

CHAPTER 27

JUDICIAL SEPARATION

§851. Judicial separation**1. Grounds.**

[PL 1997, c. 224, §1 (RP); PL 1997, c. 224, §5 (AFF).]

1-A. Jurisdiction. The District Court has jurisdiction to enter a separation decree:

A. Upon the petition of a married person who lives apart or who desires to live apart from that person's spouse for a period in excess of 60 continuous days; or [PL 1997, c. 224, §2 (NEW); PL 1997, c. 224, §5 (AFF).]

B. Upon joint petition of a married couple who live apart or who desire to live apart for a period in excess of 60 continuous days. [PL 1997, c. 224, §2 (NEW); PL 1997, c. 224, §5 (AFF).]
[PL 1999, c. 731, Pt. ZZZ, §27 (AMD); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

2. Place of filing. The person may file a petition for judicial separation in the county or judicial division in which either of the parties lives, except that if the petitioner has left the county or judicial division in which the parties lived together and the respondent still lives in that county or judicial division, the petitioner must file the petition in that county or judicial division. Notice must be given as the Maine Rules of Civil Procedure provide.

[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

3. Order.

[PL 1997, c. 224, §3 (RP); PL 1997, c. 224, §5 (AFF).]

4. Mediation. The court shall order the parties to participate in mediation as provided in chapter 3.

[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

5. Parental rights and responsibilities. Upon the petition of either spouse, or of the guardian or next friend of one of the parties who may be mentally ill, the court may make an order awarding parental rights and responsibilities with respect to a minor child of the parties in accordance with chapter 55.

[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

6. Enforcement. The court may enforce obedience to its orders by appropriate process including remedies provided in chapter 65. Nothing in this section may preclude the court from incarcerating a spouse for nonpayment of child support, spousal support or attorney's fees in violation of a court order to do so.

[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

7. Marriage settlement or contract not affected. An action under this section does not invalidate a marriage settlement or contract between the parties.

[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

8. Orders pending final separation decree. Pending a final separation decree, the court may:

A. Order either spouse to pay to the other spouse or to the attorney for the other spouse sufficient money for the defense or prosecution of the separation action; [PL 1997, c. 224, §4 (NEW); PL 1997, c. 224, §5 (AFF).]

B. Make reasonable provision for either spouse's support; [PL 2005, c. 323, §3 (AMD).]

C. Enter a decree for parental rights and responsibilities, including support of minor children in accordance with chapter 55. An order for child support under this section may include an order for the payment of all or part of the medical expenses, hospital expenses and other health care expenses of the children or an order to provide a policy or contract for coverage of those expenses. Availability of public assistance to the family may not affect the decision of the court relating to the responsibility of a parent to provide child support; [PL 1997, c. 224, §4 (NEW); PL 1997, c. 224, §5 (AFF).]

D. By order, determine the possession of owned or rented real and personal property; and [PL 1997, c. 224, §4 (NEW); PL 1997, c. 224, §5 (AFF).]

E. Enforce obedience by appropriate processes. [PL 2005, c. 323, §3 (AMD).]
[PL 2005, c. 323, §3 (AMD).]

9. Spousal support. The court may:

A. Order spousal support, which must be determined in accordance with the factors set forth in section 951-A; [PL 1999, c. 634, §1 (AMD).]

B. Order periodic spousal support payments, payments of a specific sum or any combination of both; [PL 1997, c. 224, §4 (NEW); PL 1997, c. 224, §5 (AFF).]

C. Order either spouse to maintain a policy of health insurance for the benefit of the other spouse and to pay all or a portion of the uninsured health care expenses of the other spouse; [PL 1997, c. 224, §4 (NEW); PL 1997, c. 224, §5 (AFF).]

D. Order either spouse to maintain a policy of life insurance upon that person for the benefit of the other spouse or the couple's children; [PL 1997, c. 224, §4 (NEW); PL 1997, c. 224, §5 (AFF).]

E. Order either party to pay the costs and attorney's fees of the other party in the defense or prosecution of a judicial separation; [PL 1997, c. 224, §4 (NEW); PL 1997, c. 224, §5 (AFF).]

F. At any time, alter or amend an order for spousal support or a specific sum when it appears that justice requires it, except that a court may not increase the spousal support if the original decree prohibits an increase. In making an alteration or amendment, the court shall consider the factors set forth in section 951-A; and [PL 1999, c. 634, §1 (AMD).]

G. Enforce an order for spousal support or attorney's fees and costs in accordance with section 952. [PL 1997, c. 224, §4 (NEW); PL 1997, c. 224, §5 (AFF).]

This subsection does not limit the court, by full or partial agreement of the parties or otherwise, from awarding spousal support for a limited period, from awarding spousal support that may not be increased regardless of subsequent events or conditions or otherwise limiting or conditioning the spousal support award in any manner or term that the court considers just.

[PL 1999, c. 634, §1 (AMD).]

10. Disposition of property. The court may order the disposition of the parties' property in accordance with section 953. Descent of real estate is governed by section 953.
[PL 1997, c. 224, §4 (NEW); PL 1997, c. 224, §5 (AFF).]

11. Freedom from restraint and interference. The court may order either spouse to refrain from imposing any restraint on the personal liberty of the other or interfering with the personal privacy of the other and may order other conditions necessary to ensure the peaceful coexistence of the parties.
[PL 1997, c. 224, §4 (NEW); PL 1997, c. 224, §5 (AFF).]

12. Modification and termination of separation decrees. A separation decree may be modified or is terminated as follows.

A. Upon motion by either party served in accordance with the Maine Rules of Civil Procedure, Rule 4, and after notice and hearing, the court may order the modification of a separation decree

upon showing of a substantial change of circumstances justifying the modification. However, that portion of the separation decree disposing of the parties' property in accordance with section 953 is not subject to modification and remains in full force. [PL 1997, c. 224, §4 (NEW); PL 1997, c. 224, §5 (AFF).]

B. Upon the filing of a written declaration signed and acknowledged by both parties stating that they have resumed marital relations, the separation decree terminates. However, that portion of the separation decree disposing of the parties' property in accordance with section 953 is not subject to termination and remains in full force. [PL 1997, c. 224, §4 (NEW); PL 1997, c. 224, §5 (AFF).]

C. Upon entry of a final judgment of divorce between the parties, the separation agreement terminates. However, that portion of the separation decree disposing of the parties' property in accordance with section 953 is not subject to termination and remains in full force. [PL 1997, c. 224, §4 (NEW); PL 1997, c. 224, §5 (AFF).]

[PL 1997, c. 224, §4 (NEW); PL 1997, c. 224, §5 (AFF).]

13. Joinder with divorce action. If a complaint or counterclaim seeking a divorce pursuant to section 901 is filed in an action in which a complaint or counterclaim seeking a separation decree has also been filed, the court shall order the dismissal of the complaint or counterclaim seeking a separation decree if the court grants a divorce.

[PL 1997, c. 224, §4 (NEW); PL 1997, c. 224, §5 (AFF).]

14. Inheritance not barred. A separation decree does not bar the spouses or the issue of the marriage from inheriting.

[PL 1997, c. 224, §4 (NEW); PL 1997, c. 224, §5 (AFF).]

15. Fraud. The court may not grant a judicial separation when the parties seek to procure a judicial separation for fraudulent purposes.

[PL 1997, c. 224, §4 (NEW); PL 1997, c. 224, §5 (AFF).]

SECTION HISTORY

PL 1995, c. 694, §B2 (NEW). PL 1995, c. 694, §E2 (AFF). PL 1997, c. 224, §§1-4 (AMD). PL 1997, c. 224, §5 (AFF). PL 1999, c. 634, §1 (AMD). PL 1999, c. 731, §ZZZ27 (AMD). PL 1999, c. 731, §ZZZ42 (AFF). PL 2005, c. 323, §3 (AMD).

§852. Preliminary injunction, effect; attachment or trustee process

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. Issue of preliminary injunction. In all actions for judicial separation the clerk of the court, pursuant to order of the District Court, shall issue a preliminary injunction in the following manner.

A. The preliminary injunction must bear the signature or facsimile signature of the clerk, be under the seal of the court, contain the name of the court and the names of the parties and state the name and address of the plaintiff's attorney. The preliminary injunction may be obtained in blank from the clerk and must be filled out by the plaintiff's attorney. The plaintiff's attorney is responsible for serving this preliminary injunction, along with the summons and complaint, on the defendant. [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

B. The preliminary injunction must be directed to each party to the action and must contain the following orders:

- (1) That each party is enjoined from transferring, encumbering, concealing, selling or otherwise disposing of the property of either or both of the parties, except in the usual course of business or for the necessities of life, without the written consent of the parties or the permission of the court;

(2) That each party is enjoined from imposing restraint on the personal liberty of the other party or of a biological or adopted child of either or both of the parties; and

(3) That each party is enjoined from voluntarily removing the other party or a child of the parties from a policy of health insurance that provides coverage for the other party or the child of the parties. [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

C. The preliminary injunction must include the following statement:

"Warning

This is an official court order. If you disobey this order the court may find you in contempt of court.

This court order is effective until the earliest of the following:

(1) The court revokes or modifies it;

(2) A final divorce judgment or decree of judicial separation is entered; or

(3) The action is dismissed." [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

D. The preliminary injunction is effective against the plaintiff upon the commencement of the action and against the defendant upon service of a copy of both the complaint and order in accordance with the Maine Rules of Civil Procedure. The plaintiff is deemed to have accepted service of the plaintiff's copy of the preliminary injunction and to have actual notice of its contents by filing or causing the complaint to be served. The plaintiff shall cause a copy of the preliminary injunction to be served upon the defendant with a copy of the summons and complaint. [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

E. The preliminary injunction has the force and effect of an order of a Judge of the Probate Court or District Court or Justice of Superior Court and is enforceable by all remedies made available by law, including contempt of court. The order remains in effect until entry of a final decree, until the case is dismissed or until otherwise ordered by the court. [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

[PL 1999, c. 731, Pt. ZZZ, §28 (AMD); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

2. Revocation or modification. A preliminary injunction may be revoked or modified after hearing for good cause shown. The party seeking to revoke or modify the preliminary injunction shall file a motion together with an affidavit that demonstrates the good cause necessary for revocation or modification.

A. Notwithstanding any law to the contrary, on 7 days' notice to the other party or on shorter notice as the court may order, either party subject to an order may appear and move the dissolution or modification of the order, and in that event the court shall proceed to hear and determine the motion as expeditiously as justice requires. [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

B. Mediation is not required before a hearing on a motion to revoke or modify a preliminary injunction except as directed by the court. [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

C. A preliminary injunction does not prejudice the rights of the parties or a child that are to be adjudicated at subsequent hearings in the proceeding and does not limit the power of the court to issue other injunctive relief that may be proper under the circumstances. [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

D. A preliminary injunction terminates when:

- (1) The court revokes or modifies it;
 - (2) A final divorce judgment or decree of judicial separation is entered; or
 - (3) The action is dismissed. [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]
- [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

3. Remedies. The court may enforce a preliminary injunction issued pursuant to this section:

A. By finding a person who disobeys or resists the injunction in contempt of court; [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

B. By requiring a person who disobeys or resists the injunction to pay the costs and attorney's fees that the other party incurred to enforce the preliminary injunction; or [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

C. By appropriate processes as in other actions. [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

The remedies provided in this subsection for enforcement of a preliminary injunction are in addition to any other civil or criminal remedies available, including civil contempt of court. The use of one remedy does not prevent the simultaneous or subsequent use of any other remedy.

[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

4. (TEXT EFFECTIVE UNTIL 1/01/23) Mutual order of protection or restraint. Orders issued pursuant to this section do not supersede orders issued pursuant to chapter 101.

[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

4. (TEXT EFFECTIVE 1/01/23) Mutual order of protection or restraint. Orders issued pursuant to this section do not supersede orders issued pursuant to former chapter 101 or chapter 103.

[PL 2021, c. 647, Pt. B, §44 (AMD); PL 2021, c. 647, Pt. B, §65 (AFF).]

5. Attachment of property; trustee process. Attachment of real or personal property or on trustee process may be used in connection with an action for judicial separation.

[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

PL 1995, c. 694, §B2 (NEW). PL 1995, c. 694, §E2 (AFF). PL 1999, c. 731, §ZZZ28 (AMD). PL 1999, c. 731, §ZZZ42 (AFF). PL 2021, c. 647, Pt. B, §44 (AMD). PL 2021, c. 647, Pt. B, §65 (AFF).

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