

Unmarried Parents: Custody, Parenting Time, Child Support Process for Petitioners Instructions for Packet 3A

Notice about these instructions and forms.

These instructions are not a complete statement of the law. They cover basic procedures for custody, parenting time and child support for unmarried parents. 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 packet will allow you to ask the court for custody, parenting time or child support. **Paternity (who the father of the child is) must be established before you can use these forms.** Paternity may be 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. Paternity may also be established through the Oregon Child Support Program or through the courts. You may request that the Oregon Child Support Program establish paternity by filling out an Application for Support Enforcement Services, and sending it to the address stated on the form. You will be charged a \$1 fee for this service. You may also download the Application form from the Division of Child Support's website: <http://www.oregonchildsupport.gov/forms>.

These instructions are broken down into three 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 the other parent 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 or a notary public. 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 the respondent.
 - 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.

This type of case starts with a “petition” which lists the items you are asking the court to 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.

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) tape 902, or visit 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 a copy of the signed order of any pre-existing child support orders (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.oregonchildsupport.gov/laws>. 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.oregonchildsupport.gov/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 contribute to the cost of health insurance and the cost of uninsured medical expenses. A party who makes no more than Oregon minimum wage for full-time employment 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.

Unmarried Children at Least 18 and Under 21 Years of Age. Under Oregon law unmarried children who are at least 18 and under 21 years of age 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. Also note that on both the Petition form and the Judgment form you must select whether support stops at age 18 or whether it continues until age 21 if the child continues to attend school.

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 two major categories involved in determining health care coverage for the children: private, such as insurance available through employment, and public, such as the Oregon Health Plan.

If either you or the other parent, or both of you, have private health care coverage available for the children, you must fill out the “PRIVATE HEALTH CARE COVERAGE IS APPROPRIATE AND AVAILABLE” section. If *neither* you nor the other parent has private insurance available for the children, you will fill out the section called: “NO PRIVATE INSURANCE IS APPROPRIATE OR AVAILABLE.” Regardless of insurance availability, everyone must complete the section called: “RESPONSIBILITY FOR UNINSURED HEALTH EXPENSES.” It may be appropriate to equally divide the expenses if no cash medical support is ordered or for the custodial parent to pay most or all of the uninsured expenses if cash medical support is being paid to that parent.

A party who makes no more than Oregon minimum wage for full-time employment cannot be ordered to pay for health care coverage. A party making no more than minimum wage, however, can be ordered to provide health care coverage if it is available at no cost.

Statutory Restraining Order. Oregon law requires both Petitioner and Respondent to obey a restraining order preventing either party from making unilateral (without the agreement of the other party) changes to health insurance policies that 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 beneficiaries. 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. 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” to the Summons and serve it on the respondent.

If Both Parties Already Agree.

If both parties agree on all issues, one party can file as petitioner, the other party 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.

If 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 (see Form #6J). Your local courthouse facilitator can help you with this process.

Filling out the Forms.

To get the case started, fill out the first set of forms, file them with the clerk and have the respondent “served” (have the papers delivered to respondent).

Fill out the following forms.

- *Petition for Custody, Parenting Time and Support*
- *Summons*
- *Certificate Re: Pending Child Support Proceedings and/or Existing Child Support Orders/ Judgments*
- *Confidential Information Form (CIF)*
- *Notice of CIF Filing*
- *Certificate of Mailing (for use if you or the respondent is receiving public assistance)*

Confidential Personal Information.

Please read the Confidential Information Form (CIF) information sheet. Certain personal information required by your paperwork will be protected from public disclosure.

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) the respondent.

If either you or the respondent 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.oregonchildsupport.gov/offices> 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 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 the respondent.

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 the other party served.

You are required to have the other party served (have papers delivered to) with (a) copies of the documents given to you by the clerk, 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 the other party 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 the other party 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 the other party 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 the other party 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.

Standard Methods of Service	
Personal Service	Delivery of papers directly to the other party
Substitute Service	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
Office Service	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
Service by Mail (Return Receipt Requested)	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 the other party 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 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 the respondent for serving children who are parties to the case.

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

Oregon law gives the respondent 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. The respondent may ask the court to waive or defer the fee.

If the Respondent is in the Military.

If the respondent 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) the respondent is no longer in the active military, (2) the respondent 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 the respondent is not willing to sign the waiver.

Check for Response.

The respondent 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 the respondent. 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:

- *Petitioner's Ex Parte Motion for Order of Default and Entry of Judgment by Default; and Order*
- *Declaration in Support of Motion for Order of Default and Entry of Judgment by 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 the respondent isn't complete enough for the judge to be sure that the respondent 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. 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 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. 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 parents 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 about which you and the respondent disagree. You may discuss these issues with the respondent directly if it is safe for you to do so and if no court order prohibits that contact. You may also discuss them with the other parent’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 and custody/parenting time evaluation.

Mediation. A mediator is a person trained to help people resolve disagreements. The parents 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 respondent 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.

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.

If the case is still not resolved after going through the process described above, 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.

Forms to Finalize Your Case.

The following forms are required to finalize your case:

- *Judgment of Custody, Parenting Time and Support*
- *Affidavit Supporting Judgment*

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

- *Motion for Order Allowing Judgment on Affidavit in Lieu of Hearing; and Order*
- *Affidavit in Support of Motion for Order Allowing 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 this 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 Declaration.** This form is only required if a response was filed, and the parents do not agree on child support. You aren't required to complete the schedules on the form unless one parent asks for 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 parent doesn't do what it says, the other parent may ask the judge to enforce the judgment. The parent asking for enforcement is required to personally serve (deliver) the other parent with notice of this request. If you would like to waive the requirement of personal service, you may use Form #6D – Waiver of Personal Service or a form required by your court, if different. 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, 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 the parents agree on all issues, it may be prepared by either parent as long as it is reviewed and signed by both parents. If the parents don't agree on all issues, the judge may direct one parent to fill out the judgment.

If the respondent didn't file a response, the information you fill out in the final judgment should be the same as what you requested in the petition. If the respondent filed a response, the information should be the same as was decided in mediation, 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 the respondent (unless he or she didn't file a response), and file the original with the court. **If your case involves child support, file an extra copy of the proposed judgment with the court.**