



# Divorce and Parental Rights in Maine

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## Before You Start...

Divorce and the sharing of parental rights are serious matters. For most people, this is a difficult, stressful time. In this guide we try to explain and simplify the court process for you. We hope that this will help you feel more confident about dealing with the legal system. You can get through this. Begin here and take one step at a time.

### Should I get a lawyer?

We provide this information for low-income people who cannot afford to hire lawyers. If you can afford the cost, we advise you to get a lawyer. But, if you cannot afford one, here are some guidelines.

You should try to get a lawyer if your divorce is complicated by:

- Property issues, such as pensions or real estate
- Arguments over children
- Domestic violence, or
- Other difficult problems

You may want to try to do it yourself if:

- If you and your **spouse** have agreed on the terms of the divorce,
- you do not feel your spouse is a threat, **and**
- you have little property or debts, which you can divide fairly.

If you think you need a lawyer and cannot afford one, call the Maine Volunteer Lawyers Project (VLP): **1-800-442-4293**. They may be able to refer you to a free lawyer for some or all of your case. They cannot find a free lawyer for everyone who calls.

### Other important tips for using this handbook:

- *If you are not married but have children, you can still use this information.*
- Sometimes lawyers and Judges speak in “legalese.” Legal terms appear here in **bold print**. Turn to the Glossary at page 7 to find a plain English meaning for any **bold print word**.
- Call *Pine Tree Legal Assistance* if you need more help with:
  - Getting food or shelter
  - Paying for medical care
  - Public benefits
  - Housing issues
  - Escaping domestic violence

### PTLA phone numbers:

Augusta	622-4731
Bangor	942-8241
Lewiston	784-1558
Machias	255-8656
Portland	774-8211
Presque Isle	764-4349
	TTY: 711

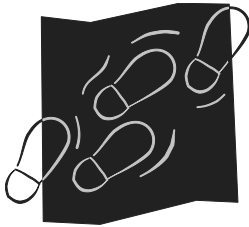




- If you have more questions about how to do your own divorce or need help with filling out the court forms, call the statewide “Helpline” at:

**Volunteer Lawyers Project  
Helpline: 1-800-442-4293**

- **Remember:** Take one step at a time.



## Here’s What to Do...

### Step One: Get Court Forms

Go to your local District Court and ask the **clerk** for a forms packet. Tell the clerk if you are married and if you have **mutual children**. The clerk will give you the right set of court forms. The packet also has a page of instructions telling you what to do with the forms. You can also get the forms online at [www.ptla.org/forms](http://www.ptla.org/forms), except for the **Summons**. You must pay the court clerk \$5.00 for a signed Summons.

Getting a divorce costs money. Here are some of the costs:

<b>Summons</b> form:	\$5
<b>Filing</b> fee:	\$120
<b>Service</b> fee:	\$20-40
<b>Mediation</b> fee:	\$160 (\$80 for each party)

If you have a very low income and cannot pay these costs, you can ask the court to pay them for you. Ask the clerk for an

“Application to Proceed Without Payment of Fees” (fee waiver form) and an “Indigency Affidavit.” Or get these forms online at [www.ptla.org/forms](http://www.ptla.org/forms). Check all of the boxes near the top of the fee waiver form to show that you need all costs waived. On the **affidavit** form, list all of your income and expenses. If you get TANF, SSI or general assistance, the court should waive the fees. (Contact Pine Tree Legal if you are denied.) If your income is higher, the court will look at your income and expenses and decide whether you qualify for the **fee waiver**.



### Step Two: Fill Out the Forms



Next, you need to fill out the forms you got from the court. The information sheet at the front of the forms packet gives you some help. **Read it carefully.**

#### Tips

- If you cannot fill out the forms by yourself, ask for help. Here are some possible resources:
  - ❑ Call the Volunteer Lawyer Project “Helpline” at:

**774-4348** (from the Portland calling area), or

**1-800-442-4293** (from the rest of Maine).

They will tell you when you can get phone help from a lawyer.



- ❑ Ask the court **clerk** if there is Courthouse Assistance Project in your local court and when you can meet with them.
- If you want your address and phone number on court papers to be kept private because you are afraid of the other party, read about what to do at page 12.
- When you **file** any paper with the court, always mail a copy to the other party, or his lawyer, if he has one.
- Make a second copy of all your court papers. Put them in a file and keep the file updated. Take it to court each time you go there. You may also want to keep dated notes about what is going on with your case.



### Step Three: Serve and File the Forms

Go back to the information sheet that came with your court forms packet. **Read it carefully.** It tells you how to **serve** and **file** the forms.

#### More Tips

- If you try certified mail service and the defendant does not sign the green postal card, this means either that she **refused** to sign or that the mail was **undeliverable**.

If the defendant **refused** to sign, you can send the papers by regular mail, then file with the court the green card **and** an **affidavit** stating how you served the papers.

If the green card comes back saying that the mail was **undeliverable**, then you must try one of the other service methods.

- If you think that one of the two mail methods will work, serve copies of your papers before you file the originals with the court.
- If the mail methods don't work because the **defendant** is avoiding **service**, use the Service by Sheriff method. This costs more. If you cannot afford the fee, you can file your papers with the Court first, along with your fee waiver application (see page 2). Explain in your application why you need to use Service by Sheriff. If the court approves your application, the court will pay for the cost of Sheriff Service.
- You may not be able to find the other party. If you have made all reasonable efforts but still cannot find the **defendant**, the court may let you do "Service by Alternative Means." Get the court's instruction sheet at: [http://www.courts.maine.gov/fees\\_forms/forms/#cv](http://www.courts.maine.gov/fees_forms/forms/#cv) Download form CV/FM-201.
- Again, you may ask for a **fee waiver** if you cannot afford the cost. You can get all the forms you need (listed on the instruction sheet) from the Court Clerk, or online at <http://www.ptla.org/all-court-forms>.



### Important Notice to Both Parties

Notify the court in writing right away if your *mailing address or telephone number changes*. The court clerk needs to be able to find you. Otherwise, you may not get court notices, causing you to miss important court dates.

## Step Four: Case Management Conference



About two weeks after you **serve** and **file** the court papers, the court will send you a notice.

The notice tells you that a Case Management Conference has been scheduled. It will give you the date and time of the conference. (In some of the busier courts, you may wait longer for the notice and meeting date.)

Be sure to go to the conference.

If you are the **defendant** and the court has not heard from you or your lawyer, the **clerk** will send you these two forms with the conference notice:

- Entry of Appearance
- Child Support Affidavit

Fill out these two forms. Sign the **affidavit** form in front of a **notary public**. File the original forms with the court clerk before the conference. Send copies to the **plaintiff**. If you have not done this before the day of the conference, bring the completed forms with you.

Read on. The rest of this information applies to you, as well as the **plaintiff**.

The conference is run by a **Family Law Magistrate** (or “**Magistrate**”). The **Magistrate** will try to move your case along by:

- ✓ Finding out if there is an issue of domestic violence in the family.
- ✓ Helping you to come to an agreement, if you can, about any issues—*especially issues that affect your children, like visitation and child support*.
- ✓ Finding out what issues you have not been able to agree upon.
- ✓ Giving a written order that says what you have agreed on, what issues still need to be decided, and scheduling the next steps.

### Tips

- ◆ The **Magistrate** has the duty to do what is in the best interests of your children. The Magistrate will tell you about how important it is for you, too, to focus on this goal. Before you go into the conference, think about what should happen so that your children will get what they need. If you are talking with the other parent about an agreement, remember that the court will be looking to see if the children’s needs are being met. If you are having trouble deciding these issues, the Magistrate may appoint a **guardian ad litem** to represent the children. *Please read more about the parental rights issues you will need to consider, at page 11.*
- ◆ This is also the time to request that a Judge hear certain issues, if you prefer, rather than the **Magistrate**. If the only **contested** issues in your case concern child support (including health care and tax exemptions) the Magistrate will hear those issues. If there are contested issues concerning **other parental rights**



(see list at page 11), those issues will have a final hearing before a Judge. *Unless you object, the Magistrate may also hold **interim hearings** (see Step Seven) concerning these other parental rights issues.* If you prefer that a Judge hear these issues at your interim hearing, you must raise your objection before or during this Conference. (Be aware that in many courts you will have to wait longer to get an interim hearing date before a Judge.)

- ◆ If you have agreed on all issues before the conference, the **Magistrate** can help you to by-pass the rest of the steps.
- ◆ If you have not agreed on all issues, the next step will be **mediation**. Be ready to pay the fee (\$160 total, or \$80 each, unless you got a **fee waiver**) and to set a mediation session for a time when you can both be there. (If you are afraid of the other party, read about waiving mediation at page 12.)

**Note:** If you need an interim hearing to resolve emergency issues before all of the next steps can be completed, the **Magistrate** may move you directly from Step Four to Step Seven.



## Step Five: Mediation

At the mediation, a court **mediator** will try to help the two of you agree to as many issues as you can. Again, the court wants to take care of your children’s needs first. So, the mediator will look for agreement on these issues:

- ✓ How you plan to share **parental rights and responsibilities**
- ✓ Where the children will live

- ✓ When the children will visit with the other parent
- ✓ Amount of child support
- ✓ How the children’s health care will be covered
- ✓ Who will pay housing costs
- ✓ Spousal support
- ✓ Any other issues that will have an immediate impact on the children

If all of these issues are resolved and there is still time, you may also talk about whether you can agree on other issues, such as:

- ✓ How you will divide your **marital property**
- ✓ How you will divide payment of debts

(Read more about division of property and debts at page 13.)

You must mediate in “good faith,” but you don’t have to agree to anything that you believe is wrong or wouldn’t work. The **mediator** will meet with each party privately at the beginning. If the other party has abused you or you are afraid, tell the mediator about this in the private meeting. You can ask to be in a separate room from the other party during the mediation. (For more on this, see page 13.)

**Note:** You can choose to use a private mediator, rather than the court mediator. But you must pay whatever fee that mediator charges.

At this point, your case could be sent along one of several paths. The next steps describe how a typical case might go. But, the **Magistrate** will direct you in a way that will best fit your case, to move it along quickly but carefully.



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## Step Six: Status Conference

Your next step may be a status conference with the **Magistrate**. At this meeting, the Magistrate will review what happened at your **mediation**. If you have agreed on all issues, the Magistrate can hold a final **uncontested hearing**. After this brief hearing, the Magistrate will give you a **final order**. Your case will be done.

If there are child-related issues you have not been able to resolve, the **Magistrate** will schedule an interim hearing. This will be held by the Magistrate, unless you opted at the first conference for a Judge-held hearing.

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## Step Seven: Interim Divorce Hearing (or Final Parental Rights Hearing)

This is a formal court hearing.

The Judge or **Magistrate** will hear each side. You can speak for yourself, bring witnesses, and present documents. Court rules of evidence and procedure will be followed.

After the hearing, the Judge or **Magistrate** will give an **interim order** saying what will happen with the children and issues that affect them until your divorce, or parental rights case, is final.

If you are unmarried, this may be the final step in your **parental rights and responsibilities** case. The court may give a **final order** after this one formal hearing if all issues can be decided at this point.

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## Step Eight: Second Mediation

If you still have unresolved issues about dividing up property, dividing up debts, or other disputes, the court may require you to go through a second **mediation**.

After mediation, if you agree on all remaining issues, the mediator will help you to write up your agreement. You will both sign the agreement. Then the **clerk** will set a time for your final **uncontested hearing**. At that hearing, the **Magistrate** will ask a few simple questions, will review your agreement and sign a **final order**.

If there are still issues you cannot agree on, you will go on to the next step.

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## Step Nine: Status or Pre-Trial Conference

The **Magistrate** may meet with you one more time to assess where you are with your case and to help you figure out where to go from here. These are some things that can come from the conference:

- If the **Magistrate** thinks that more **mediation** would help you to resolve more issues, you may be ordered to mediate again. (The \$160 fee covers two sessions. If you go beyond two sessions, you must pay another fee—unless you got a fee waiver.)
- If you have resolved all issues since the last mediation, the **Magistrate** will hold a brief **uncontested hearing**, review your agreement and sign a **final order**.



- If you still have issues you cannot agree upon and the **Magistrate** thinks you are ready for a final hearing, she will give you a “pre-trial order” which includes:
  - ✓ The date and time of your final hearing.
  - ✓ Whether a Judge or a **Magistrate** will hear your case. (Your case will now go to a Judge unless child support is the only remaining issue, or you opted earlier for a Judge-held hearing.)
  - ✓ Your deadline for telling the other party what witnesses and documents you will be using at the hearing (if any).
  - ✓ A list of the unresolved issues.

If you have resolved all issues since the last mediation, the **Magistrate** will hold a brief uncontested hearing, review your agreement and sign a final order.



## Step Ten: Final Hearing



This is a formal hearing, like the interim hearing. The Judge or **Magistrate** hears both sides then issues a **final order**. You may give your own testimony and present witnesses and documents. You may cross-examine the other party. The court rules of evidence and procedure apply.

If you disagree with any part of a **Magistrate’s** final order, you can file written objections to the order. Deliver or mail this to the **clerk** and send a copy to the other party. The deadline for filing objections is **21 days** from the date the clerk entered the order on the court docket (usually soon after the Magistrate signed the

order). Then a Judge will review the Magistrate’s order and your objections and give a **final order**. If you miss this 21-day deadline, you give up your right to any further appeals.

The deadline for appealing a Judge’s **final order** to the Law Court is **21 days** after the **clerk** enters the order on the docket. File any appeal with the District Court clerk. You will probably need a lawyer to help you go forward with an appeal. Although some of the costs can be waived, appeals are expensive.

### Review

- Decide if you should get a lawyer or if it is safe to go forward on your own.
- Read all of this information.
- Get your court forms packet.
- Read the court forms instruction sheet.
- Fill out the forms. Get help if you need it.
- Serve and file the forms.
- Go to the Case Management Conference with the Magistrate.
- Follow the steps and directions you get from the Magistrate.
- Look back at this material and ask for help when you have questions.
- Take one step at a time.**



## Here's what they mean...a glossary of legal terms

You may see words in the court forms that you don't understand. The court **clerks** and **Magistrates** may use words you don't know. Here are some legal terms, explained in plain English.

**Affidavit** means a written sworn statement where you say, under oath, that the statement is true. You must sign an affidavit in front of a **notary public**.

**Clerk** is the person you go to for court forms. The clerk also files your papers in your court file. The clerk sets the time for conferences and hearings.

**Complaint** is one of the court forms you **file** and **serve**, to start your divorce or parental rights case.

**Contested hearing** is a formal court hearing, held when the parties do not agree on one or more issues. A Judge or **Magistrate** hears both parties tell their stories and then makes a decision. You can speak for yourself, bring witnesses, and present documents. Court rules of evidence and procedure will be followed.

**Defendant** is the person who gets the court papers (including the **complaint** and **summons**) from the **plaintiff**.

**Family Law Magistrate** See Magistrates.

**Fee waiver** is granted by the court if you cannot afford the court costs. Read more at page 2.

**Filing** a paper with the court simply means handing it, or mailing it, to the court **clerk**.

**Final order** is the last step of your case (unless you appeal). This order is where the Judge or **Magistrate** says in writing what each party's rights and responsibilities are.

**Guardian ad litem**, or GAL, is a person appointed by the court to "protect and promote the best interests" of a child. The GAL interviews the child, the parents, and others involved with the child. Then the GAL files a report with the court, recommending a parental rights decision that he believes to be in the child's best interests.

**In forma pauperis** means getting the Court to waive your court fees because you can't afford to pay. Most court personnel refer to this now as a **fee waiver**. Read more at page 2.

**Interim Order** is the court order you may get soon after you file your case. In this order, the court tries to take care of your children's needs until your case is finally resolved. Later, a **final order** will take the place of this order.

**Law Court** is the Maine Supreme Judicial Court, acting as the appellate court. Under recent rule changes, all appeals in family law cases go directly to the Law Court. This Court reviews whether the trial court made any errors of law. It does not hear new evidence or retry the facts of your case.

**Magistrates** have some, but not all, of the powers of Judges. For example, the Magistrate can order how much child support must be paid. Also, the Magistrate helps you to understand the court process and to move your case along. The Magistrate will hold your first court





meeting. You may meet with the Magistrate again later in your case, or with a Judge, depending on the issues to be decided. Several courts are running pilot programs, giving Magistrates the power to hear and decide all issues if both parties agree. The Magistrate or the mediator will tell you if this is an option in your case.

**Marital property** is property that the two of you got during your marriage. *Generally speaking*, property you got before you were married, as well as gifts made to you alone during the marriage, are not marital property. The divorce order must include how all of your property is going to be divided. (Read more about dividing property at page 13. If you have pensions, retirement plans, or other complex property issues, try to get a lawyer.)

**Mediator** is a person who helps you figure out whether there are issues you can agree upon. The process is called **mediation**. The mediator cannot order you to do anything. However, the mediator does expect both parties to make a “good faith” effort to mediate.

**Motion** is a paper you file with the court, asking the Judge or **Magistrate** to decide an issue. Begin the motion by copying the heading (court location, names of **plaintiff** and **defendant**) from your **complaint** form. Then substitute “Motion” for “Complaint,” to help the clerk identify and file your paper. Then explain what you are asking the court to do, such as waive mediation. (See page 13.) Some courts will accept a less formal request. So, if this is too difficult, see if the **clerk** will accept a letter from you, stating what you are asking the court to do and why. You must mail a copy to the other party.

**Mutual children** are children the two parties had together. Usually the court will deal with mutual children only. But the Maine courts have started granting parental rights and responsibilities to stepparents in certain cases, where the stepparent has become the “de facto parent,” or where future contact is in the best interests of the child. (Read more at page 10.)

**Notary public** is a person who can be a witness when you sign papers that have to be “sworn to” or “notarized.” (See **affidavit**.) When a court form calls for this, go to your local “notary,” a bank or law office, or the court **clerk**, to find a person who can watch you sign the form.

**Parental Rights and Responsibilities** case is the type of case you bring if you and the other parent are not married. If you are married and are getting a divorce, the court’s order will address **parental rights and responsibilities** issues, as well as property and spousal support issues. (Read more at page 11.)

**Plaintiff** is the person who **files** and **serves** the court papers to start the case.

**Pro se** means doing your own court case without a lawyer.

**Public assistance benefits**, in the court **complaint** form, means TANF (formerly AFDC) and MaineCare (formerly Medicaid).

**Serve** (or **service**) means giving the court papers to the other party. Court rules say how this must be done.

**Spouse** means your husband or wife.

**Summons** is one of the court forms you file and serve, to start your divorce or parental



rights case. You cannot get this form online. You must buy it from the **clerk** for \$5.00.

**Uncontested hearing** is the type of hearing you will have at the end of your case if you have agreed on all issues. It is a very short formal court hearing where the **Magistrate** or Judge asks a few simple questions. The Magistrate or Judge will also review your agreement with you, to make sure everyone understands what the **final order** will say.

## But I still have lots of questions...

So far, we have explained the basics of how the court's family division works. And we've told you what some of the legal terms mean. But there's still more to know. Here are some answers to questions many people ask.

### **Q.** What if I need a divorce but we have no mutual children?

**A.** On one hand, your divorce case will be simpler because you don't have to deal with children's issues. You will not go through the **Magistrate** steps explained above. To get started, follow the steps outlined in your court forms packet information sheet. Soon after you **file** and **serve** your court papers, and the other party files a response, both of you will get a "Scheduling Order" from the court. This Order will give you deadlines: such as when to file a Financial Statement, when to attend mediation, etc. You must follow the Scheduling Order. If you need a change in the schedule, you must file a written request with the court, including your reasons. If both of you agree to the scheduling changes, your request is more likely to be granted.

**If you are the defendant**, you need to file either an "Entry of Appearance" form or an "Answer and Counterclaim" within 20 days of being served with the court papers (**summons** and **complaint**).

- "Entry of Appearance:" This is a simple form that you can get from the court **clerk** or on line at [www.ptla.org/forms](http://www.ptla.org/forms). Fill it out, give or mail a copy to the **plaintiff**, and give or mail the original to the court clerk.
- "Answer and Counterclaim:" This is a longer form that you may want to **file** and **serve**. If the plaintiff decides not to go through with the court case, you can still do that, if you choose, based on your own "counterclaim."

We post all of these forms at:  
[www.ptla.org/ptlasite/forms/defendant.htm](http://www.ptla.org/ptlasite/forms/defendant.htm)

If you do not file one of these two papers (Appearance or Answer), then the court will assume that you don't care about how the case comes out. It can go ahead and decide all of the issues without notifying you or hearing your side.

### **Q.** What about stepchildren?

**A.** Until recently, the court did not make any decisions about stepchildren. Typically, a party who was not a biological parent had no legal rights or responsibilities. However, the Maine courts are changing their view. In April 2004 the Maine Law Court ruled that the trial court can decide whether a stepparent who wants visitation, or other parental rights and responsibilities:

- should be awarded visitation, as a "third party," or



- should be treated as a "de facto parent," having on-going rights and responsibilities, as would a biological parent

This ruling raises many unanswered questions.

If you are a stepparent wanting to be treated as a "de facto parent," you must prove that you have been acting as a real parent to the child. The Court said that you can be considered a "de facto parent" only if you have "fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role in the child's life." This is a complex and rapidly changing area of the law. You should get legal advice if you plan to seek de facto parental rights.

As with all children's issues, the court's primary goal is to meet "the best interests of the child."

### **Q. How is a parental rights case (for unmarried parents) different from a divorce?**

**A.** The Steps explained at pages 2-7 are similar. Here are the major differences:

- The court will not decide any property issues. The only issues are **parental rights and responsibilities**.
- If you are the mother of a child and the father disputes that he is the father, then you will have to go through some more steps to prove that the **defendant** is the father of your child. If this is an issue, check the box on the complaint that asks for "blood or tissue typing tests."
- The court will deal with the issue of child support but cannot order spousal support (alimony).

### **Q. What "parental rights and responsibilities" issues have to be decided?**

**A.** Here are the issues you need to think about, and discuss with the other parent if you can:

- ✓ Where will the children be living—with one parent most of the time ("primary residence") or "shared residence?"
- ✓ When and under what conditions will the children be visiting the other parent? If you and the other parent can talk about this issue, you may want to agree to a flexible order, like "visits will be at reasonable times." On the other hand, if you expect problems, then you may want to set a schedule so that you can avoid future arguments. If you have good reasons to ask that conditions be put on visits (such as supervision by another family member, or no use of alcohol or drugs during visits), raise those issues with either the other parent or the **Magistrate**, or both.
- ✓ How much child support will be paid? You can estimate this amount by filling out the "Child Support Worksheet" included in the court forms packet. Where both parents will be providing "substantially equal care," you must fill out a "Supplemental Worksheet," as well. If you have trouble with these forms, get help from a courthouse program or the "Helpline" (see page 2). Or call Pine Tree Legal and ask for our pamphlet "Calculating Your Child Support." We also post online "self-calculating" versions of the basic Worksheet, which will do the math for you, at [www.ptla.org/forms.htm](http://www.ptla.org/forms.htm). Sometimes you can agree to a different amount, if the court approves the



reasons for the change. This is called a “child support deviation.” If you can’t figure this out, the Magistrate will help you.

- ✓ How will you cover your child’s health care expenses? Can either of you get medical insurance at work? Is your child eligible for MaineCare coverage through the state? How will you share any unmet medical expenses?
- ✓ Are there any other child-related issues that you want to include in your agreement? For example, is religious upbringing or medical treatment an issue?

There are three ways to divide up parental rights and responsibilities: “shared,” “sole” and “allocated.” *In most cases*, the parental rights and responsibilities will be “shared.” The court order will tell how those will be shared. In certain cases, such as where one parent has abandoned the child or is violent, the court may give “sole parental rights” to the other parent. Sometimes the court will “allocate” the rights and duties by directing one parent to take care of a certain task (religious upbringing, for example).

In difficult cases the court may appoint a **guardian ad litem** to represent the children. This person assists the court in deciding what outcomes would be in the children’s “best interests.” If you think your children need a guardian ad litem, ask the **Magistrate** about getting one.

**Q.** What is a “parenting coordinator”?

**A.** In high-conflict cases the court can appoint a “parenting coordinator.” This is to help the parents comply with the court’s

orders. Usually, this coordinator will be a court-registered “guardian ad litem.” These are people specially trained to look out for the “best interests of the child” during a divorce, or other family law case. The “parenting coordinator” can be some other qualified person if both parties agree.

The “parenting coordinator” interprets the court’s “parenting plan.” He helps the parents make parenting decisions that work for the children and that follow the court’s orders.

If either parent refuses to comply with the coordinator’s advice, the court can step in. Also, a parent can ask the court to review a coordinator’s advice. Both parties must follow the coordinator’s advice until the court makes its decision.

**Q.** How long will my court case take?

**A.** That depends on several things. If you are getting divorced, even if you have agreed on all issues, you still must wait at least 60 days after serving the complaint before you can have a final **uncontested hearing**.

If you’re unmarried, it may not take as long. If you’ve agreed on all issues, ask the **Magistrate** at the first conference to give a **final order** based on your agreement.

If you do not agree on all issues, then your case could take several months.

**Q.** What do I put on the complaint form as “grounds” for divorce?

**A.** Most divorces in Maine are granted on the grounds of “irreconcilable differences.” Maine statute includes nine different grounds for divorce, including adultery and extreme cruelty. But you do



not have to show fault to get a divorce in Maine. If you want a divorce based on fault (extreme cruelty, for example), you should get a lawyer. If you list this as the only grounds and you do not prove “extreme cruelty,” the court may not grant the divorce. If either **spouse** tells the court that there are “irreconcilable differences,” the court can order a divorce. So, as a practical matter, this is the grounds the court almost always uses, even when a party is at fault.

Serious abuse may be relevant to other decisions the court must make, like division of parental rights and responsibilities and need for spousal support.

**Q. If I’m the Defendant and got the divorce papers in the mail, am I agreeing to everything in the Complaint if I sign the “Acknowledgment of Receipt”?**

**A.** No. By signing and returning the form, you are only agreeing that you got the divorce papers. You will have the chance to explain where you stand on issues at the conference, the mediation, and any formal hearings you may have.

Notify the court in writing right away if your *mailing address changes*. If you don’t do this, you may not get court notices, which will cause you to miss important court dates.

**Q. In a divorce, if we file the “Certificate in Lieu of Case Management Conference,” do we still have to go to the conference?**

**A.** This is a court form you can file to ask that the first **Magistrate** conference be waived because you have resolved all child-related issues. However, unless you get a written order from the court waiving the conference, you must still go. Assuming you don’t have a lawyer, consider

going to the conference in any case. The Magistrate can answer your questions and help you to move your case along.

**Q. If I am afraid of the other party, do I have to say where I am living when I fill out the court forms?**

**A.** No. You can write “confidential” where the forms ask for address and telephone. Then ask the clerk for an “Affidavit for Confidential Address” form. If the court doesn’t have one, draft your own **affidavit**. Write down why you think this information must be kept private, for the safety of you or your children. Sign it in front of a **notary public**. Then give it to the clerk along with your other papers. The clerk will then “seal” this information, so that the other party can’t get it. The other party can object to this in writing. Then the court would hold a hearing to decide whether the clerk must still keep the information secret.

**Q. Do I have to go to mediation if I am afraid of my spouse or former partner?**

**A.** The court may waive **mediation** “for extraordinary cause.” For example, if you think trying to mediate will cause the other party to hurt you or your children, you may ask the court in writing to let you skip mediation. This is called a **motion**. On another page, explain what has happened to make you afraid of the other party. This is called an **affidavit**. You must sign your affidavit under oath in front of a **notary public**. File both papers with the court clerk. She will ask the Judge to look at them and decide whether or not you will have to mediate. (Some courts may accept a letter, instead of a formal motion. Attach a copy of your Protection from Abuse Order,



if you have one. Or ask the **Magistrate** to waive mediation when you meet with him. See Step Four.)

If you get to **mediation** and you are still afraid, ask the **mediator** to talk to you in private about your concerns. The mediator can allow you to stay in separate rooms. In extreme cases, the mediator can decide that mediation won't work, or can stop mediation after it starts, if someone is threatened. If you are in this situation, we encourage you to try to get a lawyer.

**Q. In a divorce, how do we divide up property and debts?**

**A.** That isn't an easy question to answer. If you have a lot of property or debts, you should try to get a lawyer. Make sure that you are getting a fair share of real estate, pensions and retirement accounts.

If you don't have much property, try to divide it fairly. Each of you may claim your non-marital property. Those are things you got before the marriage and gifts to you alone during the marriage. Everything else is **marital property** and should be divided as fairly as possible.

The same rules apply to debts. However, no matter how you divide up your debts, a creditor can still go after you for debts you both signed for while you were married. If a creditor forces you to pay a joint debt that the divorce court has ordered the other party to pay, you can sue your former **spouse** to pay you back.

If you own a house or other real estate and don't have a lawyer, get this court form: "Certificate Regarding Real Estate." Fill it out with the correct Registry of Deeds information, and file it with the **clerk** at least 3 days before your final court hearing.

Send a copy to the other party. The court will use this information in drafting your **final order**. Also, the court will order either you or the other party to prepare another form: "Abstract of Divorce Decree." Submit this completed form to the **clerk** along with the Registry filing fee. Send a copy to the other party. The clerk will complete the process. Once the Abstract is filed in the Registry of Deeds, third parties, like future buyers, can trace how the divorce affected the ownership of the property.

**Q. How does the court decide on spousal support, or alimony?**

**A.** First, Maine law no longer uses the term "alimony." It's now called "spousal support." Unlike child support, the court does not have a set formula for determining spousal support. If this is an issue in your case, you should try to get a lawyer. You must ask for spousal support now. You cannot come back to the court later, after your divorce, to ask for it.

There are three types of spousal support in Maine:

- General support
- Transitional support, and
- Reimbursement support

Here are some of the factors the court will look at to decide whether to award spousal support, for how long, and for what amount:

- The length of the marriage
- The ability of each party to pay
- The age of each party
- The employment history, employment potential, income and education of each party
- The health of each party



- The contributions of either party as homemaker
- Economic misconduct
- Tax consequences
- Any other factors the court considers appropriate

**Q. What happens if I don't go to a court meeting or hearing?**

**A.** It is important that you show up for court dates. Be on time and be prepared. If you don't go, you can be "defaulted," which means that the court gives the other party what he wants because you didn't appear. The court can also charge you for costs, such as court fees or the other party's attorney fees.

Notify the court in writing right away if your *mailing address changes*. If you don't do this, you may not get court notices, which will cause you to miss important court dates.

**Q. If the court orders that child support be paid to me, how do I collect it?**

**A.** You have choices. You can wait to see if the other parent pays regularly. If this happens, you don't have to do anything to enforce the order.

If you are not getting the payments, or think you'll need help collecting, you have other choices.

- ✓ You can ask the Department of Health and Human Services (DHHS) to collect the money and send it to you. Ask the **clerk** for a DHHS Child Support Services brochure, an application form, and contract form. Fill out the forms and send them to:

Dept. of Health & Human Services

Support Enforcement and Recovery  
Central Office Supervisor  
11 State House Station  
Augusta, ME 04333-0011

Be sure to submit with the forms all of the documents DHHS asks for. If you don't include all of the required information, they may return your documents, and you will have to start over. This will cause delay and could lead to lost documents. After DHHS gets your forms and opens a case file, they will be contacting you for more information. To get child support sooner, always get back to them promptly.

*If you or your children get TANF or MaineCare, you do not have to sign up for DHHS collection service. You get this service automatically.*

- ✓ You can give the other parent's employer a copy of your "Immediate Income Withholding Order."

Get this from the court **clerk**. This paper orders the employer to withhold wages and send the money to DHHS. DHHS then forwards it to you. Keep DHHS informed of your current mailing address. If you choose this option, you will get "limited service" from DHHS. They will send you the money they receive but will not take any other steps to enforce the court order.

If the other parent does not get a regular paycheck, collecting support may be much harder. Your choices are to ask for DHHS services, hire a lawyer, or try to take the other parent back to court on your own. The last choice may be difficult, depending on the facts of your case. Ask for our



handbook “Family Law in Maine: Post-Judgment Motions.”

### **Please Help Us**

We are trying to help you in ways that work. Please let us know whether this information helped you. Let us know what other information you needed but had trouble finding. With your help, we hope to improve our service to you and others.

Call, write, or e-mail:

**Pine Tree Legal Assistance  
61 Main Street  
Bangor, ME 04401**

**207-942-8241**  
or your local PTLA office  
(see phone list on page 2)

**[cliented@ptla.org](mailto:cliented@ptla.org)  
[www.ptla.org](http://www.ptla.org)**

**We are sorry that we cannot answer your e-mails. For direct service, call us.**

### **Notice**

Prepared by Pine Tree Legal Assistance  
Partially updated September 2009

We are providing this information as a public service. We try to make it accurate as of the above date. Sometimes the laws change. We cannot guarantee or promise that this information is always up-to-date and correct. If the date above is not this year, call us to see if there is an update.

This information is not legal advice. We do not intend it as advertising or solicitation. By sending you this information, we are not acting as your lawyer. Always consult a competent lawyer before taking legal action.