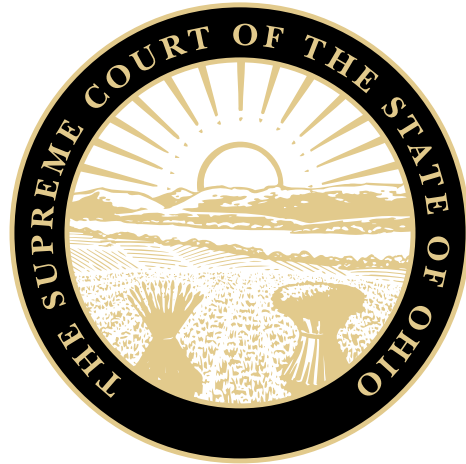




# Caregiver Notice and Right to be Heard







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# Caregiver Notice and Right to be Heard

September 2019

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## Introduction

When parents are unable to take care of their children, courts rely on caregivers to step in and keep the child safe. Caregivers, which can be kinship, non-relative and foster care, are tasked with meeting the child's medical, mental health, dietary and educational needs, while also assisting with the permanency goal. Often these children have been traumatized, placed in multiple homes and schools, or have special needs. Judicial officers require good information in order to make good decisions for these children and their families. Caregivers have the most detailed information about the child's needs, services, and daily progress. Ensuring notice is given to caregivers for every hearing and allowing the caregivers to be heard, enhances the judge's ability to make good decisions.

In 1997 the federal government recognized the importance of the caregiver's voice in hearings with the passage of the Adoption and Safe Families Act. This legislation required that caregivers are provided notice of and have a right to be heard at any hearing for the child. National best practices in the *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*, by the National Council of Juvenile and Family Court Judges also recommends caregivers be given notice of all hearings and be given the opportunity to be heard.

This toolkit is designed to provide an overview of the recommendations and best practices that courts may use to provide caregivers with notice and an opportunity to be heard at all hearings. The toolkit provides the rationale behind the recommendations and further resources for the court's reference. Several of the recommended practices can be used by the court as forms to ensure that caregivers are afforded notice and an opportunity to be heard at all hearings.







## Caregiver Notice and Right to be Heard Initiative

In 2013, the Subcommittee on Child Abuse, Neglect and Dependency of the Supreme Court of Ohio Advisory Committee on Children and Families was charged with developing procedures, rules, and other strategies to ensure that courts comply with requirements to provide notice and the opportunity to be heard to substitute caregivers in relation to juvenile court hearings on children in their care.

Throughout 2014 and the first months of 2015, a work group formed to direct this work, conducted research, and developed recommendations to ensure notice is properly provided to caregivers and to support caregivers in taking opportunities to be heard. As a first matter, the work group determined, through a review of federal guidelines and Ohio and other state laws implementing those guidelines, that Ohio's statutory notice directive is drafted in a way that is not only inconsistent with the guidelines, but could also lend an adversarial tone to court proceedings.

Under 42 U.S.C. § 675(5)(G), states are required to institute case review procedures that assure that the foster parents of a child and any preadoptive parent or relative providing care for the child are provided notice of, and a "right to be heard" in, any proceeding held with respect to the child. By contrast, under R.C. § 2151.424 (A), Ohio courts were required to provide relatives or foster caregivers notice of the date, time, and place of a hearing held in relation to a child in the relative's custody or foster caregiver's care. At the hearing, the foster caregiver or relative only had the right to "present evidence."

The work group discussed implications that the right to "present evidence" implies a formal, adversarial proceeding and, through a survey, learned that a number of Ohio courts have interpreted the law to require that foster caregivers be subpoenaed. The work

group concluded that the language and process can have a chilling effect on participation by caregivers and that, in many proceedings, a less formal means of providing relevant information to the court is preferable. In addition, because Ohio law does not provide a process for how such notice is to be given, resulting in varying interpretations of the law, the workgroup established as its first priorities to develop recommendations for statutory and/or rule revisions to establish a clear procedure to ensure notice is given as required and that the right afforded caregivers is consistent with federal directives.

In addition to looking at the function of the statute and how courts may more effectively and consistently ensure that notice is provided, the work group also considered strategies to support caregivers in providing meaningful and useful information to courts. Ohio caregivers were surveyed in relation to how they are notified of hearings, and the extent of and the substance of their participation in court proceedings. The review of this information was informed by research on notice and hearing process in other jurisdictions. It was determined that one of the most effective supports for caregivers would be the development of an information form that caregivers may complete and submit to the court either electronically or by mail. Such a form was developed and offered for comment to various stakeholder groups and caregivers. The form was revised pursuant to valuable suggestions offered in the review process.

In October 2014, the work group offered its final recommendations for changes to Ohio law and practice in this area. Recommendations included amendments to R.C. 2151.424 aimed at making the law consistent with federal guidelines requiring that caregivers be given notice and the right to “be heard” and at clarifying the caregivers to whom such notice should be given. The Workgroup also recommended that an online toolkit be developed, to include its draft model local rule and model notice to assist courts in providing notice to caregivers, as well as a child placement form to track children’s placements, and a “Caregiver Information Form” and associated information and directions to assist caregivers in providing information to the court about the children in their care.

After the original publication of the toolkit in 2017, the Ohio General Assembly passed House Bill 166, effective Oct. 17, 2019 to amend R.C. 2151.424 adopting the recommendations of the Subcommittee to provide caregivers with not only the right to present evidence, but also the right to be heard during hearings involving children in their care.

### Recommendations Summary

The Advisory Committee on Children and Families charged the Subcommittee on Responding to Child Abuse, Neglect and Dependency (Subcommittee) to recommend procedures and possible rules to ensure that courts comply with statutory requirements for notice to foster parents, pre-adoptive parents, and relative caregivers for court hearings.

The Subcommittee makes the following recommendations:

1. Courts with juvenile jurisdiction are encouraged to adopt a local rule that ensures that a foster caregiver, kinship caregiver or prospective adoptive parent (caregiver) has the ability to provide meaningful information to the court about a child in their care. The rule, at a minimum, should:
  - a. Set forth the process between the public children services agency (PCSA) and court for caregiver notice.
  - b. Require the PCSA to notify the court of an initial placement or change in placement the next business day, but no later than seven days from the date of placement.
  - c. Specify the court as responsible for providing notice to caregivers.
  - d. Require that information regarding the identity or contact information for the caregiver is not accessible to the public and that it be maintained in the court's non-public (family) file.
  - e. Provide alternate ways that the caregiver can provide information to the court.
2. To support the courts' ability to enact a local rule, the following sample forms have been provided in this toolkit:
  - a. Model Rule for Foster/Kinship Caregivers Notice
  - b. Notice to Foster/Kinship Caregiver Form
  - c. Child Placement Form
  - d. Caregiver Information Form
3. The Ohio Department of Job and Family Services is recommended to create a SACWIS-generated Notice of Initial/Change In Placement form to meet the requirements of 2(b). It is recommended that this form is adapted from the Notice of Out of County Placement form.
4. Enact statutory change to R.C. 2151.424, as proposed by the Subcommittee, that:
  - a. Aligns language with other existing statutes.
  - b. Replaces "the right to present evidence" with "the right to be heard."
  - c. 2019 Update: House Bill 166, effective October 17, 2019, amended this section replacing the "right to present evidence" with the "right to be heard."



## Model Rule and Forms

The Subcommittee recommends the following forms to be used by the Court and Children Services, as applicable. These forms were created to encourage local courts to provide notice to caregivers and to allow alternative means for a caregiver to provide information. The forms available are:

- a. Model Rule for Foster/Kinship Caregiver Notice
- b. Model Notice to Foster/Kinship Caregiver Hearing Form
- c. Model Change in Placement Form
- d. Caregiver Information Form

### Model Rule For Notice To Foster/Kinship Caregiver Notice (Pursuant to R.C. 2151.424)

*Rule \_\_\_: Notice of Hearings to Foster/Kinship Caregiver and The Right to be Heard*

1. In accordance with R.C. 2151.424, the Court will provide notice to foster caregivers and kinship caregivers of their right to attend hearings and the right to be heard concerning the child(ren) in their care.
2. To facilitate the Court in fulfilling its duty to provide proper notice of hearings to foster caregivers and kinship caregivers a Child Placement Form (Appendix \_\_\_ ) shall be completed and filed with the clerk the next business day or no later than 7 days following the initial placement and any change in placement of the child(ren).
3. Information regarding the identity of and contact information for foster caregivers or kinship caregivers provided to assist the Court in fulfilling its duty to give notice under this rule is not accessible to the public, including to any party to a case. The Court shall maintain this information in its family file.

IN THE COMMON PLEAS COURT OF \_\_\_\_\_ COUNTY, OHIO  
JUVENILE DIVISION

In re \_\_\_\_\_

Case No. \_\_\_\_\_

Judge \_\_\_\_\_

## Notice to Foster or Kinship Caregiver

(PURSUANT TO R.C. 151.424)

Please take notice that the above captioned case has been scheduled for a \_\_\_\_\_ hearing on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ am/pm. The hearing will take place at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, OH \_\_\_\_\_.

As the foster caregiver or kinship caregiver of the child(ren) who is the subject of the above-captioned case, you have the right to receive notice of hearings in relation to that child or children and the right to be heard at those proceedings. Caregivers are important to the child and can provide valuable information to the Court as it makes its decisions.

You have the right to attend this court hearing and the right to be heard at this court hearing. Your right to be heard includes the option to present an oral report and/or file a written report with the Court regarding the child or children in your care. Your appearance in court is voluntary. You may choose not to participate at all, or you may choose to participate by providing a written report or letter to the Court.

To assist you in providing information to the Court, a Caregiver Information Form is attached. You may answer all or part of the questions on this form to aid the Court at the hearing. You are not required to use this form. It is provided only as one option for you to use in giving information to the Court as part of your right to be heard during this hearing. If you use this form, please submit it to the Court before the hearing if at all possible, even if you plan to attend in person. In addition, if you attend, please bring a copy of the form with you.

Instructions to Clerk: Please serve a copy of this notice by regular US mail.

Service completed by: \_\_\_\_\_ on \_\_\_\_\_

MODEL CHANGE IN PLACEMENT FORM:  
APP. \_\_\_ TO RULE FOR FOSTER CAREGIVER/RELATIVE/KINSHIP CAREGIVER NOTICE

NON-PUBLIC: INTENDED FOR COURT PERSONNEL ONLY

Information contained in this form must not be made available to the public or any party.

## Child Placement Form

In re: \_\_\_\_\_ Case No.: \_\_\_\_\_

(Full Name)

D.O.B.: \_\_\_\_\_ Magistrate/Judge: \_\_\_\_\_

The above captioned child has been placed with the Foster Caregiver or Kinship Caregiver listed below and this caregiver should be provided with notice of future hearings in compliance with R.C. § 2151.424. Any previous Foster Caregiver or Kinship Caregiver should no longer be provided with notice of hearings.

The above captioned child is no longer placed with a Foster Caregiver or Kinship Caregiver and therefore any previous Foster Caregiver or Kinship Caregiver should no longer be provided with notice of hearings in compliance with R.C. § 2151.424.

Caregiver Name: \_\_\_\_\_

Foster     Kinship

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Placement Information Provided By: \_\_\_\_\_

Date Information Provided: \_\_\_\_\_

*This form shall be completed or updated and submitted to the Clerk's Office the next business day following the initial placement or no later than 7 days after any change in placement of the above-captioned youth.*

## Caregiver Information Form

Child's Name: \_\_\_\_\_

Case No.: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Name of Caregiver: \_\_\_\_\_

Type of Caregiver:

- Foster Parent
- Kinship Caregiver
- Other (Please specify): \_\_\_\_\_

Date of Child's Placement with you: \_\_\_\_\_

Juvenile Court Number: \_\_\_\_\_

Date of this Report: \_\_\_\_\_

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Under Ohio law, foster and kinship caregivers have the right to attend and be heard in court proceedings related to the children in their care. This form is intended to help you provide information to the court at the next hearing related to the child in your care. Please answer questions below that are relevant to the child's current status and needs. You can also obtain a fillable form online at \_\_\_\_\_ . Once you have completed the online form, please print and bring or mail to the court.

You do not need to answer all questions. Use of this form is voluntary.

1. Have you received a copy of the most recent case plan? (circle one) Yes No
2. Is there anything you would suggest be added to the case plan?
3. Please describe any behavioral, emotional, or mental health concerns with the child, if any exist (for example, any changes in eating or sleeping patterns, acting out or aggressive behaviors, withdrawal, etc.). Are any such concerns being addressed with services?
4. Please identify any needs this child has that are not currently being addressed with services.
5. Please describe the child's educational progress and identify any concerns (for example, peer or teacher issues, bullying, academic progress or lack of progress, special education needs).



6. If age appropriate, what independent living services have been provided? What age-appropriate tasks and skills have you provided to the child to assist them in preparing for independence (e.g. cooking, cleaning, finances)? Are there such services you would recommend?
7. Please describe your observations of the child's interactions with other children and adults.
8. Has this child received any medical or dental treatment since the last hearing? Please describe.
9. Please note your observations related to child's contacts and visits with his or her birth parents.
10. If child has siblings and they are not placed together, do they have ongoing visitation? Note your observations.
11. Does the child have regular, ongoing opportunities to socialize or participate in recreational activities with peers? If so, please describe. Please include any challenges to participation in activities.
12. Are there any additional services or supports needed for the child or for you that were not previously mentioned?
13. Has a Guardian ad Litem or Court Appointed Special Advocate (CASA) been appointed for the child/youth? If so, what was the date and location of the last contact?
14. Have you been made aware of the most recent report and/or recommendations by the Guardian ad Litem (GAL) or Court Appointed Special Advocate (CASA) in this case? If so, do you agree with the recommendations? If you do not agree with the recommendations, what recommendations would you make? Are there any additional recommendations you would make?
15. Have you been made aware of the most recent report(s) and/or recommendations in this case made by persons other than the GAL or CASA? If so, do you agree with the report(s) and/or recommendations? If you do not agree with the report or recommendations, please explain. Are there any additional recommendations you would make?
16. If the child/youth is in the permanent custody of the public children services agency (PCSA), please describe any efforts of which you are aware to locate a permanent adoptive family or kinship placement.
17. General progress, comments, or recommendations regarding the child/youth:

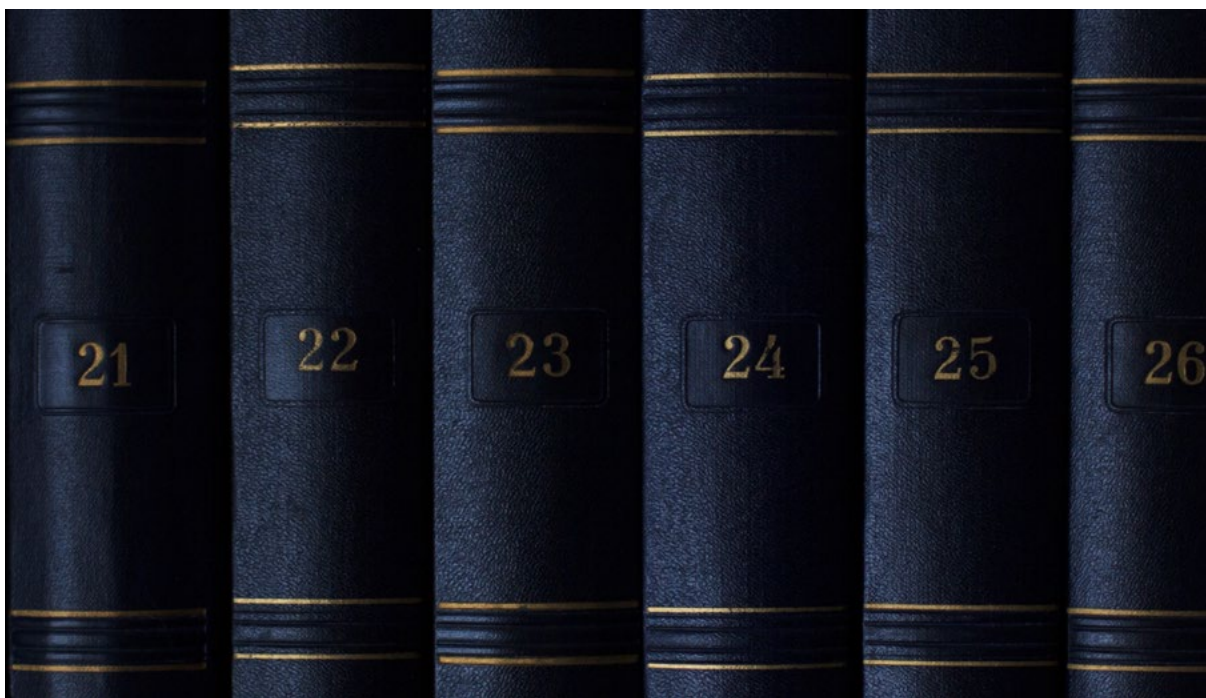
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Caregiver Signature

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Date





## Applicable Federal and State Law

### 42 U.S.C. § 675 - Definitions

As used in this part or part B of this subchapter:

(5) The term “case review system” means a procedure for assuring that -  
(G) the foster parents (if any) of a child and any preadoptive parent or relative providing care for the child are provided with notice of, and a right to be heard in, any proceeding to be held with respect to the child, except that this subparagraph shall not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to such a proceeding solely on the basis of such notice and right to be heard.

Ohio R.C. § 2151.424 Notice and opportunity to present evidence to foster caregiver, relative, or prospective adoptive parent.

(A) If a child has been placed in a certified foster home or is in the custody of, or has been placed with, a kinship caregiver as defined in section 5101.85 of the Revised Code, a court, prior to conducting any hearing pursuant to division (F) (2) or (3) of section 2151.412 or section 2151.28, 2151.33, 2151.35, 2151.414, 2151.415, 2151.416, or 2151.417 of the Revised Code with respect to the child, shall notify the foster caregiver or kinship caregiver of the date, time, and place of the hearing. At the hearing, the foster caregiver or kinship caregiver shall have the right to be heard.

(B) If a public children services agency or private child placing agency has permanent custody of a child and a petition to adopt the child has been filed under Chapter 3107. of the Revised Code, the agency, prior to conducting a review under section 2151.416 of the Revised Code, or a court, prior to conducting a hearing under division (F) (2) or (3) of section 2151.412 or section 2151.416 or 2151.417 of the Revised Code, shall notify the prospective adoptive parent of the date, time, and place of the review or hearing. At the review or hearing, the prospective adoptive parent shall have the right to be heard.

(C) The notice and the opportunity to be heard do not make the foster caregiver, kinship caregiver, or prospective adoptive parent a party in the action or proceeding pursuant to which the review or hearing is conducted.

Ohio R.C. § 2151.35 Procedure for hearings in juvenile court.

(A) (1) Except as otherwise provided by division (A) (3) of this section or in section 2152.13 of the Revised Code, the juvenile court may conduct its hearings in an informal manner and may adjourn its hearings from time to time. The court may exclude the general public from its hearings in a particular case if the court holds a separate hearing to determine whether that exclusion is appropriate. **If the court decides that exclusion of the general public is appropriate, the court still may admit to a particular hearing or all of the hearings relating to a particular case those persons who have a direct interest in the case and those who demonstrate that their need for access outweighs the interest in keeping the hearing closed.** \* \* \*

(B) (2) The dispositional hearing shall be conducted in accordance with all of the following:

(a) The judge or referee who presided at the adjudicatory hearing shall preside, if possible, at the dispositional hearing;

**(b) The court may admit any evidence that is material and relevant, including, but not limited to, hearsay, opinion, and documentary evidence;**

(c) Medical examiners and each investigator who prepared a social history shall not be cross-examined, except upon consent of the parties, for good cause shown, or as the court in its discretion may direct. Any party may offer evidence supplementing, explaining, or disputing any information contained in the social history or other reports that may be used by the court in determining disposition.

## Resources and Commentary

### Resources

- Caregivers and the Courts: Improving Court Decisions Affecting Children in Foster Care by Regina M. Deihl, J.D., Juvenile Projects Attorney, Center for Families, Children & the Courts: <http://www.plumasfys.com/caregiverscourtsfull.pdf>
- Guide for Resource Family Court Participation in Pennsylvania, American Bar Association: <http://www.psrfa.org/wp-content/uploads/resource-family-court-participation-guide.pdf>
- Caregivers and the Courts: A Primer on Juvenile Dependency Proceedings for California Foster Parents and Relative Caregivers, Judicial Council of California: <http://www.fosteryouthhelp.ca.gov/PDFs/Caregiver.pdf>
- Technical Guide to Court Performance Measures in Child Abuse and Neglect Cases, US Department of Justice: <https://www.ncjrs.gov/pdffiles1/ojdp/223570.pdf>
- Guide for Foster Parents and Relative Caregivers: Understanding the Nebraska Juvenile Court Child Protection Process, University of Nebraska Center on Children, Families, and the Law: [https://cip.nebraska.gov/sites/cip.nebraska.gov/files/files/1/publications\\_fosterparentsandrelativecaregiversguide.pdf](https://cip.nebraska.gov/sites/cip.nebraska.gov/files/files/1/publications_fosterparentsandrelativecaregiversguide.pdf)

### Commentary

Courts throughout Ohio provide notice to caregivers in a variety of ways. Below is an example of how some courts provide notice and an opportunity to be heard:

- The court provides the child welfare agency a list of the upcoming abuse, neglect, dependency and termination of parental rights hearings each month. The agency uses the list to notify the caregivers of upcoming hearings. A copy of the letter is submitted to the court and it becomes a journalized entry.
- The child welfare agency submits a form that has been created by the court that says that the caregiver was notified.
- If the caregiver is not present at the hearing, the judicial officer asks the child welfare representative if notice was provided.
- If the caregiver is present, the judicial officer provides the caregiver an opportunity to be heard in an informal way.
- If the caregiver is unable to attend due to barriers, such as not having child care for other children in the home, inability to get off of work, or the court being too far from the caregiver's residence, the court may use options such as conference calls to allow the caregiver to be heard.





## Advisory Committee on Children and Families

### History & Background

The Supreme Court Advisory Committee on Children and Families was originally created by Chief Justice Thomas J. Moyer in 2002, with the purpose of providing ongoing advice to the Chief Justice and the Justices and staff of the Supreme Court. The Advisory Committee's duties include the promotion of statewide rules and uniform standards concerning the establishment and operation of programs for children and families in Ohio courts, the development and delivery of services to Ohio courts on matters involving children and families (including education programs for judges and court personnel), and the consideration of any other issues necessary to assist the Court and its staff regarding children and families in Ohio courts.

The advisory committee consists of no more than 24 members who are appointed by the Chief Justice. Membership is broad-based and multi-disciplinary so as to represent a cross section of interests related to the issues of children and families in the courts, and represent the gender, racial, ethnic, political, and geographic diversity of Ohio. While the advisory committee itself is limited in size, over one-hundred professionals participate on the advisory committee and its subcommittees and workgroups.

The advisory committee has issued reports on Family Law Reform, Guardian ad litem Standards, and Responding to Child Abuse, Neglect, and Dependency. As a result of these reports the Supreme Court adopted Rule of Superintendence 48 on Guardian ad litem Standards, collaborated on the establishment of Ohio's Alternative Response, and adopted changes to Rule of Superintendence 44 on Court Records, to clarify which Domestic Relations and Juvenile court records are considered confidential.

Current work by the advisory committee has focused on adult guardianship standards in probate court, the need for quality parent representation in child welfare cases, youth and caregiver engagement in court proceedings, and juvenile justice recommendations.

Additional information on the advisory committee, including its current member roster and reports, is at [sc.ohio.gov/Boards/familyCourts/default.asp](http://sc.ohio.gov/Boards/familyCourts/default.asp).

#### Charge of the Advisory Committee on Children and Families

As issued by the Chief Justice of the Supreme Court of Ohio, the advisory committee shall provide ongoing advice to the Court and its staff regarding all of the following:

1. The promotion of statewide rules and uniform standards concerning the establishment and operations of programs for children and families in Ohio courts;
2. The development and delivery of services to Ohio courts on matters involving children and families, including education programs for judges and court personnel;
3. The consideration of any other issues the advisory committee deems necessary to assist the Court and its staff regarding children and families in Ohio courts.







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