody or parenting time, then the nonparent may file a motion to intervene in order to obtain the court's permission to be made a party to that legal proceeding, and if granted, then file a motion to obtain companionship time (assuming that the nonparent is not already a party to that proceeding). Likewise, if the father and child relationship is established by law (See Information Sheet "Determining Paternity"), then the father's parents and other paternal relatives may file (i) a similar complaint with that court to obtain parenting time (for the parent) or companionship rights (for the nonparent) with respect to the child or (ii) a motion to intervene, together with a motion for companionship time if there is a pending proceeding regarding the child.<sup>38</sup> The Court will only order companionship time rights if the (i) Court determines that nonparent has an interest in the welfare of the child and (ii) Court determines that granting companionship time is in the best interest of the child.

It should be noted that a nonparent may also file a complaint under R.C. 3109.12 to obtain a companionship order in the general division of the common pleas court.<sup>39</sup> However, before doing so the Help Center highly recommends obtaining legal advice from an attorney.

If the mother was unmarried when the child was born, but later the father and mother are married before the nonparent files a complaint for companionship time, then the nonparent should first obtain legal advice from an attorney. Despite the language in R.C. 3109.12(B), the Court may not have jurisdiction to grant companionship time to the nonparent.<sup>40</sup>

Deceased Mother or Father.<sup>41</sup> If either the mother or father (assuming the father and child relationship is established) is deceased, then R.C. 3109.11 allows the parents or other relatives of the deceased parent to file a complaint with a juvenile court (in the county where the child resides) and request companionship rights with respect to an unmarried minor child of the deceased parent, regardless of whether there is a pending legal proceeding regarding child custody or parenting time, and thus commence a new legal proceeding. If there is a pending legal proceeding regarding child custody or parenting time, then the nonparent may file a motion to intervene in order to obtain the court's permission to be made a party to that legal proceeding, and if granted, then file a motion to obtain companionship time (assuming that the nonparent is not already a party to that

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<sup>36</sup> See *In re Gibson*, 61 Ohio St. 3d 168, 573 N.E. 2d 1074 (1991)

<sup>37</sup> See *In re K.M.-B.*, 2015-Ohio-4626 (6<sup>th</sup> App. Dist., Lucas Cty.)

<sup>38</sup> See *In re A.B.*, 2019-Ohio-1940; *In re J.P.R.*, 2024-Ohio-3380 (4<sup>th</sup> App. Dist., Washington Cty.)

<sup>39</sup> See *State ex rel. Jones v. Paschke*, 2023-Ohio-1536 (11<sup>th</sup> App. Dist.) and *State ex rel. Jones v. Paschke*, 2024-Ohio-135 (Supreme Court of Ohio.)

<sup>40</sup> See *Santos v. Parks*, 2018-Ohio-3111 (5<sup>th</sup> App. Dist., Ashland Cty.)

<sup>41</sup> R.C. 3109.11

proceeding). Likewise, if the father and child relationship is established by law (See Information Sheet “Determining Paternity”), then the father’s parents and other paternal relatives may file (i) a similar complaint with that court to obtain parenting time (for the parent) or companionship rights (for the nonparent) with respect to the child or (ii) a motion to intervene, together with a motion for companionship time if there is a pending proceeding regarding the child.<sup>42</sup> The Court will only order companionship time rights if the (i) Court determines that nonparent has an interest in the welfare of the child and (ii) Court determines that granting companionship time is in the best interest of the child.

Again, it should be noted that a nonparent may also file a complaint under R.C. 3109.11 to obtain a companionship order in the general division of the common pleas court.<sup>43</sup> However, before doing so the Help Center highly recommends obtaining legal advice from an attorney.

Child Support Proceedings. Under R.C. 3109.051(B), if a child support proceedings is pending, then the Court may grant companionship rights to a grandparent or other relative related to the child by marriage or blood, or any other person if the nonparent first files a motion to intervene to become a party to that proceeding (assuming that the nonparent is not already a party to that proceeding), and if granted then files a motion seeking companionship rights. The Court will only order companionship time rights if the (i) Court determines that nonparent has an interest in the welfare of the child and (ii) Court determines that granting companionship time is in the best interest of the child.

#### Matters of General Concern.

- The Help Center can assist a nonparent in preparing the required documents to obtain a companionship time order from this Court under R.C. 3109.11, R.C. 3109.12, or R.C. 3109.051(D).
- In all events, after a hearing regarding companionship rights, you may ask the Judge (or magistrate) to issue separate findings of fact and conclusions of law that specifically states the basis upon which the Judge (or magistrate) rendered the order.<sup>44</sup> That may be helpful if you dislike the order and you want to file an appeal. You should file your request as soon as possible following the conclusion of the hearing. Be aware that the Judge (or magistrate) may request that you propose findings of fact and conclusions of law. Please review the Information Sheet titled “Conduct During a Hearing” for more information regarding an “objection” to a magistrate’s order.

**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 after the conclusion of the hearing, form GC Juv 031 (Request for Findings of Fact and Conclusions of Law) together with GC JF 7.0 (Instructions for Service).

- Moreover, in all events, if the residential parent contests or disputes the granting of companionship rights to grandparents or other relatives, then the Judge will give “special weight” to the wishes of that parent regarding such companionship rights. A nonparent seeking companionship rights has the burden to prove to the Court that the parent’s

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<sup>42</sup> See *In re A.B.*, 2019-Ohio-1940

<sup>43</sup> See *State ex rel. Jones v. Paschke*, 2023-Ohio-1536 (11<sup>th</sup> App. Dist.) and *State ex rel. Jones v. Paschke*, 2024-Ohio-135 (Supreme Court of Ohio.)

<sup>44</sup> R.C. 3109.04(B). Also see Civ.R. 52 (Ohio Rules of Civil Procedure) and Juv.R. 29(F)(3) (Ohio Rules of Juvenile Procedure).

decision regarding the denial or limitation of visitation rights is not in the best interest of the children.

### Custody Rights of Grandparents, other Relatives, and other Persons.

Background. To repeat, historically grandparents have not had any legal right of custody or other access to their grandchildren, including no constitutional rights.<sup>45</sup> However, there are four situations where a juvenile court may award legal custody of a minor child to a nonparent.

- The first situation is if the parents are unmarried and both parents are “unsuitable,” then a nonparent may file a complaint with the Court seeking legal custody of the parents’ minor child(ren).<sup>46</sup>
- The second situation is when a grandparent previously obtained custody of a child under the RGPOA or a caretaker authorization affidavit, and a parent terminated the applicable custody document. In this situation, the Court need only determine whether granting the grandparent legal custody is in the child’s best interest.<sup>47</sup>
- The third situation is if Geauga County Job & Family Services (“JFS”) has filed an abuse, neglect, or dependency case under R.C. 2151.23(A)(1). In that situation, if the Court determines that a child is abused, neglected, or dependent, then under R.C. 2151.353(A)(3) the Court may award legal custody to a nonparent if a party, or if not, then a nonparent who files a motion to intervene and if granted, then a motion requesting legal custody before the dispositional hearing.
- The fourth situation is if the child is abused, neglected, or dependent and JFS takes no action, then even if the parents are married, a nonparent may file a complaint under R.C. 2151.23(A)(1) and R.C. 2151.27 requesting legal custody of that child. Please note that the Court is likely to add JFS as a party to the proceeding.

“Unsuitable Parents.” Regarding the first situation, if the residential parent is not married to the other parent and if both parents are “unsuitable,” then a grandparent (or other relative or other interested person) may file a complaint with the Court to obtain temporary or legal custody of a minor child if the child is not a ward of another court (i.e. if there is no pending legal proceeding in another court concerning the custody of the minor child), or may file a motion to intervene and a motion for legal or temporary custody in a pending custody proceeding in this Court between the parents, in either case requesting legal or temporary custody of the minor child.<sup>48</sup> It must be noted at the outset that the overriding principle “is that natural parents have a fundamental liberty interest in the care, custody, and management of their children.”<sup>49</sup> To be successful, the nonparent family member (or other person) seeking custody must prove to the Judge, by a preponderance of the evidence, two different tests or concepts with respect to both parents. The first test is the

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<sup>45</sup> *In re Whitaker*, 36 Ohio St.3d 213, 522 N.E.2d 563 (1988).

<sup>46</sup> R.C. 2151.23(A)(2)

<sup>47</sup> R.C. 3109.76. Another situation is where a parent gave legal custody to a nonparent under a relinquishment agreement. If the parent elects to terminate that agreement, the nonparent could file a complaint to obtain a legal custody order.

<sup>48</sup> R.C. 2151.23(A)(2). If the nonparent files a Motion to Intervene, then that nonparent must allege that both parents are “unsuitable.” See *Brokaw v. Haser*, 2006-Ohio-5171 [11<sup>th</sup> App. Dist.]

<sup>49</sup> *Hockstok v. Hockstok*, 98 Ohio St. 3d 238 (2002).

“unsuitability” test and the second test is the “best interest” test. The nonparent need not prove the “change in circumstances” standard that is applied in custody disputes between parents.<sup>50</sup>

First Test. The “unsuitability” test is set forth in case law rather than a statute. The Court may determine that a parent is unsuitable if the nonparent proves any one of the following requirements:

1. The parent has abandon the minor child;
2. The parent has contractually relinquished custody of the minor child;
3. The parent is totally incapable of supporting or caring for the minor child; or
4. The Parent is otherwise unsuitable, that is, allowing the parent have custody would be detrimental to the minor child.<sup>51</sup>

The Nonparent need not prove that the child is abused, neglected, or dependent in order to prove that the parents are “unsuitable.”<sup>52</sup> However, if the nonparent can prove abuse, neglect, or dependency, then “unsuitability” is implied.<sup>53</sup>

In the fourth factor is the phrase “detrimental to the child.” That phrase is not defined by the Revised Code, but allowing the parent to have custody would be detrimental to a child – i.e., there must be serious problems with the unsuitable parent.<sup>54</sup> For example, the courts have found detriment to the child where a parent has exposed the child to physical or verbal abuse, the home is filled with domestic violence, or where the child has animosity toward the parent resulting in mental and physical problems.<sup>55</sup>

However, in determining whether the parents are unsuitable, the focus must be upon the detriment or harm to the child and not society’s judgment of the parent.<sup>56</sup> The issue is not whether the nonparent is more suitable.<sup>57</sup> Moreover, the fact that the nonparent may provide better care or a better environment has no bearing on whether the parents are unsuitable.<sup>58</sup>

Second Test. The “best interest” test is only applied after the nonparent proves that the parents are “unsuitable.” The factors that the Court must consider are listed in R.C. 3109.04(F). A “best interest” test looks at the best situation available and places the child there, while an “unsuitability” test requires a detriment to the child. A comparison between the home environment of the nonparent and the parent is inappropriate to establish unsuitability because parents have a paramount right to custody of their children and parental custody is presumed to be in the best

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<sup>50</sup> *In re Kovalski*, 2006-Ohio-317 [Ohio Ct. App. Washington Cty.]

<sup>51</sup> See *In re Perales*, 52 Ohio St.3d 89, 369 N.E.2d 1047 (1977); *Massitto v. Masitto*, 22 Ohio St. 3d 63, 488 N.E.2d 857 (1986); and *In re Hockstok*, 98 Ohio St.3d 238 at 241, 244 (2002).

<sup>52</sup> *In re J.R.A.*, 2014-Ohio-4463 [4<sup>th</sup> App. Dist.]

<sup>53</sup> *In re C.R.*, 108 Ohio St. 3d 369, 843 N.E. 2d 1188 (March 29, 2008).

<sup>54</sup> *In re R.J.E.*, 2017-Ohio-886 (11<sup>th</sup> App. Dist.); *In re C.V.M. Jr.*, 2012-Ohio-5514 (8<sup>th</sup> App. Dist.).

<sup>55</sup> *In re H.J.H.*, 2019-Ohio-116 (5<sup>th</sup> App. Dist.); *In Re P.M.* 2021-Ohio-3358 (8<sup>th</sup> App. Dist.)

<sup>56</sup> *In re Perales*, 52 Ohio St.3d 89 (1977)

<sup>57</sup> *In re R.R.S.*, 2018-Ohio-990 (2<sup>nd</sup> App. Dist.)

<sup>58</sup> *In re I.R.*, 2019-Ohio-2037 (2<sup>nd</sup> App. Dist)

interest of the child unless that placement would be detrimental.<sup>59</sup> However, such a comparison is appropriate in deciding the best interest of the child only after determining that having the parent retain custody is detrimental to the child.<sup>60</sup>

**No Pending Legal Proceeding.** If (i) there is no legal proceeding pending regarding child custody or parenting time, (ii) the parents are not married to each other, (iii) both parents are “Unsuitable” and it is in the best interest of the child for a change of custody, and (iv) the child does not suffer from abuse, neglect or dependency proceeding, then if you want the Judge to grant you custody of the minor child(ren) you will file a complaint with the Court as described below.

**Note:** If you want the Judge to grant you legal custody because both parents are unsuitable and the parents are not married, then consider using and filing with the Court form GC Juv 024 (Complaint for Change of Custody and Child Support), together with (1) if needed, 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 7.0 (Instructions for Service), (5) CG JF 038 (Affidavit) if an emergency order is requested, and (6) a filing fee.

**Pending Legal Proceeding.** If a legal proceeding is pending regarding child custody or parenting time and that proceeding is not an abuse, neglect or dependency proceeding, and if you want the Judge to grant you custody of the minor child(ren), then you must first file a Motion to obtain court permission to become a party to that legal proceeding. Consider using and filing with the Court form GC Juv 020A.1 (Motion to Intervene), together with (1) if needed, GC JF 5.0 (Disclosure of Confidential Child Information), (2) GC JF 7.0 (Instructions for Service), (3) a filing fee, if required, and (4) a copy of a proposed Motion for Custody. If the Court grants the Motion to Intervene, then file a signed form GC Juv 020A (Motion for Custody), together with (1) CG JF 038 (Affidavit) if an emergency order is requested that was attached to the Motion to Intervene, and (2) GC JF 7.0 (Instructions for Service). The Clerk may permit you to file both motions at the same time.

**Warning** –The Court may deny a motion to intervene.<sup>61</sup> A grandparent or other family member does not have an automatic right to be a party to a child custody proceeding. The Court is more likely to grant a motion for intervention seeking child custody if the nonparent has a significant history of caring for the child. Generally, the nonparent must be able to prove to the Court that the nonparent has (1) stood or stands “in loco parentis”<sup>62</sup> to the child or (2) exercised significant parental control over, or assumed parental duties for the benefit of, the child and the child has relied upon that nonparent for support.<sup>63</sup> Examples would be if you have custody of a child under (i) RGPOA, (ii) Caretaker Authorization Affidavit, or (iii) Relinquishment Agreement.

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<sup>59</sup> *Perales*, 52 Ohio St.2d at 97, 369 N.E.2d 1047; *In re Murray*, 52 Ohio St.3d 155, 157, 556 N.E.2d 1169 (1990).”

<sup>60</sup> See *In re Todd*, 2007-Ohio-1410 (Ohio App. Ct. Jefferson Cty.) for a fact pattern of misconduct by a mother that did not result in a finding of unsuitability.

<sup>61</sup> See Civ. R. 24. See also *In re L.M.*, 2021-Ohio-1 In local parentis means an adult who is the caretaker of a child, including a relative, foster parent or stepparent, who is charged with the rights, duties and responsibilities of a parent and whose presence in the home is needed to perform these rights, duties and responsibilities.

630 (12<sup>th</sup> App. Dist., Preble Cty.) and *In re J.B.*, 2016 WL 4497100 (8<sup>th</sup> App. Dist. Cuyahoga Cty.)

<sup>62</sup> “In local parentis” means an adult who is the caretaker of a child, including a relative, foster parent or stepparent, who is charged with the rights, duties and responsibilities of a parent and whose presence in the home is needed to perform these rights, duties and responsibilities. See Ohio Admin Code 5101:2-16-01(Q).

<sup>63</sup> See *In re A.W.*, 2022-Ohio-1097 (11<sup>th</sup> App. Dist., Ashtabula Cty.)

If the noncustodial parent requests that the Court grant him or her legal custody of the minor child and if the noncustodial parent is not determined to be “unsuitable” as a parent, then the Judge is likely grant legal custody to the noncustodial parent rather than to the grandparent (or other person is likely seeking custody). In effect, for a nonparent to be awarded custody, both parents must be determined to be unsuitable.

#### Complaint on Termination of Custody Power of Attorney or Caretaker Authorization Affidavit.<sup>64</sup>

Residential Grandparent Custody Power of Attorney (“RGPOA”). If (i) the child’s parents are unmarried, (ii) the residential parent(s) signed a RGPOA, and (iii) within 14 days after a child's residential parent gives written notice of revocation of the RGPOA to the grandparent and files a written notice of revocation of the RGPOA with the juvenile court or within 14 days after removal of the child from the grandparent's home, then that grandparent who has physical custody of a child under a RGPOA, may file a Complaint with the Court under R.C. 2151.23(A)(2) or R.C. 2151.27(D) seeking a determination of legal custody if the grandparent believes that the revocation or removal is not in the child’s best interest.<sup>65</sup>

**Note:** If you are the grandparent and want the Judge to grant you legal custody and temporary custody<sup>66</sup> because of the termination of a RGPOA, then consider using and filing with the Court form GC Juv 022 (Complaint for Custody and Child Support – R.C. 3109.76(A) together with (1) if needed, 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 7.0 (Instructions for Service), (5) CG JF 038 (Affidavit) if an emergency order is requested, and (6) a filing fee.

Caretaker Authorization Affidavit. Likewise, if (i) the child’s parents are unmarried, (ii) a grandparent with physical custody of the minor child prepared and filed a caretaker authorization affidavit, and (iii) within 14 days after the child's parent gives written notice of negation, reversal, or disapproval of a caretaker’s action or decision and files a written notice of the negation, reversal, or disapproval of the caretaker authorization affidavit with the Court or within 14 days after removal of the child from the caretaker's home, then that grandparent may file a Complaint under R.C. 2151.23(A)(2) or R.C. 2151.27(D) seeking a determination of legal or temporary custody if the caretaker believes that the negation, reversal, or disapproval notice or removal is not in the child’s best interest.

**Note:** If you are the grandparent and want the Judge to grant you legal custody because of the termination of a caretaker authorization affidavit, then consider using and filing with the Court form GC Juv 022 (Complaint for Custody and Child Support – R.C. 3109.76(A) together with (1) if needed, 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 7.0 (Instructions for Service), (5) CG JF 038 (Affidavit) if an emergency order is requested, and (6) a filing fee.

If a parent revokes a RGPOA or terminates a caretaker authorization affidavit, then the grandparent may retain physical custody of the child until the 14-day period for filing a

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<sup>64</sup> R.C. 3109.76

<sup>65</sup> See also R.C. 3109.76.

<sup>66</sup> 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.

Complaint under R.C. 3109.76 has expired or, if the grandparent files a Complaint, until the court orders otherwise.

If the child's parents are married and if the Grandparent files a Complaint to determine child custody, in the manner described above, nevertheless that Grandparent may not file the Complaint with the Court under R.C. 2151.23(A)(2).<sup>67</sup> The Grandparent should seek assistance and advice of an attorney. Possibly the complaint could be filed in the applicable domestic relations court. However, if the child is subject to abuse, neglect, or dependency, then the Grandparent could file a Complaint with the Court to be awarded temporary and legal custody under R.C. 2151(A)(1) and R.C. 2151.27 – see the discussion below.<sup>68</sup>

Parent's Right to Recover Legal Custody. Unless the Court grants permanent custody to a public child services agency (i.e., Geauga County Job & Family Services), thus terminating the parental rights, a parent has the right to file a motion with the Court to recover custody of his or her minor child.

- Parent Determined Unsuitable. If the court determined that a parent is “unsuitable” (including by reason of abuse, neglect or dependency) and as a result legal custody is granted to the grandparent, other relative, or other person, then at a later time either parent may file a motion to obtain a modification of the court's custody order, requesting that legal custody be returned to that parent. The fact that the Court awarded legal custody to another person does not terminate the parent's parental rights.<sup>69</sup> If the parent's unsuitability was based upon a finding of abuse, neglect, or dependency, then the parent must prove to the Court there has since been a change of circumstances of the child or the custodian and that it is in the child's best interest to return custody of the child to the parent.<sup>70</sup> If the parent's unsuitability was not based upon a finding of abuse, neglect, or dependency, then the parent may still be required to meet the requirements of the “change of circumstances” test and the “best interest” test.<sup>71</sup>

**Note:** If you, as the parent, want the Judge to grant you legal custody, then consider using and filing with the Court form GC Juv 025 (Motion for Change of Custody), together with (1) if needed, GC JF 5.0 (Disclosure of Confidential Child Information), (2) GC JF 2.0 (Parent History Affidavit), (3) GC JF 7.0 (Instructions for Service), (4) CG JF 038 (Affidavit) if an emergency order is requested, and (5) a filing fee, if required.

**Key Point:** In order for the Court to modify a legal custody order that granted custody to a nonparent and awarded the parent legal custody of a minor child, then the parent must prove to the Court “that a change has occurred in the circumstances of the child or the person who was granted legal custody and that modification or termination of the order is necessary to serve the best interest of the child.”<sup>72</sup>

Parent Voluntarily Surrendered Custody. If a parent contractually relinquished custody of a minor child, or the court otherwise ordered that legal custody be awarded to a grandparent,

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<sup>67</sup> R.C. 2151.233 (effective March 22, 2019) removes juvenile court jurisdiction to determine custody matters if the child's parents are married. Possibly, the complaint permitted by R.C. 3109.76 could be filed in the domestic relations court.

<sup>68</sup> R.C. 2151.234

<sup>69</sup> *T.M. v. J.H.*, 2011-Ohio-283 [6<sup>th</sup> App. Dist.]; *In re. D.H.*, 2012-Ohio-2272.

<sup>70</sup> R.C. 2151.42(B)

<sup>71</sup> *In re D.D.*, 2017-Ohio-8392 (7<sup>th</sup> App. Dist.).

<sup>72</sup> R.C. 2151.42(B) and R.C. 3109.04. See *In re D.D.*, 2017-Ohio-8392 [7<sup>th</sup> App. Dist.] (footnote 1) and *In re J.R.P.*, 2018-Ohio-3938 [7<sup>th</sup> App. Dist. 3938]

other family member, or other person without determining that the parent is “unsuitable,” then at a later time the parent may file a motion to obtain a modification of the court’s custody order, requesting that legal custody be returned to that parent without having to prove a “change of circumstances” or the “no harm” test.<sup>73</sup>

**Note:** If you, as the parent, want the Judge to grant you legal custody, then consider using and filing with the Court form GC Juv 025 (Motion for Change of Custody), together with (1) if needed, GC JF 5.0 (Disclosure of Confidential Child Information), (2) GC JF 2.0 (Parent History Affidavit), (3) GC JF 7.0 (Instructions for Service), (4) CG JF 038 (Affidavit) if an emergency order is requested, and (5) a filing fee, if required.

**Key Point:** In order for the Court modify such a legal custody order and award the parent legal custody of a minor child, the parent need not prove “that a change has occurred,” but rather need only prove that a modification of the order is necessary to serve the child’s best interest.<sup>74</sup>

JFS Action - Abused, Neglected, or Dependent Children. Geauga County Job & Family Services (“JFS”) may file a Complaint under R.C. 2151.23(A)(1) and R.C. 2151.27 to obtain custody of a minor child who is abused, neglected, or dependent. In an abuse, neglect, dependency proceeding (an “AN&D Proceeding”), JFS may file a motion under R.C. 2151.413 requesting permanent custody, which has the effect of terminating the parent-child relationship, and making the child(ren) available for adoption.

Unlike a complaint or motion by a nonparent to obtain custody of a child if the parents are unsuitable, in an AN&D Proceeding:

- JFS must prove abuse, neglect, or dependency by clear and convincing evidence, rather than by the lesser standard of a “preponderance” of the evidence; and
- If the parent(s) are indigent, then the Court must appoint legal counsel for the parents (and in some cases for the child(ren)). See the Information Sheet titled “Rights of Indigent Litigant.”

If the Court determines that a child is abused, neglected, or dependent, then that fact alone establishes that the parent is “unsuitable” and there need not be a separate finding of unsuitability.

Nonparent Companionship Rights. While the Ohio Revised Code does not specifically grant grandparents companionship or visitation rights, when the Court determines that a minor child is abused, neglected, or dependent during an AN&D Proceeding and grants JFS temporary custody of a minor child, JFS has adopted regulations that allow for companionship or visitation rights to be granted to grandparents by administrative order in some circumstances (if the child custody is temporary) if that is in the child’s best interest.<sup>75</sup> Perhaps a nonparent may obtain a companionship time order by filing a complaint with this Court under R.C. 3109.12 to starting a new legal proceeding for that purpose, or a motion to intervene, together with a motion for companionship time. Again, the Help Center highly recommends obtaining legal advice from an attorney.

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<sup>73</sup> *Culp v. Burkhardt*, 2004-Ohio-4425 (5<sup>th</sup> App. Dist.); and *In re E.Z.H.*, 2013-Ohio 3494 (5<sup>th</sup> App. Dist.).

<sup>74</sup> See - *In re J.R.P.*, 2018-Ohio-3938 (7<sup>th</sup> App. Dist.); *Culp v. Burkhardt*, 2004-Ohio-445 (5<sup>th</sup> App. Dist.); and *In re E.Z.H.*, 2013-Ohio-3494 (5<sup>th</sup> App. Dist.).

<sup>75</sup> Ohio Adm.Code 5101:2-42-92(D). However, there is a legal issue whether that provision is valid, since the Supreme Court of Ohio has stated that grandparents’ rights of access to minor grandchildren must be based upon a statute – see *In re Martin*, 68 Ohio St.3d 250, 626 N.E.2d 82 (1994).



Custody Rights. In an AN&D Proceeding a grandparent, other relative, or other interested person can “intervene” in that proceeding, by filing a motion to intervene and request custody of the minor child. If the Judge determines that the minor child is abused, neglected or dependent, then the Judge may award temporary custody to any relative residing within or outside of Ohio.<sup>76</sup> The Court may award legal custody to any person who filed a motion requesting legal custody before the dispositional hearing.<sup>77</sup> That person need not prove that the custodial parent is unsuitable if the Court finds the child to be abused, neglected, or dependent.<sup>78</sup>

**Note:** If you are the grandparent, other relative, or an interested person, and if you want the Judge to grant you custody or companionship (visitation) rights regarding the minor child(ren) during an AN&D Proceeding, then consider using and filing with the Court form GC Juv 020B.1 (Motion to Intervene), together with (1) if needed, GC JF 5.0 (Disclosure of Confidential Child Information), (2) GC JF 7.0 (Instructions for Service), (3) a filing fee and (4) a copy of a proposed Motion for Custody or Companionship Rights, form GC Juv 020B (Motion for Custody or Companionship Rights). If the Court grants the Motion to Intervene, then promptly file a signed form GC Juv 020B (Motion for Custody or Companionship Rights), together with (1) CG JF 038 (Affidavit) if an emergency order is requested, (2) GC Juv 16.0 (Statement of Understanding) and (3) GC JF 7.0 (Instructions for Service).

Nonparent Right to file Complaint for AN&D Proceeding. If a child is abused, neglected, or dependent, and if the parents are unmarried, then any grandparent, other family member, or any other interested person may file a Complaint with the Court seeking custody as discussed above (under R.C. 2151.23(A)(2) because abuse, neglect, or dependency is proof that one or perhaps both parents are unsuitable. However, if a child is abused, neglected, or dependent, and if the parents are married, then any grandparent, other family member, or any other interested person may file a Complaint with the Court seeking custody (under R.C. 2151.27 and Juv. R. 10), and thus commence an AN&D Proceeding and request temporary or legal custody of that child.<sup>79</sup> Such action may be appropriate if JFS has not filed a complaint under R.C. 2151.27 even if notified of the child’s situation. The definitions of abused, neglected, or dependent are as follows:

Abused - an "abused child" includes any child who:<sup>80</sup>

- is the victim of "sexual activity" as defined under Chapter 2907 of the Revised Code, where such activity would constitute an offense under that chapter, except that the court need not find that any person has been convicted of the offense in order to find that the child is an abused child;
- is endangered as defined in section 2919.22 of the Revised Code, except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child;
- exhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death which is at variance with the history given of it;

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<sup>76</sup> See Juv.R. 34(D)(2) (Ohio Rules of Juvenile Procedure).

<sup>77</sup> See Juv.R. 34(D)(3) (Ohio Rules of Juvenile Procedure).

<sup>78</sup> See *In re C.R.*, 108 Ohio St.3d 369, 843 N.E.2d 1188 (2006), where the Supreme Court of Ohio determined that a finding of abuse, neglect or dependency implicitly is a determination that custodial parent is unsuitable.

<sup>79</sup> See R.C. 2151.353(A)(3), which allows the Court, in an AN&D Proceeding to award legal custody to any person who files a motion seeking legal custody if the court determines that award to be in child’s best interest. See also *In re P.B.*, 2021-Ohio-414 (12<sup>th</sup> App. Dist. – Warren Cty.)

<sup>80</sup> R.C. 2151.031

- exhibits evidence of corporal punishment or other physical disciplinary measure by a parent, guardian, custodian, person having custody or control, or person in loco parentis of a child is not an abused child under this division if the measure is not prohibited under section 2919.22 of the Revised Code;
- because of the acts of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare;
- is subjected to out-of-home care child abuse.

Neglected - a "neglected child" includes any child:<sup>81</sup>

- who is abandoned by the child's parents, guardian, or custodian;
- who lacks adequate parental care because of the faults or habits of the child's parents, guardian, or custodian;
- whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child's health, morals, or well-being;
- whose parents, guardian, or custodian neglects the child or refuses to provide the special care made necessary by the child's mental condition;
- whose parents, legal guardian, or custodian have placed or attempted to place the child in violation of sections 5103.16 and 5103.17 of the Revised Code;
- who, because of the omission of the child's parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare;
- who is subjected to out-of-home care child neglect.

Dependent – a “dependent child” includes any child:<sup>82</sup>

- who is homeless or destitute or without adequate parental care, through no fault of the child's parents, guardian, or custodian;
- who lacks adequate parental care by reason of the mental or physical condition of the child's parents, guardian, or custodian;
- whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship;
- to whom both of the following apply:
  - The child is residing in a household in which a parent, guardian, custodian, or other member of the household committed an act that was the basis for an adjudication that a sibling of the child or any other child who resides in the household is an abused, neglected, or dependent child.
  - Because of the circumstances surrounding the abuse, neglect, or dependency of the sibling or other child and the other conditions in the household of the child, the child is in danger of being abused or neglected by that parent, guardian, custodian, or member of the household.

The person filing the Complaint to commence an AN&D Proceeding must file that Complaint in the county in which the child has a residence or legal settlement, or in which the violation, unruliness,

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<sup>81</sup> R.C. 2151.03

<sup>82</sup> R.C. 2151.04

abuse, neglect, or dependency occurred and shall describe all the particular facts that support the allegation of abuse, neglect, or dependency.

**Note:** If you are reporting abuse, neglect, or dependency, then consider using and filing with the Court form GC Juv 043 (Complaint - Abused, Neglected, or Dependent Child [R.C. 2151.23(A)(1)]), 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 7.0 (Instructions for Service), (5) CG JF 038 (Affidavit) if an emergency order is requested, (6) GC JF 16.0 (Statement of Understanding) and (7) a filing fee. **PLEASE NOTE that in the CG JF 038 (Affidavit) you must provide a detailed description of the specific Revised Code sections and subsections that are violated, whether for abuse, neglect, or dependency and the applicable facts.**<sup>83</sup>

**Note:** If you are reporting abuse, neglect, or dependency and if Ohio is not the Home State, then consider using and filing with the Court form GC Juv 043A (Complaint - Abused, Neglected, Or Dependent Child [R.C. 2151.23(A)(1)]), 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 7.0 (Instructions for Service), (5) CG JF 038 (Affidavit) if an emergency order is requested, (6) GC JF 16.0 (Statement of Understanding), and (7) a filing fee.

**IT IS CRITICAL** that in the complaint (i.e., form GC Juv 043A) you describe in detail the Ohio Revised Code section that supports your allegation of abuse, neglect, or dependency. For example, if you believe that the minor child is dependent by reason of lack of adequate parental care, then you would state in the complaint that you rely upon R.C. 2151.04(B) and state the facts that support that allegation.<sup>84</sup>

**Key Points:**

- Unlike an “unsuitability” proceeding,
  - in order for the Court to award you custody of a minor child, you must prove to the Court by clear and convincing evidence that the minor child is in fact abused, neglected, or dependent.
  - In an AN&D proceeding, there are special procedural rules.<sup>85</sup>
  - the Court will appoint counsel for an indigent parent if requested.
- Before deciding to file GC Juv 043 (Complaint AN&D) and thus proceed under R.C. 2151.27 and Juv. R. 10(A), we highly recommend that you hire an attorney and obtain legal advice.

Caretaker Child Support. The law allows for a nonparent, who does not have legal custody of a minor by court order, to apply for and receive child support in certain situations if a minor resides with the nonparent, known generally as caretaker child support. See the discussion of

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<sup>83</sup> See *State ex rel. Swanson v. Hague*, 2010-Ohio-4200 (11<sup>th</sup> App. Dist.)

<sup>84</sup> See Rule 10(B) of the Ohio Rule of Juvenile Procedure and *State ex rel Swanson v. Hague*, 2010-Ohio 4200 (11<sup>th</sup> App. Dist.)

<sup>85</sup> See Juv. R. 27(B) and 29

caretaker child support in the juvenile information sheet titled "Child Support," located at the end of that information sheet.

### Adoption.

When a parent dies, if the new spouse of the surviving parent adopts the minor child, then the court of common pleas, general division (not this Court) has the power to grant the companionship rights to the grandparents (i.e., the parents of the deceased parent) is not affected by reason of the adoption.<sup>86</sup> Yet, in the case of a minor child whose mother is unmarried, the Supreme Court of Ohio has determined that a final decree of adoption terminates all legal rights of access between the adopted minor child and the relatives of the minor child, regardless of whether the minor child is adopted by strangers, relatives, or a step-parent.<sup>87</sup> However, Ohio law does not terminate the relationship between a minor child and the family of the parent whose status is not changed by a step-parent adoption. Thus, grandparents whose child retains parental rights of a minor child after a step-parent adoption remain entitled to obtain companionship rights regarding the minor child.<sup>88</sup> For example, if the unmarried mother died, and the father remarries, and his new spouse adopts the minor child, then the legal rights of the maternal grandparents terminate, but the legal rights of the paternal grandparents are not affected.

### Guardianship.

A grandparent, other relative or another person could consider filing an application with the probate court to be appointed the guardian of the person and estate of a minor child rather than seeking a custody order from juvenile court.<sup>89</sup> R.C. Chapter 2111 sets forth the basic requirements of a guardianship and the duties, and responsibilities of a guardian. For more information, see the probate information sheet titled "Guardianship of a Minor." It is unlikely that a probate court will appoint a grandparent, other relative or another person as guardian of a minor unless the applicant can establish at a hearing that (i) both parents are "unsuitable," (ii) have forfeited their parental rights by contract<sup>90</sup>, or (iii) have consented to the guardianship. Moreover, the probate court may not consider an application for guardianship of a minor if a legal proceeding regarding child custody is ongoing in another court, such as a divorce court or juvenile court. A person seeking custody of a minor should obtain legal advice before deciding whether to proceed in juvenile court or in probate court under a guardianship application.

### Criminal Act.

Any person who interferes with custody rights of the residential parent, without the legal right to do so, could be guilty of a crime.<sup>91</sup> Interference includes enticing, taking, keeping, or harboring a minor child. Thus, if a grandparent acts in such manner beyond the legal rights granted by a custody power or attorney or court order, that grandparent could be found to be guilty of "interfering with custody." One defense is if that grandparent reasonably believed that such action was necessary to preserve the child's health or safety.

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<sup>86</sup> R.C. 3109.11

<sup>87</sup> See *In re Martin*, 68 Ohio St.3d 250, 626 N.E.2d 82 (1994); *Sweeney v. Sweeney*, 71 Ohio St.3<sup>rd</sup>, 169, 642 N.E. 2d 629 (1994); and *In re Adoption of Ridenour*, 61 Ohio St.3<sup>rd</sup> 319, 574 N.E.2d 1055 (1991).

<sup>88</sup> *Moore v. Strassel*, 4<sup>th</sup> Dist. Pickaway No. 97CA32, 1998 WL 101354 (February 26, 1998).

<sup>89</sup> R.C. 2111.03

<sup>90</sup> R.C. 2111.06 and *Masitto v. Masitto*, 22 Ohio St. 3d 63 (1986)

<sup>91</sup> R.C. 2919.23

**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.**