

# **NAVIGATING DIVORCE AND CUSTODY WHEN LEAVING ULTRA-ORTHODOXY:**

**A FOOTSTEPS GUIDE**



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## INTRODUCTION

This informational handbook is designed for individuals who are considering or in the process of undergoing a divorce. A person's decision to leave ultra-Orthodoxy<sup>1</sup> is often seen as an irreconcilable difference if their spouse chooses to remain ultra-Orthodox, and many individuals consider divorce as part of their effort to redefine themselves and rebuild their lives.

Navigating the transition from an ultra-Orthodox to a secular lifestyle can be a difficult and complex process. Obtaining a divorce also means significant engagement in the secular legal world, including court proceedings around child custody and financial issues. Understanding the risks can help people considering divorce make informed decisions and identify tools to ease the process.

If you have children, the process can be even more complex, stressful, and sometimes risky. A person might be torn between keeping their family together and staying true to themselves. Remember that children are resilient. They benefit from strong role models who love them.

You have a right, and a responsibility, to parent your child/ren that is recognized by our legal system.

If you are being abused or coerced, or if you have concerns about your safety or that of your child/ren, help is available. Domestic abuse is not your fault. Footsteps is available for support and can help you develop a safety plan, provide counseling, and connect you to other agencies that provide additional help. There are additional resources at the end of this manual.

### Legal Disclaimer

**“ The information contained in this guide is not, nor is it intended to be, legal advice. ”**

The information contained in this guide is not, nor is it intended to be, legal advice. Each individual's situation is different and must be evaluated based on its own facts. Before moving forward with any of the actions described in this guide, we strongly encourage you to consult with an attorney to gain a better understanding of your rights and options. Footsteps can provide resources that may help you find a qualified attorney who is right for you.

<sup>1</sup> In this handbook, the term “ultra-Orthodox” refers to all insular ultra-religious communities within the Jewish community, including the many Hasidic, Lithuanian-inspired, and conservative Sephardic sub-sects that are part of the ultra-religious Jewish spectrum.

## FINDING A LAWYER

A person may choose to represent themselves in divorce and custody proceedings, but Footsteps recommends that you consult with an attorney. Representing oneself is emotionally difficult, and court proceedings can be complicated and overwhelming.



A lawyer explains the law, provides expertise, ensures that documents are filed correctly and in a timely manner, translates legal jargon, and provides guidance and legal strategy. Finding a good, trustworthy, committed, and capable lawyer can take time and effort, but the investment will pay off as you navigate the legal process. Remember, the lawyer you hire works for you, and it is up to them to lay out the recommended options for you, but it's up to you to decide which path to take.

You want to select an attorney with whom you feel comfortable speaking about your life and your journey. It's important that you tell your attorney the truth at all times. Withholding or shaping information to affect how your attorney views your case will ultimately harm your case. Talk with your attorney about how they plan to present difficult facts in the best light for your case.

Attorneys are limited as to how much emotional support or assistance they can provide with regard to the challenges that may arise over the

course of your divorce. Be sure you have other sources of support in your life during this difficult process such as those discussed in **Emotional Support During Divorce** (see page 26). Footsteps can help you find support as well.



In Family and Supreme Court, both parties in child custody, visitation, and family offense cases are entitled to a court-appointed attorney if they cannot afford an attorney. Only the Judge can decide if you qualify for an attorney. You will need to show proof of your income, such as a tax return or pay stub. Court attorneys are not provided for you for child support.

### Where to Look for a Lawyer

- ✓ Consult with Footsteps. Depending on available resources and your income level, we may be able to connect you with **pro bono** (free) or sliding scale legal assistance.
- ✓ Ask for recommendations from others who have gone through this process.
- ✓ Consider a lawyer close to home. A local matrimonial lawyer may better understand the ultra-Orthodox community. Local lawyers may also have good relationships with the judges and clerks at the court where your case will be heard.
- ✓ Explore your lawyers' values and consider whether they are compatible with your own.

## BEING PREPARED FOR DIVORCE

There are several steps you should take to prepare for your legal case and to stay organized throughout the proceedings. These involve keeping track of your finances, having copies of important legal documents, taking steps to protect your privacy, and keeping track of time you and your ex-/spouse each spend with your child/ren, as well as your other daily life activities.

Each of these steps are discussed separately below.



### Financial Planning Before Divorce

You may want to consider these actions before starting the divorce process. They will help you have some financial independence and access financial assets in the marriage:

- ✓ Set up a separate, individual bank account for yourself, if you do not already have one. You can request to receive your statement online or to a PO Box if you are concerned about receiving mail at your home address.
- ✓ Consider protecting your assets that are in a joint account. You or your ex-/spouse can legally withdraw all of the money from a joint account at any time, without the other's knowledge or permission. Talk to your bank about steps you can take to protect your account.

- ✓ Some lawyers offer pro bono work or **sliding scale fees**. Any lawyer can be approached and asked if they would do this.
  - ✓ See **Legal Resources** (page 34) in the resources section of this handbook.
- **Before You Meet with a Lawyer** —
- ✓ Make a list of questions.
  - ✓ Organize your documents (e.g. separate financial documents from child-related documents from personal documents).
  - ✓ Make a list of your most important desired outcomes for this divorce.

- ✓ Establish a credit card in your own name. Consider saving this credit card to use only in case of an emergency.<sup>2</sup>
- ✓ Save cash in a secure location where only you will be able to access it.
- ✓ If you depend on your ex-/spouse for financial support, explore new options to support yourself. Although a judge may grant you **maintenance** (or alimony), knowing that you have an independent and steady source of income can help you financially and emotionally as you proceed through the divorce process.
- ✓ If your ex-/spouse has unreported assets (for example, a job off the books) and few legal assets, your ex-/spouse could claim to be poorer than you, particularly if you have a job. In such a situation, you may get no maintenance (alimony) or have to pay your ex-/spouse maintenance.
- ✓ Gather proof of assets. For example, get a copy of a bank statement that shows deposits into an account or document an off-the-books job. Your lawyer may also help you consider whether to hire a private investigator or forensic accountant to track this money down. Keep in mind that your ex-/spouse may also take similar actions against you, if your ex-/spouse believes that you have illegally maintained assets.



## Documents to Prepare for Divorce Proceedings

There are many documents that you will need to have for the court proceedings, as well as proof of your relationship with your child/ren and your family's lifestyle during the marriage. While you may not have access to all the documents discussed below, taking time to gather them before you start a separation or divorce is well worth the effort.

Copy all *financial statements*, including:

- ✓ credit card statements
- ✓ bank statements
- ✓ tax returns
- ✓ paystubs
- ✓ mortgage or loan statements

Copy *personal records* for you and your child/ren, including:

- ✓ social security cards
- ✓ passports
- ✓ birth certificates
- ✓ school records and reports
- ✓ health insurance cards

You should try to obtain the following documents before beginning the separation, divorce, or custody process:

- ✓ Your marriage license
- ✓ Your child/ren's passports
- ✓ A driver's license or non-drivers ID
- ✓ Statements from any credit card in your ex-/spouse's or your own name
- ✓ Bank statements for any accounts you or your ex-/spouse have

<sup>2</sup> Footsteps can provide financial counseling to members are looking to learn more about establishing credit and other matters of financial literacy.

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## Protecting Your Privacy During Divorce

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Take measures to ensure your privacy during your divorce case. People can easily gain information about you through the internet (including social media), by hiring private investigators, or by talking to friends or family. Be especially careful about what you post on social media sites – what you say could be taken out of context and used against you in legal proceedings.

- ✓ Be careful about being photographed or tagged on social media sites.
- ✓ Family or friends might reveal your information to your ex-/spouse who may use it against you in court.
- ✓ Be aware that it is *legal* to record a conversation in New York State so long as one party is aware of the recording; this means that *a person can record your conversation or call without your knowledge*.
- ✓ In extreme cases, your computer or phone may be hacked or traced.
- ✓ Be conscious of what you write in an email or text; always assume it will be later used in court. Expressing extreme emotion or anger in a text or email may later be used to portray you in a negative light.
- ✓ Consider the impact on your child/ren before starting romantic relationships. Be particularly aware of your social behavior when your child/ren are with you, even if they are asleep at the time.
- ✓ Try not to repeat the advice your lawyer gives you. While you can speak generally about the court

proceedings or legal advice, it is best not to be too detailed in order to maintain a confidential and privileged relationship with your attorney.

Although Footsteps makes every effort to protect the confidentiality of participants, you may choose not to attend Footsteps events because it is a small community and word can spread. *Instead, you can request private, confidential help from Footsteps' staff.*

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### Options for Keeping Your Records Safe

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- ✓ Keep records on a password-protected website that offers free journaling hosting.
- ✓ Ask Footsteps staff for help in finding a secure location to keep your records.
- ✓ Find a trustworthy person to keep your records for you if you are not able to keep them safe yourself.
- ✓ Rent a safe deposit box at a bank.

## Keeping Records of Your Role as a Parent

As discussed further in **Children and Custody Decisions** (see page 14), in divorce the court determines which parent the child/ren will live with, how much time the child/ren spend with each parent, and who makes decisions about their medical care and education. It will help to have records of your interactions with your child/ren that show that you are an involved parent (or primary caregiver).

These records can include:

1. A record of the time you are with your child/ren. Include the date, the amount of time you spent together, and the activities you did, even if it seems insignificant. (For example, playing at home, preparing meals, or putting the child/ren to bed).
2. Photographs of your child/ren having fun with you or doing healthy daily activities together with you.
3. A “scrapbook” of family memories; this can be both a fun way to preserve your memories together **and** contain valuable proof of the time you spend with your child/ren, the activities you do, and any style of dress your family has worn during the marriage.
4. Documentation of anything you have done to be a healthy, active parent, like helping with homework, or attending school-related activities.
5. A list of the daily things you do to keep your child/ren healthy and happy.
6. A record of any parenting or personal growth classes you have taken, friendships you have made, education or therapy you have undertaken, or support groups you have pursued.
7. An itemized list of any money you spend on your child/ren. Save receipts, brochures from places you visit, museum ticket stubs, and the like.
8. A visitation log tracking whether there are problems regarding visits and whether the child/ren are dropped off or picked up on time.
9. An outline of any concerns you have with your ex-/spouse around providing for the child/ren's care. Give examples and include the date and any potential witnesses.
10. If your ex-/spouse is frequently absent from significant events in your child/ren's lives (parent-teacher conferences, school events and celebrations, or medical or dental appointments) keep track of dates and examples.
11. If you suspect drug or alcohol abuse, indicate in your notes why you believe this or what you have seen or heard.

Whether or not you and your lawyer decide to use these materials to advance your case, these records will help your lawyer understand your circumstances.

Documenting will help you remember all the details that might be necessary if you need to testify in court or in mediation.

# PATHS TO DIVORCE

Divorce is difficult no matter how you proceed. However, some options can be less expensive and adversarial than others. Described below are different options to help you determine which one may be most suitable for your situation.

There is no “common law divorce” in New York State. *Therefore you must go through a legal proceeding to become legally divorced.* You may decide to live apart from your ex-/spouse without needing a divorce proceeding. However, if there are child/ren in the marriage, it is very likely that you will need to have some kind of legal proceeding around custody if you and your ex-/spouse cannot agree on how to raise your child/ren.

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## Mediation

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Many people choose mediation because it can be a friendly and cost-effective route to divorce and custody that gives the individuals the most control of the decisions that comprise their family’s future and needs.

In mediation, a neutral, trained person (called a mediator) guides you and your ex-/spouse through the necessary decisions with respect to parenting and finances. The mediator must respect each party’s autonomy to make their own choices. Both parties have the

opportunity to be heard and to hear the other’s perspective around each issue. This facilitated conversation provides a foundation for compromise and choices that should make sense to both of you as you contemplate how each of you will move forward.

If you wish to use mediation, it is important that you and your ex-/spouse find someone who is trained as a mediator and who can be neutral. This person may or may not be a lawyer.

If you choose mediation, *you should still have your own lawyer* to consult with during and after the mediation in order to ensure that you’re aware of your rights. Some mediators require this and will refer you to a mediation-friendly attorney accustomed to acting as a consultant in this process.

Mediation is not the right solution for every couple. If domestic violence, substance abuse, child abuse, or issues of power or control are factors in your relationship, mediation is not appropriate and litigation is the best option. It may be difficult for the couple to agree on a mediator if there are religious differences, and you may need to consider using two mediators or bringing a friend and advocate with you.

Keep in mind that *both sides have to agree to mediation*; it isn’t up to just one party.

If you do decide to try mediation and it isn’t working out, you can always still choose to go to court.

You will attend meetings with your mediator together. You will create a settlement agreement based on both of your concerns and interests.

Once the agreement is drafted, your attorney will review it and ensure that you understand what your rights are before the agreement is signed and filed with the court.

Mediation is typically less expensive than litigation. Some courts may offer or require an initial session of mediation at no cost in contested divorce matters.

*A religious court or Beis Din is one form of arbitration that is discussed separately on page 9. It is not mediation and is not always the appropriate forum when one party is less religious. You cannot be required to participate in the Beis Din.*

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## Litigation / Court

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If you do not believe mediation will be successful, or there are issues of abuse, you can proceed directly to court.<sup>3</sup> Typically, you will need a lawyer in order to proceed effectively in court to best protect your own interests.

Once you're in court, your option is to settle the case (come to a resolution with your ex-/spouse) or go to trial (have the judge decide the resolution). This settlement can take many forms, but it will involve a written document with terms that you and your ex-/spouse

agree to follow when the marriage is ended. A settlement agreement may include religious requirements, financial agreements, and a whole range of lifestyle agreements. The court will have to give its approval for a settlement agreement, but often accepts the document that the parties have agreed to as is.

It is very important for you to be sure that the settlement is something you can live with for a long time. The settlement is a compromise; in all likelihood, neither party will be entirely happy with the end result. Depending on your situation, a settlement may provide better options than what you and your attorney predict a judge would rule at trial and/or be quicker and far less expensive than going to trial.

The judge or lawyers may pressure you to settle your case. The settlement conditions can have a big impact on your life, so ask your attorney for more time to consider the terms if you need to.

Ultimately, the decision to settle is yours. Your lawyer can tell you the costs and benefits, and possible outcomes during and after trial, but you make the final decision.

If you cannot come to any settlement agreement, there will be a trial and the judge will make the ultimate decisions as to the financial matters — such as child support, maintenance, and any shared assets — as well as child custody and visitation. (There is normally no jury trial in a divorce case).

<sup>3</sup> For more information on situations of abuse, see **Domestic Violence and Abuse** (page 22).

A trial can be costly, both financially and emotionally, but is sometimes necessary to preserve your rights.

Court is emotionally draining, particularly since it can feel as though you do not have much say in the court's ruling or that your story is not being heard. In addition, you and your ex-/spouse will be highly scrutinized by the court as to your behavior, lifestyle, and history. While this can be stressful and painful, it is a necessary step in some cases; you may need a judge's intervention to resolve some issues, especially if there has been violence or abuse.

You should be aware of the length of time that the court process can take. Depending on the issues in your case and their complexity, the court process can span several years. For instance, where there are significant assets or finances are complicated or otherwise convoluted, the parties may have to exchange documents (through their lawyer during the **discovery** process) and conduct depositions before a trial can take place.

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## Beis Din

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A **Beis Din** is a religious body that is recognized by the secular courts only for limited purposes.

**While a Beis Din can be a way to quickly create a settlement agreement to present to the secular court, it may not offer a fair forum for people who are not following a strict orthodox lifestyle.**

A Beis Din is viewed as a form of binding arbitration, and if you agree (and sign a valid arbitration agreement), a secular court may uphold a Beis Din decision. A Beis Din can arbitrate and decide **equitable distribution** of assets, maintenance payments, and child support. The court will uphold those decisions (although any child support arrangement must still comply with New York law).

**You are not legally obligated to go to a Beis Din or to sign any documents in a Beis Din. Footsteps encourages you to seek counsel from a lawyer with a strong understanding of how Batei Din and secular courts interact and your rights in both forums early on in your process. In addition, Footsteps strongly recommends that you do not sign any Beis Din documents (or any other documents, for that matter) before consulting with an attorney.**

You can choose to have the entire Get, divorce, and custody arrangement settled in a religious court, but this is not required. A Beis Din makes its decisions according to Jewish law and formula, which can be different from secular law.

Additionally, a Beis Din doesn't have the same standards for the types of evidence and testimony that a secular court or mediator will take into consideration. A lawyer can talk through some of the differences with you to help make sure you are aware of your rights.

People wishing to bypass a Beis Din and forego or postpone the giving or receiving of a Get can file for divorce solely in civil court. Another option is to only go to Beis Din to give or receive the Get, but to negotiate everything else in secular court. **You should not sign any document in a Beis Din without consulting an attorney.**

You may also choose to first settle your claims in secular court and then turn to a Beis Din for the Get. It is very important to understand that once you sign something in Beis Din, it is legally binding. However, one can receive or give a Get without signing anything at all.

Whichever route you prefer, you should consult with a lawyer who is knowledgeable about the intersection between religious and civil courts in order to gain a thorough understanding of all potential outcomes.

Again, we strongly recommend you do not sign anything in Beis Din without consulting a lawyer first.

The relationship between a Beis Din and the secular courts is complex. A religious body such as a Beis Din can grant you a Get but it cannot grant you the legal divorce you will need if you have had a civil marriage. You will have to participate in a secular court proceeding as well.

A civil court cannot grant a Get; only a Beis Din can do that. While you may ultimately have to cooperate to enable

your ex-/spouse to obtain a Get, an attorney can advise you on the timing and procedure for doing so that fits your best interests.

Signed agreements are considered contracts and will be enforced in the secular courts, particularly as they relate to financial issues. The secular court may make its own determination as to child custody or visitation if it can be shown that the agreement is not in the best interest of the child/ren; however, the agreement itself will be considered as a strong factor in that determination, so you should be well represented if you decide to go to a Beis Din.

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## The Get Law

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In New York State, the "Get law" states that in a contested divorce, if the couple was married in a religious ceremony, a divorce cannot be granted unless the person starting the divorce has taken all steps to remove all barriers to remarriage, including granting, or accepting, of a Get.<sup>4</sup>

This means that if you are the person who started the divorce in court (the **Plaintiff**) you must agree to give a Get (unless both parties agree not to pursue one) before being granted a civil divorce. In some cases, you may also be required to accept a Get. The Defendant cannot be forced to remove barriers to remarriage. Most courts in

<sup>4</sup> Outside of New York State, you can refuse to participate in the Get process. A man can refuse to give a Get or a woman can refuse to accept a Get. This could be part of a larger divorce/custody strategy. Outside of New York State, if you or your ex-/spouse wants a Get, you can insist that you will not go to a Beis Din until the civil case is first settled by a secular court or arbitrator.

New York City will wait until the Get is actually given until signing the final Judgment of Divorce.

There is power both in giving or receiving the get and in choosing not to give or accept the Get. Explore your options with trusted advisors and your lawyer to make the best decisions. Ask your lawyer about the possibility of waiting until the time is right for the Get through a legal process of putting the Get in escrow.

For more information, you can also read the [Jewish Orthodox Feminist Alliance's guidebook](#) on divorce online.<sup>5</sup>

## What Happens at Beis Din

If you go to a Beis Din for some or all of your divorce settlement, you may have an initial consultation about the case with a single rabbi. The actual “court” will be a group of three rabbis who will hear both sides of the case and come to a decision. Each Jewish community generally has its own Beis Din. A Beis Din in Kiryas Joel or Borough Park will be very different from a Beis Din in the Upper West Side of NYC or Flatbush. Trusted friends and others who have gone through the divorce process may be able to help you decide whether and which Beis Din will best serve your interest.

Because of its explicit religious focus, a Beis Din is likely to prioritize religious compliance and may grant favorable

judgments to the more religious individual. For example, a Beis Din might be unwilling to grant you custody if you are shown to be less religious or non-religious, or may limit the time you have with your child/ren during holidays or your role in choosing their school.

Parties are often represented by a **toen** or a **toenet** — an expert in Jewish law. You may choose to hire a toen or toenet to represent you if you do decide to go to the Beis Din. **A toen is not a lawyer**; it is strongly recommended that you have an attorney to assist and represent you throughout the Beis Din process as well.

If you plan to have a Beis Din decide all matters, it is important that you have legal help to ensure that the agreement is legally binding and fair.

For example, you may agree to give your ex-/spouse a Get with the understanding that you would receive certain visitation rights, but if the agreement in the Beis Din is not properly done it may not be legally binding in a civil court. You might be forced to rehash visitation rights all over again in the civil court, even though you have already given over the Get.

<sup>5</sup>This guide can be found at [jofa.org/agunot](http://jofa.org/agunot)

## Preparing For Beis Din

Before agreeing to a hearing by a Beis Din, you should research various Batei Din until you find one that has a reputation for fair judgments, especially for less religious parents. According to halachah (Jewish Law), you cannot be forced to participate in the Beis Din process unless you agree with the choice of Beis Din.

If you are a woman, you may want to consider bringing male allies with you any time you do decide to appear in Beis Din. You may find the all-male court intimidating or “triggering.”

Having male allies, particularly those familiar with the community, can help you retain your confidence. You should always consult with an attorney and may want to ask that attorney to accompany you to the Beis Din.

## FILING FOR DIVORCE

The divorce process starts when one party **files for divorce** by going to the secular court and submitting the proper paperwork. The party filing for divorce then **serves** the other party by having another person give the other party a copy of the divorce papers. There is generally no legal advantage to being the first party to file for divorce. Your lawyer can assist you with the timing and location for filing for divorce.

## Location or "Venue"

The location of your case can impact its outcome. The legal term for the location of the court where your case will be heard is called its **venue**.

The location for your divorce depends on where the parties live. However, if you have concerns about your ability to get a fair hearing, you should discuss the issue with your lawyer as you may be able to change the venue if there is a good reason.

If you are seeking a divorce you will have to appear in Supreme Court. However, you may resolve some issues, such as custody or child support, in Family Court first. Your attorney can help you determine in which court you should file if you are the party filing the divorce.

## Temporary Orders or "Pendente Lite Relief"

Either party can make a motion, or request that the court grant temporary orders, or **pendente lite relief**, at any time during your divorce case. The purpose of this order would be to create conditions or rules for how the parties must behave while the divorce is going on and before the judge's final ruling or a settlement agreement resolves the case.

A pendente lite order from the court can be used for such decisions as to which party will continue to reside in the home you shared during the marriage (called the **marital residence**), which party will have temporary custody, where the child/ren will live, how often a parent may have visitation, whether one party pays the other money or support, or other circumstances that will be resolved through the divorce. The court can also grant an order of protection on behalf of either party and/or the child/ren.

Along the way to completing divorce and custody matters, there may be specific issues or disputes that are brought before the court by one or both of the parties. For example, if you would like your child to see a therapist and your ex-/spouse disagrees or won't consent to a less religious provider, you may have to seek a ruling from the court. Similarly, issues such as where a child attends school or camp or how you celebrate a holiday or arrange visitation may be reasons for court rulings if the parties cannot resolve the issues alone or through their attorneys.

Judges will generally issue temporary orders reflecting the **status quo**; that is, whatever arrangement you and your spouse have been living with up until the start of the divorce process. Pendente lite orders can be made for child custody, visitation, financial support and maintenance. These temporary orders are intended to maintain the status quo and to ensure the parties and the child/ren are supported while the divorce is going on.

For example, if one spouse has been the one to earn most or all of the household income - sometimes called the primary "breadwinner" - that person may be ordered to keep paying for the family's household expenses. So too, if one party has been doing more of the caregiving for child/ren, that parent is likely to be considered the child/ren's **primary caregiver**, which is likely to factor into a temporary order of custody and visitation.

Temporary orders are generally issued only after one party makes a motion to the court and the other party has had a chance to respond. However, in certain urgent circumstances one party may choose to ask for an emergency order **ex parte**, without the other party appearing in court. For example, a person can ask for an emergency order of protection if they have been the victim of abuse and are fearful of starting a case without some protection in place. You may seek an order of protection through an ex parte motion. Similarly, if you are still residing with your ex-/spouse, you may ask for an order that gives you exclusive occupancy of the home during the divorce proceedings.

# CHILDREN AND CUSTODY DECISIONS



If you decide to divorce, the court will determine a custody arrangement (sometimes called a parenting arrangement) that is in the best interest of the child/ren.

The legal standard to determine child custody is the best interest of the child/ren. There are many factors for the court to consider in determining what is in a child's best interest; however, the court places a great deal of weight on which parent has served as the child/ren's primary caregiver before the divorce.

Other factors the court will consider are the child's wishes (depending on the child's age), which parent will better encourage a relationship with the other, religion, stability, education, and the mental and physical health of each parent.

It is helpful to minimize tension between you and your ex-/spouse to achieve your desired end result. Unless this is an abusive situation, allow your ex-/spouse to see your child/ren and encourage them to maintain a relationship. Try hard to avoid unnecessary quarrels and do not interfere with your ex-/spouse's relationship with your child/ren.

Do not argue in front of your child/ren or speak negatively to your children about your ex-/spouse. This can be harmful to your child/ren and can seriously weaken your case.

We encourage you to seek counseling or other support to help you navigate this difficult time.

## Different Types Of Custody

**Physical or residential custody** means who the child lives with.

**Legal custody or decision-making** means who makes the decisions regarding the child even if the child does not live with that parent.

Sometimes, in cases where religion or education is a significant issue, the court can "carve out" which parent is allowed to make decisions as to any particular issue. This is sometimes called **spheres of influence**, meaning when the court separates major issues for one parent or the other.

**Sole Custody** means one parent has physical or legal custody.

**Joint Custody** means parents share custody. **Joint legal custody** means both parents make the decisions together; sole legal custody gives authority to one parent. **Joint physical custody** is when the child moves back and forth between the parents.

## The Role of the Attorney for the Child (AFC)

In New York State, children are entitled to their own attorney during a contested custody or visitation matter. That attorney must act in accordance with the child's wishes, unless the child is incapacitated or otherwise unable to express their wishes. The attorney for the child does not determine your child's best interest, but advocates on behalf of what the child wants.

The AFC is an important player in custody and visitation cases, and judges typically give great weight to their position.

The AFC will meet with your child/ren alone and their relationship with the child/ren is confidential. Do not ask your child/ren about their conversations with their lawyer or undermine that relationship in any way.

It will be important for you to represent yourself well in front of the attorney for the child. Remember that what you say to the attorney for the child is not confidential and may be repeated to the court or to your ex-/spouse.

### — **Building Your Parenting Skills** —

As you prepare for divorce, you may also want to read about child development and the impact of divorce on child/ren. This will help you learn about the experience from a child's perspective and gain skills you can use to address any changes in behavior that you may witness. You can learn more by:

- ✓ Reading books about parenting.
- ✓ Taking parenting classes, such as classes on behavior management or child development - whatever might be relevant for your child/ren. Keep records of the classes you take and any certificates you've earned.
- ✓ Seeking counseling for yourself. A therapist can help you process the emotional aspects of divorce and how to find the right tools to parent

well through this period.

Courts generally look favorably upon this and will not hold it against you in determining custody.

- ✓ Seeking counseling for your child/ren, as these transitions can be difficult.

## **Protection Against Kidnapping**

Threats and incidents of child/ren being kidnapped in contentious custodial disputes are not uncommon. If you are concerned that your ex-/spouse or someone else may kidnap your child/ren, or if someone has threatened to take your child/ren, you can file for custody and/or visitation in Family Court and ask for either a temporary order of custody or an order prohibiting your ex-/spouse from taking the child/ren outside of the state or country.

There are no fees to file in Family Court, and you can file without a lawyer if you need to; the court will appoint you a lawyer if you qualify financially.

Keep your child/ren's passports in a secure place.

If you are concerned about international abduction, you can alert the State Department and register for the [Children's Passport Issuance Alert Program](#).<sup>6</sup>

<sup>6</sup> [travel.state.gov/content/travel/en/International-Parental-Child-Abduction/prevention/passport-issuance-alert-program.html](https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/prevention/passport-issuance-alert-program.html)

## Religion and Custody

### Contact With Your Children

Individuals who choose to leave a religious lifestyle sometimes wonder if it is healthier for their child/ren if they have only limited contact with them. This idea is frequently promoted by people in the ultra-Orthodox community in order to pressure non-religious parents to sever ties with their child/ren. Secular psychological and child development experts do not support this point of view.

*Research shows (and the law supports) that child/ren do best when they are in close contact with both parents and that they are able to adapt to changing circumstances when they receive support from adults in their lives.*

If you have trouble deciding what is best for you and your child/ren, consider talking to an impartial counselor or therapist in order to work through these issues. Decisions about custody are life-altering. Taking the time to consider your options and their consequences is an important part of making the right decision for the long term.

## Children and Lifestyle Choices Before and During Divorce

All individuals should have the freedom to choose the way they live their lives. However, it's important to be aware that the decisions you make about how to live your life will play a role in determining child custody issues.

Once you have decided to change your level of religiosity, you may want to declare your new identity by changing your appearance or being open about your change in lifestyle. This may feel liberating and empowering, and you have the right to dress and act in a manner that reflects your values. At the same time, there is always the risk that a judge might view this unfavorably or perceive any significant change as negatively impacting the child/ren.

You may want to consider making some changes towards a more liberal lifestyle while maintaining a religious affiliation with a Modern Orthodox or Conservative community if it aligns with your beliefs.

Such a move would appear to be a less extreme change to the court and may help you and your child/ren transition more gradually away from ultra-Orthodox practices. If you do choose to participate in religious activities, you may wish to keep a list or notebook to record your religious practices, even if they are with a new or less observant community.

Another option is to remain within the religious community until your divorce is final, which would omit any question of religiosity from the divorce case.

This may make your case easier and less contentious. However, divorce proceedings can take several years, and if after the divorce you become significantly more secular, your ex-/spouse may object and make a motion to the court claiming that circumstances have changed since the divorce and your lifestyle choices are negatively affecting the child/ren. This is especially likely if you agreed earlier in the divorce or in an agreement (such as in a Beis Din) that you would maintain a religious lifestyle.

The choices you make in the early stages of your divorce process will matter to the outcome of the case. All of your choices may be brought up in court by your ex-/spouse.

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### Your Children's Religiosity

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You may wish to modify your religious practice or to leave all religion behind. In either case, you will need to think about whether your child/ren are willing and/or able to adapt to a non- or less religious lifestyle, particularly if the child/ren have lived for many years within the religious community. There are important legal and psychological questions that may arise from the specific choices you make.

Decisions about religion and religiosity could affect the outcome of a custody case. Your ex-/spouse may argue that

your choice to be less religious goes against the child/ren's best interest and ask the judge to deny you custody or visitation with them.

A judge might be inclined to award custody to the parent who is going to create fewer changes in the child/ren's lives by staying in the same community, maintaining the same level of religious observance, and continuing to attend the same school. If you can document any instances of the child/ren's lives or conduct that is not strictly adhering to religious practices, this can help you demonstrate that the child/ren are able to adapt to a more secular or less religious household.

*The courts are not supposed to force you to maintain a certain level of religious observance when you are with your child/ren.* You may have to make sure that your child/ren are able to continue in their religious practices, by providing kosher food or observing Shabbat for example, but you cannot be forced to be observant yourself around them. You should therefore consult with your lawyer regarding the legal ramifications of your religious practices.

If you decide to raise your child/ren without religious observance, you may find it helpful to learn more about parenting in the secular world by browsing secular parenting blogs, making friends with secular parents, and/or connecting with parents who made the journey from a religious to a secular lifestyle.

If you would still like to retain an attachment to Judaism for yourself 17

and your child/ren, there are many other Jewish communities, such as Modern Orthodox, Conservative, Reform, Reconstructionist, Renewal, Traditional, or Humanistic, that you may find welcoming. Footsteps can provide you more resources for exploring your options, and there are also many online resources and discussion groups for parents grappling with religious choices for raising their child/ren.

*What is important to keep in mind is that children are resilient. If you decide to raise your child/ren differently from the religious experience they were born into, they will adapt. Decide on your values, live those values, and be a strong role model and support for your child/ren.*

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## Child Support

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Child support is money ordered to be paid by one parent to another in order to provide for the child/ren's needs and expenses. The amount to be paid is governed by a formula set by state guidelines. The formula used in New York State can be found in the chart [here](#).<sup>7</sup> There is always some form of child support obligation placed on each parent in cases of divorce or separation.

Child support amounts are determined by the income and financial resources of both parents. In New York State, the amounts are determined by the combined adjusted gross income of both parents and are applied proportionally based on their respective

incomes. Only reported amounts of income are considered in awarding child support, so if you suspect that your ex-/spouse has unreported income, talk to your lawyer about how to address this (**see page 4** for more information about unreported income and assets).

When parents live separately and one parent has custody of the child/ren, that parent, called the **custodial parent**, may file a petition in Family Court asking the court to enter an order for the **non-custodial parent** to pay child support.

The court can order parents to pay a minimum of \$25 a month in child support or much more, depending on the parents' financial situation.

In practice, child support obligations are most often placed on the father if the mother receives sole or even joint custody. For men leaving the ultra-Orthodox community with limited financial resources, this can be a huge burden. However, it is important to realize that child support is intended to serve the child/ren, and the law mandates it.

Child support is decided separately from custody and visitation. Parents with limited (or no) contact with child/ren can still be ordered to pay child support. And parents who are not ordered to pay child support still have the right to maintain a relationship with their child/ren.

In some cases, a custodial parent who wants to limit contact between the

<sup>7</sup> [www.childsupport.ny.gov/dcse/pdfs/CSSA.pdf](http://www.childsupport.ny.gov/dcse/pdfs/CSSA.pdf)

child/ren and their non-custodial parent will offer to 'release' a non-custodial parent from their child support responsibilities so long as they agree to give up visitation rights.

*Child support is mandatory, however, and even if such an agreement is signed by the parents the court can still make an order directing payment.*

The court does not have to enforce an order that is not in the best interest of the child – even if it is signed in a religious court.

**If a parent fails to pay the child support that the court ordered, the money owed can be automatically garnished, or taken from that parent's paycheck. That parent could be arrested, their driver's license could be suspended, or their passport could be revoked.**

If you are the parent ordered to pay child support and are financially unable to make full payments, try to keep paying something. Even a small amount is better than not paying anything at all. A judge will look favorably on a parent who has made a strong effort to comply with the order to the best of their abilities.

You can also reach out to the Customer Service Unit of the Support Collection Unit and work out a payment plan.<sup>8</sup>

If your financial circumstances change after an order is entered, consider filing for an **upward** or **downward modification**. For example, if you lose your job and can no longer make payments, you should immediately go

to Family Court and file for a downward modification, which may reduce the amount of child support you are required to pay. In general, courts cannot vacate money already owed (called **arrears accrued**), but they may reduce future payments, so it is important that you file as soon as your financial circumstances change. Do not wait for a lawyer to do this.

You are not entitled to a court appointed attorney on child support matters unless you are defending yourself against a violation and your ex-/spouse is seeking incarceration (for you to go to jail). In that case only the person at risk of being put in jail for failure to pay child support is entitled to an attorney.

See [newyorkchildsupport.com](http://newyorkchildsupport.com) for more information on child support in New York State.

<sup>8</sup>[www.childsupport.ny.gov/dcse/non\\_custodial\\_parent\\_services.html](http://www.childsupport.ny.gov/dcse/non_custodial_parent_services.html)

## What is a Forensic Evaluation of a Child?

Judges generally are not trained in psychology, nor do they have the time to sufficiently examine a family's dynamics in depth. Therefore, when there is conflict between parents in custody or visitation cases it is common for a judge to order something called a forensic evaluation. This is an evaluation that is used to provide more information to the court to help the judge determine what is in a child's best interest.

The evaluation is done by a mental health professional, usually a psychologist or social worker. The goal of these in-depth evaluations will be to assist the court in making a decision about what kind of arrangements will be the most beneficial to the child/ren involved.

A forensic evaluation consists of a series of interviews and meetings with the child/ren, the parents, and other adults involved in the daily care of the child/ren, including grandparents or other relatives. Meetings are usually held in the office of the evaluator. Other information about your child/ren, such as school records, may also be gathered or a home visit may be requested in some cases.

The early interviews usually involve just one parent and the evaluator, while later meetings serve more as a way for the evaluator to observe a parent's behavior and relationship with their child/ren. Although these meetings can place a parent under a great deal of pressure, it is important to try to interact with your child/ren as if you were alone together

on an ordinary day. The evaluator may seek to assess how you handle stress or discipline with your child/ren or whether your child/ren have met appropriate developmental milestones.

It is helpful if you show your best self during these interviews. If possible, try to get a good night's rest for yourself and the child/ren the night before the interview. Leave yourself enough time to get to the interview so you do not feel rushed or arrive late. Make sure your child/ren have a snack before the interview if desired, so they are comfortable.

After conducting a series of interviews, the forensic evaluator will write a confidential report that the court will rely on for information about your child/ren's familial relationships. The report often includes a recommendation about custody that can be very influential in custody determinations.

It is up to the judge whether or not a forensic evaluation is done, and which mental health professional is chosen to conduct it. It is very common to have a forensic evaluation ordered in cases involving one parent who has left the ultra-Orthodox community. Often these evaluators will try to gauge the level of the child/ren's religious observance as well as that of the parents. The evaluator might make assumptions about your child/ren's lives because of their ultra-Orthodox background.

If you have photographs or other documents that demonstrate that your child/ren participated in secular activities, wore secular clothing on occasion,

or generally had a less strictly religious lifestyle at times, then you may want to show them to the evaluator to provide a full picture of your family.

The forensic expert may want to speak with relatives or others who are prominent in your children's lives. Your lawyer might be able to suggest appropriate people for the expert to speak with so that the right picture can be developed. Usually the investigator will want to see the parents alone, the child/ren alone, and then each parent with the child/ren. These meetings can be difficult and time consuming. It is important that you demonstrate that you are able to co-parent with your ex-/spouse for the benefit of your child/ren.

The forensic expert appointed by the court is considered the court's own witness and somebody neutral to the case. You may want to speak with your attorney about whether you should call your own expert witness to present different or additional information as well.

Your lawyer will have a copy of the forensic report which you can read, although you will most likely not be able to have a copy of your own.

Usually each parent is charged a portion of the fees by the evaluator according to each party's share of the total combined income, or a **pro-rata share**. The cost and length of a full evaluation will depend on the case, but it will usually range from \$2,500 to \$4,000 and take about two months to complete.

### Keep these tips in mind as you go through a forensic evaluation:

1. Prepare for the evaluation with your attorney by reviewing this section of the legal manual a few days before your appointment and by speaking with your attorney.
2. Remember that no parent is expected to be perfect and it's important that the evaluator knows you are trustworthy. Don't be afraid to acknowledge both your parenting strengths and weaknesses.
3. Do not coach your child/ren to say something they otherwise wouldn't.
4. Do not speak negatively about your ex-/spouse or use this as an opportunity to disparage your ex-/spouse.
5. Remember that your interactions with the evaluator will be part of the report. Be respectful and try to remain calm throughout the evaluation.
6. Talk about your child/ren's interests and favorite activities, as well as how you support them in these areas.
7. If you do not understand a question you are asked, don't be afraid to ask for clarification.
8. Be organized and bring whatever documentation the evaluator requests, as well as any additional documents that you believe are helpful to showing your parenting and your child/ren's lifestyle.

# DOMESTIC VIOLENCE AND ABUSE

## Orders of Protection In Cases Of Abuse

There can be many forms of abuse. It may be emotional, physical, or sexual. It could be verbal threats or intimidation, or financial control. Abuse may be by your ex-/spouse, family members, or even rabbis or teachers.

**Domestic violence** is sometimes called **intimate partner violence** and can occur in hetero- or homosexual relationships. Any kind of abuse is unacceptable and should be taken seriously.

People who abuse their partners may also abuse their child/ren. Even if they are not a target of the violence, however, children often know about the abuse, even when parents think they don't. While each child is different, children can be affected by seeing one parent abuse the other.

You are not alone. Millions of people are abused by their partners every year.

Abuse is not your fault.

Reach out to friends or a Footsteps staff person for support. People are available to accompany you to family events, Beis Din, divorce court, etc. Harassment may be less likely if you are with someone, and if it does occur, you will have a witness and some support.

The resources section at the end of this handbook provides information on organizations that can help in cases of abuse.

An Order of Protection (OP) or Restraining Order is a written order issued by Criminal, Family, or Supreme Court to help protect you from physical, emotional, or financial abuse by an individual to whom you are related or with whom you have an intimate relationship, and who has committed a crime against you.

Both sides are entitled to a court appointed lawyer in Family or Supreme Court if they cannot afford one. Only the Defendant is entitled to a court appointed lawyer in Criminal Court.

**Family Court** can only enter an Order of Protection from someone who is related to you by blood or marriage or with whom you are in an intimate relationship. There are no filing fees in Family Court. You will need to go to the Family Court to file for an OP. See **FAQ** for more information (page 28).

**Supreme Court** will generally only enter an OP in the context of a divorce. You can request the OP in your divorce.

**Criminal Court** can enter an OP if a crime has been committed against you. If the abuser is arrested, a criminal case will start, and you may receive an order of protection from the Criminal Court. You do not need to be in court unless the District Attorney or prosecutor tells you to attend.

Any Order of Protection sets certain limits on the abuser's behavior.

For example, it can:

- ✓ order someone to stop abusing you and your child/ren
- ✓ exclude someone from your home (see below)
- ✓ tell someone to stay away from your home, your workplace, and/or your family
- ✓ direct someone not to contact you, including no phone calls, letters, texts, or messages through other people
- ✓ order someone to stay away from the child/ren, their day care, or their school

In order to exclude someone from the home, there is a higher burden on the petitioner to show that it would be unsafe for the other party to remain in the home. If the court grants the exclusionary order, you must return to court within 3 days for a trial on whether or not the exclusion will remain.

Once an order is issued, only a Judge may change it.

A protective order will be an important factor in custody/visitation outcomes. Keep in mind that even if you file an order of protection against your ex-spouse, they may still have certain rights to your children. Orders should never be used to manipulate custody or visitation cases.

If someone files a protective order against you, speak to your attorney, or ask the court to appoint an attorney for you if you cannot afford one. The court is required to consider domestic violence when determining the child's best

interest. It is always important to comply with the order while working with your attorney to determine your options.

Understand that these cases often require a number of court appearances, and if the accused party doesn't consent to an order, the court will conduct a trial. During a trial both sides can testify, present other witnesses to testify on their behalf, and present evidence.

## THE COST OF DIVORCE

Divorce can be expensive, particularly if the process is contentious and drawn out. A case that goes to trial can cost tens of thousands of dollars in attorneys' fees and related costs. For instance, you may have costs such as your share of the fees if the court appoints an attorney for the child/ren or orders a forensic evaluation of the child/ren to be done by a mental health professional. If you own real estate or other assets, or have a pension, experts may be required to value the asset(s) and to testify at trial.

If you do not have the resources to have your case go to court, there are options for free legal services. Some of these are listed in the resources section at the end of this manual.

**Mediation** or **collaborative divorce** (see page 7) can be used as an alternative to litigation. These options can take less time and be far less expensive.

Ultimately, this could be an easier and healthier option for you and your family if you believe it is a possible and safe approach for you and your ex-/spouse.

Remember that the ultra-Orthodox community may come together to hire lawyers and experts. It is important to have your own lawyer.

In addition to granting the actual divorce to end the marriage, the court process typically includes all or some of the following financial actions:

- ✓ Dividing your assets and liabilities, including any debt built up during the marriage, such as any cash, vehicles, real estate, investments, credit card debt, household furniture, jewelry, or other items of value. This is through a process called **Equitable Distribution**.
- ✓ **Child Support** – support the non-custodial parent pays to the other to support the child/ren's expenses.
- ✓ **Maintenance** - support of one person in the marriage, also known as spousal support or alimony.

## COURTROOM ETIQUETTE

The way you present yourself in court can impact the judgment you receive. Following courtroom rules and making an overall good impression will be helpful to reach your goals.

Make sure to **arrive early** to your court appearance and leave time to go through the metal detectors at the courthouse entrance and find the courtroom. Being on time lets the court know that you are responsible and prepared for your case.

**Dress appropriately.** The way you dress in court will affect the judge's perception of you. It is therefore important to wear formal and appropriate clothing when in court, such as a suit or business attire. If you're unsure of how to dress for court, ask your lawyer or a Footsteps staff member.

**Turn your cell phone off.** Cell phones are not permitted to be on in the courtroom. Turning off your phone will also prevent you from becoming distracted with unwanted disruptions during the proceedings.

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### Stay Calm

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Your court case is likely to be an emotional experience. You might feel really upset or angry at something your ex-/spouse or their lawyers say in the courtroom or at guests they bring. However difficult it is, it is important to

remain calm and composed during this process. Emotional reactions on your part will be observed by the judge or court staff and may cast a negative view of you.

Consider doing some breathing exercises or find another way to cope with your feelings **before** your court appearance so that when the time comes you are able to maintain control. Another useful exercise is writing down what how you feel in court, rather than reacting to it out loud. Bring a notebook or ask your lawyer for some paper.

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### Support

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Many people find it helpful to have someone there with them during court appearances for support. We encourage you to bring along a friend or supportive family member if possible. Footsteps may be able to find a volunteer who will accompany you to your court appearance. Please let Footsteps staff know well in advance of your court date if you would like a court companion.

If you have a new significant other, you might be tempted to bring them to court with you for moral support. Speak to your attorney first to see whether this will help or hurt your case, as it can vary by situation.

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### Courtroom Tips:

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- ✓ Always address the judge, magistrate, or hearing examiner as “Your Honor.”
- ✓ Be polite to all court staff.
- ✓ Try not to directly engage with your ex-/spouse.
- ✓ Avoid swearing or using foul language.
- ✓ Try to only speak when you are asked to.
- ✓ Do not speak with your ex-/spouse’s attorney except when your own attorney is also present.
- ✓ Take a pad and pen with you to court for notes, questions or thoughts.
- ✓ Allow time after your court appearance in case you need to speak with your attorney so you do not feel anxious about being kept late at court.
- ✓ Bring a bottle of water or snack in case there is a long wait.

# EMOTIONAL SUPPORT DURING DIVORCE

Filing for divorce or child custody or visitation can be a painful experience and can take a long time. It will be helpful to find ways to process your emotions and cope with the stress. A trusted friend can prepare you for the process, cheer you on, and help you deal with each stage of your journey. Keep in mind that a friend, even one who has been through a divorce, is not a lawyer. You will very likely need legal counsel during this process to address your individual situation.



## Develop Friendships

Try to seek out new friends and connections outside of your community. Developing friendships with people outside of the religious community may help you gain a broader perspective and provide invaluable support.



## Pay Attention to Your Physical Symptoms

People who are going through a divorce sometimes have physical symptoms of pain, insomnia, and/or discomfort. These can be important signs telling you to pay attention to your physical and emotional needs.



## Keep Calm

Being calm and focused will not only make you feel better, but will help you engage productively with your lawyer, identify and prioritize issues, and meet your goals.



## Go to Therapy

A therapist can provide you with a safe confidential place to voice your anxieties, fears, and concerns. Therapists offer a listening ear while guiding you to make decisions with clarity. Seeking professional help does not mean you are “crazy.”

Judges typically look positively on parents who seek professional help. That being said, when you file for custody, you put your physical and mental well-being at issue and the other side may try to subpoena your therapy records or call your therapist to testify. You may want to discuss this in advance with your therapist to see how you can best protect your ability to get the help you need.

These are things that your attorney can assist with. Always be truthful with your attorney about any therapy and counselling you are receiving.

Therapists can help you to:

1. **Work through complex familial relationships**
2. **Come to terms with difficult episodes from your past**
3. **Change behaviors that are not serving you well**
4. **Make peace with the things in your life you cannot change**
5. **Think through how to handle issues with your child/ren**
6. **Set priorities for yourself during times of transition**
7. **Figure out what you would like your life to be like and determine what it will take to get there**

If you have child/ren, you may also wish to consider sending them to speak with a therapist. Children go through a great deal of emotional turmoil when their families break up and they stand to benefit from speaking with a trained, impartial professional.

## Finding a Therapist

When choosing a therapist, the most important thing is that you feel like you can be completely honest and talk about whatever is on your mind, without being judged. This includes being able to talk about your personal feelings, your religious beliefs, your community, and your family. You should feel free to ask the therapist if they can remain open and neutral to your concerns. It is a good idea when looking for a therapist to ask them for a screening call to see if their services align with your needs.

There are several different professions that practice counseling, including clinical social workers, psychologists,

mental health counselors, psychoanalysts, and psychiatrists. All of these professionals have received specialized education and are licensed by the state. Psychiatrists are medical doctors and can prescribe medication.

Although your Rabbi may provide counseling, they are not necessarily licensed by the State as therapists.

Ask yourself:

- ✓ Do I need my therapist to be located near my home or work?
- ✓ How much can I afford to pay on a weekly/monthly basis?
- ✓ Does the therapist accept my health insurance?

If you have health insurance, speak with your insurance company to determine whether it covers mental health services. Consider asking the following:

- ✓ When does my insurance year start?
- ✓ What is my deductible?  
(This is the amount you pay before insurance pays anything.)
- ✓ What is my in-network coverage?  
(This is what is covered if you see a therapist that is in your insurance plan's network of mental health service providers.)
- ✓ What is my out-of-network coverage?  
(This is how much your insurance will cover if you see someone outside of your insurance company's network of providers.)
- ✓ Is there a limit on how many sessions (appointments) are covered each year?

# FREQUENTLY ASKED QUESTIONS

## How can I obtain an Order of Protection?

If you are related to the abuser by blood or marriage, or you have had an “intimate relationship” with the abuser, you can go to the Family Court in the borough in which you or the abuser lives, or in the borough where the abuse occurred. Go to the Petition Room and tell the clerk you need to file for an order of protection. In the petition, you should describe the first incident of abuse, the most serious incident of abuse, and the most recent incidents of abuse in the form the clerk gives you.

Your description of the incidents of abuse should be as detailed as possible (such as the approximate date of the abuse, the words the abuser said, specific physical actions that were abusive, and other details) and should specify whether you called the police, whether the abuser was arrested, whether you suffered any physical injuries, and whether you received medical treatment.

At the end of the petition, specify the type of relief that you would like the court to provide. If you live with the abuser and you do not want the abuser to live in the shared residence any longer, you will need to ask the court to exclude the abuser from the home. You will have to say that you are in immediate danger for the court to exclude the abuser. If you do not live with the abuser but want the abuser to stay away from you, you will need to

ask the court to order that the abuser stay away from you, your home, and your workplace. If you do not want the abuser to stay away from you, you are able to ask for an order of protection that says that, while the abuser does not have to stay away from you, the abuser must refrain from committing any family offenses against you. This is sometimes called a **limited order**.

If you need help filling out the petition or need help obtaining other services, like shelter, go to the Safe Horizon office located in the Family Court. There is also a Legal Information for Families Today (LIFT) office and volunteer attorneys in most courthouses who may be able to answer basic legal questions if you do not have an attorney.

## I would like to get a divorce, but I do not want my ex-/spouse to know where I live. What should I do?

In cases of domestic violence, you may file for address confidentiality so that you do not have to include your address on the Summons with Notice, or any subsequent court documents. Before you file the Summons with Notice, ask the clerk for an Order to Maintain Plaintiff’s Address Confidential and a Request for Judicial Intervention.

## What if I just ignore my spouse’s decision to file for divorce?

The court case can and probably will proceed without you if you do not respond after being served or given the papers. There is no advantage to ignoring divorce papers; doing so would result in a positive outcome for your ex-/spouse in the form of a **default judgment** against you.

It is never a good idea to miss a court date or proceeding. It is much harder to change an existing order than to challenge an initial request. If you do not have a lawyer, go into court and let the judge know that you need time to locate a lawyer to represent you.

### **Does a father stand a chance of getting custody?**

Yes. There is statistical evidence that fathers who fight for custody are given equal consideration and are just as likely as mothers to receive it. The court determines custody based on what it considers to be in the best interest of the child/ren. See **Children and Custody Decisions** (page 14) for more information.

### **I didn't receive primary custody of my child/ren. How do I maintain a relationship with them?**

This is a difficult subject that a counselor or therapist can help you with. Talk to Footsteps staff if you need assistance finding help on this issue.

Most importantly, keep showing up, even if your child/ren go through a stage where it seems they are not interested or do not want to be with you. Children sometimes have a hard time expressing conflicting emotions. Remind them that you love them and try not to get frustrated if they don't reciprocate your sentiments. They may appreciate your presence even if they act or say otherwise.

Try to engage your child/ren in activities you know they like.

Help them feel safe and secure in your presence. If your lifestyle is different than theirs, you may want to consider how much you keep private and how much you share.

Send cards, gifts or letters to your child/ren.

### **I am not happy with the court-ordered visitation. Should I go anyway?**

If there is a court order that allows for visitation, be sure to show up. If you don't visit your child/ren, you run the risk of your ex-/spouse arguing that your absence means you no longer want to see your child/ren. Your ex-/spouse might seek a court order to decrease your visitation rights.

If the court has established specific rules for visitation, stick to them. For example, if the agreement or court order is that your child/ren keep kosher, do not take them to McDonalds, no matter how much they beg.

### **How do I know much child support or maintenance (alimony) I am entitled to?**

Child support and maintenance are determined by a formula based on the parties' adjusted gross income and other factors. [This website](#) can help if you live in New York.<sup>9</sup>

<sup>9</sup>[www.joyrosenthal.com/new-york-maintenance-child-support-calculator/](http://www.joyrosenthal.com/new-york-maintenance-child-support-calculator/)

## SAMPLE DIVORCE STORIES

### My financial circumstances changed and I cannot pay the child support that was ordered by the Family Court. What should I do?

If your financial circumstances have changed (e.g. you have lost your job) and you cannot pay the child support that was ordered by the Family Court, go immediately to the Family Court where the support was ordered and file a petition for a **downward modification** of the order. In your petition, you will need to explain the financial circumstances that have changed since the Family Court ordered the support. If you do not obtain a change in the order, then the **arrears** (amount overdue) will continue to accrue regardless of your ability to pay.

You are not entitled to a court appointed attorney in support cases, even if you cannot afford one, unless a violation petition is brought against you.

### I recently found out that I owe a lot of money in child support and my bank account was frozen and/or my driver's license is being suspended. What should I do?

Go to the Support Collection Unit in the borough or town where the child support was ordered. Explain your financial situation and try to make an arrangement for how you will pay the money you owe. If you believe that the Support Collection Unit made a mistake in calculating the arrears, you will need to file a petition for adjustment of arrears with the Family Court that ordered the child support.

The stories written here are composites of many stories and used for illustrative purposes only. Each person's experience with divorce is unique.

#### Chumy/Candice

Chumy never had a happy marriage. Her husband was controlling and abusive. When he got very angry, he slapped and punched her or forced her to have sex with him. Chumy had two sons before she decided to secretly go on birth control. Afraid of her husband and disappointed by her rabbis' and family's response to the violence, she no longer wanted to stay in her home or belong to the religious community. She began to gather information about leaving and secretly planned her escape.

Whenever Chumy had an extra few dollars, she hid it in a hollowed out shaitel head. Whenever her husband hit her, she took photos of her injuries and she wrote about each incident in her diary, which she hid at a friend's house. Whenever she was able, she made an appointment with her doctor to show the bruises and to tell about the abuse. The doctor expressed concern and Chumy assured her she would get help soon.

As part of her plan, she built a network of new friends from all different backgrounds and she learned about the outside world, while imagining

herself as the woman she wanted to be. She spent a few hours each week secretly working from home and managed to get hold of additional money during the renovation of her and her husband's apartment. Over the course of two years, Chummy was able to save \$30,000.

One day, when Chummy's husband was away on a trip to Israel, Jane, a new non-religious friend of hers, came to her home and helped her pack three small bags. Jane then drove Chummy and her children to her Manhattan apartment. Chummy, who now began calling herself Candice, settled into Jane's spare room with her sons and called the lawyer she had found to let her know it was time to file divorce papers and an order of protection. Candice saw a counselor who helped her develop a safety plan before she left her husband as that can be a very dangerous time.

Candice's ex-husband was furious, and he rallied supporters to pay for an expensive lawyer. But Candice had witnesses who could attest to his abuse and she had documentation of his violence. Each time she had to show up in court, Candice brought along some of her new friends. She continued to work at her part-time job and moved into a small apartment of her own. She enrolled her sons in public school. The case cost Candice \$28,000, but after 12 months, during which she and her sons built a new foundation for themselves, Candice was free. Her husband was only permitted one supervised visit a month, while Candice gained the freedom to make her own choices for herself and her children.

Duvid and his wife had two young children when Duvid realized he didn't want to live a religious lifestyle or to remain in Williamsburg. His wife was very upset by his decision and called her parents. Her father threatened to cut off Duvid from his children and have him fired from his job if he left the family.

Duvid tried to suppress his feelings, but it became impossible. Internally, he was a secular person. He couldn't continue to live a lie. He moved out, found a lawyer, and filed for divorce. He had \$13,000 in savings. He worked in life insurance, but after he left Williamsburg, all of his religious customers refused to work with him, so he lost his job. He found a new job at a Starbucks. Although he loved having freedom, his savings were depleted.

Duvid found out that the community had taken up a collection for his wife's legal fees. He was then served with an order of protection, which falsely alleged that he had been violent towards his wife. Fighting the order would cost more money. The court case had only just begun when Duvid found all of his savings depleted. He struggled for a few months, his legal fees mounting, until he felt there was no point in fighting anymore. He was \$20,000 in debt and earning only \$15 an hour, with no end in sight to the case. On top of this, his ex-wife called his parents to the stand to testify that he was an unfit parent. The emotional and financial pressure became too much.

Duvid agreed to settle, and with few options, agreed to a painful custody agreement his ex-wife's lawyers drafted. According to its terms, he was allowed to see his children once a month at the home of a religious relative. Every month, he would take the train from his new apartment in Harlem back to Williamsburg to see his children. He would knock at the door of what used to be his home, and his ex-wife's new husband would answer. "The children don't want to see you," he would tell Duvid. His two children would look at Duvid with frightened eyes, shrugging their shoulders. Sometimes the older one would walk to the ice cream store with Duvid. But the walks were silent and uncomfortable, and Duvid felt like his child was closed off from him. After a few painful months of fruitless visits, Duvid stopped trying to see his children.

But then Duvid decided to visit a therapist to process the pain of his loss. He found a free clinic, and through discussions with his therapist, gained new tools for coping with his emotions and connecting with his children. Duvid resumed his monthly visits with his children. Although they remained awkward for some months, over time his children began to open up to him again and he began to develop a new and valuable relationship with them. Eventually, he was able to expose them to small parts of his life. When his oldest son, Nuchem, turned 18, he chose to increase his visits with his dad.

Baruch and his wife had five children when Baruch realized he wanted to live a different life. His wife was willing to experiment a little bit – she'd watch secular movies with him, and they'd listen to non-Jewish music in the car. But when Baruch started talking about moving out of Boro Park and giving up shabbos, kashrut, and the rest of the religious lifestyle, she got very upset. She rallied her brother and father for support, kicked Baruch out of the house, and summoned him to Beis Din.

Baruch sought out a group of trusted friends and took stock of his resources and priorities. His wife was a good mother, and while Baruch had some resources, he didn't have enough money to hire a lawyer for a divorce or custody case in the civil court. He decided that he would fight for significant visitation and try to settle the case in Beis Din. However, he refused to go to the Beis Din his wife had selected. He found out about an Orthodox Beis Din in Far Rockaway that had a reputation of being fair-minded and balanced. He told his wife that was the only Beis Din he would agree to go to. Members of the community objected. Eventually, Baruch offered a compromise and agreed to a Beis Din in Monsey that he investigated. His wife was desperate to receive a get and move on with the divorce, so she accepted.

Meanwhile, Baruch remained quiet about his secular interests. He shaved his beard but kept remnants of his payes and wore a yarmulke when he was in a religious neighborhood. He hired a persuasive toen to represent him. The Beis Din decided that if Baruch

agreed to keep shabbos and kosher when he was with his children, he could spend two days a week with his five children. It was a compromise he was willing to make.

Baruch maintains a strong relationship with his children. Although he would love to move to California and never wear a yarmulke again, he is willing to keep an apartment in Kensington and maintain the façade of religiosity in order to have a relationship with his children.

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## Miriam

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Miriam lived in Lakewood with her husband and her two children when she decided she wanted to finally pursue a secret dream of becoming a doctor. Although she loved Judaism, she didn't love Lakewood. She wanted to pursue her career and have a more relaxed relationship with her religious heritage. She tried expressing this to her husband, but he was unsympathetic. He grew angry and threatened to take their children to Israel.

Miriam did not bring up the conversation again. Instead, she researched and gathered resources, secretly enrolling in a long-distance learning college, taking exams for college credits, and earning a degree in 18 months. During that time, she also made friends from other backgrounds, learned more about what she wanted from life, and saved some money. She was studying for her medical exams when her husband found one of her textbooks. Outraged, he demanded she stop, or he would divorce her. Miriam spoke with a counselor and consulted with an attorney and decided to move

out. She moved with her children to an inexpensive apartment in Plainsburg, New Jersey, got a part-time job, and took her medical exams.

Miriam had limited funds, so she developed a strategy of her own: she stalled as much as she could and got her children acclimated to a more moderate life. She and her husband spent a few months discussing whether to go first to Beis Din or to a civil court. She agreed to meet with a few rabbis and speak with them. She did whatever she could to keep the exchanges calm while dragging them out. When her husband finally hired a lawyer and filed papers, Miriam hired a lawyer and instructed her to ask for more time. It was eight months later by the time Miriam appeared in court. Her children were well adjusted to their Conservative day school and Miriam had been accepted to medical school. The judge was impressed with this and with how happy and acclimated her children seemed.

Six months later, Miriam was \$29,000 in debt, but she received sole legal and physical custody. Her ex-husband was awarded one week out of every month with the children. After the divorce, Miriam had to handle a large financial and emotional burden, paying off her debt and attending medical school while raising the children on her own. For assistance, she found a low-cost therapist and applied for Food Stamps and Medicaid. She bought clothing from second-hand stores. She was motivated by her children and the small gains they made in their new lives. When things became especially difficult, she looked five years down the road, imagining how things would be, knowing it would all be worth it.

# ADDITIONAL RESOURCES

## Domestic Violence

### Fearless -- formerly SAFE HOMES of Orange County

Operates a 24 hour hotline. Offers support services to survivors of intimate partner violence, teen dating violence, and trafficking and their children.

[fearlesshv.org](http://fearlesshv.org)

24-hour hotline: (845) 562-5340

Business line: (845) 562-5365

### Safe Horizon

Operates a 24-hour domestic violence confidential hotline.

[safehorizon.org](http://safehorizon.org)

(800) 621 HOPE.

### Shalom Task Force

Operates a confidential hotline 9:00am - 8:00pm during the week and until midnight on Friday and Saturday.

[shalomtaskforce.org](http://shalomtaskforce.org)

(718) 337 3700

### NYC Family Justice Centers

Offers free and confidential assistance for victims and survivors of domestic and gender-based violence. Can help with planning for safety, applying for public benefits, shelter and housing, counseling, information on job training programs, referrals to education programs and legal help.

One office located in each NYC borough.

[www1.nyc.gov/site/ocdv/programs/family-justice-centers.page](http://www1.nyc.gov/site/ocdv/programs/family-justice-centers.page)

### NYS Office for the Prevention of Domestic Violence

Offers information about domestic violence and provides resources across the State.

[opdv.ny.gov](http://opdv.ny.gov)

## Legal Representation/Advice

Organizations with expertise representing people leaving the ultra-Orthodox community:

### New York Legal Assistance Group (NYLAG) (City-wide)

Provides legal services in the areas of family, matrimonial, and immigration law for people experiencing poverty or low income residing in New York City. Priority is given to victims of domestic violence. NYLAG also provides consultation and representation for members of the LGBTQ community in a range of civil legal needs.

[nylag.org](http://nylag.org)

(212) 613-5000

### Legal Services of the Hudson Valley

Provides support, advocacy and civil legal representation to poor and low-income families and individuals in Westchester, Putnam, Rockland, Dutchess, Orange, Sullivan and Ulster counties.

[lshv.org](http://lshv.org)

(845) 476-3831

### Her Justice, Inc. (City-wide)

Provides legal services in the areas of family, matrimonial, and immigration law for women residing in New York City. Priority is given to victims of domestic violence.

[herjustice.org](http://herjustice.org)

(212) 695-3800

## **Center for Safety & Change**

(Rockland County)

Provides information and referrals, counseling, education and legal services to domestic violence victims and their families in person or by telephone.

centerforsafetyandchange.org  
(845) 634-3344 – 24/7 Crisis Hotline  
(845) 634-3391 – Main office in Rockland County

## **Court Square Law Project**

CUNY Law School (NYC)

Provides civil legal services to underserved, moderate-income clients on a sliding scale.

www.courtsquarelaw.org  
(718) 340-4412

## — **Additional Legal Resources** —

### **Jewish Orthodox Feminist Alliance**

Helps to expand opportunities for women within the framework of halachah (Jewish law). [Online guide](#) to Jewish divorce and the Beis Din.

jofa.org  
(212) 679-8500

### **LawHelpNY**

Offers online tools for helping low-income New York residents with their legal problems. Provides access to referrals to free legal services, information on legal rights, and knowledge about the court system and related organizations. LiveHelp chat system available online to answer questions.

lawhelp.org/ny

## **LIFT (Legal Information for Families Today)** (NYC - city-wide)

Step-by-step guides to the legal process on their website and on-site in family court. No direct representation is offered

liftonline.org  
(212) 343-1122

## **Legal Services NYC**

Works with low income people to target urgent problems, such as accessing high-quality education, family law, domestic violence and foreclosure prevention.

legalservicesnyc.org  
(917) 661-4500

## **New York State Court Systems**

Offers forms, instructional booklets and videos on divorce.

nycourts.gov/divorce/forms.shtml

## **Organization for the Resolution of Agunot (ORA)**

Works to eliminate abuse from the Jewish divorce process by providing free services and advocating for the timely and unrestricted issuance of a Get.

getora.org  
(212) 795-0791

## **Sanctuary for Families**

(NYC - City-wide)

Offers legal advice, assistance, and representation to domestic violence victims in cases involving divorce, child custody/visitation, child and spousal support, and immigration.

sanctuaryforfamilies.org  
(212) 349-6009

## **Volunteer Lawyers for Justice, New Jersey**

Provides pro bono legal assistance for low-income New Jersey residents involved in civil disputes. (Does not handle domestic violence cases).

vljnj.org  
(973) 645-1955

## **Women's Law**

Provides legal information to anyone who reaches out about domestic or sexual violence, regardless of gender.  
hotline.womenslaw.org/public

## **The New York State Bar Association Lawyer Referral Services**

For \$35 or less, offers an initial consultation with a lawyer for 30 minutes.

nysba.org  
(800)342-3661

## **NYC Bar Association**

Provides general legal referrals.  
nycbar.org/get-legal-help/  
(212)626-7373

## **Educational Alliance**

Provides counseling on a wide range of issues including family stress, parent/child problems, life changes, and trauma. Accepts Medicaid, Medicare, and most major health insurance plans.

edalliance.org  
(212) 228-7836

## **Mental Health Services**

### **Jewish Board of Family and Children Services**

Offers low cost counseling and mental health services to everyone, regardless of religion. Support groups for recently single parents.

jbfcs.org  
(888) 523-2769

### **Ohel** (Brooklyn & Queens)

Comprehensive mental health services for those facing acute mental illness and individuals and families confronted by everyday emotional challenges.

ohelfamily.org  
(718) 851 6300

### **Safe Horizon** (City-wide)

Provides victims of domestic violence with a wide range of social services, including counseling and legal support. Locations in all boroughs.

safehorizon.org  
(800) 621-HOPE (4673)

### **SAVI Takanot Program, Mount Sinai Hospital**

Offers free, confidential, religiously sensitive, and culturally knowledgeable weekly psychotherapy for survivors of sexual assault, sexual abuse (adult or childhood), incest, and intimate partner violence, regardless of gender. Counseling is available at Mount Sinai Hospital in Manhattan.

www.mountsinai.org/patient-care/  
service-areas/community-medicine/  
sexual-assault-and-violence-  
intervention-program-savi/services/  
takanot-program  
(212) 423-2147

## Victim Services Program, Beth Israel Medical Center

Provides free and confidential short-term and long-term counseling for survivors of childhood sexual abuse, sexual assault, and domestic violence. Orthodox and non-Orthodox therapists available. Program located at Beth Israel Medical Center in lower Manhattan.

[www.mountsinai.org/locations/beth-israel/support/social-work/victim-services](http://www.mountsinai.org/locations/beth-israel/support/social-work/victim-services)  
(212) 420-4516

## GLOSSARY

**Assets** might include a home or other property, a business, bank accounts, or retirement accounts. These assets are usually considered jointly owned by the couple and will need to be divided when a couple is divorcing.

**Child support** is court-ordered ongoing payments made by a parent for the financial benefit of a child. Often the paying parent is the non-custodial parent.

**Collaborative divorce** is a process of using mediation and negotiations to settle divorce, instead of disputes in a courtroom setting.

**Common law marriage** is one in which a couple lives together for a period of time and considers themselves “married,” but without ever going through a formal ceremony. Once a common law marriage is formed, a regular divorce must be obtained, just like any other ceremonially married couple. New York and New Jersey do not recognize Common law marriage, no matter how long a couple has been living together.

**Custodial parent** is the parent who has either sole physical custody of the child or with whom the child lives with for a majority of the time.

**Default judgment** is a binding judgment in favor of either party based on some failure to take action by the other party. For example, if the defendant has not responded to a summons or does not appear before

a court of law, a judgment will be decided in favor of the plaintiff.

**Discovery** is a part of the legal process by which each attorney can ask for documents or statements from the other side as part of seeking information on the other spouse's finances before trial.

**Defendant** is the person being sued or accused in a court of law.

**Deposition** is an opportunity for a lawyer to question a witness under oath away from the courtroom and well before trial. The deposition is recorded by a court reporter who will prepare a transcript if requested and paid for, which assists in trial preparation and can be referred to during trial as well.

**Equitable Distribution**, also known as division of property, is the process of dividing marital property and debts by what's fair for both parties during a divorce. This does not necessarily mean that it will be divided equally.

**Ex parte** refers to a motion or petition by or for one party, which means that the opposing party has not received notice of and is not present at the judicial proceedings. Ex parte hearings, petitions, or motions are often temporary orders.

**Filing for divorce** is when you are asking the court to end your marriage. The court will divide the property and debts and issue custody, visitation and child support orders if you have children.

**Joint custody** means both parents make decisions about the child together and are both involved in decision-making about major aspects of the child's life.

**Legal custody or decision-making** means who has the right to make decisions

about the child's upbringing, even if the child does not live with that parent.

**Litigation** is the process of taking legal action.

**Maintenance**, or **Alimony**, means payments made by one spouse to the other to help support the spouse who receives them.

**Mediation** is a structured process where a neutral third party helps to resolve conflict between two people.

**Mediator** is the neutral third party in mediation.

**Non-custodial parent** is the parent who does not have physical custody of the child; the child does not live with the non-custodial parent.

**Order of Protection (OP)** is a document issued by a court to help protect you from harassment or abuse.

**Physical or residential custody** means who the child primarily lives with.

**Plaintiff** is a person who brings a case against another in a court of law.

**Primary caregiver** is the parent who has the greatest responsibility for the daily care of a child.

**Pro bono** is free of charge work, especially legal work.

**Settlement** is a resolution between disputing parties about a legal case, reached either before or after court actions begins.

**Sliding scale fees** are different prices depending on a client's ability to pay. Fees are reduced for those who have lower incomes or less money to spare after their personal expenses.

**Sole custody** means one parent is responsible alone for making decisions about a child's life.

**Temporary orders**, or **Pendente Lite Relief** are made by family courts at a hearing when couples separate. Decisions on issues that must be resolved quickly are made, and given temporary effect, until family court decisions can be made in a formal divorce hearing or until the parties agree through mediation or by settlement.

**Toen/Toenet** is someone who is trained in Jewish Divorce law and can represent a person in Bet Din. Not every Bet Din will allow a Toen/Toenet to attend the proceedings, so it is important to call beforehand.

**Upward or downward modification** refers to the process of asking the court to change the amount of child support you are required to pay. If you can no longer make payments, you should go to Family Court and file for a downward modification which may reduce the amount you have to pay.

**Venue** is the location for trial of a case, usually the district or county where the defendant lives. However, the parties may agree to a different venue for convenience.

**Witness** is a person who gives evidence by testifying in court under oath.

## ACKNOWLEDGMENTS

This Legal Manual is an outgrowth of the first Family Issues Handbook created by Footsteps in 2013. As the legal landscape has evolved for parents leaving ultra-Orthodoxy, we were informed by the experience of the Footsteps parents in custody battles and identified a need to share more advanced legal strategies and resources. We are always striving to better assist our members seeking to preserve their relationships with their children and to find support for them in difficult times. This work was spearheaded by Footsteps' Senior Director of Organizational Development, Chani Getter, and Senior Legal Strategist, Julie F. Kay, with significant assistance by Footsteps' Communications Manager, Ayelet Parness, and Rockland Social Worker, Alexa Cavallo.

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