

The Legal Aid Society of Cleveland:
Volunteer Attorney Resource Guide: Domestic Law

August, 2017

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DIVORCE, DISSOLUTION OF MARRIAGE, and ANNULMENT:

What kind of case do I have?

Divorce

In Ohio, a divorce is the legal termination of a marriage. In order to obtain a divorce, one spouse must allege that his or her spouse has met one of the statutory grounds for divorce articulated in [R.C. 3105.01](#). These include “fault” and “no fault” grounds, such as incompatibility, living apart for more than one (1) year, gross neglect of duty, etc.

Dissolution

A dissolution results when both parties agree that they want to terminate the marriage, and reach full agreement on all terms, such as finances, children, etc. Unlike a divorce, grounds for the termination are not at issue since both parties agree that the termination is necessary. [R.C. 3105.61](#). A dissolution of marriage will likely eliminate much of the divorce process and expense. However, in order to pursue a dissolution, both parties must be able and willing to negotiate and reach an agreement on relevant matters, including parental responsibilities and disposition of finances.

Annulment

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An annulment terminates the marriage and treats it as if it never happened, since the marriage was void from the beginning. However, it only applies in limited circumstances and within limited timeframes.

How do I file for a divorce?

Preliminary Matters:

What is the legal definition of a “divorce”?

In Ohio, a divorce is the legal termination of a marriage. In order to obtain a divorce, one spouse must allege that his or her partner has met one of the statutory grounds—fault or no fault—for divorce articulated in [R.C. 3105.01](#).

What are the statutory grounds for a divorce?

Statutory grounds—fault and no fault—are legally acceptable reasons for a divorce, and they are outlined in [R.C. 3105.01](#).

The fault grounds are all left to the discretion of the trial court and include:

- Already having a living husband or wife at the time of the current marriage
- Adultery
- Willful absence for one year
- Extreme cruelty
 - Can be something besides physical violence or the apprehension of physical violence. Encompasses actions which destroy the peace of mind and happiness of one of the parties, and thus, render the marriage intolerable.
- Fraudulent contract
- Any gross neglect of duty
 - One of the parties has failed to perform some legal obligation or obligation established by the marriage. Must be severe or of long enough duration so as to be considered “gross”.
- Habitual drunkenness
- Imprisonment of the adverse party in a state or federal correctional institute

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- Procurement of a divorce outside Ohio, if the Ohio spouse is still bound to the marriage

In addition to the fault grounds, there are also no fault grounds for divorce in Ohio, though these must be proven, just like the fault grounds. These include:

- Living separate and apart without interruption for one year
- Incompatibility (unless denied by either party).

No matter whether a fault or no fault ground is asserted, a divorce cannot be granted, however, unless the testimony of the complaining party is supported by a witness.

Do I have to be an Ohio resident to file for divorce in Ohio?

Yes, you must be an Ohio resident for at least six (6) months to file for divorce in Ohio, per [R.C. 3105.03](#). Further, per [Civ.R. 3\(B\)\(9\)](#), you must have lived in the relevant county for at least ninety (90) days in order to file for divorce in that county,

Can I have a jury divorce trial in Ohio?

No; there are no jury divorce trials in Ohio. The parties either settle by agreement or the case is tried by a trial judge or magistrate.

Starting the Process:

What do I do first?

File a Complaint and Temporary Orders. [Sample Complaint](#). For further information, please see [R.C. 3105.17](#)

A variety of other sample forms, including sample Temporary Orders for Cuyahoga County are available [here](#)

If you have children of the marriage, you must also file a Parenting Proceeding Affidavit [R.C. 3127.23](#). The Parenting Proceeding Affidavit is necessary for the court to determine if it has the authority to issue parenting orders in the case being filed. Here is a sample for Cuyahoga County: http://domestic.cuyahogacounty.us/pdf_domestic/en-US/SeparationDivorce/PPA-IVD.pdf

What are Temporary Orders?

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A request for Temporary Support is an optional filing requesting orders to preserve the status quo, in terms of finances and responsibilities to minor children.

Examples: designation of legal custodian and allocation of the parental rights and responsibilities of minor children, child support, spousal support, payment of attorney fees and litigation expenses. Other examples include Temporary Restraining Orders (TROs), which could encompass: an order to refrain from physically and verbally harassing the other party, and an order to keep marital assets intact so they can be divided by the court. See the following link for Guidelines used by the Cuyahoga County Domestic Relations courts:

http://domestic.cuyahogacounty.us/pdf_domestic/en-US/Misc/GuidelinesTROs.pdf

Do I have to file my request for all Temporary Orders at the outset of the case?

No, throughout the divorce process, hearings may take place to determine the merits of temporary requests or to make a party comply with the temporary orders. However, temporary orders will only stay in effect until a final judgment by the court.

Where do I file papers?

Residents of Cuyahoga County:

All Domestic Relations Court pleadings and motions are filed with the Domestic Relations Division of the Clerk of Court, room 35, ground floor, the Cuyahoga County Courthouse, located at 1 W. Lakeside Avenue., Cleveland, Ohio 44113. The Domestic Relations Court does not accept filings directly or by fax.

Non-residents of Cuyahoga County:

If you are not a resident of Cuyahoga County, the Domestic Relations Court within your specific county will be the location to file your pleadings and motions.

What if I cannot afford to pay filing fees?

Here is a list of filing fee amounts for domestic relations cases in Cuyahoga County:

<http://domestic.cuyahogacounty.us/en-US/court-rule01.aspx>

Payment of the regular filing fees can be waived if the person who wishes to file is found to be indigent. However, in Cuyahoga County, a \$10.00 initial filing fee will be charged in all domestic relations actions, even if the part(ies) are indigent. Affidavits of Indigency are available through the Clerk of Courts, though a fillable copy is available here:

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http://domestic.cuyahogacounty.us/pdf_domestic/en-US/Misc/Affidavit%20Waive%20Cost%20with%20Chart.pdf

After I have filed my Complaint and Request for Temporary Orders, what is next?

Serve the papers to the other party. However, be aware: a divorce cannot be granted for at least six weeks after the other party is legally notified. [Ohio Rules of Civil Procedure, Rule 4](#)

Will my spouse respond to my complaint for divorce?

Maybe. Your spouse (“the Defendant”) has 28 days after being served with the Complaint to file an Answer if he or she intends to contest the divorce.

Uncontested Divorce:

If your spouse fails to file an Answer after being served with the Complaint, an “uncontested” trial will be scheduled. You must testify about the grounds alleged for the divorce, and bring a witness to corroborate his or her testimony. You must also provide evidence about the value of assets, debts, support, and the parenting needs of any minor children. Generally, assets and debts will be divided and parenting and support issues decided according to your request. This process takes about two months.

For an uncontested divorce proceeding, you will need to bring the following: Judgment Entry for Divorce Signed Separation Agreement or In-Court Agreement (if you have one). If you have children you will also need:

- Health Insurance Affidavit
- Child Support Computation Worksheet
- Parent Education Seminar certificate (if not already filed) [all parties who have children under age 18 must attend this class]
- Parenting Proceeding Affidavit (if not already filed)
- Shared Parenting Plan (if you have one)

You must also bring verification of your income. The Judge or magistrate may also ask you questions about aspects of your judgment entry or agreement for which you may need documentation.

Contested Divorce:

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If your spouse files an Answer, or an Answer and Counterclaim, the case is considered contested. The case will then proceed to pretrial and, eventually trial. Contested cases can be very time consuming and expensive. If the parties can settle all issues they will sign a separation agreement” or an in-court agreement which states the terms of the settlement which the court will order into effect.

Children of the Marriage:

Will the court decide issues of parenting, custody, etc through the divorce proceedings?

Yes, the court can and will decide these issues. See [R.C. 3105.21](#)

What does the court consider in making a determination on parental rights and responsibilities (custody)?

The “Best Interests of the Child” standard is used by the Court to make all parenting decisions, per. [R.C. 3105.21](#)

What are the allocations of parental rights and responsibilities (ie custody arrangements) that I can request?

There are two common parenting plans: 1) shared parenting and 2) legal custodian and visitation (supervised or unsupervised).

What is shared parenting?

The parents involved agree on a shared parenting plan where the court endorses a schedule for the parents to divide parenting rights and responsibilities for the child(ren). For more information about shared parenting plans, see [R.C. 3109.04](#)

How does the court decide whether shared parenting is in the best interests of the child?

In general, the court will consider whether the parents can work together as a team to share parenting responsibilities, including the following:

- 1) Parents appear able to cooperate in making decisions about the child(ren)?
- 2) Each parent willing and able to encourage the child’s positive relationship with the other parent?
- 3) Any history of, or potential for, abuse, domestic violence or parental kidnapping?

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- 4) Parents' residence close enough to allow shared parenting to work?
- 5) Recommendation of the child's Guardian Ad Litem, if one has been appointed.

What is sole custody?

A sole custodian is the parent who has sole custody of the child(ren). The other parent is given visitation rights which are scheduled and pre-determined by the parties and/or the court. For more information, see [R.C. 3109.051](#)

How does the court decide who will be legal custodian?

The court will consider the facts of the case and the best interests of the child(ren) under [R.C. 3109.051](#), including:

- 1) Parents' wishes with regard to the child(ren)
- 2) Wishes of the child(ren), as expressed to the court [children rarely talk to the court and have no right to choose the parent they want to live with]
- 3) Child's relationships with parents, siblings, and other significant individuals
- 4) Nature of the child's adjustment to home, school, and community
- 5) Mental and physical health of all persons involved
- 6) Which parent will better follow court-ordered schedules of parenting time
- 7) Parent's record of paying child support
- 8) Either parent's conviction of child abuse or neglect and any evidence regarding such mistreatment
- 9) Evidence that either parent continuously and willfully denied the other parent's right to court-ordered parenting time
- 10) Evidence that the other parent has established or is planning to establish a residence outside of Ohio.

In crafting our allocations of parental rights and responsibilities, must we use the Standard Parenting Guidelines?

No. Though each court of common pleas is required to adopt standard parenting time guidelines, both parents and the court are free to deviate from them. [R.C. 3109.051\(F\)\(2\)](#)

For a copy of the Standard Parenting Guidelines of Cuyahoga County, please see the following link: http://domestic.cuyahogacounty.us/pdf_domestic/en-US/Parenting/PARENTING%20TIME%20GUIDELINES%20EFF%203-1-2014_1.pdf

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At what age can my son or daughter choose which parent he or she wants to live with?

Ohio law does not give the child a right to decide with which parent he or she will reside; instead, the court will decide where the child will reside given what the court believes are in the child's best interests after a custody evaluation and considering the recommendation of a guardian ad litem, if one has been appointed.

Can I be awarded Child Support?

Depending on how parental rights and responsibilities are allocated between you and your spouse, you can be awarded child support by the court. [R.C. 3119.01-3119.24](#)

What will the court look at to determine my Child Support award?

Child support orders are set according to the "Ohio Child Support Guidelines" in [R.C. 3119.01-3119.27](#). The use of these guidelines is mandatory for the establishment of a child support award. [R.C. 3119.021](#)

Child support is computed using Child Support Computation Worksheets (see [R.C. 3119.022](#) and [R.C. 3119.023](#)) and tables that set forth the economic cost of raising children. These Worksheets and tables include: 1) "Basic Child Support Schedule" (see [R.C. 3119.021](#)) and, 2) the "Cash Medical Support Schedule."

In making its calculation, the court is free to deviate from any calculations in worksheets prepared by the parties. [R.C. 3119.022](#).

Can the court deviate from the Child Support award mandated by the Worksheet?

Yes. Under appropriate circumstances the court may "deviate" from the "presumed" correct amount. The burden of proving why a deviation is appropriate rests on the parent seeking the deviation. The standard by which a court determines if a deviation is appropriate is articulated in [R.C. 3119.04](#), and the factors to be considered are in [R.C. 3119.23](#). The amount of the deviation the court grants, if there is a valid reason to deviate, depends on the particular facts and circumstances of the case.

Can I be awarded Child Support before the divorce?

If you and your spouse have separated but have not started a legal action yet, contact the local Child Support Enforcement Agency (CSEA). Your CSEA can help you establish a support order.

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Temporary child support can also be established during the TRO process at the outset of the divorce proceedings.

What types of support could I receive?

A support order has several components:

- Monetary support order, which is an order for a spouse to pay certain direct expenses, such as mortgage, utilities, day care, etc.
- An order to carry accessible private health insurance if the cost is reasonable,
- An order to pay cash medical support if accessible private health insurance is not available at a reasonable cost,
- An order to pay health care expenses that are not covered or reimbursed by insurance and are not covered by cash medical support, and
- An allocation of the right to claim the federal dependency exemption when filing taxes.

Why does the Child Support order have to contain medical support, and what is “cash medical support”?

All support orders must include medical support. See [R.C. 3119.30](#). The court is required to order a parent to purchase health insurance to cover the children if the insurance is:

- private (not publicly funded)
- primary care services provided through the insurance are accessible to the child, and
- the cost is reasonable to the parent ordered to purchase it.

"Accessible" means primary care services are available within 30 miles of the residence of the child. If residents in the geographic area generally travel farther than 30 miles to obtain primary care services, then that is also considered accessible for purposes of the statute.

The cost is considered reasonable if the cost to the parent who will be ordered to carry coverage does not exceed 5% of that parent's annual gross income. If the cost is more than this amount, the court might still order a parent or both to buy the coverage.

If there is no private health insurance the court will require the parent paying child support to pay an additional amount to go toward health insurance, called "cash medical support". See R.C. [R.C. 3119.29](#) for the statutory definition.

Can I pay child support to my former spouse directly?

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Ohio law requires that child support be paid through the child support enforcement agency (for example: Cuyahoga Job and Family Services-Office of Child Support Services (CJFS-OCSS)). Neither the court nor the parties can waive this requirement. Child support that is not paid through the agency is presumed to be a gift.

Property and Debts of the Marriage:

What is marital property?

Marital property is defined in [R.C. 3105.171\(A\)\(3\)\(a\)](#) to be the following:

- 1) Real and personal property that is owned by either or both of the spouses;
- 2) Interest that either or both of the parties have in any real or personal property;
- 3) Income and appreciation of separate property resulting from the labor, financial or in-kind contribution of either or both of the parties during the marriage;
- 4) A deferred compensation program of either of the spouses

What is separate property?

Separate property is defined in [R.C. 3105.171\(A\)\(6\)\(a\)](#) to be “all real and personal property and any interest in real or personal property that is found by the court” to fall into any of these categories:

- 1) An inheritance by one spouse by bequest, devise or descent during the marriage
- 2) Real or personal property or interest in such that was acquired by one spouse before the marriage
- 3) Passive income and appreciation one spouse acquired from separate property during the marriage
- 4) Real or personal property or interest therein acquired by one spouse after legal separation
- 5) Real or personal property or interest therein that is excluded by an antenuptial agreement
- 6) Compensation to a spouse for their personal injury
- 7) Gifts of real or personal property or an interest therein made after the date of marriage and was clearly given to only one spouse.

How will the court divide the marital and separate property?

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The standard used to divide marital property in Ohio courts is the “equitable division of the assets” standard. [R.C. 3105.171\(C\)](#)

In determining what is “equitable” the court will consider the factors in [R.C. 3105.171\(F\)](#), which include:

- 1) Duration of the marriage
- 2) Assets and liabilities of the spouses
- 3) Desirability of awarding the family home to the spouse with custody of the children of the marriage
- 4) Liquidity of property to be distributed
- 5) Economic desirability of maintaining intact an asset
- 6) Tax consequences of property division
- 7) Costs of sale of an asset, if it must be sold
- 8) Division of property made in a separation agreement
- 9) Retirement benefits of the spouses, excluding social security benefits.
- 10) Any other factor the court feels is relevant

Generally, the court will return all separate property to the spouse that brought it into the marriage. [R.C. 3105.171\(D\)](#)

Spousal Support:

What is spousal support?

Ohio's current law defines spousal support as "the payment or payments to be made to a spouse or former spouse, or to a third party for the benefit of a spouse or a former spouse, that is both for sustenance and for support of the spouse or former spouse." [R.C. 3105.18\(A\)](#)

Can I get spousal support as a part of my divorce?

Possibly. After property has already been distributed in a divorce, upon the request of either party, the court “may award reasonable spousal support.” An award of spousal support can be made in “real or personal property, or both” or it can be made in monetary payments. [R.C. 3105.18\(B\)](#)

How will the court determine whether I can get spousal support?

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In order to award spousal support, it must be appropriate and reasonable. In order to make these determinations in addition to deciding “the nature, amount, and terms of payment, and duration of spousal support,” the court will consider a variety of factors articulated in [R.C. 3105.18\(C\)](#), including:

- The income of the parties
- The relative earning abilities of the parties
- The ages, physical, mental, and emotional conditions of the parties
- Retirement benefits
- Duration of the marriage
- The extent to which one parent will be staying home with a child
- Standard of living established during the marriage
- Relative extent of education of the parties
- Relative assets and liabilities of the parties
- Contribution of each party to the education of the other
- Time and expense necessary for one spouse to obtain necessary education or training so that they can gain appropriate employment
- Tax consequences of spousal support
- Lost income production capacity that resulted from the party’s marital responsibilities.

Can I pay spousal support to my former spouse directly?

The court may allow spousal support to be paid directly if there are no minor children and the parties agree. [R.C. 3121.441](#)

Potential Issues:

What can I do if my former spouse is not complying with a court order?

The matter can be brought to the attention of the court by way of a Motion to Show Cause. The motion must identify the specific court order that has been violated. Further, please visit the following link with instructions for Cuyahoga County on completing and filing a motion to show cause: http://domestic.cuyahogacounty.us/pdf_domestic/en-US/Misc/MotionShowCause.pdf

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What can I do if my former spouse has been found in contempt of court and has not met the condition to purge the contempt?

Please refer to the judgment entry that finds your former spouse in contempt.

When and how in the divorce proceedings can I change my last name?

In order to restore a party's maiden name at the end of the divorce proceedings, the party must request that a provision for the name change be included in the divorce degree or separation agreement (whichever is relevant in the case). [R.C. 3105.16](#).

Might I be required to attend mediation at some point?

Possibly. Per [R.C. 3109.052](#), you and your spouse might be required by the judge to attend court-mandated mediation if you have one or more children and you and your spouse cannot agree on the allocation of parental rights and responsibilities and/or a specific parenting time schedule. Though the statute allows the court to require mediation in this context, it will, ultimately, be up to the court to determine whether to mandate it. For an example, see Cuyahoga County Domestic Relations Court [Rule 32](#). To determine if your court offers mediation services, please consult this [Directory of Court Mediation Services](#).

What issues will be mediated?

The only issue that will be mediated is the allocation of parental rights and responsibilities and/or the parenting schedule.

What happens in mediation?

In mediation, a third-party neutral—the mediator—assists you and your spouse in reaching an agreement on the allocation of parental rights and responsibilities and/or a parenting schedule. Though the mediator will be there to assist you, the goal is to provide a comfortable, safe environment for you and your spouse to drive the process and reach an acceptable agreement together. The mediator will attempt to reduce hostility and foster rational discussion.

What if we cannot reach an agreement?

If you and your spouse cannot reach an agreement, then litigation proceeds as before. However, through the mediation process, it is possible that you and your spouse now have a better

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understanding of each others' perspectives, and thus, are now closer to reaching an eventual resolution in the litigation process.

How do I get a Dissolution of Marriage?

Preliminary Matters:

What is the legal definition of "dissolution"?

A dissolution results when both parties reach a jointly accepted agreement on two matters: 1) that they want to terminate the marriage, and 2) how to resolve all joint responsibilities, such as finances, children, etc . Unlike a divorce, grounds for the termination are not at issue since both parties agree that the termination is necessary. [R.C. 3105.61](#). A dissolution of marriage will likely eliminate much of the divorce process and expense.

Do I have to be an Ohio resident to file for a dissolution in Ohio?

Yes, you must be an Ohio resident for at least six (6) months to file for a dissolution in Ohio, per [R.C 3105.62](#). Further, per [Civ.R. 3\(B\)\(9\)](#), you must have lived in the relevant county for at least ninety (90) days in order to file for dissolution in that county. Both parties in a dissolution will be considered defendants.

Starting the Process:

What do I do first?

A dissolution petition is not filed with the court until the parties have reached an agreement (separation agreement) on all relevant issues, including property division, division of parenting responsibilities, and child support. [R.C. 3105.63](#)

Where do I file papers?

Residents of Cuyahoga County:

All Domestic Relations Court pleadings and motions are filed with the Domestic Relations Division of the Clerk of Court, room 35, ground floor, the Cuyahoga County Courthouse,

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located at 1 W. Lakeside Avenue., Cleveland, Ohio 44113. The Domestic Relations Court does not accept filings directly or by fax.

Non-residents of Cuyahoga County:

If you are not a resident of Cuyahoga County, the Domestic Relations Court within your specific county will be the location to file your pleadings and motions.

What if I cannot afford to pay filing fees?

Here is a list of filing fee amounts for domestic relations cases in Cuyahoga County:

<http://domestic.cuyahogacounty.us/en-US/court-rule01.aspx>

Payment of the regular filing fees can be waived if the person who wishes to file is found to be indigent. However, in Cuyahoga County, a \$10.00 initial filing fee will be charged in all domestic relations actions, even if the part(ies) are indigent. Affidavits of Indigency are available through the Clerk of Courts, though a fillable copy is available here:

http://domestic.cuyahogacounty.us/pdf_domestic/en-US/Misc/Affidavit%20Waive%20Cost%20with%20Chart.pdf

What happens next?

When an agreement is reached and filed with the court, a hearing must take place within 30 to 90 days. To properly file your case, three items must be presented to the court: a petition for dissolution, a waiver of service of process (sometimes included as a paragraph within the petition), and a separation agreement. [R.C. 3105.64](#)

Once the proper time period has passed, both parties must appear before the court and swear the following under oath: they voluntarily entered into the separation agreement, they are satisfied with the terms of the agreement and that they both seek the dissolution of the marriage. [R.C. 3105.64](#). If all the proper requirements are met, the court will approve the petition for dissolution and validate and incorporate the settlement agreement. [R.C. 3105.65\(B\)](#)

What documents do I need to bring for my dissolution hearing?

You will need the Judgment Entry of Dissolution and signed separation agreement.

If you have children you will also need:

- Health Insurance Affidavit

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- Child Support Computation Worksheet
- Parent Education Seminar certificate (if not already filed)
- Parenting Proceeding Affidavit (if not already filed)
- Shared Parenting Plan (if you have one)

Potential Issues:

When and how in the dissolution proceedings can I change my last name?

In order to restore a party's maiden name at the end of the dissolution proceedings, the party must request that a provision for the name change be included in the separation agreement.

[R.C. 3105.16.](#)

My spouse has filed for divorce; how do I respond?

Do you intend to contest the divorce?

NO:

You do not file anything. If you (as the "Defendant") fail to file an Answer after being served with the Complaint, an "uncontested" trial will be scheduled. Your spouse (the "Plaintiff") must testify about the grounds alleged for the divorce and provide evidence about all other related topics (including the value of property, the needs of the children, etc). However, be aware that if you do not file an Answer, the court will generally resolve the issues in the divorce according to your spouse's request. This process takes about two months.

YES:

If you decide to contest the divorce, you (as the "Defendant") will file an Answer. If you feel that your spouse is at fault for the divorce, you will file an Answer **and** Counterclaim. Either way, the case is considered "contested". [R.C. 3105.17](#) "Contested" cases can be very time consuming and expensive.

Where do I file papers?

Residents of Cuyahoga County:

All Domestic Relations Court pleadings and motions are filed with the Domestic Relations Division of the Clerk of Court, room 35, ground floor, the Cuyahoga County Courthouse,

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How do I get an annulment?

What is the legal definition of an annulment?

An annulment terminates the marriage and treats it as if it never happened, since the marriage was void from the beginning. However, it only applies in limited circumstances and within limited timeframes.

How do I qualify for an annulment?

To file for an annulment, one of the causes articulated in [R.C. 3105.31](#) must be met at the time of the marriage, and it must be asserted in the Complaint for Annulment. These causes include:

- The party seeking to annul the marriage was under age (males under 18 and females under 16) at the time of the marriage, unless before coming of age, the parties cohabitated together as husband and wife.
- Either party was still legally married to a former, living spouse.

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- Either party has been adjudicated to be mentally incompetent, unless after being restored to competency, the parties cohabitated together as husband and wife.
- The consent to marriage of either party was obtained by fraud, unless after knowing of the fraud, the parties cohabitated together as husband and wife.
- The consent to the marriage was obtained by force, unless the parties afterwards cohabitated together as husband and wife.
- The marriage between the parties was never consummated.

Your spouse may or may not contest a Complaint for an annulment.

What are the timing requirements for filing for an annulment?

In order to file for an annulment of a marriage, the timing requirements of [R.C. 3105.32](#) must be met. These timing requirements are based on the cause of annulment asserted.

Can I get spousal support as a part of an annulment?

No. Spousal support does not apply to annulments.

If my marriage is annulled, how do I return to my maiden name?

If a marriage is properly annulled, the court has the discretion to restore a maiden name, regardless of whether it was requested by the parties in their complaint. [R.C. 3105.34](#)

FILING FOR CUSTODY AND CHILD SUPPORT—UNMARRIED PARENTS

I am an unmarried parent; how do I file for custody of my child?

In Ohio, there is a presumption under [R.C. 3109.042](#) that an unmarried woman who gives birth to a child is “the sole residential parent and legal custodian of the child until a court of competent jurisdiction issues an order” saying otherwise. Accordingly, if you are an unmarried mother, you presumptively have sole custody of your child.

However, if the father of the child has acknowledged paternity, he is entitled to file a complaint requesting parenting time with the child. These parenting rights will be granted if the court determines that they are in the best interests of the child. [R.C. 3109.12](#).

Can I file for Child Support?

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Has a parental relationship (ie paternity or maternity) of the child been established?

A parent and child relationship between the child and his/her mother is established given proof that the mother gave birth to the child in question (ie mother's name is on the birth certificate).

See [R.C. 3111.02](#)

A parent and child relationship between the child and his/her father is presumed if paternity is acknowledged by the father (ie signed the birth certificate, paternity acknowledged via affidavit with the office of child support, or has been shown, through a genetic test, to be the father of the child). See [R.C. 3111.03](#)

If a parental relationship has been established, can I file for child support?

Yes. You can file for child support from your co-parent, as that individual assumes the parental duty of support for that child. See [R.C. 3111.77](#) and [R.C. 3103.031](#)

How do I file for child support?

You can file for child support in one of two ways (see [R.C. 3111.78](#)):

- 1) If the presumption of the parent-child relationship is not based on an acknowledgement of paternity, then you can file a complaint for child support in the juvenile court, OR
- 2) For all cases, you can establish a child support obligation through the local child support enforcement agency (CSEA).

My child's other biological parent has filed for custody; what should I know to properly respond?

What does the court consider in making a determination on parental rights and responsibilities (custody)?

The "Best Interests of the Child" standard is used by the court to make all parenting decisions, per [R.C. 3109](#)

What are the allocations of parental rights and responsibilities (ie custody arrangements) that I can request?

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There are two common parenting plans: 1) shared parenting and 2) legal custodian and visitation (supervised or unsupervised).

What is shared parenting?

The parents involved agree on a shared parenting plan where the court endorses a schedule for the parents to divide parenting rights and responsibilities for the child(ren). For more information about shared parenting plans, see [R.C. 3109.04](#)

How does the court decide whether shared parenting is in the best interests of the child?

In general, the court will consider whether the parents can work together as a team to share parenting responsibilities, including the following:

- 1) Parents appear able to cooperate in making decisions about the child(ren)?
- 2) Each parent willing and able to encourage the child's positive relationship with the other parent?
- 3) Any history of, or potential for, abuse, domestic violence or parental kidnapping?
- 4) Parents' residence close enough to allow shared parenting to work?
- 5) Recommendation of the child's Guardian Ad Litem, if one has been appointed.

What is residential parent/visitation?

The legal custodian is the parent who has sole custody of the child(ren). The other parent is given visitation rights which are scheduled and pre-determined by the parties and the court. For more information, see [R.C. 3109.051](#)

How does the court decide who will be legal custodian?

The court will consider the facts of the case and the best interests of the child(ren) under [R.C. 3109.051](#), including:

- 1) Parents' wishes with regard to the child(ren)
- 2) Wishes of the child(ren), as expressed to the court
- 3) Child's relationships with parents, siblings, and other significant individuals
- 4) Nature of the child's adjustment to home, school, and community
- 5) Mental and physical health of all persons involved
- 6) Which parent will better follow court-ordered schedules of parenting time
- 7) Parent's record of paying child support

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- 8) Either parent's conviction of child abuse or neglect and any evidence regarding such mistreatment
- 9) Evidence that either parent continuously and willfully denied the other parent's right to court-ordered parenting time
- 10) Evidence that the other parent has established or is planning to establish a residence outside of Ohio.

In crafting our allocations of parental rights and responsibilities, must we use the Standard Parenting Guidelines?

No. Though each court of common pleas is required to adopt standard parenting time guidelines, both parents and the court are free to deviate from them. [R.C. 3109.051\(F\)\(2\)](#)

For a copy of the Standard Parenting Guidelines of Cuyahoga County, please see the following link: http://domestic.cuyahogacounty.us/pdf_domestic/en-US/Parenting/PARENTING%20TIME%20GUIDELINES%20EFF%203-1-2014_1.pdf

At what age can my son or daughter choose which parent he or she wants to live with?

Ohio law does not give the child a right to decide which parent that he or she will reside with, though this can be given weight in the court's decision. Instead, the court will decide where the child will reside given what the court believes are in the child's best interests.

MODIFICATION OF CHILD SUPPORT AWARD:

How do I change my child support obligation?

A parent may request a modification of a child support order by contacting the local Child Support Enforcement Agency (CSEA) OR by filing a motion in the relevant Domestic Relations or Juvenile Court case number.

When would I apply for modification through the courts?

If the child support order originated from Juvenile or Domestic Relations court, you have the option to file for a modification of the order in court, or you can file for a modification with the local CSEA.

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If your child support order originated from your local CSEA, then you should ask the agency to modify it.

What are the differences between applying for modification through CSEA and applying through the courts?

CSEA:

PROS:

- You do not need a lawyer
- No filing fee
- May not have to go to a hearing
- CSEA will notify the other parent of your application
- CSEA can get wage information about both parents (exception: SSD, Unemployment, Workers' Compensation, SSI, OWF, or any other non-W2 income)

CONS:

- If your support order is less than three (3) years old and you lose your job, you cannot apply to CSEA for a modification until you have been out of work for thirty (30) days.
 - EXCEPTIONS:
 - Either party has experienced a 30% change in income
 - Either party was under-employed at the time the order was set and is now employed full time
 - You have been laid off or fired for at least 30 days
 - You have begun receiving SSI
 - You have become disabled and are now receiving SSD
 - You want to obtain health insurance coverage for the children.

Court:

PROS:

- You can apply to the courts for a modification at any time—no waiting period if you lose your job.
- If you are currently involved in a divorce or other family matters in the courts, you will already have to go to the court anyways.
- If you request other relief in addition to modification of support (ie change in custody or visitation), you must go to the court.
- You can appear before a judge to tell your side of the story.

CONS:

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- Though a lawyer is not required, you are advised to have one.
- Filing fee
- Will likely have to attend a hearing

What is the standard for modification of the support award?

A child support order can be modified if the parent asking for the modification can show a substantial change in circumstances has occurred since the order was established or last modified. According to [R.C. 3119.79](#), if the modified amount of child support would reflect more than 10% difference from the previous amount, then a change of circumstances has presumptively occurred. This is true no matter if you apply for the modification through the court or through the CSEA.

The order can also be modified if the court determines that the previous order does not adequately provide for the health care needs of the child, or if the court determines that a substantial change of circumstances has occurred which was not contemplated at the time of the prior order.

What will the court consider to determine whether the award should be modified?

If there has been a change of circumstances to justify a modification, then the court determine the amount of modification by using the same process as if establishing a support order. Child support orders are set according to the “Ohio Child Support Guidelines” set forth in [R.C. 3119.01-3119.27](#). The use of these guidelines is mandatory for the establishment or modification of all Ohio child support orders.

DOMESTIC VIOLENCE:

I am a victim of domestic violence; what are my rights?

Background:

What is domestic violence?

Domestic violence is defined in [R.C. 3113.31](#) as the occurrence of one or more of the following acts against a family or household member:

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- Attempting to cause or recklessly causing bodily injury;
- Placing another person by the threat of force in fear of imminent serious physical harm or committing a violation of [R.C. 2903.211](#) or [R.C. 2911.211](#);
- Committing any act with respect to a child that would result in the child being an abused child, as defined in [R.C. 2151.031](#).

Accordingly, courts can provide assistance to victims of domestic violence only if an emergency situation exists and you or a household member are in danger of domestic violence.

Do threats count as domestic violence?

Yes. Domestic violence is not only limited to incidents of physical abuse. Domestic violence includes threats of force that place a household member in fear of imminent serious physical harm.

Who is included as a “Family or Household Member”?

“Family or household member” means any of the following, per [R.C. 3113.31\(A\)\(3\)](#):

- Any of the following who is residing with or has resided with the abuser:
 - A spouse, a person living as a spouse, or a former spouse of the abuser;
 - A parent or a child of the abuser, or another person related by consanguinity or affinity to the abuser;
 - A parent or a child of a spouse, person living as a spouse, or former spouse of the abuser, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the abuser.
- The natural parent of any child of whom the abuser is the other natural parent or is the putative other natural parent

Is my boyfriend or girlfriend considered a “Family or Household Member”?

It depends. Household member does not mean a boyfriend or girlfriend unless the boyfriend or girlfriend lives with you as a spouse or used to live with you as a spouse or is the parent of your child or children.

If I or another member of my household is a victim of domestic violence, what should I do?

If someone who is a household member physically hurts or tries to physically hurt you or someone else in your household, the police should be called **immediately**. If you have nowhere

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safe to go, you may need to go to a shelter. The Battered Women's Hotline is open 24 hours a day: Battered Women's Hotline (216) 391-4357 (HELP)

If you call the police, they will determine if anyone should be arrested. Either the police will or you can contact the Prosecutor's Office, and that office will determine whether charges should be brought against the abuser.

If I am a victim of domestic violence, what assistance can the courts provide me to stay safe?

Whether someone is charged with a crime or not, you can ask the court for what is called a **Domestic Violence Civil Protection Order (CPO)**. A CPO is an order of the Domestic Relations Court that can do the following:

- Can keep the abuser away from you and your other household members,
- Can require the abuser to leave your home immediately and
- Can order the abuser not to have any contact with you or your other household members.

A CPO can be effective for up to five years, but the duration of the CPO is left to the discretion of the court.

How do I get a Civil Protection Order (CPO)?

You file a Petition for Domestic Violence Civil Protection Order, and there is no filing fee to do so.

After the Petition is filed, a hearing will be held before a Magistrate. The court may issue an emergency order (the first hearing). Another hearing will be set in seven to ten court business days whether or not an emergency order issues (the second hearing). [R.C. 3113.31\(D\)](#)

Will my abuser come to court?

Maybe. The person accused of domestic violence will be given notice, as soon as possible, that the Petition has been filed.

Both parties will be notified of the second hearing and will have an opportunity to present evidence. A party may represent him or herself in the proceeding or have an attorney, however, the court will not appoint attorneys for unrepresented parties. The person accused of domestic violence is not required to come to court for the hearing to go forward.

What will happen during the second hearing?

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At the second hearing you will again have to prove that the Respondent physically hurt you or tried to physical hurt you, and that you and/or other household members are in immediate danger. [R.C. 3113.31\(D\)](#)

What will happen if the CPO is granted?

The CPO is a valid Court Order as soon as it is issued. Accordingly, the abuser may be ordered to leave your shared home immediately, and/or the abuser may be ordered to stay away from you or other household members. See [R.C. 3113.31\(E\)](#)

If the abusive party does not follow the terms of the CPO, he or she can be arrested and charged with a crime. [R.C. 3113.31\(L\)](#)