

**Packet 2A General Instructions
Responding to Petition for Dissolution (Divorce), Cases with Children**

Notice about these instructions and forms.

These instructions are not a complete statement of the law. They cover basic procedure for uncomplicated divorce cases. Neither court nor court staff is permitted to give legal advice. For more 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 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: <http://www.courts.oregon.gov/linn> go into **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."

This set of forms and instructions explain how to file a response to a petition for dissolution (divorce). 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 the same as listed on the petition you were served. You are the named "respondent" on all court forms and your spouse is the "petitioner". 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 your spouse.
- 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. **Your contact address will become public information.** Please make sure that you use an address that is ok for other people, including the respondent, to know. It must be an address where you can receive mail. If you use a contact address, the court will assume that you will receive all notices sent to that address. **Note: If you fear for your safety, you may be able to obtain a non-disclosure order.** You may check with the Family Court Specialist for instructions and appropriate forms.

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 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 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 the General Judgment of Dissolution of Marriage based on what was asked for in the petition.

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 General Judgment of Dissolution of Marriage. Before you fill out your response, you should review what your spouse 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. 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 www.courts.oregon.gov/linn.** 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 1133, or visit www.osbar.org.

Child Support

IMPORTANT! Oregon law requires the petitioning party to 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 copies of any pre-existing child support orders (copies may be obtained from the clerk of the issuing court or the Division of Child Support office, there may be a fee charged for these copies.).

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.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: www.dcs.state.or.us/calculator. 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 X 40 hrs a wk X 4.33 wks a month) . If a person is unable to earn a minimum of \$1,524.00 a month, an explanation is required in the General Judgment of Dissolution of Marriage. The General Judgment of Dissolution of Marriage 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 General Judgment of Dissolution of Marriage.

A provision for income withholding for the support must be included in the General Judgment of Dissolution of Marriage unless a provision for an exception to income withholding, with findings that support the exception, is included in the judgment. 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."

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 www.leg.state.or.us/ors).

Property and Debts - Statutory Restraining Order

A new Oregon law requires both Petitioner and Respondent to obey a restraining order preventing *either party* from dissipating (destroying, removing, disposing of) real or personal property assets, making unilateral (without the agreement of the other party) changes to insurance policies, and making extraordinary expenditures. **By filing your response, you agree to be bound by the terms of this automatic order.** If you violate the order, you may be subject to sanctions.

For information about property and debt issues, talk to a lawyer and/or go to the Oregon State Bar's web site (www.osbar.org), "Legal Links" and read under "Oregon's Laws" the sections on "Bankruptcy and Credit," "Real Estate," and "Taxes." If either spouse has a retirement plan, you should talk to an attorney before filling out the petition. The attorney can advise you if this packet will work for your situation. If the parties' own real estate is located in Oregon, a "lis pendens" notice (notice of pending suit) may be filed with the county clerk as provided in ORS 93.740 (to view, visit your local law library or www.leg.state.or.us/ors/).

Have your documents reviewed

You may have your documents reviewed by a lawyer or the court's facilitator 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. 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 your spouse. Mail your spouse's copy and fill out the Respondent's Certificate of Mailing form. File the original Response, Respondent's Certificate of Mailing and Acknowledgment about Dissolution 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 your spouse 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.

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 DIVORCE

A divorce is "final" on the date the General Judgment of Dissolution of Marriage (divorce) is signed by a judge. If there are still items that you don't agree on, the court will probably set a date for a "final hearing" or trial. 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.

Forms to Finalize Your Divorce

The following forms are required to finalize your divorce:

General Judgment of Dissolution (Divorce)

Affidavit Supporting General Judgment of Dissolution (Divorce)

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 child support is ordered in the divorce case, child support worksheets need to be filled out and attached to the General Judgment of Dissolution.

Parenting Plan.

Your parenting plan may be completely included in the General Judgment of Dissolution (see page two of the judgment). If there are additional pages, attach them.

Uniform Support Affidavit.

This form is only required if a response was filed and you and your spouse do not agree on spousal

or child support. You aren't required to complete the schedules on the form unless one spouse asks for spousal support or a "deviation" (different amount than what was calculated using the child support guidelines) from the child support guidelines.

Waiver of Personal Service.

After the General Judgment of Dissolution is signed, if one spouse doesn't do what it says, the other spouse may ask the judge to enforce the judgment. The spouse asking for enforcement is required to personally serve (deliver) the other spouse with notice of this request. You are responsible for making sure you get all papers delivered to the address you list. A Waiver of Personal Service form is available from the court clerk.

The General Judgment of Dissolution

The General Judgment of Dissolution finalizes your divorce and contains all of the issues decided in mediation, arbitration, hearing, or through your agreement. If both spouses agree on all issues, the General Judgment of Dissolution may be prepared by either spouse as long as it is reviewed and signed by both spouses. If the spouses don't agree on all issues, the judge may direct one spouse to fill out the General Judgment of Dissolution. If you are responsible for filling out and filing the General Judgment of Dissolution, make a copy for yourself and one for your spouse, and file the original with the court. **If your case involves child, file an extra copy of the proposed General Judgment of Dissolution with the court.**

ADDITIONAL RESOURCES

Oregon Judicial Department - Family Law Forms and Resources: www.ojd.state.or.us/familylaw

Oregon State Bar 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.afs.hr.state.or.us

Division of Child Support: 503-986-6090
www.dcs.state.or.us or
www.dcs.state.or.us/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 web site: www.osbar.org

OSU Extension Service Publications:
1-541-737-2513; <http://eesc.orst.edu/>
Publications available on marriage, shared custody, financial planning and other topics.

Domestic Violence Help 1-800-799-SAFE