



ASSISTANCE

Family Law in Maine: Post-Judgment Motions

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Before You Start...

If you need to change or enforce your court order, you can ask the court for help by filing a form called a “post-judgment motion.” This guide can help you if you want to change or enforce a **divorce judgment** or a **parental rights and responsibilities order**.

First, try to work out the problem with the other party. If that doesn't work, then you can file the motion. If you both agree to a change, you can still file a motion, asking

the court to change the order to reflect your new agreement. Do this to make your agreement enforceable. The court will not enforce private agreements to change child support.

If there has been a significant change, do not delay in filing a motion. The court can only order **future** changes (from the date the other party was served with the motion). This rule applies even if, for example, a child changed residence to your household a long time ago.



Next, you will need to decide what kind of motion you need. In most cases, you will choose one of these three:

1

- ❑ **Motion to Modify.** File this motion if you need a change in your order.

2

- ❑ **Motion to Enforce.** File this motion if the other party is not following your order and you want the court to enforce it. Your other choice is Motion for Contempt (see below). Here are some reasons why a Motion to Enforce may be a better choice:

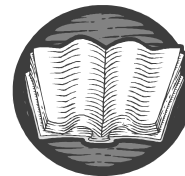
- ✓ If you have *mutual children*, the Judge will review your case up front, to determine how it should proceed. She may refer your case to a *Family Law Magistrate (Magistrate)* or to *mediation*, especially if the only issue is child support. These procedures are more informal than a Judge-held court hearing and easier to handle without a lawyer.
- ✓ The forms and court process are easier, compared to a Motion for Contempt.
- ✓ If your case goes to a *contested hearing*, your “burden of proof” will be easier to meet. Proving **contempt** is harder to do.

3

- ❑ **Motion for Contempt.** This is an alternative to the Motion to Enforce (see above). If you file this kind of motion:
- ✓ You must get a Judge to approve your action first, before *servicing* the other party with the papers.

- ✓ Only a Judge can hear your case. You may have to wait longer to get a hearing with a Judge.
- ✓ The other party is *subpoenaed* to a formal court hearing.
- ✓ You will have to prove more at the formal hearing to get a Contempt Order.
- ✓ A Judge may order more serious sanctions than you can get with a Motion to Enforce.

In summary, a Motion for Contempt is asking the court to take more drastic action. Generally, using a Motion to Enforce is simpler and should work to get what you need. However, if the other party is ignoring an earlier Order to Enforce or is extremely hostile to doing what the court orders, you may want to go the next step by bringing a Motion for Contempt.



How To Use This Handbook

After you decide which kind of Motion best matches what you need, read more about what to do on these pages:

Motion to Modify: pages 4 to 7

Motion to Enforce: pages 7 to 11

Motion for Contempt: pages 11 to 14



Look in the **glossary**, at page 15, if you see a *word printed in italics* that you don't understand. Go to www.ptla.org/forms to get online court forms.



Important Note

The steps explained below under **Motion to Modify** and **Motion to Enforce** tell you about all of the court’s Family Division procedures: case conferences, mediation, and formal hearings. The court may skip or re-order some of the steps, in order to best manage your case.

You can be *defaulted* and taxed for costs if you fail to appear. **Don’t miss your court dates!**

Notify the court in writing right away if your **telephone number or mailing address changes**. The court *clerk* needs to know where to find you. Otherwise, you may not get court notices, causing you to miss important court dates.

**Volunteer Lawyers Project
Helpline
1-800-442-4293**

- If you need more help with:
 - Getting food or shelter
 - Paying for medical care
 - Getting benefits, like TANF
 - Escaping domestic violence
 - Other legal issues

Call:

Pine Tree Legal Assistance

Augusta	622-4731
Bangor	942-8241
Lewiston	784-1558
Machias	255-8656
Portland	774-8211
Presque Isle	764-4349
TTY	711

Should I Get a Lawyer?

A family law matter is serious and the results may affect your family for many years. So we recommend that you get help from a lawyer if you can. But we know that there are not enough free lawyers to help everyone who can't afford one.

If you can't get a lawyer, this guide, along with the forms you get from the Court, will help you get started. If you file either a **Motion to Enforce** or a **Motion to Modify** and you have *mutual children*, a *Family Law Magistrate (Magistrate)* will guide you and the other party through the process. Even so, you must prepare your paperwork and court case carefully. (If your case does not involve children, see page 17.)

- If you need more help with filling out the forms or have other questions about your court case, call:

Motion to Modify

By filing this motion, you are asking the court to change something in your court *judgment* or a prior order. You must be able to show that there has been a "substantial change in circumstances" since the last court order.

Substantial Change In Circumstances could include:

- A change in income for either party that would change the child support order by 15% or more, up or down.
- A change in a parent's schedule or where a parent lives which requires a change in the visitation.
- A change in the ability of one parent to be fully involved in the life of the child, requiring a change in the child's *primary residence* or the division of *parental rights and responsibilities*.



- A change in a party's financial situation that might call for a change in *spousal support* (alimony).

Tips:

You are unlikely to get a change in the *judgment* unless it relates to spousal support, child support, or other child-related issues. Once an earlier order becomes final, most other parts of that order cannot be changed.



Generally, resist filing a Motion to Modify too soon after the court gave the original *judgment*. Your disagreement with the court's earlier order is not grounds to file a **Motion to Modify**.

If **3 years** have passed since your most recent **child support order**, you may file a motion, asking for a change in child support, without having to prove a "substantial change in circumstances."

To file your motion, go back to the District Court where you got your *judgment*. In some situations, you may be able to get a different court to hear your motion. But you would probably need the help of a lawyer to get your case moved.



Here's What To Do...

Step One: Court Forms

Get the forms packet for a **Motion To Modify** from the court *clerk* or online at www.ptla.org/forms.htm. **Read the instruction page carefully.** Review your original *judgment* and any earlier orders changing the judgment. When you fill out the motion form, you will need to explain which court order(s) and which parts of those orders you want changed.

Be ready to pay these court costs:

Service: \$20.00 or more

Filing fee: \$60.00

Mediation: \$80.00 for each party

Note: There is no filing fee for a Motion to Modify **child support only**.

If you have a low income and can't pay these fees, ask the clerk for an **Application to Proceed Without Payment of Fees and Indigency Affidavit**. Fill these out, along with the other court forms. The *clerk*, or a *notary public*, must witness your signing the **Indigency Affidavit**.

If your only income is TANF, SSI or general assistance, the court should waive fees. (Contact Pine Tree Legal if you are denied.)



Step Two: Complete The Forms

Fill out the heading portion of the forms by copying from your original *judgment*. The court location, docket number, and names of the *plaintiff* and *defendant* stay the same. If you can't find your *judgment*, buy a copy from the *clerk*.

Next, on the Motion form, if you are filing for a change in child support **only**, check the box at the top right under where it says Motion to Modify.

Fill in the date of the *judgment* or order you are trying to modify. Check one or more boxes to indicate the type of changes you want to make.

Then fill in the child information requested and answers to the questions about *public assistance*.



Note: If your children have received TANF (formerly AFDC) or MaineCare (formerly Medicaid), you must send a copy of the Motion to DHHS at the address provided.

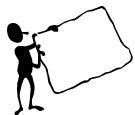
Next, explain in detail the **Substantial Change In Circumstances** that supports your request for a change in the prior *judgment*.

In the last section, briefly state what you want the new order to say. If you need more space, you can go onto another sheet of paper.

This is a sworn document. You must sign it in front of a lawyer, **notary public**, or court **clerk** who will notarize your signature.

Note: If you or your children are victims of domestic violence and you are afraid to put your address or phone number on the forms, see page 18.

Next, complete the other forms in your packet. Fill in all of the blanks.



Step Three: **Serve and File The** **Forms**

You must give or send copies of your completed forms to the other party before the court will hear your case. **The forms packet you got from the clerk, or online, tells you how to do this. Follow the steps carefully.** When you make copies, make two—one for yourself and one for *service*.

Note: Instead of sending the forms by regular mail, you can hand deliver them. In either case, you need to get a signed “Acknowledgement of Service” form from the other party. If that person won’t sign the form, get a Deputy Sheriff to serve the papers or try the certified mail option.

You may not be able to find the other party. If you have made all reasonable efforts but still cannot find him/her, the court may let you do **Service by Publication**. Ask the court **clerk** for a free **Service by Publication** forms packet. Follow the instructions on the cover sheet. This kind of service costs a lot. If you cannot afford to pay for it, go back to page 4 to read about how to ask for a fee waiver.

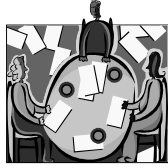
After *servicing* copies of the papers, **file** all of your original forms with the **clerk**. If there is a filing fee and you cannot afford it, go back to page 4 to read about how to ask for a **fee waiver**.

If you and the other parent agree to all proposed changes, you can use a special court rule to avoid going to court. Here are the steps:

1. Write out your agreement.
2. Both of you sign the agreement before a **Notary Public**.
3. **File** your signed agreement with your Motion to Modify (and all other required forms).

A Judge will review your agreement and decide if he can approve it. If he has any questions or concerns, he will tell the clerk to schedule a conference to discuss those concerns. Both parents should come to court for that conference. If the court approves your agreement, the clerk will mail the amended Order to both parties.

Note: On a **Motion to Modify child support only**, the **clerk** will wait, up to 30 days, to see if the other party files a response. If there is no response, the clerk will schedule a final hearing on the motion (skipping the following steps). However, if the other party does respond, **or** if you are asking for the support amount to be **lowered**, you will go on to Step Four.



Step Four: Case Management Conference

About two weeks after you file your papers, the *clerk* will mail both parties a notice. It will tell you where and when you will have your first meeting with the court's *Family Law Magistrate (Magistrate)*. (On a Motion to Modify child support **only**, you may wait longer. See end note at Step Three above.)



If you are the person who was served with the motion, you will get the same notice, along with two court forms: an “entry of appearance” form and a child support affidavit (where child support is an issue). Fill out the forms and return them to the *clerk* before the conference. If you oppose the motion, you should also file your written response within **20 days**. For motions to modify child support, your response and request for hearing is due within **30 days**. If you file nothing with the court, you could be *defaulted*. See more about drafting a response at page 18.

Finally, give or mail to the other party copies of all papers you file with the court, and keep copies for yourself.

To find out what will happen next, read on. The rest of this information applies to both parties.

Go to the conference and be on time. At the conference the *Magistrate* will go over the issues with you. If you and the other party agree on how your *judgment* should be changed, the Magistrate can give a written order to make those changes. If you cannot agree, the Magistrate will probably

order that you go to mediation. In some courts you may attend mediation on the same day as the conference.

The Magistrate's order will also say what issues still need to be resolved and when the next steps will happen.

If the only issue involves child support, the *Magistrate* may hold a formal hearing after the conference and give a *final order*. If you disagree with this order, you may object in writing. File your objections with the *clerk* and give a copy to the other party. The filing deadline is **21 days** from the date the clerk entered the order on the court docket. (This docket entry is usually soon after the Magistrate signed the order). Then a Judge will review the Magistrate's order and your objections.

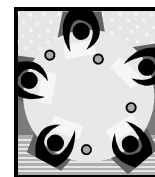
Note: If the *Magistrate* issues an *interim order*, you cannot appeal it. That order stays in effect until the court gives a *final order*.

If your case is not resolved, be prepared to pay the \$80 per person mediation fee at this conference. If you cannot afford this, you may ask for a fee waiver (see page 4). After the conference, the clerk will set the time for the mediation. Be sure that it is a time when you can be there.

TIP: Read all court notices carefully, and bring to court all the documents that you are asked to bring.

Step Five: Mediation

You must go to the mediation. The *mediator* will ask you to explain your problems with the other party. The mediator will also try to help you find





agreement where you can. You must mediate in “good faith.” This means that you will make an honest effort to come to an agreement. But you don’t have to agree to anything that you believe won’t work or is unfair.

The mediator will meet with each party privately at the beginning. If you have been abused by the other party or you are afraid, tell the mediator about this in the private meeting. You may ask to be in a separate room from the other party during the mediation. (For more on this, see page 19).

If you still disagree on any issues by the end of the mediation, you will be sent back to the *Magistrate*, or to a Judge, for a pre-trial or status conference. (Go to Step Six.) If you do agree on any issues, you will sign a written agreement, which will also go back to a *Magistrate* or Judge. If the *Magistrate* approves your agreement, she will write an order. The order will change your *judgment* to follow your agreement.



Step Six: Pre-trial or Status Conference

At this conference, the *Magistrate* will look at what has happened in your case so far and decide what needs to happen next. As before, if you can now agree on all issues, you can get a *final order*. If you don’t agree, the *Magistrate* might send you back to mediation or set up other steps that he thinks might help you to move forward. If your case is ready for a final hearing, he will ask the clerk to set a time for the hearing. If the only issue is child support, the *Magistrate* may hold the hearing then, or at a future date. If you have other issues, you will have a later hearing with a Judge.

Step Seven: The Hearing

This is a formal court hearing. The Judge or *Magistrate* will hear each side. You can testify for yourself, bring witnesses, and present documents. Court rules of evidence and procedure will be followed.



To prepare for the hearing, plan what you need to say. Be ready to tell what has happened. If you brought the motion, be ready to explain the **substantial change in circumstances** that calls for a change in your court order. If you are opposing the motion, be ready to explain why the prior Order should not be changed. You may want to make a list of the major facts and points you need to make. If you know people who have first-hand knowledge of important facts, you can ask them to testify at the hearing. If a witness is unable or unwilling to come to the hearing, you can *subpoena* him. (See more at page 19 about this process.)

The Judge cannot rely on a letter, or even a sworn statement, from an absent witness if the other parent objects. The only way you can be sure that a Judge will consider your witness’s statements is by having that person come to the court hearing and testify.

At the hearing, you will be given a turn to give your side of the story. You will also have the chance to ask questions of the other party and any other witnesses. The Judge may ask you or others questions. Since you do not have a lawyer, the Judge may help you by explaining court procedures or the law.. But she must be neutral and cannot give you or the other party legal advice.

After the hearing, the Judge (or *Magistrate*) will give a *final order*. You may get the order that day or later by mail.

If your hearing was with a *Magistrate* and you disagree with any part of her order, you



can file written objections. Deliver or mail this to the *clerk* and send a copy to the other party. The deadline for filing objections is **21 days** from the date the clerk entered the order on the court docket (usually soon after the Magistrate signed the order). Then a Judge will review the Magistrate's order and your objections and give a *final order*. If you miss this 21-day objection period, you give up your right to any further appeal.

The deadline for appealing a Judge's *final order* to the *Law Court* is **21 days** after the *clerk* enters the order on the docket. File any appeal with the District Court clerk. You will probably need a lawyer to help you go forward with an appeal. If no one files an appeal, the order becomes final in 21 days.

Both you and the other party are responsible for following the final order. All of the terms of your original *judgment*, except those that were changed by the new order, are still in effect.

Motion to Enforce

The **Motion to Enforce** is one of two ways to get help from the Court if the other party has failed to obey an earlier order. (For example, your ex-spouse has not paid marital debts, is not letting you visit your children, or is not paying child support, as ordered.) Your other choice is to file a **Motion for Contempt**, explained at page 11.

If you don't understand the difference, or which type of motion to file, go back to pages 1-2. If you decide on a **Motion to Enforce**, follow these steps.



Step One: Court Forms

Get the forms packet for Motion To Enforce from the District Court *clerk* or online at www.ptla.org/forms.htm. **Read the instruction page with care.** Review the *judgment* in your case, along with any later court orders that changed the original judgment. Be sure your Motion is clear about which order, and which part of that order, you are trying to enforce.

Be prepared to pay these costs:

Service: \$20.00 or more

Filing: \$60.00

Mediation: \$80.00 per person

Note: If your **only** issue is enforcing payment of child support you don't have to pay a filing fee or mediation fee (if mediation is ordered).

You may request a fee waiver if you have a low income and cannot pay the fees. Ask the clerk for an **Application to Proceed Without Payment of Fees and Indigency Affidavit**. Fill these out along with the other court forms. The *clerk*, or a *notary public*, must witness your signing the *affidavit*.

If your only income is TANF, SSI or general assistance, the court should waive the fees. (Contact Pine Tree Legal if you are denied.)

Get the forms and file them in the court that gave the original *judgment*. In some situations, you may be able to move to another Court, but you would probably need a lawyer to help you do that.



Step Two: Complete the Forms

To complete the top part of each form, copy from your original *judgment* or prior order. The location, docket number, and names of *plaintiff* and *defendant* stay the same. If you can't find your old *judgment*, you can buy a copy from the clerk.

On the **Motion form**, if you are asking for enforcement of **child support only**, check the box under the words “Motion to Enforce.” Next, check the box to show whether you are the *plaintiff* or *defendant*. Then fill in the date of the order you are trying to enforce.

At #2 check the box or boxes which fit your issue.

At #3 you have the chance to describe in more detail how the other party has violated the prior court order. You must describe the violation clearly. List the reasons in the same order as they are listed in #2. Be brief, but use a blank piece of paper if you need more space. (Put the docket number on any extra pages.)

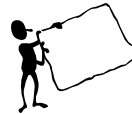
Then answer the questions about your children and whether they have received **public assistance benefits**. If your children have received TANF (formerly AFDC) or MaineCare (formerly Medicaid), you must send a copy of your motion to DHHS.

Finally, at #5B, explain specifically what you want the Court to order the other party to do, to set things right. Again, explain this as simply and briefly as you

can. Attach another sheet of paper if you need more room.

Date and sign the Motion. State whether you are the *plaintiff* or *defendant*. Add your address and phone number. (If you need to keep this information private, for safety reasons, see page 18.)

Complete the other forms in your packet. Fill in all of the blank spaces.



Step Three: Serve and File The Forms

You must give or send copies of the court papers to the other party before the court will hear your case. **The forms packet Instruction Sheet you got from the clerk (or online) tells you how to do this. Follow the steps carefully.** When you make copies, make two—one for yourself and one for service on the other party.

Note: Instead of sending the forms by regular mail, you can hand deliver them. In either case, you need to get a signed **Acknowledgement of Service** form from the other party. If that person won't sign the form, get a Deputy Sheriff to *serve* the papers or try certified mail. (See instructions in the court forms packet)

Then **file** with the court *clerk* these papers:

- ✓ Motion to Enforce (with “proof of service” section filled out, if *served* by sheriff)
- ✓ Child Support Affidavit (where **mutual children** are involved)
- ✓ Summary Sheet
- ✓ Signed acknowledgment form, if the other party accepted *service*
- ✓ Green card from Post Office, if you used certified mail *service*



If you cannot afford the filing fee, ask the clerk for an **Application to Proceed Without Payment of Fees and Indigency Affidavit**, if you did not do that earlier. See page 8.

Step Four: Response to Motion

If you are the person who was *served with the motion*, you should file a response within **20 days**. The *clerk* will send you two court forms: an Entry of Appearance form and a Child Support Affidavit (where child support is an issue). Fill out the forms and return them to the clerk within 20 days. **If you oppose the motion, you should also file your written response within 20 days.** If you file nothing, the court may assume that you agree with what the other party is asking for and *default* you. (See more about filing a response at page 18.)

Give or mail to the other party copies of all papers you file with the court, and keep copies for yourself. To find out what will happen next, read on. The rest of this information applies to both parties.

Step Five: Mediation or Court Hearing



After a Judge reviews the Motion to Enforce, the Court will mail a **Scheduling Order** to both parties.

The scheduling order can:

- Set the case for mediation,
- Set the case for a final hearing or a pre-trial conference with a Judge, or
- Refer the case to a Magistrate for hearing.

Mediation

If you are sent to mediation and there is a mediation fee, you will be asked to pay the

fee before the mediation date. If you cannot afford the fee, ask for a “fee waiver.” (Explained at Step 1 on page 8 above.)

At the mediation, the *mediator* will ask you to explain your problems with the other party. The mediator will also try to help you find agreement where you can. You must mediate in good faith, but you don’t have to agree to anything that you believe won’t work or is unfair. The mediator will meet with each party privately at the beginning of the session. If you have been abused by the other party or you are afraid, talk to the *mediator* about this in the private meeting. You can ask to be in a separate room during the mediation. (For more on this, see page 19.)

If you still disagree on any issues by the end of the mediation, you will be sent back to the Judge. If you do agree on any issues, you will sign a written agreement, which will also go back to the Judge. If the Judge approves your agreement, she will write an order. The order will change your *judgment* to follow your agreement.

Court Hearing

You will get to this step immediately, if the Judge decides to skip mediation – or after mediation, if you were sent there and you were not able to agree. (Another possible step before this is a “pre-trial conference,” where you meet with the Judge to agree on details about your upcoming court hearing and explore other areas of agreement.)

This is a formal court hearing. The Judge or *Magistrate* will hear each side. You can testify for yourself, bring witnesses, and present documents. Court rules of evidence and procedure will be followed.

To prepare for the hearing, plan what you need to say. If you filed the motion, be ready to explain how the other party has failed to follow the prior court order. If you are responding to the motion, explain what you



have done to comply. You may want to make a list of the major facts and points you need to make. If you know people who have first-hand knowledge of important facts, you can ask them to testify at the hearing. If a witness is unable or unwilling to come to the hearing, you can *subpoena* him. (See more at page 19 about this process.)

The Judge cannot rely on a letter, or even a sworn statement, from an absent witness if the other parent objects. The only way you can be sure that a Judge will consider your witness's statements is by having that person come to the court hearing and testify.

At the hearing, you will be given a turn to tell your side of the story. You will also have the chance to ask the other side questions. The Judge may ask you or others questions. Since you do not have a lawyer, the Judge (or *Magistrate*) may help you by explaining court procedures or the law. But remember that he must be neutral and cannot give you or the other party legal advice at the hearing.

If your hearing is with a *Magistrate* and you disagree with any part of his order, you can file written objections. Deliver or mail this to the *clerk* and send a copy to the other party. The deadline for filing objections is **21 days** from the date the clerk entered the order on the court docket (usually soon after the Magistrate signed the order). Then a Judge will review the Magistrate's order and your objections and give a *final order*. If you miss this 21-day deadline, you give up the right to any further appeal.

The deadline for appealing a Judge's final order to the Law Court is **21 days** after the clerk enters the order on the docket. File any appeal with the District Court clerk. You will probably need a lawyer to help you go forward with an appeal. If no one files an appeal, the order becomes final in 21 days.

Motion for Contempt

If you need to ask the Court to enforce a prior order because the other party is violating it, first decide whether to file a **Motion for Contempt** or a **Motion to Enforce**. To help you decide, read the **Before You Start** section, at pages 1-2. If you decide that a **Contempt Order** is what you need, follow these steps.

Here's What To Do...



Step One: Court Forms

Get the **Motion for Contempt** forms packet from the District Court *clerk*. You can also get the forms online at www.ptla.org/forms.htm, except for the Subpoena form. You must pay the clerk \$5.00 for a signed Subpoena. **Read the information cover page carefully.** Review the original *judgment* or order in your case, along with any later orders that changed or enforced your original *judgment*. When you fill out the Motion, be clear about which order, and which part of that order, you are trying to enforce. Be prepared to pay these costs:

Subpoena (signed court form): \$5.00

Service: \$20.00 or more

Filing: \$60.00



Note: If you are trying to enforce child support **only**, you don't have to pay the filing fee.

You may ask for a fee waiver if you have a low income and cannot pay the fees. Ask the *clerk* for an **Application to Proceed**



Without Payment of Fees and Indigency Affidavit. Fill out the forms, along with the motion form. The *clerk*, or a *notary public*, must witness your signing the *affidavit* form.

If your only income is TANF, SSI or general assistance, the court should waive the fees. (Contact Pine Tree Legal if you are denied.)

Get the forms and file them in the court that gave the original *judgment*. In some situations, you may be able to move to another court, but you would probably need a lawyer to help you do that.



Step Two: Complete the Forms

To complete the top part of each form, copy from your original *judgment* or prior order. The location, docket number, and names of *plaintiff* and *defendant* stay the same. If you can't find your old *judgment*, you can buy a copy from the clerk.

On the **Motion for Contempt** form, check the box under the “Motion for Contempt” heading if your motion is about **child support only**.

Then at **#1**, check the box which identifies you as the *plaintiff* or *defendant*.

At **#2** write the date of the order you are trying to enforce. Then check the box or boxes which fit your issue.

At **#3** explain what the other party has done to violate the earlier order. Follow the list of issues you checked in **#2** and explain each violation in the same order. Be as brief as possible. If you need more space, you can continue onto a blank sheet of paper.

At **#4** the form asks for some basic information about your *mutual children* and about any *public assistance benefits* they may have received.

Note: If any of your *mutual children* have received TANF (formerly AFDC) or MaineCare (formerly Medicaid), you must send a copy of your Motion to DHHS at the address given on the form.

Finally, on page 3, check the box or boxes that describe what you want the Judge to order to fix the problem. Check the first two boxes.

The **third box** asks for “Remedial Sanctions.” These are orders the Judge could give to insure that the order is followed or to pay you for the harm the other party has caused you. For example, the Judge could order extra visitation days to replace those that the other party refused to give in violation of the order. The Judge could also imprison or fine the other party for ongoing violations of the Court’s orders. Another typical remedy is to require the other party to catch up on back child support that was owed but not paid. Check this box if you are asking for **Remedial Sanctions**. Check the **fourth box** if you want the Judge to order the other party to pay your costs of bringing the Motion.

Before you go to court on your Motion, think about what you think the Judge should do to fix the problem. Then you will be prepared to explain exactly what you want the Court to order.

Date and sign the Motion in front of a *notary public*. Check the right box to show whether you are the *plaintiff* or *defendant*. (Remember that your original court *judgment* shows, at the top of the page, who is plaintiff and who is defendant.) Write in your address and phone number. (See page



18 if, for safety reasons, you want this information to be kept private.)

Next, fill out the form that says **ORDER** on the upper right-hand side. Fill in the top lines the same way you did with the Motion (copying from your original *judgment*). In the large boxes, add the current addresses for *plaintiff* and *defendant*.

The Judge will complete the rest of the form, by entering a hearing date and time and signing it.

The third form you must fill out is the **Subpoena for Hearing on Motion for Contempt**. This subpoena “commands” the other party to come to the court hearing on your Motion. You can also require the other party to provide papers or objects which the Judge should see to help him believe and understand your story. For example, you may want to subpoena the other party’s financial records, tax returns, or other papers if they would help to show how the other party has violated the earlier order.

Fill out the top part of the form with the location, docket number, and the names of the parties. Next, fill in the name of the other party and check the right box to show if s/he is the *plaintiff* or *defendant*. (For now, leave the middle section—notification of hearing—blank.)

If you want to require the other party to bring documents to the hearing, check the small box and list the papers you want. If your list is too long, go on to another piece of paper, attach it and note that there is a second page to the **subpoena** which is “incorporated.” Write the docket number at the top of the new page.

Check the small box, showing whether you are the *plaintiff* or *defendant*. Fill in the date.

The clerk’s signature should be on the form.

The fourth, and last, form to fill out is the **Summary Sheet**. Follow the detailed **Instructions for Completing Summary Sheet** that came in your forms packet.

After you have finished filling out the forms, **make a copy of your motion**. Then take the original forms back to the *clerk*. (If you are asking for a fee waiver, file the waiver forms at the same time.) The *clerk* will show your papers to the Judge. The Court will set a date and time for the hearing. If you have done everything correctly, the Judge will sign the **Order**. The *clerk* may fill in the hearing date and time and court location on the **Subpoena** for you. If not, add that information to the **Subpoena** by copying it from the **Order**.



Step Three: Serve The Forms

Now you must *serve* the papers on the other party. First, make two copies of the **Subpoena** (with copies of your **Motion** and the **Order** attached). Keep one copy. Give the original **Subpoena** (with attachments) and the second copy to the sheriff for service.

In a letter, or in person, ask the sheriff’s office to deliver the **Subpoena**, the **Motion**, and the **Order** to the other party. Give a home address. If you think the other party will be hard to find at home, give a work address.

Remind the deputy that the papers must be served at least 10 days before the hearing date, unless the Judge ordered a shorter time.



If you did not get a fee waiver (see pages 11-12 above), the sheriff's office will charge you for this service (about \$15-\$30). If the Court gave you a fee waiver, give the sheriff a copy of the Court's Order so that you will not be billed for this service.

After the sheriff sends the packet of papers back to you, with the back of the **Subpoena** form filled in, file them with the court *clerk*.

If you are the person who got the papers from the sheriff and you oppose the motion, file a written response with the clerk **at least 3 days before the hearing**. Give or mail a copy of your response to the other party at the same time. To find out what will happen next, read on. The following information applies to both parties.



Step Four: The Hearing

This is a formal court hearing. The Judge will hear each side. You can testify for yourself, bring witnesses, and present documents. Court rules of evidence and procedure will be followed.

To prepare for the hearing, plan what you need to say. Be ready to tell how the other party has failed or refused to follow the Court's order. Your proof must be "clear and convincing," a high standard of proof. You must also convince the Judge that the other party has the power or ability to comply with what he was ordered to do. If you are defending, be ready to explain how you have already complied with the earlier Order, or the reasons why you cannot comply.

You may want to make a list of the major facts and points you need to make. If you know people who have first-hand knowledge of important facts, you can ask them to testify at the hearing. If a witness is

unable or unwilling to come to the hearing, you can *subpoena* him. (See more at page 19 about this process.)

The Judge cannot rely on a letter, or even a sworn statement, from an absent witness if the other parent objects. The only way you can be sure that a Judge will consider your witness's statements is by having that person come to the court hearing and testify.

At the hearing, you will be given a turn to tell your side of the story. You will also have the chance to ask the other side questions. The Judge may ask you or others questions. Since you do not have a lawyer, the Judge may guide you through the hearing. But remember that she must be neutral and cannot give you or the other party legal advice.

The deadline for appealing a Judge's *final order* to the Law Court is **21 days** after the clerk enters the order on the docket. File any appeal with the District Court *clerk*. You will probably need a lawyer to help you go forward with an appeal. If no one files an appeal, the order becomes final in 21 days.

Step Five: Follow Through

If the Judge orders sanctions, it is up to you to monitor whether the other party is following the Order. Let the Judge know about any violations by filing another Motion for Contempt and asking for harsher penalties. Steeper fines or imprisonment for ongoing violations may be the Court's next step.



Here's what they mean... a glossary of legal terms

You may see words in the court forms that you don't understand. People who work at the Court may use words you don't know. Here are some legal terms, explained in plain English.

Affidavit means a written sworn statement where you say, under oath, that the statement is true. You must sign an affidavit in front of a ***notary public***.

Clerk is the person you go to for court forms. The clerk also files your papers in your court file. The clerk sets the times for conferences and hearings and sends you important notices about your case .

Complaint is one of the court forms you or the other party filed with the court to start your original divorce or parental rights case.

Contested hearing is a formal court hearing. A Judge or ***Magistrate*** hears both parties tell their stories and then gives an order to resolve the dispute. You can speak for yourself, bring witnesses, and present documents. Court rules of evidence and procedure will be followed.

Default means that the court gave the moving party what he asked for because the other party did not oppose the ***motion*** with a written response. The usual deadline for filing the response is 20 days after the ***motion*** is ***served***. If you were served with a ***motion*** and you don't want to be ***defaulted***, file your "Opposition to Motion" with the ***clerk*** within 20 days. On a Motion to

Modify ***child support***, the deadline for filing your objection and hearing request is **30 days**. (See more at page 5). Also, either party can be ***defaulted*** for not following the rules or not showing up for court dates. New rules, effective January 1, 2009, give the responding party more chances to avoid being defaulted. But you still need to file required forms, respond to court notices, and show up for court dates.

Defendant is the person who got the court papers (the ***Complaint***) from the ***Plaintiff*** in the original case. Even if you are the one who is bringing the case back to court, you will still be the defendant if you were the defendant before.

Family Law Magistrates See ***Magistrates***.

Fee Waiver is granted by the court if you cannot afford the court costs. Read more at page 4, 8 or 11-12.

Filing a paper with the court simply means handing it, or mailing it, to the court ***clerk***.

Final order is the last step of your case (unless you appeal). This order is where the Judge or ***Magistrate*** says in writing what each party's new rights and responsibilities are. If the court orders a change, you must comply with the new order, as well as any unchanged parts of the original ***judgment***.

Guardian ad litem, or ***GAL***, is a person appointed by the court to "protect and promote the best interests" of the child. The GAL interviews the child, the parents, and others involved with the child. Then the GAL files a report with the court, recommending a parental rights decision that he believes to be in the child's best interests.



In forma pauperis means getting the Court to waive your court fees because you can't afford to pay. Most court personnel refer to this now as a ***fee waiver***. Read more at page 4, 8, or 11-12.

Interim Order is the temporary court order you may get soon after you file your motion. In this order, the court tries to take care of your children's needs until your motion is finally resolved. If your motion can be decided quickly, then you may not go through the ***interim order*** step.

Judgment is the ***final order*** you got from the court in your original divorce or ***parental rights*** case. In a divorce, this is also sometimes called the "divorce decree."

Law Court is the Maine Supreme Judicial Court, acting as the appellate court. Under recent rule changes, all appeals in family law cases go directly to the Law Court. The Court reviews whether the trial court made any errors of law. It does not hear new evidence or retry the facts of your case.

Magistrates have some, but not all, of the powers of Judges. For example, the Magistrate can order how much child support must be paid. Also, the Magistrate helps you to understand the court process and to move your case along. On a Motion to Modify, the Magistrate will hold your first court meeting. You may meet with the Magistrate again later in your case, or with a Judge, depending on the issues to be decided. Magistrates, as well as Judges, have the duty to look out for the best interests of your children. The Magistrate will tell you about how important it is for you, too, to focus on this goal.

Mediator is a person who helps you figure out whether there are issues you can agree upon. The mediator is neutral. The mediator cannot order you to do anything. However, the mediator requires both parties

to make a "good faith" effort to mediate. The mediator files a report with the court about the outcome of your mediation.

Motion is a paper you file with the court, asking the Judge or ***Magistrate*** to decide an issue.

Mutual children are the natural or adopted children of the two parties.

Notary public is a person who can be a witness when you sign papers that have to be "sworn to" or "notarized." (See ***affidavit***.) When a court form calls for this, go to your local "notary," or court ***clerk***, who can watch you sign the form. Banks and law offices also have notaries.

Parental Rights and Responsibilities case is the type of court case you or the other party filed if you were not married. If you were married and had ***mutual children***, the divorce order addressed ***parental rights and responsibilities*** issues, as well as property and spousal support issues. Many post-judgment ***motions*** ask the court to enforce or revise the parental rights and responsibilities part of the original order. (Read more in Questions and Answers at pages 17-18.)

Plaintiff is the person who ***filed*** and ***served*** the court papers to start the original case. If you were the plaintiff before, you are still the plaintiff now, even if the other party filed the post-judgment motion.

Primary residence is where a ***mutual child*** lives most of the time.

Pro se means doing your own court case without a lawyer.

Public assistance benefits, in the ***motion*** form, means TANF (formerly AFDC) or MaineCare (formerly Medicaid).



Serve (or “service”) means giving the court papers to the other party. Court rules say how this must be done. “Proof of service” is showing the court that the other side has been given the court papers according to the rules. You do this by filing: (1) a signed acknowledgement form, or (2) a certified mail receipt (green card), or (3) a deputy sheriff’s signed statement on the Motion form. You must use method (3) to serve a contempt motion.

Spousal support or “alimony” is money given to a former spouse to help support him or her.

Spouse means your husband or wife.

Subpoena is a paper that orders a person to go to a court hearing to testify. (Read more about subpoenaing a witness at page 19.)

Uncontested hearing is the type of hearing you will have if you have agreed on all issues. The **Magistrate** or Judge will review your agreement with you, to make sure everyone understands what the **final order** on the motion will say.



But I still have lots of questions...

So far, we have explained the basics of how the court’s Family Division and post-judgment motions work. And we’ve told you what some of the legal terms mean. But there’s still more to know. Here are some answers to questions many people ask.

Q. If we have no mutual children, does all of this apply to me?

A. You can still bring a motion to enforce your divorce **judgment** (or to modify spousal support). Some of the information here will help you do that. Follow the same steps for completing and serving the forms. A **Family Law Magistrate (Magistrate)** will **not** be involved in your case. A Judge will decide the steps in your case, and the court will notify you.

Q. If I’m bringing a motion to modify, to change the “parental rights and responsibilities,” what questions will the court have?

A. Your motion may address one or more of the following. Read about the issues that apply to your case. Try to work out the changes with the other parent, if you can. If this isn’t possible, at least think about the following issues that apply to you:

- ✓ Where will the children be living most of the time (called their “**primary residence**”)?
- ✓ When and under what conditions will the children be visiting the other parent? If you and the other parent can talk about this issue, you may want to agree to a flexible order, like “visits will be at reasonable times.” On the other hand, if you expect problems, then you may want to set a schedule so that you can avoid future arguments. If you have good reasons to ask that conditions be put on visits (such as supervision by another family member, or no use of alcohol or drugs during visits), raise those issues with either the other parent or the **Magistrate**, or both.
- ✓ How much child support will the visiting parent pay? You can estimate this



amount by filling out the Court's **Child Support Worksheet**. (Find a self-calculating **Worksheet** at www.ptla.org/forms.htm.) If you have trouble with it, get help from a friend, an advocate, or the Helpline. (See page 3.) If you are still stumped, the Judge or **Magistrate** will do the calculation for you. Sometimes you can agree to a different amount, if the court approves the reasons for the change.

- ✓ How will you cover your child's health care expenses? Can either of you get medical insurance at work? Is your child eligible for MaineCare health coverage through the state? How will you share any unmet medical expenses?
- ✓ Are there any other child-related issues where a "substantial change in circumstances" would call for a change in the order?

There are three ways to divide up parental rights and responsibilities: "shared," "sole" and "allocated." **In most cases**, the parental rights and responsibilities are "shared." The court order tells how they are shared. In certain cases, where one parent has abandoned the child or is violent, the court may give "sole parental rights" to the other parent. Sometimes the court will "allocate" the rights and duties by directing one parent to take care of a certain task (religious upbringing, for example). When acting on a Motion to Modify, the Court can change how these rights and responsibilities are divided.

Q. What is a "parenting coordinator"?

A. In high-conflict cases the court can appoint a "parenting coordinator." This is to help the parents comply with the court's orders. Usually, this coordinator will be a

court-registered "guardian ad litem." These are people specially trained to look out for the "best interests of the child" during a divorce, or other family law case. The "parenting coordinator" can be some other qualified person if both parties agree.

The "parenting coordinator" interprets the court's "parenting plan." He helps the parents make parenting decisions that work for the children and that follow the court's orders.

If either parent refuses to comply with the coordinator's advice, the court can step in. Also, a parent can ask the court to review a coordinator's advice. Both parties must follow the coordinator's advice until the court makes its decision.

Q. How long will my court case take?

A. That depends. If you are bringing a Motion to Modify and you both agree on the changes, then your case may be taken care of at the first **Magistrate** conference. If you disagree about the changes and need to go through all of the steps, including a formal court hearing, this could take several months.

If you have brought a Motion to Enforce or Motion for Contempt, the court may try to give you some quick relief (within a few days or weeks). On the other hand, if the case becomes complicated (by difficult factual disputes, for example), the case will take longer.

Q. If I got the motion papers in the mail from the other party, am I agreeing to everything in the papers if I sign and return the "Acknowledgment of Receipt" form?

A. No. By signing and returning the form, you are only agreeing that you got the motion papers. If you disagree, you



need to file your written response with the court *clerk* within 20 days of the date you signed the acknowledgement form. (For a Motion to Modify Child Support, your objections and request for hearing must be filed within 30 days.) If you don't file any kind of response – at least an entry of appearance form, the court can grant the motion by *default*.

To prepare a response, copy the top part of the motion, identifying the court and the parties, onto a blank sheet of paper. Then label the paper "Opposition to Motion." Then answer the other party's statements that you don't agree with and explain why you think the court should reject the *motion*. You will also have the chance to explain where you stand on issues at the conference, the mediation, and any formal hearings you may have.

Q. If I am afraid of the other party, do I have to say where I am living when I fill out the court forms?

A. No. Where the form asks for address and telephone, you may write "confidential." Then ask the *clerk* for an **Affidavit for Confidential Address** form. State in the *affidavit* why you think this information must be kept private, for the safety of you or your children. You must sign the affidavit in front of a *notary public*. Give your affidavit to the clerk along with your other papers. The clerk will then "seal" this information, so that the other party can't see it. The other party can object to this in writing. Then the court would hold a hearing to decide whether the clerk must still keep the information secret.

Q. On Motions to Modify, do I have to go to mediation if I am afraid of my spouse or former partner?

A. In rare cases, the court may waive mediation "for extraordinary cause." For example, if you think trying to mediate

will cause the other party to hurt you or your children, you may ask the court in writing to let you skip mediation. Do this by filing a *motion*. On another page, explain what has happened to make you afraid of the other party. This is called an *affidavit*. You must sign your affidavit under oath in front of a *notary public*. File both papers with the court *clerk*. She will ask the Judge to look at them and decide whether you will have to mediate. (Some courts may accept a letter, instead of a formal motion. Attach a copy of your Protection from Abuse Order, if you have one. Or ask the Magistrate to waive mediation when you meet with him.)

If you get to mediation and you are still afraid, talk to the *mediator* in private about your concerns. The mediator may allow you to stay in separate rooms. In extreme cases, the mediator may decide that mediation won't work, or may stop mediation after it starts if someone is threatened.

If you are in this situation, we encourage you to try to get a lawyer. Ask for our pamphlet "Divorce and Separation: Where Can I Get Help?" or get it on-line at www.ptla.org/cliented/familyresource.htm.

Q. How do I subpoena a witness?

A. Go to the *clerk* and ask for a *subpoena* form. The form costs \$5.00, unless you got a fee waiver. Fill out the form. Make two copies of the form. Give the original and one copy to a responsible adult, asking her to **hand-deliver** the copy to the witness. You cannot serve your own subpoena.

You must pay the witness a fee. The fee is \$10.00 plus mileage, at the rate of \$.22 per mile. [Check for update.] Give this amount to the person who is serving the subpoena for you. He must give it to the witness with the subpoena. At the time of service, the



adult server should fill out the section on the back of the original form, explaining when and how the copy was given to the witness. Bring that original *subpoena* with you to the court hearing.

Think twice before subpoenaing a witness who does not want to testify or who is against you. You may get testimony that is untrue or that is not helpful to you.

Q. What happens if I don't go to a court meeting or hearing?

A. It is important that you show up for court dates. Be on time and be prepared. If you don't go, you can be *defaulted* which means that the court gives the other party what he wants because you didn't appear. The court can also charge you for costs, such as court fees or the other party's attorney fees.

Notify the court in writing right away if your **telephone number or mailing address changes**. The court *clerk* needs to know how to find you. Otherwise, you may not get court notices, causing you to miss important court dates.

Q. If the court orders that child support be paid to me, how do I collect it?

A. You have choices. You can wait to see if the payments are made. If this happens, you don't have to do anything to enforce the order.

If you are not getting the payments, or think you'll need help collecting, you have other choices.

- ✓ You can ask the Department of Health and Human Services to collect the money and send it to you. Ask the *clerk* for a DHHS Child Support Services brochure, an application form, and contract form. Get certified copies of

your Court Order and your children's birth certificates. Fill out the forms and send everything to:

Department of Health and Human Services
Division of Support Enforcement and Recovery
Central Office Supervisor
11 State House Station
Augusta, ME 04333-0011

Include all required documents. Otherwise, DHHS will not accept your application.

After DHHS gets your forms and opens a case file, they will be contacting you for more information. To get child support sooner, always get back to them promptly.

If you or your children get TANF or MaineCare, you do not have to sign up for DHHS collection service. You get this service automatically.

- ✓ You can give the other parent's employer a copy of your **Immediate Income Withholding Order**. Get this from the court *clerk*. This paper orders the employer to withhold wages and send the money to DHHS. DHHS then forwards it to you. Keep DHHS informed of your current mailing address. If you choose this option, you will get "limited service" from DHHS. They will forward money they get to you but will not take any other steps to enforce the court order.

If the other parent does not get a regular paycheck, collecting support may be much harder. Your choices are to ask for DHHS services, hire a lawyer, or try to take the other parent back to court on your own.

Notice

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