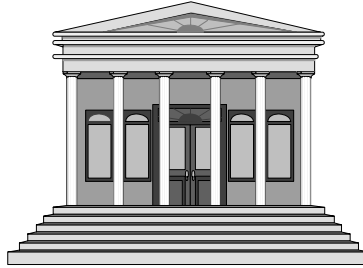


How to Prepare for Your Divorce, Legal Separation, Custody or Support Trial



IMPORTANT!

Remember that the law is always changing. **This brochure is not a substitute for talking to an attorney.** Family law cases can be complicated, and the judge will be making important decisions. Before representing yourself, you should do everything you can to get legal help. If you have not tried to get the help of an attorney, you should do that now. **If you need help finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503)684-3763 or toll-free in Oregon at (800)452-7636.** Free or low cost legal services may be available to help you from Legal Aid Services of Oregon at www.oregonlawhelp.org.

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WHERE ARE THE FAMILY LAW STATUTES AND TRIAL COURT RULES?

The main family laws are contained in the Oregon Revised Statutes (ORS), Chapters 107-109. You may look at copies of these statutes, the Uniform Trial Court Rules, or the Supplementary Local Trial Court Rules at your county law library. The law librarian can help you find the books you want and explain how to use the books. The law librarian cannot give you legal advice. If you want to copy any of the materials in the library, bring money in small bills to pay for the copies. The law library cannot make change for large bills. The family law statutes are also available on the internet at <http://www.leg.state.or.us/ors/> under Oregon Revised Statutes, see Chapters 107-109. Uniform Trial Court Rules are available on the internet at <http://courts.oregon.gov/OJD/rules>. The Supplementary Local Rules for your county may also be found on the Oregon Judicial Department website.

DO YOU NEED AN ATTORNEY?

Although the judge will hear cases not involving attorneys, you should try to get the assistance of an attorney. The judge cannot give you legal advice. An attorney can help you with complicated issues such as spousal support (alimony), custody, parenting time, and division of marital property, including retirement benefits. If the other party has an attorney, you may be at a disadvantage if you try to represent yourself.

WHERE CAN YOU FIND AN ATTORNEY?

LAWYER REFERRAL SERVICE: The Oregon State Bar can give you the number of an attorney in your area who does family law cases and who will give you a one-time in-office appointment for no more than \$35.00. Call **(800) 452-7636** toll free, or if in Portland **(503) 684-3763**. You may be eligible for the **Modest Means Program** which offers legal assistance at a reduced rate in some cases. Call the same phone numbers as above for an application.



LEGAL AID: You may be able to obtain legal help from **Legal Aid Services of Oregon**. See your phone book for numbers or information is available on their website: www.oregonlawhelp.org.

OTHER LEGAL HELP: Some attorneys may be willing to work on a sliding fee scale based on your income or to provide you with limited legal assistance, sometimes called "unbundled legal services." An attorney who does this will represent you on only a part of your case, not for the entire matter; for example, to review forms, to give you "coaching" before a hearing, or to do some research on a particular issue. The cost to you is less than the cost of full representation. For referrals to such attorneys, contact the Oregon State Bar **(800) 452-7636** or your local court. Most courts have "family law facilitation programs" where court staff provide help, but not legal advice, to people without attorneys. The family law facilitator may have a list of local attorneys who provide low-cost or unbundled legal services. You may also want to check the yellow pages of the phone book.



WHAT IF YOU CANNOT FIND AN ATTORNEY?

Many forms are online at <http://courts.oregon.gov/familylaw> or may be on the Circuit Court website for your county. Your court may also have a **Family Law Resource Center or a Family Law Facilitator**. If so, the staff may answer questions about the forms in some family law matters and explain how to file papers in the Circuit Court. Staff members are only allowed to review and notarize your court forms. **They cannot give legal advice. An attorney is the only person who can advise you of your legal rights or tell you what is best for you in your individual situation.**

If you do not contact an attorney, or are unable to find one to represent you, you should begin preparing your case.

ALTERNATIVES TO TRIAL

If you and the other party work out an agreement before trial, either by yourselves or with the help of an attorney or mediator, you will need to prepare a document called a “stipulated” judgment (a court order) that sets out your agreement. A mediator is a third person trained to help the parties reach a settlement during confidential discussions. Court-connected mediation services in your county may be free. Private mediators not connected with the court are also available for hire in many communities. For certain family matters, especially cases involving parents and teens, local community mediation centers may be helpful. You will go to trial on any issues you and the other party can not agree on.

PREPARING FOR TRIAL

WHAT IS A TRIAL?

A trial is a fact-finding process before a judge and where the final decisions are made in your case. There is no jury in a family law trial. The reason a trial is held is because you and the other party cannot agree on important issues.



Trials are open to the public. You may want to watch a family law trial in the courtroom of your assigned judge so you can see what a trial is like.

WHEN AND WHERE IS THE TRIAL?

The “Notice of Scheduled Court Proceeding” you received will tell you the courtroom, day and time of your trial. You may also call the Circuit Court and ask the clerk for the date of your trial. You must pass through metal detectors at the courthouse. Knives, weapons and pepper spray are not allowed. Each courtroom has a list of cases that are to be heard that day posted outside its doors.



WHEN SHOULD YOU GO TO THE COURTHOUSE?

Arrive early enough to give yourself time to find the courtroom, meet with your witnesses, and get organized. You should plan to arrive at least 30 minutes before your trial. If you go into the courtroom early, be quiet and polite to the court and other people who are having a case heard by the judge.

Another reason to arrive early is so that you can pay the fee if you want your court proceeding recorded. Most Oregon courts now use electronic systems for recording trials. You may be required to pay a fee prior to your court appearance if you want it recorded. If the trial is not recorded, you may be giving up your right to file an appeal if you do not like or do not agree with the judge’s decision.

CAN YOU RESCHEDULE THE COURT DATE?

If you do not come to the trial, the other party may win. If there is a serious reason why you cannot go to trial on the scheduled date, call the other party and the Circuit Court clerk right away. You will have to make a written request to the court to have the trial rescheduled. You must give the other side or their attorney, if they have one, a copy of your request.

WHAT SHOULD YOU WEAR TO THE TRIAL?

Wear clean, neat clothing such as you would wear to an important job interview. Do not wear shorts, jeans, half-shirts, tank tops, sneakers, very high heels, sandals, or anything that is too tight, too short, low-cut, or shows your stomach.

DO YOU OR YOUR WITNESSES NEED ACCOMMODATIONS?

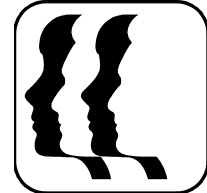


Do you or any of your witnesses need an interpreter? The court will provide a certified interpreter to translate in court. If you or any of your witnesses have difficulty hearing, the courts have electronic devices to help you with that. If you or any of your witnesses need other help for disabilities, call the Trial Court Administrator or clerk's office. Call the court as soon as you know an interpreter or special equipment is needed. Try to do this at least four (4) days before the trial.

ARE YOU OR YOUR WITNESSES CONCERNED ABOUT YOUR SAFETY IN COURT?

Your local court probably has metal detectors and law enforcement officers stationed at the courthouse. If you want a law enforcement officer in the courtroom during the trial, call the court clerk well before the trial. You may also ask to have someone walk with you to your car after the trial.

WITNESSES



DO YOU NEED WITNESSES BESIDES YOURSELF?

Witnesses are people with first hand knowledge about important things you need to prove in your case. For example, if custody of your children is contested, you must prove it is in the best interests of the children to be with you. People who have seen you together with your children and know how well you take care of your children may help the judge make this decision. Is there a witness to the other party's poor parenting or abuse of your children? Make sure that a witness will help your case before you ask them to come to the trial. Talk to them first to find out what they know. Call them well before the trial so that they can make plans to be there on that day.

HOW DO YOU GET THE WITNESSES YOU NEED TO COME TO COURT?

You may want the statement of a witness who is important for your case, but does not want to come to court. Unless witnesses are under subpoena, they do not have to show up for court. A subpoena is an order from the court to appear at a trial. Often, witnesses need a subpoena to show their employer why they need to be gone from work. Forms for a subpoena are available in the Circuit Court clerk's office. Unless the witness waives the right to payment, you must pay each witness a fee of \$30.00 per day plus mileage at the rate of \$.25 per mile.

WHAT IF YOUR WITNESS CANNOT COME TO COURT?

The judge will make decisions in the case by listening to witnesses who testify under oath. The judge cannot use letters, affidavits, or other written statements instead of personal testimony unless the other party agrees.

You may be able to have your witness testify by telephone during the trial but you will need the judge's permission and would have to follow Oregon laws. You must file a motion with the Circuit Court and serve a copy on the other party or his/her attorney before the trial.

SHOULD YOUR CHILDREN COME TO COURT?



In almost all cases, children are not needed as witnesses at trial. Think carefully before asking children to be witnesses against the other parent. The experience can be very upsetting. You will not be able to watch your children during the trial, and they may not be allowed to remain in the courtroom. Since they can be noisy, young children especially should be left at home with a babysitter or relative.

Even if you decide that you must call your child as a witness, you should have someone who can watch the child when he/she is not on the witness stand testifying.

WHAT OTHER EVIDENCE DO YOU NEED?

You may also need written evidence to prove your case. This can include photos, pay stubs, income tax returns, bank statements, proof of medical insurance for the children, medical bills, other bills and debts, pension or retirement plan documents, or letters from the other party discussing issues important to your case.

If you plan to show these documents to the judge, you must provide a copy to the other party. Also you should ask the judge's clerk for help "marking" the exhibits.

The judge may not allow you to submit certain items as evidence if the other party objects and the judge rules that, based on the Oregon Evidence Code, the evidence is not admissible. The Oregon Evidence Code is in Volume 1 of the Oregon Revised Statutes at Chapters 40 to 45. (www.leg.state.or.us/ors).

DO YOU NEED TO FILE INFORMATION WITH THE COURT BEFORE TRIAL?

Uniform Trial Court Rule 8.010 requires that you prepare and file a statement listing all of the marital assets and their fair market value, your debts and liabilities, and your suggestions for dividing those assets, debts and liabilities.

You must also prepare and file a "[Uniform Support Declaration](#)" if child or spousal support (alimony) is or could be an issue.

These forms are available on the Internet at <http://courts.oregon.gov/familylaw>.

YOU MAY NOT TALK TO THE JUDGE ABOUT YOUR CASE OUTSIDE OF THE COURTROOM

The judge cannot talk to you about your case except in the presence of the other party, or with their permission.

AT THE TRIAL



HOW SHOULD YOU ACT AT THE TRIAL?

- Be on time. Bring all papers or exhibits that you need for your trial. You may use written notes during the trial.
- No food or drinks are allowed in the courtroom. Do not chew gum or tobacco. Take off hats.
- Turn off cell phones and pagers.
- Stand when the judge comes into the courtroom.
- Sit down when the judge or clerk asks you to sit.
- Be polite to everyone. Do not interrupt anyone during the trial. Stop talking when the judge talks.
- Talk only when it is your turn. When you address the judge, you should stand up.
- The judge may ask you questions. If you do not understand the question, tell the judge. Do not answer a question unless you understand what is being asked.
- If you do not know the answer to a question, say so. Don't guess.
- Take your time answering questions and explain your answer if you think it will be helpful.
- Be honest with the judge. If the judge thinks you are being dishonest about some things, he may not believe the rest of what you have to say.
- Don't repeat what's already been said.
- Be brief when you can.
- Don't argue with the judge or anyone else.
- Address everyone in the courtroom formally, calling them "Ms. Jones" or "Mr. Smith," rather than using first names.
- When you speak to the judge, call him or her, "Your Honor."
- Be calm. Stick with the facts. Do not lose your temper.
- If you are not sure what to do during the trial, ask the court clerk or the judge.
- Your witnesses and people in the audience must be quiet during the trial, except when it is time for them to testify. You and they should not react to what witnesses and the judge say by talking or making faces.
- Remember, the judge cannot talk to you about your case, except when your case is being heard in the courtroom when the other party is present

WHAT IS THE LAYOUT OF THE COURTROOM?

The "bench" is where the judge sits. The court reporter, if present, will sit in front of the judge. The judge's clerk usually will sit at the front or to the side of the judge. There will be at least two tables in front of the bench. You will sit at one of these tables when your name is called. Only parties and attorneys may sit at the tables unless the court allows otherwise.

Your witnesses will sit in the audience section or outside the courtroom until they are needed. The place where witnesses testify is called the "witness stand." It is next to the bench. Sometimes the judge will tell you that you can testify from your seat at the table.

WHO WILL BE AT THE TRIAL?

- The judge and staff (perhaps including the court reporter).
- A deputy sheriff, if security staff has been assigned.
- The other party.
- Witnesses
- Attorneys, if any.
- There may be a number of other people in the courtroom. They may be waiting for their own case to be heard, or they may be watching court cases.

HOW WILL YOU KNOW WHEN THE TRIAL BEGINS?

The judge or clerk will call your case. Stand and let them know you are **there**, then wait for further instructions.



WHAT HAPPENS AT THE TRIAL?

Opening Statement:

The judge may ask you and the other party to give an “opening statement.” This is when you tell the judge about your case, what you want and why the judge should do what you ask.

Presenting Your Case:

- The petitioner (the person who filed the case) goes first. Then the respondent (the person who responded) goes next. You should have a written list of everything you need to prove, and how you are going to prove it by using witnesses and documents.
- If you do not have a lawyer, you will be allowed to tell the judge (“testify”) on your own what has happened, and why you should get what you asked for in the Petition or Response. The judge may ask you some questions. When you have finished testifying, the other side has a chance to “cross-examine” (ask) you about what you told the judge. Once the other party or their attorney has finished cross-examining you, you will have the chance to explain anything that was brought up in the cross-examination. Testify only about what you know; do not guess. If you do not know the answer, say so.
- When it is your turn to present your case, you may call your witness/es. They will be sworn in; then you may begin questioning them. You should have written down the questions you want to ask. Make your questions short and to the point. Do not argue with the witnesses. It is important that you are asking questions and not making statements. When you have asked all your questions, the witness will be cross-examined by the other side. You may be allowed to ask more questions of the witness to follow up on their answers. Ask the judge if you are allowed to ask a witness more questions.
- When the other side calls its witnesses, you will be able to question those witnesses. Ask questions; this is not another chance for you to make statements.
- Once the respondent finishes his/her presentation, the judge may let the petitioner “rebut” or contradict testimony or evidence presented by the other side. If so, the petitioner and/or other witnesses can re-take the stand, or offer documents into evidence.
- During the testimony, if you want the judge to consider a document or some other piece of physical evidence, you must “offer” it into evidence as an “exhibit.” You should have already given a copy to the other side before the trial started. Ask the judge’s clerk to put an evidence sticker on your document and number it. Tell the judge that you would like to “offer the exhibit into evidence” and be prepared to tell the judge why it is important for him/her to read it. The other side may object. The judge will decide whether to consider it.
- The other person may also offer exhibits. He or she should have shown them to you before trial. If you believe the exhibit is irrelevant, misleading, unreliable or otherwise improper, tell the judge.

Closing Argument and Final Judgment:

After all the testimony has been heard, the judge may not want to hear anything else. But the judge may ask you to give a “closing argument” which is a summary of the testimony and evidence that supports your requests to the court. If so, the other side will also be asked to give his or her view of the case.

The judge may make a ruling from the bench, or may take the case “under advisement” and send both sides a letter explaining his/her decision. The judge will ask one of the parties to prepare an order/judgment. You may already have the form in your packet, or they are available online or through your family law facilitator’s office. Some attorneys can also help you to prepare a judgment.

IMPORTANT: You will not be divorced or separated, or have a custody order or any other relief, until the FINAL JUDGMENT is signed by the judge.

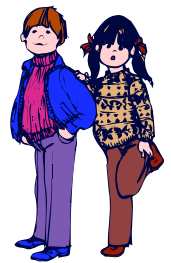
WHAT DO YOU NEED TO PROVE AT THE TRIAL?

Child Custody:

The custody decision is based on the best interests of the children. The judge cannot give preference to the mother only because she is the mother or to the father only because he is the father. If the other side does not agree with your request for custody, have witnesses available who can testify about the following information:

- The emotional ties between the children and family members
- The party’s interest or attitude towards the children
- The desirability of continuing an existing relationship
- Whether one parent has abused the other
- Who is the primary care giver of the children
- Conduct, marital status, income, social environment or lifestyle of either party only if any of these factors are causing or may cause emotional or physical damage to the children
- The presence of extended family members in the area
- The willingness and ability of a parent to facilitate and encourage a relationship between the children and the other parent, if appropriate

Definitions and other information about types of custody and parenting time is available on the Legal Aid Services of Oregon website at www.oregonlawhelp.org.



Parenting Time:

If you and the other party have children, you should prepare and file a proposed Parenting Plan outlining the time each parent should have with the children. If your county has a model (sample) parenting time plan, copies are available from your local court. Guides with information about creating parenting plans and sample plans are available on the Oregon Judicial Department’s Family Law website at <http://courts.oregon.gov/familylaw> (click on the “Parenting Plan Information” link). There is also information and forms for a “Safety-Focused Parenting Plan” if you are concerned about you or your children’s safety.

If you want the other parent to have a relationship with your children, but you have serious concerns about the children’s safety if they are alone with the other parent, you may ask the judge to order “supervised” parenting time.

Find out ahead of time if someone you trust is willing to supervise (watch) the other parent and your children during their time together. Tell the judge who the supervisor will be so that if there is an order for supervised parenting time, it will have the name of the agreed-upon supervisor on it. Your court's family law facilitator also may have information on agencies or individuals who are willing to supervise parenting time. The following may support your request for supervised parenting time:

- The other parent has harmed or threatened harm to the children.
- The other parent has threatened to keep or hide the children.
- The other parent has a history of neglecting or physically or sexually abusing other children.
- The other parent lacks parenting skills or has had little contact with the children.
- The other parent leaves young children without supervision.
- The child is afraid of the other parent.
- The other parent has drug/alcohol or criminal problems that are a danger to the safety of the children.

If the judge decides that there are some valid concerns, but not enough to order supervised parenting time, you can ask the judge to make some conditions to keep the children safe, such as:

- The other parent cannot use drugs or alcohol before or during parenting time.
- The other parent must complete a parenting class or substance abuse program or mental health counseling.

If the other parent has physically or sexually abused the children he/she had with you, the judge might order that the other parent have no contact with the children. See information and forms for a "Safety-Focused Parenting Plan" at <http://courts.oregon.gov/familylaw>. (Click on the "Parenting Plan Information link.)

Child Support:

The Oregon Administrative Rules that apply to child support (Oregon Administrative Rules, Chapter 137, Divisions 50 and 55) are available on the Internet at <http://www.oregonchildsupport.gov>.

The judge will take into account the following basic issues, as well as others listed in the Oregon Administrative Rules:

- All of the income (including potential likely income) of both parties
- Whether a party receives or pays spousal support (alimony)
- The availability and cost of medical insurance for the children
- Whether the parties have minor children with someone else
- Whether the children receive Veterans or Social Security benefits based on one or both of the parent's retirement or disability
- The number of joint children, where they each reside and the amount of overnight parenting time the children have with the non-custodial parent
- The cost of child care related to a parent's employment, job search, or training or education necessary to obtain a job
- Continuing health costs for the joint children

The judge uses a formula set out in the law to calculate an amount the law presumes is appropriate. The judge can increase or decrease this "presumed" amount if convinced by the evidence that it is fair to do so.

Once you have the necessary financial information, you may access the child support calculators on the Internet. The child support calculator is available online at <http://www.oregonchildsupport.gov/calculator>. Your court's family law facilitator may be able to refer you to resources to help you with your calculations. In addition, your public library may have public computers that you may use.

The child support guidelines also let the court take into account other circumstances which may either increase or decrease the child support amount. In the guidelines these are referred to as “rebuttals.” For example, the judge may increase the support for a child who has special needs so that each parent shares in the payment of costs for the child. The rebuttal factors are listed in ORS 25.280 (<http://www.leg.state.or.us/ors>) and the Oregon Administrative Rules Chapter 137, Division 50 (see above). You should look at both. If you include a rebuttal factor, you must be prepared to prove it is true.

Spousal Support: *(Alimony)*

Spousal support is an order that one spouse pay money to the other, usually on a monthly basis, to help that spouse with basic needs and to keep a standard of living similar to that existing during the marriage. There are three types of spousal support:

1. Transitional Support

Transitional Support is designed to allow the person receiving support to obtain the education and training needed to go back to work or get ahead in the job market. It is temporary support. The judge will consider evidence (information) on the following issues:

- how long the marriage has lasted
- both parties’ training and employment skills
- both parties’ work experience
- financial needs and resources of each party
- tax consequences to each party
- both parties’ custodial and child support responsibilities
- any other factor the court considers fair

2. Compensatory Support

Compensatory support is meant to compensate (pay back) a party who has made a significant financial or other contribution to the education, training, vocational skills, career or earning capacity of the other party. The court may consider the following factors:

- how long the marriage has lasted
- amount, length and importance of the contribution
- relative earning abilities of each party
- how much the marital estate has already benefitted from the contribution
- tax consequences to each party
- any other factor the court considers fair

3. Maintenance Support

Maintenance support is supposed to help a person financially for a definite or an indefinite period of time. The court may look at the following factors:

- how long the marriage has lasted
- age of the parties
- health of the parties (physical, mental, emotional)
- standard of living (lifestyle) established during the marriage
- income and earning abilities of each of the parties
- training and employment skills
- both parties’ work experience
- financial needs and resources of each party
- tax consequences to each party
- both parties’ responsibilities to take care of and support the children
- any other factors the court considers fair

Be ready to give evidence (information) on each of the issues listed under the type of spousal support you are requesting.

Property and Debts:

At the trial, the judge will divide the property and debts shared by you and the other party. The judge will divide all property that you and the other party own, including land, houses, motor vehicles, home furnishings, money in bank accounts, stocks and bonds, pensions and retirement benefits, etc. The judge may even divide property owned by one party before the marriage or relationship began, although it is usually given to the party who originally owned it.

The judge will also decide which party pays which debts. Even if only one of you made the purchase during the marriage or relationship, the other party is usually also responsible for the debt and can be sued by the creditor (the person to whom the debt is owed). The exceptions are for business expenses and loans of money. If you and the other party were separated when one of you signed for the debt, the other party is not responsible to the creditor unless the debt is for the children's education, health, or support needs. You should get the advice of a lawyer if **retirement benefits, pensions, or real property (land or a house)** will be issues in your case because these involve very complicated legal issues.

You should support your proposal for dividing the property and debts by providing information and evidence to the judge on questions such as the following:

- Where the property came from (gift, inheritance, purchase)
- If one of the parties owned it before the marriage
- If the parties kept their money in joint bank accounts
- How much money each party makes now and is expected to make in the future
- Whether it would make sense for a specific item to go to the parent with custody
- How much did the value of the property increase during the time the parties were together

IMPORTANT: Even if the judge says one party should pay a debt incurred by you while you were together, each party remains responsible for making sure the debt gets paid. The creditor can seek payment from either one of you and, if not paid, can file a lawsuit against you, the other party, or both of you, for the unpaid amount. You may be able to get reimbursement from the party who was ordered to pay the debt in the judgment by filing a case against the nonpaying party.

For more information about property and debt issues, talk to a lawyer or go to the Oregon State Bar's web site (www.osbar.org), click on "Public Information", go to the "Family Law Index," scroll down to the section called "Oregon Legal Services Booklet: Family Law in Oregon" and read the section on "Property, Debts and Taxes."

Source: T: ProSeFacilitation/SFLACProSeSubc/Pro Se Brochure/Trial BrochureFINAL1-12-05 (Dec 2005)

