

Family Law 101

Oregon House Judiciary Civil Subcommittee 2021

The Hon. Karrie McIntyre, Lane County Circuit Court, Chair SFLAC

The Hon. Timothy Gerking, Jackson County Circuit Court

Debra Dority, Oregon Law Center , Vice-Chair SFLAC



Statewide Family Law Advisory Committee (SFLAC)

The SFLAC was established in the mid 90's under ORS 3.436 to "assist the State Court Administrator in carrying out the administrator's responsibilities under ORS [3.438 \(Duties of State Court Administrator\)](#) (2) and (4)(a) and in identifying family law issues that need to be addressed in the future"

Meets quarterly AND YOU ARE INVITED!! (March 5, 2021)

Roadmap



- Family Law: The Big Issues
- The Life of a Family Law Case
- Complicating Factors/Dynamics:
 - Intersection with other legal matters (*briefly*)
 - Domestic Violence
 - Substance Abuse
 - Mental Health Impacted
- One Family/One Judge Perspective
- Your Questions for the Presenters!

FAMILY LAW: THE BIG ISSUES

- Custody (Decision making for the child; 'legal custody')
- Parenting Time (Time each parent is physically with the child)
- Financial Issues



FAMILY LAW: Custody (decision making)

Major Life Decisions:

- **Sole Custody:** one parent makes the *major life decisions* regarding the child, such as medical care, religious upbringing and education.
- **Joint Custody:** both parents must agree on the major life decisions.

Day to Day Decisions:

- For either Joint or Sole Custody, each parent makes day-to-day decisions regarding the child when the child is in their care.

Best Interests Determination

Custody is determined by considering the best interests and welfare of the **CHILD** -not the parent

- **Statutory factors** the court must consider in determining child's best interests including abuse of parent or child by a party, child's primary caregiver, ability to facilitate a positive relationship with the other parent, and more! (ORS 107.137).

FAMILY LAW: Parenting Time

Parenting time is the schedule (parenting plan) that the child spends time with each parent

- Parenting time is based on the best interests OF THE CHILD (not the parent). ORS 107.101(5); ORS 107.102(4)(b).
 - Statutory and Public Policy presumption of liberal parenting time with both parents that are capable and act in the child's best interests. ORS 107.101(1)
 - Special considerations for domestic violence, substance abuse, mental health issues, special needs of the children, location of the parties, etc.
 - Resources for supervised parenting time and safety protocols. 107.102; 107.718(6).

FAMILY LAW: Financial Matters

- Financial Matters
 - Child Support
 - Spousal support
 - Distribution of property and assets (houses, cars, pensions, bank accounts, pots and pans)
 - Distribution of Debt (credit cards, utility bills, medical expenses)
- Tricky Financial Issues include
 - Joint vs. separate ownership of assets, or responsibility for debts
 - Financial information sharing varies in court (could be due to financial abuse)
 - Finances of parties often change during the legal matter (separate households require additional bills)

Two Phases of Family Law Cases:

- **Pre-judgment:** The first time the family unit is seeking a court order to resolve or define issues in family (establishing paternity, custody, parenting time, divorce)
- **Post-Judgment:** What happens as the family dynamics change over the years and they need to change their court orders



<https://www.courts.oregon.gov/programs/family/selfhelp/Documents/Divorce%20and%20Custody%20Trials%20in%20Oregon.pdf>

Self Represented Litigants (SRL)

- On average, in 86.2% all domestic relations cases in Oregon have at least one party that is self-represented, and some counties exceed 90%
- OJD established family court facilitators ORS 3.428
- OJD provides forms painstakingly developed with a number of stakeholder groups
- SRL resources available from OJD and Oregonlawhelp.org

The Life of a Family Law Case

- **Filing, service, responses**
- **Interim Orders needed?**
 - Immediate Danger, Status Quo, Custody, parenting time, financial support, allocation of debts, exclusive use of home
- **Parent Education Class ORS 3.425, Mediation Orientation & Mediation ORS 107.755**
- **Status Conferences** (in some counties)



A Note About Mediation

- Most judicial districts require mediation, but the funding comes in part from OJD and in part from the counties.
- OJD began trying to establish metrics for data collection for mediation in 2015. *More than 60% of all cases resolve in mediation*
- Anecdotally: we know that parents who reach agreements voluntarily and shaped to the needs of their families have reduced conflict which is better for children.



The Life of a Family Law Case (continued)

- **Trial** if necessary: *Nature of trial is high conflict based on revealing and renewing old hurts and pains*
- Traditional Trial: Parties and witnesses testify, present evidence and are subject to cross examination.
- Informal Domestic Relations Trial: Parties provide written documentation (e.g. letters, report cards, photographs) and give statements to the judge. No direct questioning of each other by the parties.



Tools to help determine “Best Interests of the Child”

Oregon is at forefront of Family Law Policy in basing all decisions on “best interests of the child” not the hopes and desires of the parent. ORS 107.137 and ORS 107.102.

- In addition to mediation, some tools utilized throughout a case might include ORS 107.425:
 - Custody (or parenting time) Evaluators
 - Parenting Coordinators
 - Counseling, or psychological/psychiatric evaluations
 - Appointing attorney for child/ren
 - Speaking to the child in chambers
- Not permitted to pay for with public funding from public defender services fund

Final Judgment & Future Modifications

- Once the original judgment is done, the parties may seek modifications in the future based on:
 - Substantial Unanticipated Change in Circumstances (custody, spousal support, or child support)
 - Best interests of the child (parenting time)
- Conflict in Modifications is often increased due to:
 - **Joint custody is not successful**
 - Failure to abide by prior orders
 - Introduction of new partners, new siblings
 - A parent has moved
 - Child has behavioral issue due to parent conflict and change
Lifestyle changes

Complicating Factors in Family Law

- Intersections with Other Legal Considerations
- Domestic Violence
- Substance Abuse
- Mental Health Impairment



Additional Legal Considerations in Family Law Matters

- **Housing**
 - Loss of home(eviction/foreclosure)
 - Establishing a new home on ½ the budget.
 - Unpaid rent or mortgage; finding money for down payments or deposits
- **Public Benefits**
 - A party may lose access to Temporary Assistance to Needy Families (TANF) and/or Supplemental Nutrition Assistance Program (SNAP/food stamps) because of a particular parenting plan
 - Child Support may be a party to the proceeding
- **Immigration**
 - Threats of deportation
 - Fear of losing children if deported
 - Fear of a parent taking child out of the country



Additional Legal Considerations in Family Law Matters

- **Employment**
 - Party interferes with employment
 - Safety at work – Domestic violence issues
 - Danger and fear of losing job for missed work due to court proceedings, treatment, etc.
- **Family Law during the COVID-19 Pandemic**
 - Delay in having matter decided by the courts
 - Parenting time considerations
 - Child care availability
- **Family Law during natural disasters**
 - Wildfires
 - Weather and power outages



Domestic Violence in Family Law

DV Impacts a Significant Number of Family Law Litigants

- **Domestic violence is the single greatest cause of injury to women in the United States.**
- More than 30% of hospital emergency-room visits are women who have been abused.
- Three women are murdered each day in the US by their partner.
- DV is present in over 30% of DHS, Child Welfare cases in Oregon where abuse to a child was founded.
- **At least 42 people were killed in DV-related incidents in Oregon in 2019, 38 people in 2020, and Oregon already has 11 DV-related deaths so far in 2021 (as of 02/24/21).**

Protection Orders filed in Oregon

	2017	2018	2019	2020	2021
FAPA	9429	9630	9403	8774	1216
EPPDAPA	2731	3031	3105	2828	367
SAPO	85	117	136	135	24
Stalking	2675	3023	3408	3349	478
ERPO	-	74	117	144	21
Foreign	18	15	24	7	2
TOTAL	14,938	15,890	16,193	15,237	2,108

Comparison Chart of Protective Orders in Oregon

[Oregonlawhelp.org](https://oregonlawhelp.org)

FAPA	EPPDAPA	SAPO	SPO	ERPO	EPO
Family Abuse Prevention Act Restraining Order, ORS §107.700 – 735	Elderly Persons and Persons with Disabilities Abuse Prevention Act Restraining Order, ORS §124.005 – 040	Sexual Abuse Protective Order, ORS §163.760 – 777	Stalking Protective Order, ORS §163.730 – 755 (criminal and civil citation route) & ORS §30.866 (civil petition route)	Extreme Risk Protection Order, ORS §166.525 – 543	Emergency Protective Order, ORS §133.035

FAPA Protection Orders:

1. Qualifying relationship required:
family member, household member, or sexually intimate relationship within two years.
 - Limited availability to minor petitioners. NOT available against minor respondent.
2. At least one incident of abuse w/in last 180 days*
 - Sexual relations by force or threat of force
 - Causing or attempting to cause bodily injury
 - Placed petitioner in fear of “imminent bodily injury”
3. Must be *imminent danger of further abuse* (or) Petitioner must *reasonably fear for their physical safety* **and** respondent must be a *credible threat of further abuse*
 - **Relief available may include**
 - No contact provisions
 - **Temporary custody & parenting plan**
 - Ouster
 - Police standby for return of possessions
 - Gun dispossession
 - Other relief “the court deems necessary” for safety/welfare



SUMMARY

Substance Abuse in Family Law

- It is estimated that about 1 in 8 children in the US lived in households with at least one parent who had a substance use disorder (SUD) within the previous year. (samhsa.gov)
- A parent or caregiver's substance use is considered as a stress factor in between **30-43% of child welfare cases** where abuse of a child was founded.
- Substance Abuse often presents in family law matters as
 - An inability or unwillingness to act in the best interests of the children
 - Concerns of best interest & welfare of the child &/or other parent
 - General care of the children, including transportation
 - Possibility of increased violence to child or other parent when using

Mental Health and Family Law

NOTE: Not all mental health diagnoses will have an impact on a person's ability to parent

- A parent or caregiver's mental illness is considered as a stress factor in between **10-12% of child welfare cases** where abuse of a child was founded.
- Mental illness often presents in family law matters as
 - An inability or unwillingness to act in the best interests of the children
 - Use or abuse of drugs or alcohol to self-medicate (SUD)
 - Could place child at risk

Recognition & Legal Response when DV, MH and/or SUD is Present

The Legislature and the Courts have recognized the complexity of each of these issues within family law matters and provided some parameters in determining the best interest of the child when such complicating factors are present.

- Still, Judges have incredibly difficult jobs in weighing these (and other) overlapping considerations.
- Statutory Custody factors, resources such as standard parenting plans, and the *Birth Through Three Toolkit* help Courts determine what custody and parenting time provisions will be in the best interest of the child.

Parenting Time Considerations

*In addition to the **best interests** factors, other common considerations in creation of a parenting plan include:*

- A present parenting time schedule and whether it is working
- Distance between the parents
- Ages of the children
- Drug or alcohol use of either party
- Mental health concerns
- Threatening to take children or actually taking children
- Safety of the children/history of failing to properly supervise or DHS involvement
- Abuse of other parent or children
- Sexual abuse of anyone, stalking behaviors, threats of suicide
- ORS 107.101(5); 107.102(4)(b); 107.718(6), 107.137(4) & case law

Common Parenting Time Provisions based on when the **safety** of child and/or other party at risk

- Supervision by third party
- No overnights
- No firearms
- No drinking during &/or for 12 hours before parenting time
- No physical discipline
- Occurs in a public place only or exchange in a public place
- Drug/alcohol abuse evaluation and recommended treatment
- Mental health evaluation and recommended treatment
- Batterer intervention evaluation and treatment

Such limitations are narrowly tailored to limit parenting time only as much as necessary to address the concern



Jackson County Circuit Court
1st Judicial District

One Family—One Judge Pros & Cons

The Hon. Timothy Gerking, Jackson County Circuit Court



RESOURCES!



Family Law during the Pandemic

Oregon Statewide Family Law
Advisory Committee (SFLAC)
**Recommendations for Oregon
Courts: Information for Parents
sharing Custody or Parenting
Time of Children During the
COVID-19 Pandemic:**

<https://www.courts.oregon.gov/programs/family/sflac/SFLAC%20Documents/SFLACGuidelineForParentsDuringCOVID19Pandemic.pdf>

Resources for families experiencing divorce, separation, or domestic violence during COVID-19

Resources for domestic and sexual assault survivors during COVID-19.....	2
Information on divorce, custody, and other family law cases in Oregon during COVID-19	4
Frequently asked questions about the COVID-19 stimulus payment for families going through divorce or custody disputes.....	6
Additional information and resources specific to COVID-19.....	9

<https://oregonlawhelp.org/resource/resources-for-families-experiencing-divorce-separation-or-domestic-violence-during-covid-19>

Oregon Disaster Relief
Legal Services:
<https://oregondisasterlegalservices.org/>

**Wildfire Disaster Relief
Hotline: 844-944-2428.
Hotline hours:
Monday through Thursday
(9am to 4pm) and Friday
(9am to 11:30am)**



**Financial help
when you need
it the most.**

Information on the Temporary Assistance for Domestic Violence Survivors (TA-DVS) program.



**Parenting time in
your Family Abuse
Prevention Act
restraining order.**



**Protection
from Domestic
Violence.**

How to Get a Family Abuse
Prevention Act (FAPA)
Restraining Order in Oregon.



A Safe Place to Live.

Housing Rights for Domestic Violence, Sexual Assault,
and Stalking Victims.



**A Safe Place
to Work.**

Workplace Rights for
Survivors of Domestic
Violence, Harassment,
Sexual Assault, or Stalking.

@ [Oregonlawhelp.org](https://oregonlawhelp.org)

Family Law Resources

- Oregon Judicial Department (OJD) Self Help Forms:
<https://www.courts.oregon.gov/forms/Pages/default.aspx>
- OJD Local Court Information (@ drop down menu) and Remote Hearings guidance:
<https://www.courts.oregon.gov/Pages/default.aspx>
- Oregon State Bar Family Law Website:
<https://familylaw.osbar.org/>
- Oregon Judicial Department's State Family Law Advisory Committee (SFLAC):
<https://www.courts.oregon.gov/programs/family/sflac/Pages/default.aspx>
- Our Family Wizard (private, for-profit resources):
<https://www.ourfamilywizard.com/>

Thank You For Your Time!





Presenters:

The Honorable Karrie McIntyre

Circuit Court Judge

Karrie.K.McIntyre@ojd.state.or.us



The Hon. Timothy Gerking

Circuit Court Judge

Tim.Gerking@ojd.state.or.us



Debra Dority

State Support Unit Attorney

ddority@oregonlawcenter.org

