

Modification of Custody, Parenting Time, Child Support and/or Spousal Support

Instructions for Packet 4A

Notice about these instructions and forms.

These instructions are not a complete statement of the law. They cover basic procedure for uncomplicated cases in which there has already been a judgment in a divorce, legal separation, or unmarried custody proceeding that a party now wishes to modify. For legal information, please talk to a lawyer, visit your local law library and/or refer to the “Additional Resources” section on the last page of these instructions.

The instructions may refer to some forms not included in this packet. If you have a question about a form you cannot locate, you may consult with the courthouse facilitator which may have the form available.

This set of forms and instructions will allow you to ask the court to modify custody, parenting time, child support and/or spousal support. The court may terminate a party’s obligation to pay child support if a change of custody is ordered, or adjust support up or down if there has been a change in circumstances since the last support order or judgment which warrants a modification.

Your request for modification should be filed in the circuit court that entered the judgment you are asking the court to modify. If you want an Oregon court to modify a judgment from another state, we strongly urge you to consult with a lawyer. An Oregon court may not have jurisdiction to modify the out-of-state judgment.

The instructions are broken down into 3 basic steps. The forms that go with each step are listed below.

Steps	Page (Instructions)
1. Starting Your Modification	2
Ex Parte Motion for Order to Show Cause Regarding Modification of Judgment Affidavit in Support of Motion for Order to Show Cause re: Modification of Judgment Order to Show Cause Regarding Modification of Judgment Certificate re: Pending Child Support Proceedings and/or Existing Child Support Orders/ Judgments (<i>only pertains to child support modification</i>) UTCR 2.130 Confidential Information Form (one REQUIRED for EACH party) UTCR 2.130 Notice of Filing CIF Uniform Support Declaration (<i>only pertains if child support is or could be affected</i>) Order for Mediation (<i>if motion includes custody or parenting time</i>) Certificate of Mailing Declaration/Acceptance of Service	
2. Waiting for a Response	6
Regardless of whether a response has been filed, you are required to appear at your hearing.	
3. Resolving Your Case	6
Supplemental Judgment Modifying Judgment Re: Custody, Parenting Time, Child Support, Spousal Support and Order re: Jurisdiction Attachments: Parenting Plan, and, if a request to terminate or modify child support is being made, Child Support Calculation Worksheets.	

When filling out the forms, follow these directions:

- The case heading includes your case number and the parties to the court case. If you are filing in the circuit court that entered the judgment you are attempting to modify, the case number and names of “Petitioner” and “Respondent,” or “Co-Petitioners” will stay the same. If the judgment you are asking the court to modify was entered in another court, when you register it as a foreign judgment, you will be given a new case number, but the names of “Petitioner,” “Respondent,” or “Co-Petitioners” will stay the same. If you originally filed as Co-Petitioners but are no longer filing together, the person requesting the modification must also file a motion to convert the case to a petitioner/respondent case. The courthouse facilitator has forms available for the conversion.
- Make sure to put the same information in the caption on all copies and originals of documents you file with the court.
- **Do not use any kind of correction fluid or tape on documents to be filed with the court. If you make an error, cross it out and initial it (both parties if it is a stipulated document).**
- 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 that are served on the other party.
- 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: STARTING YOUR MODIFICATION

Legal Issues to Consider.

This type of modification starts with a “motion” telling the judge and the other party what you want changed. **Only mark what you want ordered in the “supplemental judgment.” Do not re-write what is already ordered—leave those sections blank.**

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 also is available from Kids’ Turn, the courthouse facilitator, and the 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>. It also includes a “Safety Focused Parenting Plan Guide” and a “Medium/Long Distance Plan Guide” to help you develop a parenting plan where there are safety concerns for your child/ren or distance between the parents.**

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.

Child Support. **IMPORTANT!** Oregon law requires that if child support would or could be affected, the moving party must 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 records department of the court).

You may request that the court terminate or modify a child support obligation, make a change in the parent responsible for it, or change the amount. The amount of support, if ordered, typically 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. Information about child support, including the Guidelines and Worksheets, is online at: <http://www.oregonchildsupport.gov/laws/index.shtml>. This website also has a Child Support Calculator which may help you calculate the amount of child support which should be paid: <https://justice.oregon.gov/guidelines/>. The courthouse facilitator, legal aid office or child support program may 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 who 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 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 and Unemancipated Children at Least 18 and Under 21 Years of Age.

The law states unmarried, unemancipated child/ren who are at least 18 and under 21 years of age are necessary parties to all family law cases that would or could involve child support. The Petition and General Judgment have lines to write in the child/ren's name to include them in the heading. The Judgment form has a place indicating how the child/ren has been involved in the case, and if applicable, a place to sign underneath Petitioner's and Respondent's signatures agreeing to the judgment. As a party to the case, these child/ren must be legally served with all the required documents. After they are served, child/ren **may** sign a Waiver of Further Appearance and Consent to Entry of Judgment form if the child does not choose to participate further in the case. Otherwise, the child may file a response to contest the modification.

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 address security for the payment of support, such as life insurance. If you are requesting a modification of health insurance, 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 child/ren: (1) private, (2) public, and (3) neither private nor public health care coverage. There also is a section for "uninsured medical expenses" where a judge will order what percentage responsibility each party has for payment of non-covered medical expenses for your child/ren, such as co-pays and deductibles above the \$250 per year that must be completed regardless of insurance availability. 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.

If you, the other party, or both of you have private health care coverage available for the child/ren, you will fill out option “(1)” under the section “4.E, Private Health Care Coverage is Appropriate and Available.”

If *neither* you nor the other party has private insurance available for the child/ren, you will fill out option “(2)” under the section “4.E, No Private Health Care Coverage is Appropriate and Available.” Appropriate means the premium does not cost more than 4% of the paying party’s adjusted income. There are reasons to ask the court to order none or an amount different from the calculator cap.

If neither of you has appropriate insurance available, you are required to mark who should be responsible for obtaining insurance if it becomes available from any source.

Cash medical support is part of child support orders. The child support calculator includes the numbers for cash medical support and indicates whether health insurance is reasonable and appropriate for the court to order. The court cannot order cash medical support if the paying party does not earn more than Oregon’s minimum wage, full time employment.

If Both Parties Already Agree.

If both parties agree on all issues you may get forms from the court facilitator to file a stipulated supplemental judgment.

To Get the Modification Started.

If you were the Petitioner in the original case, you are still the Petitioner. If you were the Respondent in the original case, you are still the Respondent (even though you are the moving party in this modification).

Fill out the following forms.

- *Ex Parte Motion for Order to Show Cause re: Modification of Judgment (MOTION)*
- *Affidavit in Support of Motion for Order to Show Cause re: Modification of Judgment (AFFIDAVIT)*
- *Order to Show Cause re: Modification of Judgment (ORDER)*
- *Certificate Re: Pending Child Support Proceedings and/or Existing Child Support Orders/Judgments (if the modification includes or could include child support)*
- *UTCR 2.130 Confidential Information Form (one REQUIRED for EACH party)*
- *UTCR 2.130 Notice of Filing CIF*
- *Request and Order for Mediation (if motion includes custody or parenting time)*
- *Uniform Support Declaration (if the modification includes or could include child or spousal support)*

Oregon law requires that social security numbers be provided to the court, but kept confidential from the public in all family law cases. Additionally, UTCR 2.130 considers the following personal information as confidential: date of birth; telephone number; if required by law, employer’s name, address and telephone number; and driver license number of a party or the child of a party, as well as former legal names. **Do not include any of this personal information in your pleadings or attachments.** Instead, include this information in the **required** UTCR 2.130 Confidential Information Form (CIF). You must submit one form for each party and indicate on the Notice of Filing CIF what information you included in the CIFs. The court has no responsibility or liability to make sure you have omitted this information—it is your responsibility.

You may want to consider serving and filing a Post-Judgment Status Quo so the child/ren’s usual residence and schedule will not be disturbed while the modification is pending.

Have your documents reviewed.

You may have your documents reviewed by a lawyer or the courthouse facilitator before you file. For information about how to find a lawyer, you may want to contact the Oregon State Bar Lawyer Referral Service. If you are low income, you may be able to get your documents reviewed for a smaller fee through the Oregon State Bar’s Modest Means program, or you may want to call Oregon Law Center (Legal Aid) office (low income and domestic violence). Contact information is listed in the additional resources section at the end of these instructions.

File the forms.

- To file the forms you must pay a filing fee. When you are ready to file your documents, you may take them to the family law clerk’s office between 8:00 and 8:30 am, pay the filing fee, and the clerk will direct you to your judge at 8:30 a.m. If you are unable to come at that time, you may file the documents with the clerk’s office and they will forward them to the judge for review. Check back in approximately two weeks to see if they were signed and get copies. If the judge grants a hearing, s/he will sign the order for the other party to appear, and the clerk will fill in a date and time for a hearing. The clerk will give you a copy for serving on the other party. Make one copy of all of the forms for your records, and if child support is involved, you will need an additional copy to send to the Division of Child Support, 5193 NE Elam Young Parkway, Suite B, Hillsboro, OR 97124. Fill out and file the *Certificate of Mailing* with the court after you have mailed the copies.

Parenting Classes.

You are required to participate in a co-parenting program called Kids’ Turn unless you have already completed the class within the last five years or your youngest child is 17 or older. You must register for the class at (503) 846-0665 or <http://www.kidsturnwaco.com/> and are required to have finished the four-week course prior to your hearing. If you are unable to pay for the class, you may qualify for a reduced fee by contacting the Kids’ Turn program.

Have the Other Party Served.

You are required to have the other party served (have papers delivered to) with:

- Copies of any documents given to you by the clerk, and
- Certified copies of all documents submitted to the court, including the MOTION, AFFIDAVIT, ORDER and REQUEST AND ORDER FOR MEDIATION (if custody or parenting time are involved) and UNIFORM SUPPORT DECLARATION (if child or spousal support is or could be involved). 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, and 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. A Declaration of Service 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” and “office service,”—see the Table below.

Standard Methods of Service	
Personal Service	Delivery of papers directly to the other party

Standard Methods of Service	
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

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, you may 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 also must be served. Follow the same steps for serving the other parent for serving children who are parties to the case.

STEP 2: WAITING FOR A RESPONSE

Oregon law gives the other party 30 days to respond in writing to your motion, ORS 107.135(14). The time starts running from the date of service. The written response is required even though **the court also requires both parties to personally appear at the hearing**. The written response must be filed with the required filing fee.

If the Other Party is in the Military.

If the other party is in the active military service of the United States and has not responded to the motion, 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 other party is no longer in the active military, (2) the other party 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 or use Form #6G. You may need to talk to an attorney if the other party is not willing to sign the waiver.

Check for Response.

The other party 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 written response after 30 days (from the date of service), you may check with the court clerk to see if one has been filed. **Regardless of whether a response has been filed, you are still required to appear at your hearing.**

STEP 3: RESOLVING YOUR MODIFICATION

Working Toward Agreement.

The court wants to assist you in resolving the issues in dispute. You may discuss these issues with the other party directly if it is safe for you to do so and if no court order prohibits that contact and you may discuss them with the other party'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 are required to meet with a mediator if they don't agree on custody or parenting time issues. You may ask to meet with the mediator alone if you are uncomfortable meeting with the other party for any reason. There is no fee for this service

provided by Washington County Conciliation Services if the court has ordered the mediation. If you choose to meet with a private mediator, you or the other party will be responsible for any fees.

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 may 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. The parties must pay for the evaluation.

If there are still items that you don't agree on, you will proceed to the hearing and the judge will rule on the remaining issues.

Forms Required to Finalize Your Modification.

The following form is required to finalize your modification:

- *Supplemental Judgment modifying Judgment regarding Custody, Parenting Time, Child Support or Spousal Support and/or Order re: Jurisdiction*
You may also need to file the following additional forms, depending on your circumstances.
- **Parenting Plan.** If there are additional pages in your parenting plan, these must be attached to the supplemental judgment.
- **Parenting Class Certificate of Completion.** Both parties are required to provide the Court with a certificate of completion of Kids' Turn, unless it has already been filed with the clerk's office or if the party has completed the class in the last five years or if the youngest child is 17 or older.
- **Child Support Worksheets.** If child support will or could be ordered, changed or terminated, child support worksheets need to be filled out and attached to the final judgment.

The Supplemental Judgment.

The supplemental judgment finalizes your modification and contains all of the issues decided in mediation, hearing, or through your agreement. If both parties agree on all issues following the hearing, it may be prepared by either party as long as it is reviewed and notarized and signed by both parties. If the parties don't agree on all issues, the judge may direct one party or the attorney to fill out the judgment.

If you are responsible for filling out and filing the final judgment, make a copy for yourself and one for the other party. Mail a copy to the other party or the other party's attorney and complete the certificate of mailing on the original judgment. If the other party has not signed the supplemental judgment, you are required to mail a copy of the proposed order at least seven days prior to submitting it to the court. If the other party is represented by an attorney, you are required to provide a copy to the attorney at least three days prior to submitting it to the court. You should complete the certificate of mailing portion of the supplemental judgment to indicate when you mailed or provided the copy and file then file the original with the court.

WASHINGTON COUNTY FAMILY LAW RESOURCES

BELOW IS A LIST OF SOME SERVICES AVAILABLE IN WASHINGTON COUNTY. THE CIRCUIT COURT DOES NOT SPECIFICALLY ENDORSE ANY OF THEM.

Circuit Court

Name: **Washington County Circuit Court**
Address: 150 N First Avenue
Hillsboro, OR 97124
Phone number: (503) 846-8888
Website: <http://courts.oregon.gov/Washington>
Fees: http://courts.oregon.gov/Washington/Rules_Fees/Court_Fees/Pages/fees.aspx

Name: **Family Law Assistance Program, 8 am to 5 pm, Monday-Friday**
Address: 145 NE Second Avenue, Room 102C
Hillsboro, OR 97124
Phone: Not available by phone.

Website: http://courts.oregon.gov/Washington/Services/Family_Law/pages/family_law_main.aspx
Email: wsh.familylaw@ojd.state.or.us
Fee: Services are free; forms are 25 cents per page
Service provided: Sell and review forms for divorce, separation, unmarried parents custody, and modifications. Many forms are available on website or by email. Document reviews for starting or finishing divorce or custody cases and modifications are only by registering for a workshop by email or in person. Services are for people representing themselves in a family law court action. Court employees (facilitators) in the program are not attorneys and may not give legal advice. Spanish-speaking staff available.

Mediation Services (court-connected custody and parenting time issues only)

Name: **Conciliation Services**
Address: Juvenile Services Building
222 N First Ave
Hillsboro, OR 97124
Contact: **Carol Swoboda, Specialist**
Phone number: (503) 846-3428 Fax: (503) 846-3753
Website: <http://www.co.washington.or.us/Juvenile/>
E-mail: webmaster@co.washington.or.us
Fee: Free with order or \$80 per session for voluntary mediation
Service provided: Mediation, conciliation, co-parenting counseling

Mediation Services (privately obtained)

Name: **Oregon Mediation Association**
Phone number: (503) 8872-9775
Website: www.omediate.org
Service provided: Referral to private mediation services providers

NON-PROFIT LEGAL SERVICES

Name: **Oregon Law Center (Legal Aid)**—Hillsboro Regional Office
Address: 230 NE Second, Suite F
Hillsboro, OR 97124-3011
Phone number: (503) 640-4115
Fax: (503) 640-9634
Child Support helpline: (800) 383-1222
Website: <http://www.oregonlawhelp.org>
Fee: Free
Service provided: Legal services to low income individuals; Spanish speaking staff available.

Name: **St. Andrew Legal Clinic**—Hillsboro Office
Address: 232 NE Lincoln, Suite H
Hillsboro, OR 97124
Phone number: (503) 648-1600
Website: <http://www.salcgroup.org>
Fee: Sliding fee scale
Service provided: Legal services for child custody, child support, divorce, family abuse prevention, guardianship, paternity, spousal support, step-parent adoption, visitation/parenting time.

SERVICES PROVIDED BY THE OREGON STATE BAR

Lawyer Referral Service

8 am to 5 pm, Monday-Friday
Phone number: (503) 684-3763 or toll-free in Oregon: (800) 452-7636
Website: <http://www.osbar.org/public/ris/ris.html#referral>
Fee: \$35 initial consultation
Service provided: Referral to an attorney for an in-office consultation about your legal issues.

Modest Means Program

8 am to 5 pm, Monday-Friday
Phone number: (503) 684-3763 or toll-free in Oregon: (800) 452-7636
Website: <http://www.osbar.org/public/ris/ris.html#referral>
Fee: \$35 initial consultation; further representation as arranged with attorney.
Service provided: Legal assistance at a reduced rate. Assistance is offered to qualified applicants based on income and assets, type of case and availability of a participating lawyer in Washington County

Military Assistance Panel

8 am to 5 pm, Monday-Friday
Phone number: (503) 684-3763 or toll-free in Oregon: (800) 452-7636
Website: http://www.osbar.org/_docs/ris/militaryflier.pdf
Fee: Free 30 minute; further representation as arranged with attorney.
Service provided: The Military Assistance Panel matches Oregon active-duty **deployed** service members and their dependents with lawyers willing to provide legal advice. Lawyers have been trained to provide legal assistance relating to the Service Members Civil Relief Act and also are able to help with a wide range of legal matters.

Problem Solvers

8 am to 5 pm, Monday-Friday
Phone number: (503) 684-3763 or toll-free in Oregon: (800) 452-7636
Website: <http://www.osbar.org/public/ris/ris.html#solvers>
Fee: Free 30 minute consultation.
Service provided: Young people between the ages of 11 and 17 may call to request a referral to this program for a consultation with an attorney.

Legal Topic Index:

<http://www.oregonstatebar.org/public/legalinfo.html>
Fee: Free
Service provided: Legal information covering a variety of general legal topics.