

## CHANGING (“MODIFYING”) JUDGMENTS



### **Important Contact Information**

Oregon Judicial Department – [www.courts.oregon.gov](http://www.courts.oregon.gov)

Oregon State Bar Lawyer Referral Service - <https://www.osbar.org/public/>

**Phone:** 503.684.3763 or toll-free in Oregon at 800.452.7636



If you are deployed or about to be deployed, contact the Oregon State Bar Military Assistance Panel ([www.osbar.org/docs/ris/militaryflyer.pdf](http://www.osbar.org/docs/ris/militaryflyer.pdf)) for information about special rights and rules that may apply to you.

**NOTE:** If you only want to change child support, contact the Department of Justice, Division of Child Support ([www.oregonchildsupport.gov](http://www.oregonchildsupport.gov)).

### **What these forms do**

This set of forms will help you to ask the court to change (‘modify’) support, custody, or parenting time if you already have a judgment from a court. If a change in custody or parenting time is ordered, the court may also change the amount of child support or end it.

- **Military Deployment:** If you need a modification because a parent is being deployed by the military, you must use a different packet of forms. Special rules and rights apply in those cases. Go to [www.courts.oregon.gov/forms](http://www.courts.oregon.gov/forms) for the correct forms.
- **Adult Children:** If you have adult children 18, 19, or 20 years old, they are “**necessary parties**” to this case. They **MUST** be included as parties and properly served with all documents. Each child may later waive the right to be part of the case, but this must be done formally after you file. If you fail to properly serve an adult child, your case may be delayed until you do. Talk to a lawyer if you have any concerns.
- **Child Attending School:** If you have an adult child (*see above*), the court may order child support for that child as long as the child is attending school. The court may order child support and medical support to be paid by either or both parents. There is **NO** parenting plan or parenting time credit for a Child Attending School. See [ORS 107.108](#) for more information.

### **If Both Parties Already Agree**

If you both agree on all of the issues, you may be able to file a stipulated *Supplemental Judgment*. Call the court to find out how to do that.



## Information about Modifications

This type of case starts with a motion called an ***Ex Parte Motion for Order to Show Cause re: Judgment Modification and Declaration in Support***. This *Motion* tells the court what you want. It ends with a ***Supplemental Judgment***. The *Judgment* contains the changes that the court makes to your old judgment.

- **Where to File** - You normally should file in the circuit court that entered the judgment you are trying to modify.
  - Talk to a lawyer or court staff if you want your modification heard in a different county.
  - If you want to modify a judgment from another state, talk to a lawyer. Oregon courts may not be able to modify the judgment.
- **Case Number** –Your case number is the same as the one on your old judgment.
- **Parties** – The parties are the same as on the judgment you want to modify. If you were the “Respondent” in that case, then you are still the “Respondent” now, even if you are the one requesting the modification.
  - If any of the children in your old judgment are now 18, 19, or 20 years old, you will need to add those children to the case as “necessary parties.”
- **Contact Information** - Keep the court and all other parties informed of your current address so you get notice of all court dates. **You are not required to use your home address on any court form.** You may use any contact address where you regularly check in, as long as it is in the same state as your home. If you use a contact address, the court will assume that you receive all papers sent to that address. **It is YOUR responsibility to let the court and other parties know if you move or want to get mail at a different address.**

## STEP 1: FILLING OUT FORMS



### **Fill out the following forms:**

- *Ex Parte Motion for Order to Show Cause re: Modification of Judgment and Declaration in Support*
- *Confidential Information Form (CIF)* and *Notice of Filing of CIF* (if either party’s employer has changed)
- *Uniform Support Declaration* (if you are requesting a change in child support or spousal/partner support)
- *Child Support Worksheets* (if you are requesting a change of child support)
- *Certificate of Mailing to DCS* (if either parent is receiving public assistance)

**It is important that you file with the court *before* you serve the other party!** If you serve *before* you file, you will have to re-serve and pay the service fees again. See Step 2 below for information about service.

- **MAKE SURE YOU COMPLETE THE COUNTY NAME AT THE TOP OF THE FIRST PAGE OF EACH FORM!**

### **Uniform Support Declaration**

If you are asking for a change in spousal/partner support or child support and you and the other party do not agree on an amount, you must complete a **Uniform Support Declaration (USD)**. Talk to a tax professional about the tax impact of changing spousal/partner support.

#### Tips for filling out the USD:

- If you are requesting a change of **spousal/partner support**, fill out the Declaration and Schedule 1 and attach the documents required by both.
- If you are requesting **child support** for the amount that the Child Support Guidelines recommend, only fill out the Declaration and attach the documents it asks for.
  - If you are requesting a different amount of child support than the Guidelines recommend, fill out *both* the Declaration and Schedule 1. Attach all of the documents that the Declaration and Schedule ask for.
- Use your *actual, present* expenses. Estimates are fine as long as they are realistic and you have no way of confirming the amount.
- Some items may not apply to you – mark those spaces “N/A” (Not Applicable), but complete *every* item that does apply.
- If you have an expense that is not listed, add it, along with a brief explanation.
- If you anticipate any major changes (birth of a new baby, a child entering or leaving school, a layoff, a car payment or mortgage being paid off), note these as well. Do NOT include fears or possibilities – only things you know or reasonably expect will happen.
- If your amounts are unusually high or low, include a brief explanation of why (if one of you is temporarily living with a relative, or if one party moved out and is no longer contributing to shared expenses). Include an estimate of what you believe your expenses will be after the situation is resolved.
- If one of your children has a medical problem, be sure to note it and include a reasonably accurate estimate of the treatment cost.

### **Parenting Plan**

A parenting plan is required if you want to change custody or parenting time. If you are *only* trying to change child support, you do not need to submit a parenting plan. The plan sets out the schedule and may include rules for each parent’s time with the child. You can describe your parenting plan in the *Motion* or attach it as a separate page.

Oregon has a **Basic Parenting Plan Guide for Parents**. This guide has information about how to develop a plan, information about alternative schedules, and stages of your children’s growth that should be considered when creating a plan. A sample parenting plan is included in the guide. The guide can be downloaded at [www.courts.oregon.gov/parentingplans](http://www.courts.oregon.gov/parentingplans) . There is also a *Safety Focused Parenting Plan Guide* on this website. This can help you develop a parenting plan if you have safety concerns for your children. Many local courts also have standard plans in their *Supplemental Local Rules*. Check your local court’s website. You can use these plans whole or as a guide to develop your own. You can also use OJD Guide & File to create a parenting plan interactively. Go to [www.courts.oregon.gov/iforms](http://www.courts.oregon.gov/iforms).

### **Co-Parenting Education**

Many courts require that parents of minor children go to a court-approved co-parenting class. Some courts will not allow you to change custody or parenting time until you have completed the class and filed a certificate of completion with the court. Contact the court to see if you have to sign up or if the court will send you information after you file.

### **Moving**

Neither parent may move more than 60 additional miles away from the other parent without giving him or her and the court notice of the move (unless your *Judgment* waived that requirement). You may ask the judge to waive this requirement by checking the appropriate box on the *Motion*.

### **Custody**

Refer to ORS 107.137 for factors a court will consider in awarding custody. The most important factor is *always* the best interest and welfare of the *child*.

### **Child Support:**

- Attach copies of any child support orders that are already in place regarding the children affected by your *Motion*.

### ***Calculating Child Support***

Child support can only be changed if there has been a significant change of circumstances or a change in custody or parenting time since the original order.

The amount of child support is determined by the Child Support Guidelines. The Guidelines have worksheets to help you estimate what support may be ordered. The Division of Child Support (DCS) also has an interactive calculator at [www.oregonchildsupport.gov](http://www.oregonchildsupport.gov) that can give you an idea of what child support may be ordered. You may also be able to ask a facilitator at your local court for help estimating child support. Submit the worksheet or calculator printout with your forms.

- **NOTE:** If you request a child support amount that is *different* from what the calculator or worksheet says, you *must* explain why and how you reached that amount. If not, your case may be delayed until you provide an explanation for the difference.

### ***Payment of Child Support***

Support is usually withheld from the payor's (the person who has to pay support) paycheck. The court may allow an exception to the income withholding requirement if you qualify under [ORS 25.396](#) and if you request an exception. If the court grants an exception to income withholding, payment can be deposited into the receiver's bank account. If you are *paying* child support directly to the other parent, you should keep proof of every payment, including a receipt if you pay cash.

### **Health Insurance**

The judgment *must* address health insurance for any minor child involved in your case if your existing order does not.

### **Cash Medical Support**

In addition to child support, the court may order "Cash Medical Support." Cash Medical Support is to help pay for health insurance and out-of-pocket medical expenses.

If neither parent has health insurance available, the court must order Cash Medical Support unless the judge finds reasons not to. The judge *cannot* order Cash Medical Support in some situations.

### **Adult Children (18-21)**

If you have any child with the respondent who is 18, 19, or 20 years old who is not married or

emancipated, that child is a necessary party to this case. He or she *must* be added as a party in the case caption and has the right to participate.

If an adult child is attending school at least half-time according to the school's standards, that child is considered a "**child attending school.**" A child attending school is entitled to child support until age 21. The child must sign the judgment if support is ordered.

You must properly serve each adult child with all the same papers as the other parent (see section below about serving the other party). After being served, a child **may** sign a ***Waiver of Further Appearance and Consent to Entry of Judgment*** form if the child chooses not to participate in the case.

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### **Have your documents reviewed**

You may want to have your documents reviewed before you file. For information about how to find a lawyer, call the Oregon State Bar at the number on [Page 1](#). If you are low-income, you might be able to get your documents reviewed for a smaller fee through the Oregon State Bar's Modest Means program. Your local Legal Aid office might review documents for free if you qualify. Facilitators may be available for free in your court, but you may have to make an appointment. Call your court for information.



### **Make copies**

Make one copy of **all** of the forms for your records, and one copy of the *Motion and Declaration* to serve on the other party if the court grants your motion (*see below*).

You must also send a copy of the *Motion and Declaration* to the Division of Child Support branch office in your county if either of you is receiving public assistance. The branch office's address can be found at [www.dcs.state.or.us/offices.htm](http://www.dcs.state.or.us/offices.htm) or in the "Local Family Law Practices and Programs" form for your local court. Fill out and file the ***Certificate of Mailing to DCS*** after you mail the *Motion*.

## STEP 2: FILING AND SERVICE



### *File your forms*

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File all of the **original** forms with the court clerk. You will have to pay the filing fee when you file your papers. Go to [www.courts.oregon.gov/Pages/fees.aspx](http://www.courts.oregon.gov/Pages/fees.aspx) for the filing fee. Some courts will set a hearing for you to appear when you file your *Motion*. Ask the court when you file if you will have to appear or if you will receive the court's decision by mail (*see* The Order on Motion to Show Cause *below*)

- If you are low income, you may ask the court to defer (postpone) or waive your filing fee. You must complete an ***Application and Declaration for Deferral or Waiver of Fees*** and an ***Order Regarding Deferral or Waiver of Fees*** and file them with your papers. If the fee is deferred, you will have to pay the fee later. If the fee is waived, you don't have to pay it now. However, the judge may reconsider waived and deferred fees at the end of the case.

### **The Order on Motion to Show Cause**

The judge will review your motion and declaration. The court will send (or give) you an *Order on Motion to Show Cause* which either grants or denies your request to have the other party respond to your requested changes. The order will have information for both you and the other party about how your case will proceed. If a hearing is scheduled, you *must* appear or the court will deny the changes you asked for.

- If the court grants your request on the *Order to Show Cause*, you must serve the *Order* and a copy of the *Motion and Declaration* on the other party. See the next section for service information.
- If the court denies your request, then no changes will be made to your judgment and no hearing will be scheduled.



### *SERVICE*

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You must officially notify the other party that you have filed a motion. This is called “service.” Follow the same steps to serve any 18, 19, or 20 year old children.

**Acceptance of Service** - If it is safe for you to give the other party the papers yourself, you can use an ***Acceptance of Service*** form. If the other party signs an *Acceptance of Service* form, no other kind of service is required. Signing the *Acceptance of Service* does *not* mean the other party agrees with anything in your *Petition*, only that he or she received the papers. You must still file the papers with the court before you give the copies to the other party.

### **Formal Service**

If the other party does not sign the ***Acceptance of Service***, you must use another method. There are four ways you can serve. Service must be done **after** you receive an order granting your motion.

**\*\*3 CRITICAL POINTS\*\***

1. If you serve before you file, you will have to serve the papers again
2. You *CANNOT* serve the papers yourself
3. If the other party has a lawyer, you should also send a courtesy copy of the papers to the lawyer

1. **Personal Service:**

- a. **By Process Server:** Take a copy of your papers to the sheriff's office in the county where the other party is located and have a sheriff's officer serve the papers. The sheriff's office charges a fee for service. You can also hire a private process server of your choice.
- b. **By a Non-Party:** Have a competent\* person 18 years or older who is a resident of Oregon **and who is not a party** to the case (Petitioner or Respondent), **nor** the lawyer of a party, serve the papers. The server cannot be an employee of any party. If the other party is outside of Oregon, the server can be a resident of the state where the other party is. If you have safety concerns, have the sheriff perform service.  
\*competent means a person who can understand, remember, and tell others about an event.

A ***Certificate of Service*** must be filed with the court by whoever serves the other party. The certificate must include the date of service and the name of the person served.

2. **Substituted Service:** The process server may leave the papers at the other party's residence (where he or she normally lives) with someone 14 or older who lives there. The process server must also mail a copy of the papers (with a statement of the date, time, and place that the papers were served) to the other party by first class mail. Make sure the process server completes a ***Certificate of Service***. The date of service is the day the first class mailing is put in the mail.
3. **Office Service:** The process server may leave the papers with someone *in charge* of the other party's office or normal workplace. The process server must also mail a copy of the papers (with a statement of the date, time, and place that the papers were served) to the other party by first class mail. Make sure the process server completes a ***Certificate of Service***. The date of service is the day the first class mailing is put in the mail.
4. **By Mail:** **First**, the process server must send the papers to the other party's home or business address by first class mail. **Second**, the server must send a copy by certified mail, return receipt requested. The process server **must** file proof of service with the court, including the signed green card, date of receipt, and item number along with a ***Certificate of Service***. If the green card is not returned or if someone other than the other party signed for it, then service by mail was not effective and you must try another type of service. The date of service is the day the other party signs the returned green card.

| SENDER: COMPLETE THIS SECTION   | COMPLETE THIS SECTION ON DELIVERY  |                                       |                     |                   |  |   |   |
|---|--|---------------------------------------|---------------------|-------------------|--|---|---|
| <ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the envelope, or on the front if space permits.</li> </ul> | <table border="1"> <tr> <td>A. Received by (Please Print Clearly)</td> <td>B. Date of Delivery</td> </tr> <tr> <td>C. Signature<br/>X</td> <td><input type="checkbox"/> Agent<br/><input type="checkbox"/> Addressee</td> </tr> <tr> <td>D. Is delivery address different from item 1? If YES, enter delivery address below:</td> <td><input type="checkbox"/> Yes<br/><input type="checkbox"/> No</td> </tr> </table> | A. Received by (Please Print Clearly) | B. Date of Delivery | C. Signature<br>X | <input type="checkbox"/> Agent<br><input type="checkbox"/> Addressee | D. Is delivery address different from item 1? If YES, enter delivery address below: | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
| A. Received by (Please Print Clearly)   | B. Date of Delivery  |                                       |                     |                   |  |   |   |
| C. Signature<br>X   | <input type="checkbox"/> Agent<br><input type="checkbox"/> Addressee   |                                       |                     |                   |  |   |   |
| D. Is delivery address different from item 1? If YES, enter delivery address below:   | <input type="checkbox"/> Yes<br><input type="checkbox"/> No  |                                       |                     |                   |  |   |   |
| 1. Article Addressed to:  |  |                                       |                     |                   |  |   |   |
| 2. Article Number (Copy from service label)   |  |                                       |                     |                   |  |   |   |
|   | 3. Service Type<br><input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise<br><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.   |                                       |                     |                   |  |   |   |
|   | 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes   |                                       |                     |                   |  |   |   |

PS Form 3811, July 1999      Domestic Return Receipt      102395-00-M-0952

### **Certificate of Service**

The Certificates are your proof of service. An original *Certificate of Service* or *Acceptance of Service* must be filed with the court for your case to proceed, regardless of the method of service.



If a certificate of service is not received within **63 days** of filing your *Motion*, the court may send you a notice of dismissal.

If you are not able to have the other party served by any of the methods listed above, you may ask a judge to allow you to use another service method. The judge might allow you to publish or post the documents. Forms to make this request are available online at [www.courts.oregon.gov](http://www.courts.oregon.gov).

## **STEP 3: RESOLVING YOUR CASE**

### **IF YOU AND THE OTHER PARTY AGREE TO CHANGE YOUR JUDGMENT:**

If you and the other party have agreed (“stipulated”) to all of the issues, fill out and have both parties sign:

- ***Supplemental Judgment Modifying a Domestic Relations Judgment***

### **IF THE COURT DID NOT SCHEDULE A HEARING ON YOUR ORDER:**

If the other party does not respond to the court in writing within 30 days of the date of service, you may submit a completed ***Supplemental Judgment of Modification of Domestic Relations Judgment*** to the court. The *Judgment* MUST have exactly the same terms as your original *Motion* or you will have to either start over (and re-serve) or fill out a new *Judgment*. If you don’t submit the *Judgment* to the court, your judgment terms will not be changed and your *Motion* may be dismissed.

You should receive a copy of the response. If not, you can check with the court to see if the other party responded.

### **IF THE COURT SCHEDULED A HEARING ON YOUR ORDER:**

If the court schedules a hearing in your case, you *must* appear or your motion will be dismissed and no changes will be made to your existing judgment. **NOTE:** you must appear even if the other party does not file a written response.



## **The Judgment**

Fill out:

- ***Supplemental Judgment Modifying a Domestic Relations Judgment***

Make a copy for yourself and one for the other party. File the original with the court.

The terms in the judgment must be *exactly* the same as what you requested in your *Motion and Declaration* unless you had a hearing and the judge made different orders.

Other parties can object to the *Judgment*. If that happens, you have to discuss the objections and attempt to resolve them before you submit the *Judgment* to the court. If you are not able to resolve the objections, the objecting parties can either send you a written statement explaining their objections, or they can submit their objections directly to the court. You must complete the *Certificate of Readiness* section of the *Judgment* to tell the judge whether there are outstanding objections. See [UTCR 5.100\(1\)](#) for more information about notice and objections.<sup>1</sup>

If the other party is responsible for preparing the judgment, they must send the proposed judgment to you before submitting it to the court. Then you can review it and object to it within 7 days of the date it was sent to you. If you and the other party are not able to resolve your objections after reasonable efforts, you can either send a written explanation of your objections to the party or directly to the court. You must notify the other party of your intentions so that they can advise the judge that there are outstanding issues. The judge may make a decision after reviewing the documents, or the court may contact you with further information.

If you are responsible for preparing the final judgment, make a copy for yourself and one for other party. File the original with the court.

Your modification is effective the date the *Judgment* is entered into the court register. You will receive a notice when the judgment is entered.

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<sup>1</sup> <http://courts.oregon.gov/utcr>