FILING FOR CUSTODY, PARENTING TIME, & CHILD SUPPORT FOR UNMARRIED PARENTS

What these forms do

This set of forms will help you get a court order for custody, parenting time, and child support if you are not married to the other parent and have children under 18, and support for a child who is 18, 19, or 20 years old and attending school.

Paternity (legally establishing who the father is) **must be done before you can use these forms.**

- Paternity is established if the father signs and files a ***Voluntary Acknowledgment of Paternity*** (a statement that says he is the father) with the State Registrar of Vital Statistics. This is usually signed in the hospital when the child is born.
- Paternity can also be established through the Oregon Child Support Program or through the courts ***before*** you file these forms. Contact the Oregon Child Support Program (*www.oregonchildsupport.gov*) or a lawyer.

If Both Parties Already Agree

If you agree on all of the issues, you can file as Petitioner and the respondent can accept service of the *Petition* and sign a completed *Judgment* form. The respondent can also choose not to file a *Response*. If no response is filed, judgment will be entered based on what is in the *Petition* after you file a *Motion for Order of Default* (see "By Default" section below).

Symbols used in this form:

Important Note

STOP! You may not be able to use this form

Caution! You may need a lawyer

Timing requirement

Important Contact Information

Oregon Judicial Department - *http://courts.oregon.gov*
Oregon State Bar Lawyer Referral Service - *www.oregonstatebar.org*
Phone: 503.684.3763 or toll-free in Oregon at 800.452.7636

If you are deployed or about to be deployed, contact the Oregon State Bar Military Assistance Panel (*www.osbar.org/_docs/ris/militaryflier.pdf*) for information about special rights and rules that may apply to you.

Notice about these instructions and forms

These instructions are not a complete statement of the law. They cover basic procedures for simple cases involving custody, parenting time, and child support. If you have complicated issues or questions about the law, talk to a lawyer.

All of the necessary forms should be online. If you cannot find a form, ask your local court.

Each court has local rules, programs, and procedures that may not be explained in these instructions. Refer to the Supplementary Local Rules for your county. These rules are available online or at your local court or law library. Forms and information about your local court are on the Oregon Judicial Department website.

WHO IS A "CHILD"?

- A child must be born before you can file these forms
  - If you are pregnant with another child when you file this *Petition* and the child is also the child of the Respondent, you will need to file an amended *Petition* after the child is born. Talk to a lawyer if you need to do this.
- Children who have been emancipated are not "children" for purposes of these forms. A child is considered emancipated (independent) if the child:
  - Has been declared emancipated by a court order or
  - Is legally and validly married

- **Adult Children:** If you have a child age **18, 19, or 20 years old**, that child is a "necessary party" to any family law case until his or her 21st birthday. The child ***must*** be included in your filings and properly served with all documents. The child may later waive the right to be part of the case, but this must be done formally after you file. If you fail to properly serve an adult child, your case may be delayed until you do.
  - **Child Attending School,** ORS 107.108**:** If you have an adult child, child support may be ordered for that child **as long as** the child is attending school. More information is included below.

- **NOTE FOR PREVIOUSLY MARRIED COUPLES**

  If you and the respondent were married before and already divorced, you *may* be able to use these forms.
  - If the child was born **more than 300 days** after your dissolution judgment was signed, then you can use these forms.
  - If the child was born **less than 300 days** after your dissolution judgment was signed, talk to a lawyer. You may need to amend your prior filings and modify your existing dissolution judgment.

CO-PARENTING EDUCATION

Many courts require that parents of minor children go to a court-approved co-parenting class. Some courts will not allow you to finalize your case until you have completed the class and filed a certificate of completion with the court. Contact the court to see if you have to sign up or if the court will send you information after you file.

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General Information

- This type of case starts with a "petition," which tells the court what you want. That's why you are called the "**petitioner.**" The other parent is the "**respondent**." The case ends with a "judgment," which is the court's final decision. The judgment is the document that finalizes your case and contains your rights and responsibilities.

- Keep the court and all other parties informed of your current address. **You don't have to use your home address.** You may use any contact address where you regularly check in, as long as it is in the same state as your home. The court will assume that you receive all notices and documents sent to that address. **It is YOUR responsibility to let the court and other parties know if you move or want to get mail at a different address.**

TABLE OF FORMS

1. Starting your Case *(See the last box of this table for additional forms you may need)*

___ Petition for Custody and Parenting Time, and Child Support
___ Certificate re: Pending Child Support Proceedings and Existing Child Support Orders or Judgments
___ Summons
___ Notice of Statutory Restraining Order Preventing Dissipation of Assets
___ Confidential Information Form (CIF) *(one for each party, including adult children)*
___ Notice of CIF Filing

Optional:
___ Fee Deferral or Waiver Application and Declaration

2. Notifying the Other Party (Respondent)

___ Acceptance of Service (if possible)
___ Certificate of Service
___ Certificate of Mailing to DCS *(if you or the respondent is receiving public assistance)*

3. Temporary Orders

4. Resolving Your Case

By Agreement
___ Declaration in Support of Judgment
___ General Judgment of Custody and Parenting Time, and Child Support

Or
By Default
___ Ex Parte Motion for Order of Default and Declaration in Support
___ Order on Motion for Default
___ Declaration in Support of Judgment
___ General Judgment of Custody and Parenting Time, and Child Support

Or
By Hearing
___ General Judgment of Custody and Parenting Time, and Child Support

Additional forms you may need: *(More information is in the Instructions below)*

___ Parenting Plan
___ Fee Deferral or Waiver Application and Declaration *(optional)*
___ Child Support Worksheets
___ Uniform Support Declaration
___ Parenting Class Certificate of Completion *(if required for your court)*
___ Waiver of Personal Service
___ Waiver of Further Appearance and Consent to Entry of Judgment *(for adult children)*
___ End-of-case Fee Waiver Application

STEP 1: STARTING YOUR CASE

General Questions

- **Where to File** - You can file in the circuit court of the county where any child lives, or in a county where either parent lives.

- **Statutory Restraining Order** – By filing your *Petition*, you agree to follow the terms of an automatic restraining order. The order is effective once the papers have been served on the respondent *(see below for service information)*. If you don't follow the order, you can be held in contempt of court and subject to penalties.
  - You must attach a copy of the restraining order (called "***Notice of Statutory Restraining Order Preventing the Dissipation of Assets in Domestic Relations Actions Between Unmarried Parents***") to the *Summons* and serve it on the respondent. The form is included as Appendix D.
  - The statutory restraining order prevents *either party* from making changes to insurance policies without the agreement of the other party if those policies are for the benefit of the children.

Filling Out The Forms

- **You are the "Petitioner" on ALL forms throughout this case, and the other parent is the "Respondent."**
  - Use full names (first, middle or middle initial, last) and print names the same way on all forms – *first, middle, last*.

- **Do not put Social Security numbers on your *Petition***. Social Security numbers must be given to the court but kept confidential from the public and the other party. Use the "*Confidential Information Form" (CIF)* to protect your identifying information.
  - Fill out one CIF for each party, including adult children.
  - The *Notice of Filing of Confidential Information Form* must be served on the respondent with your other documents. See below for information about service.

- **If the other parent does not respond**, you may be able to get a judgment by default (*see "Resolving Your Case," below, for more information)*. As you fill out your *Petition*, you must include enough information that the respondent knows what you are asking for. If you do not include specific requests, the court will not be able to enter a judgment by default until after you serve amended (changed) paperwork on the respondent.
    - **NOTE:** this often happens with parenting plans. See below for more information.

Fill out the following forms

- *Petition for Custody and Parenting Time, and Child Support*
- *Certificate re: Pending Child Support Proceedings or Existing Child Support Orders/Judgments*
- *Summons*
- *Confidential Information Form (CIF) (one for each party)*
- *Notice of Filing of Confidential Information Form*
- *Certificate of Mailing or Delivery to Division of Child Support* (ONLY if you or Respondent receives certain types of public assistance – see "Make Copies" below)

You may need additional paperwork before the court can enter a judgment. See the Appendices for more information about when you need each form.
◇ *Parenting Plan* - See Appendix A
◇ *Uniform Support Declaration* – See Appendix B

UCCJEA

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) is a law that controls which state can decide issues of custody and parenting time. In most cases, if all of the children you are asking the court to address have lived in Oregon for the six months before you filed the *Petition*, Oregon courts can make a decision. You must provide certain information before an Oregon court can decide custody or parenting time.
Click *here* to read the UCCJEA (ORS 109.701-.834).

If you have any other orders or judgments about custody or parenting time from other states, or if any of your children have not lived in Oregon for six months before you file, you should see a lawyer.

Custody and Parenting Time (Visitation)

Read ORS 107.137 to see what a court will consider when awarding custody. The most important factor is *always* the best interest and welfare of the *child*.

Custody and Parenting Time
Joint and Sole Custody are legal terms that generally refer to the right to make certain decisions about the child. The parenting plan controls how much time each parent has with the child. See Appendix A for important information about custody and parenting plans. The court can only award joint custody if both parents agree to all of the terms. In most cases, both parents will have equal rights to information about the child regardless of the type of custody ordered. Both parents will have time with the child unless the court orders otherwise.

Parenting Plans
To avoid delay in your case, your *Petition* should include a parenting plan. A parenting plan sets out the schedule and may include rules for each parent's time with the child. Your plan must include the minimum amount of parenting time (formerly called "visitation") you want the non-custodial parent to have. You can be as detailed as you like. You can describe the parenting plan in the *Petition* or you can attach a separate page.

At the end of your case, the *Judgment* **must** contain a parenting plan. The parenting plan can be a part of the judgment form, or it can be in an attached document. See Appendix A for more information about parenting plans.

Moving – The *Judgment* will prohibit either parent from moving more than 60 miles farther away from the other parent without giving written notice to the court and the other parent.

You can ask the judge to waive this rule by checking the appropriate box on the *Petition* and explaining why you should not have to give notice of a move.

Safety

If you have safety concerns, you can ask the judge to suspend certain rights that the non-custodial parent automatically has. Check the appropriate box on the *Petition*. These rights include your duty to provide contact information and to tell the other parent if there is a major health concern for the children. ORS 107.154 and 107.164 list the rights of a non-custodial parent. You MUST have a good reason for suspending these rights. Talk to a lawyer about these issues.

CHILD SUPPORT

- **IMPORTANT!** You *must* submit a "*Certificate Re: Pending Child Support Proceedings and/or Existing Child Support Orders or Judgments.*" Attach copies of any orders that are already in place for the children in this *Petition*.

Calculating Child Support

In most cases, the court will order child support if no child support order already exists. Go to *www.oregonchildsupport.gov/calculator* for worksheets and an interactive program to use when calculating support.
Click on this link:

Go to Guidelines Calculator

Worksheets must be submitted to the court before a judgment can be entered. You can submit them with your *Petition*. At the latest, you can submit them with your *Judgment*.

NOTE: If you request a child support amount that is *different* from what the calculator or worksheet says, you *must* explain why and how you reached that amount. If not, your case may be delayed until you explain the difference.

You will need to complete a ***Uniform Support Declaration*** *(USD)* if you and Respondent do not agree on an amount for child support. See Appendix B for information about the USD.

Payment of Child Support

Support is usually withheld from the payor's (the person who has to pay support) paycheck. The court may allow an exception to the income withholding requirement if you qualify under ORS 25.396 and if you request an exception in the *Petition*. If the court grants an exception to income withholding, payment can be deposited into the receiver's bank account. If you are *paying* child support directly to the other parent, you should keep proof of every payment, including a receipt if you pay cash.

See Appendix C for information about how payments are made to adult children attending school.

Child support is NOT taxable as income or deductible to either party.

Life Insurance

The court can order a party to carry life insurance if that party is ordered to pay child support. Life insurance in connection with a support obligation is for the benefit of the children receiving support.

Health Insurance

Your judgment *must* address health insurance for any minor child involved in your case. There are two main categories of health insurance: "private," which is available through an employer or directly from an insurance carrier, and "public," such as the Oregon Health Plan, which you have to apply to the state for.

Cash Medical Support

In addition to child support, the court may order "Cash Medical Support." Cash Medical Support is to help pay for health insurance and out-of-pocket medical expenses.

If neither parent has private health insurance available, the court must order Cash Medical Support unless the judge finds reasons not to. The judge *cannot* order Cash Medical Support in some situations.

* * *

Adult Children (under 21)

If you have **any** child 18, 19, or 20 years old who is not married or emancipated, that child is a necessary party to this case. He or she *must* be added as a party in the case caption and has the right to participate. Adult children who are attending school at least half-time may seek child support from either or both parents. See Appendix C for more information about a Child Attending School.

You must properly serve each adult child with all the same papers as Respondent (see section below about serving the other party). After being served, a child **may** sign a ***Waiver of Further Appearance and Consent to Entry of Judgment*** form if the child chooses not to participate in the case.

Have your documents reviewed

You may want to have your documents reviewed before you file. For information about how to find a lawyer, call the Oregon State Bar at the numbers on Page 2. If you are low-income, you might be able to get your documents reviewed for a smaller fee through the Oregon State Bar's Modest Means program. Your local Legal Aid office might review documents for free if you qualify. Facilitators might also be available for free in your court but you may have to make an appointment. Call your court for information.

Make copies

Make one copy of **all** of the completed forms for your records. See Step 2 for additional copies you will need.

STEP 2: FILING AND SERVICE

File your forms

File all of the ***original*** forms *except* the *Summons* and *Notice of Statutory Restraining Order* with the court clerk. The clerk will give you a **case number** when you file. Put the case number on all copies and originals. See below for a list of the forms you will need to copy to serve on the respondent.

You have to pay the filing fees when you file your papers. Go to *www.courts.oregon.gov* for the filing fee.

- If you are low income, you may ask the court to defer (postpone) or waive your filing fee. You must complete an ***Application and Declaration for Deferral or Waiver of Fees*** and an ***Order Regarding Deferral or Waiver of Fees*** and file them with your papers. If the fee is deferred, you will have to pay the fee later. If the fee is waived, you don't have to pay it now. However, the judge may reconsider waived and deferred fees at the end of the case.

The clerk may give you some papers. A copy of these papers must be included with the *Petition* that you serve on Respondent (see below regarding service).

Make a copy of the following forms to serve on the respondent:

- *Petition*
- *Summons*
- *Notice of Filing of Confidential Information Form*
- *Certificate re: Pending Child Support Proceedings and/or Existing Support Orders/Judgments*
- *Notice of Statutory Restraining Order Preventing the Dissipation of Assets in Domestic Relations Actions Between Unmarried Parents*
- *Parenting Plan* and *Uniform Support Declaration (if you are filing these documents with your* Petition*)* (see Appendices A & B for information)
- Any other forms your local court requires you to serve on Respondent

TANF
OHP
OYA
Foster

You must also send a copy of the filed *Petition* to the Department of Justice Division of Child Support (DCS) if either you or Respondent receives Temporary Assistance to Needy Families (TANF) or the Oregon Health Plan (OHP), or if your children are in foster care or in custody of the Oregon Youth Authority. Your county branch office's address can be found at *www.oregonchildsupport.gov/offices*. After you mail the *Petition*, fill out the ***Certificate of Mailing or Delivery to Division of Child Support*** and file it with the court.

SERVICE

You must officially notify Respondent that you have filed a case. This is called "service." Follow the same steps to serve any 18, 19, or 20 year old children.

Acceptance of Service – If it is safe for you to give the respondent the papers yourself, you can use an ***Acceptance of Service*** form. If the respondent signs an *Acceptance of Service*, no other kind of service is required. Signing the *Acceptance of Service* does *not* mean the respondent agrees with anything in your *Petition*, only that he or she received the papers. **You must file the papers with the court before you give the copies to the respondent.**

Formal Service

If the respondent does not want to sign the ***Acceptance of Service***, you must use another method. There are four ways you can serve. Service must be done ***after*** your *Petition* is filed.

****3 CRITICAL POINTS****

1. If you serve before you file, you will have to serve the papers again
2. You *CANNOT* serve the papers yourself
3. If Respondent has a lawyer, you should also send a courtesy copy of the papers to the lawyer

1. **Personal Service:**
   a. By Process Server: Take a copy of your papers to the sheriff's office in the county where Respondent is located and have a sheriff's officer serve the papers. The sheriff's office charges a fee for service. You can also hire a private process server of your choice.
   b. By a Non-Party: Have a competent* person 18 years or older who is a resident of Oregon **and who is not a party** to the case (Petitioner or Respondent), **nor** the lawyer of a party, serve the papers. The server cannot be an employee of any party. If the respondent is outside of Oregon, the server can be a resident of the state where the respondent is. If you have safety concerns, have the sheriff perform service.
   *competent means a person who can understand, remember, and tell others about an event.

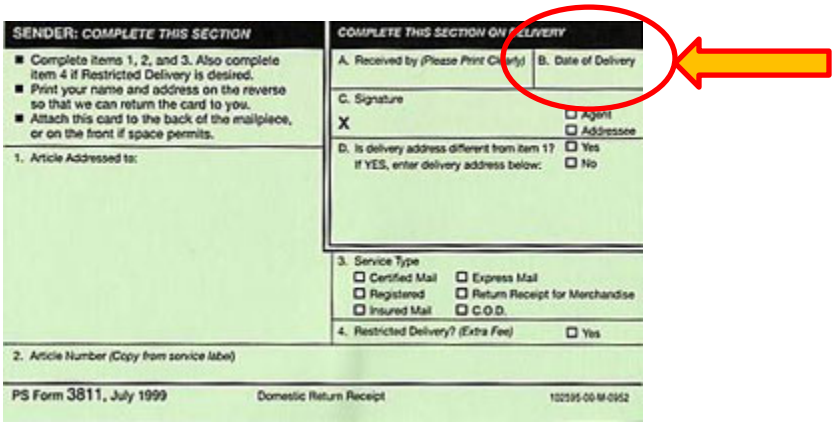
   A ***Certificate of Service*** must be filed with the court by whoever serves the respondent. The certificate must include the date of service and the name of the person served.

2. **Substituted Service:** The process server may leave the papers at the respondent's residence (where he or she normally lives) with someone 14 years or older who lives there. The process server must also mail a copy of the papers (with a statement of the date, time, and place that the papers were served) to the respondent by first class mail. Make sure the process server completes a ***Certificate of Service***. The date of service is the day the first class mailing is put in the mail.

3. **Office Service:** The process server may leave the papers with someone *in charge* of the respondent's office or normal workplace. The process server must also mail a copy of the papers (with a statement of the date, time, and place that the papers were served) to the respondent by first class mail. Make sure the process server completes a ***Certificate of Service***. The date of service is the day the first class mailing is put in the mail.

4. **By Mail:** First, the process server must send the papers to the respondent's home or business address by first class mail. Second, the server must send a copy by certified mail, return receipt requested. The process server **must** file proof of service with the court, including the signed green card, date of receipt, and item number along with a

Certificate of Service. If the green card is not returned or if someone other than the respondent signed for it, then service by mail was not effective and you must try another type of service. The date of service is the day the respondent signs the returned green card.


SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature

X ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

<u>Proof of Service</u>
The Certificates are your <u>proof of service</u>. An original *Certificate of Service* or *Acceptance of Service* must be filed with the court for your case to proceed, regardless of the method of service.

If proof of service is not received within **63 days** of filing your *Petition*, the court may send you a notice of dismissal. Your case may be dismissed if you do not provide proof of service within 28 days of the notice.

If you are not able to have Respondent served by any of the methods listed above, you may ask a judge to allow you to use another service method. The judge might allow you to publish or post the documents. Forms to make this request are available online at *http://courts.oregon.gov*.

STEP 3: TEMPORARY ORDERS

You can ask the court to make temporary orders after you file the *Petition*. Temporary orders are effective as soon as a judge signs the order. They last until a judge changes the terms, signs the *General Judgment*, or dismisses the case. For example, either party may request an order for child support or an order about temporary use of property. To make any of these requests, you must file a "motion" (request) asking the court to do what you want. You may need a lawyer to file these requests.

- **NOTE:** The *General Judgment* may affect earlier temporary orders done by Limited Judgment. Talk to a lawyer if you have questions.

One type of temporary order is called a *Status Quo Order*. This order prevents either parent from changing the children's normal schedules, interfering with parenting time by the other parent, or changing where the children live. This does *not* decide custody or who can make major decisions for the children. "Normal schedule" means the children's schedule for the three months before you file a request for a *Status Quo Order*.

Go to *http://courts.oregon.gov* for the forms to request temporary orders. The forms may not cover all temporary orders you need. Talk to a lawyer for more information.

Domestic Violence

All courts have restraining order forms for cases involving domestic violence. A judge will usually hear your request within a day or two of filing. Check with your local court for filing times and procedures.

Refer to *http://courts.oregon.gov/fapa* for Family Abuse Prevention Act (FAPA) forms and information.

Forms for other types of protective order are available at *http://courts.oregon.gov*

STEP 4: RESOLVING YOUR CASE

There are three ways your case can be resolved: by agreement between the parties, by default if the respondent doesn't respond, or by a judge in a hearing.

Even if you submitted Child Support Worksheets with your *Petition*, you MUST attach worksheets to your *Judgment*, regardless of how you resolve your case.

By Agreement

It is always better to resolve issues yourselves, since you know what's important to you. Once the case goes to a judge, it is out of your control. If you can't resolve the issues on your own, or if it is not safe for you to talk to Respondent, the court may provide options to help you, including mediation and arbitration. Some courts may require that you mediate before you have a hearing. Check your court's Supplementary Local Rules for more information.

Mediation: A mediator is a person trained to help people resolve disagreements. Mediation is confidential. You may ask to meet with the mediator alone if you are uncomfortable meeting with the other party for any reason. Check with your local court clerk to see if there is a fee for this service. Mediators are *not* judges – they cannot impose their decisions on you. Their job is to help *you* reach an agreement. This is your opportunity to retain control over the outcome of the case. Agreements incorporated into a *Judgment* are fully enforceable *(see below)*.

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. You may also request that the court waive mediation requirements if you have a good reason by filing a ***Motion and Declaration for Waiver of Mediation***. Talk to your court if you have safety concerns.

If you and Respondent have agreed to all of the issues, fill out and file:

- ***Declaration in Support of Judgment***
- ***General Judgment of Custody, Parenting Time, and Child Support***

  Note: The *Judgment* must be signed by both parties and all adult children before being submitted to the court

By Default

Respondent has 30 days to respond to your *Petition*. The time starts running from the day *after* the date of service. The response must be in writing and must be filed with the court and mailed to you. If the respondent does not file a response within 30 days, you may request an *Order of Default*.

Default means that you are asking the judge to award you what you asked for in your *Petition* because the respondent did not file a response. Look at Oregon Rules of Civil Procedure (ORCP) rule 69 for more detailed information.

- NOTE: If the respondent has given you written notice that he or she intends to appear, you have to give written notice that you intend to apply for a default order at least 10 days before you file your motion. See Uniform Trial Court Rule 2.010 for the form your notice must be in. File your notice with the court and mail it to the respondent.

The judge may not grant a default if the respondent is incapacitated, a minor, a financially incapable person, a protected person, or a respondent in a fiduciary protective proceeding, as defined by ORS 125.005.

You must also show that the respondent is not in active military service before the court can enter an order of default. This is part of the ***Ex Parte Motion for Order of Default & Declaration in Support***. If the respondent is in active military service, you cannot get an order of default unless the servicemember waives protection under the Servicemembers Civil Relief Act (SCRA). This federal law starts at 50 U.S.C. App 501. Your local law librarian can help you find it, or go to *www.law.cornell.edu*[*] (under *Get the Law* click *U.S.Code*, then click *Appendix to Title 50*). This law has strict rules about what "active military service" means. This protection does not apply to all servicemembers at all times.

If the respondent is in the military, you should see a lawyer before trying to get an order of default. If a default is not done properly, the respondent can re-open the case after returning from service. **Be aware** that if you knowingly make false statements about the respondent's status, you may face both federal and state penalties.

If you know the respondent is *not* in the military, you must state *facts* that explain how you know.

If you have the respondent's Social Security Number or date of birth, go to the Department of Defense website (*www.dmdc.osd.mil/appj/scra/scraHome.do*) to find out if the respondent is in active service. This site can give you a free statement of service status that you can print out (called a "certificate of service" on the website). Attach this statement, or a printout of the screen, to your motion. You can also call 571.372.1100 for military verification. Put the date and the name of the person you spoke with on your motion. If you don't have the Social Security Number or date of birth, commercial sites may be able to provide information.

If you don't know whether the respondent is in the military and have checked the website, or don't have the necessary information, mark "I am unable to

[*] This is an outside site maintained by Cornell University. The Oregon Judicial Department is not responsible for any information on this site. Links may have moved.

determine whether this person is in military service" and add any facts that you *do* know. The judge will decide whether to grant the default.

➢ **If Respondent is in the military**

If Respondent is in active military service of the United States and has not responded to the *Petition*, the court won't go ahead with your case until one of the following things happens:

(1) Respondent is no longer in active military service,
(2) Respondent waives, in writing, the right to avoid default, or
(3) the judge holds a special hearing in your case

Talk to a lawyer if Respondent will not sign the waiver and you do not want to wait for military service to end. The SCRA rules are technical and complex. Contact the Oregon State Bar for help (contact information is on Page 2).

* * * * *

Requesting a Default - fill out the following forms:

- ***Ex Parte Motion for Order of Default and Declaration in Support***
- ***Order on Motion for Default***
- ***Declaration in Support of Judgment***
- ***General Judgment of Custody and Parenting Time and Child Support***

Read your *Petition* CAREFULLY! The ***Declaration in Support of Judgment*** allows you to note any information that has changed since you filed the *Petition*. Read **each** section of the *Petition* you filed and note any changes in the spaces provided. You must complete the rest of the *Declaration* in all cases.

After you make yourself a copy of the completed forms, file the originals with the court any time *after* 30 days from the date of service. You must file the *Motion for Order of Default* by the **91st day** after you filed the *Petition* (NOT the proof of service!). If not, your case may be dismissed.

The court will send you notice when your judgment has been entered.

By Trial

Conferences with the Judge

Many courts will schedule a "status," "pretrial," or "settlement" conference if a response has been filed. These meetings usually take place with a judge with both parties present, along with their lawyers (if any). You must attend any conferences that are scheduled unless you have received permission from the judge not to attend. At the conference, the judge may talk to you about how your case is going to be handled, consider requests for temporary orders, or set future court dates.

➢ Many courts require that you mediate before you can get a hearing. See the **Mediation** section above in the BY AGREEMENT section.

NOTE: You must give the other party an opportunity to review the judgment before you submit it to the court. See UTCR 5.100 for information.

Trial Guide: The State Family Law Advisory Committee has written a guide that may help you prepare for trial. This guide is NOT a substitute for legal advice! The rules of court can be technical and complex, and you may damage your case if you are not properly informed. If your case goes to trial, you are strongly advised to talk to a lawyer. To read the guide, go to: *http://courts.oregon.gov/OJD/docs/OSCA/cpsd/courtimprovement/familylaw/TrialBrochureFINAL1-12-06_000.pdf*

THE JUDGMENT

Regardless of how you resolve your case, a ***General Judgment of Custody and Parenting Time and Child Support*** must be signed by a judge. One of you may be ordered to fill out the judgment form and give it to the court to be signed. **NOTE:** you must include Child Support Worksheets with your Judgment if child support is awarded.

The judgment finalizes your case and contains all of the issues decided in the mediation, trial, or by agreement.

- **NOTE:** The *General Judgment* may affect earlier temporary orders done by Limited Judgment. Talk to a lawyer if you have questions.

If the respondent DID NOT file a response, the information you fill out in the judgment should be *exactly* the same as what you requested in the *Petition*.

If the respondent DID file a response, the information should be the *exactly* the same as what was decided in mediation, arbitration, hearing, trial, or through your agreement. All parties must review the *Judgment* before you submit it to the court. You must send the *Judgment* document along with the *Notice of Proposed Judgment or Order* to the respondent and any adult children who have not filed a *Waiver of Further Appearance* in the case.

Other parties can object to the *Judgment*. If that happens, you have to discuss the objections and attempt to resolve them before you submit the *Judgment* to the court. If you are not able to resolve the objections, the objecting parties can either send you a written statement explaining their objections, or they can submit their objections directly to the court. You must complete the *Certificate of Readiness* section of the *Judgment* to tell the judge whether there are outstanding objections. See UTCR 5.100(1) for more information about notice and objections.[1]

If the respondent is responsible for preparing the judgment, the respondent must send the proposed judgment to you before submitting it to the court. Then you can review it and object to it within 7 days of the date it was sent to you. If you and the respondent are not able to resolve your objections after reasonable efforts, you can either send a written explanation of your objections to the respondent or directly to the court. You must notify the respondent of your intentions so that they can advise the judge that there are outstanding issues. The judge may make a decision after reviewing the documents, or the court may contact you with further information.

If you are responsible for preparing the final judgment, make a copy for yourself and one for Respondent (unless you got an *Order of Default*). File the original with the court. **If your case involves child support, file an extra copy of the judgment with the court.**

[1] http://courts.oregon.gov/OJD/programs/utcr/pages/utcrrules.aspx

Your case is finished and effective the date the *Judgment* is signed by the judge. NOTE: the terms of your judgment are not enforceable until the court enters the judgment. You will receive a *Notice of Entry of Judgment*.

NOTE: Every document you file must have a mailing address where you will receive documents related to this case. You do NOT need to use your home address. You can use any contact address in the same state as your home. You are responsible for checking your contact address. Notify the court and the other party in writing if your contact address changes.

Appendix A– Custody and Parenting Plans

Joint Custody and Sole Custody

What does "Custody" mean?
Custody does not only refer to where the child lives, it refers to who makes major decisions about the child's residence, health care, education, religion, and other big issues. Joint custody means that the parents have to agree about major decisions in the child's life. Sole custody means that one parent can make decisions alone. These are legal terms and don't impact how much time each parent has with the child.

The court can order joint custody only if both parents agree to all of the terms, including the parenting plan.

Regardless of the custody order, both parents will usually have time with the child (parenting time) and the right to certain information. Both parents have the right to review school records and medical records, and to authorize emergency medical, dental, psychological, or other health care if the other parent is not available, unless the court orders otherwise.

Read ORS 107.137 to see what a court will consider when awarding custody. The most important factor is *always* the best interest and welfare of the *child*.

A **parenting plan** is where you provide a plan for when each parent will actually be with the child (parenting time). Parenting plans can also include specific times for contact. For example, "Mother can call on Fridays between 7pm and 10pm." Parenting time is separate from custody. For example, you can have joint custody with one parent having the child 75% of the time, and you can have sole custody with 50-50 parenting time. See below for more information.

Child support is separate from custody. Either parent can be ordered to pay child support regardless of who has custody or what kind of custody is ordered.

Sole Custody
If sole custody is ordered, the other parent will almost always have some parenting time with the child. The non-custodial parent has equal rights to the child's school records and medical records, and to authorize emergency medical, dental, psychological, or other health care if the other parent is not available, unless the court orders otherwise.

Joint Custody
Joint custody does not mean that every day-to-day activity has to be agreed to, but major decisions must be discussed by the parties.

A joint custody order can also specify certain decisions that can be made by one parent or the other. For example, Mother may be allowed to make decisions about religious training, or Father can made decisions about medical care.

A joint custody order might specify that one parent's home is the child's primary residence, but it's not required.

Parenting Time & Parenting Plans

Parenting time is what some people call 'visitation' – it is the time a child spends with each parent. Parenting time is detailed in a "parenting plan," which is usually focused on the parent who does not have sole or primary residential custody.

Once the court enters a judgment with parenting time included, that time is enforceable like any other court order. Parents can file for an expedited (faster) hearing if the other is not following the parenting time in the judgment.

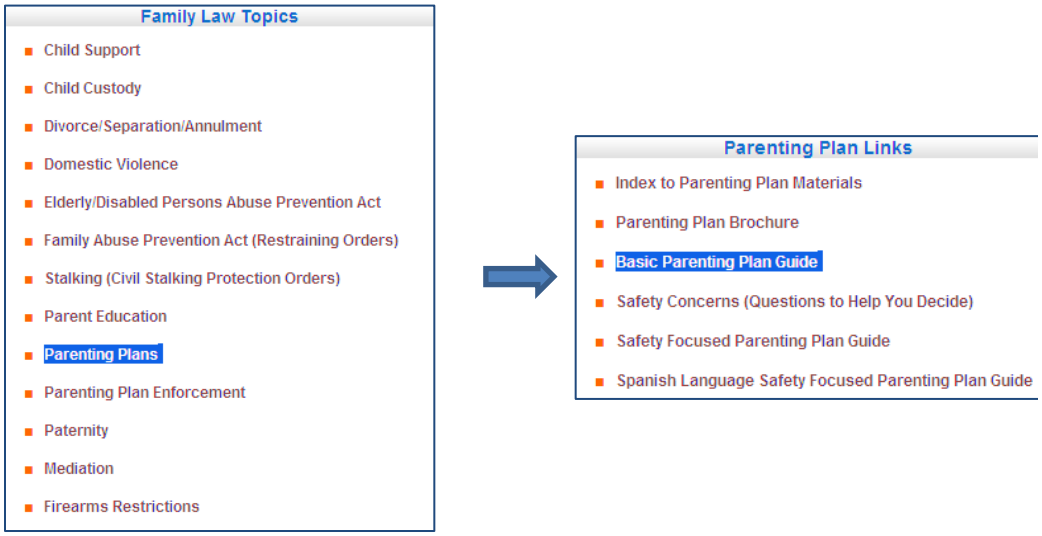
A parenting plan is required for all cases involving a minor child. The plan sets out the schedule and rules for each parent's time with each child. A parenting plan should be written in the space provided in your *Petition* or attached to it as a separate form.

A parenting plan can be as general or as specific as you need it to be. The judge will expect to see some information about the days and times when children will be picked up and dropped off, and some plan for weekends, holidays, and school breaks. Consider whether you have children with different needs. Children at different ages may need different parenting plans. If you have a child with a medical issue, you may want to consider how the plan will impact care.

BE AWARE that if you do not include enough information in your plan and the other parent does not respond, you may have to serve the other parent with corrected paperwork before you can get a *Judgment*.

The parenting plan may include safety provisions for the child if problems like domestic violence, drug or alcohol abuse, or child abuse are involved in your case.

Oregon has a ***Basic Parenting Plan Guide for Parents***. This guide has information about how to develop a plan, information about alternative schedules, and stages of your children's growth that should be considered when creating a plan. A sample parenting plan is included in the guide. The guide can be downloaded at *www.courts.oregon.gov/familylaw*. There is also a *Safety Focused Parenting Plan Guide* on this website. This can help you develop a parenting plan if you have safety concerns for your children. Many local courts also have standard plans in their *Supplemental Local Rules*. Check your local court's website. You can use these plans whole or as a guide to develop your own.



A mediator can help you create a parenting plan. Your local court may also have a mediation program for parents. A mediator is a neutral person trained to help you come to your own agreement and cannot make decisions for you. Information about mediation and parenting plans may be available through your court's parent education program, the court facilitator, or your local law library. Some courts require you to try mediation before your hearing.

Custody/Parenting Time Evaluation - If parents can't agree on a parenting plan, the court may order the parents to hire a custody or parenting time evaluator. Either or both parents may be ordered to pay for the evaluator.

If you and Respondent don't agree on a parenting plan before trial, the judge will order one.

Appendix B – Uniform Support Declaration

You may need to complete a ***Uniform Support Declaration*** *(USD)* if you and Respondent do not agree on an amount for child support.

You can file yours with the *Petition*. If you don't file it with your *Petition* and you need one, you must provide it to the court and serve a copy on the respondent at least 14 days before the hearing.

If you are NOT requesting child support, do not file the *USD*. If Respondent requests support, then you must file a *USD* at least 14 days before the hearing, and serve a copy on the respondent.

Tips for filling out the *USD*:

- If you are requesting child support for the amount that the Child Support Guidelines recommend, fill out only the *Declaration* and attach the documents it asks for.
    - If you are requesting a different amount of child support than the Guidelines recommend, fill out *both* the *Declaration* and *Schedule 1*. Attach all of the documents that the *Declaration* and *Schedule* ask for.
- Use your *actual*, *present* expenses. Estimates are fine as long as they are realistic and you have no way of confirming the amount.
    - Some items may not apply to you – mark those spaces "N/A" (Not Applicable), but complete *every* item that does apply.
    - If your amounts are unusual or likely to change soon, include a brief explanation of why (if you are temporarily living with a relative, or if one party moved out and is no longer contributing to shared expenses). Include an estimate of what you believe your expenses will be after the situation changes.
- If you have an expense that is not listed, add it, along with a brief explanation.
- If you anticipate any major changes (a child entering or leaving school, a layoff, a car payment or mortgage being paid off), note these as well. Do NOT include fears or possibilities – only things you know or reasonably expect will happen.
- If one of your children has a serious medical problem, note it and include a reasonably accurate estimate of the treatment cost.
- Household items are things like paper towels, cleaning supplies, light bulbs, storage containers.
- If you are attending school, include your tuition payments, supplies and books, and any other necessary school-related costs.

The *Uniform Support Declaration* is Form 8.010.5 and can be found here: *http://courts.oregon.gov/OJD/programs/utcr* in the *Appendix of Forms*

Certificate of Mailing – the *Uniform Support Declaration* includes a Certificate of Mailing at the bottom of the form. Once the *USD* is completed, copy the entire form and all attachments and mail them to the respondent. THEN fill out the Certificate of Mailing and file the original with the court. Keep a copy of all documents for your own records.

Appendix C – Support for a Child Attending School

If an adult child is attending school at least half-time according to the school's standards, that child is considered a "Child Attending School." A Child Attending School may be entitled to child support until he or she turns 21. "Child Attending School" is defined at ORS 107.108 and does not include children who are married.

IMPORTANT! After an order is made for support of a child attending school, the child *must* remain enrolled at least half-time AND make sufficient academic progress according to the school to qualify as a child attending school and continue to receive support.

NOTE: you can ask the court to extend child support for minor children to cover them when they qualify as Children Attending School. If a child does not immediately enter higher education after high school or drops out of high school, child support will end.

If you have an order that says support continues *if* the child becomes a Child Attending School, the child must notify the payor *before* the child turns 18 that he or she will be attending school, which school, and when the child expects to graduate or stop taking classes. Support generally continues during summers if the child has properly notified the other parent that the child intends to return to school.

The child must also provide consent to the school to release certain information to any parent paying child support. The requirements are at ORS107.108.

Paying Support for a Child Attending School
Support for an adult child is normally paid directly to the child, whether by the payor directly or by DCS. If you have good cause why the child should *not* receive payment, you must explain that in your *Petition*.

There is NO parenting plan or parenting time credit for a Child Attending School who has graduated from high school.

For more information, go to: *http://oregonchildsupport.gov/services/pages/child_attending_school.aspx*

Appendix D – Statutory Restraining Order

[Attach to Summons per ORS 109.103(5)]

NOTICE OF STATUTORY RESTRAINING ORDER
PREVENTING THE DISSIPATION OF ASSETS
IN DOMESTIC RELATIONS ACTIONS BETWEEN UNMARRIED PARENTS

REVIEW THIS NOTICE CAREFULLY.
BOTH PARTIES MUST OBEY EACH PROVISION OF THIS ORDER TO AVOID VIOLATING THE LAW.
SEE INFORMATION ON YOUR RIGHT TO A HEARING BELOW

TO THE PETITIONER AND RESPONDENT:

Under ORS 109.103(5) and UTCR 8.080, neither Petitioner nor Respondent may:

Insurance Policies
(1) Cancel, modify, terminate, or allow to lapse for nonpayment of premiums, any policy of health insurance that one party maintains to provide coverage for the other party or a minor child of the parties, or any life insurance policy that names either of the parties or a minor child of the parties as a beneficiary.

Insurance Beneficiaries
(2) Change beneficiaries or covered parties under any policy of health insurance that one party maintains to provide coverage for a minor child of the parties, or any life insurance policy.

EFFECTIVE DATE:
The above provisions are in effect immediately upon service of the *Petition* and *Summons* on the respondent. They remain in effect until a final judgment is issued, until the petition is dismissed, or until further order of the court.

RIGHT TO REQUEST A HEARING

Either Petitioner or Respondent may request a hearing to modify or revoke one or more terms of this restraining order by filing with the court the *Request for Hearing re: Statutory Restraining Order* form specified in Form 8.080.3 in the UTCR Appendix of Forms.