

Supreme Court Committee on Access to Family Courts
Litigant Awareness Program

“Make an Informed Choice”
Exterior: Courthouse lawn scene

This is a Missouri courthouse. It might seem a little intimidating. There’s a reason for that, our legal system can be complicated. Over the years the court system in our State has developed rules and procedures to safeguard the rights of all family members involved in family law cases. It’s been developed to insure fairness in resolving conflict for all parties. We hope this program gives you a better idea of how our court system works.

Keep in mind that everyone has a right to come to court and participate in the legal system. This includes people who use wheelchairs, people with hearing and vision problems, and people who speak other languages. If you or anyone participating in your case needs special arrangements, first contact the court where the case is filed.

Of course the first question that may come to mind as you are confronted with our complex legal system is; do I need a lawyer? It’s an important decision. Many people hire lawyers to manage their cases in the court system. Lawyers have the training, experience, skills and knowledge to assist people in protecting their legal rights and handling their cases effectively.

People do have the right to represent themselves in court. Whether this is the correct choice for you depends on your skills, willingness to give time to your case, and the complexity of the issues involved. Talking to a lawyer about your problem will give you an idea whether your case has issues that are best suited for the help of a lawyer.

There are significant risks and responsibilities associated with representing yourself in court. The case may have legal issues or evidence problems. Things may be required that won’t occur to a person without expertise. People who represent themselves may need to hire a lawyer to fix their mistakes.

Finley Gibbs, Attorney: I think that is a crucial point all across the legal system, represented or unrepresented is that frequently people are coming into court because there is a problem in their lives. And that means emotions are high to start with. So for an unrepresented person who is coming in to fight a case in a very emotional time for them, it's a good idea to sit back and say, what can I accomplish here? What are my goals?

The perfect pro se litigant, of course you can't expect that the person is going to have the same skills as an attorney and go through the cases smoothly, but someone that recognizes their limitations, and who come in polite, has their information together, all the information they could gather about their case and makes a reasonable effort to put that information in front of the judge, but follows the judges lead. The judge will often, although the judge cannot give legal advice, will indicate when a person has tried hard enough or has done what they need to do with regard to certain aspects of their case. And to listen. Listening to what the judge is saying, to what the other attorney is saying, what the witness is saying, it is crucial to listen. The pro se litigant can learn the most by paying attention observing the rules.

Voice Over: If you decide to represent yourself, you need to understand the risks you are taking if you go to court with out a lawyer and the responsibilities you have for handling your case. Over the next few moments we will go over these risks and responsibilities and provide information about court system and court procedures. This information is not intended as legal advice. You should consult a lawyer to answer questions about your legal rights.

Leslie Ann Schneider, Associate Circuit Judge, 13th Judicial Circuit: Any Pro Se litigant that comes before me, I refer them to the website and to the forms that are on the website. And I will ask them some general questions, enough to satisfy the jurisdictional prerequisites of the dissolution. But in terms of any other contested issue or putting on any other evidence, no I do not do that. That's their responsibility. I tell everyone that they are held to the same responsibilities as a lawyer is, any documents, any discovery anything that they get in the mail from the attorney or from the other side they need to respond appropriately because they are going to be held to the same rules and responsibilities as an attorney is.

A lot of pro se litigants also don't understand that 1:30 means 1:30; 2:30 mean 2:30, nine means nine. And if you are not there, just like an attorney, if you are not there, they can have a default, that's a default or the case will be dismissed or whatever. Punctuality is incredibly important. Many judges are very concerned about dress in the courtroom, whether they are appropriately dressed and a lot of courts have local rules on what is appropriate dress. If they are not appropriately dressed they could not have their day in court. Attitude is a big issue. These same rules apply to attorneys to; you know being rude and offensive is not going to be tolerated. The courtroom is maybe one of the last places where civility is demanded and it's a good thing because then people feel like the court and the judicial system is treating everybody the same, everyone has respect for it, because we have to have faith in our judicial system or I think the system breaks down.

Computer scene:

The first step starts here. If you don't have a computer at home you can access the internet at any local library. Check out www.selfrepresent.mo.gov. It offers general information about the risks and responsibilities of representing yourself. The website has a self assessment tool that will assist you in making an informed choice about representing yourself.

It's a good tool, use it. Your score on the survey is a guide developed to help you make that decision whether you should consider handling your case yourself.

There are a variety of resources that may help you on the **selfrepresent** website. Look for the resources by county. If domestic violence is a concern, there is specific resources and legal assistance to help you.

Walk Down Hallway:

Before we get too deep into courtroom processes and procedure, think about another option, one that can potentially keep you out of court.

It may not be necessary to file a case at all if you can resolve your dispute through a process called mediation. Mediation is a way for families to discuss their problems with an impartial person, called the mediator, who is trained to help people look at various ways to solve problems. MARCH Inc. is a state wide free mediation problem available to families in some situations. Mediators can also be hired privately or provided through court programs. The court clerk can provide you with a list of mediators in your area who meet the requirements to mediate court cases.

Randy Hoeschgen, Mediator: In family law disputes it's really helpful during the divorce process. A mediator can sit and help guide two conflicted parties to resolutions of their disputes regarding parenting issues, such as visitation, custody issues, helping the parties plan out a parenting schedule that is going to work for their children and for themselves as well. You know a lot of times the unresolved issues tend to build up and causes a lot of dissention. Mediation gives them a chance to tell their story, whereas going to the courts you may not be able to tell your story, you can only answer questions that are asked of you. So, with my clients I tend to see just that opportunity of them telling their story tends to help satisfy them, and the mediator helps facilitate the communication, they frame certain points that are made during the mediation. They help generate ideals to help the parties come to a resolution.

You have to come into mediation with the philosophy that you are going to negotiate, your going to give and take. It's not just a win lose type of philosophy it's a win – win situation for everybody. And I thoroughly enjoy conducting mediations and helping people with their problems.

Voice Over: In Missouri, family law cases are handled here, in the Circuit Court. Some areas have special courts called "Family Courts" that are a part of the Circuit Court. Family Court cases include divorces, also called dissolutions , annulments, paternity actions, name changes, parenting plan or custody modifications, child support, and order for protection from domestic violence. The Circuit Court is where your hearing or trial will take place. Other courts you've heard of, the Missouri Court of Appeals and the Missouri Supreme Court,

will review any legal error made by a Circuit Court, but they do not try cases.

Marsha Holiman, Circuit Clerk, New Madrid County: Our office handles all the filings for domestic relations cases. So we are the frontline.

When those people come to the courthouse to file their documents or to find out how to file their documents, it's our staff that handles those questions.

We are limited in the assistance that we can give them. We can tell them where to go for help, we can tell them how our court operates in terms of when hearings are heard and that kind of thing, but as far as specifically which form to use, how to prepare the form, what to say when they get into court, those are all no-no's. That's practicing law without a license.

Location: Circuit clerks office

COURT PROCESS – Basic Steps in a Family Law Case

I. Starting your case: The petition or motion

A person who starts a family law case is usually referred to as “the petitioner.” The other spouse or co-parent is called “the respondent.” The petitioner will inform the court **IN WRITING** what the case is about, who the case is against, and what outcome, called “relief,” is requested. For example, a person seeking a divorce, known as a dissolution in Missouri, would explain **IN WRITING** why a dissolution should be granted by the court and what is sought for division of property, child custody and child support. This writing is called the “petition.” A person seeking to change an existing court-ordered parenting plan files a writing called a “motion.” The petition or motion must include certain information required by law.

New court rules went into effect recently that require people representing themselves in family law cases to use standard forms approved by the Missouri Supreme Court. These forms are available online at www.selfrepresent.mo.gov. Most public libraries have

access to the internet and can assist you in downloading forms if you do not have your own internet connection. The circuit clerk can assist people with special needs.

Keep in mind that the clerk cannot give legal advice. The court clerk's staff provides assistance to everyone with business in court. Clerks must remain impartial and can only provide information about court procedures. If you represent yourself, you are expected to include the required information. The rules applying to people who use lawyers also apply to people who choose to represent themselves. The judge in your family law case must remain impartial to decide your case fairly. This means a judge is restricted from giving you advice about how to handle your case. You will need to obtain the information you need for the wording of your paperwork and to prove your case from other sources.

.II. Filing the case

The person filing a new case is called the "petitioner." When the petition is ready it must be "verified. This means the petitioner must appear before a notary and swear to or affirm under oath that the facts in the petition are true. Most banks have notaries who can do this for a small fee.

A case MUST be filed in the proper location. This is important. There are laws that determine "jurisdiction," the authority of the court to hear a case, and "venue," the location of the court where the case will be heard. Depending on the circumstances a person must include or exclude certain information to preserve their legal rights. Making this decision can be complicated and can have significant effect on your legal rights and the outcome of the case. It is important to avoid making a mistake. Lawyers know these rules and can help you make this decision.

The circuit clerk is the person in charge of keeping case files. Petitions and motions are filed with the circuit clerk. Most cases require the payment of a filing fee at the time the paperwork is presented to the circuit clerk. Filing fees vary depending on the type of case. The circuit clerk at your local courthouse can tell you how

much h it will cost to file your particular case. Some courts post this information online.

If you cannot afford to pay the court filing fee you may ask the court clerk for a fee waiver form. A judge can order that filing fees be waived in some circumstances. The form requires the disclosure of detailed financial information so that a judge can decide if waiver of fees is appropriate.

III. Service

People have a constitutional right in most cases to be notified and provided an opportunity to appear before a judge before a decision is made in a family law case. Once a case is filed with the court clerk, other people involved in the case must be notified. This is called service of process. Service is very important and must be done correctly. Doing it incorrectly will cause not only delay of your case, but MAY cause dismissal of your case. The court clerk prepares an official notice, called a “summons” and attached a copy of the petition or motion. It is the responsibility of the person filing a case to arrange for service of this summons.

Commonly the sheriff in the county where the summons needs to be served on someone will provide this service for a fee. It helps to provide very specific information on where, how and when to find the person to be served.

If the person you are trying to serve is difficult to find or avoiding service the procedure is more complicated, and the assistance of a lawyer is helpful. When the whereabouts of a person is not known service by publication in the newspaper is a possibility. This method of service has procedural requirements that are more involved. You may want to check with a lawyer before doing service by publication because this method of service can affect and/or restrict the collection of spousal maintenance and child support.

IV. Answer

The person being served with notice of filing of the case is called the “respondent.”

What happens when the respondent is served?

A respondent has 30 days to file a written response, called an “Answer.” Filing a written answer is important to protect the right to be notified of court hearings. An answer can be accompanied by a cross-petition also asking for specific outcomes. An answer must be filed with the court clerk and a copy sent to the petitioner. A person who has been served and does not file a written Answer is in “default.” This means that the case can go to court and be decided in that person’s absence.

V. Resolving the Issues

If the people involved in the case agree on how to handle all the issues, the case is considered “uncontested.” An uncontested case is usually completed faster than cases where there is no agreement. A court appearance is still normally required for the court to approve an agreement.

If the people involved in the case cannot agree on all issues, the case is considered “contested.” The case will be placed on the court calendar, called the “docket” for a contested hearing. Check with the court clerk to determine whether the court will schedule your case automatically or whether you must request a court date. Depending on how many cases are scheduled on the court docket, there may be some delays in having the case heard by a judge.

Some courts require that mediation take place in contested family law cases. The people involved in the case will meet with a mediator to discuss the issues in the case and evaluate various options for resolving differences. Mediation is confidential, which means no report of what is said will be considered as evidence by a judge. If people reach an agreement, they can ask the judge to approve their agreement.

Most cases do settle out of court without a hearing. It is better for everyone when parties agree. Mediation is always available at anytime throughout the legal process and highly recommended. The family court judge/commissioner can and many times will appoint a mediator, particularly if parents can’t agree on how the children will

be cared for and how the parents will share their parenting responsibilities.

When there is an allegation of abuse or neglect of a child, the judge will also appoint an attorney as “guardian *ad litem*” for the child. This person becomes an advocate for the best interest of the child. The parents are usually ordered to pay the fees of the guardian *ad litem*.

If you are not able to work out your differences, the final hearing will be contested. You should consider having a lawyer assist you when a case is contested because of the responsibilities of proving the case under the law.

People representing themselves may wonder whether the judge can answer questions about how to handle the case, or whether they can speak to the judge private. Judges are prevented from doing either of these things by ethical rules. Judges must be fair to all parties. They cannot communicate about the case with the people involved except in a formal hearing.

V. PREPARING FOR THE HEARING

It may be necessary to prepare additional forms before your hearing. Check the local court rules for the specific forms required in your case. Some forms required in all Missouri courts are:

- Certificate of Attendance from required programs. Everyone representing themselves in a family law case in Missouri must complete the Litigant Awareness Program you are watching now. If children under the age of 18 are involved in the case, the parents are required to attend a parent education program. Your local court clerk can provide information about these classes.
- Financial Statements help the judge make decisions about dividing property and providing child support and setting maintenance if appropriate in certain cases. It may be necessary to get copies of financial records, like income tax statements, pay check stubs, monthly bills, deeds to property, bank

accounts, and pension plans. This information is submitted on forms required by the court.

- **Parenting Plan:** If children are involved, a parenting plan is required. The plan will spell out the decision-making and child-care role of each parent and propose a schedule of the child's time with each parent. It is best if both parents can agree on a parenting plan. The Supreme Court has approved forms for the parenting plan.

You need to bring all the paperwork involved in your case to hearings. If your case is contested you will have to prove your case with evidence. This can include evidence you give verbally, the testimony of witnesses you call, and documents and exhibits you present to the judge in court. Information about the witnesses and copies of documents that will be used in a hearing can be obtained through a process called "discovery." The rules of discovery are complicated, and strict time limits apply. You should consult a lawyer if you plan to seek information through the discovery process or receive a request for discovery in your case.

VI. THE HEARING

Some courts use a formal room like those portrayed in movies or on television. But some hearings may be held in a smaller courtroom or even in the judge's or commissioner's office. Even though the room may seem informal you should take this seriously. Dress appropriately for an important occasion and be courteous to all who are present.

On the day of your hearing:

- Gather the paperwork you will need in court and bring it with you to the courthouse.
- Arrive at court early. Find out in advance where the court house is and the specific courtroom where your case is assigned. Allow time to go through the security screening at the courthouse.

- Enter the courtroom and be seated. It is best to wait quietly. No talking will be allowed once the judge enters the courtroom.
- Stand when the judge enters the courtroom, then remain seated until the judge calls your case. Stand and let the judge know you are present. You may be asked to remain seated until the judge calls all the other cases to be heard at that time.
- The judge or commissioner will make some remarks before your hearing begins. Listen to what the judge says and follow the instructions given to you.
- When the judge asks you to come forward or “approach the bench,” bring your papers with you.
- An official court reporter may be present to take down what people say or it may be tape recorded. Make sure you speak loud enough to be heard.
- The petitioner will address the judge first. The respondent goes next.

Judges must hear evidence in contested cases. Here are some of the common procedures followed in hearing contested cases.

- There are many rules for introducing evidence. Generally a witness must appear in court. What people say outside of the courtroom may not be allowed. There are rules about what types of documents can be considered by the judge. Lawyers know the court rules for presenting evidence that is admissible and for objecting to evidence that is not allowed by the rules. This can be a frustrating experience for a person who does not know the rules of evidence.
- Before witnesses testify they are given an oath to tell the truth. When the party calls a witness to testify, this is done by question and answer. Do not “lead” the witness by

making statements. The witness is giving information, so the information needs to be contained in their answers, not in the questions.

- If someone objects to questions of witnesses or documents offered as evidence, the person is allowed to state their objection without interruption. Then the other party will be allowed to respond. The judge will decide if the objection is valid. Everyone must wait for the judge's decision before proceeding. After questioning of a witness by the person who called the witness, other parties in the case have a chance to also ask questions, called "cross-examination."
- During the course of the hearing the judge may ask questions at anytime. It is wise to listen attentively to the question and then answer.
- After the petitioner "rests," the respondent goes next.
- After the evidence is presented, the Judge will decide the case. The decision may be announced by the judge in court that day or may be decided later, what judge's call "taking the case under advisement. Once the judge decides the case, the decision is put into writing.

The parties in the case usually prepare the written judgment according to the instructions given by the judge. You may be required to submit a proposed judgment before the case is scheduled for a hearing. Few judges prepare the written judgment. Check with the court clerk for local procedures. After the judge signs the judgment it will be filed with the court clerk. The court clerk will mail a copy to you.

What do I have to do after the judge signs the dissolution?

First you must do all the things that the judge ordered you to do in the judgment. That means you may have to transfer property, sign documents or pay money. Failing to do what the judge ordered may result in additional court proceedings for enforcement of the judgment or for "contempt" of court.

It is your own responsibility to change names on the property that used to be marital property. This includes names on automobile titles, insurance policies, bank accounts, retirement accounts, credit card accounts and deeds. It may be necessary to consult a lawyer for the preparation of some documents. If your judgment affected title to real estate, you must file a certified copy of the judgment with the recorder of deeds where the property is located. Also, you may need to inform the appropriate government agencies, employers, creditors and businesses that a judgment has been given and of any name change granted. You may be asked to provide “certified” copies of the judgment. The court clerk can assist you in obtaining certified copies. It is a good idea to keep a certified copy of the judgment in your own records.