

CHECKLIST FOR FAMILY LAW DOCUMENTS AVOIDING COMMON ERRORS/PROBLEMS

1. LEGAL QUESTIONS AND LEGAL REQUIREMENTS:

Your legal documents must meet certain minimum legal requirements. If you have legal questions, you should talk with an attorney. The court and court staff are not allowed to give legal advice.

2. COMPLETING YOUR DOCUMENTS:

Please read and check your documents carefully. All sections should be complete. The document must be readable. Use black or dark blue print only. If the answer to a question is none or unknown, then write "none" or "unknown". Do not use "N/A" for the word none or unknown.

3. ATTENDING COURT HEARINGS:

You and your attorney are required to appear in court, on time, for every court appearance, including resolution conferences, pre-trials, hearings, settlement conferences, trials and all other scheduled court appearances unless otherwise allowed by the court. Failure to comply with certain requirements may result in your case being dismissed, your pleadings stricken or a judgment being entered against you.

4. SUPPLEMENTAL LOCAL RULES:

Linn County has Supplemental Local Rules that apply to family law cases. A copy of these rules is available from the cashier or online at www.courts.oregon.gov/linn

5. FORMS WHICH DO NOT MEET MINIMUM REQUIREMENTS:

Forms other than Linn County or State of Oregon forms may not address or meet the local rule requirements. Linn County forms have instruction sheets to assist you in completing the forms correctly. These forms may be purchased at the Linn County Courthouse in room 107 or downloaded at www.courts.oregon.gov/linn for no cost.

6. ERRORS IN YOUR FORMS:

Errors or problems could result in your forms being returned to you or could prevent the judge from signing an order or judgment until the errors or problems are corrected. Please read the instructions in your forms packet. These instructions will explain how to complete your forms, clarify service procedures and also list important timelines.

7. LEGAL PATERNITY:

If the parents are unmarried, proof of paternity for the minor child(ren) may need to be provided by: a certified copy of the order establishing paternity or a copy of the birth certificate; or as established by another provision of law must be filed with this court. Paternity must be established before the court may address custody or parenting time. [ORS 109.070 Establishing Paternity]

8. PENDING/EXISTING CHILD SUPPORT PROCEEDINGS:

The petitioning party must submit a CERTIFICATE stating whether there are any other pending child support matters 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". You are required to attach a copy of any pre-existing child support orders to the CERTIFICATE.

9. CHILD SUPPORT:

If there are no pending or existing child support orders, child support must then be calculated by using the child support worksheet. Oregon law presumes each parent has the ability to work full time and to earn at least minimum wage which results in a monthly income of not less than \$1,455.00. The child support worksheet should not include wages of less than \$1,455.00 unless a parent cannot work full time and is unable to earn at least minimum wage. If the child support worksheet does include a lesser wage, then the reason (fact) must be explained in the Judgment and the Affidavit Supporting the Judgment. A properly completed child support worksheet must be attached to all judgments.

10. CHILD SUPPORT DEVIATION:

A deviation of the child support amount (different amount than the amount from the child support worksheet), based solely upon the agreement of the parties, will only be allowed if the support requested is within 10% of the amount determined on the child support worksheet. Deviations greater than 10% need to be supported with facts explaining why the computed child support amount is unjust and inappropriate. These facts must be listed in the Judgment and the Affidavit Supporting the Judgment. OAR 137-050-0760 and OAR 137-050-0765

11. CHILD SUPPORT INCOME WITHHOLDING:

Unless the parties agree otherwise, a provision for income withholding of child support must be included in the Judgment unless a provision for an exception to income withholding, with findings that support the exception, is included in the judgment.

12. PROVIDING COPIES FOR CHILD SUPPORT:

If Child Support Division will be collecting support in your case, a copy of the judgment must be provided at the time of filing the judgment. This copy will be forwarded to Child Support Division after the judge signs the judgment.

13. MEDICAL EXPENSES & INSURANCE:

If the proceeding involves custody of a minor child[ren], health insurance, uninsured medical expenses, and life insurance must be addressed unless there is a current child support order already addressing these provisions. If the parent ordered to provide health insurance does not have health insurance available, then that parent needs to provide health insurance when it becomes available through employment or union at a reasonable cost (no more than 4% of their gross income).

14. CUSTODY & PARENTING TIME:

If the parties have a minor child[ren], the petition and judgment must address the custody of the child[ren] and parenting time. Custody must be clearly stated. Some examples are as follows: “legal and physical custody to father”; “legal and physical custody to the mother”; “the parties shall have joint legal custody with physical custody to the mother or to the father” (choose one parent); or “joint legal and shared physical custody between the parents”. The Court may not order joint custody unless both parties agree to joint custody.

15. PARENTING PLANS:

The law requires that the term “PARENTING TIME” be used, not the word “visitation” for parenting time. If you intend to use the “STANDARD LINN COUNTY PARENTING PLAN”, you need to attach a copy of the plan. This plan is available from the cashier or online at www.courts.oregon.gov/linn. Using such words as “reasonable parenting time or as the parties agree” will not be sufficient. A child (under 18 years of age) is not allowed to decide this issue. You may submit a different plan or you may change the Linn County Parenting Plan, however the court will ultimately have to approve your parenting plan. If you are using your own parenting plan, it must list enough detail so the Court may enforce the minimum plan at a later time if necessary. For example; list the day and time a parenting time weekend begins and ends; indicate where the child will be picked up and returned; and list any holiday or summer vacation parenting time schedules you want in your plan. The parties may agree to alter or change the schedule or pickup and return location when they both agree.

16. PARENTING CLASS/MEDIATION:

If there is a dispute (a response filed in your case) regarding the custody or parenting time, each party is required to attend a co-parenting class and participate in mediation. A notice will be sent to the parties.

17. ARBITRATION:

Arbitration is mandatory in cases which only include disputes regarding property or debts.

18. SPOUSAL SUPPORT:

Spousal support provisions are complicated and you should talk with an attorney. An error may have serious consequences. Spousal support provision must comply with the provisions of ORS 107.105(d). There are three categories of spousal support: (1) transitional support, (2) compensatory support, and (3) spousal maintenance support. Documents must designate which category or categories the spousal support encompasses and make specific findings regarding the list of factors. See ORCP 62B. For example the factors may include the following:

A. Transitional support: When a party needs support during the transition after divorce, the court may consider such things as: the length of marriage, age of parties, parties training and employment skills and work experience, the financial needs and resources of each party, the tax consequences to each party, the parties custodial and child support responsibilities.

B. Compensatory Spousal Support: When there has been a significant financial or other contribution by one party to the education, training, vocational skills, career or earning capacity of the other and when an award of spousal support is just and equitable in all of the circumstances (must explain the circumstances), such as the amount, duration and nature of the contribution. The duration of the marriage, the relative earning capacity of the parties, the extent to which the marital estate has already benefitted from the contribution, and the tax consequences to each party.

C. Spousal Maintenance : A contribution by one spouse to the support of the other for either a specified or an indefinite period for spousal maintenance. May consider such factors as the duration of the marriage, age of parties, the health of the parties, including their physical, mental and emotional condition, the standard of living established during the marriage, the relative income and earning capacity of the parties, recognizing that the wage earners continuing income may be a basis for support distinct from the income that the supported spouse may receive from the distribution of marital property, a party’s training and employment skills, a party’s work experience, the financial needs and resources of each party, the tax consequences to each party, a party’s custodial and child support responsibilities: and

D. Other factors which are just and equitable to support an award of spousal support .

19. DEFAULT JUDGMENTS: (When the other party does not respond.)

A party may not add provisions to the judgment that were not listed in the petition unless both parties agree to the addition and sign the judgment. If provisions that are required in the judgment are missing from the petition and the other party will not agree to add those provisions to the Judgment, it may be necessary to file an amended petition, properly serve the other party with the amended petition and allow time for a response to be filed