



**A GUIDE TO**

# **Family Separation in Maine**

**Divorce and Parental Rights &  
Responsibilities Cases**

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**Domestic violence or sexual assault in the home?**

You may want to consider contacting a prevention agency.

**Maine Coalition to End Domestic Violence**

[www.mcedv.org/get-help](http://www.mcedv.org/get-help) or call (866) 834-HELP.

**Maine Coalition to Sexual Assault**

[www.mecasa.org/member-centers](http://www.mecasa.org/member-centers) or call (800) 871-7741.

**Important Disclaimer**

The specific requirements concerning your case are contained in the statutes, rules, and administrative orders. This is only a guide.

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## GENERAL INFORMATION

This guide will help you better understand family law cases such as divorce and parental rights and responsibilities (PR&R) cases. PR&R cases involve parties who have a child, but are not married.

This guide has five parts:

- Part 1 describes all the steps and events in a family matters case.
- Part 2 through 4 describe PR&R cases and divorce cases.
- Part 5 describes actions you can take after you have been to court for your family matters case. This includes asking the court to enforce or change what the court ordered.

To make this guide easier to read, some of the laws and legal requirements have been summarized.

Please remember that the exact wording of the law is what the court will look at, not this guide. This guide describes what goes on in court generally. It also talks about some legal requirements for family cases, not all of them. Every case is different and has its own facts, and so will be treated differently than other cases. This guide is not legal advice.

### Getting help

Going to court can be stressful. It can be even more stressful if you do not have a lawyer. Many people do not have a lawyer for family matters cases. You are encouraged to talk to a lawyer early in your case, especially when you and the other party:

- Disagree about how to make decisions for your children;
- Have complicated property or financial issues; or
- Have experienced a history or threat of domestic violence or sexual assault.

**For further help with your case, selected resources are included at the end of this guide.**

Clerks cannot help you determine which forms to use or tell you what to put in the forms. Clerks and court staff are not allowed to give legal advice.

## PART 1. COURT STEPS AND EVENTS IN FAMILY MATTERS CASES

This part is for people who are starting a family matters case. You may not be required to do some of the things described in this part, or you may have to do all of them.

### Starting the case: Court forms

The person who starts a case in court is called the "plaintiff." The plaintiff starts the case by filing a form called a "complaint." The other person involved in the case is the "defendant."

The Maine Judicial Branch has created forms for people to use when starting a family matters case. There are different forms for:

- Divorce cases with and without children; and
- Parental rights and responsibilities (PR&R) cases. This type of case is for unmarried parents.

Most of these forms can be found on the Maine Judicial Branch's website at [www.courts.maine.gov](http://www.courts.maine.gov). If you do not have access to a computer you may:

- Go to a local library or another location with public internet access. A list of public libraries can be found at [www.maine.gov/msl/libraries/directories/public.shtml](http://www.maine.gov/msl/libraries/directories/public.shtml).
- Go to your local district courthouse. The clerks at the courthouse have packets of the forms with instructions.

There is one form that **must** be picked up from the clerk's office because it has the clerk's seal on it. This form is the *Family Matters Summons and Preliminary Injunction (FM-038)*. There is a small fee for this form.

### Step 1: Gather information

The plaintiff will need to have the following information in order to fill out the court forms:

- Name, current address, and date of birth for the plaintiff and the defendant; and
- The plaintiff's social security number.

For **all divorce cases**, the plaintiff will also need to state:

- If the plaintiff or the defendant has ever filed for divorce or annulment before; and
- If the plaintiff or the defendant owns real estate.

For **divorce cases with children** and for **all PR&R cases**, the plaintiff will also need:

- The name, current address, and date of birth for each child;
- The name and current address of any person(s) the child has lived with in the last five years;
- The social security number of each child;
- The number given by the court (the docket number) of any other current court cases involving the child;
- Information on any public assistance the child received or is currently receiving from the Department of Health and Human Services (DHHS);
- Information about the plaintiff's income for this year and the last year;
- Any childcare expenses the plaintiff has; and
- The cost of health insurance for each child.

### **Safety Concerns**

If you do not want the defendant to know where you are staying for safety reasons, you may fill out and file an *Affidavit for Confidential Address (FM-057)*. This form protects this information from being shown, but applies only to the case it is filed for. Please keep in mind that it does not hide your information from other sources.

### **Step 2: Fill out the court forms**

Fill out the court forms carefully. When you sign a court form, you are stating that the information is true to the best of your knowledge, information, and belief. Court rules say that any individual who knowingly makes a false statement in a court document or form, or at a hearing, may be liable for court expenses, including attorney's fees, paid by the other party.

It is also a crime to make a false statement under oath in a court document or hearing. A parent's untruthful statements may be considered by the court when deciding parental rights and responsibilities.

### **Step 3: Serve the court forms on the defendant**

The plaintiff is responsible for getting copies of the court papers to the defendant. This is called "service." Court rules say that in most cases the plaintiff can serve papers in one of three ways:

1. The plaintiff can hand-deliver or mail the papers to the defendant, asking the defendant to accept the papers. If the defendant agrees to accept service, the defendant signs both copies of the *Acknowledgment of Receipt of Summons and Complaint (CV-036)*, keeps one copy, and sends the other back to the plaintiff. The plaintiff then files the original *Acknowledgment* with the rest of the court papers; or
2. The plaintiff can mail the papers by certified mail, restricted delivery to the defendant. The plaintiff has to file the returned certified mail card from the post office with the *Complaint*; or
3. The plaintiff can pay a sheriff to give the copies to the defendant.

Do not send the following forms to the defendant:

- *Social Security Number Confidential Disclosure (CV-CR-FM-PC-200)*;
- *Application to Proceed without Fees (CV-067)*, with *Affidavit (CV-191)*; or
- *Affidavit for Confidential Address (FM-057)* (if applicable).

After being served, the defendant generally has 21 days to file an answer before the case moves to the next phase.

More information on completing, serving, and filing the court forms on the defendant may also be found on instruction sheets at any clerk's office:

- *Divorce with Children — What to do with these court forms (FM-080)*
- *Divorce without Children — What to do with these court forms (FM-081)*
- *Parentage, Parental Rights & Responsibilities Case — What to do with these court forms (FM-082)*

In some courts, the Volunteer Lawyers Project has walk-in clinics called Court-house Assistance Projects (CHAPs) to help you with your family matters forms.



You can come to the courthouse at the designated times for a brief meeting with a volunteer lawyer at no cost. More information on walk-in clinics is available at [vlp.org/access-justice-today](http://vlp.org/access-justice-today).

#### **Step 4: File the court forms**

To file, the plaintiff must mail or hand-deliver **signed** original forms to the courthouse. The plaintiff must also file proof of service with the court. See Step 3 to learn more about how to serve the defendant. There is a \$120 filing fee for family matters cases. If you cannot afford to pay the filing fee, you may file an *Application to Proceed without Payment of Fees (CV-067)*, with an *Affidavit (CV-191)*, asking the court to not charge you the fee. Please note that the court must first review the information you submitted before deciding whether or not to waive the fee. If the court denies your *Application*, you will have seven days to pay the filing fee, or your case may be dismissed.

The district court where you file your paperwork will depend on where you live in Maine. You can find a list of courts by county or town on the Maine Judicial Branch website at [www.courts.maine.gov](http://www.courts.maine.gov), along with mailing addresses and phone numbers for each court.

#### **For defendants:**

If a defendant receives a divorce or PR&R complaint, the defendant may file a response called an answer. The defendant must give the court the answer within 21 days after receiving the copies of the forms. The answer may also include more information that the defendant would like the court to consider in the case. This is called a counterclaim (a claim against the plaintiff). If you do not file a counterclaim, the issues that the court hears may only be what the plaintiff put in the complaint.

The defendant is not required to file an answer but if the defendant would like to be heard on issues related to the plaintiff's complaint, the defendant should file an *Entry of Appearance form (FM-020)* and go to all court events.

#### **Step 5: First court date**

After the plaintiff files the forms and proof of service with the court, the clerk will schedule the first court date.

- If the case involves children, a case management conference with a family law magistrate will be scheduled.
- If the case does not involve children, a pre-trial conference with a judge will be scheduled.

### What to do if you cannot go to a court event

If you are scheduled for a court event and are not able to attend, you must ask that the court date be rescheduled. You must do this ahead of time in writing. Sometimes the court will allow you to attend the court event by phone or video.

Your request (motion) needs to include:

- A statement that the other party knows that you have asked the court to reschedule or attend by phone or video; and
- A statement telling the court if the other party is ok with rescheduling or having you appear by phone or video.

The court may or may not be able to grant your request.

This first court date is the court's chance to learn if the plaintiff and the defendant have reached an agreement on any issues. Usually, no one will testify (present formal evidence) at the first court date. However, if child support is one of the issues that needs to be decided and there is no agreement, the family law magistrate may hold a short hearing on that first court date.

At the first court date, if the plaintiff and the defendant are in **full agreement** on all issues in the case, the court may approve the agreement and hold an uncontested hearing to make the agreement official.

If there is **not an agreement**, the court will help both the plaintiff and defendant develop a plan to resolve the issues.

### Step 6: Mediation

Mediation is where the plaintiff and the defendant have a meeting to see if they can figure out how to resolve the case without the court deciding for them. A trained professional, called a mediator, listens to both sides and helps the plaintiff and the defendant see if they can agree on how to resolve all or some of the issues in the case. The mediator does not take sides or decide who is right.

## Mediation in cases where domestic violence or sexual assault may be involved

If there is a protection from abuse case or order involving you and the other party, or if there is a history of domestic violence or sexual assault, tell the court **at or before** your first court date, if you are able. The court may decide mediation is not appropriate, or may set up the mediation so that each of you meets in separate rooms with the mediator.

More information on protection orders and domestic violence or sexual assault prevention resources can be found on the Maine Judicial Branch website at [www.courts.maine.gov](http://www.courts.maine.gov). The clerk's office can also provide you with forms and a guide to help you file a request for a protection order.

Mediation is a chance for the plaintiff and the defendant to come to an agreement that they both find acceptable. If the case involves children, the court is likely to require both sides to go to mediation. Lawyers may go to mediation with their clients.

If the case is not resolved through mediation, the plaintiff and the defendant will meet with the court at a status conference to discuss the remaining issues. After the status conference, the court may issue temporary orders to help move the case forward.

### Step 7: Final hearing

If all issues are resolved at mediation, the court will hold a final uncontested hearing. The court may ask the plaintiff and the defendant questions to make sure everyone understands the agreement. If everyone agrees, and the court approves, the agreement becomes a court order.

If the plaintiff and the defendant cannot agree on any of all issues, then the court must make decisions in the case. If you have been able to work out **some**, but not all issues, the final hearing will focus only on the issues that remain.

The clerk's office will notify the plaintiff and the defendant (or any lawyers who are involved) when a court date has been scheduled.

At the final hearing, each party will be able to present evidence, including calling witnesses and giving the court documents and photos. Each party will be

required to follow the Maine Rules of Civil Procedure and the Maine Rules of Evidence at that hearing. Parties who do not have lawyers must be familiar with these rules. Review the rules before your hearing.

## **Appealing a court order**

### **A magistrate's order**

If either party disagrees with a magistrate's final order, an *Objection to Final Order of Magistrate (FM-071)* may be filed with the court. The objection must say exactly why the order is not correct and why it should be changed or vacated (undone). If the plaintiff or the defendant files an objection, a copy must be sent to the other party. If you do not file the objection within 21 days, you will lose your right to object, and the magistrate's order will become final.

If an objection is filed, a district court judge will review the magistrate's final order and then make a decision. If you disagree with the judge's decision, you may file an appeal, as explained in the next section.

### **A judge's order**

If either party disagrees with the judge's final order, an appeal can be filed with the Maine Supreme Judicial Court. The Maine Supreme Judicial Court is also called the Law Court when it hears appeals.

To start an appeal, the following forms must be filed in the district court where the order came from:

- *Notice of Appeal (CV-CR-162)*; and
- *Transcript and Audio Order Form (CV-CR-165)*.

An appeal must be filed within 21 days after the order was entered. After filing the forms above, a party must carefully follow the steps in the Maine Rules of Appellate Procedure. Completing an appeal to the Law Court can be complex. It is recommended that you talk to a lawyer before going forward with an appeal.

## **PART 2. PARENTAL RIGHTS AND RESPONSIBILITIES (UNMARRIED PARENTS)**

### **When a parent can file a PR&R case**

If there is no court order, Maine law states parents have the same rights and responsibilities to care for and raise their children. Parents also have a duty to provide for their children financially, to the extent they are able.

If a child's parents are **not** married, a parent may start a PR&R case. If a couple is married with children and files for divorce, a PR&R complaint does not need to be filed.

PR&R cases may also be used to determine who the child's parents are. For example, the court can order a test to find out who the biological father is. PR&R cases deal only with child-related issues. These issues include:

- Contact that each parent will have with the child;
- Which parent will pay child support and how much; and/or
- Which parent will make certain decisions for the child, like where the child will go to school.

PR&R cases do not deal with other issues, such as dividing property.

19-A M.R.S. §§1651-1658, the Maine Rules of Civil Procedure, and the Maine Rules of Evidence govern PR&R cases.

### **Where to file a PR&R case**

A PR&R case may be filed in the district court where one or both of the parents or children live.

### **Who can be a parent**

The Maine Parentage Act (MPA) explains who can be a legal parent. Depending upon the facts of a case, the court may decide that a child has more than two legal parents. The text of the full MPA can be found in 19-A M.R.S. §§1831-1939.

The court may decide that a person is the parent of a child as a result of:

**Giving birth to a child**, unless a person is carrying a child for someone else as a "gestational carrier."

**Adoption of a child** through a court process.

**Signing a paternity form ("Acknowledgment of Paternity")**

A man who claims to be the genetic father of a child may sign an "Acknowledgment of Paternity" form. The form may be picked up at any Department of Health and Human Services (DHHS) office. The form is then sent to the Office of Vital Statistics.

**Being a presumed parent**

It is presumed that someone is the parent of a child if:

- That person gave birth to the child (except when a gestational carrier is used);
- The child was conceived or born during a marriage. In this case, both individuals in that relationship are presumed to be the parents; or
- That person has lived in the same household with the child, openly held out the child as that person's child for at least two years starting from the time the child was born or adopted, and has assumed personal, financial, or custodial responsibilities for the child.

**De facto parent**

A "de facto" parent is a person recognized by a court as a legal parent of a child. De facto parents have all the same rights and responsibilities for children, including financial obligations.

To ask the court to determine that a person is a de facto parent, that person needs to write a statement under oath (affidavit). The statement should include facts that the person has:

- Lived with the child for a long time;
- Taken care of the child regularly;
- Developed a close and parent-like relationship with the child that another parent of the child has supported; and
- Has taken on complete and permanent responsibility for the child, without expectation of financial compensation.

A person applying for de facto parent status must also show that the continuing relationship with the child is in the child's best interest. If the court determines that a person is a de facto parent, the child may have more than two legal parents.

### **Genetic parent**

Sometimes parties in a PR&R case may not be sure who the biological parent of the child is. For example, in some cases the father either disputes the fact that he is the biological father or the father is unknown. The court may order genetic testing to help it decide who the genetic parent is.

Genetic testing may not be able to identify the biological parent. In this case, the court may make a decision that the presumed parent of the child is a legal parent, subject to all parental rights and responsibilities.

### **Intended parent**

An intended parent may become a legal parent to a child by:

- **Assisted reproduction** — Some individuals become parents through the donation of gametes, embryos, or sperm by another person. This is known as “assisted reproduction.” Generally, the MPA states that a donor is not a parent of a child conceived through assisted reproduction. The intended parents of the child may file a petition with the court before the child is born to get a court determination that they are the parents and the donor is not.
- **Gestational carrier agreement** — Intended parents may enter into an agreement with a person to carry and give birth to the intended parents' baby. That person is often called the gestational carrier or surrogate and is not a parent of that child. The law about gestational carriers lists many requirements that need to be in a valid gestational carrier agreement. Anybody needing one of these agreements must contact a lawyer.

## **PART 3. DECISIONS ABOUT CHILDREN**

**The information in this part applies to decisions about children made either in a divorce case or in a PR&R case (unmarried parents).**

Unless there is a court order in place, parents generally share all of the rights and responsibilities that come with raising a child.

If possible, it is best if parents are able to make these decisions working together rather than asking the court to decide. It is also usually in the best interest of children to have meaningful contact with each parent. If parents are unable to make these decisions on their own, a court may have to get involved.

## Types of decisions about children

There are many decisions that parents who do not live together must make about their child, including:

- Where the child will live;
- How to make important decisions about raising the child;
- How each parent will be involved in the child's life;
- How much time each parent will spend with the child;
- How each parent will take care of the child financially;
- Who will be responsible for uninsured medical expenses; and/or
- Who will claim the child as a dependent on tax returns.

## How does the court decide?

The court decides parental rights and responsibilities for married and unmarried parents based on the **best interest of the child**. When deciding what is in the best interest of the child, the court considers many factors. The first factor the court has to consider is the safety and well-being of the child.

The court then looks at other factors, such as:

- The age of the child;
- The relationship of the child with each parent;
- If the child is old enough to say, what the child wants;
- The stability of each parent's home;
- The parent's ability to work well with the other parent;
- The existence of domestic violence between the parents; and
- Anything else the court thinks is important to consider.

The entire list of factors may be found in 19-A M.R.S § 1653.

The court decides what is in the best interest of the child after listening to testimony and looking at the evidence.

## What is included in the court order?

Every PR&R order — and every divorce with children order — must have:

- How decisions about the child will be made;



- Where the child will live;
- What kind of contact the child will have with each parent;
- What amount of child support will be paid and by which parent;
- How the child's medical and dental needs will be paid for;
- How child care will be paid for; and
- Which parent will be allowed to claim the child as a dependent when filing taxes.

### **Types of decision-making**

There are three different kinds of decision-making that the court can order: shared, allocated, and sole.

#### **Shared**

The court often orders "shared" parental rights and responsibilities. This means parents make decisions about their child together. Decisions made together may be about the child's:

- Education;
  - Religion;
  - Medical treatment;
  - Dental treatment;
  - Mental health care;
  - Travel;
  - Child care, and
  - Where the child lives.
- Both parents may look at and get any records about the children.

#### **Allocated**

With "allocated" parental rights and responsibilities, the decisions about different parts of the child's life are given to a specific parent.

For example, one parent may have the right to decide the child's religious upbringing, while another parent may have the right to decide where the child will attend school.

If the parents are not able to agree on a decision, the court can order which parent has the final say.

## Sole

In some cases, one parent is awarded "sole" parental rights and responsibilities. Sole parental rights and responsibilities gives one parent the ability to make all of the decisions about the child.

The parent not given any parental rights and responsibilities may still be responsible for paying child support.

## Residence

Where the child will live must also be decided. The child will have a primary residence or a shared primary residence.

The home the child lives in most of the time is called the "primary residence." If the child spends an equal amount of time with each parent throughout the year, the order may say the parents have "shared primary residence."

If the parents live in different school districts, the order can say which school the child will attend.

## Giving advance notice of any intended move

If parents have shared or allocated parental rights and responsibilities, the order will require each parent to give notice to the other parent(s) if the parent is going to move. Normally, the moving parent has to give at least 30 days' notice. If the parent who is moving thinks notifying the other parent could be dangerous, the parent moving can notify the court instead, and the court will decide the safest way to tell the other parent of the move.

## Parent-child contact schedule

**Parents are in the best position to create a parent-child contact schedule that will meet their child's needs.** Parents know their child far better than the court ever will. Do not use the parent-child contact schedule as a tool against the other parent.

Children do best when there is regular, meaningful contact with each parent. The parent-child contact schedule should be predictable for the children, not complicated, and should be made based on what the child needs.

### **Domestic violence or sexual assault in the home**

If your child has been exposed to domestic violence or sexual assault, the court can put safety measures in place if the court finds it appropriate. These may include:

- Child exchanges in a public setting;
- Supervised parent-child contact;
- Ordering the completion of a domestic violence intervention;
- Prohibiting the use of alcohol or substances while the child is in the parent's care; and/or
- Prohibiting overnight stays.

If parents cannot agree on a schedule, the court will create one. The court's decision will be based on a number of things, including:

- The age of the child, and if the child is in school;
- How much each parent has been involved in caring for the child in the past;
- How close the parents live to each other;
- Any special medical or developmental needs of the child; and
- Whether there has been domestic violence or sexual assault in the home.

A contact schedule may be very different for an infant than for a 13-year-old child because needs of children change as they get older. For example, it may be better for very young children to have shorter visits that happen more often with the parent they do not live with the majority of the time. For older children, it may be better to have fewer visits that last longer, usually overnight. This would result in fewer transitions for the older children throughout the week.

Some parents work out a contact schedule where they spend equal time with the child. Usually, this works best when parents live close to each other and have a good co-parenting relationship.

Parents should include holidays, birthdays, and vacations in the contact schedule. This may include: summer and other school vacations, Mother's Day, Father's

Day, Fourth of July, Easter, Thanksgiving, Christmas Eve and Christmas Day, Hanukkah, Ramadan, Kwanzaa, and other important holidays.

### **When a Guardian ad Litem (GAL) may be appointed**

When parents have **very** differing views on what is best for the child, the court may appoint a guardian ad litem (GAL). The GAL is a neutral person who does an investigation and makes recommendations to the court about what is in the child's best interest. The GAL does not represent any parent, but will spend time talking with each parent and the child.

The GAL's recommendations may be made in a written report or in testimony at a court hearing, or both.

In divorce or PR&R cases, parents are usually responsible for paying the GAL. The cost of the GAL's services may be split between the parents or paid by one parent. The total cost depends on the facts of the case, how much work the GAL is required to do, and how much money the GAL charges.

More information about GALs may be found on the Maine Judicial Branch website at [www.courts.maine.gov](http://www.courts.maine.gov).

### **Co-parent education programs**

The court may order parents to attend a co-parent education class in a PR&R or a divorce case. Co-parent education programs help to teach parents how to reduce stress and other painful emotions that their child may be feeling during a separation and may help parents cooperate with each other during this difficult time.

Many classes are offered on the weekend or in the evening. The classes help parents understand:

- Children's needs as the family changes;
- How divorce or separation make children feel; and
- Common ways children react to the break-up of the families.

Parents will learn:

- How to talk with children about divorce, separation, and other changes;
- Ways to deal with disagreements without involving the children;

- How to help children get used to different households; and
- How to co-parent successfully.

The Maine Judicial Branch website at [www.courts.maine.gov](http://www.courts.maine.gov) has a list of organizations that offer 4-hour, in-person co-parent education programs at locations throughout Maine. The court and the clerk's office also have information on programs in your area.

## **Child support**

Every PR&R order — and every divorce with children order — will have a child support order included. Under Maine law, parents have a duty to financially support their children, to the extent they are able. When parents separate, it usually means that one parent will pay another parent money to support the everyday needs of the child.

### **Steps to calculate child support**

**Step 1: Each parent must complete an individual *Child Support Affidavit (FM-050)*.**

This form asks for information about a parent's income and certain expenses. After finishing the *Affidavit*, sign it in front of a Notary Public, attorney, or court clerk, and submit it to the court before the case management conference. See Part 1, step 5.

Give a copy of your completed *Affidavit* to the other parent.

The *Affidavit* is confidential in court files and may not be accessed by the public.

**Step 2: Parents complete the *Child Support Worksheet with information from the Child Support Table (FM-084)*.**

After each parent has given the other income information in the *Child Support Affidavits*, each parent's income is added together on a *Child Support Worksheet (FM-040-S)*. The *Worksheet* has instructions on how to fill it out.

The *Worksheet* requires one parent to be the "primary care provider" and one parent to be the "non-primary care provider." The primary care provider is the parent who the child lives with the majority of the time.

The *Worksheet* gives credit to each parent for payment of child care and medical expenses for the child.

The *Worksheet* gives credit to the non-primary care provider for support paid for other children or to a former spouse, and credit for any other children in the parent's home.

If parents are providing "substantially equal care," a *Supplemental Worksheet (FM-040-SA)* must also be completed. "Substantially equal care" means that each parent provides about the same amount of care. For example:

- The child spends about the same amount of time with each parent;
- Each parent helps with the education needs of the child;
- Child care is provided by each parent when the child is not in school;
- The medical, dental, and mental health needs are addressed by each parent.

The court uses the information from the parents *Child Support Worksheets* and uses an official Child Support Table to help determine how much child support will be paid. Even though the court must calculate the standard child support amount to be paid based on the table, the court may order a different amount. The court will only do this if there is a good reason to order a different amount.

If either one of the parents has not filled out the *Child Support Worksheet* before the case management conference, the court may fill one out at that time. Be sure to bring information about your income and expenses to the case management conference, including:

- Your most recent W-2;
- Your two most recent pay stubs or other proof of income; and
- Proof of the amount you paid for child care and health insurance for the child.

### **Changing a child support order**

Child support can be changed by filing a motion to modify. See Part 5 for information on that process.

### **Enforcing a child support order**

#### **Motion to enforce or motion for contempt**

Once a child support order is in place, if payments are not made, a motion can be filed with the court asking that the parent pay. See Part 5 for more information

on these types of motions.

### **Immediate income withholding**

If the child support order indicates that it is subject to "immediate income withholding," the money can be automatically taken out of the paycheck of the parent who is paying.

The Department of Health and Human Services Division of Support Enforcement and Recovery (DSER) can help set up an automatic withdrawal so the money is taken out of the paying parent's paycheck immediately or as soon as possible. DSER can also help parents keep track of how much has been paid in child support.

### **Support enforcement and recovery services**

DSER also offers services to help get past child support that is owed. You do not need to have any other involvement with DHHS to apply for DSER services.

DSER may be able to help a parent seeking to enforce a child support order to:

- Collect past child support that has not been paid;
- Penalize a parent who has not paid child support. This can include:
  - Putting liens on property;
  - Taking away licenses or passports;
  - Collecting the money directly from bank accounts or lottery winnings;  
or
  - Reporting the child support debt to credit bureaus;
- Establish who the father of the child is; and
- Collect money from another parent of the child.

**Please note: the parent ordered to pay child support can also contact DSER to set up payment services.**

### **TANF recipients**

If a parent gets Temporary Assistance for Needy Families (TANF) benefits or other income-based benefits, that parent will receive child support services from DSER without asking for services.

**More information on DSER**, including contact information, may be found at the DSER Guide to Services on the Department of Health and Human Services' Office of Family Independence website:

[maine.gov/dhhs/ofl/dser/service-guide.html](http://maine.gov/dhhs/ofl/dser/service-guide.html).

You may also call the DSER Voice Response System at (800) 371-7179 or (207) 624-7830, or call (207) 624-4100 to speak to a representative.

### **Parents who have not received cash assistance from TANF**

If you have never received public assistance for the children involved in your case (TANF assistance), you will be charged a small fee of \$25 per year for assistance.

### **Tax issues involving children**

A PR&R order and a divorce with children order will include a decision on which parent may claim tax benefits for the child. If the parents cannot agree on this issue, the court will decide. In most cases, the parent with primary residence claims the tax benefits for the child, but parents can agree on a different arrangement. For example, parents may agree:

- That the parent who will gain a larger financial benefit will claim the child;
- To alternate years claiming the child as a dependent; or
- If they have more than one child, to each claim a certain child.

Both parents are not allowed to claim the same child as a dependent in the same year.

More information on child-related tax credits can be found on the Child Related Tax Credits: Who is a "Qualifying Child?" page of the Pine Tree Legal Assistance website at [ptla.org](http://ptla.org).

### **Health insurance and uninsured health expenses**

The court's order will require that at least one parent get and keep health insurance for the child, if it is available at reasonable cost.

When medical expenses for the child are not fully covered by health insurance, the court may order the parent who receives child support to pay for the first



\$250 of expenses. If the uninsured medical expenses are more than \$250, the court will decide how to split the remaining cost.

## **PART 4. DIVORCE**

Divorce is the legal process of ending a marriage. Divorce can be a very difficult and emotional process, especially when children are involved. Please read this part of the guide to help understand what issues may come up in a divorce case, including:

- Deciding how property will be divided. This includes real estate and personal items;
- How debt should be divided, as well as how any money in bank accounts or other assets will be divided;
- If one person will receive money from the other as spousal support (alimony); and
- If there are minor children, decisions about where children will live, what contact each parent will have with the children, and how the children's needs will be paid for (child support).

### **Where and when a case can be heard**

In order to get a divorce in Maine, you must show that the state has the authority to hear and decide the case (jurisdiction). A couple can get a divorce in Maine if the couple is married and one individual in the relationship:

- Has lived in Maine for six months or longer;
- Is a Maine resident and the couple was married in Maine;
- Is a Maine resident and were living in Maine when the cause of divorce arose; or
- A spouse who is a Maine resident.

Maine law requires a minimum 60-day waiting period between the filing of all necessary divorce paperwork and the final hearing. Your case may take longer than 60 days, especially if you and your spouse do not agree on all issues.

## **Divorce laws and rules**

19-A M.R.S. §§ 901-908, the Maine Rules of Civil Procedure, and the Maine Rules of Evidence govern divorce cases.

## **Decisions about children**

**Note: please skip this section if your case does not include minor children.**

Every divorce with children order must have:

- How decisions about the child will be made;
- Where the child will live;
- What kind of contact the child will have with each parent;
- What amount of child support will be paid and by which parent;
- How the child's medical and dental needs will be paid for;
- How child care will be paid for; and
- Which parent will be allowed to claim the child as a dependent when filing taxes.

If the parents cannot agree on any or all of these issues, the court will have to decide for them.

**For more information see Part 3: Decisions about Children on issues relating to parental rights and responsibilities. Part 3 applies to both divorce cases with minor children and PR&R cases.**

## **Dividing assets and debts**

If a married couple has made the decision to get divorced, the couple must divide the assets (property) and debts that they acquired during the marriage. Couples should first try to reach an agreement about these issues on their own. If they are unable to come to an agreement, the court will decide who gets what property and how the debts will be divided. Below are frequently asked questions about property division.

### **What property does the court have the authority to divide?**

The court can divide a couple's "marital property." This means the court can divide any property that either party received during the marriage. Marital property may include:

- The family home;
- Other real estate;
- Bank accounts;
- Investment accounts;
- Vehicles;
- Personal items, including pets; and
- Most pension plans and retirement accounts.

In addition, any debts the couple acquired after the date of marriage and before the date of divorce must be divided or assigned to one party or the other.

### **Is there property that cannot be divided?**

Yes. The court will not divide property that is non-marital, but it will have to decide whether the property is marital or non-marital. Non-marital property may include property either party:

- Acquired before the marriage;
- Inherited during the marriage;
- Received as a gift during the marriage; or
- Received after an official decree of judicial separation was granted by the court.

A divorcing couple can also agree to treat certain property that would otherwise be considered marital property as non-marital property.

### **How is marital property divided?**

Ideally, marital property is divided by agreement between the divorcing couple. If there is not an agreement when the couple first comes to court, they will have a chance to reach an agreement through mediation. Mediation is an informal meeting where the plaintiff and the defendant work with a trained professional, called a mediator, to see if they can come to a resolution. The mediator does not take sides or decide who is right.

Before mediation, each party must file a *Financial Statement (FM-043)* and necessary financial documents. If all of the divorce issues are not resolved at mediation, the court will divide assets and debts at the final hearing. The court will use evidence presented by both parties about the property.

If there are no financial issues, the parties can file a *Certificate in Lieu of Financial Statement (FM-042)*.

### **What does the court consider when deciding how to divide marital property?**

The court considers many factors when deciding how to divide marital property. This includes how much each spouse has contributed to the marriage. Contributions can include being a stay-at-home parent and homemaker in addition to financial contributions.

The court will divide all property "equitably," which means fairly. Equitable division of marital property does not mean that the property will be divided equally.

### **Can I ask a court to change how property was divided at a later time?**

No. Although some other portions of a divorce judgment may be modified (changed) at a later time, the division of property cannot. See Part 5 for more information.

### **Spousal support (alimony)**

Spousal support is money the court orders one spouse to pay to the other spouse. This money can be on a temporary basis or ongoing. Spousal support used to be called "alimony."

The court often will order spousal support when one spouse makes a lot more money than the other spouse. The type, amount, and length of time for spousal support depends upon many factors. A complete list of the factors can be found in 19-A M.R.S. § 951-A(5).

### **Types of spousal support**

Maine law provides for five types of spousal support in a divorce case:

#### **1. Interim support**

Interim support is money awarded to a spouse while the divorce case is pending.

#### **2. General support**

General support is usually awarded to a spouse who has much less income potential than the other spouse to allow that spouse to maintain a reasonable standard of living. In most cases, courts will award general spousal support only when the marriage lasted longer than ten years.

### 3. Transitional support

Transitional support is awarded to a spouse on a short-term basis to assist with the changes that happen after a divorce. The purpose of this money may be to help one spouse get back to work or find somewhere new to live.

### 4. Reimbursement support

In rare cases, reimbursement support may be awarded:

- If one spouse did something with marital property that is considered misconduct; or
- If one spouse helped the other with money for education or training for their job during the marriage.

### 5. Nominal support

If changes to spousal support may need to be made at a later time, a small amount of support, or nominal support, will be ordered. This small amount of support may be necessary because if a divorce order has \$0 for spousal support, the court may not change it at a later time. See Part 5 for more information.

### Changes to spousal support

For all divorce judgments issued after October 1, 2013 that include a spousal support amount, a court may change the spousal support amount at a later time. (See 19-A M.R.S. § 951-A(4); Part 5.) If you were divorced before that date, you may or may not be able to have the spousal support order changed and should talk to a lawyer.

If the court did not award any spousal support in the original divorce judgment, however, you cannot come back to the court and ask for it at a later time.

## **PART 5. POST-JUDGMENT MOTIONS: CHANGING OR ENFORCING A COURT ORDER**

After a final order has been entered in a divorce case or PR&R case, there may be a need to change, or modify, the order. If any of the parties to the case are not doing what the order states they have to do, there may also be a need for the court to enforce the order. These requests are referred to as "post-judgment motions" in

family matters cases. See the Maine Rules of Civil Procedure for more information.

### **Motion to modify**

Maine law requires that there be a "substantial change in circumstances" in order to change or modify an order for PR&R or divorce.

Many things could result in a change in a family's circumstances. For example:

- One parent might lose a job or get a better job;
- One parent might need to move away and contact with the child may need to change; or
- The child's needs may change.

If the parties agree on the changes to the court order, the court will likely agree as well. The court will still consider whether the changes are in the best interest of the child. For example, if the parties agree to change an order so that child support is no longer paid, the parties will have to explain to the court why that is a good thing for the child.

If the parties cannot agree on the changes to the court order, the court may ask that the parties go to mediation. If mediation is not successful or is not ordered, the court will hold a hearing and decide whether to grant the motion to modify based on the specific facts of the case.

**Reminder: Although other portions of a divorce judgment may be modified at a later time, the division of property cannot.**

The following forms are needed to file a motion to modify:

- *Family and Probate Matter Summary Sheet (FM-002)*;
- *Social Security Number Confidential Disclosure Form (CV-CR-FM-PC-200)*;
- *Motion to Modify (FM-062)*; and
- *Child Support Affidavit (FM-050)* (if applicable).

## Modifying a child support order

A request to change a child support order may be modified if:

- One parent's income has changed so much that it would change the amount of child support by at least 15%. The 15% change in child support could be the result of the parent earning more money or less money; or
- It has been at least three years since the current child support order was issued.

It does not cost anything to file paperwork to modify child support. If there are changes other than child support that the court is being asked to look at, there is a filing fee.

## Motion to enforce

A party may file a motion to enforce if the other party is not following the court's order. The court may refer the parties to mediation to try and resolve the issue, or it may hold a hearing.

The following forms are needed to file a Motion to Enforce:

- *Family and Probate Matter Summary Sheet (FM-002)*;
- *Social Security Number Confidential Disclosure Form (CV-CR-FM-PC-200)*;
- *Motion to Enforce (FM-070)*;
- *Child Support Affidavit (FM-050)* (if applicable); and
- *Expedited Motion to Enforce Visitation for Military Members (FM-214)* (if applicable); and
- *Notice of Hearing (CV-FM-103)* (Please contact the clerk's office to obtain the court location, hearing date, and time that are required on this form to be served with *FM-214*).

## Motion for contempt

When one party has not followed the court order, that person may be found in contempt of court if a motion for contempt is filed. If a person is found in contempt, there may be serious consequences (sanctions). In order to prove that someone is in contempt, the court must find by "clear and convincing" evidence that the other party:

- Is **not** following the court's order; and
- **Has the ability** to do so.

A motion for contempt will be scheduled for a hearing in front of a judge. If, after the hearing, the court finds contempt, it may use different sanctions, up to and including jail time, to convince the other party to follow the court order.

The following forms are needed to file a motion for contempt:

- *Family and Probate Matter Summary Sheet (FM-002)*;
- *Social Security Number Confidential Disclosure Form (CV-CR-FM-PC-200)*; and
- *Motion for Contempt, Rule 66 (FM-068)*.

Please note: Motions for contempt have a different process than other post-judgment motions and can be difficult to prove because they generally require more evidence. Carefully follow the instructions in the *Motion for Contempt: What to do with these court forms (FM-090)* instruction sheet available on the Maine Judicial Branch website or from any clerk's office

### **Registration of a foreign order**

If a divorce order was issued in another state, or another state issued a custody order regarding children, a party can "register" that order in Maine. Maine courts may be able to change or enforce another state's order after you register it.

The following forms are needed to register a foreign order:

- One plain copy and one **certified** copy of the order from another state;
- *Affidavit and Request for Registration of a Foreign Order (FM-PA-058)*. See also: *Foreign Judgments: What to do with these court forms (FM-093)*; and
- *Family and Probate Matter Summary Sheet (FM-002)*;

It does not cost anything to register a foreign judgment.



## SELECTED RESOURCES

### Maine statutes and court rules

#### Maine Revised Statutes

[mainelegislature.org](http://mainelegislature.org)

Title 19-A: Domestic Relations

#### Court Rules

[www.courts.maine.gov](http://www.courts.maine.gov)

Maine Rules of Civil Procedure, Maine Rules of Evidence, Maine Rules of Appellate Procedure

### Getting legal help

#### Maine State Bar Association Lawyer Referral Service

[www.mainebar.org/law](http://www.mainebar.org/law) | (800) 860-1460

\$25 administrative fee to help individuals find a private attorney; includes a 30-minute consultation

#### Pine Tree Legal Assistance

[ptla.org](http://ptla.org)

Online legal guides on divorce and many other topics; contact information for local offices

#### Legal Services for the Elderly

[www.mainelse.org](http://www.mainelse.org) | (800) 750-5353

Information for people over age 60.

#### Immigrant Legal Advocacy Project

[www.ilapmaine.org/](http://www.ilapmaine.org/) | (800) 497-8505

#### Volunteer Lawyers Project Walk-In Family Law Clinics

[vlp.org/access-justice-today](http://vlp.org/access-justice-today)

Courthouse Assistance Project (CHAP) schedule of walk-in clinics

## **Domestic violence/sexual assault prevention organizations**

**Maine Coalition to End Domestic Violence**

[www.mcedv.org](http://www.mcedv.org) | (866) 83-4HELP

**Maine Coalition Against Sexual Assault**

[www.mecasa.org/](http://www.mecasa.org/) | (800) 871-7741 (text or call)

## **Tribal domestic violence/sexual assault resources**

**Wabanaki Women's Coalition**

[www.wabanakiwomenscoalition.org](http://www.wabanakiwomenscoalition.org) | (844) 7NATIVE or (207) 763-3478

## **Domestic & Sexual Violence Advocacy Centers :**

**Aroostook Band of Micmacs**

(207) 551-3639

**Houlton Band of Maliseets**

(207) 214-1917

**Passamaquoddy Peaceful Relations**

(877) 853-2613

**Penobscot Indian Nation**

(207) 631-4886

## **Other resources**

**Department of Health and Human Services Support Enforcement and Recovery Services (DSER)**

[maine.gov/dhhs/ofi/dser](http://maine.gov/dhhs/ofi/dser) | (207) 624-4100

DSER Voice Response System: (800) 371-7179 or (207) 624-7830

**Maine 211**

[211maine.org](http://211maine.org) | Dial: 211

Text your zip code: 898-211

Email: [info@211maine.org](mailto:info@211maine.org)

## DISABILITY ACCOMMODATION



The Maine Judicial Branch makes every reasonable effort to provide accommodations and auxiliary aids and services to people with disabilities at no cost to them so that they may access the court and its services. You may talk to your lawyer about arranging for accommodations, or contact the Court Access Coordinator at (207) 822-0718, TTY: Maine Relay 711, or [accessibility@courts.maine.gov](mailto:accessibility@courts.maine.gov) with requests. You may also contact the clerk's office in the court where your case is being heard. A link to the Disability Accommodation Request Form is available on the Judicial Branch website.

## LANGUAGE ACCESS



The Maine Judicial Branch provides interpreters to people who have Limited English Proficiency (LEP) or who are deaf or hard of hearing at no cost to them so that they may access the court and its services. The Judicial Branch must also provide an ASL interpreter to court observers who are deaf or hard of hearing upon request. Please talk to your lawyer about arranging for an interpreter, or contact the Communications Access Specialist directly at (207) 822-0703, TTY: Maine Relay 711, or [interpreters@courts.maine.gov](mailto:interpreters@courts.maine.gov) with requests. You may also contact the clerk's office where your case is being heard. More information on interpreter assistance can be found on the Judicial Branch website.

## NOTES

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## **MORE FAMILY MATTERS PUBLICATIONS FROM THE MAINE JUDICIAL BRANCH**

The Maine Judicial Branch provides many publications that contain helpful information about the court process and available resources.

### **A Guide to Protection from Abuse & Harassment Cases**

This guide explains how to ask the court for a protection order. The guide also explains the court process for a protection from abuse and protection from harassment case.

### **A Guide for Families in Juvenile Cases**

This guide is for parents, guardians, and juveniles to learn more about the juvenile court process and possible outcomes of juvenile cases. The guide also includes important information for parents and guardians, frequently asked questions, and explains how juvenile court records are stored.

### **A Guide for Families in Child Protection Cases**

This guide explains the court process and what to expect when you go to court for a child protection case.

### **Scheduling Planner for Families in Child Protection Cases**

This resource includes a calendar to help keep track of dates and important information in a child protection case. The scheduling planner also includes information about the court process for a child protection case.

Copies of these guides can be found on the Maine Judicial Branch website at [www.courts.maine.gov/help/guides](http://www.courts.maine.gov/help/guides)

Maine Judicial Branch  
Administrative Office of the Courts  
1 Court Street, Suite 301, Augusta, Maine 04330  
[www.courts.maine.gov](http://www.courts.maine.gov)