

TDS INFORMATION PAPER  
4133 Regional Trial Defense Team  
Oregon Army National Guard  
Domestic Relations Resources in Oregon  
May 2013

Information papers are intended to provide general guidance in legal issues. They are not intended to substitute for the advice of a qualified attorney. This paper primarily discusses the legal process and resources for divorce and custody cases, and only peripherally other family law proceedings. This paper does not constitute legal advice. The law changes all of the time and the websites herein change all of the time. If you have questions you should seek out a qualified attorney.

Legal Assistance attorneys (LAA) or Trial Defense Counsel (TDC) may provide legal assistance in family law matters under AR 27-3, and the restrictions provided by the Staff Judge Advocate (SJA) and the Regional Defense Counsel (RDC). These Judge Advocates represent the particular eligible individual and provide advice and assistance to determine their legal rights and obligations. The Oregon Trial Defense Service (TDS), which primarily provides military criminal justice defense matters, only provides legal assistance services in family law cases after a referral from the Office of the Staff Judge Advocate (OSJA) due to conflicts or inability to represent in a particular case. Therefore, requests for legal assistance advice must first go the OSJA LAA. All requests to Oregon TDS must use the Request for Counsel Form (RFC) on the Oregon TDS website at [www.oregon.gov/omd/jag](http://www.oregon.gov/omd/jag).

Judge Advocates (JA or “JAG”) are severely limited in their representation of someone, particularly since JAGs will not file legal papers or appear in court. If you have time sensitive matters, papers to respond to, unless you can see a JAG immediately you should seek out the advice of a qualified private attorney immediately. If you have an attorney already then JAG cannot talk to you without their permission. As there are military issues in many cases, your private attorney can work through you to coordinate issues with a JAG.

There are resources available at the Circuit Court, typically the availability of forms, and possibly a family court clerk who may be able to assist you in filling out forms. The court staff cannot provide you legal advice. Additionally, there is some assistance available through Oregon Legal Aid, and if you qualify then limited resources with JAG. The Oregon National Guard (ONG) JAG Office and Oregon TDS only represent ORNG members and eligible family members in the Oregon National Guard. If you are Active Duty or Army Reserve you should contact the closest legal assistance office at an active duty military installation.

If you are representing yourself then you are ‘pro-se’ or ‘self-represented’. Even though you are self represented, it is your responsibility to comply with Law, including statutes, case law, regulations, court rules and supplemental local court rules. You are expected to understand the existence of such and properly apply the law. The judge will not do

it for you. The law is complicated and there is no way that this paper can discuss all aspects of any case type. As Oregon moves to the electronic paperless system, “Oregon eCourt”, the procedures will be more complicated in preservation of confidential information, how to electronically file, etc.

#### General Procedures:

If you are starting out with a domestic relations issue you may wish to look at the Oregon State Bar (OSB) website at <http://www.osbar.org/index.html> , and particularly the information and resource page at <http://www.osbar.org/public/legalinfo/family.html>. There is also self help material on the Oregon Judicial Department (OJD) website.

Generally, domestic relations cases involve divorce, separation, custody and parenting time, child support, or restraining orders. Typically, the process of any of these starts with a petition filed by one party, or if both parties then it is called ‘stipulated’. A response is required in the time frame required by law, usually 30 days unless the pleading is an Order to Show Cause for temporary orders which may be 14 days. Restraining orders start out as ‘ex-parte’ meaning that the petitioner was able to legally appear before the court without notice to the other party to obtain an initial order, which is then served on the other party, and they have a chance then to file an objection. Some orders may require a party to appear in court rather than appear by filing a legal writing generally known as a pleading by filing a response. The following is general information that varies from court to court, judge to judge and in interpretation of rules of court.

In Divorce or ‘Dissolution of Marriage”, separation or custody cases, a petition is filed, and the petition and other required documents are legally served on the other party for a response within 30 days, and without a response the filing party can seek a default order and then a default judgment to win the case. If you are deployed and get served papers contact a JAG immediately to invoke the Servicemembers Civil Relief Act (SCRA) provisions to stay the case. If a response is filed then the case begins its track towards court, and every case is different. Remember, that the court is generally not going to do anything for you to advance your case. Whether you are the petitioner or the respondent you must initiate and process your claims and defenses. The court will not advance your claims or defenses. The court will set some hearings, establish timelines and require pleadings to be filed. If you fail to meet any of the court requirements you may lose your case.

Pleadings during such cases may involve motions for orders to show cause for temporary matters (temporary relief or ‘pendite lite’), motions to compel discovery, motions for examinations, and many other possible motions. Cases involving children will typically involve pleadings for custody, parenting time, possible mediation of those issues, filing of Uniform Support Declarations and supporting documents for child support. If there is an existing Administrative Support Case in the same county then that usually will be consolidated with the new case. The court may do this or you may submit a motion and order to accomplish this in each case. Additionally, if there is already an administrative case, or one is started, and

or a party is on state assistance, then the petitioner must provide the Support Enforcement Division of the Department of Justice a copy of any petition and provide the court proof of that on the applicable form. If you have an Administrative Support case from a different county, or out of state your support issues make the case complex and you should plan on providing the court copies of your final judgment order in that other case. Divorce cases will eventually need a 'Rule 8' statement, and personal property lists, outlining the final requests to be heard by the court, but must really reflect the nature of the pleadings and not present new issues not reflected by those pleadings.

You must file original documents with the court, copy the other party and provide the court a certificate reflecting the copy by email to the other party. If you fail to provide the other party copies of documents you submit the court may STRIKE or IGNORE the documents. Your submissions must comply with the Oregon Rules of Civil Procedure (ORCP), the Uniform Trial Court Rules (UTCRC), and the Supplemental Local Rules (SLRs), and State Law. Please submit a proposed order in accordance with the rules at the appropriate time. The court will ordinarily not prepare orders in response to your motion. If you fail to respond to pleadings you may lose on the issues asserted or even your whole case.

If any motion or timely response does not request oral argument then the court's presumption may be that no hearing will be set to hear oral argument. When a motion is mailed to the other party (and properly filed) there is allowed 17 days from the mailing date to respond to the motion. If a substantive hearing is already set and the motion issue affects that hearing then the moving party needs to make the court aware of that fact and ask for oral argument, possibly relating that an evidentiary proceeding is needed and the time necessary for it, an expedited hearing requested on the motion.

Often a court is going to wait for the 17 days to see if a response is filed to the motion before setting the hearing. If no response is filed to the motion then the moving party may file a proposed order based on the motion. If you don't please don't expect the court to be doing anything about your motion. A court can assume many things at this point, and one of them is that you are wisely working things out short of a hearing. That said, how a particular judge or court system processes motions is different from court to court. Unless you provide the court a self addressed stamped envelope (SASE) and a conformed copy or money for a photo-copy of the signed order, then don't expect to get any response from the court as to the status of any motion or order you have submitted.

In domestic relations cases where temporary relief is sought, if there is not a timely response to the order to show cause as described in those documents, then with proof of 'service' of the documents upon the non-responding party an order and as appropriate a limited judgment may be submitted to the court consistent with the motion and supporting documents.

In some cases, the court will decide to immediately set a hearing, or possibly set one but not sooner than the 18th calendar day after the filing date of the motion. If you ask for an expedited hearing with oral argument then it is more likely that the hearing will be set earlier.

During that time the responding party can respond and if they choose to not respond then arguably the matters in the motion have been deemed admitted. This is a warning that even if the matter is set for hearing that does not mean you do not need to timely file a response. If the party does not respond then the moving party may submit an order consistent with the motion for the court to approve. There is generally six days (ten for self represented litigants) for objections to orders, and any objection to such an order upon failing to plead ought to include a responsive pleading. If the six days lapses prior to any set hearing date you can expect the court to sign the order and cancel the hearing. The court generally discourages orders from being filed too soon, but clearly at the 10th day under ORCP or the 14th day under UTCR the time is ripe to submit an order. Mechanically and procedurally (especially with Oregon eCourt), Orders must be filed separately from motions. If you prepare your own pleadings, they must be compliant with the UTCRs and any local court SLRs, and orders should provide blocks for “Granted” “Denied” and a section for the court to fill in any specific comments or instructions based on the order submitted. If you are using an OJD form, then the form is fine regardless of its format.

Generally, your personal appearance is expected at all scheduled hearings. That said, you may be able to ask for telephonic appearance at minor hearings and such are at your cost. You ordinarily must see if the other party has an objection and make such a request in writing, typically by motion for telephonic appearance, reflecting the other parties position, with a proposed order and certificate of mailing to the other party. These are usually not evidentiary, meaning you generally don’t get to testify unless the court has ordered that you (1) can appear telephonically and (2) can present telephonic testimony. Ordinarily, the court will tell you the phone number you will call into for the hearing. Courts generally do not make long distance calls so you will need to either (1) send a SASE to return your conformed copy of the order or with money to get a copy of the court’s signed order, (2) be possibly prepared to receive the court’s court notice with the number on it to call into – if that court does that, (3) call in and check status on the motion, or (4) give the court your email address so you can get communication from the court by email. No matter what, however, it is up to you to coordinate, not the court.

Keep the court advised in writing of your mailing address, telephone and email address during your case, as to each separate case you have. If you fail to appear in person at any hearing then you risk losing your case and the other party winning by default. Examine the available forms on the OJD and the Circuit Court website for the court you are filing in. If you don’t have an attorney and need help completing your paperwork then you can contact the court to see if there is an available family law clerk to help to complete the paperwork. The court clerk cannot give you legal advice and for legal advice you should see an attorney.

The court will be setting hearings on your case. Generally you need to inform the court of the time you expect to take for any particular hearing.

If you have settled your case but need to complete the paperwork, or need a continuance, or wish to appear by telephone then you may contact the court to see if the court has a form to apply for a continuance or telephonic appearance. If you need a continuance to complete settlement paperwork then you still must submit a continuance and you may then get a notice to submit the paperwork in 28 days or the case may be dismissed. If you have email then the court will often email the form to you. There may otherwise be a cost for form production and mailing. You must coordinate a request for continuance with the other party or their attorney if represented and reflect their position in the motion. You must outline the reasons for the continuance or appearance by telephone with supporting materials if you have them. Last minute continuances not agreed to are ordinarily denied. There is no guarantee that submission of any motion or application means that it will be granted, and if appearance is allowed by telephone that does not mean that ‘testimony’ is allowed by telephone. You will need to check with the court to see if it was approved or not, and unless you submit a post card or SASE and payment for copies at .25 per page to get a return copy then don’t expect to get a return notice of what happened.

An appearance by phone does not mean that you can give testimony by phone and presumptively is ‘non-evidentiary’. The court expects physical personal appearances unless the court allows telephonic appearances or testimony by written order. **ORDINARILY, YOU MUST GET THE COURT’S PERMISSION FOR EITHER AN APPEARANCE BY TELEPHONE OR FOR TESTIMONY BY PHONE, BY MOTION, AFFIDAVIT OR DECLARATION AND SEPARATE PROPOSED ORDER**, copied to the other party, with certificate of mailing filed with the court, and do not assume it will be approved.

Your physical personal appearance, and the physical personal appearance of any witnesses you have, is expected unless the parties agree in writing to telephonic appearance, testimony, etc, which is at YOUR cost and so you must bring a telephone ‘minutes’ card to court for calls to be placed.

In cases where children are involved for custody or parenting time issues, the court will or has issued a separate order for the parties to attend the parenting class, which comes in various names, including “Helping Children Cope Class” and for mediation of custody and parenting time issues. If the case only affects support now but changes to address custody or parenting time issues the court will often later issue the order for the class and mediation later.

Contacting the court without copying the other party or other individual contact with the Judge (called ‘ex parte’) is not allowed. Discussing your case with the court clerks is without value. You must provide the court evidence in writing that you have provided the other party a copy of any submission or it may be returned, struck, or denied.

Resources:

There are many approved forms and guides that are available from State Government resources. The links provided herein change and so the primary location for you to look for

approved resources is the Oregon Judicial Department website, under materials and resources, currently located at:

<http://courts.oregon.gov/OJD/OSCA/cpsd/courtimprovement/familylaw/pages/index.aspx>

Family law forms are generally located on line at:

<http://courts.oregon.gov/OJD/OSCA/cpsd/courtimprovement/familylaw/pages/index.aspx>

You must generally coordinate with the other party, and must provide the other party copies of anything you file with the court and file a certificate of mailing of that document to reflect your compliance. A certificate of mailing is available on line at:

<http://courts.oregon.gov/OJD/OSCA/cpsd/courtimprovement/familylaw/flPacket6.page?>

The Circuit Courts have available a guide provided by the Oregon Judicial Department for “How to Prepare . . .” for your domestic relations case. This is available on line at:

<http://courts.oregon.gov/OJD/OSCA/cpsd/courtimprovement/familylaw/familylawresources.page?> As your case is now proceeding to a trial date you should be getting familiar with how to present your case.

The Oregon Judicial Department has self help information on the OJD website at:

<http://courts.oregon.gov/OJD/OSCA/cpsd/courtimprovement/familylaw/familylawforms.page?>  
*Most OJD forms for family law, except anything that a judicial district has locally adopted is here.*

Standard parenting plans are often located on a particular court’s website. For instance, the Umatilla and Morrow County Courts have information available online at: <http://courts.oregon.gov/Umatilla/FormsDomRel.page?> *In particular the joint personal property list and standard parenting plan is here.*

The Oregon State Bar has information online located at:

<http://www.osbar.org/public/legalinfo/family.html>.

The State of Oregon Law Library has online resources at:

<http://www.oregon.gov/SOLL/index.shtml>.

The Oregon Department of Justice has online resources at:

<http://www.doj.state.or.us/dcs/index.shtml>. *In particular child support calculator information is here* <https://justice.oregon.gov/guidelines/default.aspx>.

Oregon Legal Aid website is located at: <http://www.oregonlawhelp.org/OR/index.cfm>.

You can find the Oregon Statutes at:

<http://www.leg.state.or.us/ors/>.

The Uniform Trial Court Rules (UTCRR) are located at:  
<http://courts.oregon.gov/OJD/programs/utcr/utcrrules.page?>

You can find the Umatilla Morrow County Supplemental Court Rules (SLR) at:  
<http://www.ojd.state.or.us/Web/OJDPublications.nsf/SLR?OpenView&count=1000>.

You can find the Oregon State Administrative Rules at:  
<http://arcweb.sos.state.or.us/banners/rules.htm>.

#### Preparing for Trial or Hearings:

The petitioner is responsible to pay for any trial fees for trial currently \$125 per day or partial days. Generally, prior to trial the petitioner must contact the court clerk and arrange to pay the trial fees for a trial date. You should plan on showing proof to the courtroom clerk of the payment. Subject to change, there are no fees for ‘hearings’. If you have not paid a fee, then the court will either not hold the hearing or add the fee to a limited judgment, or the general (final) judgment and order that it be paid by one or both parties. Be on time for your case. If you are late, then your case may be called and you may lose for non-appearance,

For any hearing, you will want to have for any exhibits your ORIGINAL and a copy of each exhibit for the other party and a copy for the court. Petitioner marks each exhibit on the lower right hand side of the page with PET EX 1 and so on; and the Respondent marks their exhibits on the lower right hand side of the page with RESP EX 101 and so on. You should have a list of exhibits and witnesses prepared, provide the court clerk the original on pleading paper, and provide the other party, or their attorney, and the judge a copy. You should retain your exhibits intact and without change for at least 30 days after Judgment.

All persons attending the court must be dressed so as not to detract from the dignity of court. Members of the public not dressed in accordance with this rule may be removed from the courtroom. As a party to the proceeding, please dress appropriately for court. This includes wearing appropriate attire, not wearing hats, shorts, T-shirts, chewing gum, or smokeless tobacco, etc. Turn off all cell phones.

While every court does things differently, because of docketing and case priority issues, your case could be continued and you should check with the court and check your case status in the days leading up to the hearing or trial date including the afternoon before the scheduled date.

You may wish to consider writing out your opening statement about the facts of your case, and what you intend to prove in court and what you are asking the court for in the form of relief and judgment. You probably would read it to the court, and offer it if it’s in pleading format. It is not a time to argue your case. For divorce cases, Rule 8 statements and joint personal property lists are required, and for any support case, even if no support is sought which is a deviation from the support guidelines, each party must file a Uniform Support

Declaration with exhibits and child support calculations - all at least 14 days before trial. The failure to provide such materials will likely diminish the ability of that party to properly present their case.

The Rule 8, “statement of assets and liabilities” can be found at:  
<http://courts.oregon.gov/OJD/OSCA/cpsd/courtimprovement/familylaw/flPacket6.page?>

A sample joint personal property distribution list is available at:  
<http://courts.oregon.gov/Umatilla/FormsDomRel.page?>

The Uniform Support Declaration (USD) (formerly the Uniform Support Affidavit) can be found at:  
<http://courts.oregon.gov/OJD/programs/utcr/UTCRForms.page?>

You may also file a written trial memorandum of facts and issues pertaining to your case to outline the issues for the court, the evidence you expect to present, any applicable law and its application to your case, and generally provide the court a written document pertaining to your case.

Trials and hearings generally start with the petitioner’s opening statement and the respondents opening statement unless they reserve it for the start of their case. Then the petitioner presents their ‘case in chief’, and the respondent asks questions of witnesses. Once the petitioner completes their case the respondent presents their witnesses and evidence, and the petitioner asks questions of the witnesses. Once the respondent is done, the petitioner may have a chance for rebuttal testimony and then the respondent sur-rebuttal. When testimony closes the petitioner and respondent have closing argument, and the court may allow the petitioner to give a rebuttal, but often not in domestic relation cases. The court will typically take any complex issues under ‘advisement’ to issue a decision memorandum, order, or even a judgment. One party may have to prepare the final order or judgment. If a party is represented by an attorney, the court may award attorney fees based on the facts and pleadings.

Author: COL Daniel Hill, RDC, dated 9 May 2013

Revised: Not Applicable

Approved: COL Daniel Hill, RDC, dated 9 May 2013