

Divorce & Family Law Trials In Lane County Circuit Court

How to Prepare and What to Expect at a Trial



IMPORTANT!

The information in this booklet is not legal advice and is not intended to substitute for consultation with an attorney. This material is intended for educational purposes only. The law is always changing. Family law hearings can be complicated and much is at stake. Before representing yourself, you should make every effort to get legal help. If you have not tried to obtain the help of an attorney, please do so. **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 Lane County Legal Aid and Advocacy Center at 541-485-1017, 376 E. 11th Avenue, Eugene, OR 97401.

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Preparing for Your Trial

Why Your Case was Set for Trial

In domestic relations cases, first the petitioner files a petition. If the respondent files a response, it means that the case is contested. Unless both parties can come to an agreement on their own or through the assistance of a mediator, then the case will go to trial. The trial may be set even as the parties are working on an agreement. At the trial, a judge will hear both parties and then decide the case.

Getting a Trial Date

When a response is filed, the Circuit Court Calendar Unit sends a letter to both parties letting them know that it is time to set the trial. The letter has the Calendar Unit's phone number and directs the parties to contact the Calendar Clerk within 14 days of the notice with a trial date that has been agreed upon by both parties. The Calendar Clerk will ask if both parties agree on a trial date before they set the case for trial. If only one of the parties contacts the court with his/her preferred trial date, then the Calendar Clerk will set the trial on that date. If neither party contacts the Calendar Unit, then the Calendar Clerk will set the trial for a date most convenient for the court.

Once a trial date is scheduled by a Calendar Clerk, a registered letter with a Notice of Scheduled Court Proceeding will be sent to both parties informing them of the trial date. The Notice will tell you to check in at the Information Booth on the second floor of the courthouse. The Information Booth will provide you with the courtroom where the trial is scheduled. You will receive only one notice of the trial date. You may call the Calendar Unit at 541-682-6521 to check on your trial date or to ask questions about your trial date. The Calendar Unit cannot postpone or reschedule your trial date over the phone. The Calendar Clerk cannot give you legal advice.

Can You Reschedule a Trial Date?

If you do not appear at the trial, the other party may win. If there is a serious reason why you cannot proceed to trial on the scheduled date, you will be required to file a formal request with the court called a Motion and Order to Postpone. The Motion and Order will be forwarded to the Presiding Judge for review. If the Presiding Judge approves the request, a new trial date will be set by the Calendar Unit.

What is a Trial?

A trial is a fact finding process before a judge. There is no jury in a divorce or family law trial. The reason a trial is held is because you and the other party cannot agree on important issues. At the trial, the judge needs both parties to provide information so that he/she can determine child custody, parenting time, child and spousal support (alimony), responsibility for marital debt and marital property division.

Trials are open to the public. Consider watching a trial to familiarize yourself with the trial process. Call the court clerk at 541-682-6521 just before 5:00 p.m. to find out if a domestic relations trial is scheduled for the next day.

Preparing Your Case for Your Trial

At the trial, you will need to “prove your case” to the judge. What does “prove your case” mean? “Your case” is what you are requesting from the court - for example, child support and/or supervised parenting time. In order to prove your case, you will need to supply evidence, in the form of witnesses, documents, etc, that support your request. The evidence can help prove your version of events so you may get what you request, whether it is child support, spousal support, supervised parenting time, etc.

First you should think about what you will need to prove your case. You can use witnesses and/or other evidence to prove your case.

Witnesses

Witnesses are people with first-hand knowledge about important things you need to prove in your case. For example, if custody of your child/ren is contested, you must prove it is in the best interests of the child/ren to be with you. People who have seen you interacting with your child/ren and how well you take care of your child/ren can help the judge make this decision. Is there a witness to the other party’s abuse of your child/ren? Make sure that a witness is necessary to your case before you ask them to appear at trial. Talk to them first to find out what they know. Contact them well in advance of the trial so that they can make arrangements to be available on that day.

The background of a witness may affect the importance the judge gives to his/her testimony. Witnesses may have to disclose prior convictions and drug or alcohol problems to the judge. People who are objective, such as your child’s teachers or counselors, are more believable.

Questions for Witnesses

When a witness testifies at a trial, this testimony is done in a ‘question and answer’-style. You ask the witness a question, and then they answer it. You ask another question, and they will answer it, and so on. You will need to develop a list of questions to ask witnesses. You can ask witnesses questions about events they have observed directly. If a witness is considered a professional in a particular field, like a teacher or doctor, you may ask their professional opinion on a particular matter in their field of expertise.

You may not ask a witness to speculate about an event that they were not present and a witness cannot talk about what other people have told them or what they have heard said by others. This kind of testimony is known as ‘hearsay’ and is not allowed in court. If a witness tries to give hearsay testimony, the judge might tell them that their testimony contains hearsay and the judge will disregard that portion of the testimony that the judge considers to be hearsay.



Do You or Your Witnesses Have Special Needs?

Do you or any of your witnesses need an interpreter? The court has a list of certified interpreters available to help you in court. Do you or any of your witnesses have difficulty hearing? The courts have electronic devices to help you hear what is happening. Do you or any of your witnesses have other special needs based on physical limitations? If so, contact the Circuit Court clerk's office, 541-682-6521.

Call immediately, as soon as you know an interpreter or specialized equipment is needed so that arrangements can be made in time for your trial.

How Do You Get the Witnesses You Need to Come to Court?

Unless a witness is under subpoena, he/she has no obligation to show up for court. A subpoena is an order from the court to appear. Frequently, a witness needs a subpoena to show his/her employer why they need to be absent from work. You may want the testimony of a witness who is essential for your case, but is unwilling to appear at trial. Forms for a subpoena are available at Court Information on the 2nd floor of the courthouse. Unless the witness waives his/her right to payment, you must pay each witness a fee of \$30.00/day plus mileage at the rate of \$.25/mile.

What If Your Witness Cannot Come to Court?

The judge will make decisions in the case by listening to live witnesses who testify under oath. The judge cannot consider 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. If the other party does not agree to allow your witness to testify by telephone, then you must file a formal motion with the Circuit Court and serve a copy on the other party at least 30 days before the trial. You must provide a proposed order for the judge to sign. If your request is granted, make sure that you have a phone card at the trial, with plenty of time on it, to pay the cost of the call. The court will not pay for long distance phone calls.

Should Your Children Come to Court?

In most cases, children are not needed as witnesses at trial. Consider carefully before requiring children to be witnesses against the other parent. The experience can be very traumatic. **You will not be able to watch your child/ren during the trial, and they may not be allowed to remain in the courtroom.** Since they can be a distraction, 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. Witnesses are not allowed in the courtroom unless they are testifying. The rest of the time they must stay outside the courtroom.



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 child/ren, 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 on showing these documents to the judge, you must provide a copy to the other party before trial. If you do not, it will slow the trial down, and the judge may decide not to consider them at all

What Do You Need to Prove at the Trial?

For Child Custody:

The custody decision is based on the best interests of the child/ren. If the other side is contesting your request for custody, have witnesses available who can testify about the following information: (See ORS 107.137)

- The emotional ties between the child/ren and family members
- The party's interest or attitude towards the child/ren
- The desirability of continuing an existing relationship
- Whether one parent has abused the other
- Conduct and lifestyle of the parties
- Moral fitness of each party
- The emotional or physical fitness of a party to care for a child
- The home environment of each party
- The age and sex of each child
- The health of each child
- The preference of each child
- Whether children would be separated from each other
- The presence of extended family members in the area
- Employment demands and work hours of each party
- Whether one party has interfered with the parenting time of the other party

For Supervised Parenting Time:

If you want to encourage the other parent's relationship with your child/ren, but you have serious concerns about the child/ren's safety if the child/ren were alone with the other parent, you can ask the judge to order supervised parenting time. A guide to help you create your own parenting plan is available at the Family Court Assistance Office or on the Oregon Judicial Department website at: <http://www.courts.oregon.gov/OJD/OSCA/cpsd/courtimprovement/familylaw/Pages/parentingplan.aspx>.

Find out ahead of time if someone you trust is willing to supervise the other parent and your child/ren 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. The following are some factors that may support your request for supervised parenting time:

- The other parent has harmed or threatened harm to the child/ren.
- The other parent has threatened to keep or hide the child/ren.
- 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 child/ren.
- The other parent leaves young children without supervision.
- The child is afraid of the other parent.
- The other parent has drug/alcohol problems that present a danger to the safety of the child/ren.



If the judge decides that there are some valid concerns, but not enough to order supervised parenting time, you can request the judge to impose some conditions to ensure the child/ren's safety, 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 child/ren he/she had with you, the judge might consider prohibiting contact between the child/ren and that parent.

For Child Support:

The Oregon Administrative rules governing child support calculations are available on the internet at: <http://www.oregonchildsupport.gov/laws/pages/index.aspx>. You can get a copy of the Child Support Guidelines from the Division of Child Support, 165 E. 7th Avenue, Suite 300, Eugene, Oregon and from the Lane County Law Library.

The Judge will consider the following basic issues, as well as others listed in the Oregon Administrative

Rules:

- All of the income (including potential income) of both parties
- Whether a party receives or pays spousal support (alimony)
- The availability and cost of medical insurance for the child/ren
- Whether the parties have minor children with someone else
- Whether the child/ren receive Veteran's 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 child/ren have with the non-custodial parent
- The cost of day care for the joint child/ren
- Continuing health costs for the parties and their joint child/ren

Once you have the necessary financial information, you may access the child support calculators on the internet at <http://oregonchildsupport.gov/calculator>. The child support guidelines also allow for 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. The rebuttal factors are listed in ORS 25.280 and the Oregon Administrative Rules Chapter 137, Division 50. You should look at both. If you include a rebuttal, you must be prepared to prove it is true. You should have your Uniform Support Declaration ready to present to the judge at your trial. This form is available on-line at the Oregon Judicial Department website at http://courts.oregon.gov/OJD/docs.programs/utcr/Form_8.010.5.pdf and at the Family Court Assistance Office.

For Spousal Support: ("alimony")

There are three types of spousal support:

1. Transitional Support

Its purpose is to allow the person receiving support to obtain the education and training needed to advance in the job market. It is temporary support. The judge will consider evidence on the following issues:

- duration of the marriage

- a party's training and employment skills
- a party's work experience
- the financial needs and resources of each party
- the tax consequences to each party
- a party's custodial and child support responsibilities
- any other factor the court deems just and equitable

2. Compensatory Support

Its purpose is to compensate 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:

- duration of the marriage
- amount, duration and nature of the contribution
- the relative earning capacity of the parties
- the extent to which the marital estate has already benefitted from the contribution
- the tax consequences to each party
- any other factor the court deems just and equitable

3. Maintenance Support

Its purpose is to maintain a person financially for a definite or an indefinite period of time at the same standard of living to which the person was accustomed during the marriage. The court may consider the following factors:

- duration of the marriage
- the age of the parties
- the health of the parties (physical, mental, emotional)
- the standard of living established during the marriage
- the relative income and earning capacity of the parties
- a party's work experience
- the financial needs and resources of each party

- the tax consequences to each party
- a party's custodial and child support responsibilities
- any other factors the court deems just and equitable

Be prepared to provide evidence on each of the issues listed under the type of spousal support you are requesting.

Property and Debts (in a Dissolution Case)

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 event divide property owned by one party before the marriage or relationship began, although it is usually given to the party that originally owned it.

UTCRC 8.010 requires that you prepare and file a statement listing all of the martial assets and their fair market value, your debts and liabilities and your suggestions for dividing these assets, debts, and liabilities.

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 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:

- 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.

Your Opening Statement

To start off the trial, the judge may ask each side for their “opening statement.” An opening statement is a summary of your requests to the court and gives a brief overview of the witnesses and evidence you will be presenting to the court.

Your Closing Argument

After all the testimony has been heard, the judge may not need to hear anything else. You may be asked 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 have a chance to present their view of the case.

Can You Contact the Judge about Your Case?

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





The Day of Trial

Location of the Courthouse

The Lane County Circuit Court is located at the corner of 8th and Oak in downtown Eugene. Its address is 125 East 8th Avenue, Eugene, OR 97401. There is no free parking for court users. There is a choice of either metered parking on the streets around the courthouse or parking lots located in the blocks around the courthouse. Most parking lots costs between \$3.50 to \$6.00 per day for parking. The metered parking on the street costs \$1.00 per hour.

Where to Check-in for the Trial

Look at your “Notice of Scheduled Court Proceeding.” It will tell you the courtroom, day, and time of your trial. On the day of your trial, come to the courthouse and check-in at the Court Information Booth. Court Information, located on the second floor, also has the schedule of all cases for the day. At the entrance to the courthouse is an airport-style metal detector. You will be required to pass through this metal detector to enter. Knives, weapons and pepper spray are not allowed. Your belongings will be sent through an x-ray machine and may be searched by court security.

What if Your Case Settles Before Trial Call?

If you and the other party resolve your case before it is scheduled to go to trial, please contact the Family Court Assistance Office as soon as possible. If you and the other party have settled your case the morning of Trial Call then you need to attend Trial Call. When the Presiding Judge calls your case, let him/her know that you have settled your case. The Presiding Judge will refer you and the other party to the Family Court Assistance Office. The Office staff will then assist you in preparing a judgment. An appointment may be necessary in order to complete the judgment.

Trial Call

The judge will call your case. Stand and let him/her know you are present, then wait for further instructions from the judge. If you and the other party are ready for trial, the Presiding Judge will refer your case to a different judge in a different courtroom for trial. At the end of Trial Call, the judge will assign each case to an available judge. Listen carefully to hear what judge and courtroom number your case has been assigned to. The judge will then hand the case file to a member of the judge’s staff. Follow that person outside of Courtroom 307. They will then tell you what courtroom to go to and who needs to pay the trial fees. Please see the next page for more information on trial fees.

If for some reason you are unable to hear which judge your case was assigned to, you can go down to the second floor Information Booth and ask them to find out who your case was assigned to.

Paying the Trial Fees

If you are the “moving party” or the one asking for the trial, you will be required to pay a trial fee (unless otherwise ordered by the judge). The judge’s staff member will give the moving party a slip of paper with the case number and trial fee and tell you to go downstairs to the second floor to a civil cashier to pay the fee. The trial fee must be paid before the trial can begin.

The Layout of the Courtroom

The “bench” is where the judge sits. If there is a court reporter, he/she will sit in front of the judge. The judge’s assistant will also sit in front of the judge. There will be at least two tables in front of the bench. These are for the parties and their attorneys, if any. This is where you will sit when your name is called.

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 located next to the bench. The judge will tell you whether you can testify from your seat at the table.

The Trial

How to Act at a Trial

- Be prepared by being on time. Bring all documents or exhibits that you need for your trial. You may use written notes during the trial.
- Wear clean, neat clothing such as you would wear to an important job interview. Avoid casual clothing like jeans, shorts, t-shirts and tank tops.
- No food or drinks are allowed in the courtroom. Do not chew gum or tobacco. Remove hats. Turn off cell phones, pagers, and beepers.
- Stand when the judge enters the courtroom.
- Sit down when the judge or clerk asks you to sit.
- **When you speak to the judge, call him or her, “Your Honor.”**
- Be polite. Do not interrupt anyone during the trial. Stop speaking if the judge interrupts you. Speak only when it is your turn.
- The judge may ask you questions. If you do not understand the question, tell the judge. Do not answer a question unless you fully understand it.
- If you do not know the answer to a question, say so. Do not guess.
- Take your time answering questions and explain your answer if you think it is necessary.

- Be direct and honest with the judge. The judge will not appreciate evasiveness.
- Be truthful on all matters, even if you think the truth might hurt your case. The truth can help you overall.
- Be brief when you can.
- Be sincere. Be courteous to all participants in the trial.
- **Be calm and respectful.** Rely on facts. Do not use the courtroom as a place to have or continue arguments with the other side.
- Witnesses must remain outside the courtroom until they are called in to testify.
- Your witnesses and people in the audience must remain quiet during the trial, except when they are called to testify. You and they should not react verbally to the judge’s decisions or statements by the other party or his/her witnesses.
- Remember, **the judge cannot speak to you about your case, except when your case is being heard in court or the other party is present.**

Who Will be at the Trial?

- The judge and judicial staff.
- A Deputy Sheriff (if you have requested security).
- The other party, his/her witnesses and attorney.
- If the other party’s attorney is present, you are not required to talk to him/her unless you are on the witness stand or the judge tells you to talk to the attorney.
- If the other party or his/her witnesses are making you feel uncomfortable or unsafe, tell the judge or Deputy Sheriff.
- Your witnesses should be there.
- 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 observing court cases.

What Happens at a Trial

Opening Statement

The judge may ask you and the other party to give an “opening statement.” This is a brief summary

describing what you want and why the court should grant it.

Testimony

The Petitioner (or the person who filed the motion) presents his/her case first. Then the Respondent (or the person who is answering the motion) presents his/her case. You should have a written list of everything you need to prove, and how you are going to prove it by witnesses and documents.

If you have a lawyer, he/she will ask you questions after you swear or affirm that you will tell the truth. If you do not have a lawyer, you will be allowed to tell the judge on your own what has happened, and why you should get what you asked for in the Petition or Response. Give as much detail as possible. The judge may ask you some questions. When you have finished testifying, the other side has an opportunity to “cross-examine” (question) you about what you told the judge. Once the other party or their attorney has finished cross-examining you, you have the opportunity to clarify 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 can call your witness/es. They will be sworn in, and then you may begin questioning them. Have questions prepared in advance to ask. Make your questions brief and to the point. 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 about their answers to the other side’s questions. Ask the judge if he/she will allow you to re-question a witness.

When the other side calls its witnesses, you or your attorney will be able to question those witnesses. Ask questions; this is not another opportunity for you to make statements.

Once the respondent finishes his/her presentation, the judge may allow the petitioner to “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.

Physical 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 shown it to the other side before trial. Ask the judge’s assistant 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. You must provide a copy for the other party. The other side may object. The judge will decide whether to consider it.

The other side may also offer exhibits. They should have shown them to you before trial. If you believe the exhibit is irrelevant, misleading or unreliable, tell the judge.

The Judge’s Ruling

After hearing testimony from both parties and their witnesses, 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 may ask one of the parties to prepare an order/judgment. The **forms are available at the Family Court Assistance Office**. Attorneys who provide limited assistance representation can also help you prepare an order/judgment. You may need to schedule an appointment with the Family Court Assistance Office for help in preparing the judgment.

If you wish to appeal the judge's ruling, appeal paperwork must be filed within 30 days of the filing of the judgment with the court. The appeals process is very complicated. **The Family Court Assistance Office cannot help you with appeals**. You will need to find and contact an attorney who can help you with your appeal immediately so that you do not miss the 30 day deadline



Family Law Resources in Lane County

Department of Justice

Division of Child Support (Eugene Branch)541-686-7834

165 E. 7th Avenue, Suite 300
Eugene, OR 97401

Family Court Assistance Office541-682-4302

Lane County Courthouse, Basement level
125 E. 8th Avenue
Eugene, OR 97401

Lane County Circuit Court541-682-4020

Lane County Courthouse
125 E. 8th Avenue
Eugene, OR 97401

Lane County District Attorney's Office

Family Support Division541-682-4517

101 E. Broadway, Suite 304
Eugene, OR 97401

Lane County Law Library541-682-4337

Lane County Public Services Building, Lower Level/Basement
125 E. 8th Avenue
Eugene, OR 97401

Lane County Legal Aid and Advocacy Center541-485-1017

376 E. 11th Avenue
Eugene, OR 97401

Oregon State Bar

Lawyer Referral Services

Modest Means Program

Problem Solvers800-452-7636