

DOMESTIC RELATIONS TRIALS

In the Clackamas County Circuit Court

Two different types of trials are available in the Clackamas County Circuit Court for resolving domestic relations cases. Domestic relations cases include divorce, separation, unmarried parent custody, and modification cases about child custody, parenting time, and child support. The two types of trials are called an Informal Domestic Relations Trial (IDRT) and a Traditional Trial. You will need to choose the type of trial that you think is best for your case.

What is an Informal Domestic Relations Trial (IDRT)?

In an Informal Domestic Relations Trial (IDRT), you and the other person speak directly to the judge about the issues that are disputed, such as child custody and dividing property or debts. A question and answer format is not used. Only the judge asks questions of each person. This happens even if you or the other person has a lawyer. Usually, other witnesses are not allowed to testify. You can, however, ask the court to let an expert witness testify, such as doctor, counselor, or custody evaluator.

The Rules of Evidence do not apply in an IDRT. This means you can tell the judge everything that you think is important. You also can give the judge any documents or papers you want the judge to review. The judge will decide the importance of what you and the other person say and the papers you each give to the judge. In an Informal Domestic Relations Trial, lawyers are only allowed to:

- say what the issues in the case are,
- respond when the judge asks if there are other areas the person wants the court to ask about, and
- make short arguments about the law at the end of the case.

The Informal Domestic Relations Trial is a voluntary process. In other words, you decide whether it is something you want to do. An IDRT will be used only if both people involved in the case agree to it. Both people must complete a form that says what type of trial they choose.

What is a Traditional Trial?

In a Traditional Trial, lawyers or people who represent themselves usually present information to the judge by asking questions of witnesses. Each side gets to ask follow-up questions of the other person and their witnesses. Generally, the judge asks few, if any, questions.

The Rules of Evidence apply. The Rules of Evidence place limits on the things a witness can talk about and the kind of documents that can be given to the judge to read. If you or the other person has a lawyer in a Traditional Trial, the lawyer will make opening statements and closing arguments to the judge and will ask questions of you, the other person, and other witnesses. If you represent yourself, you will be expected to follow the Rules of Evidence and you will be the one to make opening statements and closing arguments and to question witnesses.



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Why would I choose an Informal Domestic Relations Trial?

- 1) Fewer rules apply, so Informal Domestic Relations Trials are more flexible. IDRTs may be easier for people who are representing themselves. The judge is more involved in asking questions and guiding the process. The judge may be able to reduce conflict between the two sides and help them focus on the children or other issues.
 - 2) You can speak directly to the judge about your situation without interruption or objections from the other person or their lawyer. The other person is not allowed to ask you questions.
 - 3) You do not have to worry about formal rules that limit what you can say in court. You can:
 - Speak freely about conversations between you and other people who are not in court.
 - Talk to the judge about what your children have said about custody and parenting time.
 - Tell the judge whatever you think is important before he or she makes a decision about your case.
 - 4) You can give any documents you think are important to the judge.
 - 5) Informal Domestic Relations Trials may be shorter. A lawyer may be able to prepare in a shorter amount of time. Therefore, the cost to have a lawyer represent you may be less. You may have to take less time off from work.
 - 6) The judge usually, but not always, makes a decision the same day as the trial.
 - 7) Your case is relatively simple. You are comfortable explaining your circumstances and the facts to the judge.
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Why would I choose a Traditional Trial?

- 1) Rules and formal procedures are in place to protect each person's rights. The Rules of Evidence apply. You or your lawyer may feel more comfortable with this structure.
- 2) You like the fact that the Rules of Evidence will limit what people can say and the information that can be given to the judge in writing.
- 3) The question and answer format will be more effective in getting out the information about your case. It may be important to be able to ask the other person follow-up questions.
- 4) You may bring any witnesses you think are important to court.
- 5) Generally, written statements from family members, teachers, and friends will not be considered by the judge. People with something to say about your situation or the other person's situation will need to come to court.
- 6) Your case is complicated. You and the other person own a business or have lots of stocks, property, and retirement funds to divide.

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How an Informal Domestic Relations Trial Works:

- 1) When the Informal Domestic Relations Trial begins both people will be asked if:
 - they understand the rules and how the trial works, and
 - they agreed to participate in the IDRT voluntarily.
 - 2) The person that started the case will speak first. He or she swears to tell the truth and may speak about anything he or she wishes.
 - 3) He or she is not questioned by a lawyer. Instead, the judge will ask some questions in order to make a better decision.
 - 4) If the person talking has a lawyer, then that lawyer may ask the judge to ask their client questions on specific topics.
 - 5) This process is repeated for the other person.
 - 6) If there are any experts, the expert's report may be given to the judge. Either person may also ask to have the expert testify and be questioned by the judge or the other person.
 - 7) Each person may submit documents and other evidence that they want to the judge to see. The judge will look at each document and decide whether it is trustworthy and should be considered.
 - 8) Each person may briefly respond to comments made by the other person.
 - 9) Each person or their lawyer may make a short legal argument about how the laws apply to their case.
 - 10) Once all the above steps are complete, the judge states their decision. In some cases, the judge may give the ruling at a later date.
 - 11) Any of the above steps may be modified by the judge in order to make sure the trial is fair for both people.
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How a Traditional Trial works:

- 1) Both people or their lawyers make an opening statement, telling the judge about the case and what result they want and why that result would be fair. The person who started the case goes first.
- 2) The person who started the case then calls all of their witnesses. That person or their lawyer asks the witnesses questions and may give the judge documents or other evidence. The other person or their lawyer then takes a turn asking the witness- es questions. The people in the case will also usually be witnesses.
- 3) The other person then gets a turn to call all of their witnesses and that person or their lawyer asks the witnesses questions and may give the judge documents or other evidence. And then, the person who went first or their lawyer takes a turn asking the witnesses questions.
- 4) The judge may allow the witness to be questioned again if the judge thinks it would help them make a better decision.
- 5) Both people, or their lawyers, make a closing argument, summarizing the evidence (statements of witnesses and documents), explaining how the witnesses support the result they want, and telling the judge what he or she thinks is most important for the judge to consider in making a decision.

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What Both Trials Have in Common:

- 1) You have to decide which type of trial you want to have. Both people must agree to have an Informal Domestic Relations Trial. The case will be scheduled for a traditional trial if both people want a Traditional Trial or if only one person wants a Traditional Trial.
- 2) Before the trial starts there are several documents that each person **must** prepare and give to the judge and the other person:
 - A list of everything you and your spouse own and owe. If possible, it is best to give the judge one list, even if you do not agree on what each item is worth or who should get it.
 - If there are children and child support is an issue or if spousal support is an issue, the Uniform Support Declaration. If the Uniform Support Declaration is not required, you must submit an alternate affidavit. An affidavit is a notarized letter explaining why a Uniform Support Declaration is not applicable in your case.
 - If there are children, a parenting schedule.
- 3) Before the trial starts, each person must give the judge and the other person a copy of all of the documents and other evidence that you will give to the judge to consider. In a traditional trial the judge will decide if the information can be used during the trial.
- 4) The Judge will follow the law and will consider the factors that the law requires in making a decision about your case.
- 5) After the trial is over, the judge will direct one person (or their lawyer if they have one) to draft a final judgment in writing. The final, written judgment must contain all of the decisions the judge made at the end of the trial. The case is not over until the judge receives the final written judgment and signs it.

RESOURCES

For more information about going to court, go to:

www.courts.oregon.gov/programs/family/selfhelp/ and click on “Preparing for Court.”

For information about finding an attorney, go to www.osbar.org and click on the “For The Public” link.



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