

INFORMAL DOMESTIC RELATIONS TRIAL BENCH GUIDE

For Montana District Courts



SEPTEMBER 29, 2023
OFFICE OF THE COURT ADMINISTRATOR
Simplified Family Law Resolution Project Administrator

As of October 1, 2023, the Informal Domestic Relations Trial (IDRT) process will be default for all domestic relations cases in Montana involving at least one pro se litigant. We hope this guide will help support a smooth and successful transition to using the IDRT process in your district.

Enclosed, you will find:

- the MT Supreme Court order regarding IDRTs and Rule 17 of the Uniform District Code
- the IDRT Pilot Report and Addendum
- a template IDRT scheduling order
- a script for explaining the IDRT process to parties
- an IDRT flyer for parties
- a detailed document for parties called “Understanding IDRTs”
- an opt out request form with instructions for parties

Each of these documents may also be downloaded from <https://idrt.mt.gov/>.

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If you would like to speak to a judge, standing master, or court staff member who participated in the IDRT pilot, you may reach out to the 1st, 4th, or 12th Districts.

If you have questions, need assistance, or would like to request additional materials, please contact the program administrator, Emma Schmelzer, at emma.schmelzer@mt.gov or 406-444-6196.

IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 11-0765

ACCESS TO JUSTICE COMMISSION:
IN RE THE ADOPTION OF GUIDELINES
FOR ESTABLISHING INFORMAL
DOMESTIC RELATIONS TRIALS

O R D E R

The Access to Justice Commission petitioned this Court in August 2021 to authorize a pilot project with guidelines for district courts wishing to participate in informal domestic relations trials (IDRT) within their jurisdictions during the pilot. The Court approved the petition and adopted guidelines, and several district courts opted to participate. Pursuant to the Court's August 17, 2021 Order, the participating district courts, through the Supreme Court Administrator's Simplified Family Law Project Administrator, submitted a report to the Court with comments and a recommendation that the Court establish the IDRT process as a permanent rule of court. The Project Administrator followed with an addendum to the report containing additional recommendations. The Court put the proposal out for public comment on June 30, 2023.

After considering the participating courts' recommendations and public comment on the proposal, the Court hereby adopts the Informal Domestic Relations Trial process as a new rule in the Montana Uniform District Court Rules, which will become Rule 17. Rule 17 is effective October 1, 2023. The Court further directs the Project Administrator to develop a Bench Guide to the IDRT Process for District Courts, including sample forms and instructions, and to continue developing informational materials for parties considering or participating in the process.

IT IS ORDERED that the proposed revisions as approved by the Court are ADOPTED. The Montana Uniform District Court Rules are amended to include Rule 17, which is set forth in the attachment to this Order, effective October 1, 2023.

This Order and the attached rule shall be posted on the Court’s website. In addition, the Clerk is directed to provide copies of this Order and the attachment to: the State Law Library, the Office of the Court Administrator for dissemination to all District Court Judges, the Simplified Family Law Project Administrator, the members of the Access to Justice Commission, the Executive Director of the Montana Legal Services Association, the President of the University of Great Falls, the Dean of the Alexander Blewett III School of Law, Todd Everts, Shana Harrington, and Karl Kempel at Montana Legislative Services, Eric Goodemote at Thomson Reuters, Patti Glueckert and the Statute Legislation department at LexisNexis, and the State Bar of Montana with the request that it provide notice to the membership by publication in the *Montana Lawyer* magazine and through other electronic and timely means .

DATED this 30th day of August, 2023.

/S/ MIKE McGRATH
/S/ BETH BAKER
/S/ LAURIE McKINNON
/S/ JAMES JEREMIAH SHEA
/S/ DIRK M. SANDEFUR
/S/ INGRID GUSTAFSON
/S/ JIM RICE

RULE 17 – INFORMAL DOMESTIC RELATIONS TRIALS

- (a) Unless one or both parties objects or the court orders otherwise, in every original or modification action for dissolution of marriage, parenting and visitation, child and medical support, declaration of invalidity of marriage, paternity, separation, grandparent-grandchild contact, or orders of protection brought under MCA Title 40, including interim proceedings, in which at least one party is self-represented, the issues will be resolved through an informal domestic relations trial before a judge or standing master as provided in this Rule. If both parties are represented by counsel and wish to use the informal process provided in this Rule, the court in its discretion may allow the informal proceeding upon stipulation in the record.
- (b) The court must explain the informal domestic relations trial process and advise the parties of their right not to consent. The court may include in the case scheduling order a deadline for parties to opt out of the process. A party's decision to opt out must be stated on the record or in a signed filing with the court.
- (c) The court may refuse to allow the parties to utilize the informal domestic relations trial process at any time and may direct that a case proceed in the traditional manner.
- (d) The court may allow a party to withdraw from an informal domestic relations trial election as long as the other party is not prejudiced by the withdrawal. The court will not allow a withdrawal of an election that has the effect of postponing the trial date absent a showing of good cause.
- (e) During an informal domestic relations trial, parties may present any evidence they believe is relevant. The court may admit any evidence a party offers, even if this evidence might be inadmissible under formal rules of evidence, and may determine how much weight to give any evidence. The traditional format used to question witnesses at trial does not apply. In many cases, the parties will be the only witnesses. The parties may call other witnesses in the discretion of the court. The court may question the parties and any other witnesses, and the parties may suggest additional topics or questions.
- (f) Any evidence offered during an informal domestic relations trial initiated under this Rule is not admissible in any other proceeding unless the court in the other proceeding determines the evidence meets the applicable rules of evidence.
- (g) If an informal domestic relations trial converts to a formal proceeding, the court will determine the admissibility of evidence previously offered in the

informal proceeding. The court may not rely on any evidence in a formal proceeding that is not admissible under the applicable rules of evidence.

- (h) The court will allow each party an opportunity to file any objections or motions on the admissibility or use of any evidence offered in an informal domestic relations trial before relying on that evidence in a formal proceeding.
- (i) An informal domestic relations trial will proceed as follows:
 - (1) At the beginning of an informal domestic relations trial, the court will ask the parties to affirm that they understand the rules and procedures of the informal domestic relations trial process, they are consenting to this process freely and voluntarily, and they have not been threatened or promised anything for agreeing to the informal domestic relations trial.
 - (2) The court may ask the parties or their lawyers for a brief summary of the issues.
 - (3) The court will allow the moving party to speak to the court under oath concerning all issues in dispute. The party is not questioned by the other party or any lawyers, but the court may question the party to develop evidence required by any statute or rule or necessary in the court's discretion to address the matters at issue.
 - (4) The parties will not be subject to cross-examination. However, the court will ask the nonmoving party or their lawyer whether there are any other areas the party wishes the court to inquire about. The court will inquire into these areas if requested and if relevant to an issue to be decided by the court.
 - (5) The process in subsections (i)(3) and (i)(4) is then repeated for the other party.
 - (6) Expert reports will be received as exhibits. Upon the request of the court or either party, the expert will be sworn in and subjected to questioning by the parties, their lawyers, or the court.
 - (7) The court may receive any exhibits offered by the parties which are capable of being made a part of the record of the case. The court will determine the materiality, relevance, and what weight, if any, to give each exhibit. The court may order the record to be supplemented.

- (8) The court will allow the parties or their lawyers to respond briefly to the statements of the other party.
 - (9) The court will offer each party or the party's lawyer the opportunity to make a closing statement.
 - (10) At the conclusion of the case, the court will render judgment. The court may take the matter under advisement, but it will make its best efforts to issue prompt judgments.
 - (11) The court may modify these procedures as justice and fundamental fairness requires.
- (j) A case proceeding as an informal domestic relations trial will be subject to the same pretrial procedures and orders of the court that apply to traditional cases. Parties seeking a dissolution proceeding under informal domestic relations trials are subject to the mandatory disclosure requirements of MCA § 40-4-252.
 - (k) The court's final judgment will have the same force and effect as if entered after a traditional trial and may be appealed or objected to on any grounds that do not rely on the rules of evidence.

IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 11-0765

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ESTABLISHING PILOT INFORMAL
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PILOT REPORT

In accordance with the Montana Supreme Court’s order of August 17, 2021, the Simplified Family Law Resolution Project Administrator submits to the Court this report, which was compiled from feedback provided by participating districts throughout the pilot period. In January 2022, the Informal Domestic Relations Trial (IDRT) program launched in the First Judicial District (Lewis & Clark and Broadwater counties), the Fourth Judicial District (Missoula and Mineral counties), and the Twelfth Judicial District (Chouteau, Hill, and Liberty counties). IDRTs have been used for dissolutions, parenting plans, and orders of protection.

Finding #1: There is general agreement that the IDRT process was beneficial to pilot courts and parties who chose to participate.

“IDRT has been effective in getting folks a more timely resolution that have little dispute with regard to property and need the court to help them navigate parenting plan challenges. This allows the court flexibility to simply ask the parties the questions that matter, rather than watching self-represented litigants fumble through a contested final hearing. IDRT also gives full detail on what to expect from the Court—IDRT is what most self-represented litigants want, as

they do not understand the legal process or legal intricacies such as foundation for evidence, etc.” – *Judge Snipes Ruiz, Twelfth Judicial District*

“I think that when we have used IDRT in hearings, it has been very beneficial, made the process more user-friendly for self-represented litigants, and led to better decisions in those cases because we can receive a wider variety of information and direct the testimony more efficiently.” – *Judge Abbott, First Judicial District*

“IDRT provides a mechanism for judges to hear what parties have to say because we can overlook some evidentiary foibles and decide what to take into consideration. We get permission to hear the whole story. When we render a decision, the parties can at least rest in the knowledge that they were heard.” – *Judge Vannatta, Fourth Judicial District*

Though returned surveys were limited in number, all feedback received from parties themselves was positive, apart from one serious concern related to the power imbalance that can still exist within the IDRT process if one party is represented and one is not.

Finding #2: Some judges and standing masters found IDRT particularly useful for pro se order of protection (OOP) cases.

“In OOP cases without attorneys appearing, I have been using IDRT almost exclusively—works great to bring the temperature down in these proceedings where emotions run hot.” – *Judge Snipes Ruiz, Twelfth Judicial District*

“Some of the principles of IDRT work really well with an OOP even if the parties have not elected to use IDRT. For example, the IDRT method of judge involvement is particularly helpful to use in OOP cases to avoid having a pro se petitioner or respondent asking questions directly to the opposing party (which would normally happen in cross examination). In this way,

the judge can essentially run interference by asking the questions of the parties instead.” –
Standing Master Rubin, Fourth Judicial District

Finding #3: It was challenging to encourage participation and secure consent from parties.

Each District created their own plan for informing parties about the IDRT option, and consent could either be elicited through a signed consent form or verbally on the court record. Information about the IDRT process was provided through self-help centers, clerks of court, and scheduling orders, and the option was often discussed during scheduling conferences or just before trials began. Despite those efforts, parties were sometimes still unaware of IDRT or reticent to embrace the process. Often, one party wished to proceed, but the other declined.

“I still am having resistance from parties to using an informal process even when it is clearly to their benefit (even in OOP hearings).” - *Standing Master Rubin, Fourth Judicial District*

“As a practical matter I use IDRT in virtually all of my pro se family law and order of protection cases even though I have only occasionally remembered to go through the formal IDRT paperwork process. I do this because it feels to me to be the natural and efficient way for the matter before me to progress to a conclusion. When I have remembered to do the paperwork, I have found that it caused delay explaining what it was all about.” – *Judge Deschamps, Fourth Judicial District*

Finding #4: Court staff have had a generally good experience with the pilot.

According to reports from the districts and staff themselves, the introduction of the IDRT option did not place an addition burden on judicial assistants or scheduling clerks, and some staff spoke positively about the benefits IDRT offers the parties and the court. Staff indicated that they

would be excited if IDRTs continued to be available for pro se litigants in particular because parties often feel more comfortable, and the process is more manageable for courts.

Finding #5: There is a general recommendation that an IDRT rule be adopted and that IDRT become the default process for pro se family law matters.

Overall, the pilot judges, standing masters, and staff like the IDRT process and believe that some of the barriers to entry would be alleviated by instituting it as default. They believe it would increase efficiency, reduce the parties' sense that they are giving something up or selecting a "lite" version of the full family law process, and relieve a great burden from an already-stressed court system.

"I certainly request that IDRT be adopted by the Montana Supreme Court. IDRT should be an opt-out mandatory program where both parties are pro se. Where a party is represented by counsel, I do not recommend IDRT." – *Judge McMahon, First Judicial District*

"I think having an actual IDRT rule of evidence / uniform district court rule would be helpful to explain precisely how it differs from traditional hearings. It would help us better explain it to litigants and lead to more uniformity in how we deal with documentary evidence, experts, cross-examination, etc." – *Judge Abbott, First Judicial District*

"Self-represented litigants would benefit from speedier resolution if this were implemented as default." – *Judge Snipes Ruiz, Twelfth Judicial District*

"I would not object to IDRT as the default for any DR case that has at least one pro se litigant. Regardless of being formally adopted, we are all doing some form of IDRT anyway." – *Judge Vannatta, Fourth Judicial District*

"I wholeheartedly recommend adoption of an IDRT Rule in Montana as a default requirement in family law and order of protection (O/P) cases where one or both parties are pro

se. I strongly encourage IDRT as a default procedure in all pro se family law and O/P cases. I also urge going further and requiring IDRT procedures as the default in all family law and O/P cases where only one side is represented by counsel. While there will still be an imbalance of power and skill, utilizing IDRT procedures in such cases will help in a small way to level the playing field.” – *Judge Deschamps, Fourth Judicial District*

There are elements of any potential rule that may require specific consideration. First, if IDRT were to become the default process, it would be beneficial to specify for whom it would be the default and how the opt-out procedure would function. Some judges and standing masters would like to see IDRT become the default process for DR cases in which at least one party is pro se, while others would advocate that IDRT should be default only where both parties are pro se. There is also a question of whether the formal process would only be able to be used if both parties elect to opt out of an IDRT.

Additionally, there is concern from some judges about the characterization that “the rules of evidence do not apply” in IDRTs. Some suggested that a more accurate way to describe how the rules of evidence function within an IDRT would be that the rules of evidence are administered in a relaxed fashion, or the rules of evidence do still exist, but the judges are the gatekeepers.

Final Notes

31 IDRTs were identified by case number during the pilot period. The number of completed IDRTs reported informally was higher, but since there was not a cost-effective way to implement IDRT tracking into the court data system, and sometimes parties did not consent until the day of the IDRT, it was a challenge for judges, standing masters, and court staff to accurately capture which cases used the IDRT process.

In response to pilot district requests, program staff will create additional materials to support the IDRT process during the summer of 2023. These will include a bench card/script for judges with suggestions on holding an effective IDRT hearing, a video for participants introducing the IDRT option (which may be able to be incorporated into required parenting classes in some districts), a template for an IDRT-specific scheduling order, and a handbook for implementing the IDRT process for districts that choose to participate in the future.

The program administrator anticipates that the pilot group judges will follow this report with additional, specific recommendations before the Court opens a public comment period or considers whether to adopt the program on a permanent basis or rescind or supersede the pilot Order. Any additional proposals will be submitted to the Court by June 23, 2023.

DATED this 25th day of May, 2023.



Emma Schmelzer

IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 11-0765

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ADDENDUM TO
PILOT REPORT

A smaller group of pilot judges (Judge Deschamps, Judge Abbott, and Judge Menahan) were able to gather on June 22nd to discuss additional, specific recommendations they would like to make before the Court opens a public comment period or considers whether to adopt the program on a permanent basis or rescind or supersede the pilot Order.

This group proposes that the Informal Domestic Relations Trial (IDRT) process be default for all DR cases in which both parties are self-represented *and* cases where one party has counsel and the other does not. They also recommend that if either party (represented or not) objects to the use of IDRT, the traditional trial format should be used instead.

Finally, this group suggests that any IDRT Order include a robust description of how the rules of evidence will be used in comparison to a traditional trial. Example language: “Parties may present any evidence they believe to be relevant, and judicial discretion will be used to determine how much weight any piece of evidence is given.”

DATED this 23th day of June, 2023.



Emma Schmelzer

1 MONTANA XX JUDICIAL DISTRICT COURT, XX COUNTY

2 IN RE THE MARRIAGE OF

Cause No. DR-23-xxx

3 xx,

4 Petitioner,

5 and

ORDER SETTING STATUS HEARING

6 xx,

7 Respondent.

8
9
10 A Status Hearing will be held on _____, the _____ of _____,
11 **2023** at _____ a.m./p.m. at [location] before [judge or standing master].

12 Parties must participate [in person or via video conference (see Zoom
13 instructions below for joining by either video or telephone)].

14 During this hearing, the parties must be prepared to discuss the status of the
15 case, [proposed parenting plans], and any actions needed to help prepare for trial or
16 resolve this dispute.

17 No witnesses, other than the parties, will be able to testify at the Status
18 Hearing.

19 Before the Status Hearing, both parties must review the attached information
20 about the Informal Domestic Relations Trial (IDRT) rules. **If you or the other**
21 **party are not represented by a lawyer, your trial will be held using IDRT**
22 **rules unless you formally say you want a traditional trial.** It is important that
23 you understand the differences between the two kinds of trials before the Status
24 Hearing.

25 If either party would like to opt out of the IDRT trial and use a traditional
26 trial format instead, that party must file the form below by the date of Status
27 Hearing or tell the judge on the record during the Status Hearing.
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29
30

1 DATED this _____ day of _____, 2023.
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4 *Electronically Signed and Dated Below*
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IDRT Explanation Script

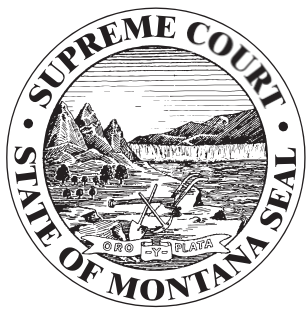
All Montana courts now use a process called an Informal Domestic Relations Trial (or IDRT) for family cases where at least one person doesn't have a lawyer. Because neither of you objected by the deadline I set, we will be using the IDRT process. This means that:

- You speak directly to me without interruption or questions from the other party.
- You explain the issues in a way that makes sense to you and can provide any documents or other evidence without worrying if it's allowed under the Montana Rules of Evidence.
- I ask you and the other party questions about what you've told me.

Here's how this will work:

- 1) The person who started the case will speak first. That will be you, [petitioner's name]. You will tell me about the case, what result you want, and why. I will then ask you questions so I can confirm relevant facts. Only I will ask questions, not the other party or lawyer. I will then ask [respondent's name] or their lawyer whether there are other topics I should ask you about.
- 2) Then we'll repeat this process for you, [respondent's name].
- 3) While you testify, you can both submit relevant documents and any other evidence you want me to see. I'll look at each item and decide whether it should be considered. The other party can't object to your testimony or the evidence you give to me.
- 4) If there are any experts: the expert's report will be given to me. Either of you can ask to have the expert testify, and the expert can be questioned by me, either of you, or your lawyers.
- 5) I'll give you each an opportunity to respond to statements made by the other person.
- 6) At the end, each of you or your lawyer may make a short closing statement about the issues and how I should rule.
- 7) Once we've gotten through all that, I will make my decision. I may be able to share that with you before we leave the courtroom, or I may need some time to consider and send you the result in writing.

Any questions?



MONTANA JUDICIAL BRANCH

Are you involved in a divorce or parenting plan?

There is a new way for your District Court to handle the trial.

Informal Domestic Relations Trial (IDRT)

- You speak directly to the judge without interruption or questions from the other party.
- You explain the issues in a way that makes sense to you and provide any documents or other evidence without worrying if it's allowed under the Montana Evidence Rules.
- The judge asks you and the other party questions.



Traditional Trial

- You or your lawyer present information to the judge by calling witnesses and asking questions of them.
- Each side gets to ask questions directly of the other person and their other witnesses.
- The Montana Rules of Evidence apply, so only certain kinds of documents and testimony can be considered by the judge.



As of October 1st, 2023 all family cases where at least one person doesn't have a lawyer will be handled using the IDRT process. This will happen automatically, unless you or the other party tell the court that you want to opt out and use a traditional trial instead.

Have questions?

Contact the Self-Help Law Center closest to your county.

<https://courts.mt.gov/selfhelp/>

Understanding Informal Domestic Relations Trials

As of October 1st, 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.

Opting Out of an Informal Domestic Relations Trial for Your Family Law Case: Form and Instructions

Note: As of October 1, 2023, all family cases will automatically use the Informal Domestic Relations Trial (IDRT) process. If you don't want to use that process, you have the right to request a traditional trial either by using this form or telling the judge during a hearing. Make sure you do so before the deadline. Before you make a decision, read about the differences between the two kinds of trials at <https://courts.mt.gov/idrt/>.

These instructions cannot take the place of advice from a lawyer. Talk to a lawyer if you have **any** questions.

What Terms Do I Need to Know?



Petitioner/Plaintiff- Depending on the type of case, the person who files an action in court is either called the petitioner or the plaintiff. If you were the first person to file something in court, this is you.

Respondent/Defendant- Depending on the type of case, the person who needs to respond to someone else's action in court is either called the respondent or defendant. If the other person filed first, this is you.

Dissolution- Dissolution is the legal word for divorce in Montana.

Modification- If you want to change something about an earlier order (*i.e.*, a dissolution, parenting plan, or order of protection), then you are asking for a modification.

Informal Domestic Relations Trial (IDRT)- This is the new default process for handling family laws cases in Montana, where the rules of evidence are relaxed and the judge takes a more active role. You can learn more about the difference between this and a traditional trial at <https://courts.mt.gov/idrt/>.

Traditional Trial- Previously, family law cases used a traditional trial, where the normal rules of evidence apply. You can learn more about the difference between this and an IDRT at <https://courts.mt.gov/idrt/>.

Montana Rules of Evidence- The laws that govern evidence in a traditional family law case are called the Montana Rules of Evidence. They can be found [in title 26, chapter 10 of the Montana Code Annotated.](#)

Who Can Use the Form?



You can use this form if:

- Your case is in a Montana District Court, AND
- Your case involves a dissolution, parenting and visitation, child and medical support, invalidity of marriage, paternity, grandparent-grandchild contact, an order of protection, or modification of any of those.

What Do I Do with this Form?

1 If don't want to use the Informal Domestic Relations Trial process, fill out the Form.

- Fill out all the blanks on the Notice to Opt Out of an Informal Domestic Relations Trial.
- Sign and date your Notice to Opt Out of an Informal Domestic Relations Trial.
- Fill out the judicial district, county, and caption. If you aren't sure which judicial district you are in, you can look at another document that has been filed in your case or ask the Clerk of District Court. The caption looks like this:

Montana _____ Judicial District Court <i>Number of the judicial district where you are filing</i> _____ County <i>Name of the county where you are filing</i>	
_____ Petitioner / Plaintiff, and _____ Respondent / Defendant.	Case No.: _____ <i>Filled out by Clerk of District Court Unless you have already filed your case and know the number</i> Notice to Opt Out of an Informal Domestic Relations Trial

2 Make Copies

- Make two copies of the form after you have filled it out.

3 File Form at the Courthouse

- Go to the Clerk of District Court's office in your county courthouse. Give the Clerk of District Court the original Notice to Opt Out of an Informal Domestic Relations Trial
- Give your copy to the Clerk of District Court and ask them to stamp it as "Filed". Keep the copy in a safe place.

3 Serve Form to the Other Party

- Mail or hand deliver a copy of the Notice to Opt Out of an Informal Domestic Relations Trial to the other parent. Use the method of service you checked on the form.

Where Can I Get Help?



- **The Court Help Program** is a free service provided by the Montana Supreme Court to assist people with civil, non-criminal legal problems. You can visit their website at <https://courts.mt.gov/selfhelp/> to find your nearest Self-Help Law Center.
- **Montana Legal Services Association (MLSA)** gives free legal help to low and moderate-income people. To find out if you qualify for MLSA, call the MLSA HelpLine at 1-800-666-6899.
- **The State Bar Lawyer Referral and Information Service (LRIS)** refers people to Montana lawyers who might be able to help. The referral is free. Call LRIS at 1-406-449-6577.
- **The State Law Library** can help you find and use legal resources such as books, forms, and websites. You can visit the Law Library website at www.lawlibrary.mt.gov. Or you can contact a Reference Librarian at 1-800-710-9827 or by email at mtlawlibrary@mt.gov.

Name

Mailing Address

City State Zip Code

Phone Number

E-mail Address (optional)

Petitioner/Plaintiff Respondent/Defendant

MONTANA _____ JUDICIAL DISTRICT COURT, _____ COUNTY

_____,
Petitioner / Plaintiff,

and

_____,
Respondent / Defendant.

Case No: _____

Notice to Opt Out of an Informal Domestic
Relations Trial

My name is _____. I agree to the following:

- I understand that there are two ways for my District Court to handle my case: a traditional trial or an informal trial (also known as an Informal Domestic Relations Trial).
- I understand that in a traditional trial, the Montana Evidence Rules apply, and I will not be able to talk about any issues or provide any documents unless allowed by those rules. I also know that I will have the right to question the other side and the other side will be able to question me.
- I understand that because I am not doing an informal trial, I will not be able to speak directly to the judge without interruption or questions from the other party,

Notice to Opt Out of an Informal Domestic Relations Trial

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and I won't be able to explain the issues and present documents unless allowed to under the Montana Evidence Rules.

I have read and understood this document, and I am voluntarily opting out of the informal domestic relations trial process so that I can have a traditional trial.

Signature

Date

Certificate of Service

I, _____, swear (or affirm) under oath that:
(print your name)

I served a copy of the above Notice to Opt Out of an Informal Domestic Relations Trial upon _____,
(name of the opposing party)

on _____ day of _____, _____, by
(date) (month) (year)

mailing a true and correct copy with postage prepaid and addressed as follows:

(opposing party's name or name of opposing party's attorney, if he/she has one)

(opposing party's mailing address or mailing address of his/her attorney)

(city, state, zip code)

hand delivering a true and correct copy to:

(opposing party's name or name of opposing party's attorney, if he/she has one)

DATED this _____ day of _____, _____.
(date) (month) (year)

(Your signature)

Notice to Opt Out of an Informal Domestic Relations Trial

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