

Unmarried Parents: Responding to Petition for Custody, Parenting Time and Support Instructions for Packet 3B

Notice about these instructions and forms.

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

This set of forms and instructions explain how to file a response to a petition for custody, parenting time and support.

When filling out the forms, follow these directions:

- The case heading is the same as listed on the petition you were served.
- Some forms have to be notarized or signed in the presence of a court clerk. You will need your picture ID for this. Many banks provide notary services.
- Some forms say on the bottom, “I certify that this is a true copy,” and provide a place to sign. Don’t sign this line on the original form or on your own copy. You need to sign this line only on the copies for the other parent.
- 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.

STEP 1: FILING YOUR RESPONSE

You have 30 days following the date you were served with the petition to file a written response with the court clerk and pay the filing fee. If you feel you can’t afford to pay the fee, you may ask the clerk for an Application and Declaration for Deferral or Waiver of Fees. You may fill out this form and file it with the court requesting that your filing fee be waived or deferred. If the fee is waived, you don’t have to pay the fee back. If the fee is deferred, most courts will require that you pay the fee at a later date.

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

Legal Issues to Consider.

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

Also, if you weren’t served with the petition in Oregon, or if you haven’t lived in Oregon for a long period of time, you may not be required to file a response. You should talk to an attorney about whether you

should file a response.

Parenting Plan. A parenting plan is required for cases involving a minor child/ren. The plan sets out the schedule and rules for each parent's time with the child/ren. The parenting plan may include safety provisions for the child/ren if domestic violence, substance abuse, child/ren 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 child/ren.** 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 in your response.

For information about child/ren custody, you may call Tel-Law (1-800-452-4776) tape 902, or visit www.osbar.org.

Child Support. In most cases, the court will order child support if the parties have a child and no child support order already exists. The amount of support, if ordered, will be determined by the Child Support Guidelines. The Guidelines have worksheets to help you figure out who should pay support and how much it should be. **Support is typically withheld from wages unless an exception is allowed for direct deposit to the other parent's checking or savings account, or, if support enforcement services are being provided to either parent, as an "electronic payment withdrawal (EPW) or electronic funds transfer (EFT)" to a Department of Justice account.** (EPW and EFT are procedures whereby funds are automatically withdrawn from a checking/savings account as authorized by the account holder.) Information about child support, including the Guidelines and Worksheets, is on the Internet at: <http://www.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. 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: A party who makes Oregon minimum wage for full-time employment or less cannot be ordered to pay cash medical support.

Insurance. Oregon law requires that the judgment address the issue of health insurance for any minor child/ren 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.

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. The order is effective on both you and the petitioner once the notice has been served. 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.

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.

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.

Filing the Response.

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

File the original Response and Certificate of Mailing form with the court clerk along with the required filing fee (unless your fee was waived or deferred by a judge).

Parenting Classes.

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

STEP 2: RESOLVING YOUR CASE

Temporary Orders.

You may ask the court to make temporary orders 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 until the case is dismissed. 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/ren. 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 go to 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 assist you in resolving the issues about which the parents disagree. You may discuss these issues with the other parent directly if it is safe for you to do so and if no court order prohibits this contact. If you filed a response, and later decide that what the other parent asked for in the petition is okay with you, you may fill out and file a Waiver of Further Appearance and Consent to Entry of Judgment form (see Form #6J or use your local court's form). The court will then enter judgment based on what was requested in the petition. Ask your local courthouse facilitator for help with this step. If you can't resolve the issues on your own, the court may provide a number of options to help you, including mediation and custody 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). There is usually no fee for mediation. 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 (see Form #6H or use your local court's form). You may ask 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 or use your local court's form). 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/parenting time evaluator. After interviewing each parent and doing other research, the evaluator will make a recommendation to the court about what the parenting plan should be. The evaluator will consider factors that might affect a child/ren's safety, such as domestic violence, substance abuse, child/ren abuse or other circumstances. Many courts require that the parents pay for part of the evaluation.

Your case is finished the date the judgment is signed by a judge. The judgment contains all of the issues decided in mediation, hearing or through your agreement. If both parents agree on all issues, it may be prepared by either parent as long as it is reviewed and signed by both parents. 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.

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

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

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

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

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

Uniform Support Declaration. This form is only required if the parents don't agree on child support.

You aren't required to complete the schedules on the form, unless one parent asks for a "deviation" (different from the amount calculated under the child support guidelines) from the child support guidelines.

Waiver of Personal Service. After the final judgment is signed, if one parent doesn't follow what it says to do, 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.