



LASC

The Legal Aid Society of Columbus

Family Law & Family Law Resources

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Topics Covered

- Paternity
- Child Support and Health Insurance
- Allocation of Parental Rights and Responsibilities (Custody)
- Abuse, Neglect and Dependency Proceedings
- Termination of Marriage (Divorce and Dissolution)
- Protection Orders
- Community Resources

Paternity

Generally

- Paternity must be established before most types of court orders can be made (including custody and child support orders).

Establishment

- **Presumed if child born during the marriage.**
 - Husband will be considered the father of the child unless genetic testing.
- Ways to establish paternity for **unmarried** parents:
 - **Acknowledgment/Affidavit**
 - Both parents sign; typically done in the hospital, but can be done later (form available through local health department or Department of Job and Family Services);
 - **Child Support Enforcement Agency (CSEA)**
 - Establish DNA testing.
 - **Court**
 - Complaint for paternity through court.

Putative (“Potential”) Father Registry

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

Undoing Paternity

- Cancelling Acknowledgment: 60 days, with some conditions; 1 year for fraud, duress, or mistake.
- Some additional opportunities but must not have known that he was not the father prior to acknowledging.

Note: Establishing paternity is an essential step for an unmarried father to obtain custody and parenting time. BUT, establishing paternity, by itself, does not automatically give an unmarried father parenting time rights.

What to Expect at Clinic

- Fathers with basic paternity establishment questions.
- Parents who are questioning paternity.
- Parents without court orders.

Child Support and Health Insurance Coverage

Generally

- Child support is intended as financial support for a minor child.
- Informal payments or tangible items are *not* considered child support for purposes of satisfying a child support order.

Establishment of Child Support

- Where is Child Support Established?
 - **Child Support Enforcement Agency (CSEA)**
 - Process and Services: CSEA conducts hearing. CSEA has parent locator services to help establish address and whereabouts of a prospective child support “obligor” (payor).
 - **Court**
 - Typically happens when father files a complaint in court to establish paternity or custody. Either parent can raise this as an issue in pleadings.

Calculation of Child Support

- Generally
 - Child Support guidelines formula and worksheet: uses gross income; gross income does not include “means-tested assistance” (e.g. SSI, OWF, and some other benefits).
- What if parent is not working?
 - Can “impute” income when someone is voluntarily unemployed or underemployed; generally no imputation if receiving means-tested public assistance.
- Consideration of Disability
 - Need to present benefits information, medical evidence or doctor’s statements.

Additional Components of Child Support Orders

- Health Insurance and Cash Medical Support
 - Many clinic participants may have Medicaid coverage for children.
 - If not, must obtain other coverage if available at “reasonable cost.”
 - “Reasonable cost” is defined as equal to, or less than, 5% of gross income.
- Cash Medical Support

CSEA or Court?

- **CSEA**

- *Strictly* follows child support guidelines.

- **Court**

- *Can “deviate” or adjust* the child support obligation. Court may consider: parenting time with the children, travel expenses associated with exercising parenting time, other child-related expenses.
- Address tax dependency exemption (even though IRS has suspended deduction, dependency is still relevant for other credits).

Modification of Child Support

- **Through CSEA:**
 - Automatic every 36 months review.
 - Earlier review upon request if sufficient change in circumstances/income.
- **Through Court:**
 - Can review anytime.

What to Expect at Clinic

- Parents trying to establish support.
- Parents questioning the amount of support.
- Parents who aren't receiving support that has been ordered by agency or court (unpaid support).

Allocation of Parental Rights and Responsibilities

Generally

- **Generally (R.C. 3109.04)**
 - “Best interests of the child”—broad facts and circumstances test applied by the court.
 - Numerous factors relating to the lives of parents and children.
 - ***Note: The child’s wishes may be a factor that the court considers, but it is not the determinative factor. In other words, the child does not decide where she wants to live.***
 - When making custody determination, court also makes orders for parenting time/visitation.

Which State?

- Between States: In which state should the case be heard?
 - Based on the residence of the child.
 - Action should be filed in the child’s “home state.” This is the child’s residence for six months prior to the filing of the action.

Which Court?

- Juvenile Court
 - Used by unmarried parents.
- Domestic Relations
 - Used by married parents; married parents typically have custody proceedings as part of a termination of marriage proceeding.

Which County?

- Venue in Juvenile Court: In which county should a complaint be filed?
 - A complaint should generally be filed where child is residing or is found. This changes when custody issues are part of a divorce or termination of marriage proceeding.

Custodial Rights Prior to Court Orders: Unmarried v. Married

- Unmarried mother has legal custody until a court issues an order that modifies this “default” rule. R.C. 3109.042.
- Tips:
 - Unmarried mother can establish terms and conditions of parenting time, absent a court order (particularly in the event of health or safety concerns).
 - Varied enforcement based on police department; some refuse to get involved if the father withholds child without any court order.
 - Unmarried mother should NOT withhold parenting time because of father’s failure to provide financial support, including child support.
 - Unmarried mother should typically never file a complaint for custody because she is custodian by statute.

Note:

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

Custodial Rights Prior to Court Orders: Unmarried v. Married

- Married parents are both the legal custodians with equal rights until a court determines otherwise. R.C. 3109.03.
 - Can create conflict when parties are physically separated but there are no court proceedings or court orders pending yet.

Parenting Time

- When making orders of custody, the court will also make orders for parenting time using similar factors from the “best interests of the child” standard:
 - Standard parenting time or beyond (local rule is different for each county; Franklin: Rule 27.1 (Domestic) and Rule 22.1 (Juvenile)).
 - Supervised parenting time may be an option if health and safety concerns.

Shared Parenting

- Shared Parenting: theory of parenting based on joint decision-making; does not mean 50/50 parenting time (though it can be); one parent is typically designated residential parent for school placement purposes.
- ***Note: Shared Parenting does NOT mean \$0 child support***
- In addition to best interest factors, court considers parents' ability to cooperate and make joint decisions.

Resources/Tools for Making Custody Determination

- **Home Investigation** (Franklin County)
 - Free services through the court.
 - Home investigator meets with the parents, reviews home, review records, and may talk with children.
- **Mediation Services:** Neutral party attempts to reach agreement.
- **Guardian Ad Litem:** Independent person appointed by the court to conduct an investigation and make a recommendation as to best interests of the child.
 - No cost if appointed in an abuse/neglect/dependency proceeding.
 - Usually a cost if appointed in private custody matters.

Rights of Non-Custodial Parents

- The non-residential parent is generally entitled to equal access to:
 - school records;
 - medical records;
 - day-care and childcare facility and records;
 - all school activities.

Rights of Non-Parents

- Custody
 - Initially, biological parents are given preference.
 - However, court can award custody to non-parent upon finding that parents are **unsuitable or unfit**; once finding is made, then the parties are on equal footing and no preference is given.
- Companionship:
 - When parents unmarried: Grandparent can request visitation in juvenile court; must demonstrate that it is in best interests and wishes of parents should be afforded deference.
 - When parents are married: Request can only be made as part of an existing case; for example, a grandparent could intervene in a divorce.

Rights of Non-Parents

- Other options:
 - Kinship power of attorney affidavits and caretaker affidavits allow *grandparents* to care for grandchildren without filing a custody action. Used by many grandparents seeking this kind of help to enroll children in school.

Modification of Custody and Parenting Time

- To modify custody order, generally must demonstrate:
 - Change in circumstances since previous court order, in the life of the child or residential parent.
 - ***Note: A change in the circumstance of the non-custodial parent, is typically NOT sufficient for changing custody.***
- If parent lost custody to grandparent, then they stand on equal footing; no more parental preference when seeking modification.

Modification of Custody and Parenting Time

- **Modifying Parenting Time:** Do NOT need to show change in circumstances; just need to demonstrate “best interests.” R.C. 3109.051(D).

What to Expect at Clinic

- Questions about parenting time (LASC typically does not handle “parenting time only” cases).
- Questions about regaining custody.
- Questions from non-parents (e.g. grandparents, aunts/uncles) about custody.
- General expectations about “hearings.”

Abuse, Neglect and Dependency Proceedings

General

- Children's Services (CS) involved; different than private custody case; in Franklin County, "5th Floor" cases (private custody conducted on 3rd floor).
- Parents are entitled to court-appointed attorney (so Legal Aid does NOT get involved). Screen for appointed counsel on the 5th floor.
- Case Plans developed and parents have to complete Case Plan.
- If failure to complete case plan, then permanent custody placement is made.
- Guardians can be involved (no cost to the parties).

Termination of Marriage

General

- Options for Separation
 - **Dissolution:** Parties in complete agreement on *every* aspect at the outset; can be converted to divorce if separation agreement not confirmed.
 - **Divorce:** Termination of marriage (R.C. 3105.01 et seq.).
 - **Legal separation:** Not divorced, but separated (usually done for religious reasons or health insurance reasons).
 - **Annulment:** Voiding the marriage as if it never happened (non-consummation; someone was married to another at time; incompetent).

General

- Procedure:
 - After complaint is filed, twenty-eight (28) days to file Answer and counterclaim. OTHERWISE CASE CAN BE HEARD “UNCONTESTED” AT A FINAL HEARING.
 - However, in Franklin County, leave to file answer past deadline is liberally granted.
 - Therefore, defendant should actively participate even if they have missed answer deadline.

General

- Grounds for divorce under R.C. 3105.01.
- Most common:
 - Incompatibility, unless denied by either party (consensual, not intended to be litigated).
 - Extreme cruelty.
 - Any gross neglect of duty.
 - lived separate and apart without cohabitation for one year.

Which State and County?

- Jurisdiction: Can I file in Ohio?
 - Must be a resident of the State of Ohio for 6 months.
- Venue: In which county can I file?
 - County where defendant resides.
 - County where plaintiff has been a resident for at least 90 days.
- ***Note: There could be multiple counties where a divorce case could be filed.***

Available Relief

- Custody determination (see above); parentage if child born of the parties, but prior to marriage.
- Equitable division of marital debts and assets.
- Spousal support: support for the maintenance of the former spouse.
- Restoration of spouse's former name.
- Temporary orders (Civil Rule 75):
 - For any of the above relief
 - Temporary Restraining Orders (TRO): preventing removal of child from jurisdiction, preventing dissipation of assets.

Limitations on Relief

- “Personal Jurisdiction” over Defendant:
If no connection to the state, then no property division, no spousal support; just divorce and award of property located in state.
- Type of Service: If served by publication, then no personal jurisdiction. Therefore, no child or spousal support order.

What to Expect at Clinic

- Questions about uncontested or minimally contested divorces.
- Where to file a divorce or termination of marriage proceeding.
- Questions about service, particularly when spouses separated for long time.
- Expectations at “hearings.”

Protection Orders

Criminal

(Municipal Court and Common Pleas-General Division)

- Stay Away Orders
 - General provision requiring the defendant to stay away from the victim; usually a condition of bond or a condition of probation after criminal case concludes.
 - Probably not subject to immediate arrest.
- Temporary Protection Order (TPO)
 - Immediate arrest if violates, and further criminal charges: violation of protection order (VPO).
 - Only lasts the length of the case; usually replaced by a stay away order as part of sentencing.

Civil

(Common Pleas-Domestic Relations Division)

- Does not require criminal charges against “Respondent.”
- Requirements:
 - Involving family or household member, child in common, or other type of cohabitating relationship; NEW: dating relationships.
 - Show violence, threats of violence, or stalking; and
 - Fear that respondent can cause imminent/immediate harm.
- Provisions:
 - Can last up to five (5) years.
 - Requires respondent to stay away, and subject to criminal charges for violation of protection order (VPO) if respondent does not follow.
 - Can provide award of temporary custody and temporary financial support.
 - Can exclude respondent from shared residence.
- ***Note: Do not confuse with: (a) Temporary Protection Order (TPO) from criminal case; or (b) Temporary Restraining Orders (TRO) that are issued as part of a divorce.***

CPO: Process

- “Petitioner” can file for a Civil Protection Order (CPO) on her own (there is a CPO Help Desk on the 6th Floor of Domestic Relations Court in Franklin County).
- Filed in domestic relations court
- Process:
 - File petition.
 - Court conducts immediate “ex parte” hearing; only the petitioner/victim present.
 - Full hearing; must obtain service of petition on respondent prior to hearing.
 - Can also reach consent CPO; same result, but no detailed findings.

Civil

(Common Pleas-General Division)

- Civil Stalking and Sexually-Oriented Offense Protection Orders (CSPO & SOOPO)
 - Usually reserved for non-family members and situations where there is not domestic violence
 - Stalking Requirements:
 - Need to show pattern of conduct.
 - Fear that respondent may cause harm, or respondent has caused mental distress.
 - Commission of sexually-oriented offense.

What to Expect at Clinic

- People stating that they have a “restraining order.”
- Questions about how to obtain a protection order.
- People who have requested protection orders but can’t serve the respondent.
- Preserving evidence of allegations (text messages, social media pages, photographs).
- Sharing domestic violence resources.
- Err on the side of caution and refer violence cases to Legal Aid or CPO Help Desk at Court.

RESOURCES AND QUICK TIPS

Resources and Quick Tips

- **Self-Represented Resource Center**, Franklin County Common Pleas Court, Domestic Relations Division and Juvenile Branch, 373 S. High St., 4th Floor.
- **CPO Help Desk** (Capital University Legal Clinic), Franklin County Common Pleas Court, Domestic Relations Division and Juvenile Branch, 373 S. High St., 6th Floor.
- **Forms:**
 - Juvenile and Domestic Relations:
 - <https://www.supremecourt.ohio.gov/JCS/CFC/DRForms>
 - Civil Protection Orders:
 - https://www.supremecourt.ohio.gov/JCS/domesticViolence/protection_forms/DVForms/
- **Local Rules**, including Parenting Time Schedules:
 - : <https://drj.fccourts.org>

Resources and Quick Tips

- **Child Support Enforcement Agency (CSEA):**
 - Franklin County Child Support Enforcement Agency: 80 E. Fulton St., Columbus, 43215; www.support.franklincountyohio.gov;
 - Franklin County Common Pleas, Domestic Relations Division and Juvenile Branch CSEA Client Affairs Officers: Last Name A-L: 525.4801; Last Name M-Z: 525-5211.

Resources and Quick Tips

- Court Structure for Franklin County Domestic Relations and Juvenile Division
 - 6th Floor (Courtrooms 61-66): Judges; CPO Help Desk
 - Civil Protection Orders.
 - Emergency Custody Motions.
 - Divorce pre-trials and final divorce hearings.
 - 5th Floor: Magistrates for Abuse/Neglect/Dependency and Child Support.
 - 4th Floor: Clerk's Office; Hearing Assignment Office; Self-Represented Resource Center.
 - 3rd Floor (Courtrooms 31-39): Juvenile (31,32,37-39) and Domestic Magistrates (33-36).
 - » All complaints and motions in Juvenile Court.
 - » Motions for temporary orders in divorces, miscellaneous motions in divorces, and post-divorce motions.

Resources and Quick Tips

- **Interpreting Case Information:**
 - Case number: contains information about filing and case type. YY Type MM-#####
 - Abbreviations:
 - JU: Juvenile
 - DR: Domestic Relations (Termination of Marriage)
 - DV: Domestic Violence (Civil Protection Order)
 - e.g. 16 JU 04-1565 : A juvenile case filed in April 2016.
 - 15 DV 07-1100: A civil protection order filed in July 2015.

Resources and Quick Tips

- “Hearing” Information:
 - Time and location will give clues as to type of hearing.
 - 8:30 AM Hearings
 - Temporary orders in divorces.
 - Initial hearings in Juvenile Court.
 - 9:30 AM Hearings
 - Miscellaneous divorce motions.
 - Subsequent or continued hearings in Juvenile cases.
 - Miscellaneous AM times
 - Pretrials and CPOs.
 - Some divorce trials.
 - 1:30 PM Hearings
 - Contested trials (final trial/hearing date).

Resources and Quick Tips

- Case Timeline: Will give you an idea of whether person will be granted a continuance of upcoming hearing.
 - Juvenile: 9 months
 - Divorce without children: 12 months
 - Divorce with children: 18 months
 - Post-decree motions: 6-9 months

Online Case Information

Divorce

(with or without children)

- Franklin County Common Pleas Clerk of Court's Website
 - General case history.
 - Hearing information.
 - Dates when documents filed (cannot view actual documents).

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

Criminal Domestic Violence Cases

- Misdemeanor:
 - Franklin County Municipal Court's Website:
 - General case information.
 - Hearing information.
 - Dates documents filed (cannot view actual documents).

<http://www.fcmmcclerk.com/>

Criminal Domestic Violence Cases

- Felony:
 - Franklin County Common Pleas Clerk of Court's Website:
 - General case information.
 - Hearing information.
 - Dates documents filed (some documents available for viewing as PDFs).

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

Not Available Online:

- Juvenile Court case information.
- Civil Protection Orders.
- Domestic Violence Police Reports.
 - Highly likely no entries on CPD website regarding a call or contact with law enforcement.
 - Will need to contact CPD directly.

Contact Information

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

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