

# Modification of Custody, Parenting Time and Child 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 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 will allow you to ask the court to modify a custody, parenting time, and/or child support order or judgment. The court may terminate a party’s obligation to pay child support if a change of custody is ordered, or adjust child support up or down if there has been a change in circumstances since the last child 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 either party lives in a different judicial district in Oregon than the one that entered that judgment, you may request that the case be transferred. 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 Case	2
<p>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            Either of the following (<i>consult your court clerk or facilitator</i>):            Order to Show Cause Regarding Modification of Judgment - Written Response Required            Order to Show Cause Regarding Modification of Judgment - Personal Appearance Required            Certificate re: Pending Child Support Proceedings and/or Existing Child Support Orders/            Judgments            Confidential Information Form (CIF)            Notice of CIF Filing            Certificate of Document Preparation            Certificate of Mailing            Affidavit/Acceptance of Service</p> <p>NOTE: If a request to terminate or modify child support is being made, some courts require that the following documents be filed with the above documents: <i>Uniform Support Declaration</i> (see Packet #6F), and <i>Child Support Calculation Worksheets</i> (See “Child Support” on page 3). Check with your court clerk or facilitator.</p>	
2. Waiting for a Response; Taking a Default	6
<p>Ex Parte Motion for Order of Default; and Order            Affidavit in Support of Motion for Order of Default            (<i>continued on next page</i>)</p>	

Supplemental Judgment Modifying Judgment Re: Custody, Parenting Time, Child Support, and Order re: Jurisdiction (ORS 107.174)

Attachments: Parenting Plan, Parenting Class Certificate of Completion and, if a request to terminate or modify child support is being made: *Uniform Support Declaration* (see Packet #6F), *Child Support Calculation Worksheets* (See “Child Support” on page 3)

**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”, “Respondent”, or “Co-Petitioners” will stay the same. If the judgment you are asking the court to modify was entered in another court, 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 will be the Petitioner and the other parent will be the Respondent.
- Make sure to put the same information in the caption on all copies and originals of documents you file with the court.
- 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 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: STARTING YOUR CASE**

**Legal Issues to Consider.**

This type of case starts with a “motion” 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 motion, 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](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).**

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, 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 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.** 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 defray the cost of health insurance and the cost of uninsured medical expenses. 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. A party who makes no more than Oregon minimum wage 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 and Unemancipated Children at Least 18 and Under 21 Years of Age.** Under Oregon law unmarried unemancipated 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, your spouse/partner, 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 your spouse/partner 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.

### **If Both Parents Already Agree.**

If both parents agree on all issues to change either custody or parenting time, and/or child support, the forms in Packet 4C may be filed. Practice varies in the different courts, so you should contact your court or courthouse facilitator to determine which forms may be used and to help you with this process.

### **Filling out the Forms.**

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

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)*
- *Certificate Re: Pending Child Support Proceedings and/or Existing Child Support Orders/Judgments Certificate of Document Preparation*
- *Certificate of Mailing (if you or the other parent is or has received public assistance)*
- *Confidential Information Form (CIF). If there are CIFs already filed in the original court proceeding but the information has changed, you will need to file another CIF and check the box at the top of the form that shows it is an amended CIF.*
- *Notice of CIF Filing*

### **Social Security numbers and other 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.

• **IMPORTANT:** Consult with your court clerk or court facilitator to determine which of the following forms you will be required to fill out. Some courts require the other parent to personally appear at a hearing, while others only require a written response.

- a. *Order to Show Cause re: Modification of Judgment - Written Response Required [ORDER]* —  
— Some courts also require a “NOTICE ABOUT WRITTEN RESPONSE” to be attached to this form. Check with your local court or facilitator to see if one is required in your county.
- b. *Order to Show Cause re: Modification of Judgment - Personal Appearance Required [ORDER]*

NOTE: If a request to terminate or modify child support is being made, some courts require that the following documents be filed with the above documents. Check with your court clerk or facilitator:

- *Child Support Calculation Worksheet(s)* - See “Child Support” on page 3.
- *Uniform Support Declaration* (Packet #6F)

### **Make copies.**

Make one copy of all of the forms for your records, and one copy of the MOTION, AFFIDAVIT AND ORDER to serve on (deliver to) the other parent.

If you request that the court end the obligation to pay child support because of a requested change in custody, or change the amount of child support owed because of a change in parenting time or other circumstance, you are required to send a copy of the motion 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/office\\_info/offices.htm](http://www.dcs.state.or.us/office_info/offices.htm) 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 motion.

### **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 have 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 which may be attached to these instructions.

### **File the forms.**

File all of the original forms that are listed above with the court clerk. 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. Note, however, that even if your filing fee is deferred, most courts will require that you pay it at a later date.

The clerk may 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 other parent.

The clerk may also schedule a time for a hearing in your case. If a hearing is scheduled, you must appear at the time and place of the hearing unless the other parent signs a Stipulation to Amend Parenting Time Order (see Packet 4C).

### **Parenting Classes.**

Many courts require that parents of minor children go to a parent education class. If your court has a program and the local court rules require that you attend, 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.

### **Check Back.**

The ORDER must be signed by a judge before you serve the other parent. You may have to check back with the court after you have filed the papers to see if a judge signed the ORDER. Ask the court clerk or facilitator how long you may have to wait, usually 7-10 days. If the ORDER was signed and the following information is not on the service copy of the ORDER you made for the other parent, place the symbols “/s/” on the judge’s signature line, along with the name of the judge and fill in the date that the order was signed. Sign the lines on the service copies of the MOTION, AFFIDAVIT and ORDER where they say, “I certify that this is a true copy.” You are now ready to have the other party served.

If the ORDER was not signed, find out from the judge’s staff, the courthouse facilitator or the court clerk why the paperwork was not signed.

### **Have the Other Parent Served.**

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

- Copies of any documents given to you by the clerk, and
- Certified copies of the MOTION, AFFIDAVIT and ORDER. You may certify the copies by signing your name where it says “I certify this is a true copy”.
- If you are requesting that child support be terminated or modified, you will also be required to serve on the other parent and/or file the following documents either at the beginning of your case, before a hearing or before entry of judgment. Check with your court clerk or facilitator: (a) *Uniform Support Declaration* (see Packet #6F); and/or (b) *Child Support Calculation Worksheet(s)* - See “Child Support” on page 3.

If the other parent 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 parent 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 parent 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 parent might react angrily or violently. An Affidavit 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,” “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.

If you are not able to have the other parent 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 the other parent for serving children who are parties to the case.

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

Oregon law gives the other parent 30 days to respond in writing to your motion. ORS 107.135(11). The time starts running from the date of service. The written response is required even if the court also requires the other parent to personally appear at a hearing. The written response must be filed with the required filing fee. The other parent may ask the court to waive or defer the fee.

#### **If the Other Parent is in the Military.**

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

#### **Check for Response.**

The other parent 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. If no response has been filed, **the court may either** enter judgment ordering the items you

requested in your motion, or it may require you to file a request for default. A “default” means that you may ask the court to enter a judgment giving you the items you asked for in your motion, with no input from the other parent. You should check with your court to determine whether you will need to request entry of a default order. If a response has been filed, you will not be allowed to request a default and you will need to skip the next two sections.

### **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 completed 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 or court facilitator 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 other party is not complete enough for the judge to be sure that s/he got notice of the court proceeding.

## **STEP 3: 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 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, and will probably set future court dates.

### **Working Toward Agreement.**

The court wants to assist you in resolving the issues that the parents 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 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 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 or 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 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 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 also want to meet with you for a “settlement conference” (a private meeting with a judge) to help you come to agreement.

### **Forms Required to Finalize Your Case.**

The following form is required to finalize your case:

- *Supplemental Judgment modifying Judgment regarding Custody, Parenting Time, Child Support and/or Order re: Jurisdiction*

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.

- **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.

- **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.

- **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.

### **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 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 the parents don't agree on all issues, the judge may direct one parent to fill out the judgment.

If the other parent didn't file a response, the information you fill out in the final judgment should be the same as what you requested in your motion. If the other parent 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 other parent (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.**