

# SHARED PARENTING BY THE NUMBERS

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# WHAT IS SHARED PARENTING?

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- **3109.04(A)(2)** the court may allocate the parental rights and responsibilities for the care of the children to **both parents** and issue a **shared parenting order** requiring the parents to **share all or some of the aspects of the physical and legal care** of the children in accordance with the approved **plan for shared parenting**.

# STATUTORY REQUIREMENTS

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- 3109.04 (G) sets forth the most general requirement for shared parenting, the filing of a motion for shared parenting

## 3109.04 (G)

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- Either parent or both parents ... may file a pleading or motion ... requesting ...shared parental rights and responsibilities...pursuant to division (A) of this section.
- If a pleading or motion requesting shared parenting is filed, the parent or parents filing the pleading or motion also shall file with the court a plan for the exercise of shared parenting by both parents.
- If each parent files a pleading or motion requesting shared parenting but only one parent files a plan or if only one parent files a pleading or motion requesting shared parenting and also files a plan, the other parent as ordered by the court shall file with the court a plan for the exercise of shared parenting by both parents.

## 3109.04 (G) TIMING REQUIREMENTS

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- The plan for shared parenting shall be filed
  - with the petition for dissolution of marriage, if the question of parental rights and responsibilities for the care of the children arises out of an action for dissolution of marriage,  
or
  - in other cases, at a time at least thirty days prior to the hearing on the issue of the parental rights and responsibilities for the care of the children.

# WHY 30 DAYS?

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- Due Process –
- **Harris v. Harris** (1995), 105 Ohio App.3d 671, 674, 664 N.E.2d 1304, 1306.
- “R.C. 3109.04(G) does not create an inflexible rule requiring all shared parenting plans to be submitted thirty days before trial -- a judge has discretion to grant leave to file an untimely plan, as long as due process rights are protected by allowing the opposing party adequate opportunity to address the issue and present relevant evidence at trial.”

# RULE OR GUIDELINE?

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- **Clouse v. Clouse**, 2009-Ohio-1301, 3<sup>rd</sup>, Seneca, #13-08-40, 3/23/09
- “In interpreting and applying the filing deadlines of R.C. 3109.04(G), courts have found the requirement not to be a rigid rule, but a flexible guideline to assure the opposing party is not prejudiced by failing to have an adequate opportunity to respond to the shared parenting plan.”

# DISCRETIONARY?

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- **Harris v. Harris** (1995), 105 Ohio App.3d 671:
- “In our view, [R.C. 3109.04(G)] was not intended by the legislature to divest the trial court of a reasonable degree of flexibility in considering shared parenting plans. Within its discretion, the trial court may relieve a party of the statutory deadline and grant a party's request to file a shared parenting plan within thirty days prior to the hearing. We also agree \* \* \* that the statutory deadline implicates [the party's] right to due process. The critical inquiry is thus whether [the party] had an adequate opportunity to respond to the plan so that her due process right was protected.”

# NINTH DISTRICT?

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**\*Awkward Silence\***

# STATUTORY REQUIREMENTS AND FACTORS

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- **3109.04(G)** A plan for shared parenting shall include provisions covering all factors that are relevant to the care of the children, including, but not limited to, provisions covering factors such as *physical living arrangements*, *child support* obligations, provision for the children's *medical and dental care*, *school* placement, and the parent with which the children will be physically located during legal *holidays*, school holidays, and other days of special importance

# COURT RESPONSIBILITY

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- If at least one parent files a motion for shared parenting and a plan, the court is to determine if shared parenting is in the best interest of the child
  - 3109.04 (F)(1) factors

## 3109.04 (F)(1) FACTORS

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- (a) The wishes of the child's parents regarding the child's care;
- (b) If the court has interviewed the child in chambers pursuant to division (B) of this section regarding the child's wishes and concerns as to the allocation of parental rights and responsibilities concerning the child, the wishes and concerns of the child, as expressed to the court;
- (c) The child's interaction and interrelationship with the child's parents, siblings, and any other person who may significantly affect the child's best interest;

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- (d) The child's adjustment to the child's home, school, and community;
  - (e) The mental and physical health of all persons involved in the situation;
  - (f) The parent more likely to honor and facilitate court-approved parenting time rights or visitation and companionship rights;
  - (g) Whether either parent has failed to make all child support payments, including all arrearages, that are required of that parent pursuant to a child support order under which that parent is an obligor;

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- (h) Whether either *parent or any member of the household* of either parent previously has been convicted of or pleaded *guilty to any criminal offense* involving any act that resulted in *a child* being an *abused* child or a *neglected* child;
  - whether either *parent*, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been *determined to be the perpetrator of the abusive or neglectful act* that is the basis of an adjudication;

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- whether either *parent or any member of the household* of either parent previously has been convicted of or pleaded *guilty* to a violation of section 2919.25 of the Revised Code *or a sexually oriented offense* involving a *victim* who at the time of the commission of the offense was a *member of the family or household* that is the subject of the *current proceeding*;

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- whether either *parent or any member of the household* of either parent previously has been convicted of or pleaded *guilty* to any offense involving *a victim* who at the time of the commission of the offense was a *member of the family or household* that is the *subject of the current proceeding* and *caused physical harm* to the victim in the commission of the offense; and
  - whether there is reason to believe that either *parent* has acted in a manner *resulting in a child being an abused child or a neglected child*;

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- (i) Whether the residential parent or one of the parents subject to a shared parenting decree has continuously and willfully denied the other parent's right to parenting time in accordance with an order of the court;
  - (j) Whether either parent has established a residence, or is planning to establish a residence, outside this state.

## 3109.04

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

## 3109.04 (F)(2) FACTORS

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- (a) The ability of the parents to cooperate and make decisions jointly, with respect to the children;
- (b) The ability of each parent to encourage the sharing of love, affection, and contact between the child and the other parent;
- (c) Any history of, or potential for, child abuse, spouse abuse, other domestic violence, or parental kidnapping by either parent;
- (d) The geographic proximity of the parents to each other, as the proximity relates to the practical considerations of shared parenting;
- (e) The recommendation of the guardian ad litem of the child, if the child has a guardian ad litem.

# 3119.23 FACTORS TO BE CONSIDERED IN GRANTING A CHILD SUPPORT DEVIATION

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- The court may consider any of the following factors in determining whether to grant a deviation pursuant to section 3119.22 of the Revised Code:
  - (A) Special and unusual needs of the children;
  - (B) Extraordinary obligations for minor children or obligations for handicapped children who are not stepchildren and who are not offspring from the marriage or relationship that is the basis of the immediate child support determination;
  - (C) Other court-ordered payments;

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- (D) Extended parenting time or extraordinary costs associated with parenting time, provided that this division does not authorize and shall not be construed as authorizing any deviation from the schedule and the applicable worksheet, through the line establishing the actual annual obligation, or any escrowing, impoundment, or withholding of child support because of a denial of or interference with a right of parenting time granted by court order;
  - (E) The obligor obtaining additional employment after a child support order is issued in order to support a second family;
  - (F) The financial resources and the earning ability of the child;
  - (G) Disparity in income between parties or households;

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- (H) Benefits that either parent receives from remarriage or sharing living expenses with another person;
  - (I) The amount of federal, state, and local taxes actually paid or estimated to be paid by a parent or both of the parents;
  - (J) Significant in-kind contributions from a parent, including, but not limited to, direct payment for lessons, sports equipment, schooling, or clothing;
  - (K) The relative financial resources, other assets and resources, and needs of each parent;

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- (L) The standard of living and circumstances of each parent and the standard of living the child would have enjoyed had the marriage continued or had the parents been married;
  - (M) The physical and emotional condition and needs of the child;
  - (N) The need and capacity of the child for an education and the educational opportunities that would have been available to the child had the circumstances requiring a court order for support not arisen;
  - (O) The responsibility of each parent for the support of others;
  - (P) Any other relevant factor.

# THE RELATIONSHIPS OF THE PARENTS AND THEIR ABILITY TO COOPERATE



# 3109.04(D)(1)(a) PROCESS

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- 3109.04(D)(1)(a)(i) One Plan, jointly made
- If the court determines that the plan is in the best interest of the children, the court **shall approve** it.
- If the court determines that the plan or any part of the plan is not in the best interest of the children, the court **shall require** the parents to make appropriate changes to the plan to meet the court's objections to it.
  - If changes to the plan are made to meet the court's objections, and if the new plan is in the best interest of the children, the court **shall approve** the plan.
  - If changes to the plan are not made to meet the court's objections, or if the parents attempt to make changes to the plan to meet the court's objections, but the court determines that the new plan or any part of the new plan still is not in the best interest of the children, the court **may reject** the portion of the parents' pleadings or deny their motion requesting shared parenting of the children and proceed as if the request in the pleadings or the motion had not been made.

## 3109.04(D)(1)(a)(ii) TWO MOTIONS AND TWO PLANS

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- Each parent makes a request or files a motion and each also files a separate plan,
- If the court determines that one of the filed plans is in the best interest of the children, the court **may** approve the plan.
- If the court determines that neither filed plan is in the best interest of the children, the court **may order** each parent to submit appropriate changes to the parent's plan or both of the filed plans to meet the court's objections, or may select one of the filed plans and order each parent to submit appropriate changes to the selected plan to meet the court's objections.
  - If changes to the plan or plans are submitted to meet the court's objections, and if any of the filed plans with the changes is in the best interest of the children, the court **may approve** the plan with the changes.
  - If changes to the plan or plans are not submitted to meet the court's objections, or if the parents submit changes to the plan or plans to meet the court's objections but the court determines that none of the filed plans with the submitted changes is in the best interest of the children, the court **may reject** the portion of the parents' pleadings or deny their motions requesting shared parenting of the children and proceed as if the requests in the pleadings or the motions had not been made.

# 3109.04(D)(1)(a)(ii) TWO MOTIONS BUT ONE PLAN OR ONE MOTION AND PLAN

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- The court **may** order the other parent to file a plan for shared parenting
- The court shall review each plan filed
- If the court determines that one of the filed plans is in the best interest of the children, the court may approve the plan.
- If the court determines that no filed plan is in the best interest of the children, the court may order each parent to submit appropriate changes to the parent's plan or both of the filed plans to meet the court's objections or may select one filed plan and order each parent to submit appropriate changes to the selected plan to meet the court's objections.
  - If changes to the plan or plans are submitted to meet the court's objections, and if any of the filed plans with the changes is in the best interest of the children, the court may approve the plan with the changes.
  - If changes to the plan or plans are not submitted to meet the court's objections, or if the parents submit changes to the plan or plans to meet the court's objections but the court determines that none of the filed plans with the submitted changes is in the best interest of the children, the court may reject the portion of the parents' pleadings or deny the parents' motion or reject the portion of the parents' pleadings or deny their motions requesting shared parenting of the children and proceed as if the request or requests or the motion or motions had not been made.

## 3109.04(D)(1)(b)

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- (b) The approval of a plan under division (D)(1)(a)(ii) or (iii) of this section is discretionary with the court. The court shall not approve more than one plan under either division and shall not approve a plan under either division unless it determines that the plan is in the best interest of the children. If the court, under either division, does not determine that any filed plan or any filed plan with submitted changes is in the best interest of the children, the court shall not approve any plan.

# FINDINGS AND CONCLUSIONS

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- When the court approves or disapproves a shared parenting plan, it is required to make findings of fact and conclusions of law in support of its decision. *Young v. Young*, 9<sup>th</sup> Dist. 2010-Ohio-3658, 2010 WL 3075601, Wayne, #09CA0067, 8/9/10

# INTERIM ORDER

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- After evidentiary hearing, an interim order must be issued which instructs the parties to bring the shared parenting plan into compliance with the court's wishes regarding its terms and conditions.
- The amended plan, if approved, is then incorporated into the final decision on the allocation of parental rights and responsibilities made by the court.

# MODIFICATION 3109.04(E)(2)(a) – the easy way

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- Both parents ... **jointly may** modify the terms of the plan ... at any time.
- The modifications to the plan shall be filed jointly by both parents with the court, and the court shall include them in the plan, unless they are not in the best interest of the children.
  - If the modifications are not in the best interests of the children, the court, in its discretion, may reject the modifications or make modifications to the proposed modifications or the plan that are in the best interest of the children.
  - Modifications jointly submitted by both parents under a shared parenting decree shall be effective, either as originally filed or as modified by the court, upon their inclusion by the court in the plan.
  - Modifications to the plan made by the court shall be effective upon their inclusion by the court in the plan.

# MODIFICATION 3109.04(E)(1)(a) – the hard way

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The court shall not modify a prior decree ...unless it finds,

- based on facts
    - that have arisen since the prior decree or
    - that were unknown to the court at the time of the prior decree,
  - that a change has occurred in the circumstances of
    - the child,
    - the child's residential parent, or
    - either of the parents subject to a shared parenting decree,
- and
- that the modification is necessary to serve the best interest of the child.

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- In applying these standards, the court shall retain the residential parent designated by the prior decree or the prior shared parenting decree, unless a modification is in the best interest of the child and one of the following applies:
    - (i) The residential parent agrees to a change in the residential parent or both parents under a shared parenting decree agree to a change in the designation of residential parent.
    - (ii) The child, with the consent of the residential parent or of both parents under a shared parenting decree, has been integrated into the family of the person seeking to become the residential parent.
    - (iii) The harm likely to be caused by a change of environment is outweighed by the advantages of the change of environment to the child.

# MODIFICATIONS BY COURT - 3109.04(E)(2)(b)

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- The court **may** modify the *terms* of the plan for shared parenting approved by the court and incorporated by it into the shared parenting decree
  - upon its own motion
  - at any time
  - if the court determines that the modifications are in the best interest of the children or upon the request of one or both of the parents under the decree.
- Modifications under this division may be made at any time.
- The court shall not make any modification to the plan under this division, unless the modification is in the best interest of the children.

# WHAT IS A TERM OF A SHARED PARENTING PLAN?

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- *Fisher v. Hasenjager*, 116 Ohio St. 3d 53, 2007-Ohio-5589
- *Dietrich v. Dietrich*, 9<sup>th</sup> Dist. 14CA26919, 2014-Ohio-4782
- *Gunderman v. Gunderman*, 9<sup>th</sup> Dist. No. 08CA0067-M, 2009-Ohio-3787
- *Porter v. Porter*, 9<sup>th</sup> Dist. No. 02CA21040, 2002-Ohio-6038
- *In re Jacobberger*, 11<sup>th</sup> Dist. No. 2003-G-2538, 2004-Ohio-6937
- *In re Daniel Beekman*, 4<sup>th</sup>, #03CA710, 3/04
- *CD v DL*, 2007-Ohio-2559, 12<sup>th</sup> Fayette #CA2006-09-037, 5/29/07

# TERMINATION - 3109.04 (E)(2)(c)

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- The court **may** terminate a prior final shared parenting decree that includes a shared parenting plan approved under division (D)(1)(a)(i) of this section upon the request of one or both of the parents or whenever it determines that shared parenting is not in the best interest of the children.
- The court **may** terminate a prior final shared parenting decree that includes a shared parenting plan approved under division (D)(1)(a)(ii) or (iii) of this section if it determines, upon its own motion or upon the request of one or both parents, that shared parenting is not in the best interest of the children.
- If modification of the terms of the plan for shared parenting approved by the court and incorporated by it into the final shared parenting decree is attempted under division (E)(2)(a) of this section and the court rejects the modifications, it may terminate the final shared parenting decree if it determines that shared parenting is not in the best interest of the children.

**SHARED PARENTING PLAN  
PROVISIONS THAT CAN LEAD TO  
FURTHER LITIGATION**

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# 1. AGREEMENTS TO AGREE.



## 2. RIGHT OF FIRST REFUSAL.



**Wanted: Dora's Mom  
Seeks Babysitter**

**Requirements:** Must be able to handle insanely inquisitive eight-year-old girl, twin babies and occasionally a nephew. Must be able to read a map and answer many thousands of questions each day.

**Specialties:** Must love animals, especially monkeys, iguanas and bulls. Light gardening encouraged, including maintenance of chocolate tree. Must NOT be afraid of bugs, even those that play mariachi music. Ability to play an instrument a plus; wooden flute preferred.

**Language:** English, Spanish (duh).

**Additional Info:** We do NOT condone swiping.

[nicumom.com](http://nicumom.com)

### 3. FAILURE TO MAKE A SCHOOL PLACEMENT.

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## 4. AGREEMENTS TO SHARE EXPENSES.

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## 5. EXTRACURRICULAR ACTIVITIES

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# ODDBALL CLAUSES FOR SHARED PARENTING PLANS

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- **Substitutions for child support clauses:**
  - Justification
  - Expense Sharing
  - Child's Checkbook
  - How to Pay

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- Post-Secondary Education
  - Residential Schedules
    - School and Summer
    - Preschool and School age
  - Relocation

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- Canceled Parenting Time
  - Holidays
  - Vacations
  - Decision-making

THANK YOU

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