



A Citizen's Guide to the Montgomery County Common Pleas Court: Domestic Relations Division



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**Denise L. Cross, Administrative Judge
Timothy D. Wood, Judge**

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THE COURT

The Montgomery County Domestic Relations Court is a division of the Court of Common Pleas. It is a civil court that handles family law cases.

The cases and motions in Domestic Relations Court often involve complicated legal issues. The laws and rules under which the Court must operate continually change. Everyone appearing in the Court is urged to hire an attorney who is familiar with family law to represent him or her.

Do I Need A Lawyer?

As with any court, citizens are not required to have an attorney, and therefore may represent themselves if they choose. Persons who choose to represent themselves will be held to the same standards, and must meet the same legal requirements with respect to the form, content and filing of documents; and the introduction of evidence at trial as an attorney must meet.

No employee of the Court, nor of the Clerk of Courts, may provide legal advice to a party. To assist with obtaining counsel, or in obtaining legal advice from an appropriate agency, a list of various sources of information is provided on the last page of this pamphlet.

Several organizations are available to assist when an attorney cannot be afforded. These include central intake at the Legal Aid Society of Western Ohio (888) 534-1432 and the University of Dayton Law Clinic (937) 229-3817. If a case involves a possible finding of contempt, which could result in a jail sentence, the Public Defender (937) 225-4652 may represent those individuals who meet the financial qualifications set forth by that office.

How Do I Communicate With The Court?

Requests to the Court must be in formal writings called complaints, petitions and/or motions. All paperwork must be filed with the Clerk of Courts and served on the opposing party in accordance with the Ohio Rules of Civil Procedure. The Court will rule on all complaints, petitions and/or motions. In some cases a hearing is required, in others the Court can rule based upon the filed paperwork.

The opposing party must be notified of the hearing date so that he or she can respond to all filings. **Neither the Judge nor any of the Magistrates may discuss any case with the parties except at the hearing.**

TYPES OF CASES THE COURT HANDLES

The Montgomery County Domestic Relations Court hears the following types of cases:

- A **DIVORCE** is where one spouse files a complaint to end the marriage. The Court decides issues of allocation of parental rights and responsibilities (formerly “custody”), parenting time, support, division of property, etc.;
- A **DISSOLUTION** is where both parties enter into a Separation Agreement addressing all issues concerning the termination of their marriage. A petition is filed with the court and the Separation Agreement is attached. Both parties must appear at the final hearing. Neither party needs to state grounds against the other;
- A **LEGAL SEPARATION** is similar to a divorce except the marriage is not ended even though property can be divided. The Court can make orders for allocation of parental rights and responsibilities and support;
- An **ANNULMENT** is where one spouse files a complaint to have the Court declare that the marriage was void;
- A **DOMESTIC VIOLENCE** case is a very special type of case where a family or household member has either threatened to commit or has committed an act of violence against another family or household member. The Court issues a civil protection order to protect the victim if the Court determines that an act of domestic violence has occurred.

Other actions such as contempt proceedings, matters of allocation of parental rights and responsibilities, child support, parenting time and spousal support are also heard by the Court.

ELEVEN GROUNDS FOR DIVORCE:

1. Another spouse living at time of marriage (bigamy)
2. Willful absence for one year
3. Adultery
4. Extreme cruelty
5. Fraudulent contract
6. Gross neglect of duty
7. Imprisonment of adverse party
8. Lived separate and apart for a year without cohabitation

9. Incompatibility
10. Foreign or out-of-state divorce decree
11. Habitual drunkenness

SIX STATUTORY GROUNDS FOR ANNULMENT:

1. The party was underage
2. Former spouse still living and marriage still in force (bigamy)
3. Either party adjudged mentally incompetent
4. Fraud
5. Consent of marriage was obtained by force (duress)
6. Marriage was never consummated

WHAT HAPPENS AT COURT?

A divorce, legal separation or annulment case begins when the plaintiff - the party who starts the case - files a formal document called a Complaint. The defendant, the other party, may file an Answer with or without a counterclaim for divorce or other relief within 28 days. If an Answer is filed, then the case is *contested*. If an Answer is not filed, then the case proceeds as *uncontested*.

If a case is uncontested, both parties will receive an Order notifying them of a final hearing. This hearing will be approximately 6 weeks after the defendant was served with the Complaint. If the case is contested, both parties will receive an Order scheduling a Pretrial Conference and a final Trial. The Pretrial Conference is held with the assigned Judge. The attorneys and/or Pro Se litigants (persons who choose to represent themselves) meet with the Judge to determine what issues are contested and what issues are resolved. Many times parties are able to agree on all issues at their Pretrial and then proceed to have their final hearing.

Both parties are required by the Court to give the other party *Discovery*. This is the legal term for a process of exchanging information about the case. It often includes interrogatories (written questions), depositions (oral questions asked in front of a court reporter) and requests for documents (tax returns, bank accounts, pension information, etc.). A party that does not cooperate in providing Discovery can be sanctioned by the Court for not providing the information.

At trial, the plaintiff is the first to present his or her case. After the plaintiff's witnesses have been examined and cross-examined, the defendant presents his or her case. After all the evidence has been presented the Court will issue a final written decision.

WHAT FORMS ARE REQUIRED?

1. **QUESTIONNAIRE** (form DR-8): Is a social history of the parties required to be filed in divorce, legal separation, annulment, and dissolution cases as well as registration of a foreign decree. Copies Needed: original only
2. **AFFIDAVIT OF FINANCIAL DISCLOSURE** (form DR-10): Completion of this form satisfies the legal requirement that parties disclose all of their debts and assets to each other during the process of terminating their marriage. This form also helps the Court make an equitable distribution of those debts and assets. In divorce or legal separation cases the filing party's Affidavit is filed with the Complaint and the other party is required to file their Affidavit within 14 days even if they do not intend to file an Answer or other responsive pleading. Copies Needed: original and two copies.
3. **INFORMATION FOR PARENTING PROCEEDING AFFIDAVIT** (form DR-9): Completion of this form satisfies the legal requirement that the party notify the Court of all prior addresses of the minor child(ren), with whom the child(ren) resided, and any pending court cases that involve allocation of parental rights and responsibilities or abuse of the child(ren). This form must be filed with every case filed in this Court if there were child(ren) born of the marriage. Copies Needed: original and two copies.
4. **APPLICATION FOR CHILD SUPPORT (IVD) SERVICES** (form DR-17): This form is required with every new complaint for divorce, dissolution, legal separation or annulment even if there are no minor children.
5. **CHILD SUPPORT COMPUTATION WORKSHEET** (form DR-24 or form DR-25): This form, which is required by law, helps the Court determine the proper and fair amount of child support in each case. This form must be filed with all cases at the time of the final hearing if there were children born of the marriage who are minors. Copies Needed: original and three copies.

HOW MANY COPIES DO I NEED?

1. **DIVORCE, LEGAL SEPARATION OR ANNULMENT (NEW CASES) WITH NO CHILDREN**
 - Complaint: Original and 4 copies
 - Affidavit of Financial Disclosure: Original and 2 copies

- Questionnaire: Original only
- Instructions for Service Sheet: Original and 2 copies
- Motion for Restraining Order: Original and 4 copies
- Entry Granting Restraining Order: Original and 4 copies
- Decree: Original and 5 copies
- Affidavit of Poverty: Original and 5 copies
- Application for Child Support (IVD) Services: Original and 1 copy

2. DIVORCE, LEGAL SEPARATION OR ANNULMENT (NEW CASES) WITH CHILDREN

- Complaint: Original and 4 copies
- Information for Parenting Proceeding Affidavit: Original and 2 copies
- Affidavit of Financial Disclosure: Original and 2 copies
- Questionnaire: Original only
- Instructions for Service Sheet: Original and 2 copies
- Motion for Restraining Order: Original and 4 copies
- Entry Granting Restraining Order: Original and 4 copies
- Decree: Original and 5 copies
- Affidavit of Poverty: Original and 5 copies
- Request for Shared Parenting: Original and 3 copies
- Shared Parenting Plan: Original and 5 copies
- Decree of Shared Parenting: Original and 5 copies
- Child Support Computation Worksheet: Original and 3 copies
- Application for Child Support (IVD) Services: Original only

3. DISSOLUTION OF MARRIAGE (NEW CASE) WITH NO CHILDREN

- Petition for Dissolution of Marriage: Original and 4 copies
- Separation Agreement: Original and 4 copies
- Affidavit of Financial Disclosure: Each party must file their own Affidavit with 2 copies
- Questionnaire: Original only
- Final Decree of Dissolution: Original and 4 copies
- Application for Child Support (IVD) Services: Original only

4. DISSOLUTION OF MARRIAGE (NEW CASE) WITH CHILDREN

- Petition for Dissolution of Marriage: Original and 4 copies
- Separation Agreement: Original and 4 copies
- Affidavit of Financial Disclosure: Each party must file their own Affidavit with 2 copies
- Questionnaire: Original only
- Final Decree of Dissolution: Original and 4 copies
- Information for Parenting Proceeding Affidavit: Original and 2 copies
- Child Support Computation Worksheet: Original and 3 copies
- Application for Child Support (IVD) Services: Original only

5. DISSOLUTION OF MARRIAGE WITH SHARED PARENTING

- Petition for Dissolution of Marriage: Original and 4 copies
- Separation Agreement: Original and 4 copies
- Affidavit of Financial Disclosure: Each party must file their own Affidavit with 2 copies
- Questionnaire: Original only

- Final Decree of Dissolution: Original and 4 copies
- Information for Parenting Proceeding Affidavit: Original and 2 copies
- Child Support Computation Worksheet: Original and 3 copies
- Request for Shared Parenting: Original and 3 copies
- Shared Parenting Plan: Original and 5 copies
- Decree of Shared Parenting: Original and 5 copies
- Application for Child Support (IVD) Services: Original only

6. PETITION FOR DOMESTIC VIOLENCE

- Petition for Domestic Violence: Original and 9 copies
- Information for Parenting Proceeding Affidavit: Original and 2 copies
- Affidavit of Financial Disclosure: Original and 2 copies
- Description Sheet: Original and 2 copies

7. MOTIONS AND NOTICE OF HEARINGS

- Original and 4 copies
- See Mont. D.R. Rule 4.09 for additional guidance

8. SUBPOENA

- Original and 3 copies

CHILD SUPPORT

Child support in Ohio is set by what is known as the "child support guidelines." Ohio's guidelines were effective October 1, 1987. The guidelines are based on a concept known as the "income shares" model - which simply means that both parents' incomes are used to determine the amount of support that will be paid by one parent to the parent who is providing the primary residence for the child. The guidelines are established by law, but some adjustments may be made when justified by the

circumstances. The Child Support Reorganization Act of 2000, effective March 22, 2001, provides numerous changes to the guidelines.

All child support must be paid through the Ohio Child Support Payment Central (O.C.S.P.C.). Direct payments not made through the O.C.S.P.C. may be deemed a "gift" and no credit will be given to the payor for these payments. In addition, the law requires that support must be paid by wage withholding or bank account withholding to assure regular payments.

If child support or spousal support is not paid as ordered, then help may be obtained by filing a court action or by contacting the Montgomery County Child Support Enforcement Agency (C.S.E.A.) The Court does not appoint an attorney to represent you in this process. The services provided by the C.S.E.A. are free of charge to residents in the county who have submitted a written application for assistance.

Remedies that the C.S.E.A. can pursue include: the interception of tax refunds, seizure of bank accounts, driver's license revocation, professional license suspension, increases or decreases of child support and the filing of motions for contempt. The C.S.E.A. also can assist those seeking to enforce court orders from other counties or states, or enforce local orders against out-of-state payors.

ALLOCATION OF PARENTAL RIGHTS

Many of the divorce cases heard by the Court are settled, which means the parties - not the Court - decide the allocation of parental rights. While many cases involving children are resolved with one parent becoming the "residential parent and legal custodian" of the minor children and the other parent receiving parenting time, parties can create other arrangements more appropriate for their situation.

SHARED PARENTING

Ohio allows for the shared parenting of children, which is a form of joint custody. Shared Parenting may be requested by one or both parents by filing a workable "plan." The plan must include provisions covering all factors relevant to the case of the children, including physical living arrangements, child support obligations, child's medical and dental needs, school placement, allocation of parenting time and the child tax credit. If the Court finds that shared parenting is in the children's best interests, the shared parenting decree will be ordered at the time of a divorce or dissolution, or may be granted later as a post-decree change of custody.

CHILD ELECTIONS

There is no longer a "magic age" at which a child can choose which parent will be designated as the residential parent. Child custody "elections" were eliminated by law in April, 1991.

The Judge or Magistrate may interview the child privately to determine the child's "wishes and concerns" in any custody case. The Court may also appoint a Guardian Ad Litem. The Guardian Ad Litem will prepare an independent report for the Court with recommendations regarding the best interests of the child(ren) as to custody and parenting time.

PARENTING TIME

Both parents have a continuing right to see and be involved in their child's life. The Court created a Standard Order of Parenting Time to facilitate the non-residential parent's involvement. This Order seeks to divide the quality time available by taking into consideration school, the employment of the parents, weekends, holidays and vacations. Parenting time orders, of course, need to be varied to meet special needs and to accommodate cases where parents live long distances from each other.

The Montgomery County Domestic Relations Court regards parenting time and payment of child support to be important, necessary but separate issues. The rights of the child as well as the parent are involved. For this reason, the Court encourages parents to openly discuss all parenting issues and to work to make their joint relationship with their child a positive one filled with love and encouragement.

GRANDPARENT/RELATIVE VISITATION TIME

Sometimes after a divorce or dissolution, relatives such as grandparents feel left out of the life of the child. Under Ohio law, the importance of grandparents and others having a relationship with the child is recognized. These laws are intended to encourage extended family relationships in spite of the divorce. Grandparents and other relatives may request specific visitation rights by filing the appropriate motion with the Court.

PARENT EDUCATION SEMINAR

Although marriages end, parenting does not. All parents who have minor children and are in divorce, dissolution or legal separation cases, are required to attend the Parenting Seminar program provided by the Court: "Helping Children Succeed After Divorce." The Parent Education Seminar is a three-hour educational seminar focusing on the needs of children whose parents are divorced or in the process of getting a

divorce. It does not teach "parenting," but instructs parents on how to deal with the impact of divorce on the children.

One of the concerns of all divorcing or divorced parents is how the experience is affecting the children. The Parenting Seminar helps parents recognize the child's emotional needs and offers suggestions on behaviors to avoid actions that may be harmful to the children's adjustment.

During the seminar, parents will discuss:

- How families often experience divorce;
- Typical reactions of the children;
- Developmental needs of the children;
- Skills that help children to cope;
- Pitfalls to avoid
- Importance of timely child support payment.

The Parenting Seminar--an investment of three hours of time--has been found to pay dividends for many years to come. All participants receive a handbook and other materials to keep and use as a guide.

MEDIATION

Divorce can be a time of conflict and change for families. How these conflicts are resolved can influence a family's adjustment to divorce. Mediation is a way for family members to resolve conflicts during and after divorce. Mediation is a cooperative process with both parties resolving issues with the assistance of the mediator. Mediation can help increase trust and cooperation between parties.

How Does Mediation Work?

Both parties meet with the mediator and the session begins with an explanation of the mediation process. Several sessions may be needed to provide parties with enough time to complete the mediation process. The mediator assists the couple in identifying the issues, developing options and making constructive decisions for the future. The mediation process is confidential.

Domestic Relations Court has trained Mediators on staff and can make referrals to private mediators, such as psychologists and lawyers. Mediation can be court ordered or voluntary. If a case is pending in the Domestic Relations Court, the Judge or Magistrate may order the parties to mediation services. If parties voluntarily desire mediation services, they may request services by filing an Agreed Order for mediation.

What Issues Are Covered In Mediation?

Any issue may be referred to mediation including: parental responsibility (custody), time arrangement (parenting time), and property issues. Private mediators can be employed to mediate. Mediation Services in the Family Relations Department maintains an up-to-date list of mediators in the community. This list is available to all interested parties.

Is Mediation Considered Counseling?

Mediation is not a counseling process. It is an arena in which parties take the opportunity to discuss family issues. It is a process in which parents may make constructive choices for themselves and/or their children.

What Is The Outcome Of Mediation?

When a mutual decision is reached, an agreement will be prepared. It will describe the decisions the parties have reached regarding the family. Copies of the agreement will be provided for both parties, their attorneys, and the Court to review. The Court may adopt the agreement as an order of the court.

If a couple does not come to an agreement on any of the issues listed, then the only notice sent to the attorneys and the Court about the mediation process is the statement of "no agreement."

What Happens In The Mediation Session?

The Mediation session is a process in which individuals work out a mutual agreement on issues that are creating conflict for them with the aid of a Court Magistrate, a Court Mediator, and the parties' counsel, if so desired. The Mediation session is not a counseling process. It is an arena in which parties take the opportunity to discuss and resolve the needs of the restructured family.

The Mediation session starts with the explanation of the process. Through joint meetings with the mediators and counsel, if requested, both individuals are assisted to identify, discuss, negotiate and resolve the domestic relations issues. More than one session may be needed to provide the individuals with enough time to complete the process. The Mediation session process is confidential. If the parties don't reach agreement and an evidentiary hearing is required, a different magistrate will be assigned.

When an agreement is reached, the Mediator will formalize the decision of the parties by preparing an Agreed Order. Copies will be provided for both parties and their attorneys. If both parties do not come to an agreement on the issues, then only the statement of "no agreement" will be noted by the Court without any information from the process.

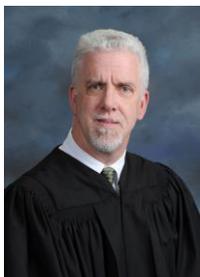
DOMESTIC VIOLENCE

The Domestic Relations Court takes all allegations of domestic violence very seriously. The Court has authority to issue Temporary Ex Parte Civil Protection Orders. These will be granted on the same day that the Petition for a Domestic Violence Civil Protection Order is filed if the testimony substantiates the petition. The Ex Parte Order may include other members of the household. A Civil Protection Order may be granted after both parties have had the opportunity to present their respective case before the Judge or Magistrate at a full hearing on the evidence. These orders may be in effect for up to five (5) years. Other issues such as temporary custody, child and spousal support and allocation of parenting time may be addressed at the full hearing.

The filing of a criminal domestic violence charge does not prevent the Domestic Relations Court from issuing Civil Protection Orders. If an act of domestic violence has been committed, the police should be called and an attorney or one of the services on the back of this pamphlet may be contacted for assistance in filing a domestic violence petition.

It is important to file Petition for Domestic Violence Civil Protection Order as soon as possible so the Court can issue the necessary protection orders immediately.

We hope this guide is helpful:



Timothy D. Wood,
Judge



Denise L. Cross,
Administrative Judge

WHERE TO GET HELP

FINDING A LAWYER

Dayton Bar Association Lawyer Referral (937) 222-6102
Ohio State Bar Association (614) 487-2050 or (800) 282-6556

LEGAL HELP FOR THE INDIGENT

Legal Aid of Western Ohio (888) 534-1432
University of Dayton Law Clinic (937) 229-3817
Public Defender's Office (937) 225-4652

CHILD SUPPORT ASSISTANCE

Support Enforcement Agency Investigations (937) 225-4600
Prosecutor's Office (937) 225-4892

CHILD SUPPORT PAYMENT INFORMATION

Ohio Child Support Payment Central (800) 860-2555

DOMESTIC VIOLENCE HELP

Artemis Center for Alternative to Domestic Violence (937) 461-4357
24-hour Domestic Violence Hotline (937) 222-SAFE
Preventing Abuse in the Home (937) 775-4300
YWCA Shelter and Housing (937) 222-6333

SOCIAL SERVICE EDUCATION AGENCIES

Children Services Board (937) 276-6121
Department of Job and Family Services (937) 225-6347
Family Services Association (937) 222-9481
Suicide Prevention Center (937) 299-7777

CLERK OF COURTS

Domestic Relations Cases (937) 225-4562

This Information Provided For You By:

Denise L. Cross, Administrative Judge
Timothy D. Wood, Judge