

# Responding to Petition for Separation, Cases with Children Instructions

## Notice about these instructions and forms.

*These instructions are not a complete statement of the law. They cover basic procedure for uncomplicated separation cases. 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://courts.oregon.gov>*

This set of forms and instructions explain how to file a response to a petition for separation. Legal separation may be for a set period of time, or may be for an unlimited duration. Even in a separation of unlimited duration, the parties still may get divorced or reconcile (live together as husband and wife), but further court proceedings may be necessary to legally change their relationship. Keep in mind that the final judgment in this case will create rights and obligations that may vest (become permanent). Generally speaking, child custody, parenting time, and support may be modified at a later date in certain situations. Property divisions usually can't be modified. You should talk to a lawyer if you have questions about these issues.

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## When filling out the forms, follow these directions:

- The case heading is the same as listed on the petition you were served.
- Some forms have to be notarized or signed in the presence of a court clerk. You will need your picture ID for this. Many banks provide notary services.
- Some forms say on the bottom, "I certify that this is a true copy," and provide a place to sign. Don't sign this line on the original form or on your own copy. You need to sign this line only on the copies for your spouse/partner.
- Make yourself a copy of any document you are filing with the court. File the original with the court clerk.
- Keep the court informed of your current address so you get notice of all court dates. **You are not required to use your residential address on any court form.** You may use a contact address where you regularly check in. If you use a contact address, the court will assume that you will receive all notices sent to that address.

## STEP 1: FILING YOUR RESPONSE

You have 30 days following the date you were served with the petition to file a written response with the court clerk and pay the filing fee. If you feel you can't afford to pay the fee, you may ask the clerk for a Motion and Affidavit for Waiver or Deferral of Filing Fee. You may fill out this form and file it with the court requesting that your filing fee be waived or deferred. If the fee is waived, you don't have to pay the fee back. If the fee is deferred, most courts will require that you pay the fee at a later date.

In the response, space is provided for you to state that you disagree with certain items asked for in the petition. You may also write in items that you would like the court to order that were not included in the petition. These are called "counterclaims." If you agree with everything asked for in the petition, you are not required to file a response. The court will enter judgment based on what was asked for in the petition.

## Legal Issues to Consider.

Oregon law requires a number of issues be addressed in the final separation judgment. Before you fill out your response, you should review what your spouse/partner asked for in the petition, and think about how you want to handle these issues.

Also, if you were not served with the petition in Oregon, or if you haven't lived in Oregon for a long period of time, you may be entitled to respond by objecting to service or jurisdiction. However, these are complicated legal determinations and you should talk to an attorney about what kind of response to file if either of these situations apply to you.

**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://courts.oregon.gov>. 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 <http://osbar.org>.

**Child Support.** In most cases, the court will order child support if the parties have a child and no child support order already exists. 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. **Support is typically withheld from wages unless an exception is allowed for direct deposit to the other parent's checking or savings account, or, if support enforcement services are being provided to either parent, as an "electronic payment withdrawal (EPW) or electronic funds transfer (EFT)" to a Department of Justice account.** (EPW and EFT are procedures whereby funds are automatically withdrawn from a checking/savings account as authorized by the account holder.) Information about child support, including the Guidelines and Worksheets, is on the Internet at: <http://oregonchildsupport.gov>.

This website also has a Child Support Calculator which may help you to calculate the amount of child support which should be paid: <http://justice.oregon.gov/guidelines>. 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.** You may request that you be reimbursed for out-of-pocket medical expenses that exceed \$250.00 PER CHILD per year or to reimburse for public health care coverage. Even if you do not request the payment of cash medical support, the judge may order that either you or the other party pay it. NOTE: 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.

**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.

### **Spousal Support**

Oregon law provides for three different categories of spousal support: transitional, compensatory and spousal maintenance. Transitional support may be ordered for a spouse to get work related education and training. Compensatory spousal support may be ordered if one party has significantly contributed to the education, training, vocational skills, career or earning capacity of the other spouse. Spousal maintenance may be ordered for the support of one spouse. The judge will consider a number of factors when making the award. For more information on what the judge will consider, please refer to ORS 107.105 (to view, visit your local law library or [http://oregonlegislature.gov/bills\\_laws](http://oregonlegislature.gov/bills_laws)).

**Property and Debts – Statutory Restraining Order.** Oregon law requires both Petitioner and Respondent to obey a restraining order preventing *either party* from dissipating (selling, destroying, removing, disposing of) real or personal property, making unilateral (without the agreement of the other party) changes to insurance policies, and making extraordinary expenditures. Expenditures that are necessary for the safety or welfare of the children or the parties are not

prohibited. The order is effective on both you and the petitioner once you have been served with the “*Notice of Statutory Restraining Order Preventing the Dissipation of Assets in Domestic Relations Actions*.” You may request a hearing if you object to the terms of the Statutory Restraining. If you violate the order, you may be subject to sanctions.

### **Social Security Numbers**

Oregon law requires **social security numbers** to be provided in certain circumstances but kept confidential from the public in dissolution, separation and annulment proceedings. **Do not place any social security numbers on your pleadings.** If a social security number is required on any form, fill out the UTCR 2.130 Confidential Information Form. This form is available in this packet or on Linn County Court’s website, <http://courts.oregon.gov/linn> .

### **Have your documents reviewed.**

You may have your documents reviewed by a lawyer or a courthouse facilitator (if your court has one) before you file. For information about how to find a lawyer, call the Oregon State Bar Lawyer Referral Service. If you are low income, you may get your documents reviewed for a smaller fee through the Oregon State Bar’s Modest Means program, or you may call your local Legal Aid office and in the “Local Family Law Practices and Procedures” for your court attached to these instructions.

### **Filing the Response.**

After you have filled out the Response, make two copies. One copy is for your records, and the second copy is for your spouse/partner. **If your spouse/partner does not have an attorney**, mail your spouse’s/partner’s copy **to your spouse’s/partner’s address** and fill out the Certificate of Mailing form, **and file it with the court.** If your spouse/partner is represented by an attorney, **you must instead** mail the copy to your spouse’s/partner’s attorney and provide the attorney’s address in the Certificate of Mailing form.

File the original Response and Certificate of Mailing form with the court clerk along with the required filing fee (unless your fee has been waived or deferred by a judge).

### **Parenting Classes.**

Many courts require that parents of minor children go to a parent education class. If your court has this program, you will need to sign up for the class right away. Some courts will not allow you to finalize your separation until you have completed the class and filed a certificate of completion with the court.

## **STEP 2: RESOLVING YOUR CASE**

### **Temporary Orders**

You may ask the court to make temporary orders after the petition is filed. Temporary orders are in effect once signed by the judge and last until changed by the judge or until the final judgment is signed by a judge. For example, either spouse may request an order for spousal or child support, an order preventing one or both parties from getting rid of property owned by both spouses, an order requiring one spouse to move out of the family home or an order preventing either party from interfering with the child/ren’s regular living arrangement and schedule. To make any of these requests, you file a “motion” (request) asking the court to do what you want. You may need the assistance of an attorney to file these requests.

You may use Packet 6B, Status Quo Order Application Packet, to ask the court to order that neither parent change the child/ren’s usual place of residence, change the child/ren’s regular routine, or interfere with the other parent’s usual contact with the child. In addition, there are restraining order forms available for cases involving domestic violence. A restraining order can usually be obtained within a day or two of filing if there has been abuse in the last 180 days and if there is further danger of abuse. Check with the court clerk about forms and filing instructions.

### **Conferences with the Judge**

Linn County court will schedule an early resolution conference if a response has been filed. These meetings usually take place with a judge with both spouses 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.

### **Working Toward Agreement**

The court wants to help you resolve the issues that you and your spouse disagree on. You may discuss these issues with your spouse directly if it is safe for you to do so and if no court order prohibits that contact. If you can't resolve the issues on your own, the court may provide a number of options to help you, including mediation, arbitration and a custody/parenting time evaluation.

### **Mediation**

A mediator is a person trained to help people resolve disagreements. You and your spouse 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). 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).

### **Arbitration**

The court may refer spouses who disagree on how to divide their property to an arbitrator. The parties may also ask the arbitrator to resolve spousal support issues. An arbitrator is a lawyer appointed by the court who meets with both spouses and their lawyers, if they are represented, and makes a decision about how the property should be divided. Both spouses are required to pay for this service unless the court has specifically waived or deferred the arbitrator's fee. If either spouse disagrees with the arbitrator's decision, he or she can ask the court for a trial. If a trial is not requested, the arbitrator's decision is final unless both spouses agree on another resolution.

### **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. The court does not pay for the evaluation. One or both parties will be required to pay for the evaluation.

## **STEP 3: FINALIZING YOUR SEPARATION**

A separation is "final" the date the judgment is signed by a judge. The judgment contains all of the issues decided in mediation, arbitration, hearing or through your agreement. If both spouses/partners agree on all issues, it may be prepared by either spouse/partners as long as it is reviewed and signed by both spouses/partners. If there are still items that you don't agree on, the court will probably set a date for a "final hearing" or trial. The judge may direct one spouse/partner to prepare the judgment after the hearing. Some judges may want you to attend a "settlement conference" (a meeting between the parties to discuss settlement, usually led by a different judge than your trial judge) to help you come to agreement.

If you are responsible for filling out the judgment, make a copy for yourself and one for your spouse/partner, and file the original with the court. **If your case involves child or spousal support, file an extra copy of the proposed judgment with the court.**

You may also have to file the forms listed below, depending on your circumstances.

**Parenting Class Certificate of Completion.** If your local court requires parents of minor children to attend a parent education class, a certificate of completion must be filed with the court unless this requirement has been waived by order of the court.

**Child Support Worksheets.** If child support is ordered, child support worksheets need to be filled out and attached to the final judgment.

**Parenting Plan.** Your parenting plan may be completely covered in the final judgment (see page two of the judgment). If there are additional pages, please attach them.

**Uniform Support Declaration.** This form is only required if you and your spouse/partner don't agree on child

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or spousal support. You aren't required to complete the schedules on the form, unless one spouse/partner asks for spousal support or a "deviation" (different from the amount calculated under the child support guidelines) from the child support guidelines.

**Waiver of Personal Service.** After the final judgment is signed, if one spouse/partner doesn't follow what it says to do, the other spouse/partner may ask the judge to enforce the judgment. The spouse/partner asking for enforcement is required to personally serve (deliver) the other spouse/partner with notice of this request. If you would like to keep your home address confidential, you may file this form listing another address for service. You are responsible for making sure you get all papers delivered to the address that you list.

### **ADDITIONAL RESOURCES**

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

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

Division of Child Support: 1-800-850-0228  
<http://oregonchildsupport.gov> or  
<http://justice.oregon.gov/guidelines>

Legal Aid Service of Oregon (must have low income)  
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 web site: <http://osbar.org>

Domestic Violence Help 1-800-799-SAFE