



10 Things to Know About Family Court

SELF-REPRESENTED LITIGANTS SERIES

If you are the victim of domestic violence and need legal help, this guide contains some basic information about family court. While a lawyer who knows about domestic violence is the best person to help, many survivors cannot find or afford lawyers to represent them in court. This quick guide provides general information about family courts across the country. Keep in mind some information may not apply to your court or your state.

You can get more information about your local court and local resources by calling the Resource Center on Domestic

Violence: Child Protection and Custody at our confidential toll-free number, **800-527-3223**. You also can send a question via email to fvinfo@ncjfcj.org.

The Resource Center also has informational packets that might be helpful, which we can mail to you at no charge. In fact, you can download many of these informational resources from our website at www.rcdvpc.org.

Following are ten things to know about family court.

Purpose: What the Court Can and Cannot Do

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A family court can do many things, which generally include dissolving or establishing family relationships (e.g., divorce, adoption) and resolving disputes between family members (e.g., custody, child support). While the court has broad authority in these matters, it does have limits. If you know these limits and expect a realistic outcome, you'll have a less stressful experience and be more likely to get what you ask for.

The court CAN:

- award custody and set a parenting plan,
- order support payments (including wage withholding),
- divide property and debts (in a divorce),
- enter a divorce,
- grant a protection order or include restrictions on contact, and
- enforce orders through contempt powers.

The court CANNOT:

- grant requests that are not supported by the law,
- make your partner change, or
- make your partner easier to get along with.

The law may require the court to follow

certain guidelines, such as a preference for joint custody or a set amount for child support based on the parents' incomes. For help in how to get more information on the law in your state, see our guide, *10 Ways to Find Help with Your Case*. The court also must follow the law about how it gets information (called evidence). These laws keep the judge from favoring one side over the other or basing decisions on unreliable information. For more help on evidence, see our guide, *10 Steps for Presenting Evidence in Court*. Both guides are available on our website, www.rcdvpc.org.

People

02

Most people think of the judge when they think of a court, but during your case you'll meet a lot of other people, too.

Different courts will have different rules, so you may not see all the people listed below, but these are common roles that may be part of your family court case:

- **Judge:** is in charge of the courtroom, will decide any issues you and your ex-partner can't agree on, and may try to help you and your ex-partner reach an agreement (in some courts).
- **Parties:** you and your ex-partner.
- **File clerk:** is responsible for filing papers in the court case and keeping the court's

file up-to-date and organized. In some courts, the file clerk also may help with tasks like scheduling hearings.

- **Court clerk**: sits in the courtroom during hearings, takes notes, and is responsible for keeping track of any exhibits submitted as evidence.
- **Court reporter**: in some courts, copies down everything that's said, by anyone, during a court hearing. Many courts no longer use court reporters and instead keep a recording of hearings, and some family courts do not keep a record at all unless a party (or attorney) asks for one.
- **Law clerk**: is a lawyer, usually a recent law school graduate, who helps the judge with legal research, preparing cases, drafting orders, and other tasks assigned by the judge.
- **Bailiff**: provides security in the courtroom during hearings. In some places, this person may be employed by the court and, in others, by local law enforcement.
- **Facilitator/Self-Help Center staff**: helps people who don't have lawyers with paperwork and court procedure. Many courts, especially in more populated areas, have self-help centers that can provide one-on-one assistance; in some courts, they may be called facilitators or navigators.

- **Mediator/Early Neutral Evaluator/other alternative dispute resolution provider**: tries to help the parties reach an agreement. Many courts require parties involved in a custody dispute to go through some form of settlement process to try to reach an agreement, at least on some things, before going to court and asking the judge to decide the case. This process may not be safe or appropriate when domestic violence is present. You can usually ask for an exception, or at least for additional protection, to help you feel safe and able to state your position and make your requests. Ask for help from the facilitator, self-help center, and/or mediator about how to ask for an exception or additional protection.
- **Custody Evaluator/Guardian ad Litem/Court-Appointed Special Advocate/Children's Attorney**: is appointed by the court, often at the request of one or both parties, to represent the children and/or to argue for the children's best interests. Their role can change depending on the court and the order appointing them, but generally, they provide information and sometimes recommendations to the court about each party's parenting and the children's well-being. They may interview the parties and the children, observe each parent with the children, visit each parent's home, and interview

others who know the parents and children such as extended family, friends, teachers, etc. A custody evaluator is usually someone with a mental health license (e.g., psychologist, therapist) or a social worker and usually must be paid. Due to the high cost, they are not used often. In some courts, a guardian *ad litem* (often called a “GAL”) may be paid and in others may be a volunteer, and the levels of training vary widely. A GAL may have a license and training like a custody evaluator or may simply have completed a certain training course. A court-appointed special advocate (“CASA”) is usually a volunteer who has completed a required course of training. A children’s attorney is an attorney who represents the child and advocates for the child in court proceedings. Payment for GALs and children’s attorneys varies; in some courts, the state or county pays for them and in others, parents may be required to pay a fee. The court can direct what each party must pay in its orders.

Law

03

Almost all family law is governed by the state, not the U.S. federal government (that is, not Congress or the President), so it’s different in each state. The two main sources of family law

are statutes (laws passed by the state legislature) and case opinions from the state’s appellate court(s). Court rules govern court procedures. Some court rules govern all family courts in the state and others may be for only a particular location. Rules and statutes are usually easy to find; court opinions can be hard to find. All of them can be hard to understand without help. **Womenslaw.org** is a website with information on each state’s laws specifically about domestic violence, including custody and other family law topics. Your state or court also may have legal information on their websites. For more ideas on how to get help learning the law in your state, look at our guide, *10 Ways to Find Help with Your Case*, available at **www.rcdvcpc.org**.

Legal Standards

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You’ll hear a lot of legal terms used in court, many of which are about legal standards—laws or rules that the court must follow in deciding your case. Each state is different, but most use those listed below:

- **Jurisdiction:** The court’s authority, or power. To decide a case, the court must have jurisdiction over the parties and their case. For example, the court usually has jurisdiction over parties who live in the state or county, and a family court

will have jurisdiction over cases like divorce, custody, and child support. In most rural areas, family law cases will be decided by the same court as all other cases—there may not be a separate “family” court.

- **Best Interests of the Child**: The term used in most states for the basis of the court’s decision in custody cases; that is, the court must award custody in the way that serves the child’s best interests. Many states list several factors that the court must consider in determining the child’s best interests, so check your state’s statutes. (See #3, above, if you need help with finding the statute.)
- **Presumptions**: A presumption directs a particular decision by the court if certain facts are present. For example, many states require the court to award both parents joint custody unless the court finds reasons why that would not be in the children’s best interest. Many states also have a presumption forbidding a court from awarding custody to a parent who has abused the child or the other parent, if the abuse is properly proven, unless the court finds reasons why that would not be in the child’s best interests. If a presumption is in your favor, that can help you with your case. If it’s against you, you’ll have to show more to persuade the court that the presumption

shouldn’t apply to you.

- **Standard of Proof**: The “standard of proof” means how much evidence you need to persuade the court that you should get what you ask for. You’ve probably heard of “beyond a reasonable doubt,” which is the standard for a conviction in criminal cases, which is very high. For family court, the standard is usually a “preponderance of the evidence,” which is much lower. It means you have to show your story is more likely true than not true. To say it another way, if “beyond a reasonable doubt” means being 99% sure, a “preponderance” is 51%. Your state may also use “clear and convincing evidence” for certain things, which is between the other two standards.
- **Burden of Proof**: A party asking the court to do something usually has the “burden of proof,” that is, they have to show why the court should give them what they want. For example, if you ask for custody, you have the “burden” of showing the court why the children will be better off with you than the other parent. This burden will be harder if you’re asking for something that’s against a presumption; for example, if your state has a presumption for joint custody and you ask for sole custody, you’ll have a higher burden to persuade the court.

- **Child Support Guidelines:** Most states have a chart or guide that says how much child support should be paid based on the custody arrangement and the parents' incomes.

Paperwork

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As you've probably guessed, a court case requires a lot of paperwork. Some courts have electronic filing (where you send the documents by computer) while others require paper copies to be filed at the courthouse. This often can be done by mail (if you have trouble getting to the courthouse to file papers in person, ask the court's file clerk how to do this.) Some of the common papers are listed below:

- **Complaint/Petition:** The first paper filed in the case; the party who files it is called the plaintiff or petitioner. It states basic facts and what the plaintiff/petitioner wants the court to do. Often, other forms must be completed and filed along with the complaint/petition. You can ask the file clerk or self-help center about these forms.
- **Proof of Service:** In most states, the complaint or petition must be given in person to the other party, usually by a deputy sheriff or other law enforcement officer. Once that's been done, the officer

provides a document called a "proof of service" stating when and where the document was served. The proof of service must be filed with the court.

- **Fee Waiver:** A divorce or custody case usually requires a filing fee, and the law enforcement agency that serves the complaint or petition also charges a fee. If you can't afford to pay these fees, you can ask the court to waive them (sometimes called "*in forma pauperis*" or "pauper status"). The court will have a form you must complete which includes a statement about your income. Some courts provide the form without being asked; in others, you have to ask for it specifically.
- **Answer/Response/Counterclaim:** After the complaint or petition is filed and served, the other party (usually called the "defendant" or "respondent") can respond; this document is called the answer or response. The defendant/respondent can agree with the facts in the complaint/petition or deny that they are true and can agree or object to what the complaint/petition asks for. If the defendant/respondent wants to ask for something different, the response includes a "counterclaim," stating what the defendant/respondent wants the court to do.

- **Reply to Counterclaim:** If a counterclaim is filed, the plaintiff/petitioner in some states can file a response, called a reply to the counterclaim, which can agree or disagree with the facts in the counterclaim and agree or object to what the defendant/ respondent is asking from the court.
- **Motion:** A motion is the legal word for a paper asking the court to do something during the case, with a statement of why the court should grant the request.
- **Opposition:** If the other side doesn't agree with the motion, an opposition is filed, explaining why the motion should be denied.
- **Reply:** In some states, the party filing the motion is allowed to respond to the opposition, saying why it's wrong and the motion should be granted.
- **Order:** The paper with the court's decision and ruling, saying what the parties are required to do. An order may resolve just a motion or part of the case, or it may be the final order deciding the whole case. Sometimes the final order is called the "decree."

Other forms and papers may be required or filed in your case. If you have questions about what you're supposed to do, ask the file clerk, the self-help center, or try some of the resources listed in *10 Ways to Find*

Help with Your Case. You also can call us at **800-527-3223**, and we'll find out what help is available in your area.

Court-related Proceedings

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When most people hear "court," they think of a trial—a very formal proceeding in a courtroom before a judge. You very well may have a trial in your case, but before you get to that point, you'll likely go through some other proceedings. Some of the most common are listed below. You can check your state's rules to be sure you're doing everything you need to do, and if you need help, ask the self-help center, file clerk, or the resources listed in *10 Ways to Find Help with Your Case*.

- **Early Conference:** Many courts hold a hearing a month or so after the answer or response is filed to allow the court to issue any temporary orders that may be needed until a final decision is made (such as temporary custody and parenting time or child support), to see if the parties might be able to settle the case, and to identify all the issues in the case.
- **Classes:** Many courts require parents who are in a custody case to take a class about parenting after divorce or

separation. Ask the file clerk or self-help center how to take this class separately from your ex-partner, especially if you are concerned about safety. Some courts also require a party who does not have a lawyer to take a class on how to handle the court case.

- **Mediation/Early Neutral Evaluation/Other Alternative Dispute Resolution:**

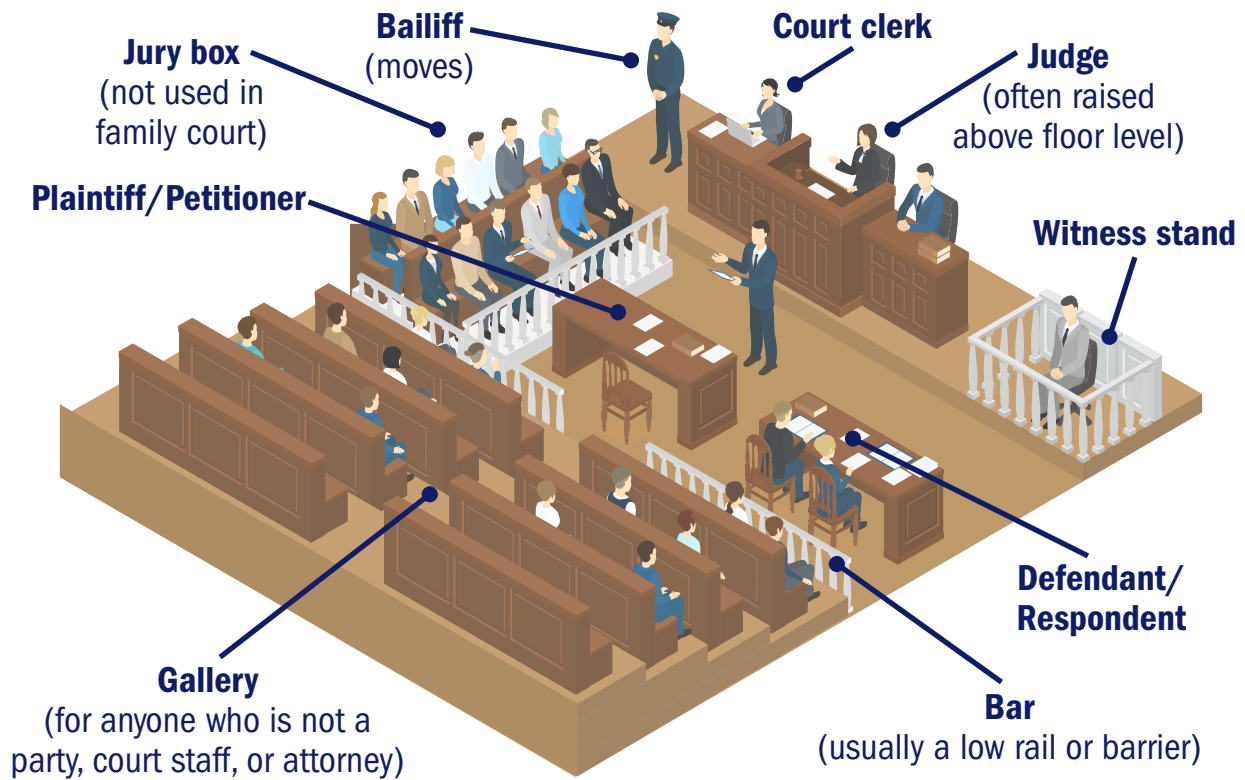
Many courts require the parties to engage in a settlement process to try to reach an agreement before taking the case to the judge. The exact type of process varies from state to state and even in different courts in the same state. Ask questions about how the process works in your court and, if you have any concerns about safety or your ability to talk about your case with your ex-partner there, ask whether you can be excused or at least have additional protections if domestic violence is present. For example, you may be able to meet separately with the mediator (called “shuttle mediation”).

Court Hearings

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A court hearing is likely what you think of when you hear “court.” During a hearing, the parties (and their lawyers, if they have them) go to the courtroom to appear before the judge. The parties, lawyers, and judge may simply talk about the case, or the court may take evidence—when the parties present information to support their side and to show why they should get what they ask for. Some tips to keep in mind for hearings:

- **Court Layout:** Most courts have a seat for the judge, often raised higher than the rest of the room, called the bench. Each side has a table in front of the judge. Next to the judge will be the witness stand. There also will be seats for the court clerk and law clerk. The bailiff may sit or may stand and often moves around the courtroom. This part of the room is usually separated from the rest of the room by a low rail, called the bar. Only the parties and their lawyers are supposed to go past the bar; others sit in seats behind the bar (often called the “gallery”). The best way to get a good idea of how your court looks is to visit your court before your first hearing (see #10, below). A diagram of a typical courtroom is on the following page.



- **Etiquette:** This simply means manners, and courts prefer good manners. In a courtroom, this means standing when talking to the judge (unless you have a disability that makes it difficult for you to stand or the judge says it's okay to sit), calling the judge "Your Honor" or "Judge," not interrupting, and generally showing respect for the court and the process. You don't need to dress up, but try to be neat and clean.
- **Order of Presentation:** This is the term for how the parties take turns in presenting their case. The plaintiff/petitioner usually goes first, but if the hearing is on a motion, then the party

filing the motion goes first. After that side presents evidence, the other side gets a turn. Then the first side gets a last chance to present any other information. The judge may let each side sum up their arguments (but sometimes the court may decide this isn't necessary), and then it will issue a decision.

- **Evidence:** Information given to the court during the hearing. It must be presented in the correct way for the judge to consider it. For more information, read *10 Steps for Presenting Evidence in Court*, available at www.rcdvpc.org.
- **No Jury:** There are no juries in family court—the judge makes the decisions.

Agreements

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Most family court cases end with an agreement or settlement between the parties. Often, they agree on the whole case, and sometimes they agree only on certain things. A settlement can happen anytime: before the case is filed, shortly after it's filed, during a required mediation (or other settlement process), before or during trial, and even after trial. It can be quicker and easier than preparing a case for trial and often gives the parties a result they like better than what a judge might decide. Settlement in cases with domestic violence, however, can be a problem because of the power imbalance—it's often difficult for a victim to negotiate on an equal level with the abusive ex-partner, and sometimes it's even dangerous. Before talking about settlement with your ex-partner, be sure it's safe and that you're confident you can state your position and argue for what you want.

Post-judgment Issues

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Even after the final order, you may need to return to court. One common reason is that one party didn't obey the order, so the other party asks the court to enforce the order and punish the violation. This is usually done by filing a motion, and a hearing often is held. If you are the one seeking enforcement, you should be ready to show how the other party violated the order. You may want to ask the judge to make the order stronger or to include penalties for any future violations. If you are the one accused of disobeying the order, be ready to show that you complied with the order or that you had an important reason that excuses your behavior. If the reason is something that is likely to happen again, you may want to ask the court to change the order so you don't violate it again.

This raises the other most common reason for returning to court: when the situation has changed and the order needs to be modified. This happens often since many events can change what a family needs: a party changes jobs and needs a different parenting time schedule, a child needs medical treatment or wants to participate in an activity that will affect the schedule, one party has a lower or higher income

that affects child support, etc. If the parties agree on any changes to the order, they can put the changes in writing (called a stipulation) and submit it to the court. If they don't agree, then the party that wants to change the order must file a motion.

If you have questions about the information in this guide or would like additional help, please feel free to call us at **1-800-527-3223** or visit our website at www.rcdvcpc.org.

**We wish the best for you
and your children.**

Learn About Your Family Court

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As stated above, each court is different, and your court may be very different in important ways from the general

information in this guide. The best thing you can do to help manage your court case is to learn as much as you can about your own family court. Browse the website. Visit the courthouse and find where different offices are. Try to observe a court hearing or trial, if permitted. Talk to the file clerk's office staff and ask about paperwork, procedures, and the best places to get information. Talk to the self-help center staff or facilitator (if available) and find out what assistance they offer. See if you have a law library, legal aid office, or other types of assistance in your area. Taking a little time to learn about your court and the local help available to you can help you enormously as you proceed with your case.

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