

## ***Understanding Informal Domestic Relations Trials***

As of October 1<sup>st</sup>, 2023, all Montana courts will use a new process to resolve family law cases. This process is called an “informal domestic relations trial,” or IDRT.

Domestic relations cases include divorces (or “dissolutions”), custody and visitation (or “parenting plans”), child support, division of property, grandparent-grandchild contact, protection orders, as well as changes to previous domestic relations orders (or “modifications”). If you are a party in one of these types of family law case in a Montana district court, you now have two options for how the trial will go.

The two types of trials you can choose between are informal and traditional. You will need to choose the type of trial that you think is best for your case. You may want to talk to a lawyer before deciding which type of trial is best for you.

If you or the other party don’t have a lawyer, then you will have informal trial automatically unless you or the other party officially asks to have a traditional trial instead. If you want an informal trial, you do not need to do anything. **If you do not have a lawyer and want a traditional trial, you will have to opt out of the informal trial by using the form on <https://idrt.mt.gov> or telling the judge in court by the deadline set in the judge’s order.**

### **What is an Informal Trial?**

In an informal trial, you and the other party 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. They also do not get to interrupt you or object to evidence you want to give the judge. Similarly, you (or your lawyer) do not get to ask the other party questions directly, interrupt, or object to evidence. Most of the time, you and the other person will be the only witnesses.

In an informal trial, either party can present any evidence they think is relevant and the judge may consider it, even if that evidence wouldn’t be accepted under the Montana Rules of Evidence. This means you can explain the issues more informally and provide any documents or other evidence to the judge without worrying whether it is allowed (or “admissible”). The judge will decide the importance of what each person says and the evidence provided.

No one can force you to do an informal trial. An informal trial will automatically be used for any family case where at least one party doesn’t have a lawyer. But if you or the other party want to do a traditional trial instead, all if you have to do is tell the judge in a hearing or by filing out the form found at <https://idrt.mt.gov>.

### **What is a Traditional Trial?**

In a traditional trial, lawyers or people who represent themselves usually present information to the judge by testifying and by calling witnesses and asking questions of them. Each side gets to

ask questions directly of the other person and their other witnesses (this is called “cross-examining”). Generally, the judge asks few, if any, questions during a traditional trial.

In a traditional trial, the Montana Rules of Evidence (found in [title 26, chapter 10 of the Montana Code Annotated](#)) apply. These evidentiary rules can be complicated. They place limits on the things you and other witness can talk about and the kind of documents and other evidence that you can give to the judge to consider in deciding the case.

If you or the other person has a lawyer in a traditional trial, the lawyer may, if allowed by the court, 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 they believe the testimony or documents violate the Montana 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.**

### **If I Choose an Informal Trial, Can I Have Other Witnesses?**

In general, an informal trial will only involve testimony from you and the other party. The judge can decide if other witnesses are necessary.

There is one exception. If you or the other party give the judge a written report from an expert, you, the other party, or the judge can ask that the expert testify under oath and answer questions by either party, their lawyers, or the judge.

### **Can I Choose an Informal Trial if I Have a Lawyer?**

Yes. People with lawyers and people representing themselves can both use informal trials. If you have a lawyer, the lawyer will help you prepare and can sit next to you during the informal trial to offer advice.

In an informal trial, lawyers CAN NOT ask you or the other party questions and they CAN NOT object to evidence or testimony.

A lawyer in an informal trial CAN help you to:

- prepare for the trial,
- identify the issues in the case,
- identify other issues that the judge should ask the other party about,
- question expert witnesses, and
- make short arguments about the law at the end of the case.

**Remember, informal trials are now the default for family cases where at least one person doesn't have a lawyer. A formal trial will be used if one party opts out of the informal process and asks for a traditional trial. You can ask for a traditional trial by filling out the form on <https://idrt.mt.gov> or asking the judge at the hearing.**

### **Why Would I Choose an Informal Trial?**

- 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.

- You can speak directly to the judge about your situation without interruption or objections from the other person or their lawyer.
- You may be uncomfortable with a setting where the other person is allowed to directly ask you questions. In an informal trial, the other person and their lawyer may not question you.
- You do not have to worry about formal rules of evidence 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;
  - tell the judge about the important issues in your case without worrying if what you say is admissible; and
  - ask the judge to consider any documents or other evidence. It is up to the judge to decide if they are important.
- 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.
- Informal trials may be shorter. If you have a lawyer, the lawyer may need less time to prepare and work on your case, which may cost you less. Also, you may not need to take as much time off from work.
- An informal trial might be right for you if your case is relatively simple, and you are comfortable explaining your circumstances and the facts to the judge.

### **Why Would I Choose a Traditional Trial?**

- The Rules of Civil Procedure and formal procedures are in place to control the process. The Montana Rules of Evidence will apply. You or your lawyer may feel more comfortable with this structure.
- You may like the fact that the Rules of Evidence control what people can say and what documents the judge can consider.
- It is important for you or your lawyer to question the other person directly.
- 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.
- In a traditional trial, the judge will not usually 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.
- A traditional trial might be better for you if you are represented by a lawyer and your case is complicated. For example, you might prefer a traditional trial if you and the other person own a business or have lots of stocks and property to divide that is difficult to value.

### **How Does an Informal Trial Work?**

- 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 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.
- This process is repeated for the other person.
- Each person may submit relevant documents and other evidence that they want 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.
- The judge will give each person an opportunity to respond to statements made by the other person.
- Each person or their lawyer may make a short closing statement about the issues and how the judge should decide.
- After all the above steps are done, the judge decides the case and shares it with both people. Because informal trials are often shorter and less complicated, sometimes the judge can decide the matter before the parties leave the court room.

### **How Does a Traditional Trial Work?**

- Both people and/or their lawyers make an opening statement if permitted by the judge. The person who filed the case or the motion at issue goes first.
- The person who filed the case or motion then calls their witnesses. Following the Rules of Evidence, 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 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 filed the case or their lawyer then takes a turn questioning the witnesses.
- The question-and-answer process and the presentation of documents or other evidence can be interrupted by objections. Some evidence and testimony may not be allowed if the judge agrees with the objections.
- The parties and/or their attorneys may make a closing argument if permitted by the judge, 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 deciding the case.
- After all the above steps are done, the judge will make a decision. The judge may need additional time to make a ruling.