

Unmarried Parents: Custody, Parenting Time, and Child Support

These instructions are not a complete statement of the law. They cover basic procedure for uncomplicated cases. Neither the Court nor Court Staff is permitted to give legal advice. For legal information, please talk to a lawyer, visit the local law library, 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. You may get the forms at <http://courts.oregon.gov/linn> go into **FORMS**. Linn County Court may also have the form available in Room 107 for a small fee.

Linn County Court has local rules, programs and procedures that may not be explained in these instructions. Please refer to the “Linn County Supplemental Local Court Rules.”

This packet will allow you to ask the court for custody, parenting time, or child support. **Paternity (who the father of the child is) must be established before you can use these forms.** Paternity may be established if the father signs and files a Voluntary Acknowledgment of Paternity (a statement that says he is the father) with the State Registrar of Vital Statistics. Paternity may also be established through the Oregon Child Support Program or through the courts in a separate filing.

This is an **abbreviated version of the statewide instructions**. Statewide instructions are available on the Oregon Judicial Department’s Family law website at:

<http://courts.oregon.gov/OJD/OSCA/JFCPD/Pages/FLP/Forms-Divorce.aspx>

STEPS AND FORMS

Step 1. Starting your Case – Page 4

(additional forms you may need are listed on page 2)

- Petition for Custody and Parenting Time, and Child Support
- Notice of Statutory Restraining Order Preventing the Dissipation of Assets in Domestic Relations Actions Between Unmarried Parents
- Notice of Mandatory Parent Education
- Certificate re: Pending Child Support Proceedings and Existing Child Support Orders or Judgments
- Confidential Information Form (CIF) (one for each parent and each adult child)
- Notice of CIF Filing
- Summons

Step 2. Notifying the other parent – Page 5

- Certificate of Service
- Certificate of Mailing to DCS (if you or the respondent receive public assistance)

Step 3. Resolving Your Case – Page 7

By Agreement

- Declaration in Support of Judgment
- General Judgment of Custody and Parenting Time, and Child Support

or

By Default

- Ex Parte Motion for Order of Default and Declaration in Support
- Order on Motion for Default
- Declaration in Support of Judgment
- General Judgment of Custody and Parenting Time, and Child Support

or

By Hearing

- General Judgment of Custody and Parenting Time, and Child Support

Additional forms you may need:

- ___ Child Support Worksheets (if you are requesting child support)
 - ___ Parenting Plan
 - ___ Statement of Assets and Liabilities
 - ___ Uniform Support Declaration
 - ___ Waiver of Personal Service
 - ___ Waiver of Further Appearance and Consent to Entry of Judgment (for adult children)
- *More information about these forms may be found in the expanded version of the instructions.

GENERAL INFORMATION

A. Complete all sections- The document must be readable. Print handwritten documents. If the answer to a question is none, then write “none”. Do not use “N/A” for the word none.

B. File the original forms with the clerk- You should always make yourself an extra copy before you file any form with the clerk.

C. Keep the court informed of your current address- It is your responsibility to keep the court informed of your current address. **You are not required to use your residential address on any court form.** You may use a contact address where you regularly check in. **Your contact address will become public information.** Please make sure you use an address that is okay for other people, including the Respondent, to know. If you use a contact address, the court will assume that you will receive all notices sent to that address.

D. Case Heading-- Make sure you fill in your full names in the blanks at the top of the forms (first, middle or middle initial, last). Print the names the same way on all of the forms.

E. Case number- The clerk will give you a case number when you file your papers. After you receive your case number, you will need to print your case number on all your copies and other papers you file with the court.

F. Statutory Restraining Order – By filing your *Petition*, you agree to follow the terms of an automatic restraining order. The order is effective once the papers have been served on the respondent (*see below for service information*). If you don’t follow the order, you can be held in contempt of court and subject to penalties.

- You must attach a copy of the restraining order (called “*Notice of Statutory Restraining Order Preventing the Dissipation of Assets in Domestic Relations Actions Between Unmarried Parents*”) to the *Summons* and serve it on the respondent. The form is included in this packet.
- The statutory restraining order prevents *either parent* from making changes to insurance policies without the agreement of the other parent if those policies are for the benefit of the children.

G. Confidential Personal Information- Some personal information should only be listed in a Confidential Information Form (CIF) and not in any of the other papers you file with the court. You must complete a CIF for each parent in the case.

H. Parenting Plans- The most important factor is *always* the best interest and welfare of the *child*.

Custody and Parenting Time- Joint and Sole Custody are legal terms that generally refer to the right to make certain decisions about the child. The parenting plan controls how much time each parent has with the child. The court can only award joint custody if both parents agree

to all of the terms. In most cases, both parents will have equal rights to information about the child regardless of the type of custody ordered. Both parents will have time with the child unless the court orders otherwise.

Parenting Plans- To avoid delay in your case, your *Petition* should include a parenting plan. A parenting plan sets out the schedule and rules for each parent’s time with the child. Your plan must include the minimum amount of parenting time (formerly called “visitation”) you want non-custodial parent to have. You can be as detailed as you like. You can describe the parenting plan in the *Petition* or you can attach a separate page. At the end of your case, the *Judgment* **must** contain a parenting plan. The parenting plan can be a part of the judgment form, or it can be in an attached document.

Safety- If you have safety concerns, you may be able to suspend certain rights that the non-custodial parent automatically has. Check the appropriate box on the *Petition*. These rights include your duty to provide contact information and to tell the other parent if there is a major health concern for the children. [ORS 107.154](#) and [107.164](#) list the rights of a non-custodial parent. You **MUST** have a valid, legal reason for suspending these rights. Talk to a lawyer about these issues.

I. Child Support- IMPORTANT! Oregon law requires that the petitioning parent 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 signed copies of any pre-existing child support orders.**

Calculating Child Support- In most cases, the court will order child support if you have a child and no child support order already exists. Go to www.justice.oregon.gov/guidelines for worksheets and an interactive program to calculate support. Worksheets must be submitted to the court before a judgment can be entered. You can submit them with your *Petition*, but you must submit the worksheet with your *Judgment*.

- **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 explain 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 in the *Petition*. If the court grants an exception to income withholding, payment can be made by direct deposit to 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- Your judgment *must* address health insurance for any minor child involved in your case. There are two main categories of health insurance: “private,” which is available through an employer or directly from an insurance carrier, and “public,” such as the Oregon Health Plan, which you have to apply to the state for.

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 private 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 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. Adult children who are attending school at least half-time may seek child support from either or both parents.

You must properly serve each adult child with all the same papers as Respondent (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.

You may be required to serve new documents on the respondent before you can get a final judgment if:

➤ you are not specific in your *Petition* about how you want the court to divide property and debts (including if you asked for equitable relief)

or

➤ what you put in the *Judgment* is different from what you asked for in the *Petition*

STEP 1 – STARTING YOUR CASE

Fill out the following forms

- *Petition for Custody and Parenting Time, and Child Support*
- *Certificate re: Pending Child Support Proceedings or Existing Child Support Orders/Judgments*
- *Summons*
- *Confidential Information Form (CIF) (one for each party)*
- *Notice of Filing of Confidential Information Form*
- *Certificate of Mailing or Delivery to Division of Child Support* (ONLY if you or Respondent receives certain types of public assistance – see “Make Copies” below)

Have your documents reviewed- You may have your documents reviewed by either a lawyer or the Family Court Assistance Office. You should have a lawyer advise you on these forms if either of you have a retirement account or have **other complicated issues**. You may schedule an appointment with the Family Court Assistance Office to review your documents by calling 541-704-3479 or by emailing lin.familycourt.mailbox@ojd.state.or.us.

Make copies- Make one copy of all of the forms for your records, and one copy of the *petition and summons* to serve on (deliver to) the other party.

You may also be required to send a copy of the petition to the Division of Child Support if either you or Respondent receives Temporary Assistance to Needy Families (TANF) or the Oregon Health Plan (OHP), or if your children are in foster care or in custody of the Oregon Youth Authority.

File the forms- File all of the **original** forms except the *Summons* (*file at a later time*) with the court clerk. The clerk will give you a **case number** when you file. Put the case number on all copies. See below for a list of the forms you will need to copy to serve on the respondent.

Payment of fees- The cashier will ask you for a filing fee when you file your papers. If you feel you can't afford to pay the fee, you may ask the clerk for an Application for Waiver or Deferral of Fees. This form needs to be filled out and filed with the court. If the fee is waived, you will not have to pay the fee. If

the fee is deferred, you will be required to pay the fee according to a payment plan set by the Court.

If you have purchased your packet of documents at the Linn County Courthouse, handouts are included in your packet. If you did not purchase your packet at the Linn County Courthouse, the clerk will give you a number of handouts when you file your papers. The handouts include a notice regarding continuation of health coverage, a copy of ORS 107.089 (documents parties may have to give each other), a notice regarding mediation, family law guidelines and services, and information about local parent education class. These notices are also available at www.courts.oregon.gov/linn. You are not required to serve the copy of ORS 107.089 on the Respondent, but if you do, both of you must follow what it says.

Create your service packet- copy all of the following forms to serve on the respondent.

- *Petition*
- *Certificate re: Pending Child Support Proceedings and/or Existing Support Orders/Judgments*
- *Notice of Statutory Restraining Order Preventing the Dissipation of Assets in Domestic Relations Actions*
- *Notice of Filing of Confidential Information Form*
- *Summons*
- *Uniform Support Declaration, Statement of Assets and Liabilities, and Parenting Plan (if you are filing any of these documents with your Petition)*

STEP 2: NOTIFYING THE OTHER PARENT

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

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

There are four ways you can serve. Service must be done **after** your *Petition* is filed.

****3 CRITICAL POINTS****

1. If you have your copies served before you file, you will need to have them served the papers again
2. You **CANNOT** serve the papers yourself
3. If Respondent has a lawyer, you should also mail a courtesy copy of the papers to the lawyer

1. **Personal Service - Delivery of papers directly to the other parent by the server:**
 - a. **By Process Server:** Take a copy of your papers to the sheriff’s office in the county where Respondent 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 respondent is outside of Oregon, the server can be a resident of the state where the respondent 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 respondent. 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 respondent’s residence (where he or she normally lives) with someone 14 years 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 respondent 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 respondent'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 respondent 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 server must send the papers to the respondent's home or business address by first class mail. Second, the server must send a copy by certified mail, return receipt requested. The server **must** file proof of the service with the court, including the signed green card, date of receipt, and a **Certificate of Service**. The date of service is the day the respondent signs the returned green postal card.

NOTE: If the green postal card is not returned or if someone other than the respondent signed for it, then service by mail was not effective and you must try another type of service.

Standard Methods of Service for your Server	
Personal Service	Delivery of papers directly to the other parent
Substitute Service	Delivery of papers to a person living at the other parent's home who is at least 14 years old, AND mailing of the documents to the other parent'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 parent's place of employment (who has a business duty to give the documents to the other parent), done during working hours, AND mailing of the document to the home or business address of the other parent by first class regular mail.
Service by Mail (Return Receipt Requested) **You cannot complete this type of service.	Deliver by mailing a true copy of the summons and the petition to the respondent by first class mail AND by mailing the documents certified or registered, return-receipt requested, or by Express mail, the <u>other parent</u> is MUST to sign the "return receipt."

Acceptance of Service. If it is safe for you to give the respondent the papers yourself, you can use an **Acceptance of Service** form (available at the Linn County Courthouse, Room 107 or online for at <http://courts.oregon.gov/linn>) instead of having someone else serve the documents. If the respondent signs an *Acceptance of Service*, no other kind of service is required. Signing the *Acceptance of Service* does *not* mean the respondent agrees with anything in your *Petition*, only that he or she received the papers. **You must file the papers with the court and be given a case number before you give the copies to the respondent.**

Alternative Form of Service- If you are not able to have the Respondent 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 the Alternative Form of Service packet. This packet is available for a small fee at the Linn County Courthouse, Room 107 or online for no cost at <http://courts.oregon.gov/linn>

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 Respondent for serving children who are parties to the case.

Calculation of Time - Service by mail shall be complete on the day the respondent, or other person authorized by appointment or law, signs a receipt for the mailing, or three days after the mailing if mailed to an address within the state, or seven days after the mailing if mailed to an address outside the state, whichever first occurs.

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY						
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the envelope, or on the front if space permits. 	<table border="1"> <tr> <td>A. Received by (Please Print Clearly)</td> <td>B. Date of Delivery</td> </tr> <tr> <td>C. Signature X</td> <td><input type="checkbox"/> Agent <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 <input type="checkbox"/> No</td> </tr> </table>	A. Received by (Please Print Clearly)	B. Date of Delivery	C. Signature X	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee	D. Is delivery address different from item 1? If YES, enter delivery address below:	<input type="checkbox"/> Yes <input type="checkbox"/> No
A. Received by (Please Print Clearly)	B. Date of Delivery						
C. Signature X	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee						
D. Is delivery address different from item 1? If YES, enter delivery address below:	<input type="checkbox"/> Yes <input type="checkbox"/> No						
1. Article Addressed to:							
2. Article Number (Copy from service label)							
3. Service Type	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <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 12295-00-90962

Proof 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 proof of service is not filed within **63 days** of filing your *Petition*, the court may send you a notice of dismissal. Your case may be dismissed if proof of service is not filed within 28 days of the notice.

STEP 3: RESOLVING YOUR CASE

There are three ways your case can be resolved: by agreement between the parties, by default if the respondent doesn't respond, or by a judge in a hearing.

By Agreement- It is always better to resolve issues yourselves, since you know what's important to you. Once the case goes to a judge, it is out of your control. If you can't resolve the issues on your own, or if it is not safe for you to talk to Respondent, the court may provide options to help you, including mediation and arbitration. Some courts may require that you mediate before you have a hearing. Check your court's Supplementary Local Rules for more information.

Mediation- A mediator is a person trained to help people resolve disagreements. Mediation is confidential. You may ask to meet with the mediator alone if you are uncomfortable meeting with the other parent for any reason. Mediators are *not* judges – they cannot impose their decisions on you. Their job is to help *you* reach an agreement. This may be your last chance to retain control over the outcome of the case. Agreements incorporated into a *Judgment* are fully enforceable (*see The Judgments-page 11*).

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. You may also request that the court waive mediation requirements if you have a good reason by filing a **Motion and Declaration for Waiver of Mediation**. Talk to your court if you have safety concerns.

If you and Respondent have agreed to all of the issues, fill out and file:

- ***Declaration in Support of Judgment***
- ***General Judgment of Custody, Parenting Time, and Child Support***
 - Note: The *Judgment* must be signed by both parties before being submitted to the court.

NOTE: You must file the above Stipulated Judgment (agreement) no later than **91st day** after you filed the *Petition*. If not, your case may be dismissed.

By Default- Respondent has 30 days to respond to your *Petition*. The time starts running from the day *after* the date of service. The response must be in writing and must be filed with the court and mailed to you. If the respondent does not file a response within 30 days, you may request an *Order of Default*.

Default means that you are asking the judge to award you what you asked for in your *Petition* because the respondent did not file a response. Look at [Oregon Rules of Civil Procedure](#) (ORCP) rule 69 for more detailed information.

- NOTE: If the respondent has given you written notice that he or she intends to appear, you must give written notice that you intend to apply for a default order at least 10 days before you file your motion. See [Uniform Trial Court Rule 2.010](#) for the form your notice must be in. File your notice with the court and mail it to the respondent.

The judge may not grant a default if the respondent is incapacitated, a minor, a financially incapable person, a protected person, or a respondent in a fiduciary protective proceeding, as defined by [ORS 125.005](#).

Requesting a Default - fill out the following forms:

- ***Ex Parte Motion for Order of Default and Declaration in Support***
- ***Order on Motion for Default***
- ***Declaration in Support of Judgment***
- ***General Judgment of Custody, Parenting Time, and Child Support***

Read your *Petition* CAREFULLY! The ***Declaration in Support of Judgment*** allows you to note any information that has changed since you filed the *Petition*. Read **each** section of the *Petition* you filed and note any changes in the spaces provided. You must complete the rest of the *Declaration* in all cases.

NOTE: File the originals with the court any time *after* 30 days from the date of service. You must file the *Motion for Order of Default and General Judgment* by the **91st day** after you filed the *Petition*. If not, your case may be dismissed.

By Trial- Linn County court will schedule an early resolution conference if a response has been filed. These meetings usually take place with a judge and with both parents present, along with their attorneys if they are represented. **You must attend all conferences that are scheduled unless you have received permission from the judge not to attend. If you fail to appear at the conferences or court appearances, your pleadings may be stricken and a judgment entered against you.**

At the conference, the judge will probably talk to you about how the case is going to be resolved, may consider requests for temporary orders and will set future court dates.

Trial Guide - The State Family Law Advisory Committee has written a guide that may help you prepare for trial. This guide is NOT a substitute for legal advice! The rules of court can be technical and complex, and you may damage your case if you are not properly informed. If your case goes to trial, you are strongly advised to talk to a lawyer. To read the guide, go to:
<http://courts.oregon.gov/OJD/OSCA/JFCPD/Pages/FLP/Family-Law-Self-Help.aspx>

NOTE: After the Trial, the judge will instruct who needs to file the General Judgment. Follow the instructions in *The Judgment* (below).

THE JUDGMENT

A ***General Judgment of Custody and Parenting Time and Child Support*** is completed by one of you and signed by a judge. **NOTE:** you must include Child Support Worksheets with your Judgment if child support is awarded.

The judgment finalizes your case and contains all of the issues decided in the mediation, arbitration, trial, or agreement.

If the respondent DID NOT file a response, the information you fill out in the final judgment should be *exactly* the same as what you requested in the *Petition*.

If the respondent DID file a response, the information should be the *exactly* the same as what was decided in mediation, arbitration, hearing, trial, or through your agreement. All parties must review the *Judgment* before you submit it to the court. You must send the *Judgment* document along with the *Notice of Proposed Judgment or Order* to the respondent and any adult children who have not filed a *Waiver of Further Appearance* in the case.

Other parties can object to how the *Judgment* is written. 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.

If the respondent is responsible for preparing the judgment, the respondent 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 respondent are not able to resolve your objections after reasonable efforts, you can either send a written explanation of your objections to the respondent or directly to the court. You must notify the respondent 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 Respondent (unless you got an *Order of Default*). File the original with the court.

Even if you submitted Child Support Worksheets with your *Petition*, you MUST include a worksheet with your *Judgment*, regardless of how you resolve your case.

Your case is finished and effective the date the *Judgment* is signed by the judge. **NOTE:** The terms of your judgment are not enforceable until the court enters the judgment. A *Notice of Entry of Judgment* will be sent to you

ADDITIONAL RESOURCES

Oregon Judicial Department - Family Law Forms and Resources: <http://courts.oregon.gov>

Oregon State Bar <http://oregonstatebar.org>
Lawyer Referral 1-800-452-7636
Modest Means (low income)
Tel-law 1-800-452-4776

Child Support Program: 1-800-850-0228;
<http://oregonchildsupport.gov>

Division of Child Support: 503-986-6090
<http://oregonchildsupport.gov> or
<http://justice.oregon.gov/guidelines>

Legal Aid Service of Oregon (must have low income)
(541) 926-8678 or 1-800-383-1222
Child Support Help Line 1-800-383-1222

Local offices: Look on the “Local Family Law Practices and Programs” form for your court, the telephone book, or in the “legal links” section of the Oregon State Bar’s website:
<http://oregonstatebar.org>

Domestic Violence Help 1-800-799-SAFE

NOTE: The complete *Instructions* are available on the Oregon Judicial Department’s Family law website at:
<http://courts.oregon.gov/OJD/OSCA/JFCPD/Pages/FLP>