



**EQUES**  
L A W G R O U P

## **FAMILY LAW**

Domestic Relations, Juvenile, and Custody

Presented by Attorney Robert M. Barga

# About the Presenter

- Eques Law Group
- Attorney Robert M. Barga
- Quinnipiac University School of Law, JD 2013
- Practicing for 7 years
- Practice Statewide, mainly in Franklin, Delaware, Holmes, Knox, Licking, Fairfield, Muskingum, Coshocton, Perry
- Generalist, mainly in Domestic, Juvenile, Probate, Civil Litigation, Life Planning, Business/Contracts, Agritourism
- Licking County Chamber of Commerce - committee member of Thrive Event, speaker; Reynoldsburg City School Board - former elected member; Eastland Fairfield Career and Technical Schools Board - former appointed member; Ohio School Boards Association - former member and delegate; Reynoldsburg Arts Forum - current member, vice president; Ohio State Bar Association - current member.
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# Today's Focus

- General Overview
  - Domestic Relations
  - Juvenile Court
  - Basic Process
- Abuse Allegations
  - *Ex Parte* Temporary Orders
  - Domestic Violence CPOs
- Separate or Marital Property
- Protecting your Emotional and Mental Wellbeing
- War Stories and Examples (sprinkled throughout)



# General Overview:

## What is Domestic Relations?

- ORC 3105.011
- “(A) The court of common pleas including divisions of courts of domestic relations, has full equitable powers and jurisdiction appropriate to the determination of all domestic relations matters. This section is not a determination by the general assembly that such equitable powers and jurisdiction do not exist with respect to any such matter.
- (B) For purposes of this section, "domestic relations matters" means both of the following:
  - (1) Any matter committed to the jurisdiction of the division of domestic relations of common pleas courts under section 2301.03 of the Revised Code, as well as a complaint for child support and allocation of parental rights and responsibilities, including the enforcement and modification of such orders;
  - (2) Actions and proceedings under Chapters 3105., 3109., 3111., 3113., 3115., 3119., 3121., 3123., 3125., and 3127. of the Revised Code, actions pursuant to section 2151.231 of the Revised Code, all actions removed from the jurisdiction of the juvenile court pursuant to section 2151.233 of the Revised Code, and all matters transferred by the juvenile court pursuant to section 2151.235 of the Revised Code.”



# General Overview:

## What is Domestic Relations?

- Married couple
  - Generally, Domestic Relations Courts are limited to handling concerns arising from the end of a marriage, though they occasionally can handle other issues like child support alone.
- May or may not be children
  - A Domestic Relations Court will address the allocation of parental rights and responsibilities of children from a marriage.
- Division of property and debt
  - A Domestic Relations Court will equitably divide marital assets and debts of the couple.
- Ongoing concerns
  - Domestic Relations Courts will address alimony, child support, parenting plans and decrees, insurance, stock or retirement accounts, and other ongoing concerns.



# General Overview:

## What is Juvenile Court?

- Custody concerns of unmarried parents (depends on the County)
- Delinquency, unruliness, juvenile traffic and tobacco offenses
- Abuse, neglect, or dependency ("AND")
  - Abuse - A child who exhibits evidence of physical or mental injury other than by accident (ORC 2151.031)
  - Neglect - A child who is abandoned by the child's parents or who lacks adequate care because of the parents' failure to provide care (ORC 2151.03)
  - Dependency - A child is without adequate parental care, such as to warrant the State assuming the child's guardianship for the child's protection (ORC 2151.04)
- Misdemeanor adult criminal matters (depends on the County)
  - Criminal non-support, contributing to the delinquency, child endangering, sexual imposition of a minor
- Temporary Emergency Jurisdiction (depends on the County)
  - "(A) A court of this state has temporary emergency jurisdiction if a child is present in this state and either of the following applies:
    - (1) The child has been abandoned.
    - (2) It is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse." (ORC 3127.18)



# General Overview:

## Basic Filings and Information

- Create an internal case flow and timeline for the following filings:
  - Complaint for divorce
  - Complaint for (or Motion to Modify) allocation of parental rights and responsibilities
  - Child support worksheet
  - Temporary Orders
  - Affidavits 1, 2, 3, 4 (depends on context)
  - If jointly agreed, proposed plans and entries
  - Instructions for service



# General Overview:

## Basic Filings and Information

- Create an external intake flow and timeline for getting this information from your client:
  - Dates of birth, full names, addresses, important dates
  - Affidavit information and signing
  - Health insurance
  - Debts (including supporting records)
  - Incomes (including supporting records)
  - Assets (including supporting records)
  - Desires
  - Proof/argument of best interest





# My Client has Alleged Abuse:

## *Ex Parte* Temporary Orders

- Franklin County Local Rule 13:
  - “(E) Any motion requesting ex parte or emergency orders related to custody or parenting time (collectively referred to as “parental rights”) are strongly discouraged. However, there are certain limited circumstances where such motions may be considered necessary and may be considered by the Court. Ex parte or emergency motions related to parental rights may only be made if there is also filed and pending before the Court an accompanying complaint or motion to address matters related to parental rights (excluding motions related solely to child support).
  - The Court will only issue such an order if it is supported by sworn testimony in open court that irreparable harm to the child(ren) will occur unless immediate action is taken. Examples of irreparable harm include, but are not limited to, physical abuse, bodily injury, medical neglect or exposure to domestic violence in the other party’s household. Irreparable harm DOES NOT include: the need to enroll the child(ren) in school, the need to obtain an initial custody order, missed visits or parenting time, refusal to return the child(ren) following visitation, and the need to obtain non-emergency medical treatment.”
- Collect the needed information from the client
- Create the standardized (County Court or Supreme Court) forms
- Prepare the affidavits
- Proposed Order



# My Client has Alleged Abuse: Domestic Violence CPOs

- ORC 3113.31(A):
  - “(1) "Domestic violence" means any of the following:
  - (a) The occurrence of one or more of the following acts against a family or household member:
  - (i) Attempting to cause or recklessly causing bodily injury;
  - (ii) Placing another person by the threat of force in fear of imminent serious physical harm or committing a violation of section 2903.211 or 2911.211 of the Revised Code;
  - (iii) Committing any act with respect to a child that would result in the child being an abused child, as defined in section 2151.031 of the Revised Code;
  - (iv) Committing a sexually oriented offense.
- Collect the needed information from the client
- Create the standardized (County Court or Supreme Court) forms
- Prepare the affidavits
- Proposed Order
- Consider impact on firearms



# My Client has Alleged Abuse: War Stories

- False claims for advantage
  - An opposing party upset by a ruling seeks family members to file against Client
- Defending
  - An opposing party files against your client legitimately, how to mitigate or remove
- Deciding to file or holding off
  - There is evidence of neglect, but its weak, hard to support, and may backfire



# My Client Owned their House First

## Separate or Marital Property

- ORC 3105.171
  - “(B) In divorce proceedings, the court shall, and in legal separation proceedings upon the request of either spouse, the court may, determine what constitutes marital property and what constitutes separate property. In either case, upon making such a determination, the court shall divide the marital and separate property equitably between the spouses, in accordance with this section. For purposes of this section, the court has jurisdiction over all property, excluding the social security benefits of a spouse other than as set forth in division (F)(9) of this section, in which one or both spouses have an interest.”



# My Client Owned their House First

## Separate or Marital Property

- *Middendorf v. Middendorf* (1998), 82 Ohio St.3d 397
  - H argues that the increase in value of a previously owned stockyard is passive, and thus separate – W argues it derives from labor added during the marriage, and thus marital.
  - “[I]f the evidence indicates that the appreciation of the separate property is not due to the input of Max’s (or Pat’s) labor, money, or in-kind contributions, the increase in the value of the stockyard is passive appreciation and remains separate property.”
  - “[A]n increase in the value of separate property due to either spouse’s efforts is marital property.”



# My Client Owned their House First Separate or Marital Property

- *Eikleberry v. Eikleberry*, 2002-Ohio-985 (5<sup>th</sup>)
  - Complicated backstory with a home that was premarital partially, partially marital inheritance, and partially debt paid with marital incomes. The Magistrate determined \$37,000 was marital and \$38,000 was premarital, which the Judge mostly adopted.
  - “The party seeking to have a particular asset classified as separate property has the burden of proof, by a preponderance of the evidence, to trace the asset to separate property.”
  - “Separate property” may be converted to “marital property” through the process of transmutation. Transmutation is a process by which an act or acts of one party, the original owner, converts separate property into marital property.”



# My Client Owned their House First

## Separate or Marital Property

- *Munroe v. Munroe*, 119 Ohio App. 3d 530 (8<sup>th</sup>)
  - H had a premarital home. This home was refinanced once married and paid for by marital income. The lower Court demarked separate and personal property values for the home.
  - “However, we find that the trial court erred in not awarding plaintiff the value of any appreciation on the down payment as separate property despite commingling. It is a matter of economic certainty that some of the current enhanced market value of the home was traceable to the original down payment twenty-one years earlier.”
  - “Marital property includes “all income and appreciation on separate property, due to the labor, monetary or in-kind contributions of either or both spouses that occurred during the marriage.” \*\*\*At the same time, separate property also includes “passive income and appreciation acquired from separate property by one spouse during the marriage.””
  - “Appreciation as the result of the increase in the fair market value of the separate property due to its location or inflation is passive income pursuant to the statute.”
  - “Separate Investment × Total appreciation = Separate Total Investment during the marriage Property.
  - Marital Investment × Total appreciation = Marital Total Investment during the marriage Property”



# My Client Owned their House First

## War Stories

- Third-Party Ownership
  - A rent-to-own property is part of the divorce, not yet triggered but with significant payments made
- Transmutation
  - W owned property before the marriage, and married H shortly after taking possession. Work was done on the property while married using joint funds and both H's and W's labor.





# Protecting your Emotional and Mental Wellbeing

- Too often we fall victim to personalizing our litigations and the emotions involved.
- Cannot judge in this field.
  - War Stories: A client is seeking to make no changes yet demands rights, or to terminate all rights.
- Will encounter issues that surprise, shock, disgust, or upset you.
  - War Stories: Surprise, a client details serious abuse or rape.
- Find a strategy to “throw away” at the end of the day.
- Respect your time and energy, do not let the client walk over you.
- Remember: “This is not my child, this is not my home”.





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