

2009 Non-Mandated Expenditures Department Response

DEPARTMENT: COURT OF DOMESTIC RELATIONS

DEPARTMENT HEAD / ELECTED OFFICIAL: SUSAN LAKER TOLBERT, ADMINISTRATIVE JUDGE

OCA TITLE: 440032-ADMINISTRATION

Hamilton County departments and agencies have the opportunity to respond and provide insight to the Office of Budget and Strategic Initiatives (BSI) initial assessment as to non-mandated services. This response form should be used for each specific BSI assessment; not a general response for entire department. Take as much space as necessary for each question.

1. Are there elements of the BSI non-mandated services that you believe are mandated? If so, provide the specific Ohio Revised Code (ORC) citation, Code of Federal Regulation (CFR) and/or relevant case law information. Please be especially diligent if there is a specific service or staffing level prescribed by law.

Ohio Revised Code-2301.03 (B)

Judges of domestic relations division; juvenile and probate court responsibility.

In addition to the judge's regular duties, the administrative judge of the division of domestic relations **shall** be the administrator of the DR division and its subdivisions and departments and **shall** have charge of the employment, assignment, and supervision of the personnel of the division engaged in handling, servicing, or investigating divorce, dissolution of marriage, legal separation, and annulment cases, including any referees considered necessary by the judges in the discharge of their various duties.

The administrative judge of the division of DR also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division, and shall fix the duties of its personnel. The duties of the personnel, in addition to those provided for in other sections of the Revised Code, shall include the handling, servicing, and investigation of divorce, dissolution of marriage, legal separation, and annulment cases and counseling and conciliation services that may be made available to persons requesting them, whether or not the persons are parties to an action pending in the division.

The BOCC **shall** appropriate the sum of money each year as will meet all the administrative expenses of the division of DR, including reasonable expenses of the DR judges and the division counselors and other employees designated to conduct the handling, servicing and investigation of divorce, dissolution of marriage, legal separation, and annulment cases, conciliation and counseling, all matters relating to those cases and counseling, and the expenses involved in the attendance of division personnel at DR and welfare conferences designated by the division, and the further sum each year as will provide for the adequate operation of the division of DR....

Assistant Court Administrator

One of the many job duties of the Assistant Court Administrator is supervising DR case flow management and the reporting of court data to the Supreme Court of Ohio.

2009 Non-Mandated Expenditures
Department Response

Ohio Rules of Superintendence

Rule 27. Reports and Information

(2) (a) Each judge of a general, domestic relations,is responsible for a report of the judge's work in that division.

Rule 37 (A) (2) Courts of Common Pleas

In a domestic relations division, each judge is required to submit a monthly report.....

Rule 38. Annual Physical Case Inventory; New Judge Inventory.

(A).....each judge, on or before the first day of October, shall complete an annual physical inventory of all cases reported as pending on the applicable statistical report forms filed by the judge.

Rule 40-Review of Cases; Dismissals; Rulings on Motions and Submitted Cases

(A) Review; dismissal; rulings.

- (1) Each trial judge shall review, or cause to be reviewed, all cases assigned to the judge....
- (2) All cases submitted for determination after a court trial shall be decided within ninety days from the date the case was submitted.
- (3) All motions shall be ruled upon within one hundred twenty days from the date the motion was filed

(B) Reporting.

- (1) Each judge shall report to the administrative judge decisions that have not been ruled upon within the applicable time period.. . .

Rule 40 (A) Review; dismissal; rulings.

..... The control and supervision of the docket is the responsibility of the administrative judge.....The review, with its sanction of dismissal, is a powerful tool in keeping cases

2009 Non-Mandated Expenditures Department Response

moving and dockets current.....

- (C) Powers and duties. The administrative judge shall have full responsibility and control over the administration, docket, and calendar of the court or division and shall be responsible to the Chief Justice of the Supreme Court in the discharge of his or her duties.....The administrative judge shall do all of the following:
- (3) Require timely and accurate reports from each judge of the court or division concerning the status of individually assigned cases and from judges and court personnel concerning cases assigned to particular sessions;
 - (4) Timely file all administrative judge reports required by the Court Statistical Reporting Section;
 - (5) Develop accounting and auditing systems within the court or division and the office of the clerk of the court that ensure accuracy and completeness of all reports required by these rules;

Supreme Court of Ohio

Disciplinary Counsel v, Sergeant No. 2007-2294, Decided May 20, 2008

Background: In a judicial disciplinary proceeding alleging common pleas court judge had allowed six civil cases to languish in his court, the Board of Commissioners on Grievances and Discipline recommended public reprimand.

Determination: Parties rightfully expect to receive prompt, efficient, and fair resolutions of their cases. Judges must meet these expectations impartially and diligently. By failing to manage his docket, respondent injured the parties before him and the public's perception of the legal system.

Ohio Revised Code 3125.58-Court rules establishing time limits for support cases.

Each court with jurisdiction to issue court support orders or orders establishing the existence or nonexistence of a parent and child relationship shall establish rules of court to ensure that the following percentage of all actions to establish the existence or nonexistence of a parent and child relationship, to establish a support requirement, or to modify a previously issued court support order are completed within the following time limits:

- (A) Seventy-five per cent of all of the actions shall be completed within six months after the date of initial filing;
- (B) Ninety per cent of all of the actions shall be completed within twelve months after the date of initial filing.

2009 Non-Mandated Expenditures Department Response

Court Officer

The essential functions of the Court Officer are to process and expedite all domestic violence court orders resulting from hearings before domestic violence magistrates. This position acts as a liaison coordinating the flow of critical paperwork between Domestic Relations Court, the Clerk's Office, the Sheriff's Department, Central Warrants, the Petitioner, and the Respondent.

Ohio Revised Code 3113.31-Domestic violence definitions-hearings

(A) As used in this section:

(1) "Domestic violence" means the occurrence of one or more of the following acts against a family of household member:

- (a) Attempting to cause or recklessly causing bodily injury;
- (b) 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;
- (c) Committing an 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;
- (d) Committing a sexually oriented offense.

(2) "Court" means the domestic relations division of the court of common pleas in counties that have a domestic relations division,.....

(6)(B) The court has jurisdiction over all proceedings under this section.....

(D)(1) If a person who files a petition pursuant to this section requests an ex parte order, the court **shall** hold an ex parte hearing on the same day that the petition is filed.....

(2)(a) If the court, after an ex parte hearing, issues an order described in division (E)(1)(b) or (c) of this section, the court shall schedule a full hearing for a date that is within seven court days after the ex parte hearing. If any other type of protection order that is authorized under division (E) of this section is issued by the court after an ex parte hearing, the court shall schedule a full hearing for a date that is within ten court days after the ex parte hearing. The court shall give the respondent notice of, and an opportunity to be heard at, the full hearing.....

(3) If a person who files a petition pursuant to this section does not request an ex parte order, or if a person requests an ex parte order but the court does not issue an ex parte order after an ex parte hearing, the court shall proceed as in a normal civil action and grant a full hearing on the matter.....

2009 Non-Mandated Expenditures Department Response

(8)(a)The court that issued the protection order or approved the consent agreement shall hear a motion for modification or termination of the protection order or consent agreement pursuant to division (E)(8) of this section.....

(d) If a protection order or consent agreement is modified or terminated as provided in division (E) (8) of this section, the court shall issue copies of the modified or terminated order or agreement as provided in division (F) of this section.....

(F)(1) A copy of any protection order, or consent agreement, that is issued, approved, or modified, or terminated under this section shall be issued by the court to the petitioner, to the respondent, and to all law enforcement agencies that have jurisdiction to enforce the order or agreement. The court shall direct that a copy of an order be delivered to the respondent on the same day that the order is entered.....

(K)(1) The court shall comply with Chapters 3119., 3121., 3123., and 3125. of the Revised Code when it makes or modifies an order for child support under this section.....

Ohio Rules of Superintendence - Re: Domestic Violence CPOs

Rule 10. Notifying Law Enforcement Agencies of Criminal or Civil Protection Orders.

Upon issuance of a civil or criminal protection order by a court pursuant to section 2903.213, 2903.214, 2919.26(E)(2), or 3113.31 of the Revised Code, the court shall complete Form 10-A.....

Rule 10.01. Standard Civil Protection Order Forms - Domestic Relations Division.

(A) The domestic relations division of the court of common pleas shall distribute upon request a form and instructions packet for use in civil protection order proceedings under section 3113.31 of the Revised Code. The packet shall include, at a minimum, forms and instructions that are substantially similar to Forms 10-01-A through 10.01-H.

(B) An action for a civil protection order pursuant to section 3113.31 of the Revised Code shall be commenced by filing a petition form that is substantially similar to Form 10-01-D.

(C) In every case in which the domestic relations division of the court of common pleas issues or approves an ex parte civil protection order, a full hearing civil protection order, or a consent agreement pursuant to section 3113.31 of the Revised Code, the court shall use, as applicable, forms that are substantially similar to Forms 10.01-H through 10.01-J.

(D) Every ex parte civil protection order, full hearing civil protection order, and consent agreement that the domestic relations division of the court of common pleas issues or approves pursuant to section 3113.31 of the Revised Code shall include a cover sheet that is substantially similar to Form 10.01-G.

2009 Non-Mandated Expenditures
Department Response

Finance & Personnel Director and Fiscal Clerk

Ohio Revised Code 3125.13 Contract with public agencies and private vendors; collection agent.

Each child support enforcement agency may enter into contracts with public agencies..... for assistance in establishing paternity or support obligations, or for the performance of other administrative duties of the agency.....

Ohio Revised Code 3125.14 Cooperative working arrangement with courts, prosecuting attorney, and law enforcement officials.

Each child support enforcement agency **shall** enter into written agreements with the courts.....The agreements shall provide for the reimbursement of the courtsfor the responsibility they assume and actions they undertake pursuant to such agreements.

Ohio Revised Code 305.18 Annual inventory

Each county officer or department head **shall** make an inventory,.....of all materials, machinery, tools, and other county supplies under the jurisdiction of such county officer or department head.....

Legal Requirements for Public Officials

Ohio Revised Code Section 9.39 states, "All public officials are liable for all public money received or collected by them or by their subordinates under color of office." The term "public official" is defined in Ohio Revised Code Section 117.01(E) as "any officer, employee, or duly authorized representative or agent of a public office." Additionally, Ohio Revised Code 117.01 (C) defines "public money" as "any money received, collected by, or due a public official under color of office, as well as any money collected by any individual on behalf of a public office or as a purported representative or agent of the public office." Finally, the term "color of office," defined in Ohio Revised Code Section 117.01(A), "means actually, purportedly, or allegedly done under any law, ordinance, resolution, order or other pretension to official right, power, or authority."

Historically, public officials have generally been held strictly and individually liable for the loss or misuse of public money under their control:

It has been the general policy...with state officers, county officers, township officers, and all other public officials to hold the public official accountable for the moneys that come into his hands as such official, and his obligation has been held to be as broad as is the

2009 Non-Mandated Expenditures Department Response

obligation of a common carrier of freight received for shipment; that is to say, that when he comes to account for the money received, it must be accounted for and paid over, unless payment is prevented by an act of God or a public enemy; and burglary and larceny and the destruction by fire, or any other such reason, have not been accepted by the courts as a defense against the claim for the lost money. 1993 Op. Att’y Gen. No.93-004 (citing *Seward v. National Surety Co.* (1929), 120 Ohio St. 47, 49-50); *See also* 1980 Op. Att’y Gen. No. 80-074.

More recent court decisions have reiterated this proposition, in that “[t]he policy reasons behind making public officials accountable for the funds that they receive, *i.e.* the need to prevent frauds against the public, to protect public funds, and to place final responsibility for public funds on the shoulders of the officials charged with the collection and care of such funds -- are as valid today as when they first formed the basis for the rule of accountability set forth above.” *State ex rel. Village of Linndale v. Masten* (1985), 18 Ohio St.3d 228,229.

Thus, county officials, county fiscal officers and county auditors must be aware of their role in the approval of expenditures and take steps to prevent mistakes, errors or omissions that result in the loss of public funds. In the context of a county audit by AOS, both the supervising/approving officer or employee and the county auditor may be liable for such losses.

Information Systems Manager and Network Administrator

The Court of Domestic Relations is in the process of installing digital audio recording equipment for all judges and magistrates. This equipment will be utilized to store recordings of more than 23,000 hearings annually. This massive amount of data will need to be accessible, preserved, secured, and available for decades. The Information Systems Manager and Network Administrator are responsible for these records.

Ohio Rules of Superintendence

Rule 11. Recording of Proceedings

(A) Recording devices. Proceedings before any court and discovery proceedings may be recorded by stenographic means, phonographic means, photographic means, audio electronic devices, or video recording systems. The administrative judge may order the use of any method of recording authorized by this rule.

Rule 11 (A) Recording Devices

Recordation represents the best method of providing an accurate base for the creation of a transcript or proceedings required for an appeal under App. R. 9(A).....Rule 11(A) directs that the choice of method of recording the proceedings is vested in the administrative judge rather than in the individual in a multi-judge court.

2009 Non-Mandated Expenditures Department Response

Rule 11(C) Custody

.....The trial court has custody and control over the electronic recordings or proceedings.....

Rule 11 (D) Inspection of electronically recorded transcripts of proceedings

All electronically recorded transcripts of proceedings are required to be maintained in the manner directed by the trial court as provided in Rule 11 (C).....

2. Who are the recipients of the service or activity for the non-mandated service? How many recipients? Please note any internal customers, other county departments, jurisdictions, businesses, etc. If the service is geographic specific (i.e., a satellite probation office), please identify the neighborhood, township or municipality.

N/A-Services are mandated. Additionally, the Court of Domestic Relations held 23,381 hearings in 2007 to afford a forum for adequate and proper relief for litigants of Hamilton County.

3. Are there county revenues associated with the non-mandated services? If so, please provide the methodology for any lost revenues. Please consider state or federal reimbursements, grants, fees, etc. Please note if the service or activity is included in the county's indirect cost plan.

Yes, the salaries of the Assistant Court Administrator, the Finance and Personnel Director, the Fiscal Officer, the Information Systems Manager, and the Network Administrator are partially reimbursed through the IV-D Contract with the C.S.E.A. These positions account for \$91,492 (salaries and benefits) in revenue.

4. If the county did not provide the non-mandated service, is there the potential for increased expenditures in another jurisdiction within Hamilton County? If so, please list the specific municipality and/or township. N/A
5. Does the non-mandated service include Board of County Commissioner policy via resolution or motion? N/A
6. Are there contracts or agreements that preclude the elimination of a non-mandated service? If so, please provide the specific language as to termination and/or amendment terms. N/A

2009 Non-Mandated Expenditures Department Response

7. What are the equipment/non-personnel expenditure considerations with discontinuing a non-mandated service? (i.e., surplus equipment). N/A

8. Any of the non-mandated services include employees represented by a bargaining unit? If so, Do please note the union and provide information as to reduction-in-force and job abolishment considerations. N/A

9. For positions within non-mandated services, are there are special circumstances that preclude a traditional job abolishment process? Separation costs will be addressed centrally including leave balance payouts, unemployment compensation and severance (based on current Commission policy).
N/A

10. In addition to positions associated with non-mandated services, the Budget Office included a review of management layers, support staff, and currently vacant positions. Please comment on the impact of eliminating these positions. N/A

11. What is the performance impact of not providing the non-mandated service? For example, wait times, waiting lists, case loads, operating hours and other consequences of not providing the service. Please see the numerous mandates above.

12. Are there any alternatives that result in savings to the general fund?

In 2007, Domestic Relations employed four court reporters. Presently, our Court is in the process of installing a digital recording system in the judicial courtrooms. When this installation is completed, the Court is requesting that the number of court reporters be reduced to one F.T.E. This reduction in staff will reduce personnel expenditures by approximately \$ 173,376 (salaries and benefits for three positions) per year.

The one remaining court reporter will be responsible for internal transcripts and transcripts for in camera interviews. The Information Systems Manager and the Network Administrator will maintain, store, and preserve these digital records.

13. Are there more efficient ways to deliver a mandated service that may allow for the savings to offset the cost of a non-mandated service? N/A

2009 Non-Mandated Expenditures Department Response

14. Is there an opportunity to transfer any non-mandated expenditures to another funding source (i.e., restricted fund or grant)? No.

15. Does your department have any fees that could be raised to offset the cost of a mandated service? No.

Other Considerations and Comments:

Since 2006, to reduce expenditures, the court has agreed to eliminate funding from the budget for the following positions:

1. Administrative Secretary
2. Senior Systems Analyst
3. File Clerk
4. Court Reporter