

Responding to Petition for Separation, Cases with Children

Instructions for Packet 2C

Notice about these instructions and forms.

*These instructions are not a complete statement of the law. They cover basic procedure for uncomplicated divorce cases. For legal information, please talk to a lawyer or visit your local law library. Each court has local rules, programs and procedures that may not be explained in these instructions. **Information about how to contact your local court may be found at the Oregon Judicial Department website:*** <http://www.courts.oregon.gov>.

This set of forms and instructions explain how to file a response to a petition for separation. Legal separation may be for a set period of time, or may be for an unlimited duration. Even in a separation of unlimited duration, the parties still may get divorced or reconcile (live together as husband and wife), but further court proceedings may be necessary to legally change their relationship. Keep in mind that the final judgment in this case will create rights and obligations that may vest (become permanent). Generally speaking, child custody, parenting time, and support may be modified at a later date in certain situations. Property divisions usually can't be modified. You should talk to a lawyer if you have questions about these issues.

This set of forms and instructions explain how to file a response to a petition for legal separation. When filling out the forms, follow these directions:

- The case heading is the same as listed on the petition you were served (the other party is the Petitioner, and you are the Respondent).
- Some forms have to be notarized or signed in the presence of a court clerk. You will need your picture ID for this. Many banks provide notary services.
- Some forms say on the bottom, "I certify that this is a true copy," and provide a place to sign. Don't sign this line on the original form or on your own copy. You need to sign this line only on the copies for your spouse/partner.
- Make yourself two copies of any document you are filing with the court (one for yourself, and one for the other party). File the original with the court clerk.
- Keep the court informed of your current address so you get notice of all court dates. **You are not required to use your residential address on any court form.** You may use a contact address where you regularly check in. If you use a contact address, the court will assume that you will receive all notices sent to that address.

STEP 1: FILING YOUR RESPONSE

You have 30 days following the date you were served with the petition to file a written response with the court clerk and pay the filing fee. If you feel you can't afford to pay the fee, you may ask the clerk for a Motion and Affidavit for Waiver or Deferral of Filing Fee. Please check with the Information Clerk for this form, or visit the Clackamas County Court's website at <http://www.courts.oregon.gov/Clackamas/>. You may fill out this form and file it with the court requesting that your filing fee be waived or deferred. If the fee is waived, you don't have to pay the fee back. . If the fee is deferred, you will be required to pay the fee to the court according to a payment plan.

In the response, space is provided for you to state that you disagree with certain items asked for in the petition. You may also write in items that you would like the court to order that were not included in the petition. These are called "counterclaims." If you agree with everything asked for in the petition, you are not required to file a response. The court will enter judgment based on what was asked for in the petition.

Legal Issues to Consider.

Oregon law requires a number of issues be addressed in the final separation judgment. Before you fill out your response, you should review what your spouse/partner asked for in the petition, and think about how you want to handle these issues.

Also, if you were not served with the petition in Oregon, or if you haven't lived in Oregon for a long period of time, you may be entitled to respond by objecting to service or jurisdiction. However, these are complicated legal determinations and you should talk to an attorney about what kind of response to file if either of these situations apply to you.

Parenting Plan. A parenting plan is required for cases involving a minor child. The plan sets out the schedule and rules for each parent's time with the child. The parenting plan may include safety provisions for the child if domestic violence, substance abuse, child abuse or other circumstances are involved in your case.

A mediator can help parents create a parenting plan. Information about parenting plans may also be available through your court's parent education program, the courthouse facilitator, or your local law library. **The Oregon Judicial Department and the State Family Law Advisory Committee have created a "Basic Parenting Plan Guide for Parents" with information about how to develop a plan, information about alternative schedules, and ages and stages of your child/ren which should be considered in creating a plan. A sample parenting plan form is included in the Guide. The Guide may be downloaded from the OJD Family Law Website at <http://www.courts.oregon.gov/familylaw>. There is also a "Safety Focused Parenting Plan Guide" on this website to help you develop a parenting plan where there are safety concerns for your children.** If the parents don't agree on a parenting plan, a judge will **order** a parenting plan for you.

Oregon law (ORS 107.159) prevents either parent from moving more than 60 additional miles away from the other parent without giving him or her and the court notice of the move. You may ask the judge to waive this requirement by checking the last box in the parenting plan section of the petition.

For information about child custody, you may call Tel-Law (1-800-452-4776) or visit www.osbar.org.

Child Support. In most cases, the court will order child support if the parties have a child and no child support order already exists. The amount of support, if ordered, will be determined by the Child Support Guidelines. The Guidelines have worksheets to help you figure out who should pay support and how much it should be. **Support is typically withheld from wages unless an exception is allowed for direct deposit to the other parent's checking or savings account, or, if support enforcement services are being provided to either parent, as an "electronic payment withdrawal (EPW) or electronic funds transfer (EFT)" to a Department of Justice account.** (EPW and EFT are procedures whereby funds are automatically withdrawn from a checking/savings account as authorized by the account holder.) Information about child support, including the Guidelines and Worksheets, is on the Internet at:

http://www.dcs.state.or.us/oregon_admin_rules/guidelines.htm.

This website also has a Child Support Calculator which may help you to calculate the amount of child support which should be paid: <http://www.dcs.state.or.us/calculator>. Your local court facilitator, legal aid office or child support program **may** also be able to help you calculate the amount of support.

Cash Medical Support. In addition to cash child support, Oregon law may require the payment of cash medical support. If neither party has private health insurance for the child(ren) or if the health insurance is to be provided only by the parent that receives cash child support, the court is required to order cash medical support unless the court finds there are reasons not to order it. The purpose of cash medical support is to help defray the cost of health insurance and the cost of uninsured medical expenses. The judge cannot order you or the other

party to pay cash medical support if you or the other party has a dependent child in the household who is eligible to receive public medical assistance or if you or the other party is eligible for public medical assistance yourselves. A party who makes no more than Oregon minimum wage cannot be ordered to pay cash medical support.

Oregon law requires the court to make sure that payment for the child(ren)'s uninsured medical expenses are addressed in the judgment. Although you may request that each party share the out-of-pocket medical expenses that exceed \$250.00 per child per year, it may not be appropriate to request both the payment of cash medical support and the sharing of uninsured medical expenses. That is because one of the purposes of cash medical support is to help pay for the cost of uninsured medical expenses.

Insurance. Oregon law requires that the judgment address the issue of health insurance for any minor child involved in your case, and for payment of uninsured medical expenses. It also must provide for security for the payment of support, such as life insurance.

Spousal Support. Oregon law provides for three different categories of spousal support: transitional, compensatory and spousal maintenance. Transitional support may be ordered for a spouse/partner to get work related education and training. Compensatory spousal support may be ordered if one party has significantly contributed to the education, training, vocational skills, career or earning capacity of the other spouse/partner. Spousal maintenance may be ordered for the support of one spouse/partner. The judge will consider a number of factors when making the award. For more information on what the judge will consider, please refer to ORS 107.105 (to view, visit your local law library or www.leg.state.or.us/ors/).

Property and Debts – Statutory Restraining Order. Oregon law requires both Petitioner and Respondent to obey a restraining order preventing *either party* from dissipating (selling, destroying, removing, disposing of) real or personal property, making unilateral (without the agreement of the other party) changes to insurance policies, and making extraordinary expenditures. Expenditures that are necessary for the safety or welfare of the children or the parties are not prohibited. The order is effective on both you and the petitioner once you have been served with the “*Notice of Statutory Restraining Order Preventing the Dissipation of Assets in Domestic Relations Actions.*” You may request a hearing if you object to the terms of the Statutory Restraining Order (see Packet 1BC for a Request for Hearing Form). If you violate the order, you may be subject to sanctions.

For information about these issues, talk to a lawyer and/or go to the Oregon State Bar’s web site (www.osbar.org), “Legal Links” and read under “Oregon’s Laws” the sections on “Bankruptcy and Credit,” “Real Estate,” and “Taxes.” If either spouse has a retirement plan, you should talk to an attorney before filling out the response. The attorney can advise you if this packet will work for your situation. If the parties own real estate located in Oregon, a “lis pendens” notice (notice of pending suit) may be filed with the county clerk as provided in ORS 93.740 (to view, visit your local law library or www.leg.state.or.us/ors/).

Social Security Numbers and Other Confidential Personal Information.

There is certain personal information that can only be listed in a Confidential Information Form (CIF) and may not be listed in any of the other papers you file with the court. See the CIF information sheet that is available in the Separation With Children packet 2A. Most likely, the petitioner completed a CIF on your behalf already. If you feel that the CIF isn’t accurate or complete with your most current information, you may file an Amended CIF, and then mail a copy of the Notice of Filing CIF to the other party.

Have Your Documents Reviewed.

You may have your documents reviewed by a lawyer or a courthouse facilitator (if your court has one) before you file. For information about how to find a lawyer, call the Oregon State Bar Lawyer Referral Service.

If you are low income, you may get your documents reviewed for a smaller fee through the Oregon State Bar's Modest Means program, or you may call your local Legal Aid office and in the "Local Family Law Practices and Procedures" for your court attached to these instructions.

Filing the Response.

After you have filled out the Response, make two copies. One copy is for your records, and the second copy is for your spouse/partner. **If your spouse/partner does not have an attorney**, mail your spouse's/partner's copy **to your spouse's/partner's address** and fill out the Certificate of Mailing form, **and file it with the court**. If your spouse/partner is represented by an attorney, **you must instead** mail the copy to your spouse's/partner's attorney and provide the attorney's address in the Certificate of Mailing form.

File the original Response, Certificate of Mailing and Acknowledgment about Dissolution form with the court clerk along with the required filing fee (unless your fee has been waived or deferred by a judge).

Parenting Classes.

Many courts require that parents of minor children go to a parent education class. If your court has this program, you will need to sign up for the class right away. Some courts will not allow you to finalize your separation until you have completed the class and filed a certificate of completion with the court.

STEP 2: RESOLVING YOUR CASE

Temporary Orders.

You may ask the court to make temporary orders. Temporary orders are in effect once signed by the judge and last until changed or until the judgment is signed by a judge or the case is dismissed. For example, either spouse/partner may ask for an order for spousal or child support, an order preventing one or both spouses/partners from getting rid of property owned by both spouses/partners, an order requiring one spouse/partner to move out of the family home or an order preventing either spouse/partner from interfering with the child/ren's regular living arrangement and schedule. To make any of these requests, you will need to file a "motion" (request) asking the court to do what you want. You may need the assistance of an attorney to file these requests.

Unless your court requires you to use a different form, you may use Packet 6B, Status Quo Order Application Packet to ask the court to order that neither parent change the child/ren's usual place of residence, change the child/ren's regular routine, or interfere with the other parent's usual contact with the child.

All courts have restraining order forms for cases involving domestic violence. A restraining order can usually be obtained within a day or two of filing if there has been abuse in the last 180 days, and if there is further danger of abuse. Check with your local court about forms and filing instructions.

Working Toward Agreement.

The court wants to help you resolve the issues that you and your spouse/partner disagree on. You may discuss these issues with your spouse/partner directly if it is safe for you to do so and if no court order prohibits this contact. You may also discuss them with your spouse's/partner's attorney. If you filed a response, and later decide that what your spouse/partner asked for in the petition is okay with you, you may fill out and file a Waiver of Further Appearance and Consent to Entry of Judgment form. The court will then enter judgment based on what was requested in the petition. Ask your local courthouse facilitator for help with this step. If you can't resolve the issues on your own, the court may provide a number of options to help you, including mediation, arbitration and custody evaluation.

Mediation. A mediator is a person trained to help people resolve disagreements. You may attempt to schedule voluntary mediation with the other party by contacting Clackamas County Family Court Services. If mediation is not attempted before the court date, some judges will require the parties to meet with a mediator if

they can't agree on a "parenting plan" (who has custody and parenting time (visitation) with the child/ren and how decisions about the child/ren will be made). If mediation has not yet been ordered in your case and you would like to request it, you may file a Request for Mediation form. Please ask for this form from the Information Clerk at the court house.

If you've been ordered to attend mediation, and you don't want to go, you may ask that mediation be waived, if you have a good reason, by filing a Motion and Affidavit for Waiver of Mediation (see Form #6I or local court form). For example, if there has been domestic violence, the court will consider a request to waive the mediation requirement.

You may also meet with a mediator to resolve the financial issues in your case. Many courts have a list of mediators qualified to mediate these cases. Check with your local court clerk to see if there is a fee for this service.

Custody/Parenting Time Evaluation. If parents can't agree on a parenting plan, sometimes the court refers the case to a custody/parenting time evaluator. After interviewing each parent and doing other research, the evaluator will make a recommendation to the court about what the parenting plan should be. The evaluator will consider factors that might affect a child's safety, such as domestic violence, substance abuse, child abuse or other circumstances. Many courts require that the parties pay for part or all of the evaluation.

STEP 3: FINALIZING YOUR SEPARATION

A separation is "final" the date the judgment is signed by a judge. The judgment contains all of the issues decided in mediation, arbitration, hearing or through your agreement. If both spouses/partners agree on all issues, it may be prepared by either spouse/partners as long as it is reviewed and signed by both spouses/partners. If there are still items that you don't agree on, the court will probably set a date for a "final hearing" or trial. The judge may direct one spouse/partner to prepare the judgment after the hearing. Some judges may want you to attend a "settlement conference" (a meeting between the parties to discuss settlement, usually led by a different judge than your trial judge) to help you come to agreement.

If you are responsible for filling out the judgment, make a copy for yourself and one for your spouse/partner, and file the original with the court **If your case involves child or spousal support, file an extra copy of the proposed judgment with the court.**

You may also have to file the forms listed below, depending on your circumstances.

Parenting Class Certificate of Completion. If your local court requires parents of minor children to attend a parent education class, a certificate of completion must be filed with the court unless this requirement has been waived by order of the court.

Child Support Worksheets. If child support is ordered, child support worksheets need to be filled out and attached to the final judgment.

Parenting Plan. Your parenting plan may be completely covered in the final judgment (see page two of the judgment). If there are additional pages, please attach them.

Uniform Support Declaration. This form is only required if you and your spouse/partner don't agree on child or spousal support. You aren't required to complete the schedules on the form, unless one spouse/partner asks for spousal support or a "deviation" (different from the amount calculated under the child support guidelines) from the child support guidelines.

Waiver of Personal Service. After the final judgment is signed, if one spouse/partner doesn't follow what it says to do, the other spouse/partner may ask the judge to enforce the judgment. The spouse/partner asking for enforcement is required to personally serve (deliver) the other spouse/partner with notice of this request. If you would like to keep your home address confidential, you may file this form listing another address for service. You are responsible for making sure you get all papers delivered to the address that you list.