

## Filing For Separation, Cases with Children Instructions for Packet 2A

### 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.ojd.state.or.us/>.*

This set of forms and instructions will allow you to file for and obtain a 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 the 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.

The instructions are broken down into four basic steps. The forms that go with each step are listed below.

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**When filling out the forms, follow these directions:**

- You are the named “petitioner” on all court forms and your spouse is the “respondent”. Use full names (first, middle or middle initial, last) and print the names the same on all forms.
- The clerk will give you a case number when you file your papers. Make sure to put this on all copies and originals.
- 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.
- Many 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 that are served on your spouse.
- Make yourself a copy of any document you are filing with the court. 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. **Note: If you fear for your safety, you may be able to obtain a non-disclosure order.** Consult with your local court for instructions as well as the appropriate forms.

**STEP 1: STARTING YOUR CASE**

**Legal Issues to Consider.**

A separation case starts with a “petition” which lists the items you are asking the court order in the “judgment”. The judgment is the document that finalizes your case, and contains your rights and responsibilities. Oregon law provides that a number of issues must be addressed in the judgment. Before you fill out the petition, you should think about how you want to handle these issues.

You may not know what real or personal property to ask for in the beginning because you are not sure what property you own either alone or together with the other party. Or you may not know how much spousal or child support to ask for in the beginning because you do not know how much the other party earns. The Petition provides options for either indicating a specific amount or distribution of property or, where you do not know, you may ask that these be made “equitably” (i.e., fairly) or “prior to judgment” so that you have time after filing the petition to find out what property you own or how much the other party earns. **HOWEVER:**

- if you do NOT ask for a specific amount or distribution in the Petition, or
- what you ask for in the Judgment is different from what you asked for in the Petition, **the court may require you to re-serve documents on the other party** before it will enter a final judgment. This is so that the other parent knows what is being asked for in the Judgment is different from what was in the Petition.

**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.ojd.state.or.us/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) tape 902, or visit [www.osbar.org](http://www.osbar.org).

**Child Support. IMPORTANT! Oregon law requires that the petitioning party submit a CERTIFICATE stating whether there are any pending child support proceedings or existing child support orders involving the parties' child[ren]. To comply with this requirement, fill out and submit the form called "CERTIFICATE re: PENDING CHILD SUPPORT PROCEEDINGS and/or EXISTING CHILD SUPPORT ORDERS/JUDGMENTS" in this packet. You will be required to attach certified copies of any pre-existing child support orders (certified copies may be obtained from the clerk of the issuing court).**

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](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.** You may request that you be reimbursed for out-of-pocket medical expenses that exceed \$250.00 PER CHILD per year or to reimburse for public health care coverage. Even if you do not request the payment of cash medical support, the judge may order that either you or the other party pay it. NOTE: 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.

**Unmarried and Unemancipated Children at Least 18 and Under 21 Years of Age.** The 2005 Legislative Assembly amended Oregon law regarding unmarried unemancipated children who are at least 18 and under 21 years of age. The new law says that these children are necessary parties to all family law cases involving support. The Petition forms that deal with support will have a line to write in the child's name, including them in the heading. The Judgment forms will have a place indicating how the child has been involved in the case, and if applicable, a place to sign underneath Petitioner and Respondent signatures agreeing to the judgment. As a party to the case, these children must be legally served with all the required documents. After they are served, children **may** sign a Waiver of Further Appearance and Consent to Entry of Judgment form found in Packet 6J if the child does not choose to participate further in the case.

**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. In the health care coverage section, you must mark any of the options that apply to your family's situation. There are three major categories involved in determining health care coverage for the children: (1) private, (2) public, and (3) neither private or public health care coverage. There is also a section for "uninsured health expenses" whereby a judge will order what percentage responsibility each party has for payment of non-covered medical expenses for your child/ren. If either you, your spouse, or both of you have private health care coverage available for the children, you will

fill out either option “A” or “B” under the section called: “1) PRIVATE INSURANCE IS AVAILABLE.” If *neither* you nor your spouse have private insurance available for the children, you will fill out the section called: “2.) NO PRIVATE INSURANCE IS AVAILABLE NOW.” Regardless of insurance availability, everyone must complete the section called: “3.) RESPONSIBILITY FOR UNINSURED HEALTH EXPENSES.”

**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 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. Spousal maintenance may be ordered for the support of one spouse. The judge will consider a number of factors when making the award, and may order more than one type of support. 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](http://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. **By filing your petition, you agree to be bound by the terms of this order.** The order is effective on both the petitioner and the respondent once the notice has been served on the respondent. You may request a hearing if you object to the terms of the Statutory Restraining Order (see Packet 2AB for a Request for Hearing Form). If you violate the order, you may be subject to sanctions. You must attach a copy of the “*Notice of Statutory Restraining Order Preventing the Dissipation of Assets in Domestic Relations Actions*” (see Packet 2AB) to the Summons and serve it on the Respondent.

For information about these issues, talk to a lawyer and/or go to the Oregon State Bar’s web site ([www.osbar.org](http://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 petition. 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](http://www.leg.state.or.us/ors)).

### **If Both Spouses Already Agree.**

There are two ways to handle your case if both spouses agree on all issues: (1) one spouse can file as petitioner, the other spouse can accept service of the petition and not file a response (if there is no disagreement with what the petitioner requested in the petition) and judgment will be entered based on what was stated in the petition, or (2) the parties can file as co-petitioners (see Packet #9). Forms to file as co-petitioners may also be available through your local court, courthouse facilitator and/or attorney.

If your spouse (the respondent) does not agree with you at first and files a response, then later decides that what you requested in the petition is okay, he or she can file a Waiver of Further Appearance and Consent to Entry of Judgment form to avoid having to go through the court process further. Your local courthouse facilitator can help you with this process. If your spouse is willing to accept service, s/he must fill out the Acceptance of Service form, sign it in front of a notary or court clerk, then file it with the court. It is not necessary that your spouse agree with what is in the papers, just that he/she is willing to acknowledge receipt of them.

Fill out the following forms.

- *Acknowledgment about Separation*
- *Petition for Separation*
- *Summons*
- ***Certificate Re: Pending Child Support Proceedings and/or Existing Child Support Orders/ Judgments***

- *UTCR 2.100 Affidavit, either SHORT FORM or LONG FORM (REQUIRED)*
- *Certificate of Mailing (for use if you or your spouse is receiving public assistance)*

Oregon law requires that **Social Security numbers** be given but kept confidential from the public in dissolution, separation and annulment proceedings. **Do not place your or your children's Social Security numbers on your pleadings.** Use UTCR 2.100 SHORT FORM to segregate only your Social Security number. If you wish to segregate additional protected personal information, use UTCR 2.100 LONG FORM. **NOTE: You are REQUIRED to fill out and use one of the UTCR 2.100 Affidavits, either the short form or the long form.**

### **Make copies.**

Make one copy of all of the forms for your records, and one copy of the *petition and summons* to serve on (deliver to) your spouse.

If either you or your spouse is receiving certain types of public assistance (Temporary Assistance to Needy Families or the Oregon Health Plan), you are also required to send a copy of the petition to the Division of Child Support branch office in your county. The branch office address may be found at <http://www.dcs.state.or.us> or in the "Local Family Law Practices and Programs" form for your local court. Fill out and file the *Certificate of Mailing* after you have mailed the petition.

### **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. Contact numbers are listed in the additional resources section at the end of these instructions, and in the "Local Family Law Practices and Procedures" for your court attached to these instructions.

### **File the forms.**

File all of the original forms that are listed above with the court clerk except the summons. The court clerk will ask you for a filing fee when you file your papers. Check with your local court to learn the amount of the filing fee. If you feel you can't afford to pay the fee, you may ask the court to waive or defer your filing fee. Use Packet #10 of these forms, or check with your local court to see if they require a different form. This form needs to be filled out and filed with the court. If the fee is waived, you don't have to pay the fee. If the fee is deferred, most courts will require that you pay the fee at a later date.

The clerk will give you a number of handouts when you file your papers. The handouts usually include a notice regarding continuation of health coverage, a copy of ORS 107.089 (documents parties may have to give each other), notice regarding mediation, family law guidelines and services, family law resource list, and possibly, information about local parent education classes. The clerk will give you two copies of each handout: one for you and one to be served on your spouse. You aren't required to serve the copy of ORS 107.089 on your spouse, but if you do, both spouses must follow what it says.

### **Parenting Classes.**

Many courts require that parents of minor children go to a parent education class. If your court has this program, sign up for the class right away. 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.

### **Have your spouse served.**

You are required to have your spouse served (have papers delivered to) with (a) copies of the documents given to you by the clerk, including the Statutory Restraining Order described above, and (b) certified copies of the petition and summons (you may certify the copies by signing your name where it says "I certify this is a true copy").

If your spouse is willing to accept service, s/he must fill out the Acceptance of Service form, sign it in front of a notary or court clerk, then file it with the court. It is not necessary that your spouse agree with what is in the papers, just that he/she is willing to acknowledge receipt of them.

If the other party will not complete the Acceptance of Service form, **YOU CANNOT SERVE THE PAPERS YOURSELF.** You may have service completed by the Sheriff in the county where your spouse lives, by a private process server, or by another individual who is a competent person 18 years or older, an Oregon resident (or of the state where service is made) and not a party nor an attorney for a party. Caution should be used before asking a friend or relative to

serve the papers if your spouse might react angrily or violently. An Affidavit of Service along with the original summons must be filed with the court after service has been made.

The best way to serve the other party is to have the person serving the papers hand them directly to the respondent (personal service). If personal service cannot be done, there are other ways to serve the papers including “substitute service,” “office service,” and “service by mail” — see the Table below. You may ask the Sheriff or a private process server about these other options or consult an attorney.

<b>Standard Methods of Service</b>	
<b>Personal Service</b>	Delivery of papers directly to the other party
<b>Substitute Service</b>	Delivery of papers to a person <u>living</u> at the other party’s home who is at least 14 years old, PLUS mailing of the documents to the other party’s home address by first class regular mail
<b>Office Service</b>	Delivery of papers to a person who appears to be in charge at the other party’s place of employment (who has a business duty to give the documents to the other party), done during working hours, PLUS mailing of the document to the home or business address of the other party by first class regular mail
<b>Service by Mail (Return Receipt Requested)</b>	Delivery by mailing the documents certified or registered, return-receipt requested, or by Express mail, PLUS mailing of documents to home or business address of the other party by first class regular mail, PROVIDED the other party signs the “return receipt.”

If you are not able to have your spouse served by any of the methods described above, you may ask a judge to allow you to use another service method. The judge might allow you to publish, post or mail the documents. In order to make this request, check with your local court for the appropriate form or use Packet 6A-Alternative Form of Service.

**Serving Children Who are Necessary Parties.** Because all unmarried, unemancipated children at least 18 and under 21 years of age are necessary parties to the case, they must also be served. Follow the same steps for serving your spouse for serving children who are parties to the case.

**STEP 2: WAITING FOR A RESPONSE; TAKING A DEFAULT**

Oregon law gives your spouse 30 days to respond to your petition. The time starts running from the date of service. The response must be written, and must be filed with the required filing fee. Your spouse may ask the court to waive or defer the fee.

**If your Spouse is in the Military.**

If your spouse is in the active military service of the United States and has not responded to the petition, you may have to go through some extra steps. The court won’t go further with your case until one of the following things has happened: (1) your spouse is no longer in the active military, (2) your spouse has waived his or her rights using the Waiver of Right to Stay of Proceedings form, or (3) the judge holds a special hearing in your case. You may get a Waiver of Right to Stay of Proceedings form from the courthouse facilitator. You may need to talk to an attorney if your spouse is not willing to sign the waiver.

### **Check for Response.**

Your spouse should mail or deliver a copy of his or her response to you when it is filed with the court. If you haven't received a copy of a response after 30 days (from the date of service), you may check with the court clerk to see if one has been filed. If no response has been filed, you may request a "default order." A default means that you may ask the court to enter a judgment giving you the items you asked for in your petition, with no input from your spouse. If a response has been filed, you will not be allowed to take a default and you will skip the next two sections about requesting a default and go straight to step 3.

### **No Response Filed; Requesting a Default.**

To ask the court to enter a default, you must fill out the following forms:

- *Ex Parte Motion for Order of Default; and Order*
- *Affidavit in Support of Motion for Order of Default*

After you make yourself a copy of the filled out forms, you may file the original with the court anytime after 30 days have expired from the date of service.

### **Check Back.**

Check back with the court clerk in a week to 10 days to see if your request was granted. If the request was not granted, ask the court clerk why it was not. Sometimes, the proof that service was made on your spouse isn't complete enough for the judge to be sure that your spouse got notice of the court proceeding.

## **STEP 3: RESOLVING YOUR CASE**

### **Temporary Orders.**

You may ask the court to make temporary orders after the petition is filed. Temporary orders are in effect once signed by the judge and last until changed by the judge or until the final judgment is signed by a judge or the case is dismissed. For example, either spouse may request an order for spousal or child support, an order requiring one spouse to move out of the family home or an order preventing either party from interfering with the child/ren's regular living arrangement and schedule. To make any of these requests, 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 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. In addition, 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.

### **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 spouses present, along with their attorneys if they are represented. You must attend any conferences that are scheduled unless you have received permission from the judge not to attend.

At the conference, the judge will probably talk to you about how the case is going to be resolved, may consider requests for temporary orders and will probably set future court dates.

### **Working Toward Agreement.**

The court wants to help you resolve the issues that you and your spouse disagree on. You may discuss these issues with your spouse directly if it is safe for you to do so and if no court order prohibits that contact. You may also discuss them with your spouse's attorney. 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/parenting time evaluation.

**Mediation.** A mediator is a person trained to help people resolve disagreements. You and your spouse may be required to meet with a mediator if you don'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). You may ask to meet with the mediator alone if you are uncomfortable meeting with the other parent for any reason. There is usually no fee for this service. If mediation has not yet been ordered in your case and you would like to request it, you may file a Request for Mediation, (see Form #6H or your local court's form). You may request that the mediation requirement be waived if you have a good reason, by filing a Motion and Affidavit for Waiver of Mediation, see Form #6I. 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.

**Arbitration.** Some courts refer spouses who disagree on how to divide their property to an arbitrator. The court may also ask the arbitrator to resolve spousal support issues. An arbitrator is a lawyer appointed by the court who meets with both spouses and their lawyers, if they are represented, and makes a decision about how the property should be divided. Both spouses are required to pay for this service unless the court has specifically waived or deferred the arbitrator's fee. If either spouse disagrees with the arbitrator's decision, he or she can ask the court for a trial. If a trial is not requested, the arbitrator's decision is final unless both spouses agree on another resolution.

**Custody/Parenting Time Evaluation.** If parents can't agree on a parenting plan, sometimes the court refers the case to a custody or parenting time evaluator. After interviewing each parent and doing other research, the evaluator will make a recommendation to the judge about which parent should have custody and 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 of the evaluation.

#### **STEP 4: THE FINAL PAPERWORK**

Your case is finished the date the judgment of separation is signed by a judge. If there are still items that you don't agree on, the court will probably set a date for a "final hearing" or trial. 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.

The following forms are required to finalize your case:

- *Judgment of Separation*
- *Affidavit Supporting Judgment of Separation*

If your spouse did not file a response and the court has entered an Order for Default, or if your spouse responded and then filed a Waiver of Further Appearance and Consent to Entry of Judgment form, or if your spouse has signed the Judgment, you may also need the following:

- *Motion for Order Allowing Entry of Judgment on Affidavit in Lieu of Hearing; and Order*
- *Affidavit in Support of Motion for Order Allowing Entry of Judgment on Affidavit in Lieu of Hearing*

You may also need to file the following additional forms, 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 in the separation case, 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, attach them.

**Uniform Support Affidavit.** This form is only required if a response was filed, and you and your spouse do not agree on spousal or child support. You aren't required to complete the schedules on the form unless one spouse asks for spousal support or a "deviation" (different amount than what was calculated using the child support guidelines) from the child support guidelines.

**Waiver of Personal Service.** After the judgment is signed, if one spouse doesn't do what it says, the other spouse may ask the judge to enforce the judgment. The spouse asking for enforcement is required to personally serve (deliver) the other spouse 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 you list.

**The Final Judgment.**

The judgment finalizes your case and contains all of the issues decided in mediation, arbitration, hearing, or through your agreement. Check with your local court to determine whether you should complete this form, or whether the judge will fill it out. If both spouses agree on all issues, it may be prepared by either spouse as long as it is reviewed and signed by both spouses. If the spouses don't agree on all issues, the judge may direct one spouse to fill out the judgment.

If your spouse didn't file a response, the information you fill out in the final judgment must be the same as what you requested in the petition. If your spouse filed a response, the information must be the same as was decided in mediation, arbitration, hearing or through your agreement.

If you are responsible for filling out and filing the final judgment, make a copy for yourself and one for your spouse (unless he or she didn't file a response), 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.**