

DOMESTIC RELATIONS TRIALS

—Understanding the Two Options—

Two different types of trials are available for resolving domestic relations cases. Domestic relations cases include actions for divorce, property division, parenting arrangements, and child support, as well as modifications. The two types of trials are informal and formal. You will need to choose the type of trial that you think is best for your case.

What is an Informal Trial?

In an informal trial, you and the other person speak directly to the judge. The judge will ask questions to make sure you cover everything the judge needs to know to decide your case. When you are done speaking, the judge will ask the other person or that person's lawyer if there are other questions that they think the judge should ask. If it seems helpful, the judge will ask the questions suggested. The other person or lawyer does not question you directly or get to interrupt you. Most of the time, you and the other person will be the only witnesses. You can have an expert witness testify, such as a doctor, counselor, custody evaluator, or appraiser. Other witnesses are allowed only if the judge agrees they are needed.

Fewer witnesses are needed in an informal trial because the Rules of Evidence do not strictly apply. So you can explain the issues in the case to the judge without worrying if the information is admissible and provide any relevant documents or other evidence you want the judge to review. The judge will decide the importance of what each person says and the evidence provided. If you have a lawyer, the lawyer will help you prepare and will sit next to you during the trial to offer advice. Your lawyer can also:

- identify the issues in the case,
- respond when the judge asks whether there are other issues that the judge should inquire about,
- question expert witnesses, and
- make short arguments about the law at the end of the case.

The informal trial is a voluntary process. An informal trial will be used only if both people involved in the case and the judge agree to it. Before starting the trial, the judge will explain the process and how it works.

What is a Formal Trial?

In a formal trial, lawyers or people who represent themselves usually present information to the judge by calling witnesses and asking questions of them. Each side gets to cross examine the other person and their witnesses. Generally, the judge asks few, if any, questions.

All 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 formal 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. The lawyer may object if the testimony or documents violate the Rules of Evidence. If you represent yourself, you will be expected to follow the Rules of Evidence. You will be the one to make opening statements and closing arguments, question witnesses, and make objections.



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Why would I choose an Informal Trial?

- 1) Fewer rules apply. Informal trials are usually easier for people who are representing themselves. The judge asks questions and guides the process. The judge will try 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 question you.
 - 3) You do not have to worry about formal evidence rules that limit what you can say in the courtroom. You can:
 - speak freely about conversations between you and other people who are not present in the courtroom; and
 - tell the judge about the important issues in your case without worrying if what you say is admissible.
 - 4) You can ask the judge to consider any documents or other evidence. It is up to the judge to decide if they are important.
 - 5) You do not need to worry about getting a lot of different witnesses to come to court to make your case. Instead, you can tell the judge yourself what is important or rely on letters or other documents. If the judge agrees that a particular witness is needed to explain something in person or to answer questions, that witness can be called.
 - 6) Informal trials may be shorter. If you have a lawyer, the lawyer will probably need less time to prepare and work on your case, which should cost you less. Also, you may not need to take as much time off from work.
 - 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 Formal Trial?

- 1) Rules and formal procedures are in place to control the process. 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 control what people can say and what documents the judge can consider.
- 3) It is important for you or your lawyer to question the other person directly.
- 4) You may bring any witnesses you think are important to the courtroom. You or your lawyer can question your own witnesses and cross examine the other person's witnesses.
- 5) Generally, the judge will not consider written statements from family members, friends, or professionals such as teachers, counselors, appraisers, or police officers. People with something to say about the issues will need to testify during the trial.
- 6) Your case is complicated. You and the other person own a business or have lots of stocks and property to divide that is difficult to value.

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How an Informal Trial works:

- 1) The person who started the case will speak first. The person will tell the judge about the case, what result the person wants, and why the parenting arrangement is in the child's best interest or the marital property and debt division is fair. The judge will ask the person questions in order to confirm relevant facts. Only the judge asks questions—not the lawyers and not the other person. The judge will ask the other person or their lawyer whether there are other topics the judge should ask about.
- 2) This process is repeated for the other person.
- 3) Each person may submit relevant documents and other evidence that they want to the judge to see. The judge will look at each item and decide whether it should be considered. If there are any experts, the expert's report will be given to the judge. Either person may ask to have the expert testify. The expert may be questioned by the judge, the people in the case, or their lawyers.
- 4) If the judge agrees it would be helpful, either person can have other people testify in person. The judge will ask the questions.
- 5) The judge will give each person an opportunity to respond to statements made by the other person.
- 6) Each person or their lawyer may make a short closing statement about the issues and how the judge should decide.
- 7) Once all the above steps are done, the judge makes a decision and shares it with both people. Because informal trials are shorter and less complicated, the judge can usually make a decision before the people leave the court room.

How a Formal Trial works:

- 1) Both people or their lawyers make an opening statement. The person who started the case goes first.
- 2) The person who started the case then calls their witnesses. That person or their lawyer questions the witnesses and presents the documents or other evidence that the person wants the judge to review. The other person or their lawyer then cross examines the witnesses. Both people in the case usually testify. The question-and-answer process and the presentation of documents or other evidence can be interrupted by objections.
- 3) The other person then gets a turn to call witnesses. That person or their lawyer questions the witnesses and presents documents or other evidence for the judge to review. The person who started the case or their lawyer then takes a turn questioning the witnesses.
- 4) The judge may allow any witness to be questioned again if the judge thinks more information is needed.
- 5) Both people or their lawyers make a closing argument, summarizing the evidence (witness statements, documents, and other items), explaining how the evidence supports the result that person wants, and telling the judge what the person thinks the judge should consider in making a decision.
- 6) Once all the above steps are done, the judge makes a decision. Although judges try to make a decision before the people leave the courtroom, the judge may need additional time to make a ruling.

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Whether you choose an informal or formal trial:

- The judge will control the courtroom and make sure that both you and the other person are treated fairly and have the opportunity to be heard.
- You will need certain documents. Before the trial starts there are several documents that each person **must** prepare and give to the judge and the other person:
 - *If marital property or debts need to be divided*, a list of everything you and your spouse own and owe, including the values. You can use the Property & Debt Worksheet, SHC-1000 [Word](#) | [PDF](#).
 - *If there are children*:
 - a parenting schedule, see www.courts.alaska.gov/shc/family/shcforms.htm#cust for form options
 - Child Support Guidelines Affidavit, DR-305 [PDF](#)
 - 2 most recent paystubs
 - Most recent W-2s, tax return and any schedules filed.

If there are other documents that you want the judge to consider, you will need to provide copies of them to the judge and other person before trial.

- Be prepared to talk about any other cases that might affect this one, such as Domestic Violence Protective Order or Child In Need of Aid (CINA) cases.
- Letters from children that suggest parenting preferences are discouraged. It is important to keep children out of the parents' conflict. Filing letters can show the judge you are putting the child in the middle and may harm your child and your case.

RESOURCES

For information about getting ready for trial: www.courts.alaska.gov/shc/family/shctrtrial.htm.

For information about finding an attorney, go to: www.courts.alaska.gov/shc/shclawyer.htm. For information about the process and forms, contact the Family Law Self-Help Center:

www.courts.alaska.gov/shc/family/selfhelp.htm, (907) 264-0851 or (866) 279-0851.

If you want an informal trial, fill out and file: Informal Trial Agreement, DR-905 at: <https://public.courts.alaska.gov/web/forms/docs/dr-905.pdf>