

# Temporary Relief Request

## [not for use in a modification of judgment]

### Linn County SLR 8.005

**Notice about these instructions and forms.**

*These instructions are not a complete statement of the law. They cover basic procedure for requesting temporary relief during the pendency of a case. **These forms are not intended to be used during a modification proceeding.** Neither the Court nor Court Staff is permitted to give legal advice. For legal advice you should speak with a lawyer. For additional information visit your local law library and/or refer to the “Additional Resources” section on the last page of these instructions.*

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

*If you have a question about a form you cannot locate, you should consult your local court which may have the form available. These forms and procedures apply only in Linn County.*

<b><u>Steps</u></b>
<b>1. Starting your Request for Temporary Relief by Motion</b>
Ex Parte Motion for Order to Show Cause Regarding Temporary Relief SLR 8.005 Affidavit in Support of Motion for Order to Show Cause re: Temporary Relief SLR 8.005 Order to Show Cause Regarding Temporary Relief SLR 8.005 Uniform Support Declaration (required when child support or spousal support is requested)
<b>2. Serving the Other Parent</b>
Affidavit of Service Acceptance of Service
<b>3. Waiting for a Response; Taking a Default</b>
Ex Parte Motion for Order of Default; and Order Affidavit in Support of Motion for Order of Default
<b>4. Resolving Your Motion for Temporary Relief</b>
Limited Judgment regarding Temporary Relief SLR 8.005 Order for Temporary Relief SLR 8.005 Attachments: Child Support Worksheet and/or Standard Linn County Parenting Plan

**When filling out the forms, follow these directions**

- Please make certain that all sections are complete. The document must be readable. Use black or dark blue print only. If the document is handwritten, please print. If the answer to a question is none, then write “none”. Do not use “N/A” for the word none.
- The case heading is your case number and the parties to the court case
- This motion will need to be filed with a Petition or in an existing case. When filing a new case, the clerk will give you a case number when you file your papers. Make sure to put this on all copies and originals. When filing in an existing case, use the same case number, petitioner and respondent.
- 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 and often check in. If you use a contact address, the court will assume that you will receive all notices sent to that address. Be aware however that if you do not receive your mail and the court sends you notice you will be deemed to have received notice whether you receive your mail or not.

## **STEP 1: STARTING YOUR REQUEST**

This type of request starts with a “motion” which lists the items you are asking the court to order. The Limited Judgment and the Order for Temporary Relief are the documents which finalize your request in the **Ex Parte Motion** for Order to Show Cause Regarding Temporary Relief.

### **Parenting Plan**

The Oregon Judicial Department and the State Family Law Advisory Committee have created a “*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>

Linn County also has a Linn County Standard Parenting Plan available in room 107 for a small fee or on at <http://courts.oregon.gov/linn> at no charge.

### **Child Support**

The Division of Child Support has 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://dcs.state.or.us>. This website also has a Child Support Calculator which may help you to calculate the amount of child support which should be paid: <http://oregonchildsupport.gov/calculator>. A deviation from the child support guidelines, based solely upon the agreement of the parties, does not constitute adequate bases for a deviation from the guidelines.

If child support is requested, a **Uniform Support Declaration** MUST be completed and filed with your **Ex Parte Motion** for Order to Show Cause Regarding Temporary Relief, otherwise, the Judge may not allow the support request.

### **Spousal Support**

Spousal support may be requested in the **Ex Parte Motion** for Order to Show Cause Regarding Temporary Relief. If support is requested, a **Uniform Support Declaration** MUST be completed and filed with your **Ex Parte Motion** for Order to Show Cause Regarding Temporary Relief, otherwise, the Judge may not allow the support request.

### **Make copies**

Make one copy of all of the forms for your records, and one copy of the **Ex Parte Motion** for Order to Show Cause Regarding Temporary Relief, **Affidavit** for Order to Show Cause Regarding Temporary Relief and **Order to Show Cause Regarding Temporary Relief** to serve on (deliver to) the other parent.

### **Have your documents reviewed**

Please make certain that all sections are complete. The document must be readable. Use black or dark blue print only. If the document is handwritten, please print. If the answer to a question is none, then write “none”. Do not use “N/A” for the word none.

You may have your documents reviewed by a lawyer. 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 by calling (541)926-8678.

Errors or problems could result in your forms being returned to you or could prevent the judge from signing a Order for Temporary Relief or the Limited Judgment until the errors or problems have been corrected. In some circumstances, in order to correct the errors, you may need to file an **Amended Ex Parte Motion** for Order to Show Cause Regarding Temporary Relief and serve the other party again.

### **File the forms**

File all of the original forms that are listed above with the court clerk.

### **Check Back**

The **Order to Show Cause Regarding Temporary Relief** must be signed by a judge before you serve the other

parent. Check back with the court in 7 to 10 days to see if a judge signed the **Order to Show Cause Regarding Temporary Relief**. If the **Order to Show Cause Regarding Temporary Relief** was signed, you will also need to know which judge signed the **Order to Show Cause Regarding Temporary Relief**, the spelling of the judge's name, and the date the **Order to Show Cause Regarding Temporary Relief** was signed.

If the **Order to Show Cause Regarding Temporary Relief** was signed, take the service copy of the **Order to Show Cause Regarding Temporary Relief** you made for the other parent and 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 to Show Cause Regarding Temporary Relief** was signed. Sign the lines on the service copies of **Ex Parte Motion for Order to Show Cause Regarding Temporary Relief**, **Affadavit for Order to Show Cause Regarding Temporary Relief** and **Order to Show Cause Regarding Temporary Relief** where they say, "I certify that this is a true copy." You are now ready to have the other party served.

If the **Order to Show Cause Regarding Temporary Relief** was not signed, check with the judge's staff or the court clerk to see if the Judge noted any reason as to why the paperwork was not signed.

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

You are required to have the other party served (have papers delivered) with (a) copies of the **Ex Parte Motion, Affidavit and Order to Show Cause Regarding Temporary Relief** and the **Uniform Support Declaration (if applicable)**. You may purchase the service copies from the court for a small fee or copy them yourself before you file with the court. You may certify the copies by signing your name where it says "I certify this is a true copy".

If the other party is willing to accept service, s/he must fill out the **Acceptance of Service** form, sign it in front of a notary or court clerk, then file it with the court. It is not necessary that the other party agree with what is in the papers, just that he/she is willing to acknowledge receipt of them.

If the other party will not complete the **Acceptance of Service** form, YOU CANNOT SERVE THE PAPERS YOURSELF. You may have service completed by the Sheriff in the county where the other 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. Make certain that all of the documents given to the other parent are listed in the Affidavit of Service.

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 living at the other party's home who is at least 14 years old, AND 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, AND 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>	Deliver by mailing a true copy of the documents 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 party</u> is REQUIRED to sign the "return receipt."

If you are not able to have the other party served by any of the methods described above, you may ask a judge to allow you to use another service method. The judge might allow you to publish, post or mail the documents to a last known address. In order to make this request, you may use Packet 6A-Alternative Form of Service. 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>

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

Linn County Local Court Rule 8.005 gives the other parent 14 days to respond to your motion, but the 14 days cannot expire prior to the summons. The time starts running from the date of service. The response and affidavit must be written, and 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 **Ex Parte Motion for Order to Show Cause Regarding Temporary Relief**, 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 Linn County Court, room 107 or online for no cost at <http://courts.oregon.gov/linn> . You may need to talk to an attorney if your spouse 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 response after 14 days from the date of service, but no earlier than the summons response date, you may check with the court clerk to see if one has been filed. If no response has been filed, you may request a "default order." A default means that you may ask the court to enter a judgment giving you what you asked for in your **Ex Parte Motion for Order to Show Cause Regarding Temporary Relief**, with no input from the other party. **If a response has been filed**, you will not be allowed to take a default and you will skip the next two sections about requesting a default and go straight to step 3.

### **No Response Filed; Requesting a Default, filing the Limited Judgment or Order for Temporary Relief**

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*
- *Limited Judgment re: Temporary Relief (Money issues only)*
- *Order for Temporary Relief (other temporary relief ordered)*

After you make yourself a copy of the completed forms, you may file the original with the court anytime after 14 days have expired from the date of service (but no earlier than the response to the Summons expiration date.)

## **STEP 3: Response and Affidavit filed**

### **Supplemental Affidavit**

After a Response and Supporting Affidavit is filed and mailed to the other party, the parties have 10 days from the date of mailing to file a Supplemental Affidavit (additional sworn statements to the court). Linn County SLR 8.005

### **Judge's Opinion Letter**

An opinion letter will be written by the Judge. This opinion letter will include the Judge's ruling after the review of the filed motion and affidavits. Failure to file an Affidavit or a Uniform Support Declaration, where required, may result in denial of relief.

### **Requesting a hearing after the Judge's opinion letter**

A hearing may be requested regarding custody and parenting time issues only. This request needs to be filed within ten (10) days after the Court's ruling.

## STEP 4: FINALIZING YOUR REQUEST FOR TEMPORARY RELIEF

### **Forms Required to Finalize Your Motion**

The following form is required to finalize your case:

- *Limited Judgment re: Temporary Relief (money issues only)*
- *Order for Temporary Relief (all issues other than money issues)*

You may also need to file the following additional forms, depending on your circumstances.

- Child Support Worksheets, Parenting Plans.

### **Limited Judgment and Order for Temporary Relief**

The Limited Judgment re: Temporary Relief or the Order for Temporary Relief finalizes the judge's ruling (or your request if there was not a response) This document is prepared by the filing party (you).

A Limited Judgment re: Temporary Relief form should be used when there is money owed between the parties.

A Order for Temporary Relief form should be use for all other temporary issues awarded.

If the other party didn't file a response, the information you fill out in the Limited Judgment re: Temporary Relief or the Order for Temporary Relief should be the same as what you requested in your **Ex Parte Motion for Order to Show Cause Regarding Temporary Relief**.

If the other parent filed a response and affidavit, the information should be the same as what was in the judge's ruling/opinion letter.

**Before submitting your Limited Judgment re: Temporary Relief or the Order for Temporary Relief, please review the document to be certain that all sections are complete.**

If you are responsible for filling out and filing the Limited Judgment re: Temporary Relief or the Order for Temporary Relief, 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 and a completed Certificate of Mailing (to show you mailed a copy of the judgment/order to the other party).

## **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

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

Division of Child Support:    503-986-6090  
<http://oregonchildsupport.gov/calculator>

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 website at <http://osbar.org>

Domestic Violence Help    1-800-799-SAFE