

Demystifying Family Court

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Family Court Enhancement Project

- Office of Violence Against Women
 - Demonstration Site
- Goals
 - Overall-improve response to cases with DV and Custody
- Multnomah County Problem Areas
 - Information and procedural fairness

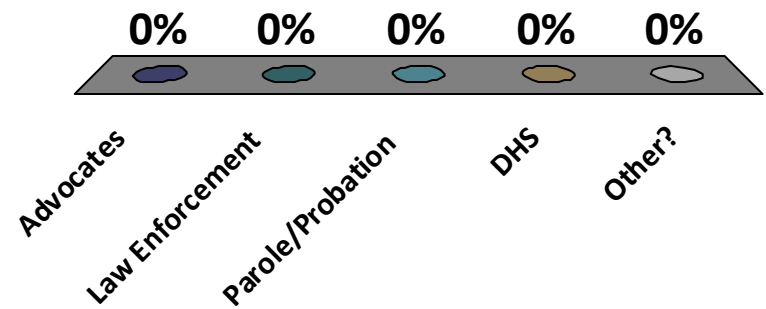


Our Goals for Today

- Review the difference between civil and criminal court
- Go over the basic steps in a family law process
- Address some FAQ's
- Discuss ways to provide legal advocacy and not give legal advice while supporting litigants in court

Who are you?

- A. Advocates
- B. Law Enforcement
- C. Parole/Probation
- D. DHS
- E. Other?





Barriers to using the court?

- Language
- Physical accessibility
- Hasn't worked before
- Bad experiences with systems
- Cultural
- Hard to understand
- Immigration status
- Expensive

Civil vs. Criminal

Civil

Purpose: To resolve disputes and compensate for harm or injury (bodily, financial, property)

Remedies: Possible court order, often for payment of \$ or specific action

Proof: Usually – a preponderance of evidence (more likely than not something occurred). Some cases have higher standard

Lawyers: Each party may hire a private attorney

Criminal

Purpose: To set accountability for acts which are disruptive of social order (breaking laws)

Penalties: Conviction may result in jail or prison, fines, restitution, probation.

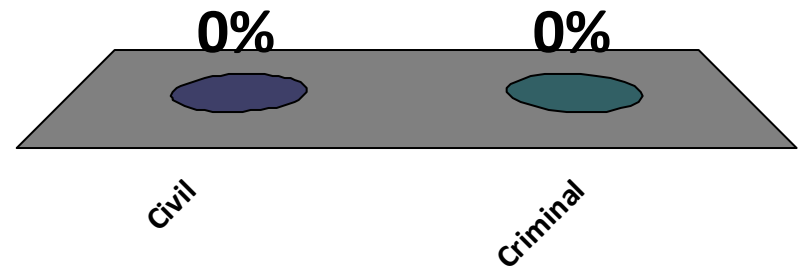
Proof: Beyond a reasonable doubt (re guilt)

Lawyers: The state hires prosecutors. Defendants can hire their own attorney and indigent Defendants have a right to court-appointed counsel.

Divorce: civil or criminal?

A. Civil

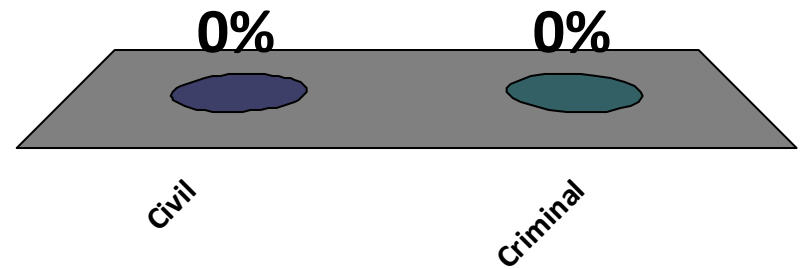
B. Criminal



Assault: civil or criminal?

A. Civil

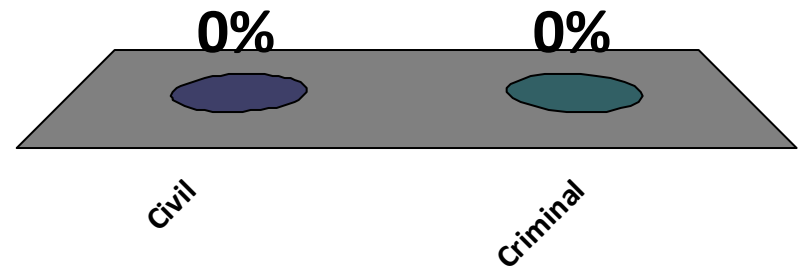
B. Criminal



Protective order: civil or criminal?

A. Civil

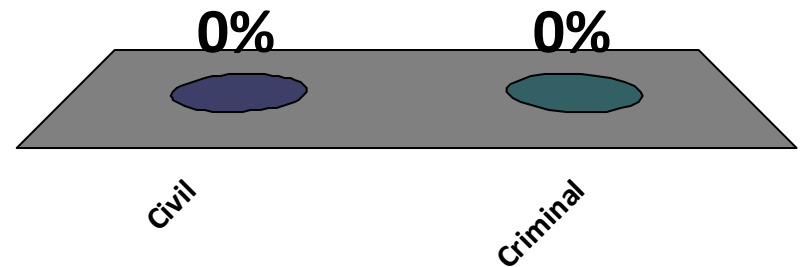
B. Criminal



Suing someone: civil or criminal?

A. Civil

B. Criminal





Family Law Cases

- Divorce
- Custody/Parenting time
- Protective Orders
- Adoption
- Name/gender change
- Separation
- Status Quo
- Immediate Danger



Why aren't people hiring an attorney?

- Can't afford
- Don't want to pay
- Very few free/low cost options
- Not required
- Think they can represent themselves better
- Start with an attorney and run out of money or felt let down
- When people can afford, are making rational, thought out choice to not hire

What's confusing about the process?

- What forms to use?
- Where to go?
- What are the court's rules?
- Language is hard to understand (Latin!)
- Hard to distinguish between processes
- May be multiple routes to same end (or seem like there are, when there isn't)



Some definitions



- Dissolution-divorce
- Petitioner- the person initiating a civil case
- Respondent- the person whom the petitioner has a case against
- Pro se- Litigants are representing themselves, without an attorney
- Ex parte- a hearing that allows only one person party to the case to be present



Divorce/Custody Process



Before Getting Started

- Address any immediate safety concerns
- In domestic violence cases, separation is a dangerous time
- How will other party respond to divorce/custody?
- Begin thinking about safe parenting plans
- Is paternity established?

Parenting Plans

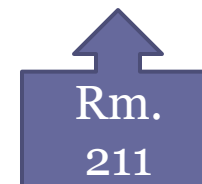
- A parenting plan is a document that states when the child will be with each parent and how decisions will be made about the children
- Has other parent:
 - felt violence towards family OK in some situations
 - threatened to commit suicide
 - physically hurt you or the kids
 - threatened to kill anyone
 - sexually abused anyone
 - been arrested for harming anyone
 - had a problem with alcohol or other drugs
 - needed medications to be safe around others
- If yes, consider a safety focused parenting plan

Safety Focused Parenting Plans

- The court has a guide:
 - <http://courts.oregon.gov/OJD/docs/osca/cpsd/courtimprovement/familylaw/sfppgentirever04-091003.pdf>
- Option A: The child can't be safe alone with the other parent- *supervised or no parenting time*
- Option B: You feel the child can safely spend limited time with the other parent – *no overnight time*
- Option C: The child is safe with the other parent but you are not – *overnight parenting time, public or supervised exchanges*
- Supervised parenting options:
 - Friends or Family
 - A paid, private supervisor
 - Safety First - <https://multco.us/dcj/safety-first>



Getting Started



- Find the paperwork-buy in 211 or print off website
 - If printing for someone, have them sit with you or tell you *exactly* what forms to print
- Complete stage one forms
 - Separate the packet into Stage 1 and Stage 2
 - Including the child support calculator online
- Document review if possible
 - Attorneys, Advocates, Friends, Family

Filing

Rm 210
1021 SW 4th



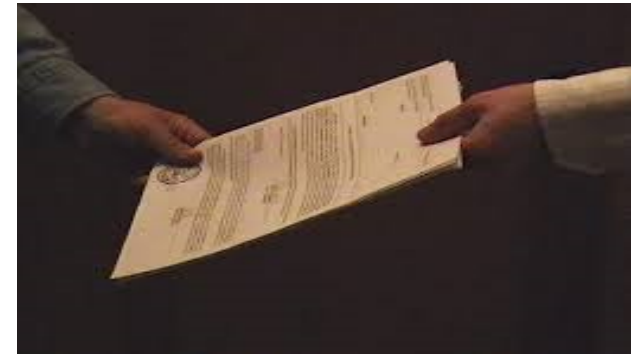
- File paperwork at the court house
 - Make 2 set of copies of all the completed forms (court staff can do this for \$.25/page)
- It costs, about \$250, but people can complete a fee waiver/deferral- this is not fast and requires documentation related to financial situation



18480 SE
Stark St.

Service

- Serve the Respondent
 - You can not serve the other party. The server must be at least 18 years old and live in the state of service. The server **must complete a form that must be returned to the court.**
 - You can pay the sheriff to serve (fee can be waived in fee waiver/deferral)
- “How to Serve Legal Papers”



<http://courts.oregon.gov/Multnomah/docs/FamilyCourt/HowToServeDeliverLegalPapersInOregon.pdf>



Finishing the divorce/custody case

- If there are minor children, a parent education class must be completed
- Family Court Services (in the courthouse) administers the class; it's cheaper if you sign up early)
- The Respondent has 30 days to respond (in paper)



Finishing the Divorce/custody case, possibility 1:

- The respondent **doesn't respond**:
 - Complete a **Default Judgment**
 - Fill out the default judgment paperwork in packet
 - File it with the court
 - The court will mail the signed judgment or return it to be fixed



Finishing the Divorce/custody case, possibility 2:

- The respondent **responds, but agrees:**
 - Complete a **Stipulated Judgment**
 - Fill out the stipulated judgment forms
 - File it with the court
 - A trial will be set, so call the court and cancel
 - The court will mail the signed judgment or return it to be fixed

Finishing the divorce/custody case, possibility 3:

- The Respondent **responds and disagrees:**
 - Go to mediation or get a waiver for mediation if it's unsafe
 - A trial date will be set
 - Go to Trial Assignment
- **Remember:** Your case isn't done until a final judgment is turned in, the petitioner has to do this after court

And . . . in divorce and unmarried parent petitions for custody:

- A motion to MODIFY starts the process all over again about custody, parenting time, or support
 - Service
 - 30 day wait
 - Written Response?



Trial Assignment



- A trial will be set, you'll get notice to come to court on two different days
- Show up at 9 am the first day-start in 211 to find out what court room
- Tell the judge if you're ready for court and how many witnesses you plan to bring (so the judge knows how much time you'll need)
- Your trial will be set for the next business day

Getting Ready for Trial

- Before trial:

- Know how long it takes you to get to court
- Where to park-garage vs. metered
- What to wear
- Childcare (don't bring kids!)

CourtCare

- You can bring notes
- Bring pen and paper to take notes during trial
- Contact the court if you or your witness need an interpreter or ADA accommodations



MULTNOMAH
CourtCare

A project of the Multnomah Bar Foundation, in partnership with Multnomah County, the Oregon Judicial Department, the U.S. District Court Attorney Admission Fund and Volunteers of America Oregon

Emotionally Preparing for Trial

- Highly emotional
 - What will help you be calm in court?
 - Something to focus on in the room (always look at the judge and not partner)
 - Something to touch in your lap
 - Taking deep breathes
- Abuse tactics will continue in court, just more subtle-try to not react
- Help adjust expectations-as clear as it is to the litigant-the judge may disagree or not have a legal basis to grant what is being asked
- Safety plan about getting there, during time in court, and leaving
- Help paint picture of what court will be like (you can always observe court)

During Trial

- There will be limited time-be concise
- Basic court rules
 - Don't interrupt anyone, especially the judge-even if the other party is lying or you don't agree (you'll have a chance to rebut their statements)
 - Turn your phones off



Trial Process

Opening Statements

- Each side can make an opening statement that tells the judge about your case and what you're asking for in the case

Petitioner's Case

- Presents evidence-testifies, calls witnesses, etc.
- Respondent can cross examine (ask questions of) witnesses

Respondent's Case

- Presents evidence-testifies, calls witnesses, etc.
- Petitioner can cross examine (ask questions of) witnesses

Petitioner's Rebuttal

- Can present more evidence or call witnesses, but only to rebut respondent's testimony and evidence

Closing Arguments

- Each side can make Closing Arguments that summarize their case

I object!

Hearsay

- Example: bringing evidence, like letters, and the person that wrote them isn't present.
- Example: when you're testifying and say, "Jesse said the respondent was drunk..." and Jesse isn't present to be questioned.
- In either case you're repeating something someone said who isn't there to be questioned by the other side.
- Certain types of hearsay are allowable, as the law recognizes some exceptions.

Relevance

- Sometimes a party begins testifying about things that aren't relevant to the current case.
- This could look like; "the respondent used drugs 15 years ago," and discussions of drug use may not have been part of this case.
- Or someone could begin testifying about a completely unrelated topic – such as how the parents first met in high school.



Evidence

- Make 3 copies of any document or photos you want the judge to consider: 1 for you, 1 for other party, and 1 for the judge.
- Often people want to bring letters-remember hearsay?
- Remember, the other side can object to your evidence.

Text messages as Evidence



- If you want the judge to consider evidence, it has to be admitted and kept with the file, so you have to copy messages off your phone into a document-include the date, time, and who sent and received it.
- Bring your phone to show the judge the original message if needed.
- You can sometimes get these records from your phone company, but it is complicated and requires subpoenas.

Witnesses

- You can bring people to speak about what they know of your case
 - Think in advance about what questions you want to ask them
 - You can subpoena them if they won't come voluntarily or need a subpoena for their work
 - You can get blank subpoenas from 211



Unlawful Practice of Law

- **Don't do it! You can be sued.**
- Acting like an attorney when you are not one, some of these actions:
 - Representing yourself as an attorney
 - Giving legal advice – recommending specific choice(s)
 - Advising people about their rights
 - Telling people what matters they should bring before the court
- *Can* provide legal advocacy
- *Can* answer questions about how the court works and give general info about rules and processes

Legal Advocacy vs. Legal Advice

Advocacy

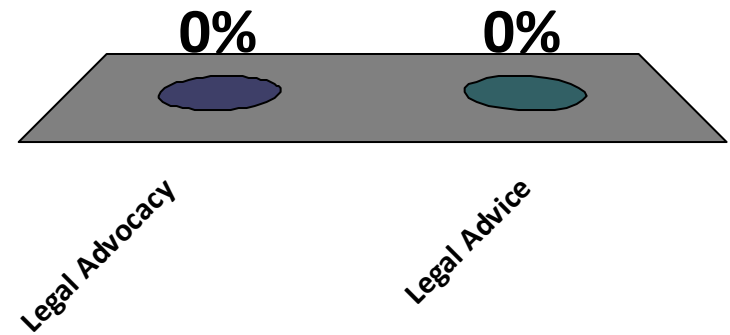
- Answering questions:
 - about deadlines
 - about where to get forms
 - about what goes on at hearings
 - about the general way to complete forms
 - that start with “How do I..?”
- Any time you’re answering general questions about process that does not have anything to do with the *facts* of their case.

Advice

- Answering questions:
 - about what forms to pick out
 - about what the outcome of their case will likely be
 - about what to write on their forms
 - that start with “Should I..?”
- Any time you answer questions or direct people based on the *facts* of their case.

What should I ask for in my divorce?

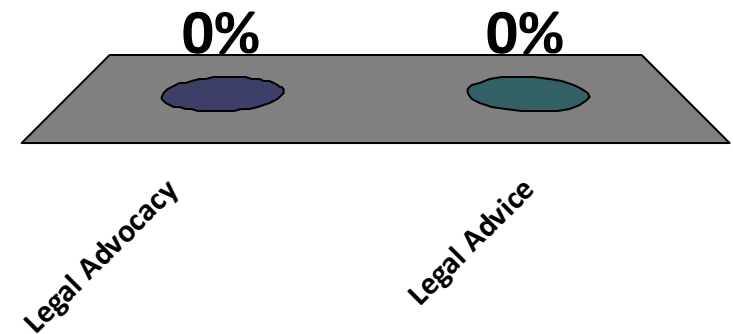
- A. Legal Advocacy
- B. Legal Advice



My hand is broken, can your write for me?

A. Legal Advocacy

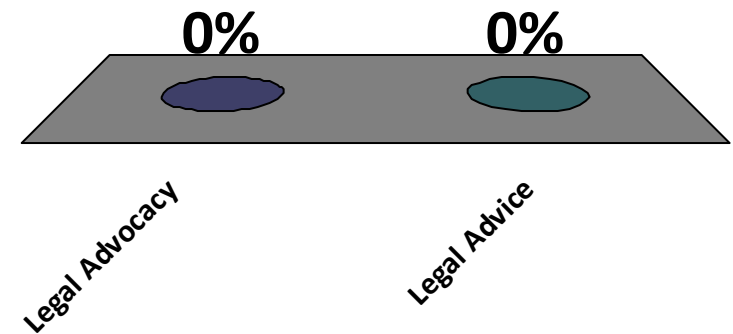
B. Legal Advice



How much does it cost to file for custody?

A. Legal Advocacy

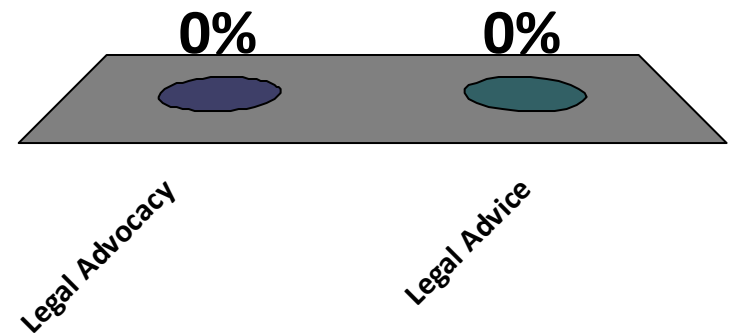
B. Legal Advice



He's not working right now, should I even bother to ask for child support?

A. Legal Advocacy

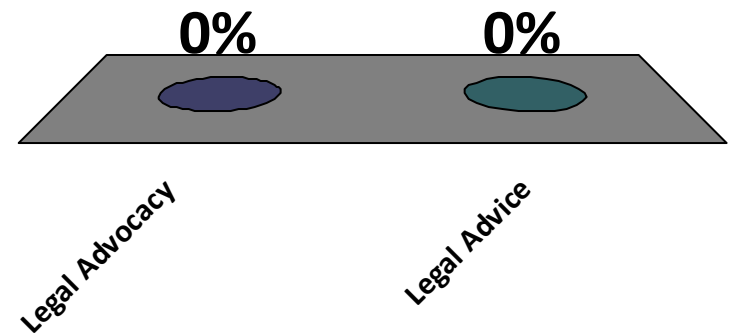
B. Legal Advice



Do you think the judge will grant my order?

A. Legal Advocacy

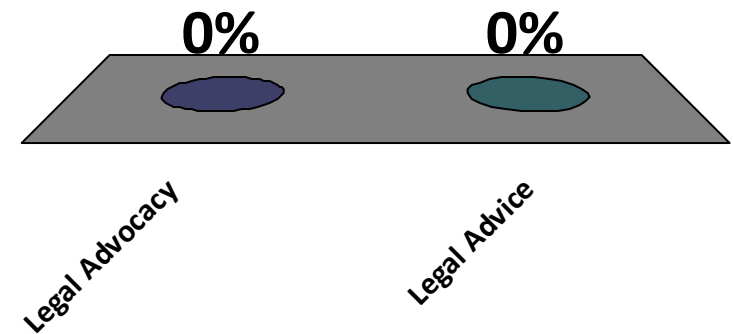
B. Legal Advice



I'm not comfortable with her having the kids alone, should I ask for supervised parenting time?

A. Legal Advocacy

B. Legal Advice



Legal Resources

- Legal Aid Domestic Violence Project – FREE!
 - If she simply anticipates contest, she can call!!
 - Make sure survivor mentions: RO and DV to the receptionist
- Victim Rights Law Center – FREE
 - Representation in any SA related cases
 - No income restrictions
- Oregon Crime Victims Law Center – FREE
 - Helps with civil matters related to victimization, including protective orders
- St. Andrews – SLIDING SCALE
- Modest Means Program – SLIDING SCALE
- Online Resources
- Legal Resource Center on VAW
 - Interstate Custody Issues in DV
 - <http://www.lrcvaw.org/>
- Women's Law
 - Legal Information/DV
 - <http://www.womenslaw.org/>
- Oregon Law Help
 - <http://oregonlawhelp.org>

Preparing for Court Resources

- “What to Expect in Court” (video)
<https://www.youtube.com/watch?v=azQvV6P9-Ps>
- “How to Prepare for Your Divorce, Legal Separation, Custody, or Support Trial” (brochure)
<http://courts.oregon.gov/Multnomah/docs/FamilyCourt/HowToPrepareForYourDivorceLegalSeparationCustodyOrSupportTrial.pdf>
- Multnomah County Circuit Court
http://courts.oregon.gov/Multnomah/General_Info/Family/pages/findinglegalhelp.aspx
- Safety Focused Parenting Plan
<http://courts.oregon.gov/OJD/docs/osca/cpsd/courtimprovement/familylaw/sfppgentirever04-091003.pdf>

Legal Advocacy Resources

- VOA Home Free – Legal Advocacy Program
 - Information and support around ROs and other civil legal matters
 - Accompaniment to court proceedings
- The Gateway Center for Domestic Violence Services
 - Information and support around ROs and other civil legal matters
 - Legal Aid Services of Oregon is an on-site partner
 - Can apply for Restraining Orders on-site.
 - Navigators speak many languages.