

ORIGINAL

**IN THE SUPREME COURT OF OHIO  
APPEAL FROM THE COURT OF APPEALS OF OTTAWA COUNTY, OHIO**

IN THE MATTER OF:

**A. G., a minor child.**

Appellant.

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\*  
\*

Supreme Court Case No. 12-2097

Court of Appeals Case No. OT-11-003

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**MERIT BRIEF OF APPELLANT A.G., A MINOR CHILD**

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## STATEMENT OF THE FACTS

This matter came before the Ottawa County Court of Common Pleas, Juvenile Division, on February 13, 2006 upon a transfer from the Henry County Court of Common Pleas, Domestic Relations Division (Case Number 98-DR-063). The transfer of the case was premised upon the fact that the minor child, A. G. (hereinafter referred to as "Appellant"), her mother (hereinafter referred to as "Appellee Mother") and her step-father resided in Oak Harbor, which is located in Ottawa County, Ohio. Appellant's father (hereinafter referred to as "Appellee Father") had relocated to the State of North Carolina. Since there were no remaining ties to Henry County, the Ottawa County Juvenile Court accepted jurisdiction of this case (*See Supplement to Merit Brief of Appellant A.G. at Exhibit A, page 1, first narrative paragraph*). The parties **did not raise an objection** to the transfer of this case to the jurisdiction of the Ottawa County Juvenile Court.

The Henry County case originally arose as a result of a filing for divorce by Appellee Father in 1998 (*See Supplement to Merit Brief of Appellant A. G. at Exhibit A, page 1, second narrative paragraph*). Although Appellee Father had a lengthy and documented history wherein he was the aggressor of incidents of domestic violence involving prior wives and family members, he never completed treatment and/or counseling for either anger management and/or domestic violence (*See Child's Trial Exhibit MM and Trial Transcript (hereinafter referred to as "TR.") at page 585, line 19 through page 593, line; page 714, line 8 through page 715, line 24, and page 593, lines 16 through 19*). Due to specific

allegations of domestic violence and threats of harm by Appellee Father upon Appellee Mother (*TR. at page 1356, line 12 through page 1358, line 3; page 1374, lines 5 through 10, and page 1378, lines 8 through 15*) and other family members prior to and during the pendency of the divorce action (*TR. at page 1360, lines 2 through 5 and page 1374, lines 1 through 4 and Child's Trial Exhibit HH*), Appellee Mother and Appellant relocated themselves to live with Appellee Mother's mother (A. G.'s maternal grandmother) in Moscow, Russia (*TR. at page 1361, lines 25 through page 1362, line 18*). Appellee Mother maintained contact with her attorney, Appellee Father, the Henry County Court and the then-appointed guardian ad litem (GAL) during her stay in Moscow (*TR. at page 1362, lines 19 through 24*). At the time of the divorce proceedings, Appellee Mother was and remained to be a Russian citizen, as she so remains to be to this day (*TR. at page 1353, line 9 through page 1354, line 14*). Because she was born in the United States, Appellant had a dual citizenship (United States and Russian). After several months, Appellee Mother and Appellant eventually returned to the United States (*TR. at page 1362, lines 6 through 18*).

Shortly after the return of Appellant and Appellee Mother to the United States, Appellee Father absconded with Appellant and remained "whereabouts unknown" for approximately six (6) months until law enforcement authorities in Key Largo, Florida executed the Ohio bench warrant for Appellee Father's arrest (*TR. at page 1366, lines 6 through 14 and page 613, line 16 through page 614, line 15*). During that six (6) month period, Appellee Father, with Appellant, traveled to several states including Arizona, California, Nevada and Florida as well as to Costa Rica (*TR. at page 614, line 13 through page 624, line 1*).

Appellee Father had obtained and was using false identification for both himself and Appellant to avoid detection by the law enforcement authorities (*TR. at page 614, line 13 through page 624, line 1*). Appellee Father had illegally obtained false birth certificates (*See Child's Trial Exhibits T and U*) for both himself and Appellant (under the fictitious names of Michael James Philips and Emelia Carmen Philips), a false motor vehicle title (*See Child's Trial Exhibits V and W*), a false voter registration card (*See Child's Trial Exhibit Y*), a false driver's license and identification cards (*See Child's Trial Exhibits S, Z and AA*), as well as having obtained an executed lease to an apartment under the same false identity (*See Child's Trial Exhibit X*). During Appellant's abduction, Appellee Father told Appellant that **her mother was dead** (Appellant was approximately four (4) years old at the time) (*TR. at page 243, line 2 through page 244, line 16; page 526, lines 15 through 17, and see Supplement to Merit Brief of Appellant A.G. at Exhibit B – Guardian ad litem's report at page 2, paragraph 4, 8<sup>th</sup> line from bottom of page*). Appellee Father was subsequently indicted in Henry County on a charge of Interference with Custody (a fifth degree felony) and he eventually pled to a reduced charge, being a first degree misdemeanor (*See Child's Trial Exhibits II and JJ and TR. at page 601, line 10 through page 603, line 24*).

During the pendency of the divorce action, the parties underwent and completed a court-ordered psychological evaluation (*See file copies (sealed) of Dr. Wayne Graves' evaluations performed in 2000, 2002 and 2008*). It was noted by Dr. Graves that the Appellee Father had significant "control" issues and further, Appellee Father believed that he was completely justified in asserting his control over others (*See Exhibit C of Supplement*

to Merit Brief of Appellant A.G. at pages 10 and 38, paragraph 13). Appellee Father's own belief was so dominant that he never sought nor did he ever receive any further counseling for the diagnosed mental health disorders (TR. at page 604, line 6 through page 605, line 16). Dr. Graves further noted that Appellee Father is a "...high risk of flight again because of his knowledge, his flexibility of job, his past experience at work travel, his contacts and financial capabilities" (See Exhibit C of Supplement to Merit Brief of Appellant A.G. at page 37, paragraph 16). During the evaluation period, temporary custody of Appellant was awarded to Appellee Mother (TR. at page 1366, lines 20 through 23). Upon Appellee Father's arrest and subsequent return to Ohio, the divorce proceedings were finalized, and Appellee Mother was awarded legal custody of Appellant (TR. at page 1366, line 24 through page 1367, line 6 and page 1404, lines 9 through 15).

Actual occurrences of domestic violence and threats of harm by Appellee Father upon Appellee Mother after the divorce caused Appellee Mother to once again seek protection for both herself and Appellant from Appellee Father by returning to Moscow, Russia (TR. at page 1367, line 20 through page 1368, line 23). After residing with her mother for several months, both Appellee Mother and her mother were suddenly and brutally attacked, bound and drugged in their home by three (3) males (TR. at page 1369, line 20 through page 1372, line 2). Appellant (who was at the time six (6) years old) was forcefully taken from her maternal grandmother's home in Moscow and transported through the Ukraine and eventually to Paris, France where Appellee Father obtained possession of her (TR. at page 1368, line 13 through page 1372, line 14; page 214, lines 7 through 11 and page 1328, line 14 through page 1329, line 2). Appellee Father and Appellant eventually

returned to the United States where authorities once again intercepted and recovered Appellant from Appellee Father (*TR. at page 1372, lines 3 through 14*).

Upon her return and recovery by United States law enforcement authorities, Appellant was reunited with Appellee Mother who had also returned to the United States when her daughter (Appellant) had been located by the authorities (*TR. at page 1372, line 15 through page 1373, line 25*). Appellee Father was subsequently afforded the opportunity to exercise some visitation with Appellant primarily during the summer months (*TR. at page 1409, lines 6 through 16*). However, due to the repetitive history of long absences with the Appellant and a parent, the Henry County Court of Common Pleas ordered that each party deposit the sum of \$10,000 into an escrow account to thwart future harm to the Appellant (*TR. at page 1543, lines 18 through 22*). It was further ordered that should either party leave the jurisdiction of the court without proper authorization, the monies in escrow could be applied to the other party's fees and costs (*TR. at page 1543, line 12 through page 1544, line 2*). The court order provided that the trial court would hold Appellant's U. S. Passport subject to her legal right to travel outside the country (*See Henry County case number 98-DR-063 file and TR. at page 1543, lines 16 and 17*).

With respect to Appellee Father's visits with Appellant, the parties have differing accounts regarding the success and benefit conferred upon Appellant during those visits (*TR. at page 1409, line 17 through page 1413, line 13*). Appellant first began to verbally express her fear of Appellee Father to Appellee Mother immediately after her return from a visit to Appellee Father's home in North Carolina in December 2003 (*TR. at page 1015, line 3*

*through page 1016, line 18).* The fears Appellant complained of included her recollection of unpleasant memories of her past abductions at the hands of Appellee Father, the ongoing threats and intimidation of discipline upon her by Appellee Father if Appellant did not respond to his questions as he expected she should and the constant and harassing telephone calls and letters to Appellant by Appellee Father (*TR. at page 1017, line 15 through page 1018 line 10; page 1092, lines 18 through 21; page 1112, lines 20 through 25; page 1115, line 15 through page 1116, line 3; page 216, lines 2 through 10; page 212, lines 2 through 12; and Child's Trial Exhibits FF and GG).*

Appellant began individual counseling (Lucy Moreno, LISW - Harbor Behavioral Healthcare) in January 2004 and continued in counseling for several months (*TR. at page 1017, lines 2 through 10*). Because Appellant's fears and concerns initially appeared to be abating during these initial counseling sessions, Appellee Mother encouraged Appellant to see her father for a short period of time during each of the summers for calendar years 2004 and 2005 (*TR. at page 1018, line 20 through page 1021, line 2*). But Appellant's fears and concerns persisted and Appellant's demeanor continued to be impacted in a more obvious and negative way (*TR. at page 1090, lines 15 through 25 and page 1091, lines 8 through 16*). As a result, Appellant re-commenced counseling with a different counselor (Barbara Feldmar, M.S., LISW - Bayshore Counseling Services) in September 2005 to once again address Appellant's growing concerns and fears regarding Appellee Father (*TR. at page 122, line 19 through page 128, line 1*). Appellant continued counseling and has remained in individual counseling with the same counselor continuously from that date through to the present (*TR. at page 1022, lines 18 through 21 and page 1298, lines 13 through 17*).

During the summer of 2006, the newly-appointed guardian ad litem requested that Appellee Father's visitation be suspended altogether pending the completion of her investigation. Upon receipt of the request, the trial court suspended Appellee Father's visits with Appellant. In latter 2008 and early 2009, visits were resumed on a supervised basis and those visits could only take place in Ohio. Although Appellant requested the return of her U. S. Passport, the trial court denied her request. Several supervised visits occurred with disputed results (*TR. at page 316, line 11 through page 318, line 10*). Appellant claims that because Appellee Father had threatened her and had mistreated her in the past, she remained afraid of him and further, she *did not* enjoy the recent visits with him (*TR. at page 1090, lines 15 through 25 and page 1095, line 18 through page 1096, line 6*). Appellant attended the court-ordered supervised visitations with Appellee Father because there was an assigned supervisor ("safety net") present during the visits. Additionally, Appellant claims that on one of the supervised visits which had occurred at the Kalahari Resort in Sandusky, Ohio, Appellee Father attempted to force both her and a female friend into a hotel room against their will (*TR. at page 1173, lines 6 through 14*). On that occasion, the assigned supervisor failed to maintain continuous contact with the Appellant. Appellee Father denied his involvement on that occasion (*TR. at page 507, lines 6 through 15*). Appellee Father further claimed otherwise, saying that the visits generally went so well that he wanted the trial court to order "unsupervised" visits at his home in the State of North Carolina (*See Exhibit D of Supplement to Merit Brief for Appellant SA.G.*).

Appellee Father eventually filed a motion requesting unsupervised visits on September 14, 2009 (See Exhibit D of Supplement to Merit Brief for Appellant A.G.). When Appellee Father filed his motion for unsupervised visitation, Appellant A.G. was then thirteen years old (Appellant's DOB: is 12/26/95), **a minor under the definition of Ohio statutes, and a party to the pending action.** Pursuant to Civ R 75 (B) (2), the trial court had previously joined Appellant A.G. as a party to the on-going case on March 28, 2006 (See Exhibit E of Supplement to Merit Brief of Appellant A. G.). After hiring her own counsel, Appellant filed her Response to Father's Motion and Motion to Terminate All Visitation and Companionship with Father on October 14, 2009 (See Exhibit F of Supplement to Merit Brief for Appellant A.G.).

On October 21, 2009, Appellant filed a Motion for Leave and Order Permitting Minor Child's Attendance and Participation at Trial on November 6, 2009 (See Exhibit G of Supplement to Merit Brief of Appellant A. G.). The trial court's magistrate initially denied Appellant A.G.'s request, without explanation, on November 6, 2009 (See Exhibit H of Supplement to Merit Brief of Appellant A. G.). Appellant A.G. timely requested written findings of fact and conclusions of law on November 10, 2009 (See Exhibit I of Supplement to Merit Brief of Appellant A. G.). Pursuant to the request of the trial court, Appellant A.G. filed her proposed findings of fact and conclusions of law on November 25, 2009 (See Exhibit J of Supplement to Merit Brief of Appellant A. G.), citing the applicable juvenile rules supporting her request. The trial court eventually issued its decision denying Appellant A.G.'s request approximately eleven (11) months later on October 25, 2010 (See Exhibit K of Supplement to Merit Brief of Appellant A. G.).

A trial commenced on November 20, 2009 and continued in December 2009 and February 2010. However, before the case was concluded and a decision rendered, the presiding judge (Judge David Zeitzheim) unexpectedly recused himself on August 19, 2010. Prior to the time Judge Zeitzheim recused himself, Appellant again requested the return of her U. S. Passport in November 2009 so that she could accompany Appellee Mother to Moscow to visit with her maternal grandmother (*TR. at page 1541, line 19 through page 1542, line 13*). Judge Zeitzheim released the passport to Appellant and she went to Moscow as planned (*TR. at page 1542, lines 7 through 9*). Upon Appellant's prompt return in January 2010, Judge Zeitzheim ordered that the U. S. passport remain in the possession of the Appellant (*TR. at page 1542, lines 14 through 17*).

The newly assigned judge (Judge Thomas E. Heydinger) subsequently became gravely ill shortly after setting a new trial date. As a result, the Ottawa County Juvenile Court judge (Judge Kathleen L. Giesler) was reassigned to this case and a trial (de novo) was held on November 1, 2, 3, 5 and 8, 2010 (*See Trial Court's file and Docketing Record*). Upon her re-assignment to the case, Judge Giesler ordered the Appellant to surrender her U. S. Passport and issued its Decision and Judgment Entry (Attachment C) on January 21, 2011 granting Appellee Father's motion for unsupervised visitation. The Appellant timely filed an appeal Court of Appeals of Ottawa County, Sixth Appellate District (*See Exhibit R of Supplement to Merit Brief of Appellant A. G.*).

On May 27, 2010, the guardian ad litem filed a Motion (*See Exhibit L of Supplement to Merit Brief of Appellant A. G.*) and Ex Parte Motion (*See Exhibit M of Supplement to Merit Brief of Appellant A. G.*) for a change of custody of Appellant A.G. from Appellee Mother to Appellee Father and further to cease all visitation between Appellee Mother and Appellant A.G. claiming that “parental alienation” had occurred and that the alienation had resulted in Appellant A.G. fearing Appellee Father. On June 4, 2010, Appellant A.G. filed her Motion to Strike Motions and Recommendations of GAL; Motion to Discharge GAL (*See Exhibit N of Supplement to Merit Brief of Appellant A. G.*) citing; 1) a lack of evidentiary basis upon which the guardian ad litem could reasonably base her recommendations and motions, 2) the guardian ad litem had failed to adhere to the requirements of Sup R 48, and 3) the guardian ad litem had lost her neutrality and ability to act in an unbiased manner and fairly advocate what was in Appellant A.G.’s best interest. The trial court denied Appellant’s request (*See Exhibit O of Supplement to Merit Brief of Appellant A. G. at page 2, first un-numbered paragraph*). Although the guardian ad litem later testified that she was concerned about alienation for some time, the guardian ad litem did not take timely action to properly investigate her “suspicions”. The guardian ad litem did not present any expert witnesses to support her theory at trial in November 2010. Although the trial court did not act upon the guardian ad litem’s motions, it did deny Appellant A.G.’s motion to discharge the guardian ad litem.

In its October 25, 2010 decision which denied Appellant’s motion to participate in the trial, the trial court stated that the child “... ***does not have a constitutional right to be present during a trial*** that involves a dispute between her parents.” (*See Exhibit K of Supplement to Merit Brief of Appellant A. G. at page 2, first un-numbered paragraph*). In its

decision, the trial court failed to acknowledge that the *Appellant A.G. had filed her own motion* to terminate all visitation and companionship with father on October 14, 2009.

Pursuant to its ruling, the trial court did not allow the Appellant to be present and participate in the subsequent trial held in November 2010. Following the conclusion of that hearing, the trial court issued its Decision and Judgment Entry (*Attachment C*) on January 21, 2011 granting Appellee Father's motion for unsupervised visitation. Upon receipt of that document, the Appellant A.G. timely filed an appeal with the Ottawa County Court of Appeals, Sixth Appellate District. The Sixth Appellate District issued its Decision and Judgment on November 2, 2012 (*Attachment B*) denying Appellant A.G.'s assignments of error and affirming the trial court's decision. This appeal timely follows (*Attachment A*).

## ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

**Proposition of Law No. I: The denial of a person, under the age of majority, the opportunity to participate in trial proceedings in which they have a direct interest, is a violation of that person's right to due process as guaranteed by the 14<sup>th</sup> Amendment of the U. S. Constitution and Article 1, Section 16, of the Ohio Constitution.**

Our American system of justice provides adults the opportunity to participate in the prosecution and defense of any legal action to which they may be a party. Adults possess and enjoy the right to make the choice whether they participate or not subject to appropriate sanctions. In criminal cases, adult persons who choose not to participate face the consequence of either having their case dismissed (prosecutors) or having bench warrants/capiases issued requiring their attendance to defend their case (defendants). In civil cases, an adult party who fails to participate faces the consequence of either having his or her case dismissed (plaintiffs) or having judgments rendered against his or her interest (defendants). In either type of case, the court is not permitted to interfere with a party's right to be present and participate in court proceedings absent the specific situation whereby a party fails to abide by established courtroom procedure and/or decorum. In that event, the adult party would likely face the additional consequences of a contempt finding. Otherwise, a court's interference with a party's right to attend and participate in the court proceedings would constitute a violation of that person's guaranteed right to due process and therefore, would be considered *unconstitutional*.

The same standards and practices do not apply to persons *under the age of majority* (children). Children do not currently possess and enjoy the same opportunities as adults do even though their rights are similarly guaranteed by the U. S. and State of Ohio Constitutions. Except for the specific situation in which a child has been charged in a

delinquency proceeding, children *are routinely and summarily denied* the right to participate in any proceedings, particularly those in which the child has a direct interest in the outcome of the case, Appellant's case now before this Court is such a case. For the reasons set forth in Appellant's argument, these standards and practices regarding the violation of children's right to due process must be recognized as unconstitutional and therefore, changed.

Appellant submits this proposition of law, asserting that she was denied the right to due process of the law as guaranteed by the Fourteenth Amendment of the United States Constitution and Article 1, Section 16 of the Ohio Constitution when the trial court improvidently applied the rules of juvenile procedure and precluded her participation at trial, thereby denying her the guaranteed due process rights to which she was entitled. Appellant was thirteen (13) years old when Appellee Father filed his motion for unsupervised visitation (*See Exhibit D of Supplement to Merit Brief of Appellant A.G.*). The then existing tenuous relationship between Appellant and Appellee Father is supported by the historical background leading up to Appellee Father's motion (See Trial Transcript). In short, Appellant was afraid of Appellee father because of the intimidation she had felt during her younger years. The fear that Appellant harbored was real and genuine to her. Appellant's counselor of several years confirmed the sincerity of Appellant's feelings through observations she had made during the counseling sessions. When Appellee Father filed his motion for unsupervised visits, the Appellant had last seen her court-appointed guardian ad litem (GAL) approximately six (6) months earlier.

For reasons that had never been substantiated through any evidentiary adjudicatory process, the GAL "dismissed" Appellant's fears as being trite and therefore, recommended

that the trial court grant unsupervised visitation to Appellee Father. Once it became obvious that the GAL's recommendations were conflicted to Appellant's expressed feelings and wishes, the GAL **did not** request **nor did the trial court**, on its own initiative, **appoint separate counsel** for the Appellant. Appellant, with the assistance of her extended family, retained counsel and filed her response to Appellee Father's motion (*See Exhibit F of Supplement to Merit Brief of Appellant A.G.*). Shortly thereafter, Appellant filed her motion for leave to participate and attend the adjudicatory hearing scheduled upon Appellee Father's motion. At the time of filing her request, Appellant was of sufficient age and maturity to understand and appreciate the nature of the proceedings. According to her counselor, it was unlikely that she would experience any trauma more serious than she had already experienced in her past (*See Exhibit G of Supplement to Merit Brief of Appellant A.G.*). Appellant relied upon Juv. R. 4(A) and Juv. R. 27(A)(1) in support of her request (*See Exhibit J of Supplement to Merit Brief of Appellant A.G.*).

The trial court **did not timely respond** to Appellant's request. When it did respond one (1) year later, three and one-half (3 ½) days of trial had already occurred. Appellant was not present during any of those proceedings. In its **October 25, 2010** decision which denied Appellant's motion to participate in the trial, the trial court stated that the child "... **does not have a constitutional right to be present during a trial** that involves a dispute between her parents." (*See Exhibit K of Supplement to Merit Brief of Appellant A. G. at page 2, first unnumbered paragraph*) (*Emphasis added*). In its decision, the trial court failed to acknowledge that the **Appellant A.G. had filed her own motion** to terminate all visitation and companionship with Appellee Father on October 14, 2009. The trial court further noted that "As a party to these proceedings, Amelia Garmyn is entitled to be represented by counsel pursuant to the Ohio Rules of Juvenile Procedure. Further the child is required to have counsel, as her wishes are in dispute with the recommendations of the Guardian ad Litem."

In its decision, the trial court *did not*, in any way, *limit the applicability* of the Ohio Rules of Juvenile Procedure as set forth in Juv. R. 1(C).

Pursuant to its ruling, the trial court did not allow the Appellant to be present and participate in the subsequent five (5) day trial held in November 2010. On January 21, 2011, the trial court issued its decision granting Appellee Father's request for unsupervised visitation. After receiving the trial court's decision, Appellant timely filed an appeal of that decision on January 27, 2011. On February 17, 2011, Appellant filed Minor Child's Motion for Stay of January 21, 2011 Decision and Judgment Entry with Memorandum in Support (*See Exhibit P of Supplement to Merit Brief of Appellant A. G.*). In support of her motion, Appellant submitted the affidavit of her counselor in addition to her own affidavit. Appellant conveyed her negative feelings regarding any visitation with Appellee Father. Appellee Father *did not* submit a response to Appellant's request for stay. On March 18, 2011, the Court of Appeals of Ottawa County, Sixth Appellate District issued its Decision and Judgment granting Appellant's request for stay of the January 21, 2011 trial court decision (*See Exhibit Q of Supplement to Merit Brief of Appellant A. G.*).

On November 2, 2012, the Court of Appeals, Sixth Appellate District issued its Decision and Judgment Entry (*See Attachment B*), overruling each of Appellant's four (4) assignments of error and affirming the trial court's January 21, 2011 decision. Regarding Appellant's submission that the trial court's denial of her request to attend and participate in the trial proceedings violated her due process rights a guaranteed by the U.S. and Ohio constitutions, the Court of Appeals, Sixth Appellate District, improvidently affirmed the trial court's limited interpretation and application of the juvenile rules of procedure in denying

Appellant A.G., *a minor child under the age of eighteen (18) years old*, the due process of the law when the trial court ruled that she could not participate in the trial proceedings *to which she was a party with a direct interest in the case*. The Court of Appeals reasoned that Juv. R. 1(C)(4) precludes the application of the Juvenile Rules of Procedure in the instant case because it involved “proceedings to determine parent-child relationships...”, including the determination of custody and visitation rights and therefore, Appellant’s reliance on Juv. R. 27 was faulty (*See Attachment B at page 3, paragraph 4*). Appellant respectfully responds that the appellate court’s application of Juv. R. 1(C)(4) in this case does not fully address the due process issue now raised by the Appellant.

If one accepts the appellate court’s holding that Juv. R. 1(C)(4) *does* apply in this instance, and therefore, the Juvenile Rules of Procedure *do not apply*, then we must rely upon the Civil Rules of Procedure which, except for Civ. R. 75, do not specifically provide for the due process rights of children. Because the Civil Rules of Procedure seemingly apply to all persons, *irrespective of age*, and they *do not* specifically prohibit a child’s participation in an adjudicatory hearing, then it must follow that Appellant’s due process rights were violated when the trial court denied her request to participate.

If the appellate court’s holding is rejected, then it follows that Juv. R. 4 and Juv. R. 27 do not specifically prohibit a child’s participation at a hearing in which *the child has a direct interest in the outcome*. The Juvenile Rules of Procedure do provide, in delinquency and the limited class of cases involving dependent, neglected and abused children, guidance regarding the participation of children at hearings. In the case of the delinquent child, said

child is not only entitled to be present at hearing, he is entitled to court-appointed counsel in the event that the child is unable to afford and pay for his own counsel. The requirements, among others, satisfy the due process and confrontation clauses of both the U. S. and Ohio constitutions. In the other class of cases mentioned (dependency, neglect and abuse cases), the Juv. R. 27(A) provides that the trial court has discretion to allow the presence of the child, depending on a number of factors, including the intelligence, maturity, age and ability to understand the nature of the issues being litigated, without causing trauma to the child. However, for all other types of cases (such as this one), the Juvenile Rules of Procedure do not provide for, *nor do they prohibit*, a child's participation at a hearing such as for matters of custody and visitation.

Appellant further posits that because this issue involves the statutory construction of a guaranteed due process right to her, *a member of the class of persons under the age of majority*, this matter is ripe for this Court's review and consideration. Appellant's analysis is respectfully submitted as follows:

Section 1 of the Fourteenth Amendment (titled "Civil Rights") provides, in relevant part, that:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. *No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.* (Emphasis added).

Appellant is a citizen of the United States for purposes of this Court's consideration in this matter. The Fourteenth Amendment **does not make** any distinction *regarding the age of the person* subject to the protections afforded by it. Rather, it applies to *all persons*.

Article 1, Section 16 (titled "Redress for Injury; Due Process"), of the Ohio Constitution further provides that:

"All courts shall be open, and *every person*, for an injury done him in his land, goods, person, or reputation, ***shall have remedy by due course of law***, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law." (Emphasis added).

Article 1, Section 16 also **does not make** any distinction *regarding the age of the person* subject to the protections afforded by it. Again, it applies to *all persons*.

When Appellee Father filed his motion for unsupervised visitation on September 14, 2009 (*See Exhibit D of Supplement to Merit Brief of Appellant A.G.*), Appellant was then thirteen years old (Appellant's DOB: is 12/26/95), a minor under the definition of Ohio statutes, and a party to the pending action. Her counselor of several years determined that Appellant was of sufficient intelligence and maturity to participate at trial in a meaningful way. Pursuant to Civ. R. 75 (B) (2), the trial court had previously joined the Appellant as a party to the on-going case on March 28, 2006 (*See Exhibit E of Supplement to Merit Brief of Appellant A.G.*). Appellant continues her analysis with a review of Juv. R. 1, 2, 4 and 27.

Juv. R. 1(A), titled "Applicability", provides that:

These rules prescribe the procedure to be followed in all juvenile courts of this state in all proceedings coming within the jurisdiction of such courts, with the exceptions stated in subdivision (C).

Juv. R. 1(C), titled "Exceptions", in relevant part, provides that:

These rules *shall not* apply to procedure

...

(4) *In proceedings to determine parent-child relationships...* (Emphasis added).

Juv. R. 2, titled "Definitions", at paragraph (Y), provides that:

"Party" means *a child who is subject of a juvenile court proceeding*, the child's spouse, if any, the child's parent or parents, or if the parent of a child is a child, the parent of that parent, in appropriate cases, the child's custodian, guardian or guardian ad litem, the state, and any other person specifically designated by the court."  
(Emphasis added).

Juv. R. 4 (A), titled "Assistance of counsel", further provides, in relevant part, that:

"Every party shall have the right to be represented by counsel and *every child, parent, custodian, or other person in loco parentis the right to appointed counsel if indigent*. These *rights shall arise when a person becomes a party to a juvenile court proceeding.*" (Emphasis added).

Juv. R. 27(A) further provides as follows:

(A) General provisions

Unless otherwise stated in this rule, the juvenile court may conduct its

hearings in an informal manner and may adjourn its hearings from time to time.

*The court may excuse the attendance of the child at the hearing in neglect, dependency, or abuse cases.* (Emphasis added).

Juv. R. 27 (A)(1) further provides that:

(1) *Public access to hearings.* In serious youthful offender proceedings, hearings shall be open to the public. In *all other proceedings*, the court may exclude the general public from the hearing, but *may not exclude* either of the following:

- (a) Persons with a *direct interest in the case*,
- (b) Persons who demonstrate, at a hearing, a *countervailing right* to be present. (Emphasis added).

Regarding the competency of a child to testify as a witness in a trial, R.C. 2317.01, titled "Competent witnesses", provides that:

All persons are competent witnesses except those of unsound mind and children under ten years of age who appear incapable of receiving just impressions of the facts and transactions respecting which they are examined, or of relating them truly.

In a hearing in an abuse, neglect, or dependency case, any examination made by the court to determine whether a child is a competent witness shall be conducted by the court in an office or room other than a courtroom or hearing room, shall be conducted in the presence of only those individuals considered necessary by the court for the conduct of the examination or the well-being of the child, and shall be conducted with a court reporter present. The court may allow the prosecutor, guardian ad litem, or attorney for any party to submit questions for use by the court in determining whether the child is a competent witness.

Further, Evid R 601, titled "General rule of competency" states, in relevant part, as follows:

Every person is competent to be a witness except:

(A) Those of unsound mind, and children under ten years of age, who appear incapable of receiving just impressions of the facts and transactions respecting which they are examined, or of relating to them truly.

Appellant raises the issue of competency as being illustrative of and a corollary to the due process issue (right to attend and participate in the trial proceedings) now being presented to this Court. Appellant suggests that a similar algorithm as that used for determining whether or not a child is competent to testify could be a useful tool for courts in allowing children to attend and participate in court proceedings. This Court in State of Ohio, Appellant v. Clark, Appellee, (December 30, 1994), 71 Ohio St. 3d 466, 1994 Ohio 43, 644 N.E.2d 331, 1994 LEXIS 2947 re-emphasized that Ohio R. Evid. 601(A) creates a presumption of competency in favor of anyone who is at least 10 years of age and is of sound mind. In furthering this Court's holding in *Clark* as well as the earlier holding of State v. Frazier, (1991), 61 Ohio St.3d 247, 250-251, 574 N.E.2d 483, the Court of Appeals of Cuyahoga County, Eighth Appellate District in State of Ohio, Plaintiff-Appellee vs. Michael Harris, Defendant-Appellant, (August 25, 2010), 2010 Ohio 1865, 2010 App. LEXIS 1545, further held that:

“In determining whether a child under ten is competent to testify, the trial court must take into consideration (1) the child's ability to receive accurate impressions of fact or to observe acts about which he or she will testify, (2) the child's ability to recollect those impressions or observations, (3) the child's ability to communicate what was observed, (4) the child's understanding of truth and falsity and (5) the child's appreciation of his or her responsibility to be truthful.”

The embodiment of the cited case law above presumes the competency of a child's ability to testify. Such an analysis could be applied to permit a child to attend and participate in

court proceedings if that child requested to do so and is a party in the action with a direct interest in the result of the proceeding. In the instant case, the trial court summarily denied the Appellant's attendance and participation at trial because "she did not have a constitutional right to participate during trial", without further analysis. Appellant re-emphasizes that she was the party who had filed the response to Appellee Father's motion for unsupervised visitation. No other response was filed by either Appellee Mother or the guardian ad litem.

Additionally, the issue before the trial court was not one involving allegations of neglect, dependency or abuse, *nor was it one to determine the parent-child relationship.* Rather, Appellee Father had filed a motion for unsupervised visitation and Appellant responded with a motion, through her own attorney, to terminate all visitation with Appellee Father. In considering the requirements of Juv. R. 27(A)(1) in this case, Appellant posits that she *had a direct interest* in the case. As such, the trial court's application of Juv. R. 1(C) in denying Appellant's participation at trial appears to directly contradict Juv. R. 1(A), 2, 4 and 27(A)(1).

Appellant further notes that the trial court did not, at any time, appoint counsel for the Appellant, even though her wishes were in direct conflict with the recommendations of the guardian ad litem (a licensed attorney in Ohio). When the guardian ad litem became aware that her recommendations were in conflict with Appellant's desires/wishes, she did not request the appointment of counsel for Appellant and Appellant, on her own accord, subsequently obtained counsel in September 2009. Although her counsel did participate in the ensuing court proceedings, he did not have the benefit of Appellant's spontaneous and

direct input regarding the testimonies of Appellee Father and the witnesses Appellee Father presented against Appellant. Additionally, numerous pictures and written documents purportedly to be crafted by Appellant were admitted into evidence without Appellant's ability to review them firsthand and comment to her counsel about them during trial. In being denied the opportunity to participate at trial, Appellant was also unable to submit the numerous recorded telephone calls which demonstrated Appellee Father's anger and attempted control of Appellant and further challenge Appellee Father's in-court statements.

Furthermore, the protracted efforts of Appellant's counsel to make copies of the photographs and show them to Appellant shortly after the conclusion of the testimony denied the Appellant the opportunity to spontaneously object and comment about the authenticity and/or relevance of the photographs. With regard to the statements made by the guardian ad litem relative to the confidential conversations that she had with Appellant, Appellant's absence at trial rendered any rebuttal to the statements made by the guardian ad litem impossible, since Appellant's counsel was not present for either of those interviews and as such, he did not have personal knowledge of what occurred during those interviews. Because Appellant was denied the opportunity to participate in the trial proceedings, she was unable to observe and spontaneously challenge the in-court testimony of the guardian ad litem. Appellant additionally posits that by denying her the right to participate at trial, the trial court did not have the opportunity to observe, first hand, Appellant's resultant reaction and demeanor relative to the witnesses and evidence presented during the trial. Such observations would likely have had an impact upon the trial court's impression regarding the evidence presented at trial.

In summary, Appellant asserts that by denying her the opportunity to *personally* participate in the trial proceedings, the trial court denied her the due process rights as guaranteed by the U. S. Constitution and the Ohio Constitution, as well as the established due process requirements mandated by Juv. R. 2, 4 and 27. Absent a legitimate compelling public policy reason which outweighs the constitutional rights guaranteed to all persons, *including those under the age of majority*, these existing standards and practices which treat children differently than adult persons *must be changed*. It is finally noted that this is not about whether or not a different outcome would have been achieved had Appellant been afforded the opportunity to attend and participate during the adjudicatory proceedings. Rather, it is about Appellant's constitutionally guaranteed right to attend and participate in that specific proceeding in which she had a direct interest in the outcome of the case.

## CONCLUSION

The decision of the trial and appellate courts in this case are fundamentally wrong and violate the rights embodied in the Fourteenth Amendment of the Constitution of the United States and Article I, Section 16 of the Constitution of the State of Ohio which collectively guarantee that **any person**, *regardless of age*, shall be afforded the right to due process, principally the fair and impartial judicial enforcement of the legislative laws of the State of Ohio. Inherent in that right is the protection of persons from unfair decisions resulting from vague, ambiguous and broad sweeping laws that are subject to multiple interpretations or are inconsistent with each other to achieve a generally unbiased result. This Court must recognize the protected rights of persons who are under the age of majority and reverse the trial court and appellate decisions in this case. A reversal will promote the constitutionally guaranteed rights embodied in the U. S. and Ohio Constitutions as applied to all persons, irrespective of their age.

Respectfully submitted,



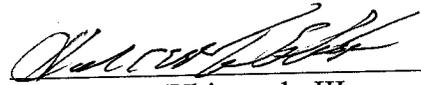
Howard C. Whitcomb, III, Esq.  
COUNSEL FOR APPELLANT,  
A. G., A MINOR CHILD

## APPENDIX

Notice of Appeal of Appellant A.G., A Minor Child (dated December 14, 2012)	Attachment A
Decision and Judgment (6 <sup>th</sup> District Appellate Court) (dated November 2, 2012)	Attachment B
Decision and Judgment Entry (Ottawa County Juvenile Court) (dated January 21, 2011)	Attachment C
Constitution of the United States with Amendments	Attachment D
Constitution of the State of Ohio	Attachment E
Ohio Revised Code 2317.01 Competent Witnesses	Attachment F
Ohio Evid. R. 601 General rule of competency	Attachment G
Ohio Juv. R. 1 Scope of rules; applicability; construction; exceptions	Attachment H
Ohio Juv. R. 2 Definitions	Attachment I
Ohio Juv. R. 4 Assistance of counsel; guardian ad litem	Attachment J
Ohio Juv. R. 27 Hearings; general	Attachment K
Ohio Civ. R. 75 Divorce, annulment, and legal separation actions	Attachment L

**PROOF OF SERVICE**

I certify that copies (one each) of the Merit Brief of Appellant A.G., A Minor Child and the Supplement to Merit Brief of Appellant A.G., A Minor Child has been sent by ordinary U. S. Mail, postage pre-paid, to Counsel of record for Appellee Father, Mr. Timothy Hallett, Esq. and Mr. Eric Nagel, Esq., Hallett, Hallett & Nagel, at 132 Fulton Street, Wauseon, OH 43567; Counsel of record for Appellee Mother, Mr. Richard A. Karcher, Esq., at 421 North Michigan Street, Suite D, Toledo, OH 43604; and the Guardian ad Litem, Ms. Bree Noblitt Brown, Esq., at 318 Madison Street, Port Clinton, OH 43452 on April 22, 2013.



Howard C. Whitcomb, III  
COUNSEL FOR APPELLANT,  
A. G., A MINOR CHILD



**IN THE SUPREME COURT OF OHIO**

In re: \* On Appeal from the  
A.G., a minor child. \* Ottawa County Court  
Appellant. \* of Appeals, Sixth  
Appellate District  
\* Court of Appeals  
\* Case No.: OT-11-003

12-2097

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**NOTICE OF APPEAL OF APPELLANT A. G.,  
A MINOR CHILD**

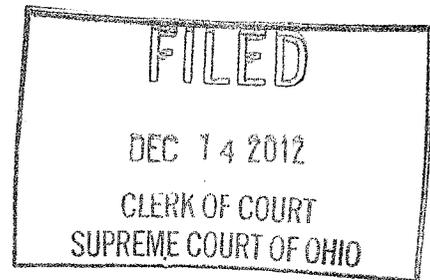
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127 West Perry Street , Suite 105  
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APPELEE FATHER

Bree Noblitt Brown, Esq.  
NOBLITT & BROWN, LPA  
318 Madison Street  
Port Clinton, OH 43452  
GUARDIAN AD LITEM FOR A. G

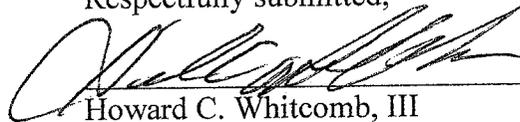


**Notice of Appeal of Appellant A. G., a minor child**

Appellant A. G., a minor child, hereby gives notice of appeal to the Supreme Court Of Ohio from the Decision and Judgment of the Ottawa County Court of Appeals, Sixth Appellate District, entered in Court of Appeals Case No. OT-11-003 on November 2, 2012.

This case raises a substantial constitutional question and is one of public or great general interest.

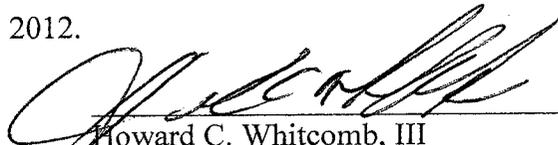
Respectfully submitted,



Howard C. Whitcomb, III  
COUNSEL FOR APPELLANT,  
A. G., A MINOR CHILD

**Proof of Service**

I certify that a copy of this Notice of Appeal of Appellant A. G., a Minor Child was sent by ordinary U. S. mail to appellee father, Mr. Patrick J. Garmyn, acting pro se, at 122 S. 29<sup>th</sup> Street, Wilmington, NC 28403; Counsel of record for appellee mother, Mr. Richard A. Karcher, Esq., at 421 North Michigan Street, Suite D, Toledo, OH 43604; and the Guardian ad Litem, Ms. Bree Noblitt Brown, Esq., at 318 Madison Street, Port Clinton, OH 43452 on this day, December 13, 2012.



Howard C. Whitcomb, III  
COUNSEL FOR APPELLANT,  
A. G., A MINOR CHILD



ATTACHMENT B  
**FILED**  
COURT OF APPEALS

NOV 02 2012

JENNIFER L. WILKINS, CLERK  
OTTAWA COUNTY, OHIO

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
OTTAWA COUNTY

In re A.G.

Court of Appeals No. OT-11-003

Trial Court No. 20630010

**STATE OF OHIO, OTTAWA COUNTY**

I hereby certify this to be a true copy of original on file.

Subscribed to me this 2 day of

November 2012  
Clerk of Courts  
By Jennifer L. Wilkins deputy

**DECISION AND JUDGMENT**

Decided:

NOV 02 2012

\* \* \* \* \*

Howard C. Whitcomb, III, for appellant.

Timothy W. Hallett and Eric K. Nagel, for appellee.

\* \* \* \* \*

**SINGER, P.J.**

{¶ 1} Appellant, A.G., appeals from a decision of the Ottawa County Court of Common Pleas, Juvenile Division, granting her father, appellee, unsupervised visitation.

For the reasons that follow, we affirm the decision of the trial court.

{¶ 2} A.G. was born in December 1995. Her parents divorced in 2001. On September 14, 2009, father filed a motion seeking unsupervised visitation with A.G.

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A.G. filed her own motion on October 14, 2009, to terminate all visitations with her father. The court granted father's motion and denied A.G.'s motion. She now appeals setting forth the following assignments of error:

I. In denying A.G.'s request to attend and participate in the trial proceedings, the trial court violated her due process rights as guaranteed by the 14th Amendment of the U.S. Constitution and Article 1, Section 16, of the Ohio Constitution.

II. The trial court abused its discretion in ordering unsupervised visitation between A.G. and her father as said order was contrary to the best interests of the minor child, A.G. and was against the sufficiency and/or manifest weight of the evidence adduced at trial.

III. The minor child was deprived the due process of the law in that the court-appointed guardian ad litem failed to zealously represent the best interests of A.G. pursuant to the requirements of R. 48 of the Ohio Rules of Superintendence.

IV. The trial court denied A.G. the protections afforded by R.C. Chapter 2151 and Superintendence Rule 48 by denying her request to re-appoint a different guardian ad litem to represent her best interests.

{¶ 3} In her first assignment of error, A.G. contends that the court violated her due process rights when denying her motion to attend the hearing for her father's motion for unsupervised visitation. In support, A.G. cites Juv.R. 27(A)(1) which states in pertinent

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part: "the court may exclude the general public from any hearing, but may not exclude either of the following: (a) persons with a direct interest in the case[.]" A.G. naturally contends that, as the subject of the motion, she is a person with a direct interest.

{¶ 4} However, Juv.R. 1(C)(4) states that the Juvenile Rules of Procedure do not apply "in proceedings to determine parent-child relationships \* \* \*." A proceeding to determine parent-child relationships includes the determination of custody and visitation rights. *Hook v. Gahris*, 2d Dist. No. 2011-CA-36, 2011-Ohio-6491. Thus, appellant's reliance on Juv.R. 27 is faulty.

{¶ 5} In *Hanna v. Hanna*, 177 Ohio App.3d 233, 2008-Ohio-3523, 894 N.E.2d 355 (10th Dist.), a minor child filed his own objections to a magistrate's decision regarding a shared parenting matter after his father withdrew his objections. In finding that the trial court did not err in failing to rule on the child's objections, the court stated:

The question is not whether the minor child has a personal interest in the proceedings relating to custody modification; without question, the minor child has an interest in proceedings that involve such significant matters as where the child resides or spends his time. \* \* \* According to the plain language in R.C. 3109.04(E)(1)(b), only plaintiff and defendant, as the minor child's parents, could invoke the court's continuing jurisdiction to modify a prior custody decree and grant shared parenting. The right of action is not in the child; it is in his parents and is jurisdictional. *Id.* at

¶ 13-14.

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{¶ 6} In this case, A.G. was represented by an attorney who conveyed her wishes and she was able to express her wishes to the court in an in-camera interview. She also was scheduled to testify at the hearing. For all of the foregoing reasons, we find that the trial court did not err in denying her motion to be present at the hearing. A.G.'s first assignment of error is found not well-taken.

{¶ 7} In her second assignment of error, A.G. contends that the court erred in granting her father's motion for unsupervised visitation. A.G. contends that the decision was contrary to her best interest and was against the sufficiency and/or manifest weight of the evidence.

{¶ 8} In determining whether the trial court's determination, that the best interests of the children would be served by a modification of visitation, was against the manifest weight of the evidence, a reviewing court "does not undertake to weigh the evidence and pass upon its sufficiency but will ascertain from the record whether there is some competent evidence to sustain the findings of the trial court." *Ross v. Ross*, 64 Ohio St.2d 203, 204, 414 N.E.2d 426 (1980). The juvenile court has broad discretion as to visitation issues. *In re S.K.G.*, 12th Dist. No. CA2008-11-105, 2009-Ohio-4673, ¶ 21. The juvenile court's decision, therefore, is subject to reversal only where there is an abuse of discretion. *In re A.M.*, 12th Dist. No. CA2005-11-492, 2006-Ohio-5986, ¶ 8. Thus, a reviewing court may not merely substitute its judgment for that of the trial court absent a showing that the decision was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

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{¶ 9} R.C. 3109.051 governs matters of visitation. *Braatz v. Braatz*, 85 Ohio St.3d 40, 44-45, 706 N.E.2d 1218 (1999). Therefore, when ordering a modification of visitation the court must consider the enumerated factors in R.C. 3109.051(D) as well as any other factor in the child's best interest. R.C. 3109.051(D). R.C. 3109.051(D) states, in pertinent part:

In determining whether to grant parenting time to a parent pursuant to this section or [other sections], \* \* \* in establishing a specific parenting time or visitation schedule, the court shall consider all of the following factors: prior interrelationships with parents and relatives; the geographical distance between parents; the available time of both the child and parent(s); age of the child; child's adjustment to home, school and community; wishes and concerns of the child; health and safety of the child; child's time with other siblings; mental and physical health of all parties; each parent's willingness to reschedule missed parenting time; whether the residential parent has denied the other parent's rights to parenting time; whether either parent is establishing a residence outside the state; and any other factor in the best interest of the child.

{¶ 10} A.G. contends that the court, in awarding unsupervised visitation, ignored evidence of her unhealthy relationship with her father and ignored her father's mental health issues. We disagree.

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{¶ 11} The record reflects a long, contentious history between the parents involving the custody of their daughter. The trial court in this case meticulously detailed this history in a 63 page judgment entry. To summarize, A.G. has shifted back and forth between her parents during her life and has even spent some time in foster care. Both parents, on separate occasions, have absconded with A.G. to foreign countries in an attempt to circumvent whatever custody order was in place at the time. Both parents have faced legal consequences in the past as a result of their actions.

{¶ 12} In 2002, father moved to North Carolina. A.G. sometimes expressed an interest in moving to North Carolina and sometimes maintained that she did not want to go at all. The record shows that father, throughout A.G.'s life, has consistently made an effort to stay in touch with her, despite impediments created by mother and appellant's stepfather. As for father's mental health issues, the court considered the various psychological evaluations done of father over the years. Generally, he was found to be mistrustful. He was found to have good intentions but very insecure about his relationship with his daughter. He tends to see himself as the victim in this matter. He has anger issues and exhibits a strong need to control situations.

{¶ 13} The guardian ad litem ("GAL") in this case noted that A.G. could not cite any reason why she did not want to visit her father. She further noted that A.G. exhibits no fear of her father.

{¶ 14} James Bedra, a retired social worker experienced in issues involving minors, testified that in 2009, he was appointed by a magistrate to be a supervisor for

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visitation between A.G. and her father. Each visitation period was approximately eight hours long. He was compensated for his time by A.G.'s father and mother. Appellant was 13 years old at this time. They went on an out of town trip, went shopping and rode go-carts for the three visits he supervised. He testified that A.G. and her father appeared to engage in positive interaction. Though A.G. sometimes seemed reluctant to participate in the visits, Bedra testified that in his opinion, she was exhibiting normal teenage girl behavior. Her demeanor generally became more agreeable as the visits wore on. Bedra testified that A.G. did not seem to fear her father and he testified that he saw nothing inappropriate in the way father acted towards A.G. He, in fact, found him to be a loving father and he did not believe A.G. was at risk in father's presence. Bedra testified that after the three visits, he saw no need for their visits to be further supervised and he thought it would be unethical to accept any more money to supervise their visitations.

{¶ 15} Stephanie Skrbina, a social worker, testified that she also acted as a supervisor during A.G.'s visitations with her father. Before her first visit with A.G. and father, she met with appellant's mother and stepfather. They told Skrbina that father was dangerous, that there was domestic violence between father and mother, and they believed he had hired a hit man. They also told her that appellant's stepfather wanted to adopt A.G.

{¶ 16} Despite obstacles in scheduling supervised visits, obstacles Skrbina attributed to mother, Skrbina accompanied A.G. and father on two visits. In her opinion, these visits showed evidence of a positive relationship between father and daughter.

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Skrbina testified that she saw no signs of mental illness in father and that A.G. did not appear to fear her father. They went shopping and they went to a recreational water park. Like Bedra, Skrbina noted that A.G. was withdrawn at the beginning of the visits but she gradually let her guard down and fully participated. She further noted that father was very patient with A.G. when the girl acted defiant or accused her father of being cheap or even when she called him a jerk. Skrbina concluded that after supervising two visits, she felt there was no more need for supervised visitation.

{¶ 17} Adrienne Finley, a social worker, testified that she supervised a seven hour visit with A.G. and father. They took a boat ride and played games at a pizza arcade. Like the other two witnesses before her, Finley testified that A.G. was initially withdrawn but later opened up and talked with her father. Finley testified that she seemed to enjoy the visit and that there was no indication that she feared her father. She also testified that father's behavior towards A.G., even when she was being standoffish, was appropriate.

{¶ 18} In the judgment entry granting father's motion for unsupervised visitation, the judge noted that A.G. was 15 years old and that the last order designating mother as the residential parent was issued when A.G. was 10 years old. The court recognized that A.G. had expressed an unwillingness to foster a relationship with her father, however, the court pointed out that in the past, she has demonstrated love and affection for her father which can be seen in the drawings A.G. gave to her father when she was younger and by the many photographs of the two together. As of 2009, A.G. and her father have not

talked on the phone, nor has there been any face-to face contact between the two. The court further stated:

A large portion of the evidence presented at this 2010 trial was a rehashing of the events that occurred from 1995 through 2005. It is time to put these matters to rest. It would be in [A.G.'s] best interest that she has a relationship with each of her parents that is encouraged by [mother, father and stepfather]. This court is not without empathy for [A.G.]. She is an only child caught in a web of parental hostility and ongoing conflict. It is this court's belief that she has been influenced by her mother's fear and paranoia, her father's need to control, and her stepfather's full acceptance of mother's position with no intent of acting as a conciliatory intermediary. Each of these parents is responsible for the conflict they have created for themselves, and particularly, for their child. Unfortunately, due to the inability of these parents to work out their own differences, this court must impose its judgment upon this family.

{¶ 19} After a thorough review of the record, especially the testimony presented at the hearing, we cannot conclude that the trial court abused its discretion in its visitation determination. Accordingly, A.G.'s second assignment of error is found not well-taken.

{¶ 20} A.G.'s third and fourth assignments of error will be addressed together. A.G. contends that the GAL failed to honestly and zealously represent her best interests. As such, the court erred in denying her motion to discharge the GAL.

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{¶ 21} The GAL testified that from the beginning of her involvement in this case she was very concerned about A.G.'s well-being. This was because of the extreme allegations that both of A.G.'s parents had made and because of the kidnapping history. She therefore spoke to as many people who knew the parties as she possibly could so she could get an accurate grasp of the situation. She spoke to A.G. many times and A.G. was always adamant that she hated her father and did not want to see him. However, A.G. was never able to give a reason as to why she hated her father. The GAL testified that before she could recommend that the relationship between A.G. and her father be severed, she needed something more concrete than just A.G.'s blanket statements of hatred that the GAL did not find credible. The GAL testified that in her opinion, both father and mother believe they are justified in their positions but as a consequence, they are forcing A.G. to choose sides, something the GAL did not believe A.G. should have to do. The GAL did not exonerate either father or mother from fault but she concluded, based on the success of the supervised visits; it appeared to her that there was a relationship between A.G. and her father that was worth rekindling.

{¶ 22} The role of the GAL is to investigate the child's situation and then ask the court to do what the guardian feels is in the child's best interests. *In re Baby Girl Baxter*, 17 Ohio St.3d 229, 232, 479 N.E.2d. 257 (1985). "Because a guardian ad litem owes his or her principal duty to the court, a guardian may properly reject the child's expressed wishes and support a contrary position, one that the guardian believes is in the child's best interests." *In re Alfrey*, 2d Dist. No. 01 CA0083, 2003-Ohio-608, ¶ 18.

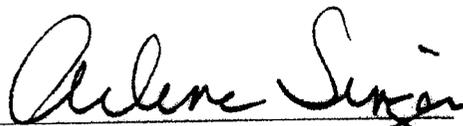
{¶ 23} We find nothing in the record to suggest that the GAL failed to adequately protect A.G.'s best interests. Rather, the record shows that after a thorough investigation, the GAL reached a different conclusion than A.G. would have liked. This does not constitute reversible error. A.G.'s third and fourth assignments of error are found not well-taken.

{¶ 24} On consideration whereof, the judgment of the Ottawa County Court of Common Pleas, Juvenile Division, is affirmed. It is ordered that appellant pay the costs of this appeal, pursuant to App.R. 24.

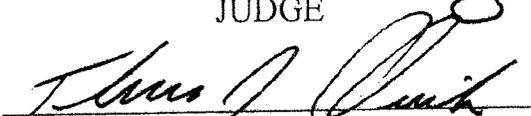
Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See also 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J.

  
JUDGE

Thomas J. Osowik, J.

  
JUDGE

Stephen A. Yarbrough, J.  
CONCUR.

  
JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.



IN THE COURT OF COMMON PLEAS  
OF OTTAWA COUNTY, OHIO  
JUVENILE DIVISION

JAN 21 2011

JUDGE KATHLEEN L. GIESLER  
OTTAWA CO. JUVENILE COURT

IN THE MATTER OF:

AMELIA GARMYN  
Date of Birth: 12/26/1995

)  
)  
)  
)

CASE NO. 20630010

DECISION and  
JUDGMENT ENTRY

\*\*\*\*\*

This matter came before the Court for HEARING on November 1, 2010; November 2, 2010; November 3, 2010; November 5, 2010; and November 8, 2010 upon the Motion for Unsupervised Visitation filed on behalf of Father, Patrick Garmyn; the Motion for Change of Custody filed by the Guardian ad Litem and joined by Father; the Motion to Terminate Visitation filed on behalf of the minor child, Amelia Garmyn; and the Motion to Show Cause filed by Mother, Lolita Blay. Present in open court were the following:

- Lolita Blay, Mother, *pro se*
- Patrick Garmyn, Father
- Timothy W. Hallett, Attorney for Father
- Howard C. Whitcomb, Attorney for Amelia Garmyn
- Bree Noblitt-Brown, Guardian ad Litem

FINDINGS OF FACT

1995

- 1.) Patrick Garmyn (hereinafter "Patrick") and Lolita Garmyn, nka Lolita Blay, (hereinafter "Lolita") were married in Lolita's home country of Russia in February of 1995. Mr. Garmyn brought his wife to the United States soon after their marriage, and they moved into the home of Patrick's brother, Joe Garmyn, in Archbold, Ohio.

- 2.) The couple began to experience marital difficulties soon after their marriage. Lolita testified that Patrick became mean, accusatory, and controlling. She claims that he would mock her and call her "stupid". At the time, Lolita could speak little English, and Patrick spoke no Russian. The couple communicated through writing.
- 3.) Lolita states that Patrick became physically abusive toward her. If she would disagree with him, he would hit her on the head with his hand. Patrick denies said allegations. There were no domestic violence charges filed against Patrick.
- 4.) In March of 1990, a restraining order was granted to Patrick Garmyn's former wife in the Sonoma County (California) Superior Court wherein Patrick Garmyn was prohibited from coming within 150 yards of her. Patrick was not charged with violating the protection order. NOTE: The Court cannot weigh the credibility of the allegations made by Mary Garmyn, as she was not present for direct or cross examination.
- 5.) Patrick and Lolita's only child, Amelia, was born on December 26, 1995.

1996

- 6.) In 1996, Lolita's mother, Natalia, traveled from Russia to visit with Patrick and Lolita for six (6) months. According to Patrick, she "overstayed her VISA" and was required by the immigration service to return to Russia.

1997

- 7.) Much discussion was had regarding an alleged assault by Patrick on Lolita's mother during her visit and soon after the divorce was filed.
- 8.) Patrick tells this story. He was dressing 15-month-old Amelia for the purpose of traveling to Toledo to obtain an American passport for the child. He was concerned that Lolita was going to take the child to

- Russia, and he believed that the child could be more readily returned if she had an American passport.
- 9.) His mother-in-law began to hit him repeatedly and chased him across the street to his business. He entered the building and locked the door.
  - 10.) Lolita states that she was at work and received a telephone call that her mother had been assaulted by her husband. Patrick told Lolita that he was attacked; however, Lolita observed bruising on Natalia.
  - 11.) A police report was made by both Natalia and Patrick on March 25, 1997. Patrick claims that the police advised him that he had 30 days in which to file a complaint against Natalia. Lolita requested that he not do so, and the 30 days lapsed.
  - 12.) According to Patrick, Lolita received her green card one month later and took her mother to file charges against Patrick. A complaint alleging assault was filed in the Napoleon Municipal Court on May 20, 1997. Patrick pled no contest to the amended complaint of disorderly conduct and paid a fine and court costs.
  - 13.) During this time, Lolita filed a Complaint for Divorce in the Henry County Common Pleas Court.
  - 14.) Early in the summer of 1997, Patrick was given temporary custody of Amelia, and Lolita had visitation and companionship every other weekend.
  - 15.) In December of 1997, Lolita's mother returned to Russia. A few days later, Patrick received a fax stating that Lolita's father was dying and that they should all come to Russia immediately. Lolita asked Patrick to allow her to put Amelia on her Russian passport.
  - 16.) Lolita dismissed her complaint for divorce.
  - 17.) Patrick claims that one day Lolita "went to town with Amelia and did not come back". Lolita and Amelia went to Russia, and Patrick did not see them again for 6-7 months.

1998

- 18.) Lolita asserts that Patrick was fully aware of her plans. He described to her the route to Detroit Airport. Lolita had a return ticket for three months later; however, she claims there were problems in Russia and she did not return until June of 1998.
- 19.) The couple did have telephone communications during that time. Patrick stated that he wrote a document declaring that he would share money and his business with Lolita if she would return with Amelia from Russia.
- 20.) In June of 1998, Patrick picked up Lolita and Amelia at the Chicago airport. During the trip from the airport to the family's Archbold, Ohio home, Patrick stopped at a local convenience store. He asked Lolita to buy some Tylenol. When she came out of the store, Patrick and Amelia were gone. Patrick stated that he went to see his attorney, and he and the child returned home the next evening.
- 21.) On June 22, 1998, Patrick Garmyn filed a Complaint for Divorce in Henry County Common Pleas Court. Shortly thereafter, he was granted temporary custody of 2-year-old Amelia, and Lolita was granted supervised visitation with the child.

1999

- 22.) In February of 1999, Lolita was exercising her visitation in the presence of a teenaged supervisor. During the visit, Amelia was taken by ambulance to the local hospital. There were disputed claims by each of the parents as to whether the child was actually ill. Patrick believed this was a ploy by Lolita to remove Amelia again from his care, as he claims that Lolita had a friend waiting in the parking lot.

- 23.) Thereafter, Patrick took Amelia and "went on a three-month vacation" to Arizona, New Mexico and Costa Rico.
- 24.) While Patrick and Amelia were absent, the Henry County Common Pleas Court ordered in March of 1999 that Lolita be designated the residential parent of Amelia and that Patrick be held in contempt for his violation of the Court's orders pertaining to Lolita's visitation with the child. A bench warrant issued for Patrick's arrest and Amelia's detention into protective custody until the child could be safely returned to Lolita.
- 25.) Patrick was ultimately arrested in Key Largo, Florida. Several documents were found on his person at that time, including an Arizona driver's license bearing the name of "Michael James Phillips" with a picture of Patrick; a New York birth certificate for "Michael James Phillips"; a New York birth certificate for "Emelia Carmen Phillips"; a Certificate of Title for a 1991 Nissan pickup truck in the name of "Michael James Phillips"; an Arizona license plate; a monthly rental agreement between "Dr. R.T. Burton" and "Michael James Phillips" for a premises located at 588 E. Marble Peak Place, Tucson, Arizona; an Arizona voter registration for "Michael James Phillips"; and a Veterans Administration identification card bearing Patrick Garmyn's picture and the name of "Michael Phillips".
- 26.) Patrick acknowledged that there is no such person as "Michael James Phillips" and that he did acquire a different identity but did not use it. He claims his actions were based upon the fact that Amelia was taken by her mother to Russia for six months in violation of a custody order, and he was afraid that it would happen again.
- 27.) Lolita thereafter flew to Florida and retrieved the child. The two returned to Archbold, Ohio.
- 28.) On May 19, 1999, Patrick was indicted by the Fulton County Grand Jury on one count of Interference with Custody. Patrick thereafter pled to Attempted Interference with Custody, a misdemeanor of the first degree. In its' Judgment Entry of Sentence dated October 21,

1999, the Court suspended five months of incarceration and imposed two years of community control and a fine of \$1,000. Patrick was further ordered to comply with court orders stemming from the domestic proceedings and the recommendations of Dr. Wayne Graves.

29.) In November of 1999, Patrick was granted supervised visitation with Amelia.

2000

30.) On February 29, 2000, Dr. Graves issued his first *psychological* evaluation of Patrick, Lolita and Amelia. Some of his findings deemed particularly pertinent to this writer included:

*Patrick's summary:*

2. Patrick projects an image of gullibility and good intentions. He appears to present himself as if he is a victim here and fearful for his daughter's well-being.
5. He claims that Lolita is not what she seems to be. That she is strong-willed, tough and aggressive. He claims that she is impulsive, dishonest, volatile and not to be trusted. His perception of her is almost universally negative and based on the idea that the ordinary observer would not see these things in her.
6. He claims to be completely justified in his running away with Amelia to find a safe place. He presents that his flight was out of fear for Amelia's safety and to keep her from being taken to Russia again.
12. His behavior and beliefs have elements of grandiosity, narcissism, insecurity and paranoia. The testing supports the idea of an **almost** delusional belief system about those around him, acting as a threat to him or not understanding his specialness.
13. His mistrust is relatively pervasive. He uses poor judgment and engages in anger and a strong need to control, all of which are patterns similar to individuals who are abusive to those around them.
14. He seems to lack much ability to be empathic, although he can experience guilt feelings. He tends to justify his own actions and transfer responsibility to those around him.

15. Although he has been a fairly active part of Amelia's life and his beliefs about his daughter in some ways reflect positive parenting models, his suspicions, mistrust and judgment issues are going to continue to plague his interactions with his daughter over time.

*Lolita's summary:*

2. She appears to present as a mostly traditionally feminine woman, more comfortable reducing conflict, deferring to men, taking a more passive role, and seeking dependence as a basis for the relationship.
3. She is not entirely open in this evaluation process, but certainly more transparent and credible, in my opinion, than Patrick.
10. There is no significant psychopathology apparent to this examiner. She does display some anger, some mistrust, and a tendency toward judgmental beliefs, not unexpected in someone who has gone through her experience in this relationship.
14. She believes that it is fine for Amelia to never fully know all of the conflict or accusations that have been raised in this process.

*Amelia's summary:*

6. She is described by both parents as independent, capable of resisting, stubborn and can be angry.
9. The pattern of communication between the parents has been poor. The pattern of instability in the marriage pronounced and prolonged.
18. Father's fears about Amelia being taken to Russia could be addressed as well with court order. Amelia has only an American passport at this point, even though she has potential for dual citizenship and dual passports.
19. This child needs stability of living arrangement, life pattern and placement.

31.) The recommendations made by Dr. Graves were as follows:

"Therefore, it is my opinion that it is in Amelia's best interest that she be placed in the primary parenting responsibility and custodial placement with her moth, Lolita. For the time being the child needs to be continued in some form of individual treatment. This can be determined by appropriate consultation with the therapist. The evaluator believes that stability, safety and normalization should be the themes for Amelia's life...

A number of other events, at least as troublesome, can be minimized by ending the conflict, reducing risks to Amelia, and keeping her lifestyle and pattern stable.

At this point father's visitation, in my opinion, needs to continue to be supervised partly to prevent risk of flight, partly to be aware of, and conscious of, his tendency to try to induce ideas and beliefs into Amelia congruent with his own fears and distress. This supervision will probably need to continue into the foreseeable future, and the amount of hours can gradually be expanded and other supervisors, agreeable to the mother, can begin to be put in place as the court circumstances are resolved. Finally, it would probably be helpful if father had at least one other short contact with Amelia per week, simply because of the child's age. This increase in contact can be instituted as long as father is willing to accept this evaluator's recommendations and/or the court findings.

Although father has some significant and serious difficulties on a psychological level, I do not see him as a good treatment candidate. Imposing treatment as a condition of his contact with his daughter would build a lot of impediments into any therapeutic process. Father can be encouraged to seek treatment without making it mandatory. Any treating professional should have access to at least the summary portions of this report in order to untangle the web of complaints, counter-charges and allegations."

2001

- 32.) Patrick and Lolita were divorced by Judgment Entry of the Henry County Common Pleas Court on February 23, 2001.
- 33.) During the final divorce hearing, Patrick and his attorney expressed their concern to the Court that Lolita would take the child to Russia when she received her property settlement of \$40,000.
- 34.) Lolita specifically advised the Court that if she wanted to take the child back to Russia, she would go appropriately through the court system. She further assured the court that she has her life here in the United States and has no intention of leaving. Finally, if such would ever occur, she would abide by the court's orders and return the child.

- 35.) Three weeks later, Lolita and Amelia were gone. Lolita reasoned that she became scared and decided to ask for protection from the Russian government. Once she arrived in Moscow, she notified her attorney, Pam Weaner.
- 36.) In March of 2001, Attorney Weaner advised Dr. Wayne Graves "that Lolita had left for Moscow and was not intending on returning".
- 37.) On April 26, 2001, Patrick was granted temporary custody of the child with court-ordered protective services. Lolita and Amelia were ordered to return to Henry County.
- 38.) The child remained in Russia for approximately 15 months. During that time, Patrick had no contact or communication with the child.

2002

- 39.) On July 19, 2002, three men broke into the Moscow apartment that Lolita and Amelia shared with Lolita's mother. Lolita and her mother were assaulted, allegedly drugged and tied up. When Lolita awoke, Amelia was gone.
- 40.) The child was ultimately reunified with her father in either the Ukraine or in France.
- 41.) Patrick and Amelia were located by the F.B.I. in Canada, and they returned to Henry County. Lolita, who had lost her status to return to the United States, was granted entry.
- 42.) Amelia was placed in temporary custody of the Henry County Department of Job and Family Services. During that time she was placed in three different foster homes and, as a result, attended three different schools.
- 43.) Lolita was indicted by the Henry County Grand Jury for perjury.
- 44.) In August of 2002, Dr. Wayne Graves completed a second psychological evaluation of Patrick, Lolita and Amelia. Some of his findings deemed particularly pertinent by this writer, include:

*Patrick's summary:*

11. Patrick, surprisingly, presents this time with more benign psychological testing. It is benign in two ways. One, he is more open and revealing, more straight-forward and direct, even while positively oriented. And, it is also less pathological, indicating that Patrick appears to have managed to resolve some of his level of situational suspicion, fearfulness and distress. He seems more open and less reactive.
12. Patrick did return his daughter to authorities, rather than run with her again, even though he had the opportunity.
20. This evaluator does not believe that any sexual abuse of Amelia occurred by Patrick.

*Lolita's summary:*

1. Lolita presents as apparently cooperative and seemingly open enough in this evaluation.
2. She still is apprehensive, mistrustful, unsure and not fully disclosing. It is unclear whether this is a cultural rather than idiosyncratic trait.
6. Her actions (removing the child) demonstrate a relatively impulsive side. She acted in a willful fashion. She was not particularly open or transparent in her decisions until safe in her own country.
9. Her actions are congruent with being frightened for Amelia's well-being. At the same time that she was deceptive.
10. She was engaged in a professional life (in Moscow). She took steps to operate within the Russian court system to legalize her status for Amelia. She did not continue to operate underground.
15. Lolita has proposed to be completely absent from this area, to run, hide, to change her identity and to remove Patrick entirely from Amelia's life.
16. She does not appear to be considering the impact of the loss of Patrick on Amelia, in any active fashion. She would substitute someone else for Patrick in Amelia's life.
19. She does have a more developed relationship with Amelia. In part, this is because she excluded Patrick.
20. She has better parenting skills and instincts than Patrick.

*Amelia's summary:*

1. This youngster is a bright, perceptive young lady, who seems to act with some degree of emotional independence, as much as possible for a six and three-quarter year old child.
2. She is, at the same time, strong-willed, with behavioral impulsivity, and some attention span difficulties. She engages in frequent testing of limits. She appears to be expressing episodes of anger, annoyance and impatience.
4. She reportedly engages in some inconsistent behavior with mother, at times clingy, at times hitting, at times angry and rebellious, at times wanting hugs. Her mother is able to calm her.
7. This child seems to be have been repeatedly taken from one parent or the other through choice or abduction, at least on four separate occasions. And, separated from the other parent for periods ranging from four to seven and a half to seventeen months at a time. This means an experience of a loss of a parent in a semi-traumatic or traumatic fashion on four occasions over her six years of life.
8. She was reportedly acting out and distressed by the prior visitation and companionship as it was expanding with father. At the same time, mother was supposedly interfering with, and adding to the distress, by her style of response to Amelia before leaving with her to Russia.
17. During this evaluation process, neither parent is entirely forthcoming or credible. Both are not particularly open because of their mistrust and suspicion. The likelihood of any kind of cooperative exchange between the two of them is almost non-existent.
18. Mother's request for this little girl would essentially deprive her of any relationship with her father in the foreseeable future.
19. Father's willingness to include mom is certainly far from certain as well.
21. Amelia is at risk for disorders of emotional attachment, fears and phobias, generalized anxiety disorder, guilt, post-traumatic stress disorders, parental alienation, grief and separation anxiety during her childhood because of parent's actions.
22. There is a possibility that both of these parents have some sociopathic traits; that is, will not follow through with what they promised and will manipulate circumstances or counseling in order to shield disclosures and control the process.

28. Under ideal circumstances, she would have both her parents involved in a predictable and safe way in her life. And, she would be able to feel that going from one to the other was not a scary experience, or one marked by torn loyalties.
29. It is clear, to this examiner, that contact with father and the benefits of a father figure in her life, outweigh the risks associated with Patrick's behavioral controls or acting out.
35. These parents are not particularly good candidates for a psychotherapeutic intervention. Each is firmly convinced of the accuracy of their own views of the other parent, believe it unlikely that anyone else could understand the history of this case or the validity of their fears. They would not easily be able to adopt a productive view of their child from the other parent's point of view or understand fully the impact of their own beliefs on Amelia and her well-being. Any problematic behaviors in Amelia will likely continue to be blamed on the other parent.
- 45.) The recommendations made by Dr. Graves were as follows:

"Therefore, it is my professional opinion that it is in Amelia's best interest that she be placed in the primary parenting responsibility of the mother, Lolita, for the time being. All available safeguards to prevent mother leaving the court's purview should be instituted and enforced. Any measures that can be taken to prevent the legal exit from this country by Amelia should occur. This should take place not so much out of an assertion that the US is a superior culture to Russia for Amelia (but rather) as a way to increase the chances that Father can also plan a meaningful role in Amelia's life and development.

Amelia should be immediately placed in supportive psychotherapy with a well trained children's therapist who has access to these evaluations.

Movement from foster care to placement with a parent should happen as soon as is practical and safe enough. And a GAL or CASA should continue to be involved in this case for the foreseeable future.

If the court chooses to place the child with the father, Patrick, a more gradual process of reacclimation should take place, so that Amelia has more time to gradually become comfortable with father and his household. This process could be done in a 2 month period. And contact with mother should continue at the same pace as presently. Transitions should be at a neutral setting with no face to face parental contact in front of Amelia.

All new allegations of misconduct need to be resolved as expeditiously as possible for Amelia's sake and there should be no disruption in parenting time unless extraordinary circumstances dictate that is necessary.

Finally, this child's status should be reported and reviewed regularly to be responsive to her likely changing needs. However, changes in her schedule and contact with parents should not be easily interrupted or changed."

- 46.) On September 23, 2002, the parties entered into an Agreed Judgment Entry wherein Lolita was designated the residential parent of Amelia. Patrick was given visitation every other weekend, a midweek visit and extended summer visitation. Lolita was to obtain permanent residency status and to notify the Guardian ad Litem of her intentions to visit Russia. Both parents were allowed to travel in the continental United States. The Guardian ad Litem was ordered to hold Amelia's passport. Patrick was ordered to pay child support. NOTE: Lolita has not yet obtained her United States citizenship. She indicated that she will be eligible in January of 2011, and it is her intent to obtain that status then.
- 47.) To further assure visitation compliance, each party was ordered to deposit \$10,000 bond in an interest-bearing account. If either party were to remove the child from the continental United States in violation of the parental rights order, then the other parent would file a motion. A hearing would be scheduled, and the removing party could explain. If the parent and child failed to appear, then the other parent would receive the \$20,000 plus interest. Further, rights of the violating parent would be terminated.
- NOTE: Said monies continue to be held by the Court.
- 48.) The next day, on September 24, 2002, the criminal indictment against Lolita was dismissed.
- 49.) Soon thereafter, Patrick moved to North Carolina. The parents of Patrick's girlfriend, Elisa, (now fiancé) lived there and were experiencing

health issues. Patrick also believed it was best to distance himself from Lolita.

NOTE: Patrick continues to reside with Elisa Edelman in Wilmington, North Carolina. Ms. Edelman is a registered nurse at Duke University Hospital.

50.) The parties met with a mediator and agreed to a schedule of long distance visitation, which began at Christmas of 2002.

51.) According to Patrick, the long distance visits went well, other than the ongoing struggles with Lolita to coordinate dates for the visits. The parents would exchange the child in parking lots without incident. The police were not involved in the exchanges.

2003

52.) The Court adopted the parties' agreement by Judgment Entry dated June 18, 2003.

53.) The parents agreed, in part, that Patrick would visit with Amelia during Christmas school vacation in the odd years, Thanksgiving in the even years, every Spring Break, and each summer from the Saturday after school is released to July 31<sup>st</sup>. The parties shared the transportation for Patrick's visits (unless he was \$400.00 behind in child support 7 days before his parenting time).

54.) Patrick was to have three phone calls per week with Amelia. Initially, these calls were occurring and appeared to be pleasant.

55.) Patrick continued to visit with Amelia in North Carolina for Spring Break, summer vacation and Christmas in 2003. They enjoyed such activities as going to the beach and the park, visiting Patrick's spa and salon, and jet skiing. Patrick indicated that Amelia never acted out, was angry, or became out of control.

- 56.) Patrick testified that Amelia began to talk about living in North Carolina. Upon his counsel's advice, Patrick took Amelia to a counselor in his area. Danielle McIntire saw Amelia on a number of occasions. She wrote a letter and soon thereafter, Patrick filed a motion for change of custody in April of 2004.
- 57.) In January of 2004, Lolita took Amelia to a therapist, Lucy Moreno, in Defiance. Lolita reported to Ms. Moreno that when Amelia came back from Christmas visitation with her father, her behavior had changed. The child was screaming, yelling, kicking and not listening.
- 58.) Lolita further reported that Amelia had stated that she wanted to die and also wanted her mother to die. Lolita expressed her suspicions that Amelia had been sexually abused. NOTE: There was no evidence of sexual abuse presented at trial.
- 59.) Ms. Moreno indicated that Amelia was concerned that her father would take her away from her mother and that her father was making negative comments about her mother.
- 60.) Although Amelia did not want to live with her father, she did not indicate that she wished to stop visiting him.
- 61.) Ms. Moreno counseled Amelia from January 8, 2004 to April 29, 2004. She closed her case when the family moved from the Defiance area.
- 62.) Leanna Thorndike, a kindergarten teacher from North Carolina, testified that she first met Amelia during the summer of 2004 when Ms. Thorndike worked at Patrick's spa and salon.
- 63.) Amelia and Leanna's daughter, Haley, were close in age. The families spent a great deal of time together, particularly during the summers.
- 64.) Ms. Thorndike described Patrick's relationship with Amelia as very loving. Amelia did not exhibit any fear of or dislike for her father. Amelia also had a very good relationship with Elisa.

- 65.) Ms. Thorndike also described the continuing communications that Amelia had with her mother while she was in Patrick's home. Patrick encouraged Amelia to call Lolita. He would dial the phone, hand it to Amelia, and then give her privacy during their conversations.
- 66.) She stated that she occasionally witnessed Patrick's attempts to contact Amelia when the child was with her mother. Patrick would finally reach Lolita, but he would be told that Amelia was asleep or at a friend's house.
- 67.) Christie Pemberton is a firefighter in North Carolina. Her husband is a deputy sheriff. She testified that she worked for Patrick's spa and salon and witnessed the relationship between Patrick and Amelia on a regular basis. They were affectionate toward each other and enjoyed many activities together.
- 68.) Ms. Thorndike and Ms. Pemberton both indicated that Amelia had expressed to them on more than one occasion that she did not want to return to Ohio. Amelia also told them that her mother and stepfather spoke badly of her father.
- 69.) Lolita met Jeff Blay (hereinafter "Jeff") in May of 2004. Jeff, a nuclear consultant, was first introduced to Amelia in August of 2004 when he and Lolita picked up the child from the airport following Patrick's summer visitation. At this first meeting, Jeff stated the "child was screaming and stating that she did not want to go back". He further stated that Amelia was kicking the car doors and stating, "I hate him. I hate him. Why do you make me go there? I am going to kill myself." She was 8 years old at the time.
- 70.) That same month, Lolita and Amelia moved to Oak Harbor in Ottawa County, and Amelia entered the third grade at Carroll Elementary School.
- 71.) Jeff and Lolita were married in November of 2004.
- 72.) In December of 2004, Amelia visited Patrick in North Carolina for the Christmas holidays. The pictures provided by way of exhibit show a little girl who appears to be enjoying herself.

- 73.) Amelia visited with her father in North Carolina during Spring Break and the summer of 2005. It was during these visitation exchanges that police presence began to be introduced at the request of Jeff and Lolita Blay.
- 74.) Lolita testified that it was necessary for her protection in light of Patrick's history of domestic violence. Jeff advised Amelia that the police were present for Amelia's protection.
- 75.) On one particular exchange in West Virginia, a police officer walked Amelia to the middle of the parking lot. They stopped, and then Amelia walked alone to her father waiting on the other end of the lot.
- 76.) When Amelia arrived in North Carolina for her 2005 summer visit, she advised Patrick that her mother and Jeff wanted to change her name to "Blay".
- 77.) Patrick had also been advised by school officials that Amelia was using the name "Blay" at school.
- 78.) Jeff explained that when he and Lolita discovered that Amelia was using the name "Blay" at school, they advised her that she must use her legal name.
- 79.) On two of Amelia's visits with her father, however, Amelia had packed sweatshirts and pants inscribed with the word "Blay".
- 80.) It is Patrick's opinion that his relationship with Amelia began to change when Amelia came to North Carolina and told him that Lolita and Jeff wanted to change her name to "Blay", and Amelia began referring to Jeff as her "dad".
- 81.) Jeff further testified that it was in 2004 or 2005 that Amelia began asking Jeff if he would adopt her. He told her that there was no need for that and that it could not happen anyway.
- 82.) Patrick testified that he continued to have difficulties in reaching Amelia by telephone after Jeff became involved. He encountered such

- obstacles as busy lines and full voice mail boxes. He stated there were "285 times" that Amelia was not made available by her mother. He was told that "she is not here", "she is asleep" or "my cell phone is dying". There were occasions when Patrick would call at a different time and be told by Lolita that "you missed your call", and she would hang up.
- 83.) On one occasion, Jeff told Patrick, "My daughter is asleep". Patrick advised Jeff that Amelia was his daughter, and Jeff exclaimed, "I will see about that."
- 84.) In September of 2005, Amelia began counseling with Barbara Feldmar of Bayshore Counseling. She has remained Amelia's counselor since that time.
- 85.) At their initial conference, Jeff and Lolita reported to Ms. Feldmar that Amelia was having much difficulty dealing with visitation.
- 86.) Jeff and Lolita advised Ms. Feldmar of their version of the history of this case. The counselor believed that Amelia was probably present during much of this explanation; however, she further believes that children have the right to know what has caused their living arrangements. Upon cross examination, she did acknowledge that it would be unfortunate for the child if the history as stated was false or exaggerated.
- 87.) Jeff and Lolita relayed no positive statements regarding Patrick, as Ms. Feldmar would have remembered any good remarks.
- 88.) She did hear that Lolita was able to make telephone calls to Amelia when the child was in North Carolina. She noted that Amelia did like some of the people that she would see in North Carolina.
- 89.) Soon after their contact began, Barbara Feldmar diagnosed Amelia with Anxiety Disorder NOS and Post-Traumatic Stress Syndrome.
- 90.) She based the diagnoses on the history as presented by Lolita Blay, Jeff Blay and Carl Anderson, Lolita's attorney, as well as the statements made by Amelia during their earlier sessions.

- 91.) She did not talk to Patrick, as she did not feel that it was her role to determine the correct story. She did acknowledge that Jeff and Lolita Blay exhibited a bias against the father.
- 92.) She specifically based her diagnosis of PTSD on what Amelia had gone through, knowing what had happened to her mother, being "kidnapped again" by her father, being fearful, and living in three foster homes. Further, Amelia exhibited signs of restlessness, avoidance, and "over-control".
- 93.) Specifically, Amelia did not want to visit her father. Further, Amelia stated that her father took her to another therapist and demanded that she tell the therapist she wanted to live with him. Finally, Amelia told Ms. Feldmar that her father asked her with whom she would like to live if he and her mother were dead. Patrick denies making either of those statements.
- 94.) Amelia did not like having to deal with the extended out-of-state visits. She has been "pretty consistent" with Ms. Feldmar about not wanting to go on the visits. The counselor believes they are made more difficult due to the ongoing motions filed with the court.
- 95.) On December 20, 2005, Patrick and Lolita entered into an agreement that was ultimately journalized by the Henry County Common Pleas Court. It was ordered, in part, that Lolita continue as the residential parent of Amelia, and Patrick have visitation for Christmas breaks in the odd years; Spring breaks in the odd years; Thanksgiving in the even years; all 3-days weekends; and summer companionship from the Saturday after school until the first Saturday in August.
- 96.) The next day, December 21, 2005, Jeff contacted the Carroll Township Police Department and advised Patrolman James Meek that he was to make visitation arrangements directly with Patrick. Patrick's brother, Joe, had left a voice mail message for Lolita to call him and set up the visits. There were phone conversations back and forth, with some yelling and profanity.

NOTE: There is no provision in the 12/20/05 Judgment Entry that indicates that Jeff (or Joe) is to be involved in making visitation arrangements between Patrick and Lolita.

- 97.) On December 23, 2005, Patrolman Meek wrote a letter at Jeff's request; however, he was not certain of the purpose for the request. He stated that he had "witnessed several times that when Patrick (ex-husband) either picks up or drops Amelia off, he leaves and when Lolita leaves Patrick turns around and follows her. I have also witnessed the same subject drive up and down State Rt. 19 until it is time to pick up his daughter at the school."
- 98.) Upon cross examination, Patrolman Meek acknowledged that such action did not mean that Patrick was following Jeff and Lolita. He did not stop him. He has never had a charge of threats by Mr. Garmyn against Mr. and Mrs. Blay.
- 99.) He did state that Patrick pulled his vehicle next to Patrolman Meek to introduce himself. Patrick was calm and accepted the fact that he was there. He was not belligerent.
- 100.) Amelia visited Patrick in North Carolina for the Christmas holidays from December 23, 2005 to January 2, 2006. The pictures provided by way of exhibit show a young girl who appears to be enjoying herself.
- 101.) Patrick introduced several letters written to him by Amelia during his visits, including several Father's Day cards. Each expressed Amelia's love for her father.

2006

- 102.) On January 4, 2006, Patrolman Meek was again contacted by Jeff Blay. He stated that his step-daughter had just returned from visitation with her father, and Jeff wanted some of the statements Amelia made to he and her mother on file. Patrolman Meek traveled to the Blay residence to meet with Amelia.

103.) Amelia, now 10 years of age, told the officer that her vacation with her father was okay. When asked if there was anything that happened that she did not like, she stated "yes". At first Amelia did not want to talk but she eventually "opened up".

104.) She stated that her father asked her while traveling in the car if she had a chance to choose with whom she would like to live. She stated that she did not know. Amelia stated that her father yelled at her and told her that she had better answer him or he would stop the car, get a branch, and beat her with it. Her father also asked her who in his family she would like to live with if her mother and father were dead. Amelia stated that her father did not strike her but did grab her arm at one point and push her into the bedroom. Finally, she told the officer that she was afraid of her father.

105.) Patrolman Meek stated that when he witnessed visitation exchanges, Amelia would get into Patrick's car without incident. She did not act out and seemed comfortable around Patrick and not in fear of him.

106.) On January 8, 2006, Lolita wrote down the events of the evening, apparently for further reference. She stated, in part,

"Today is Sunday, January 8, 2006. We were coming from Michigan to Ohio. Amelia was on Christmas Holiday program for children this night, and now afterwards we had to go home. Amelia did not want to leave and had a tantrum, but I told her we must go immediately and she can not play any more with her friends, because it was too late already. When we drove in the car on the road Amelia was screaming that she does not want to leave, she wants (sic) continue to play, and saying she hates everybody. I try to explain that we needed to leave and she should not be acting like that, or we will not be able to come back another time. She was crying and screaming (in) the car. I ask her why she was acting like this. She did not know. I asked if she acted like that in NC. Then she became furious and started to scream so hard: "No, I never said anything like that or scream." I said, "Why do you do it with me here?" She said: "Because you are my Mom and I know you love me." I said, "So, does that mean you can treat me like this?" And then she bursted in tears with very loud screaming: She said "... because I am afraid of him, and I hate him, and I don't want to go over there EVER. I am going to kill myself or I will run away!!!..."

107.) Barbara Feldmar did not discuss these events with Amelia.

- 108.) On January 26, 2006, Barbara Feldmar sent a letter to Judge Denise Herman McColley of the Henry County Juvenile Court wherein she suggested the December Agreed Judgment Entry be modified to "one weekend visit each month, on a regular and predictable basis" as opposed to all three-day weekends. She stated, in part, that "... (F)or February, President's Day weekend would work well for her to have visitation with her Father..." She further recommended that "telephone calls be made during the week by 7:30 p.m.". No further limitations to the visitation schedule were recommended.
- 109.) During her testimony at the trial of these proceedings, Ms. Feldmar stated that, as a therapist, she should not be making statements regarding parental access.
- 110.) On January 31, 2006, Lolita filed a Motion to Modify Visitation Pursuant to the Counselor's Recommendations.
- 111.) On February 2, 2006, Lolita filed a Motion to Modify Visitation to allow the minor child to attend Girl Scout Camp during the summer.
- 112.) On President's Day weekend, Patrick came from North Carolina to pick up Amelia at Carroll Elementary School. He waited in the parking lot. A policeman approached his vehicle and advised Patrick that Amelia did not want to go. Patrick stated that he had just talked to her the evening before and did not anticipate any problems. He had flown 900 miles for the visit.
- 113.) He further testified that Jeff and Lolita Blay put their hands on Amelia's shoulders and stated, "Tell your dad, I don't want to go".
- 114.) Amelia eventually went for the weekend visit without incident. Later, she told her father that she wanted to stay home that weekend because Jeff and Lolita had told her they would take her skiing.
- 115.) The police continued to be involved in each exchange. Patrick described an exchange when the officer pulled his police cruiser within six inches of the back of Patrick's car so as to block him in. He indicated that if it was unnerving to him, it would be particularly so for a 9-10 -year-old child.

- 116.) By Judgment Entry of the Henry County Juvenile Court dated February 10, 2006, this matter was transferred to the Ottawa County Juvenile Court.
- 117.) This Court appointed Bree Noblitt Brown as Guardian ad Litem on March 28, 2006.
- 118.) In April of 2006, Patrick first contacted Barbara Feldmar. He asked her if she would work with an expert on Parental Alienation Syndrome.
- 119.) Patrick later met with Barbara and did tell her some of the history from his perspective. She indicated that he felt that all of Amelia's problems were due to Lolita and Jeff, and he seemed fixated on the parental alienation.
- 120.) Ms. Feldmar recommended to Patrick that he seek therapy for himself, which Patrick rejected.
- 121.) On April 27, 2006, Lolita filed a Motion to adopt the standard long distance schedule of Ottawa County (DR-4).
- 122.) Patrick and Lolita were able to work out a solution regarding Amelia's attendance at Girl Scout camp during Patrick's 2006 summer visitation. Patrick agreed so long as he could make up that time at the end of his regular summer companionship.
- 123.) Amelia went to North Carolina to begin her visit with Patrick. She enjoyed drawing pictures and writing affectionate notes to her father.
- 124.) On the designated day for the Girl Scout camp exchange, Patrick instructed Amelia to pack up her belongings. Amelia stated that she would be coming back. Patrick drove Amelia to the Oak Island Police Department (arranged by the Blay's) for the mid-visitation exchange. This would prove to be the last time Patrick would visit with Amelia in North Carolina.
- 125.) On June 23, 2006, the Guardian ad Litem filed a motion to temporarily stop all visits due to the child's stress and the need of the Guardian to finish her investigation, including review of father's criminal history. The *ex parte* order was granted that day.

- 126.) The Guardian ad Litem explained that she was very concerned for the safety of the child as well as her personal safety in light of the extreme allegations being made in this case, including hit men, protection orders, domestic violence, four kidnappings by both parents, international disputes, vandalism, and threats of constant violence. Amelia further expressed very negative feelings toward her father.
- 127.) The history she received was from Amelia, Lolita, Jeff and some members of Patrick's extended family.
- 128.) It was Barbara Feldmar's opinion that Amelia benefited from the cessation of visits, primarily in light of the problems regarding the logistics of the visits and the conflicts of the exchanges.
- 129.) The Guardian ad Litem explained that Patrick was still allowed telephone calls after the *ex parte* order. These calls became progressively worse.
- 130.) She stated that the scheduling of visits and telephone calls were very difficult. In most cases, Lolita created the issue.
- 131.) Pursuant to Judgment Entry of this Court dated August 4, 2006, the *ex parte* order of June 23<sup>rd</sup> remained in effect. Father was granted weekly telephone calls each Tuesday at 7:30 p.m.. Mother's motion to travel to Russia was denied for her failure to obtain permanent residency status.
- 132.) Much testimony was elicited concerning the return of Amelia's belongings from North Carolina after visitation was suspended. Amelia sent a letter to Patrick stating,  
"Hello... Earlier I asked you if you could send my stuff (puppy & tomagotchi), now I am asking you again/Will you please send my stuff? My mom will send a check that will pay the shipping if it is to (sic) expensive. From: Amelia".
- 133.) Patrick reasoned that he believed that it would be only a short period of time before his visitation would be restored, and he could provide the items to Amelia in person. Amelia was quite upset with her father, and the items were then mailed to her in October of 2006.

134.) On January 5, 2007, this Court ordered that the Guardian ad Litem pick up Amelia and transport her to a visit with her father at Oak Haven Horse Farm and for further visitation as directed by the Guardian. Mother was instructed not to coach the child other than to encourage respect.

135.) The Guardian ad Litem noted that her relationship with Amelia began to deteriorate after this visit. It was the Guardian's suggestion that the supervised visit take place. After that, the Guardian was told by Lolita and Barbara Feldmar that Amelia was not happy with her.

136.) In February of 2007, Patrick underwent surgery for cancer. He suffered complications and was ill for approximately six months.

137.) The phone calls between Patrick and Amelia continued to be difficult. Patrick described one telephone call right after his cancer surgery. Neither Patrick nor Amelia were pleasant towards one another. When their conversation was ended, the telephone connection did not terminate. Patrick heard voices saying, "Way to go, Amelia. He's been dying for a long time. Did you know that your father tried to kill your mother? Did you know that your father tried to kill your grandmother?"

138.) Jeff testified that he has heard Patrick badger and scream at Amelia over the telephone. At times, Amelia would put on the phone on speaker. She would say to Patrick, "I want to get off the phone", and she would eventually hang up. She would later say, "I'm being yelled at all of the time. I'm called a liar."

139.) Patrick acknowledged that he has raised his voice in the past during telephone conversations with Amelia and that he has told the child that she lies.

140.) Jeff and Lolita had many discussions regarding the telephone calls with the Guardian ad Litem throughout 2006 and 2007. The Guardian advised Amelia to tape the telephone calls so that she could hear the conversations.

- 141.) On other occasions, Amelia would disappear when it was time for a phone call. Jeff would state to her, "It's just a phone call. Do it, and be done with it." It was Jeff's opinion that he and Lolita did not discourage phone calls.
- 142.) By Magistrate's Order, the child participated in a 1-2 hour diagnostic assessment conducted by Mike Novitski, LISW, CSAP. The clinician issued his report and recommendations on March 22, 2007.
- 143.) In preparation for the assessment, Mr. Novitski reviewed the court file, including the evaluations of Dr. Wayne Graves and Dr. Thomas Kunkle. He also spoke with Lolita as part of the interview process. He may have had contact with Jeff as well.
- 144.) Mr. Novitski found Amelia, approximately age 10, to be a "well-adjusted young lady". She was very tired of the arguing exhibited by both of her parents, and she felt that she was stuck in the middle of the conflict.
- 145.) He recommended that Amelia not be forced to have telephone contact with her father; however, he did not suggest that the parent and child be denied any access. Amelia, however, should not be forced to speak to her father for 20 minutes.
- 146.) Mr. Novitski indicated that he did not see any signs of parental alienation in this case.
- 147.) It was his professional opinion that Patrick was treating Amelia like a possession. He recommended that Patrick establish a counselor. He believed that the ongoing legal actions were driving a wedge between father and child. He specifically noted in his recommendations, in part: "...It would be in the best interest of Amelia if the court proceeding regarding visitation and or custody were to cease. She should not have to chose (sic) between her parents or 2 people who she loves. Children should never be placed in a situation where they have to choose between parents."
- 148.) Mr. Novitski stated that Amelia was upset with Patrick because he was "bringing her back to court"; however, the clinician acknowledged that he was not aware of who was filing motions with the court.

149.) On August 6, 2007, Barbara Feldmar provided a detailed update of her counseling relationship with Amelia. She concluded her remarks with the following:

"... It is not clear to me how much potential there is to repair the relationship with her father, or how that could occur, given the long distance between where they live. I am concerned about Mr. Garmyn's inclination to see the family dynamics in terms of "Parental Alienation Syndrome," which he has brought up to me, sometimes stated as asked about by this Attorney. Clearly, there is no respect left between he and his ex-wife. But it would appear to me, seeing things through this lens, in issues effecting Amelia, can only cause distortions in looking at things into extremes of "black and white, good or bad". Thus, what might be a child's normally hesitant or confused responses on the telephone can too easily be interpreted as the result of the other parent's attempt to turn the child against the parent.

What I feel is needed for Amelia, is an appreciation of what the above approach does to her, and a recognition that she would gain so much more from having parents who can try to increase their flexibility and sensitivity with one another, for her sake. She also needs stability and predictability in her emotional experiences, to lessen her need to have to figure out how to avoid provocations and anger, which only creates fear and confusion for her. We would hope to lessen the extent of fear, anxiety and confusion with which she must cope, before negative strategies and defensive measures become ingrained and fixed aspects of her personality..."

150.) Apparently, Amelia has occasionally been obstinate with her mother and stepfather, as she has written a letter to them stating that she is sorry for the way she has treated them in the past.

151.) Barbara Feldmar testified that she would have worked with Mr. Garmyn if he had been more inclined to work with her. The first time she spoke to him, he mentioned "parental alienation". He always blamed Mrs. Blay.

152.) Patrick reported to Ms. Feldmar that he had written a letter to Amelia apologizing to her for the family's conflict.

153.) By Magistrate's Order dated September 5, 2007, Dr. Wayne Graves was to conduct a psychological evaluation of Amelia and all others deemed pertinent.

154.) In the Fall of 2007, Amelia entered sixth grade at the Oak Harbor Middle School.

155.) Jeff testified that when he first met his stepdaughter, Amelia's grades were good (A's, B's and C's). He noted that in seventh grade, Amelia had difficulty with her classes. He would spend up to three hours a night helping her with her homework. Also, Amelia's teachers were helping her to study and get her homework done. Amelia began to receive C's and D's.

2008

156.) On February 28, 2008, Dr. Wayne Graves issued his third psychological evaluation of Patrick, Lolita and Amelia. Some of his findings deemed particularly pertinent by this writer include:

*Lolita's summary:*

2. She presents without much apparent acceptance of personal responsibility for her part in this conflict. She does not have or demonstrate any real insight into her own self and her effect on her daughter.
3. This is a rather assertive woman who presents with intensity in a near demanding style and with significant interpersonal and emotional push. It is likely that her daughter is acutely aware of her mother's emotional intensity.
4. She is frequently annoyed, judgmental sounding, and accusing, even if she does so in the name of protecting herself and her daughter.
5. She and Jeff seem to resist making Amelia available for this evaluation process and require or assert the need for a number of adaptations in order to prevent Amelia from missing any school or sporting events. She does not seem concerned with a recent drop in school performance.
9. It is clear that she sees herself as a victim. She does not seem to attribute any of Amelia's apprehensions or fearfulness to herself. She interprets most, if not all of Amelia's behavioral difficulties to be a result of Patrick, rather than seeing any possible contribution she might have to the situation.

10. She paints Patrick as violent and dangerous to everybody she communicates with, including her husband, Amelia's school, counselors, and police, as well as the courts. She is apparently quite persuasive about her view.
11. She interprets Amelia as being brave and more assertive when Amelia pushes her father away.
14. She is not naïve about an alienation pattern. She has made active requests to stop father's involvement entirely since 2002. This orientation is not likely to change.
15. Her actions are clearly alienating in character, even if their intention is protective. There is also some more malevolent motive at work, it appears.
16. Jeff is in full support of Lolita, and seems to be acting in a kind of protective role as a white knight.
17. He does not have much detachment or objectivity, and has fully endorsed Lolita's version of history.
18. He has taken on the role of father as replacement for Patrick, and is willing to do so with not much recognition of Amelia's potential need for her own biological father.

*Patrick's summary:*

2. He still presents as somewhat insecure, and mistrustful. Although he is not as grandiose or narcissistic sounding as he used to be, at least in terms of his presentation in this evaluation.
4. He likely would have restricted mom's visitation, if he had the primary parent, out of his own fears and beliefs.
5. He is somewhat naïve and unrealistic in his ideas about self and others, and has always been.
10. There are no clearly documented episodes of violence or unusually impulsive judgment problems over the last 6 or 7 years. Predicting rare events is difficult and there is a strong bias to identify potential risks, in order to be safe, that are actually of rather low probability. (false positive errors)

11. He continues to try to make efforts toward contact with his daughter. His persistence is a good indicator of the level of connection that he feels.
13. He has strong concerns over the pattern of alienation that he sees happening with his daughter, and believes that much, if not all, of it is attributable to Lolita and her husband.
14. He is feeling quite usurped by the stepfather, but then, perhaps, appropriately so.
15. He has been angry and frustrated in his verbal interactions with his daughter over at least the last 18 months, accusing her of lying and being quite annoyed and dismissive of her. This pattern may have been present for some time. He seems to clearly be trying to force concordance from his daughter.

*Amelia's summary:*

2. She has been the subject of struggle and controversy since her birth. She has had no respite...
4. ...She has had significant acting out and behavioral struggles for the last few years. The precipitants of that acting out are multiple and complex.
6. She has spent most of her developmental years in an atmosphere of relatively intense apprehension and fearfulness that she has observed in both of her parents. She learned to be less trusting. There will be long term consequences from this disturbed atmosphere to her ability to form a positive and functional intimate relationship.
7. She has also learned to be careful and circumspect in her thoughts and words. She has become gradually less open with all those in her life. She is still more open and trusting with her mother than her father.
8. Phone calls with her father used to be more positive in the apparent interpersonal exchange. They have been gradually growing more uncomfortable. Some of them more recently have been, at times, confrontational and psychologically coercive, and because of that, they have been damaging to her sense of safety.
13. She has had some productive involvement in treatment or counseling settings. The goals of that treatment have not been clear. For the most part, mother was the one who got to frame the need, goals and content for the treatment.

14. She seems to still be experiencing some divided loyalties, because there is no safe room in the middle of her parents for her. Although, in general, she is much more allied with her mother.
16. In visits, in observation with father, she is distant more than fearful, and resistant, even petulant more than apprehensive. Some of her presentation is angry and dismissive of him.
17. During those times, she displays a gradual increase in verbal output and response, but is still quite limited in her willingness to interact or to relax her guard.

*Family Dynamic:*

1. Amelia is gradually increasing the level of alienated feelings and behaviors that she has with her father. This process, however, is not only a reaction of Amelia (but also) to living with her mother and mother's attitudes and fears.
  2. This alienation has been a gradually increasing kind of reaction that is a combination of Amelia's developing identity and individual feelings, Mother's apprehensive fearfulness, and mother's sometimes deliberate limiting or sabotage of father's relationship.
  3. It is also a result of father's inept handling of his contacts of Amelia, his own psychological rigidity and the problematic parental communication, as well as his decision to move away, and the consequences of his own past behaviors and poor judgment.
  4. There is not a lot of substantial change in these parents over time. So, Amelia is growing up and making some choices for herself in order to preserve some degree of sanity in her own world.
  6. There is no safe middle ground for Amelia between these parents, and in my opinion none that is likely to develop. Each is convinced of the validity of their own complaints of the other parent.
  7. Using therapeutic methods to try to help Amelia adjust to the parenting process would not have any effect without substantial change in the attitudes of the parents in this process. And they are not likely to change.
- 157.) The recommendations made by Dr. Graves were as follows:

"Therefore, it is my professional opinion, to a reasonable degree of psychological certainty, that no option available to this family is likely to have a clear positive outcome. I continue to believe that some contact with

father is important, even if it is not particularly obviously helpful. I would recommend that father have supervised visits, no more than three or four times a year in the local (Oak Harbor) area of a duration that is in the range of two-to-four hours, and that could include activities away from a specific supervised physical setting (movies, park, picnics, etc.) I would also recommend that at least part of these contacts occur with or in a therapeutic setting with a counselor capable of managing the complications of this post-divorce process, who is used to working with the courts, and able to respond to visitation and parenting time conflicts and able to coach father in regard to options and possibilities for his communication with his daughter.

I would also recommend that father and daughter engage more in written forms of communication than in phone calls, even though I would suggest that there continue to be some kind of attempt at phone calls on a weekly basis. Again, I think that it would be better with Amelia initiating them with some degree of flexibility about the time, if not the day on which they occur.

At best, this is a set of recommendations that has significant flaws and limits on all participants, and can easily deteriorate; but it seems to provide the best options for all concerned while still allowing some kind of parent-child interaction that will provide some degree of safety and predictability.

This examiner, again, would urge that both parents re-examine, expand and open themselves up to other ways of looking at the situation, even with therapeutic assistance, if necessary, so that they can find ways to make the atmosphere between them for their daughter something more benign and less toxic."

158.) The Magistrate issued a Decision on March 12, 2008 addressing Patrick's motion to modify his parenting time limitations. Patrick was to have supervised visits with Amelia four times per year in the Oak Harbor/Port Clinton area. Further, father and daughter were to write four letters to each other per year and to talk by telephone two times per month. Said calls were to be placed by Amelia's counselor, Barbara Feldmar.

NOTE: After consulting with her clinical director, Ms. Feldmar later advised the court that she would be unable to provide assistance with telephone calls.

- 159.) The relationship between the Guardian ad Litem and the child continued to be strained. The Guardian spoke regularly with Ms. Feldmar through phone calls, e-mails, faxes and face-to-face meetings.
- 160.) Pursuant to Judgment Entry of this Court dated June 9, 2008, it was ordered that Patrick would have visitation supervised by Stephany Skrbina for four hours in July, six hours in August, 8 hours in September and then continuing thereafter every three months. Each parent was ordered to make no disparaging remarks about the other parent in the presence of the child.
- 161.) On July 22, 2008, Ms. Skrbina met with the Blay's and Amelia in their home. She first talked with Jeff and Lolita privately. The concerns expressed by Jeff and Lolita were that Amelia be protected from any harsh statements made by Patrick and that she not be abducted.
- 162.) Jeff and Lolita advised Ms. Skrbina that Patrick was dangerous and had hired a hit man at one point. Lolita made comments regarding acts of domestic violence she had endured during her marriage to Patrick.
- 163.) Jeff displayed a large binder filled with pages regarding this case. At the end of their initial conversation, he stated to Ms. Skrbina, "As you can see why, I would like to adopt her."
- 164.) Amelia told Ms. Skrbina that she feared that her father would be mean to her. The supervisor assured the child that she would be protected from such statements.
- 165.) At a later time, Ms. Skrbina met with Patrick at a local restaurant. He explained his version of the history of this case and described the visits that he enjoyed with Amelia in the past. Ms. Skrbina saw evidence of a positive relationship.
- 166.) The first supervised visit took place at Nagoya Restaurant in Port Clinton on July 23, 2008. Present at that time were Amelia, Patrick, and Ms. Skrbina.
- 167.) Initially, Amelia was reluctant to engage; however, Patrick brought pictures of North Carolina "to break the ice". Amelia appeared to relax, and by the end of the visit, Amelia was initiating conversation. The

supervisor noted that Amelia did text on her cell phone a great deal during the visit.

168.) She further noted that Amelia was hesitant to answer some of Patrick's questions about her life in general. When this occurred, Patrick did not insist that she answer and moved on to another topic.

169.) After the visit, Ms. Skrbina advised Jeff and Lolita that Amelia would not tell Patrick the names of her pets. Their response, in part, was "Thank God, she didn't tell him that stuff, because we think he killed our family dog".

170.) Jeff testified that Amelia was upset after the visit because Ms. Skrbina forced her to talk about stuff she did not want to talk about. When Jeff and Lolita picked up Amelia at Nagoya's, Amelia walked over to them and said that Ms. Skrbina was a liar and that she did not want to be around her anymore.

171.) Ms. Skrbina transported Amelia for the first visit. Jeff then questioned Ms. Skrbina regarding her liability insurance. The supervisor advised him that she had liability and malpractice insurance. Lolita then filed a subpoena requesting the insurance information and filed a motion to hold the supervisor in contempt when it was not provided. Jeff thereafter went to the office of Ms. Skrbina's insurance carrier and requested the information directly and determined that she did not have business insurance but did have personal liability insurance.

172.) The next visit occurred at Walmart. Amelia wanted her father to buy some items for her dog. Father and daughter were walking together, and Amelia appeared to be happy. Other than Amelia calling her father a "jerk" or "cheap" when he would not buy something, it was the supervisor's opinion that the visit went well.

173.) Jeff testified that it was around the second visit that Amelia started cutting her arms with a blade. He talked to Barbara Feldmar about it. When Barbara discussed this with her, Amelia denied that she was cutting. She may have stated that one of her friends did that. Ms. Feldmar did not believe that Amelia was truly suicidal or homicidal.

174.) Ms. Skrbina testified that the visits began and ended the same. Patrick would try to make a normal exchange; however, Amelia would not acknowledge him. She further noted that in the presence of the Blay's, Amelia would show no effect or interest. At the end of the visit, Amelia would stop interacting with her father as soon as she saw Jeff and Lolita.

175.) Ms. Skrbina also noted that her relationship with the Blay's began to deteriorate after the second visit. She began to have trouble arranging the visits. As the supervisor, it was Ms. Skrbina's task to determine the dates of the visits. The Blay's would suggest some dates, and Ms. Skrbina would call Patrick. When she called the Blay's back to confirm, she was told that Amelia was busy with an activity.

176.) Jeff testified that he and his wife had specifically advised Ms. Skrbina early on that they would not be available the weekend of September 12<sup>th</sup>, as they had made plans to be gone for the weekend. When they expressed their frustration to Ms. Skrbina that she had scheduled the visit on that weekend, Ms. Skrbina stated, "too bad". Jeff stated that the family would leave their function on Sunday morning and be back in Ohio for the scheduled visit.

177.) On August 27, 2008, a hearing was held on Patrick's Motion to Show Cause regarding ongoing problems with telephone calls to Amelia. The parties settled their differences and agreed that Patrick would have two (2) telephone calls per month, facilitated by Stephany Skrbina, at times determined by the parents and the supervisor. Patrick thereafter withdrew his pending motion. The parties also agreed that Adrienne Skrbina could substitute as supervisor for the upcoming visit on September 14, 2008.

178.) The third visit thereafter occurred on that date with Adrienne (Skrbina) Finley, a licensed social worker and daughter of Stephany Skrbina. (Ms. Skrbina had undergone back surgery).

179.) She and Patrick first met at a local restaurant in Port Clinton. Jeff testified that they dropped Amelia off at a "bar" which smelled of smoke, and Amelia did not like it.

- 180.) Ms. Finley noted that Amelia was very "stand-offish" and would not make any eye contact with either Patrick or Ms. Finley. Patrick made consistent attempts to engage her. Amelia did not appear to be afraid of her father.
- 181.) The three went to Put-in-Bay for a 7-hour visit. Amelia's demeanor changed during the visit, as she began to respond to Patrick's questions. They joked and laughed together.
- 182.) Ms. Finley noted that Amelia would block her face if Patrick tried to take her picture or would try to delete her pictures from his camera.
- 183.) Amelia also called her father names such as "cheap" and "mean". Ms. Finley estimated that Amelia called Patrick a "jerk" at least ten times. Patrick would not address the comments but would try to engage Amelia otherwise.
- 184.) It was Ms. Finley's opinion that Patrick's visits with Amelia did not need to be supervised in the future.
- 185.) Between the third and fourth visit, Ms. Skrbina attempted to arrange some telephone calls between Patrick and Amelia. The supervisor testified that there appeared to be ongoing logistical problems with arranging the calls.
- 186.) Much testimony was provided regarding the visit in December of 2008. It was Ms. Skrbina's opinion that Amelia and Patrick would enjoy one of the water parks in an adjoining county, as there were few options for winter visits in Ottawa County. She also thought it would be beneficial to have Amelia bring a friend.
- 187.) Mr. and Mrs. Blay objected to each of these suggestions, indicating that the court order specifically limited visits to Ottawa County and no mention was made regarding the inclusion of friends.
- 188.) The Guardian ad Litem thereafter moved the Court to modify the visitation order to allow the suggested visitation terms, and same was granted.
- 189.) Ms. Skrbina insisted that Patrick reserve a room so that they would have a safe place to put their personal items and to make plans for the day.

- Further, Patrick had decorated the door of the room for Amelia's birthday and had presents to give to her during the visit.
- 190.) On December 20, 2008, Jeff delivered Amelia and her friend to Kalahari at approximately 3:00 p.m.. Amelia made no eye contact with Patrick or Ms. Skrbina.
- 191.) During introductions, Patrick stated to Amelia's friend, "I met you before. I saw you playing at a basketball game". Jeff expressed concern regarding this statement because he (Jeff) had never given a basketball schedule to Patrick.
- 192.) Jeff thereafter left, and Patrick, Ms. Skrbina, Amelia and her friend headed toward Patrick's hotel room. The girls were laughing and texting on their phones. When they got to the room, Amelia stated that she was not going into the room.
- 193.) Ms. Skrbina explained that the plan was to have the girls put their coats, hats, gloves and backpacks in the room. Patrick would give Amelia her Christmas and birthday gifts, and then they could participate in various activities within the water park.
- 194.) Amelia suggested that they go to the restaurant and talk.
- 195.) Ms. Skrbina testified that they were in a busy hallway, and she wanted to have a "safe place" where they could also maintain confidentiality. Amelia continued to refuse to enter the room. When the supervisor asked her why, Amelia stated, "Because I don't have to."
- 196.) At this point, Ms. Skrbina produced a court order regarding the visit. She told Amelia that she could get in trouble with the court if she refuses to participate in the visit. Again, Amelia stated that she did not have to enter the room and would not to do so. She also asked Ms. Skrbina why she was being so mean to her.
- 197.) Ms. Skrbina made the decision that Amelia would not avail herself of the supervisor's care and control, and thus, the visit would have to end. The supervisor stepped into the hotel room and called Lolita who, in turn, called Jeff. While she was on the phone, Patrick stated that Amelia and

her friend "took off" in the hotel. Amelia was heard to make the comment, "Stephany is stupid, fat, and a liar".

198.) Jeff received the following text messages from Amelia:

- a) 3:14 p.m. "Help me"
- b) 3:18 p.m. "She is forcing us in room 7=\$lily\$"
- c) 3:20 p.m. "Help now"

199.) When Jeff called, the supervisor asked him to call Amelia and instruct her to meet Ms. Skrbina in the lobby. (Jeff refused to give the supervisor Amelia's cell phone number). Ms. Skrbina sent Patrick to look for the girls.

200.) Approximately 20-30 minutes later, Jeff entered the hotel with a security guard. He was on the phone with Amelia and determined that the girls were in one of the restaurants.

201.) Amelia was familiar with Kalahari, as she had been to the water park on approximately five occasions with family and/or friends.

202.) The girls were thereafter secured, and they left with Jeff.

203.) Upon their return home, Jeff contacted the local police department to advise that the visit did not go well and to request extra patrols of his residence during the holidays.

204.) It was the supervisor's opinion that Patrick was never a threat to Amelia during the visit. Rather, she believed that Amelia was simply defiant. It was her further opinion that there was no need for Patrick's visitation to be supervised in the future.

205.) On December 22, 2008, Lolita (and Jeff) filed a Motion to Remove Skrbina Associates and Stephany Skrbina from involvement in the case.

2009

206.) Lolita (and Jeff) filed several motions throughout January, February, March and April of 2009, including a motion to have Stephany Skrbina found in contempt for her failure to provide information to them pursuant to subpoena; a motion to change venue and supervisor for

supervised visitations; a motion to deny access to Father of Amelia's counseling records; and a subsequent motion to show cause for Patrick and his attorney.

207.) On February 15, 2009, Patrick sent a letter to Amelia (presumably in accord with the Magistrate's Decision of March 12, 2008). The letter stated,

"Hi, Goose! How are you doing today? Well I hope that you are great, really great. You know Amelia dad loves you very very much. And I want to tell you know matter what happens I will remember all of the great times we had so you see dad will not forget you. Know matter what happens I will always be there for you.

It was cold here this week very strange weather. How about you are you ready for warm weather and getting back to surfing? I have all of your stuff ready for you!! And you have your job ready and waiting for you dog groomer, and vet tech!

I hope to hear from you soon. So hang in there for a while longer I promise things will get better, and I will make sure that you find out the truth about all the negative things that you have been told. So until I see you again. Remember be nice. Think before you speak. Treat people with respect and always think for yourself do not just let people put words in your mouth. I send you all my love from the beach to the sun and infinity and back to the beach. HANG TUFF GOOSE! Love Dad, Elisa Ivory, Missy & Oliver"

208.) Amelia received the letter on or about February 19, 2009. She had talked with the Guardian ad Litem earlier in the day. While she was home alone with Jeff and they were doing homework, Amelia went to the computer and typed a response to her father in rough draft. It stated (with handwritten changes in italics),

"To Whom It May Concern: First of all I want to say that no, I am not ready for the warm weather in North Carolina because I am not going to go there! Second I don't want to have the job you are offering with the dogs, thanks, but NO THANKS! Third, things are better *the way they are now*. I'm where I want to be right now, and I am sorry if you don't like that. Also if you think my parents are feeding me with negative information, *they're not!* They are the one's who make sure I call you. Personaly (sic) I'd rather not make that phone call, but unfortunately I have no choice.

Remember how you said "always think for yourself, and do not let people put words in your mouth"? *Also sometimes you should think for other people, not just yourself. I think the only person you think about is*

*yourself. You should stop trying to put words in my mouth, cause you're the only one trying to make me say things. You're the only one who has been putting words in my mouth.*

**For example:**

1. "Are you ready for the warm weather and getting back to surfing?"
2. "I have all your stuff waiting for you."
3. "And you have your job ready and waiting for you, dog groomer, and vet tech."

All of these sentences are implying that you assume I'm coming over, BUT I'M NOT!!! Amelia Natalia Garmyn P.S. Bree this is rough draft of what I will send to bio-father. If you have any problems with me sending this please contact my parents.

209.) Amelia thereafter made the necessary changes and sent the letter to her father.

210.) A hearing commenced on April 3, 2009 before the magistrate on all pending motions. A Magistrate's Order was issued April 10, 2009 wherein it was found, in part, that "neither of the motions make any allegations that father did any wrongdoing. Ms. Skrbina and her daughter shall continue to supervise according to the order that 'visits shall be every three (3) months for eight (8) hours.'"

211.) Attorney Richard Koehn entered his appearance as counsel for Lolita on April 23, 2009.

212.) Attorney Koehn suggested that James Bedra provide supervision for Patrick's visits. The parties agreed, and a Magistrate's Decision was thereafter issued.

213.) Before he retired, Mr. Bedra worked as a supervisor for Lucas County Children's Services for 13 years. He has also worked for the Lucas County Prosecutor's Office and the Ohio Parole Board.

214.) He met Amelia at the law office of Bree Noblitt-Brown on May 23, 2009. He noted that Amelia seemed anxious and reluctant to be there.

215.) This visit included Patrick, Elisa (Patrick's fiancé), Amelia and Mr. Bedra. They went to Put-in-Bay for the day. The visit started slow, but as it progressed, Amelia grew more spontaneous. Amelia particularly

- enjoyed shopping, and her father purchased some items for her. It was Mr. Bedra's opinion that the visit was a positive experience for all.
- 216.) Amelia's next visit was in June of 2009, with Patrick, Elisa and Mr. Bedra present. Everyone met at a mutually-agreed location in Oregon, Ohio. There was some discussion about Amelia's use of her cell phone. During the first visit, Amelia had used her cell phone to excess, and it was Mr. Bedra's understanding that she would not be doing so on this visit.
- 217.) The texting issue became a problem during the June visit. Mr. Bedra estimated that 150-plus text messages transpired that day. Both he and Patrick tried to curtail use; however, neither wanted to "come down hard on her".
- 218.) During the second visit, the group went shopping again. Amelia purchased some CDs for her father from her own funds. She presented them to Patrick as a birthday gift along with a card.
- 219.) It was Mr. Bedra's opinion that the visit went well.
- 220.) He did mention Amelia's excessive phone usage to the Blay's, and Lolita and Jeff appropriately chastised Amelia for abuse of the cell phone.
- 221.) Patrick's fiancé was not present during the third visit. Lolita and Jeff brought Amelia to the designated location to meet Patrick and Mr. Bedra. Initially, Amelia would not leave the car. Eventually she did with some encouragement by the Blay's, and the visit commenced.
- 222.) Mr. Bedra noted that the visit was strained. Amelia seemed agitated and quiet.
- 223.) Patrick had done some research of activities in the area, i.e. putt-putt golf, go-karts, batting cages, etc. When they engaged in those, Amelia seemed to "spark up" and have some fun. Amelia and Patrick began to have more normal conversation and talked about school, grades, past experiences, grandparents, holidays, etc. There was nothing forced. Amelia displayed no fear.
- 224.) About 5-6 hours into the 8-hour visit, Amelia texted Mr. Bedra and told him that she wanted to go home.

225.) He did not believe the text was made out of fear, but more out of boredom. She did not give him a reason when he asked her why. When they were having lunch, Mr. Bedra told Patrick that Amelia had something to tell him. She stated she wanted to go home. Patrick remained calm and said that he was disappointed, but if that is what she wanted to do, that is fine.

226.) When they returned to the exchange site and were waiting for Lolita, Patrick sat in his car while Amelia and Mr. Bedra sat on a parking lot curb. Mr. Bedra felt compelled to ask Amelia why she did not want to continue the visit. Her only response was, "I don't like my father".

227.) After Lolita and Jeff picked up Amelia, Mr. Bedra received a telephone call from Amelia stating that while they were in the restaurant and Mr. Bedra stepped out to make a telephone call, Patrick told Amelia that she would "be one sorry girl for doing this". Amelia did not tell Mr. Bedra this while waiting in the parking lot, and Mr. Bedra did not know the context of the statement if it was, indeed, made.

NOTE: This same language was included in a letter from Barbara Feldmar to Magistrate Wendy Wood dated August 6, 2007. Ms. Feldmar stated, in part, "... During this period (*early 2007*), Mother reported that in one phone call from Father, Amelia was told that "she was going to be one sorry little girl one day." I do not know if Amelia reported this to her, if Mother listens to the phone calls, or both, and whether this reported comment could be referring to Father's illness..."

228.) Mr. Bedra did not schedule any further visits. It was his opinion that he could not ethically continue to supervise these visitations because there was no need for further supervision. At no time did he ever see any risk of harm to Amelia by her father or feel that Amelia was in danger.

229.) Jeff provided telephone records demonstrating that approximately 15 calls (lasting 4-7 minutes) were made by Amelia to Patrick from January 18, 2009 through August 6, 2009.

230.) Patrick testified of an unusual telephone call he received from Amelia on August 9, 2009. During their 18-minute conversation, Amelia

indicated that she intended to find her way to an airport and to come to her father's house. Patrick called his attorney and the Guardian ad Litem the next morning, as he feared his daughter may be running away from home.

- 231.) That was the last telephone call between Patrick and Amelia.
- 232.) He has attempted to call, but there has been no answer. This past summer on at least two occasions, someone did answer and then promptly hung up.
- 233.) In the Fall of 2009, Amelia enrolled in eighth grade at Maumee Valley Country Day School.
- 234.) During her first year, Amelia received the following grades:
- Math: D
  - Choir: B
  - Physical Education: A
  - Science: C
  - Spanish: F
  - Social Studies: F
- 235.) Her therapist indicated that Amelia was not studying as much as was needed, and Amelia was shy in terms of asking for help.
- 236.) Jeff suggested that Amelia's grades began to decline when Amelia got notice that her father was asking for unsupervised visits.
- 237.) It was then decided that Amelia would return to Oak Harbor High School the following Fall. Over the summer, there were some difficulties. When Amelia went to volleyball practice, some of the other girls were mean to her. Mr. and Mrs. Blay thereafter decided to return Amelia to Maumee Valley Country Day School and were able to obtain financial aid.
- 238.) Patrick testified that it has been difficult to receive any information regarding his daughter's education. He did receive the grades from Maumee Valley, although it has been a struggle.
- 239.) He is not made aware of any of Amelia's extracurricular activities.
- 240.) On September 14, 2009, Patrick filed a motion for unsupervised visitation, requesting that Amelia travel to North Carolina for Thanksgiving and Christmas.

- 241.) On September 15, 2009, Jeff and Lolita filed a copy of a letter they had sent to Patrick informing him that Amelia will be traveling to Russia from December 19, 2009 through January 2, 2010.
- 242.) In September of 2009, Amelia advised Lolita and Jeff that she would like her own attorney. It was also during this time that Amelia had talked with one of her friends who had been successful in terminating a visiting relationship with her father.
- 243.) On October 15, 2009, Attorney Howard Whitcomb entered his appearance on behalf of Amelia and filed a motion to terminate all visitation.
- 244.) On November 18, 2009, Attorney Richard Koehn sought leave to withdraw as counsel for Lolita. Same was granted, and Lolita proceeded *pro se*.
- 245.) In November of 2009, Jeff called the Ottawa County Sheriff's Office and reported acts of vandalism on some of his farm equipment that was sitting in the field overnight during harvest.
- 246.) Jeff advised the dispatched deputy that he believed Patrick was involved. The deputy testified that Jeff made reference to Patrick's kidnapping the child and his ties to the Mafia.
- 247.) The deputy contacted the records department and did not note any concerning previous convictions.
- 248.) The deputy further noted that there were no fingerprints or tire tracks. The vandalism could have been done by anyone.
- 249.) Patrick testified that he was never contacted by law enforcement. Further, he can provide telephone records and an alibi, if necessary.
- 250.) On November 20, 2009, a full-day trial began before Visiting Judge David A. Zeitzheim as to all pending motions. The matter continued for three more days on December 4, 2009, February 8, 2010 and February 9, 2010. The matter was continued for finalization to June 14 and June 15, 2010.

- 251.) The Guardian ad Litem testified that she had originally felt that if the supervised visits, as ordered in 2008, went well, she would recommend that Patrick have expanded visits.
- 252.) When the first trial commenced in November of 2009, she was not sure of her position regarding Amelia's contact with her father.
- 253.) She began to reconsider her position, however, after talking with the supervisors and conducting personal research on parental alienation, including talking with noted experts. She did not ask the court for a parental alienation evaluation, as she could not, in good conscience, ask that this matter be further delayed.
- 254.) She now believes that it would be in Amelia's best interest that custody be granted to Patrick.
- 255.) The Guardian ad Litem bases her opinion, in part, on the following:
- (a) Lolita has continuously created scheduling problems regarding visits and telephone calls.
  - (b) Amelia is not fearful of her father.
  - (c) Amelia started using her stepfather's name.
  - (d) Amelia has been kept fully apprised of court proceedings.
  - (e) Jeff and Lolita brought police presence into the visits.
  - (f) Jeff and Lolita support Amelia's position instead of encouraging her to participate in visitation.
  - (g) Patrick would facilitate visitation between Lolita and Amelia.
  - (h) Dr. Graves indicated in his report that parental alienation does exist in this case.
  - (i) The atmosphere created for this child by her mother and stepfather, knowingly or otherwise, is the major cause of Amelia's problems with her father.
- 256.) When this case was first transferred from Henry County to Ottawa County and she was appointed as the Guardian ad Litem, Ms. Noblitt-Brown indicated that she was scared for the child as well as herself. She was worried that the father was dangerous based upon the statements

made by Lolita and Jeff. However, as she has gotten to know Patrick, her concerns have been alleviated.

- 257.) Further, she noted that the Henry County Court dealt with the issues of custody and visitation in December of 2005 soon after each of the parties had taken the child out of the country, and that Court did not see a reason why Patrick should not have a relationship with his daughter.
- 258.) On May 27, 2010, the Guardian ad Litem filed a six-pronged motion, including a request for "immediate change of custody from Mother to Father and temporary cessation of visitation between Mother and Child".
- 259.) It is the Guardian's belief that if Amelia remains in the home of her mother, there is little hope that Amelia's relationship with her father will ever improve.
- 260.) She is concerned for the future and well-being of Amelia, as she has already been harmed. "Amelia deserves both parents in her life without any conflict".
- 261.) Her recommendation is further based upon the fact that the child cannot give a reason why she does not want to visit with her father.
- 262.) Upon cross examination, the Guardian ad Litem indicated that she was aware that Barbara Feldmar had suggested that Patrick seek a counselor so that he may have an "ally" in this dispute. However, Ms. Brown recognizes Patrick's frustration in having to "do one more thing" with nothing in return.
- 263.) Finally, the Guardian stated that both parents and stepfather are very negative. Lolita refuses to take any responsibility for the visitation problems. Jeff has no objectivity and fully accepts Lolita's stance, and Jeff has told the Guardian that he wishes to adopt Amelia.
- 264.) The Guardian ad Litem last spoke to Amelia in May of 2009. It was the Guardian's understanding that during the period of supervised visits, she would no longer continue investigating the case.
- 265.) Further, she was told that Amelia no longer wished to speak with her. The Guardian continued to speak with Barbara Feldmar at length.

- 266.) On June 2, 2010, Lolita filed a "Motion to Remove Attorney/GAL Bree Brown and Reject GAL Recommendations and Motions".
- 267.) On June 4, 2010, the minor child filed a "Motion to Strike Motions and Recommendations of GAL" and a "Motion to Discharge GAL"
- 268.) On June 7, 2010, the minor child filed a request for Judge Zeitzheim to recuse and disqualify himself due to his prior litigation with Jeff's mother.
- 269.) On June 8, 2010, Judge Zeitzheim ruled that he would not voluntarily recuse or otherwise disqualify himself.
- 270.) On June 28, 2010, the Supreme Court of Ohio denied the minor child's request to disqualify Judge Zeitzheim.
- 271.) All pending motions were thereafter scheduled for finalization on August 23 and August 24, 2010.
- 272.) On August 19, 2010, Visiting Judge David Zeitzheim recused himself, as he believed that he could no longer act impartially in this case.
- 273.) Visiting Judge Thomas Heydinger was scheduled to hear this case in its' entirety on September 27 through October 1, 2010. Unfortunately, Judge Heydinger suffered a medical emergency, and the matter was referred back to the presiding judge of this Court for final determination.

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- 274.) Barbara Feldmar "was shocked" when she learned that the Guardian ad Litem was recommending a change of Amelia's custody. When she talked with Amelia, the child stated that the motion was "revenge against my mother".
- 275.) The Guardian ad Litem stated that she discussed with the counselor the possibility of filing such a motion. Ms. Feldmar did think it was extreme, but she could not give a reason why visitation should be terminated. Ms. Feldmar has counseled Amelia for the past 4-5 years.

276.) Ms. Feldmar believed that the supervised visits were going well, and then Patrick introduced another motion for unsupervised visitation. She felt that he should have been more patient.

277.) It was the opinion of Ms. Feldmar that some of Amelia's problems have to do with her parents. She believes that it would have been better for Amelia had her parents been able to work out difficulties related to visitation.

278.) She is not an expert in parental alienation. She believes that it can exist in different levels. However, there is very little research. It is not accepted as a mental health diagnosis, and it is very controversial. She does accept that a child may have "estrangement" issues with a parent.

279.) Finally, she believes that a relationship can be repaired, depending upon the contentiousness between the parents.

280.) It is Ms. Feldmar's opinion that should visitation continue, it should be supervised.

281.) She suggested that the Court consider appointing a "special master", if possible, who would make binding day-to-day decisions for this high-conflict family.

NOTE: This Court is unaware of any provision for a binding arbiter in family law cases in the State of Ohio. This Court further questions the likelihood if such arbitration would be followed by these parties in light of the failure to adhere to the Interim Order issued by a judge.

282.) Patrick acknowledged that it would be helpful for he and Amelia to work on their relationship through joint counseling.

283.) He is recently began counseling with a therapist in Wilmington who works with teens and families.

284.) Patrick has not been charged with domestic violence or stalking of Lolita. There have been no restraining orders sought by Jeff and/or Lolita. Patrick has not been convicted of a crime against his daughter or alleged to have abused or neglected her.

285.) Patrick's estranged niece and nephew testified that when they were 10 and 8, respectively, (approximately 20 years ago), they saw books in a

room in which Patrick was staying entitled "How to Hire a Hit Man" and "How to Pick a Lock". They could not state that the books belonged to Patrick, and they did not tell anyone of the identity of the books at the time.

286.) Patrick indicated that he has made 28 trips to Ohio in an effort to have visits with Amelia. This is "no vendetta against Lolita".

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287.) Terri Kardos of the Ottawa County Child Support Enforcement Agency testified and submitted a brief report, stated in part as follows:

"Mr. Garmyn is ordered to pay \$465.05 per month in current child support effective July 1, 2010... The case currently has a credit balance as of October 31, 2010 of \$2.85. According to the payment history attached, three months out of twenty-eight with no payment. The other 25 months meet or exceed the monthly obligation through October 31, 2010."

288.) Patrick has not maintained a bank account of \$1,000 for child support purposes.

289.) He indicated that he has spent considerable amounts of money traveling to Ohio for numerous hearings in an effort to secure some companionship with his daughter. The three months when he did not make timely payments, he was spending his funds to travel to Ohio.

290.) He further indicated that he does not have \$1,000 to set up a bank account due to substantial litigation expense.

291.) Patrick is employed as a realtor/broker in Wilmington, North Carolina and owns a carpet/tile cleaning business.

292.) Ms. Kardos testified that usually support from self-employed parents fluctuates. She further indicated that Patrick was "making up" a deficient month very quickly. To her knowledge, a Notice of Default has not ever been sent by the agency.

293.) Lolita and Jeff further notified Patrick that he was responsible for uninsured health care expenses incurred on behalf of Amelia as follows (Child's Exhibit XX):

Allergy 2009	758.19
Eye examine 2009	85.00
Contacts 2009	195.00
Eye examine 2010	383.90
Contacts 2010	85.00
Total Paid by Blay's	1,508.07
Owed by Patrick (70%)	1,055.65

294.) Patrick has not paid said sum. He requested copies of documentation from the insurance company indicating how much had been paid but did not receive same in return.

295.) He acknowledged that he did not contact the provider himself or direct his legal representative to do so.

**CONCLUSIONS OF LAW**  
**AND**  
**FURTHER FINDINGS**

*Termination of Visitation*

The Court in *Petry v. Petry* (1984), Ohio App.3d 350, began its' analysis of whether to terminate a parent's visitation by stating that "(A) noncustodial parent's right of visitation with his children is a natural right", *Porter v. Porter* (1971), 25 Ohio St.2d 123. "As such, the right of visitation, albeit not absolute, should be denied only under extraordinary circumstances", *Foster v. Foster* (1974), 40 Ohio App.2d 257.

"Extraordinary circumstances would include, for example, the unfitness of the noncustodial parent or a showing that visitation with the noncustodial parent would cause harm to the children, *Foster*, supra, *Smith v. Smith* (1980), 70 Ohio App.2d 87. The Court in *In re Hall* (1989), 65 Ohio Ap.3<sup>rd</sup> 88, held that it would be an extraordinary circumstance if the non-custodial parent was imprisoned for a number of years for a crime of violence.

"The burden of proof is on the party contesting visitation privileges, and absent a showing of extraordinary circumstances, the trial court may fashion any just and reasonable visitation schedule." See R.C. 3109.05(B). "The standard of proof for one contesting visitation is clear and convincing evidence", *Petry* as cited in *John-tonny v. Malliski* (1990), 67 Ohio App.3d 709. "Once the custodial parent proves the existence of an extraordinary circumstance, the burden shifts back to the non-custodial parent to prove that any visitation would be in the best interests of the child," *Hoppel v. Hoppel*, 2004-Ohio-1574, *Dubec v. Pochiro*, 2010-Ohio-1293.

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The minor child (and by inference, Mother) has failed to show by clear and convincing evidence that an extraordinary circumstance exists to terminate Father's visits.

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#### *Modification of Custody*

§ 3109.04 of the Ohio Revised Code provides, in part, as follows:

"(E)(1)(a) The court shall not modify a prior decree allocating parental rights and responsibilities for the care of children 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. 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...

- (ii) The child, with the consent of the residential parent... 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."

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The prior decree last allocating parental rights and responsibilities for Amelia was on December 20, 2005. (Although there have been filings and court proceedings dealing with visitation since that time, this was the last Judgment Entry that addressed the issue of who should be the residential parent of the child.)

296.) There has been a change of circumstances since the date of the prior order to warrant a determination as to whether it is in the best interest of the minor child that parental rights be modified, based upon the following facts:

- (a) The child is now almost 15 years of age. At the time of the prior order, she was 10 years old.
- (b) The child currently expresses her unwillingness to foster a relationship with her father. At the time of the prior order, she would demonstrate love and affection for her father as demonstrated by her writings and family photographs.
- (c) There exists some evidence of alienation by the child's mother and stepfather.
- (d) There has been no telephonic contact between the child and her father since August of 2009.
- (e) There has been no visitation or face-to-face contact between the child and her father since approximately Fall of 2009.

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R.C. 3109.04(F)(1) further provides:

"In determining the best interests of the child pursuant to this section, whether on an original decree allocating parental rights and responsibilities for the care of children or a modification of a decree allocating those rights and responsibilities, the court shall consider all relevant factors, including, but not limited to:

**(1) The wishes of the child's parents regarding the child's care.**

297.) It is the desire of Mother, Lolita Blay, that Amelia be allowed to make her own decision regarding contact with Amelia's father.

298.) It is apparent through the actions and words of Mother that she does not want the father to have any relationship with the child.

299.) Father, Patrick Garmyn, desires to have contact with Amelia and agrees with the Guardian ad Litem that a father-daughter relationship can only be fostered if the child is placed in his custody.

**(2) If the court has interviewed the child in chambers... 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.**

300.) The Court interviewed Amelia on October 20, 2010. She was pleasant and engaging.

301.) She indicated that she wants "nothing to do with her biological father". It is her desire that all contact - visits and telephone calls - be stopped completely.

302.) Her reason given for all cessation of contact was that she was traumatized "from everything from before and the threats and just the screaming and stuff".

**(3) 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.**

303.) Amelia enjoys a close relationship with her mother. They like to shop and watch television together. When Amelia needs to talk to someone, she goes to her mother.

304.) Amelia also has a good relationship with her stepfather. They work with the horses together, and Jeff helps Amelia with her homework.

305.) Amelia has no siblings.

306.) Amelia visits regularly with Jeff's mother and Jeff's extended family.

307.) Amelia's maternal grandmother and aunt reside in Russia. She did visit with them in December of 2009.

308.) Amelia likes Patrick's fiancé, Elisa.

**(4) The child's adjustment to the child's home, school, and community.**

309.) Amelia enjoys living with her mother and stepfather.

310.) She appears to be doing better academically this school year.

311.) She has several friends at Maumee Valley Country Day School, including a very close friend of more than a year. She also maintains friendships with teens in the Oak Harbor area.

312.) Should Patrick receive custody of Amelia, he indicated that he would assist her in her adaptation to North Carolina. There are excellent schools in his community, and he and Elisa would help Amelia engage in many activities. There are also beaches, a YMCA, and friends.

**(5) The mental and physical health of all persons involved in the situation.**

313.) It has been approximately four years since Patrick was diagnosed with cancer. He now is in good health.

314.) Lolita and Amelia appear to be in good physical health.

315.) There was no evidence presented to suggest that Patrick and Lolita suffer from any diagnosed mental illness.

316.) Lolita and Jeff have alleged that Amelia has indicated that she wants to die and, at one point, was cutting herself.

317.) Barbara Feldmar testified that Amelia does not suffer from any chronic depression and that she has not heard that she is suicidal. Amelia has not told her that she was cutting herself.

**(6) The parent more likely to honor and facilitate court-approved parenting time rights or visitation and companionship rights.**

318.) Patrick would be more inclined than Lolita to facilitate visitation and companionship.

319.) There appeared to be no obvious problems with Amelia's contact with her mother while she was in North Carolina.

320.) Patrick has indicated that, should he have custody of Amelia, Lolita could see Amelia whenever she wanted. He would not call the police for exchanges and would try to avoid the friction during the transfers.

321.) There is ample evidence to indicate that Jeff and Lolita have made past visits difficult by summoning the police and continuing to regurgitate the history of this case to any person that may become involved.

322.) Lolita has attempted to absolve herself of all obligations to assure that the child complies with court orders.

323.) As a result, it is unlikely that Lolita will honor court-ordered visitation.

(7) **Whether either parent has failed to make all child support payments.**

324.) Patrick has substantially complied with payment of child support.

(8) **Whether either parent has been convicted or pleaded guilty to (certain enumerated offenses).**

325.) There was no evidence presented regarding prior convictions of the enumerated offenses by either parent.

(9) **Whether the residential parent... has continuously and willfully denied the other parent's right to parenting time in accordance with an order of the court.**

326.) See findings above.

(10) **Whether either parent has established a residence, or is planning to establish a residence, outside this state.**

310.) Patrick has resided in the State of North Carolina since 2002.

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Although this writer agrees with the Guardian ad Litem when she states it will be difficult for Amelia to visit with her father while her mother and stepfather continue to impliedly interfere with said visits, either knowingly or otherwise, the Court finds that the advantages of changing the child's environment do not outweigh the harm of removing the child from her mother, her school, and her friends.

## Modification of Visitation

"... (w)hen a party requests a change in visitation, the trial court must consider the factors set forth in R.C. 3109.051(D) and then determine visitation that is in the best interest of the child", *Braatz. v. Braatz*, 1999-Ohio-203.

The factors included in R.C. 3109.051(D) are, in pertinent part, as follows:

(1) **The prior interaction and interrelationships of the child with the child's parents... and any other persons related by consanguinity or affinity.**

327.) See findings above.

(2) **The geographical location of the residence of each parent and the distance between those residences.**

328.) See findings above.

(3) **The child's and parent's available time, including, but not limited to, each parent's employment schedule, the child's school schedule, and the child's and the parents' holiday and vacation schedule.**

329.) There was no evidence presented regarding the schedules of the parents and/or the child.

330.) Amelia does participate in the 4-H program with her horse and competes at the Ottawa County Fair (third week in July).

**(4) The age of the child.**

331.) Amelia turned fifteen (15) years of age on December 26, 2010.

**(4) The child's adjustment to home, school, and community.**

332.) See findings above.

**(5) If the court has interviewed the child in chambers... regarding the wishes and concerns of the child as to parenting time by the parent who is not the residential parent... as expressed to the court.**

333.) See findings above.

**(6) The health and safety of the child.**

334.) There was no evidence to indicate that Amelia would not be safe if she were to visit with her father in North Carolina.

**(7) The amount of time that will be available for the child to spend with siblings.**

335.) Amelia is the only child of Patrick Garmyn and Lolita Blay.

**(8) The mental and physical health of all parties.**

336.) See findings above.

**(9) Each parent's willingness to reschedule missed parenting time and to facilitate the other parent's parenting time rights.**

337.) See findings above.

- (10) In relation to parenting time, whether either parent previously has been convicted of or pleaded guilty to any criminal offense involved any act that resulted in a child being an abused child or a neglected child,, 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.

338.) There was no evidence presented regarding convictions of either parent of these offenses.

- (11) Whether either parent previously has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code 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...

339.) There was no evidence presenting regarding convictions by either parent of these offenses.

- (12) Whether the residential parent has continuously and willfully denied the other parent's right to parenting time in accordance with an order of the court.

340.) See findings above.

**(13) Any other factor in the best interest of the child.**

341.) Soon after each parent had taken the child out of the country in an effort to keep the child from the other parent, Patrick and Lolita were able to sit down with a mediator and work out their differences regarding visitation. The Henry County Juvenile Court accepted that agreement only a few months after the child came back from Russia.

342.) A large portion of the evidence presented at this 2010 trial was a rehashing of the events that occurred from 1995 through 2005. It is time to put these matters to rest...

343.) It would be in Amelia's best interest that she has a relationship with each of her parents that is encouraged by Lolita, Jeff, Patrick and Elisa.

344.) This Court is not without empathy for Amelia. She is an only child caught in a web of parental hostility and ongoing conflict.

345.) It is this Court's belief that she has been influenced by her mother's fear and paranoia, her father's need for control, and her stepfather's full acceptance of Mother's position with no intent of acting as a conciliatory intermediary.

346.) Each of these parents is responsible for the conflict they have created for themselves, and particularly, for their child.

347.) Unfortunately, due to the inability of these parents to work out their own differences, this Court must impose its' judgment upon this family.

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Based upon all of the foregoing Findings of Fact and Conclusions of Law,  
**IT IS HEREBY ORDERED** that the Motion to Terminate Visitation filed on behalf of the minor child is hereby DENIED.

**IT IS FURTHER ORDERED** that the Motion for Change of Custody filed by the Guardian ad Litem and joined by Father is hereby DENIED.

**IT IS FURTHER ORDERED** that the Motion to Show Cause filed by Mother is hereby DENIED.

**IT IS FURTHER ORDERED** that Mother shall provide to Father copies of the Explanation of Medical Benefits paid on the health care expenses submitted for payment. Said documents shall be provided within thirty (30) days. Upon receipt and within thirty (30) days thereafter, Patrick Garmyn shall pay his portion of the uninsured expenses pursuant to this Court's prior order.

**IT IS FURTHER ORDERED** that the Motion for Unsupervised Visitation filed on behalf of Father is hereby GRANTED.

**IT IS FURTHER ORDERED** that Father shall have visitation and companionship with the minor child as follows:

- 1.) One-half (1/2) of the Christmas school vacation. If the parents cannot agree as to which half, then in the even-numbered years, the first half of the vacation shall be spent in Mother's home, with the second half in the home of Father. The first-half visitation shall commence at 2:00 p.m. on the day after school concludes at the commencement of the break and shall end at 2:00 p.m. on the day representing the half way point of the child's school vacation. The second-half visitation shall commence at 2:00 p.m. on the day representing the half way point of the child's school vacation and shall conclude at 2:00 p.m. on the day before school reconvenes at the conclusion of the break.
- 2.) The Spring school vacation during the odd-numbered years, commencing at 2:00 p.m. on the day after school concludes at the commencement of the break until 2:00 p.m. on the day before school reconvenes at the conclusion of the break.
- 3.) Two (2) weeks in August, commencing at 2:00 p.m. on the first Monday in August and ending at 2:00 p.m. on the third Monday in August.
- 4.) One (1) weekend during the odd-numbered years and two (2) weekends during the even-numbered years in Ottawa County, Ohio or its' contiguous counties. Said visits shall commence at 6:00 p.m. on Friday and shall conclude at 6:00 p.m. on

Sunday. Father shall notify Mother at least thirty (30) days in advance of the time that he will be in the area and desirous of said visitation. Transportation costs for said weekend visitation shall be borne solely by Father.

**IT IS FURTHER ORDERED** that responsibility for the transportation and associated costs for summer, spring and Christmas visitations shall be the responsibility of the non-residential parent receiving the child at the commencement of the visitation and companionship period and the residential parent at the conclusion of the visitation and companionship period (unless the parties agree otherwise).

**IT IS FURTHER ORDERED** that the exchanges of the child in Ottawa County shall be at Joyful Connections, 8200 W. St. Rt. 163, Oak Harbor, Ohio.

**IT IS FURTHER ORDERED** that the exchanges in North Carolina shall be at a similar visitation exchange facility in the Wilmington area. Counsel for Mother and Father shall determine an appropriate facility for said exchange.

**IT IS FURTHER ORDERED** that the parents shall provide all necessary information as required by the visitation facilities and shall equally pay the fees associated with the exchanges.

**IT IS FURTHER ORDERED** that Amelia shall telephone Father on the first day of each month at 7:00 p.m. Father and daughter shall attempt to carry on a pleasant conversation. Father shall not raise his voice or make accusations toward the child. The child shall be respectful to Father. Telephone conversations are not required to extend beyond five (5) minutes unless Father and daughter desire to continue talking. Mother shall assure that the child has complete privacy during the telephone calls.

**IT IS FURTHER ORDERED** that discussions regarding visitation arrangements and matters pertaining to Amelia shall be solely between Mother and Father, or counsel for the parents (if necessary). Any discussions between the parents shall be civil in nature.

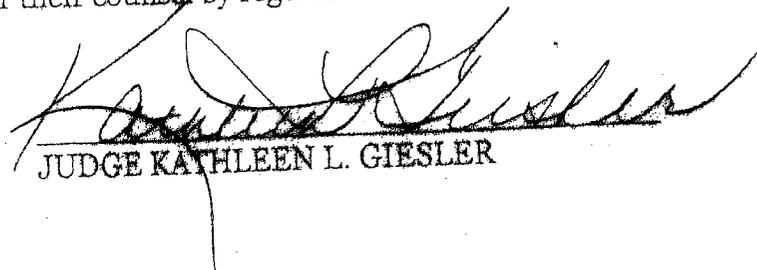
**IT IS FURTHER ORDERED** that each of the parents shall encourage free communications between the child and the other parent, and both parents

shall encourage the child to love the other parent and refrain from criticizing or making disparaging comments about the other parent.

**IT IS FURTHER ORDERED** that Mother and Father shall not discuss these proceedings with the minor child, with the exception of advising Amelia of times and arrangements for visits as ordered herein. Mother and Father shall assure that his or her spouse or significant other refrain from engaging in any discussion with the minor child regarding aspects of these proceedings. Said parents shall further assure that any discussions between themselves and others regarding these proceedings shall be conducted out of the sight and hearing of the minor child.

**IT IS FURTHER ORDERED** that failure to abide by these orders may be result in a finding of contempt of court and monetary consequence, including but not limited to, payment of attorney fees, Guardian ad Litem fees and court costs.

**IT IS FURTHER ORDERED** that copies of this Judgment Entry shall be sent to all parties of record or their counsel by regular U. S. Mail.

  
JUDGE KATHLEEN L. GIESLER



# CONSTITUTION OF THE UNITED STATES

EFFECTIVE 1789  
WITH ALL AMENDMENTS TO 1994

We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

## ARTICLE I

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the

Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of Chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of Absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

#### Comparative Legislation

Privilege from arrest, answering for speech or debate, OConst art II, § 12

SECTION 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the Credit of the United States; To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States, respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may be, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;— And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and

Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

#### Comparative Legislation

Bills of attainder, OConst art I, § 12

Ex post facto laws, OConst art II, § 28

Habeas corpus, OConst art I, § 8

Laws impairing obligation of contract, OConst art II, § 28

Titles of nobility, OConst art I, § 17

SECTION 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque or Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

## ARTICLE II

SECTION 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be

taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to Discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

SECTION 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

#### Comparative Legislation

President as commander-in-chief of militia, OConst art III, § 10  
Subordination of military to civilian authority, OConst art I, § 4

SECTION 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

#### Comparative Legislation

Communication with legislature, OConst art III, § 7

SECTION 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

### ARTICLE III

SECTION 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

#### Comparative Legislation

Judicial branch, OConst art IV, §§ 1-4, 6

SECTION 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

### ARTICLE IV

SECTION 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

SECTION 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

#### Comparative Legislation

Extradition proceedings, OConst art I, § 12

SECTION 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

SECTION 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

### ARTICLE V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

#### Comparative Legislation

Constitutional amendments, OConst art II, § 1b; OConst art XVI, §§ 1, 2

### ARTICLE VI

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid

against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

#### Comparative Legislation

Prohibition against requiring religious test to qualify for public office, OConst art I, § 7

### ARTICLE VII

The Ratification of the Conventions of nine States shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the

Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth. IN WITNESS whereof We have hereunto subscribed our Names.

G. WASHINGTON — Presidt. and Deputy  
from Virginia

Attest.—WILLIAM JACKSON, Secretary.

**New Hampshire.**—John Langdon, Nicholas Gilman.

**Massachusetts.**—Nathaniel Gorham, Rufus King.

**Connecticut.**—Wm. Saml. Johnson, Roger Sherman.

**New York.**—Alexander Hamilton.

**New Jersey.**—Wil: Livingston, David Brearley, Wm. Paterson, Jona: Dayton.

**Pennsylvania.**—B Franklin, Thomas Mifflin, Robt. Morris, Geo. Clymer, Thos. FitzSimons, Jared Ingersoll, James Wilson, Gouv Morris.

**Delaware.**—Geo: Read, Gunning Bedford Jun, John Dickinson, Richard Bassett, Jaco: Broom.

**Maryland.**—James McHenry, Dan of St Thos. Jenifer, Danl. Carroll.

**Virginia.**—John Blair—James Madison, Jr.

**North Carolina.**—Wm. Blount, Richd. Dobbs Spaight, Hu Williamson.

**South Carolina.**—J. Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler.

**Georgia.**—William Few, Abr. Baldwin.

# AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

*Articles in addition to, and amendments of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth article of the original Constitution.*

## AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

(Effective 1791)

### Comparative Legislation

Freedom of speech, press, OConst art I, § 11  
Rights of assembly petition, OConst art I, § 3

## AMENDMENT II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

(Effective 1791)

### Comparative Legislation

Right to bear arms, OConst art I, § 4

## AMENDMENT III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

(Effective 1791)

### Comparative Legislation

Quartering of troops, OConst art I, § 13

## AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(Effective 1791)

### Comparative Legislation

Search and seizure, OConst art I, § 14

## AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

(Effective 1791)

### Comparative Legislation

Compensation for taking for public use, OConst art I, § 19  
Double jeopardy, OConst art I, § 10  
Due process, OConst art I, § 16  
Indictment by grand jury, OConst art I, § 10  
Self-incrimination, OConst art I, § 10

## AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

(Effective 1791)

### Comparative Legislation

Compulsory process, OConst art I, § 10  
Confronting witnesses, OConst art I, § 10  
Nature of charge, OConst art I, § 10  
Right to counsel, OConst art I, § 10  
Right to trial by jury, OConst art I, § 5  
Speedy and public trial by jury, OConst art I, § 10

## AMENDMENT VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

(Effective 1791)

### Comparative Legislation

Trial by jury, OConst art I, § 5

## AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

(Effective 1791)

### Comparative Legislation

Bail, OConst art I, § 9

## AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

(Effective 1791)

### Comparative Legislation

Powers reserved to people, OConst art I, § 20

## AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

(Effective 1791)

**Comparative Legislation**

Powers reserved to people, OConst art I, § 20

**AMENDMENT XI**

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

(Effective 1798)

**AMENDMENT XII**

The Electors shall meet in their respective states and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives; open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

(Effective 1804)

**AMENDMENT XIII**

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

(Effective 1865)

**Comparative Legislation**

Slavery and involuntary servitude, OConst art I, § 6

**AMENDMENT XIV**

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Comparative Legislation**

Due process, OConst art I, § 16

Equal protection, OConst art I, § 2

**AMENDMENT XIV**

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

**Comparative Legislation**

Apportionment, OConst art XI, §§ 1, 2, 3

**AMENDMENT XIV**

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

**Comparative Legislation**

Qualification for office, OConst art II, § 5

**AMENDMENT XIV**

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

**Comparative Legislation**

Public debt, OConst art VIII, §§ 1, 3

## AMENDMENT XIV

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article:  
(Effective 1868)

## AMENDMENT XV

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

(Effective 1870)

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

**Comparative Legislation**

Elective franchise, OConst art V, § 1

## AMENDMENT XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

(Effective 1913)

**Comparative Legislation**

Taxation, OConst art XII, §§ 3, 4, 5, 9

## AMENDMENT XVII

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

(Effective 1913)

**Comparative Legislation**

Vacancies, OConst art II, § 11

## AMENDMENT XVIII

SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SECTION 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

SECTION 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

(Effective 1919)

## AMENDMENT XIX

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

(Effective 1920)

**Comparative Legislation**

Elective franchise, OConst art V, § 1

## AMENDMENT XX

SECTION 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

SECTION 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

SECTION 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

SECTION 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

SECTION 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

SECTION 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

(Effective 1933)

**Comparative Legislation**

Rules of conduct, OConst art II, § 8

## AMENDMENT XXI

SECTION 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

SECTION 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

SECTION 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

(Effective 1933)

## AMENDMENT XXII

SECTION 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

SECTION 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

(Effective 1951)

**Comparative Legislation**

Executive power, OConst art III, § 2

## AMENDMENT XXIII

SECTION 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.  
(Effective 1961)

## AMENDMENT XXIV

SECTION 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.  
(Effective 1964)

**Comparative Legislation**

Elective franchise, OConst art V, § 1

## AMENDMENT XXV

SECTION 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

SECTION 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

SECTION 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

SECTION 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.  
(Effective 1967)

**Comparative Legislation**

Vacancy, OConst art III, § 17

## AMENDMENT XXVI

SECTION 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.  
(Effective 1971)

**Comparative Legislation**

Elective franchise, OConst art V, § 1

## AMENDMENT XXVII

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.  
(Effective 1992)

**Comparative Legislation**

Bail; bailable offenses, OConst art I, § 9



# CONSTITUTION OF THE STATE OF OHIO

ADOPTED MARCH 10, 1851  
WITH AMENDMENTS CURRENT TO JULY 1, 2001

## ARTICLE I: BILL OF RIGHTS

### Section

- 1 Right to freedom and protection of property.
- 2 Right to alter, reform, or abolish government, and repeal special privileges.
- 3 Right to assemble together.
- 4 Bearing arms; standing armies; subordination of military power.
- 5 Trial by jury; reform in civil jury system.
- 6 Slavery and involuntary servitude.
- 7 Rights of conscience; education; necessity of religion and knowledge.
- 8 Writ of habeas corpus.
- 9 Bail; cruel and unusual punishments.
- 10 Trial of accused persons and their rights; depositions by state and comment on failure of accused to testify in criminal cases.
- 10a Rights of victims of crime.
- 11 Freedom of speech and of the press; libel.
- 12 Transportation, etc., for crime.
- 13 Quartering of troops.
- 14 Search warrants and general warrants.
- 15 No imprisonment for debt.
- 16 Redress in courts.
- 17 Hereditary privileges, etc.
- 18 Suspension of laws.
- 19 Inviolability of private property.
- 19a Damage for wrongful death.
- 20 Powers reserved to the people.

### § 1 Right to freedom and protection of property.

All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

### § 2 Right to alter, reform, or abolish government, and repeal special privileges.

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly.

### § 3 Right to assemble together.

The people have the right to assemble together, in a peaceable manner, to consult for their common good; to instruct their representatives; and to petition the general assembly for the redress of grievances.

### § 4 Bearing arms; standing armies; subordination of military power.

The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power.

### § 5 Trial by jury; reform in civil jury system.

The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury.

**HISTORY:** (As amended September 3, 1912.)

### § 6 Slavery and involuntary servitude.

There shall be no slavery in this state; nor involuntary servitude, unless for the punishment of crime.

### § 7 Rights of conscience; education; necessity of religion and knowledge.

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required, as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the general assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

### § 8 Writ of habeas corpus.

The privilege of the writ of habeas corpus shall not be suspended, unless, in cases of rebellion or invasion, the public safety require it.

### § 9 Bail; cruel and unusual punishments.

All persons shall be bailable by sufficient sureties, except for a person who is charged with a capital offense where the proof is evident or the presumption great, and except for a person who is charged with a felony where the proof is evident or the presumption great and where the

person poses a substantial risk of serious physical harm to any person or to the community. Where a person is charged with any offense for which the person may be incarcerated, the court may determine at any time the type, amount, and conditions of bail. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted.

The General Assembly shall fix by law standards to determine whether a person who is charged with a felony where the proof is evident or the presumption great poses a substantial risk of serious physical harm to any person or to the community. Procedures for establishing the amount and conditions of bail shall be established pursuant to Article IV, Section 5(b) of the Constitution of the state of Ohio.

(As amended January 1, 1998.)

**§ 10 Trial of accused persons and their rights; depositions by state and comment on failure of accused to testify in criminal cases.**

Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

**HISTORY:** (As amended September 3, 1912.)

**§ 10a Rights of victims of crime.**

Victims of criminal offenses shall be accorded fairness, dignity, and respect in the criminal justice process, and, as the general assembly shall define and provide by law, shall be accorded rights to reasonable and appropriate notice, information, access, and protection and to a meaningful role in the criminal justice process. This section does not confer upon any person a right to appeal or modify any decision in a criminal proceeding, does not abridge any other right guaranteed by the Constitution of the United States or this constitution, and does not create any cause of action for compensation or damages against the state, any political subdivision of the state, any officer, employee, or

agent of the state or of any political subdivision, or any officer of the court.

(Adopted November 8, 1994)

**§ 11 Freedom of speech and of the press; libel.**

Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury, that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted.

**§ 12 Transportation, etc., for crime.**

No person shall be transported out of the state, for any offense committed within the same; and no conviction shall work corruption of blood, or forfeiture of estate.

**§ 13 Quartering of troops.**

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor, in time of war, except in the manner prescribed by law.

**§ 14 Search warrants and general warrants.**

The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized.

**§ 15 No imprisonment for debt.**

No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud.

**§ 16 Redress in courts.**

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

[Suits against the state.] Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

**HISTORY:** (As amended September 3, 1912.)

**§ 17 Hereditary privileges, etc.**

No hereditary emoluments, honors, or privileges, shall ever be granted or conferred by this state.

**§ 18 Suspension of laws.**

No power of suspending laws shall ever be exercised, except by the general assembly.

### § 19 Inviolability of private property.

Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.

### § 19a Damage for wrongful death.

The amount of damages recoverable by civil action in the courts for death caused by the wrongful act, neglect, or default of another, shall not be limited by law.

**HISTORY:** (Adopted September 3, 1912.)

### § 20 Powers reserved to the people.

This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers, not herein delegated, remain with the people.

## ARTICLE II: LEGISLATIVE

### Section

39 Regulating expert testimony in criminal trials.

### § 39 Regulating expert testimony in criminal trials.

Laws may be passed for the regulation of the use of expert witnesses and expert testimony in criminal trials and proceedings.

**HISTORY:** (Adopted September 3, 1912.)

## ARTICLE III: EXECUTIVE

### Section

11 May grant reprieves, commutations, and pardons.

### § 11 May grant reprieves, commutations, and pardons.

The Governor shall have power, after conviction, to grant reprieves, commutations, and pardons, for all crimes and offenses, except treason and cases of impeachment, upon such conditions as the Governor may think proper; subject, however, to such regulations, as to the manner of applying for commutations and pardons, as may be prescribed by law. Upon conviction for treason, the Governor may suspend the execution of the sentence, and report the case to the General Assembly, at its next meeting, when the General Assembly shall either pardon, commute the sentence, direct its execution, or grant a further reprieve. The Governor shall communicate to the general assembly, at every regular session, each case of reprieve, commutation, or pardon granted, stating the name and crime of the convict, the sentence, its date, and the date of the

commutation, pardon, or reprieve, with the Governor's reasons therefor.

(As amended January 1, 1996)

## ARTICLE IV: JUDICIAL

### Section

- 1 In whom judicial power vested.
- 2 The supreme court.
- 3 Court of appeals.
- 4 Common pleas court.
- 5 Additional powers of supreme court; supervision; rule making.
- 20 Style of process, prosecution, and indictment.

### § 1 In whom judicial power vested.

The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law.

**HISTORY:** (Amended May 7, 1968; Nov. 6, 1973; SJR No.30.)

### § 2 The supreme court.

(A) The supreme court shall, until otherwise provided by law, consist of seven judges, who shall be known as the chief justice and justices. In case of the absence or disability of the chief justice, the judge having the period of longest total service upon the court shall be the acting chief justice. If any member of the court shall be unable, by reason of illness, disability or disqualification, to hear, consider and decide a cause or causes, the chief justice or the acting chief justice may direct any judge of any court of appeals to sit with the judges of the supreme court in the place and stead of the absent judge. A majority of the supreme court shall be necessary to constitute a quorum or to render a judgment.

(B)(1) The supreme court shall have original jurisdiction in the following:

- (a) Quo warranto;
- (b) Mandamus;
- (c) Habeas corpus;
- (d) Prohibition;
- (e) Procedendo;
- (f) In any cause on review as may be necessary to its complete determination;

(g) Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.

(2) The supreme court shall have appellate jurisdiction as follows:

(a) In appeals from the courts of appeals as a matter of right in the following:

- (i) Cases originating in the courts of appeals;
- (ii) Cases involving questions arising under the constitution of the United States or of this state.

(b) In appeals from the courts of appeals in cases of felony on leave first obtained,

(c) In direct appeals from the courts of common pleas or other courts of record inferior to the court of appeals as a matter of right in cases in which the death penalty has been imposed;

(d) Such revisory jurisdiction of the proceedings of administrative officers or agencies as may be conferred by law;

(e) In cases of public or great general interest, the supreme court may direct any court of appeals to certify its record to the supreme court, and may review and affirm, modify, or reverse the judgment of the court of appeals;

(f) The supreme court shall review and affirm, modify, or reverse the judgment in any case certified by any court of appeals pursuant to section 3(B) (4) of this article.

(3) No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the supreme court.

(C) The decisions in all cases in the supreme court shall be reported, together with the reasons therefor.

(Amended November 8, 1994)

### § 3 Court of appeals.

(A) The state shall be divided by law into compact appellate districts in each of which there shall be a court of appeals consisting of three judges. Laws may be passed increasing the number of judges in any district wherein the volume of business may require such additional judge or judges. In districts having additional judges, three judges shall participate in the hearing and disposition of each case. The court shall hold sessions in each county of the district as the necessity arises. The county commissioners of each county shall provide a proper and convenient place for the court of appeals to hold court.

(B)(1) The courts of appeals shall have original jurisdiction in the following:

- (a) Quo warranto;
- (b) Mandamus;
- (c) Habeas corpus;
- (d) Prohibition;
- (e) Procedendo;

(f) In any cause on review as may be necessary to its complete determination.

(2) Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district, except that courts of appeals shall not have jurisdiction to review on direct appeal a judgment that imposes a sentence of death. Courts of appeals shall have such appellate jurisdiction as may be provided by law to review and affirm, modify, or reverse final orders or actions of administrative officers or agencies.

(3) A majority of the judges hearing the cause shall be necessary to render a judgment. Judgments of the courts of appeals are final except as provided in section 2(B) (2) of this article. No judgment resulting from a trial by jury shall be reversed on the weight of the evidence except by the concurrence of all three judges hearing the cause.

(4) Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination.

(C) Laws may be passed providing for the reporting of cases in the courts of appeals.

(Amended November 8, 1994)

Analogous to former Art. IV, § 6.

### § 4 Common pleas court.

(A) There shall be a court of common pleas and such divisions thereof as may be established by law serving each county of the state. Any judge of a court of common pleas or a division thereof may temporarily hold court in any county. In the interests of the fair, impartial, speedy, and sure administration of justice, each county shall have one or more resident judges, or two or more counties may be combined into districts having one or more judges resident in the district and serving the common pleas courts of all counties in the district, as may be provided by law. Judges serving a district shall sit in each county in the district as the business of the court requires. In counties or districts having more than one judge of the court of common pleas, the judges shall select one of their number to act as presiding judge, to serve at their pleasure. If the judges are unable because of equal division of the vote to make such selection, the judge having the longest total service on the court of common pleas shall serve as presiding judge until selection is made by vote. The presiding judge shall have such duties and exercise such powers as are prescribed by rule of the supreme court.

(B) The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law.

(C) Unless otherwise provided by law, there shall be a probate division and such other divisions of the courts of common pleas as may be provided by law. Judges shall be elected specifically to such probate division and to such other divisions. The judges of the probate division shall be empowered to employ and control the clerks, employees, deputies, and referees of such probate division of the common pleas courts.

**HISTORY:** (Amended, effective Nov. 6, 1973; SJR No.30. Adopted May 7, 1968. Former § 4 repealed.)

### § 5 Additional powers of supreme court; supervision; rule making.

(A)(1) In addition to all other powers vested by this article in the supreme court, the supreme court shall have general superintendence over all courts in the state. Such general superintending power shall be exercised by the chief justice in accordance with rules promulgated by the supreme court.

(2) The supreme court shall appoint an administrative director who shall assist the chief justice and who shall serve at the pleasure of the court. The compensation and duties of the administrative director shall be determined by the court.

(3) The chief justice or acting chief justice, as necessity arises, shall assign any judge of a court of common pleas or a division thereof temporarily to sit or hold court on any other court of common pleas or division thereof or any court of appeals or shall assign any judge of a court of appeals temporarily to sit or hold court on any other court of appeals or any court of common pleas or division thereof and upon such assignment said judge shall serve in such assigned capacity until the termination of the assignment. Rules may be adopted to provide for the temporary

assignment of judges to sit and hold court in any court established by law.

(B) The supreme court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right. Proposed rules shall be filed by the court, not later than the fifteenth day of January, with the clerk of each house of the general assembly during a regular session thereof, and amendments to any such proposed rules may be so filed not later than the first day of May in that session. Such rules shall take effect on the following first day of July, unless prior to such day the general assembly adopts a concurrent resolution of disapproval. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Courts may adopt additional rules concerning local practice in their respective courts which are not inconsistent with the rules promulgated by the supreme court. The supreme court may make rules to require uniform record keeping for all courts of the state, and shall make rules governing the admission to the practice of law and discipline of persons so admitted.

(C) The chief justice of the supreme court or any judge of that court designated by him shall pass upon the disqualification of any judge of the courts of appeals or courts of common pleas or division thereof. Rules may be adopted to provide for the hearing of disqualification matters involving judges of courts established by law.

**HISTORY: (Amended, effective Nov. 6, 1973; SJR No.30. Adopted May 7, 1968.)**

**Not analogous to former § 5, repealed October 9, 1883.**

## § 20 Style of process, prosecution, and indictment.

The style of all process shall be, "The State of Ohio;" all prosecutions shall be carried on, in the name, and by the authority, of the state of Ohio; and all indictments shall conclude, "against the peace and dignity of the state of Ohio."

## ARTICLE V: ELECTIVE FRANCHISE

### Section

- 3 Repealed, June 8, 1976.
- 4 Forfeiture of elective franchise.

## § 3 Repealed, June 8, 1976.

This section referred to the privilege from arrest of voters during elections.

## § 4 Forfeiture of elective franchise.

The General Assembly shall have power to exclude from the privilege of voting, or of being eligible to office, any person convicted of a felony.

**HISTORY: (Amended, effective June 8, 1976; SJR No.16.)**

## ARTICLE XVIII: MUNICIPAL CORPORATIONS

### Section

- 3 Powers.
- 7 Home rule.

## § 3 Powers.

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws. (Adopted September 3, 1912.)

The provisions of § 3 of HB 386 (149 v —) read as follows:

SECTION 3. (A) The provisions of the Revised Code, including, but not limited to, Titles XI, XIII, XVII, and XLVII, relating to the origination, granting, servicing, and collection of loans and other forms of credit prescribe rules of conduct upon citizens generally, comprise a comprehensive regulatory framework intended to operate uniformly throughout the state under the same circumstances and conditions, and constitute general laws within the meaning of Section 3 of Article XVIII of the Ohio Constitution.

(B) The provisions of the Revised Code, including, but not limited to, Titles XI, XIII, XVII, and XLVII, relating to the origination, granting, servicing, and collection of loans and other forms of credit have been enacted in furtherance of the police powers of the state.

(C) Silence in the Revised Code, including, but not limited to, Titles XI, XIII, XVII, and XLVII, with respect to any act or practice in the origination, granting, servicing, or collection of loans or other forms of credit shall not be interpreted to mean that the state has not completely occupied the field or has only set minimum standards in its regulation of lending and other credit activities.

(D) It is the intent of the General Assembly to entirely preempt municipal corporations and other political subdivisions from the regulation and licensing of lending and other credit activities.

## § 7 Home rule.

Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.

**HISTORY: (Adopted September 3, 1912.)**



ATTACHMENT F

**2317.01 Competent witnesses.**

All persons are competent witnesses except those of unsound mind and children under ten years of age who appear incapable of receiving just impressions of the facts and transactions respecting which they are examined, or of relating them truly.

In a hearing in an abuse, neglect, or dependency case, any examination made by the court to determine whether a child is a competent witness shall be conducted by the court in an office or room other than a courtroom or hearing room, shall be conducted in the presence of only those individuals considered necessary by the court for the conduct of the examination or the well-being of the child, and shall be conducted with a court reporter present. The court may allow the prosecutor, guardian ad litem, or attorney for any party to submit questions for use by the court in determining whether the child is a competent witness.

Effective Date: 01-01-1989



## ATTACHMENT G

### **Evid R 601 General rule of competency**

Every person is competent to be a witness except:

(A) Those of unsound mind, and children under ten years of age, who appear incapable of receiving just impressions of the facts and transactions respecting which they are examined, or of relating them truly.

(B) A spouse testifying against the other spouse charged with a crime except when either of the following applies:

(1) a crime against the testifying spouse or a child of either spouse is charged;

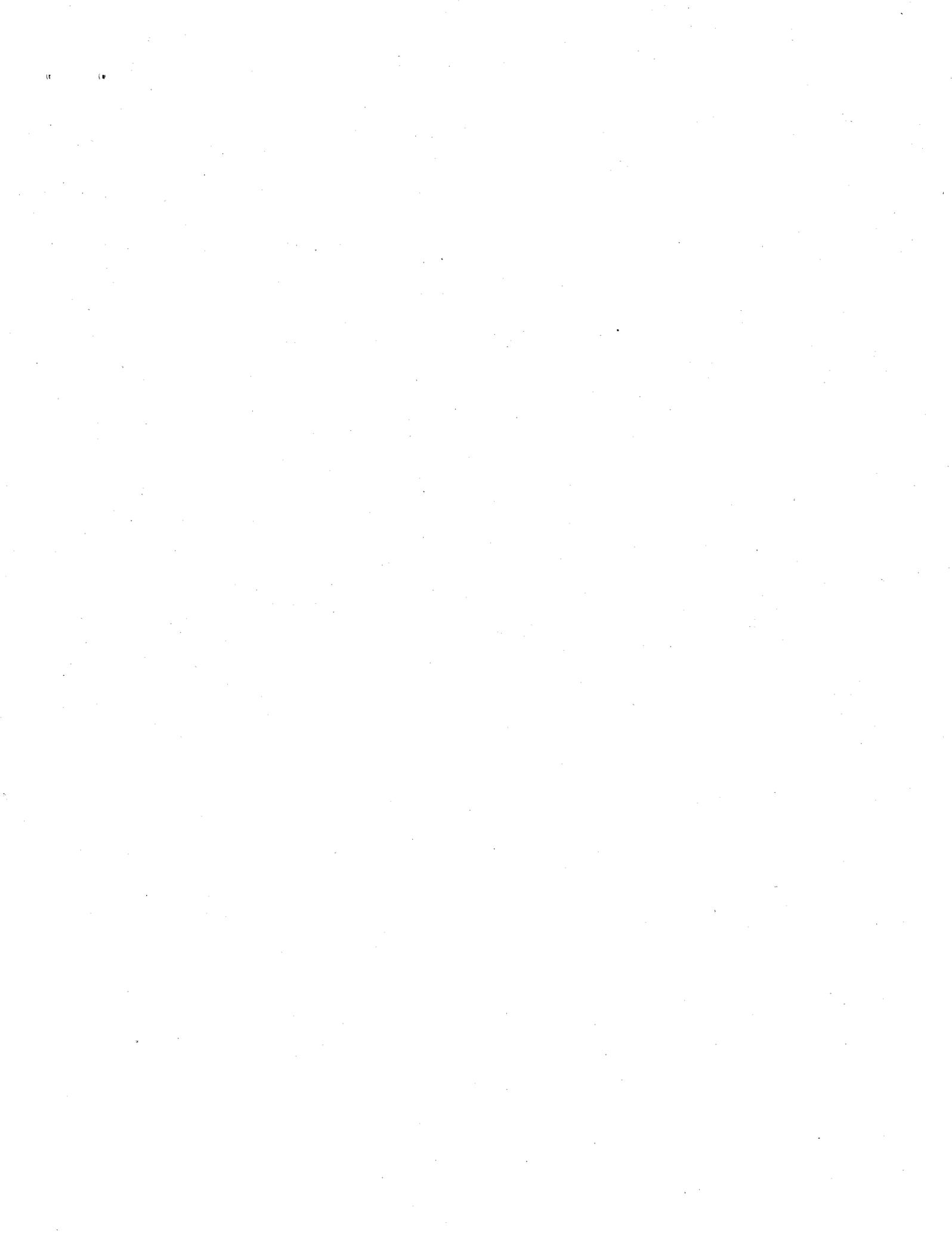
(2) the testifying spouse elects to testify.

(C) An officer, while on duty for the exclusive or main purpose of enforcing traffic laws, arresting or assisting in the arrest of a person charged with a traffic violation punishable as a misdemeanor where the officer at the time of the arrest was not using a properly marked motor vehicle as defined by statute or was not wearing a legally distinctive uniform as defined by statute.

(D) A person giving expert testimony on the issue of liability in any claim asserted in any civil action against a physician, podiatrist, or hospital arising out of the diagnosis, care, or treatment of any person by a physician or podiatrist, unless the person testifying is licensed to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery by the state medical board or by the licensing authority of any state, and unless the person devotes at least one-half of his or her professional time to the active clinical practice in his or her field of licensure, or to its instruction in an accredited school. This division shall not prohibit other medical professionals who otherwise are competent to testify under these rules from giving expert testimony on the appropriate standard of care in their own profession in any claim asserted in any civil action against a physician, podiatrist, medical professional, or hospital arising out of the diagnosis, care, or treatment of any person.

(E) As otherwise provided in these rules.

(Adopted eff. 7-1-80; amended eff. 7-1-91)



## ATTACHMENT H

### Juv R 1 Scope of rules: applicability; construction; exceptions

#### (A) Applicability

These rules prescribe the procedure to be followed in all juvenile courts of this state in all proceedings coming within the jurisdiction of such courts, with the exceptions stated in subdivision (C).

#### (B) Construction

These rules shall be liberally interpreted and construed so as to effectuate the following purposes:

(1) to effect the just determination of every juvenile court proceeding by ensuring the parties a fair hearing and the recognition and enforcement of their constitutional and other legal rights;

(2) to secure simplicity and uniformity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay;

(3) to provide for the care, protection, and mental and physical development of children subject to the jurisdiction of the juvenile court, and to protect the welfare of the community; and

(4) to protect the public interest by treating children as persons in need of supervision, care and rehabilitation.

#### (C) Exceptions

These rules shall not apply to procedure (1) Upon appeal to review any judgment, order, or ruling; (2) Upon the trial of criminal actions; (3) Upon the trial of actions for divorce, annulment, legal separation, and related proceedings; (4) In proceedings to determine parent-child relationships, provided, however that appointment of counsel shall be in accordance with Rule 4(A) of the Rules of Juvenile Procedure; (5) In the commitment of the mentally ill and mentally retarded; (6) In proceedings under section 2151.85 of the Revised Code to the extent that there is a conflict between these rules and section 2151.85 of the Revised Code.

When any statute provides for procedure by general or specific reference to the statutes governing procedure in juvenile court actions, procedure shall be in accordance with these rules.

(Adopted eff. 7-1-72; amended eff. 7-1-91, 7-1-94, 7-1-95)



## ATTACHMENT I

### Juv R 2 Definitions

As used in these rules:

(A) "Abused child" has the same meaning as in section 2151.031 of the Revised Code.

(B) "Adjudicatory hearing" means a hearing to determine whether a child is a juvenile traffic offender, delinquent, unruly, abused, neglected, or dependent or otherwise within the jurisdiction of the court.

(C) "Agreement for temporary custody" means a voluntary agreement that is authorized by section 5103.15 of the Revised Code and transfers the temporary custody of a child to a public children services agency or a private child placing agency.

(D) "Child" has the same meaning as in sections 2151.011 and 2152.02 of the Revised Code.

(E) "Chronic truant" has the same meaning as in section 2151.011 of the Revised Code.

(F) "Complaint" means the legal document that sets forth the allegations that form the basis for juvenile court jurisdiction.

(G) "Court proceeding" means all action taken by a court from the earlier of (1) the time a complaint is filed and (2) the time a person first appears before an officer of a juvenile court until the court relinquishes jurisdiction over such child.

(H) "Custodian" means a person who has legal custody of a child or a public children's services agency or private child-placing agency that has permanent temporary, or legal custody of a child.

(I) "Delinquent child" has the same meaning as in section 2152.02 of the Revised Code.

(J) "Dependent child" has the same meaning as in section 2151.04 of the Revised Code.

(K) "Detention" means the temporary care of children in restricted facilities pending court adjudication or disposition.

(L) "Detention hearing" means a hearing to determine whether a child shall be held in detention or shelter care prior to or pending execution of a final dispositional order.

(M) "Dispositional hearing" means a hearing to determine what action shall be taken concerning a child who is within the jurisdiction of the court.

(N) "Guardian" means a person, association, or corporation that is granted authority by a probate court pursuant to Chapter 2111 of the Revised Code to exercise parental rights over a child to the extent provided in the court's order and subject to the residual parental rights of the child's parents.

(O) "Guardian ad litem" means a person appointed to protect the interests of a party in a juvenile court proceeding.

(P) "Habitual truant" has the same meaning as in section 2151.011 of the Revised Code.

(Q) "Hearing" means any portion of a juvenile court proceeding before the court, whether summary in nature or by examination of witnesses.

(R) "Indigent person" means a person who, at the time need is determined, is unable by reason of lack of property or income to provide for full payment of legal counsel and all other necessary expenses of representation.

(S) "Juvenile court" means a division of the court of common pleas, or a juvenile court separately and independently created, that has jurisdiction under Chapters 2151 and 2152 of the Revised Code.

(T) "Juvenile judge" means a judge of a court having jurisdiction under Chapters 2151 and 2152 of the Revised Code.

(U) "Juvenile traffic offender" has the same meaning as in section 2151.021 of the Revised Code.

(V) "Legal custody" means a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and provide the child with food, shelter, education, and medical care,

all subject to any residual parental rights, privileges, and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by any section of the Revised Code or by the court.

(W) "Mental examination" means an examination by a psychiatrist or psychologist.

(X) "Neglected child" has the same meaning as in section 2151.03 of the Revised Code.

(Y) "Party" means a child who is the subject of a juvenile court proceeding, the child's spouse, if any, the child's parent or parents, or if the parent of a child is a child, the parent of that parent, in appropriate cases, the child's custodian, guardian, or guardian ad litem, the state, and any other person specifically designated by the court.

(Z) "Permanent custody" means a legal status that vests in a public children's services agency or a private child-placing agency, all parental rights, duties, and obligations, including the right to consent to adoption, and divests the natural parents or adoptive parents of any and all parental rights, privileges, and obligations, including all residual rights and obligations.

(AA) "Permanent surrender" means the act of the parents or, if a child has only one parent, of the parent of a child, by a voluntary agreement authorized by section 5103.15 of the Revised Code, to transfer the permanent custody of the child to a public children's services agency or a private child-placing agency.

(BB) "Person" includes an individual, association, corporation, or partnership and the state or any of its political subdivisions, departments, or agencies.

(CC) "Physical examination" means an examination by a physician.

(DD) "Planned permanent living arrangement" means an order of a juvenile court pursuant to which both of the following apply:

(1) The court gives legal custody of a child to a public children's services agency or a private child-placing agency without the termination of parental rights;

(2) The order permits the agency to make an appropriate placement of the child and to enter into a written planned permanent living arrangement agreement with a foster care provider or with another person or agency with whom the child is placed.

(EE) "Private child-placing agency" means any association, as defined in section 5103.02 of the Revised Code that is certified pursuant to sections 5103.03 to 5103.05 of the Revised Code to accept temporary, permanent, or legal custody of children and place the children for either foster care or adoption.

(FF) "Public children's services agency" means a children's services board or a county department of

human services that has assumed the administration of the children's services function prescribed by Chapter 5153 of the Revised Code.

(GG) "Removal action" means a statutory action filed by the superintendent of a school district for the removal of a child in an out-of-county foster home placement.

(HH) "Residence or legal settlement" means a location as defined by section 2151.06 of the Revised Code.

(II) "Residual parental rights, privileges, and responsibilities" means those rights, privileges, and responsibilities remaining with the natural parent after the transfer of legal custody of the child, including but not limited to the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support.

(JJ) "Rule of court" means a rule promulgated by the Supreme Court or a rule concerning local practice adopted by another court that is not inconsistent with the rules promulgated by the Supreme Court and that is filed with the Supreme Court.

(KK) "Serious youthful offender" means a child eligible for sentencing as described in sections 2152.11 and 2152.13 of the Revised Code.

(LL) "Serious youthful offender proceedings" means proceedings after a probable cause determination that a child is eligible for sentencing as described in sections 2152.11 and 2152.13 of the Revised Code. Serious youthful offender proceedings cease to be serious youthful offender proceedings once a child has been determined by the trier of fact not to be a serious youthful offender or the juvenile judge has determined not to impose a serious youthful offender disposition on a child eligible for discretionary serious youthful offender sentencing.

(MM) "Shelter care" means the temporary care of children in physically unrestricted facilities, pending court adjudication or disposition.

(NN) "Social history" means the personal and family history of a child or any other party to a juvenile proceeding and may include the prior record of the person with the juvenile court or any other court.

(OO) "Temporary custody" means legal custody of a child who is removed from the child's home, which custody may be terminated at any time at the discretion of the court or, if the legal custody is granted in an agreement for temporary custody, by the person or persons who executed the agreement.

(PP) "Unruly child" has the same meaning as in section 2151.022 of the Revised Code.

(QQ) "Ward of court" means a child over whom the court assumes continuing jurisdiction.

(Adopted eff. 7-1-72; amended eff. 7-1-94, 7-1-98, 7-1-01, 7-1-02)





**Juv R 27 Hearings: general****(A) General provisions**

Unless otherwise stated in this rule, the juvenile court may conduct its hearings in an informal manner and may adjourn its hearings from time to time.

The court may excuse the attendance of the child at the hearing in neglect, dependency, or abuse cases.

(1) *Public access to hearings.* In serious youthful offender proceedings, hearings shall be open to the public. In all other proceedings, the court may exclude the general public from any hearing, but may not exclude either of the following:

- (a) persons with a direct interest in the case;
- (b) persons who demonstrate, at a hearing, a countervailing right to be present.

(2) *Separation of juvenile and adult cases.* Cases involving children shall be heard separate and apart from the trial of cases against adults, except for cases involving chronic or habitual truancy.

(3) *Jury trials.* The court shall hear and determine all cases of children without a jury, except for the adjudication of a serious youthful offender complaint, indictment, or information in which trial by jury has not been waived.

**(B) Special provisions for abuse, neglect, and dependency proceedings**

(1) In any proceeding involving abuse, neglect, or dependency at which the court removes a child from the child's home or continues the removal of a child from the child's home, or in a proceeding where the court orders detention, the court shall determine whether the person who filed the complaint in the case and removed the child from the child's home has custody of the child or will be given custody and has made reasonable efforts to do any of the following:

- (a) Prevent the removal of the child from the child's home;
- (b) Eliminate the continued removal of the child from the child's home;
- (c) Make it possible for the child to return home.

(2) In a proceeding involving abuse, neglect, or dependency, the examination made by the court to determine whether a child is a competent witness shall comply with all of the following:

- (a) Occur in an area other than a courtroom or hearing room;
- (b) Be conducted in the presence of only those individuals considered necessary by the court for the conduct of the examination or the well being of the child;
- (c) Be recorded in accordance with Juv. R. 37 or Juv. R. 40. The court may allow the prosecutor, guardian ad litem, or attorney for any party to submit questions for use by the court in determining whether the child is a competent witness.

(3) In a proceeding where a child is alleged to be an abused child, the court may order that the testimony of the child be taken by deposition in the presence of a judge or a magistrate. On motion of the prosecuting attorney, guardian ad litem, or a party, or in its own discretion, the court may order that the deposition be videotaped. All or part of the deposition is admissible in evidence where all of the following apply:

(a) It is filed with the clerk;

(b) Counsel for all parties had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or redirect examination;

(c) The judge or magistrate determines there is reasonable cause to believe that if the child were to testify in person at the hearing, the child would experience emotional trauma as a result of the child's participation at the hearing.

(Adopted eff. 7-1-72; amended eff. 7-1-76, 7-1-94, 7-1-96, 7-1-01)



**Civ R 75 Divorce, annulment, and  
legal separation actions****(A) Applicability**

The Rules of Civil Procedure shall apply in actions for divorce, annulment, legal separation, and related proceedings, with the modifications or exceptions set forth in this rule.

**(B) Joinder of parties**

Civ. R. 14, 19, 19.1, and 24 shall not apply in divorce, annulment, or legal separation actions, however:

(1) A person or corporation having possession of, control of, or claiming an interest in property, whether real, personal, or mixed, out of which a party seeks a division of marital property, a distributive award, or an award of spousal support or other support, may be made a party defendant;

(2) When it is essential to protect the interests of a child, the court may join the child of the parties as a party defendant and appoint a guardian ad litem and legal counsel, if necessary, for the child and tax the costs;

(3) When child support is ordered, the court, on its own motion or that of an interested person, after notice to the party ordered to pay child support and to his or her employer, may make the employer a party defendant.

**(C) Trial by court or magistrate**

In proceedings under this rule there shall be no right to trial by jury. All issues may be heard either by the court or by a magistrate as the court on the request of any party or on its own motion, may direct. Civ. R. 53 shall apply to all cases or issues directed to be heard by a magistrate.

**(D) Investigation**

On the filing of a complaint for divorce, annulment, or legal separation, where minor children are involved, or on the filing of a motion for the modification of a decree allocating parental rights and responsibilities for the care of children, the court may cause an investigation to be made as to the character, family relations, past conduct, earning ability, and financial worth of the parties to the action. The report of the investigation shall be made available to either party or their counsel of record upon written request not less than seven days before trial. The report shall be signed by the investigator and the investigator shall be subject to cross-examination by either party concerning the contents of the report. The court may tax as costs all or any part of the expenses for each investigation.

**(E) Subpoena where custody involved**

In any case involving the allocation of parental rights and responsibilities for the care of children, the

court, on its own motion, may cite a party to the action from any point within the state to appear in court and testify.

#### **(F) Judgment**

The provisions of Civ. R. 55 shall not apply in actions for divorce, annulment, legal separation, or civil protection orders. For purposes of Civ. R. 54(B), the court shall not enter final judgment as to a claim for divorce, dissolution of marriage, annulment, or legal separation unless one of the following applies:

(1) The judgment also divides the property of the parties, determines the appropriateness of an order of spousal support, and, where applicable, either allocates parental rights and responsibilities, including payment of child support, between the parties or orders shared parenting of minor children;

(2) Issues of property division, spousal support, and allocation of parental rights and responsibilities or shared parenting have been finally determined in orders, previously entered by the court, that are incorporated into the judgment;

(3) The court includes in the judgment the express determination required by Civ. R. 54(B) and a final determination that either of the following applies:

(a) The court lacks jurisdiction to determine such issues;

(b) In a legal separation action, the division of the property of the parties would be inappropriate at that time.

#### **(G) Civil protection order**

A claim for a civil protection order based upon an allegation of domestic violence shall be a separate claim from a claim for divorce, dissolution of marriage, annulment, or legal separation.

#### **(H) Relief pending appeal**

A motion to modify, pending appeal, either a decree allocating parental rights and responsibilities for the care of children, a spousal or other support order, shall be made to the trial court in the first instance, whether made before or after a notice of appeal is filed. The trial court may grant relief upon terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party and in the best interests of the children involved. Civ. R. 62(B) does not apply to orders allocating parental rights and responsibilities for the care of children or a spousal or other support order. An order entered upon motion under this rule may be vacated or modified by the appellate court. The appellate court has authority to enter like orders pending appeal, but an application to the appellate court for relief shall disclose what has occurred in the trial court regarding the relief.

#### **(I) Temporary restraining orders**

(1) *Restraining order: exclusion.* The provisions of Civ. R. 65(A) shall not apply in divorce, annulment, or legal separation actions.

(2) *Restraining order: grounds, procedure.* When it is made to appear to the court by affidavit of a party sworn to absolutely that a party is about to dispose of or encumber property, or any part thereof of property, so as to defeat another party in obtaining an equitable division of marital property, a distributive award, or spousal or other support, or that a party to the action or a child of any party is about to suffer physical abuse, annoyance, or bodily injury by the other party, the court may allow a temporary restraining order, with or without bond, to prevent that action. A temporary restraining order may be issued without notice and shall remain in force during the pendency of the action unless the court or magistrate otherwise orders.

#### **(J) Continuing jurisdiction**

The continuing jurisdiction of the court shall be invoked by motion filed in the original action, notice of which shall be served in the manner provided for the service of process under Civ. R. 4 to 4.6. When the continuing jurisdiction of the court is invoked pursuant to this division, the discovery procedures set forth in Civ. R. 26 to 37 shall apply.

#### **(K) Hearing**

No action for divorce, annulment, or legal separation may be heard and decided until the expiration of forty-two days after the service of process or twenty-eight days after the last publication of notice of the complaint, and no action for divorce, annulment, or legal separation shall be heard and decided earlier than twenty-eight days after the service of a counterclaim, which under this rule may be designated a cross-complaint, unless the plaintiff files a written waiver of the twenty-eight day period.

#### **(L) Notice of trial**

In all cases where there is no counsel of record for the adverse party, the court shall give the adverse party notice of the trial upon the merits. The notice shall be made by regular mail to the party's last known address, and shall be mailed at least seven days prior to the commencement of trial.

#### **(M) Testimony**

Judgment for divorce, annulment, or legal separation shall not be granted upon the testimony or admission of a party not supported by other credible evidence. No admission shall be received that the court has reason to believe was obtained by fraud, connivance, coercion, or other improper means. The parties, notwithstanding their marital relations, shall be competent to testify in the proceeding to the same extent as other witnesses.

#### **(N) Allowance of spousal support, child support, and custody pendente lite**

(1) When requested in the complaint, answer, or counterclaim, or by motion served with the pleading, upon satisfactory proof by affidavit duly filed with the clerk of the court, the court or magistrate, without oral hearing and for good cause shown, may grant spousal support pendente lite to either of the parties for the party's sustenance and expenses during the suit and may make a temporary order regarding the support, maintenance, and allocation of parental rights and responsibilities for the care of children of the marriage, whether natural or adopted, during the pendency of the action for divorce, annulment, or legal separation.

(2) Counter affidavits may be filed by the other party within fourteen days from the service of the complaint, answer, counterclaim, or motion, all affidavits to be used by the court or magistrate in making a temporary spousal support order, child support order, and order allocating parental rights and responsibilities for the care of children. Upon request, in writing, after any temporary spousal support, child support, or order allocating parental rights and responsibilities for the care of children is journalized, the court shall grant the party so requesting an oral hearing within twenty-eight days to modify the temporary order. A request for oral hearing shall not suspend or delay the commencement of spousal support or other support payments previously ordered or change the allocation of parental rights and responsibilities until the order is modified by journal entry after the oral hearing.

**(O) Delay of decree**

When a party who is entitled to a decree of divorce or annulment is ordered to pay spousal support or child support for a child not in his or her custody, or to deliver a child to the party to whom parental rights and responsibilities for the care of the child are allocated, the court may delay entering a decree for divorce or annulment until the party, to the satisfaction of the court, secures the payment of the spousal support or the child support for the child, or delivers custody of the child to the party to whom parental rights and responsibilities are allocated.

(Adopted eff. 7-1-70; amended eff. 7-1-71, 7-1-72, 7-1-77, 7-1-78, 7-1-91, 7-1-96, 7-1-97, 7-1-98, 7-1-01)

