

## Packet 5A General Instructions Responding to Change of Custody and Parenting Time

### **Notice about these instructions and forms.**

*These instructions are not a complete statement of the law. They cover basic procedure for uncomplicated modification (changed) cases. Neither the Court nor Court Staff are permitted to give legal advice. For legal information, please talk to a lawyer, visit your local law library and/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 by clicking on the form name if you are using the Internet at: [www.courts.oregon.gov/linn](http://www.courts.oregon.gov/linn) and click on **FORMS**. Linn County Court also has the forms available in Room 107.*

*Linn County 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.*

This set of forms and instructions explain how to file a response to a motion requesting that child custody or parenting time (visitation) and or child support provisions of a judgment be modified. When filling out the forms, follow these

- 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 the same as listed on the motion you were served. Use full names (first, middle or middle initial, last) and print the names the same on all forms.
- 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 you are mailing to 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 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 motion 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 Deferring or Waiving Fees and Costs. 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, you will be required to pay the fee pursuant to a payment plan set by the court.

In the response, space is provided for you to state that you disagree with certain items asked for in the motion. You may also write in items that you would like the court to order that were not included in the motion. These are called "counterclaims." If you agree with everything asked for in the motion, you are not required to file a response. The court will enter Supplemental Judgment Modifying Custody, Parenting Time and/or Support based on what was asked for in the motion.

You may also be served with additional papers in which the other party is asking the court to order temporary relief. Remember to read all the papers carefully. **If you do not respond within the time period allowed, the court may order the relief requested without further notice to you.**

### **Legal Issues to Consider**

Oregon law requires a number of issues be addressed in the Supplemental Judgment Modifying Custody, Parenting Time and/or Support. Before you fill out your response and affidavit responding, you should review what the parent asked for in the motion, and think about how you want to handle these issues.

Also, if you were not served with the motion 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. It may be very detailed, or it may just cover a few issues. It must specify the access and a minimum amount of parenting time (visitation) for the parent who does not have custody of 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 are available through the court's parent education program, the courthouse facilitator, or the local law library. **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://www.courts.oregon.gov>** 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 motion. For information about child custody, you may call Tel-Law (1-800-452-4776) tape 1133, or visit [www.osbar.org](http://www.osbar.org).

### **Child Support**

**IMPORTANT! Oregon law now requires that the petitioning party 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" in this packet. You will be required to attach certified copies of any pre-existing child support orders (certified copies may be obtained from the clerk of the issuing court).**

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 funds transfer" to a Department of Justice account. Information about child support, including the Guidelines and Worksheets, is on the Internet at: [www.oregonchildsupport.gov](http://www.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: [www.oregonchildsupport.gov](http://www.oregonchildsupport.gov) The legal aid office or child support program **may** also be able to help you calculate the amount of support.

Oregon law presumes the ability of a parent to work full time and to earn at least minimum wage. This would result in an income of not less than \$1,524.00 per month ( $\$8.80 \times 40 \text{ hrs a wk} \times 4.33 \text{ wks a month}$ ). If a person is unable to earn a minimum of \$1,524.00 a month, an explanation is required in the Supplemental Judgment Modifying Custody, Parenting Time and/or Child Support. The Supplemental Judgment Modifying Custody, Parenting Time and/or Child Support must contain findings to support using an income amount that is less than minimum wage for the computation of child support. A properly completed child support work sheet must be attached to the Supplemental Judgment Modifying Custody, Parenting Time and/or Child Support.

A provision for income withholding for the support must be included in the Supplemental Judgment Modifying Custody, Parenting Time and/or Child Support unless a provision for an exception to income withholding, with findings that support the exception, is included in the Supplemental Judgment of Custody, Parenting Time or Child Support. The parties may agree to not use income withholding.

### **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.

## **Unmarried and Unemancipated Children at Least 18 and Under 21 Years of Age**

The 2005 Legislative Assembly amended Oregon law regarding unmarried unemancipated children who are at least 18 and under 21 years of age. The new law says that these children are necessary parties to all family law cases involving support. The Petition forms that deal with support will have a line to write in the child's name, including them in the heading. The Judgment forms will have a place indicating how the child has been involved in the case, and if applicable, a place to sign underneath Petitioner and Respondent signatures agreeing to the judgment. These children **may** sign a Waiver of Further Appearance and Consent to Entry of Judgment form if the child does not choose to participate further in the case.

## **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. In the health care coverage section, you must mark any of the options that apply to your family's situation. There are three major categories involved in determining health care coverage for the children: (1) private, (2) public, and (3) neither private or public health care coverage. There is also a section for "uninsured health expenses" whereby a judge will order what percentage responsibility each party has for payment of non-covered medical expenses for your child/ren.

If either you, your spouse/partner, or both of you have private health care coverage available for the children, you will fill out either option "A" or "B" under the section called: "1) PRIVATE INSURANCE IS AVAILABLE." If *neither* you nor your spouse/partner have private insurance available for the children, you will fill out the section called: "2.) NO PRIVATE INSURANCE IS AVAILABLE NOW."

## **Have your documents reviewed**

You may have your documents reviewed by a lawyer or the court's facilitator before you file. Neither court nor court staff are permitted to give legal advice. 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. Contact numbers are listed in the additional resources section at the end of 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 the other parent. Mail the other parent's copy and fill out the Respondent's Certificate of Mailing form.

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

## **Parenting Classes**

If you and the other parent disagree about custody or parenting time of your minor child(ren) you are required to attend a mediation orientation and parenting class unless waived by the Court. A certificate of completion will need to be filed for each party.

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

### **Temporary Orders**

You may ask the court to make temporary orders after the motion is filed. Temporary orders are in effect once signed by the judge and last until changed by the judge or until the Supplemental Judgment Modifying Custody, Parenting Time and/or Child Support is signed by a judge. For example, either parent may request an order for child support or file 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 parents present, along with their attorneys if they are represented. 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. **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.**

### **Working Toward Agreement**

The court wants to assist you in resolving the issues that the parents disagree on. You may discuss these issues with the other parent directly if it is safe for you to do so and if no court order prohibits this contact. If you filed a response, and later decide that what the other parent asked for in the motion is okay with you, you may fill out and file a Waiver of Further Appearance and Consent to Entry of Judgment form. The court will then enter judgment based on what was requested in the motion. If you can't resolve the issues on your own, the court may provide a number of options to help you, including mediation and may require a custody evaluation. The Court does not have funds to pay for custody evaluations.

### **Mediation**

A mediator is a person trained to help people resolve disagreements. The parents 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). There is usually no fee for mediation. If mediation has not yet been ordered in your case and you would like to request it, you may file a Request to Initiate/Waive Mediation form. You may ask that the mediation requirement be waived if you have a good reason by filing a Motion and Affidavit for Waiver of Mediation. For example, if there has been domestic violence, the court will consider a request to waive the mediation requirement.

### **Custody/Parenting Time Evaluation**

If parents can't agree on a parenting plan, sometimes the court refers the case to a custody/parenting time evaluator. After interviewing each parent and doing other research, the evaluator will make a recommendation to the court about 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. Either one or both parties would have to pay for the evaluation. The court does not have funds to pay for an evaluation.

### **The Final Paperwork**

Your case is finished the date the Supplemental Judgment Modifying Custody, Parenting Time and/or Child Support is signed by a judge. The Supplemental Judgment Modifying Custody, Parenting Time and/or Child Support contains all of the issues decided in mediation, hearing or through your agreement. If both parents agree on all issues, it may be prepared by either parent as long as it is reviewed and signed by both parents. If there are still items that you don't agree on, the court will probably set a date for a "final hearing" or trial.

If child support or/and the amount of child support are involved, you will need to complete and file a "Uniform Support Affidavit" form and file it with the court not less than 14 days before the hearing or trial on the merits, unless the parties stipulate (agree) otherwise, but in any event it must be filed by the beginning of the hearing or trial and a copy must be served on the other parent.

The judge may direct one parent to prepare the Supplemental Judgment Modifying Custody, Parenting Time and/or Child Support after the hearing.

CHILD SUPPORT MUST BE DETERMINED ACCORDING TO THE CHILD SUPPORT GUIDELINES. Any deviation from the child support guidelines must be properly supported and the modification of Supplemental Judgment Modifying Custody, Parenting Time and/or Child Support must contain findings to support the deviation. The findings must be supported by an affidavit that sets forth facts that support the finding. A deviation of the child support amount, based solely upon the agreement of the parties, does not constitute an adequate basis for a deviation and will not be allowed. Further, joint custody and or the income disparity of the parties alone are not sufficient grounds to deviate from the child support guidelines.

Oregon law presumes the ability of a parent to work full time and to earn at least minimum wage. This would result in an income of not less than \$1,524.00 per month ( $\$8.80 \times 40 \text{ hrs a wk} \times 4.33 \text{ wks a month}$ ). If a person is unable to earn a minimum of \$1,524.00 a month, an explanation is required in the Supplemental Judgment Modifying Custody, Parenting Time and/or Child Support. The Supplemental Judgment Modifying Custody, Parenting Time and/or Child Support must contain findings to support using an income amount that is less than minimum wage for the computation of child support. A properly completed child support work sheet must be attached to the Supplemental

## Judgment Modifying Custody, Parenting Time and/or Child Support.

A provision for income withholding for the support must be included in the Supplemental Judgment Modifying Custody, Parenting Time and/or Child Support modifying unless a provision for an exception to income withholding, with findings that support the exception, is included in the Supplemental Judgment Modifying Custody, Parenting Time and/or Child Support modifying. The parties may agree to not use income withholding.

If you are responsible for filling out the Supplemental Judgment Modifying Custody, Parenting Time and/or Child Support, make a copy for yourself and one for the other parent, and file the original with the court **If your case involves child support, file an extra copy of the proposed Supplemental Judgment Modifying Custody, Parenting Time and/or Child Support with the court.**

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

•**Parenting Class Certificate of Completion** - When the 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 the parties have children under 18 years of age, child support worksheets need to be filled out and attached to the Supplemental Judgment Modifying Custody, Parenting Time and/or Support.

•**Parenting Plan** - Your parenting plan may be completely included in the Supplemental Judgment Modifying Custody, Parenting Time and/or Support. If there are additional pages, attach them. If you use the Standard Linn County Parenting Plan it must be attached and labeled as an exhibit.

•**Uniform Support Affidavit** - This form is only required if a response was filed and you and the other party do not agree on child support. You aren't required to complete the schedules on the form unless one party asks for a "deviation" (different amount than what was calculated using the child support guidelines) from the child support guidelines.

•**Waiver of Personal Service** - After the Supplemental Judgment Modifying Custody, Parenting Time and/or Support is signed, if one party doesn't do what it says, the other party may ask the judge to enforce the Supplemental Judgment Modifying Custody, Parenting Time and/or Support. The party asking for enforcement is required to personally serve (deliver) the other party with notice of this request. If you would like to keep your home address confidential, you may file Waiver of Personal Service form listing another address for service. You are responsible for making sure you get all papers delivered to the address you list.

## ADDITIONAL RESOURCES

Oregon Judicial Department - Family Law Forms and Resources: [www.courts.oregon.gov](http://www.courts.oregon.gov)

Oregon State Bar [www.osbar.org](http://www.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;  
[www.oregonchildsupport.gov](http://www.oregonchildsupport.gov)

Division of Child Support: 503-986-6090  
[www.oregonchildsupport.gov](http://www.oregonchildsupport.gov)

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: [www.osbar.org](http://www.osbar.org)

OSU Extension Service Publications:

1-541-737-2513

Publications available on marriage, shared custody, financial planning and other topics.

Domestic Violence Help 1-800-799-SAFE