

Modification of Custody and Parenting Time; Response Packet

Instructions for Packet 4B

Notice about these instructions and forms.

These instructions are not a complete statement of the law. They cover basic procedure for uncomplicated divorce, legal separation, or unmarried custody cases. For legal information, please talk to a lawyer and/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 following website: <http://www.courts.oregon.gov>.

This set of forms and instructions explains how to file a response to a motion requesting that the custody, parenting time, and/or child support provisions of a judgment be modified.

When filling out the forms, follow these directions:

- The case heading is the same as listed on the motion 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 thirty (30) days following the date you were served with the motion to file a written response with the court clerk and pay the filing fee. The court may also have ordered you to personally appear in court on a certain date and time. If you feel you cannot afford to pay the fee, your court *may* have forms to waive or defer your filing fee. Check with your court clerk or facilitator. Note, however, that even if your filing fee is deferred, most courts will require that you pay it at a later date.

If you weren’t served with the motion 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.

Legal Issues to Consider.

Before you fill out your response (called, “Affidavit Responding to Motion to Modify Judgment”), you should review what the other parent asked for in the motion, and think about how you want to handle the issues raised by the other parent. The court will require that a parenting plan be made part of the final judgment (the final document in the case that contains each parent’s rights and responsibilities).

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. The other parent may have requested that the court terminate or modify a child support obligation. The amount of support, if ordered, will be determined by the Child Support Guidelines. **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.) The Guidelines have worksheets to help you figure out who should pay support and how much it should be. If you do not agree with the change requested by the other parent, you will need to complete and file with the court your own "Child Support Worksheet(s)." Information about child support, including the Guidelines and Worksheets, is on the Internet at:

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

This website also has a Child Support Calculator <http://www.dcs.state.or.us/calculator> which may help you to calculate the amount of child support which should be paid.

Cash Medical Support and Health Care Coverage. 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. The judge cannot order a party who makes no more than Oregon minimum wage for full-time employment to pay cash medical support. The judge can order a party making minimum wage or less to provide health care coverage if it is available at no cost.

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

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

Confidential Personal Information.

There is certain personal information that can only be listed in a Confidential Information Form (CIF) and may not be listed in any of the other papers you file with the court. See the CIF information sheet that is part of this packet.

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 and Related Documents.

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.

If the other parent has requested to terminate or modify child support *and you do not agree*, you will also have to complete and file the Uniform Support Declaration (see Packet #6F) and the Child Support Calculation Worksheets.

File the originals of the above documents 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 children go to a parent education class. If your court has this program, you will need to sign up for the class right away. Some courts will not allow you to finalize your case until you have completed the class and filed a certificate of completion with the court.

STEP 2: RESOLVING YOUR CASE

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 and will probably set future court dates.

Working Toward Agreement.

The court wants to assist you in resolving the issues about which you and the other party disagree on. 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. You may also discuss them with the other party's attorney if they have one. If you filed a response, and later decide that what the other parent asked for in the motion 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 form). The court will then enter judgment based on what was requested in the motion. 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 local court 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 local court 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's safety, such as domestic violence, substance abuse, child abuse or other circumstances. Many courts require that the parents pay for part of the evaluation.

The Final Paperwork.

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, they may use the forms in Packet #4C.** The judgment 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. The judge may direct one parent to prepare the judgment after the hearing. Some judges may also want to meet with you for a "settlement conference" (a private meeting with a 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 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.

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.

Child Support Worksheets. If child support will be terminated or changed, child support worksheets need to be filled out and attached to the final judgment. See "Child Support" above on page 2.

Uniform Support Declaration. This form is required if you and the other parent do not agree on child support. You are not required to complete the schedules on the form unless one parent asks for a "deviation" (a different amount than what was calculated using the child support guidelines) from the child support guidelines. See Packet #6F.