

CAO M/P INSTRUCTION 6-1 FINALIZING A CUSTODY OR MODIFICATION CASE

Talk with an Attorney if possible.

WARNING: When you represent yourself in a court case you are held to the same standard as an attorney. This applies to your preparation of paperwork and your conduct at all hearings and/or trial. Your lack of legal knowledge may cause you to make serious errors in handling your case. These instructions are not a substitute for legal advice. The laws and court rules are complex and following these instructions will not guarantee that your rights are protected or that you will be satisfied with the result. You should always talk to a lawyer about your legal problems before filing any legal paperwork. Even if you do not hire a lawyer to appear in your case, you may be able to find a lawyer to review your paperwork or give you more information about your rights. Call the Idaho State Bar (208-334-4500) to provide you with the name of an attorney who handles this type of case. Contact the Court Assistance Office for information about resources for low-income people or visit the Idaho Supreme Court's Self-Help Center at <http://www.courtselfhelp.idaho.gov/>.

First, Determine How You Can Finalize Your Case.

These instructions cover two of the ways you can get a final Decree or Judgment in a new custody case or a modification case. These instructions will help you if you will be finalizing by default **or** if you will be finalizing because you and the other parent have reached an agreement.

If you and the other parent agree on all the issues and you both attend the Parenting Workshop, you can finalize your custody case by stipulation. See the steps beginning on page 4.

If the other parent does not respond to the court in writing within 20 days of receiving service, you may finalize your custody case by default (see the following instructions).

Finalizing a Custody or Modification Case by Default.

Step 1: Obtain and Complete the Required Forms

Step 2: Make Copies, File With the Clerk and Obtain a Court Date to Finalize Your Custody Case

Step 3: Finalize Your Case

Step 1: Obtain and Complete the Required Forms.

If you have not already done so, you should return the Original Summons or Notice and file your proof of service on the other parent. (See your instructions "Filing for Custody" or "Filing for Modification").

A default cannot be entered any earlier than 21 days (including weekends and holidays) from the day the other parent was served. You must wait at least 21 days (including weekends and holidays) from the day the other parent was served before you can prepare your default documents. For this purpose, the date the other parent was served was either: 1.) the date s/he signed the acknowledgment of service form; or 2.) the date the process server delivered the papers to the other parent; or 3.) the last date the papers were published in a newspaper.

You will need to get the following forms to have your custody or modification decree or judgment entered by default:

- Motion and Affidavit for Entry of Default (CAO FLPI 7-1)
- Default (CAO FLPI 7-4)
- Decree of Paternity, Custody, Visitation, and Support (CAO P 8-2) or Judgment of Modification (CAO M 8-1)
- Parenting Plan, (CAO FL-3) which you filed with your Petition
- Child Support Transmittal form (CSS 809), (if your decree or judgment includes a new child support amount).

If the other parent filed a Notice of Appearance (CAO Cv 3-1), but did not file any other response to the Petition, you will also need:

- Notice of Intent to Take Default (CAO Cv 7-5X).

If the other parent filed a Response or a Response and Counterclaim, you cannot take default. Contact your local Court Assistance Officer for the procedures available to finalize your case, or read *Finalizing A Custody Case By Stipulation*, on page 4.

Complete the forms you need by typing or printing neatly in black ink. At the top left-hand corner of page 1 of each form fill in your name, address, telephone number, and email address (if you have one). Fill in the county and judicial district in capital letters in the heading just as it was on the Petition you filed (for example, "IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT IN AND FOR THE COUNTY OF ADA"). Fill in your names in the caption ("John Doe, Petitioner v. Mary Doe, Respondent") just as they appear in the other forms you filed. Fill out the remainder of each individual form, providing the information requested. If specific instructions are provided for a particular form, follow those instructions.

Step 2: Make Copies, File with the Clerk and Obtain a Court Date to Finalize Your Custody or Modification Case.

Make one copy of the default forms for your records. Make two copies of the Decree or Judgment and all attached Exhibits. (Make three copies of the Decree or Judgment with all exhibits if it sets or changes a child support amount). Place your copies under the originals of each document.

Go to the window in the Clerk's Office. Give the Clerk the completed originals and all copies of the following forms:

- Notice of Intent to Take Default (if applicable)
- Motion and Affidavit for Default
- Default
- Custody Decree **or** Modification Judgment (with all Exhibits attached)
- Child Support Transmittal Form (if your decree or judgment sets or changes child support)
- Two envelopes which the Clerk will use to mail the final Decree or Judgment to you and to the other parent. The envelopes must be addressed (one to you and one to the other parent). In addition, the envelopes must have the right amount of postage on them. The clerk will be mailing a copy of the final Decree or Judgment that you are providing, along with any attachments. If you are finalizing a custody case, you may have documents, such as a Parenting Plan, attached to your final Decree or Judgment. You should provide a large envelope with enough postage to send your Decree or Judgment and all attachments.

The Clerk will file the Notice and Motion and Affidavit, and will set the Default aside for the judge's signature. The Clerk will "conform" your copies of the filed documents by stamping and dating them. This will save you paying \$1.00 per page for copies of these documents from the court file later on, and will provide proof of the filing of the documents in case they become misplaced from the court file. The Clerk will place the original Decree or Judgment (with attached Exhibits) in the court file so it will be available for the judge to review during your court hearing. The Clerk will hold all of the copies of the Decree or Judgment, the Child Support Transmittal form, plus any envelopes, for use after your Decree or Judgment is final.

Obtain a court date from the clerk to finalize your custody case by default. If the other parent filed a Notice of Appearance but did not formally respond to the Petition, you must allow three days after service of the Notice of Intent to Take Default (plus three additional days for mailing unless the Notice was served in person). If you have been ordered to attend the parenting workshop, you will need to attend the court's Parenting Workshop (called "Divorce Orientation" or "Mediation Orientation" in some districts) before the hearing date. The parenting workshop attendance is required even if you and the other parent agree on all the issues in case.

Step 3: Finalize Your Case.

You are the only person who needs to come to court to finalize your case, but both parents may attend. We recommend that you sit in on several custody hearings at the courthouse prior to your scheduled hearing, so that you can become familiar with the procedure. The clerk will be able to give you the times when default hearings are held.

On the day of the hearing, make sure you go to the correct courtroom. Bring copies of all documents you have filed in the case. Dress appropriately for an office setting and address the judge as "Your Honor." (See "Guidelines for Courtroom Behavior", CAO Cv 4-1) The judge will call the name and the number of your case. Let the judge know you are representing yourself and that you will be your own witness. Then the clerk will swear you in and you will take a seat at the witness stand and give your testimony which is an outline of the things you asked for in the Petition. If what you are asking the judge to give you is in any way different from what you've asked for in your original Petition, then you must have a signed agreement with the other parent (called a Sworn Stipulation, CAO FLPi 6-1), or have served an Amended Petition. Answer any questions the judge asks. If the judge has no further questions, you are finished. The judge will tell you if he is signing your Decree or Judgment, and will hand the court file to the Court Clerk.

At the Clerk's office after your hearing, the Clerk will "conform" the extra copies you provided. The judge will not sign these copies, but the Clerk will stamp the judge's name on them. The Clerk will send conformed copies of the final Decree or Judgment to all parties of the case and to Child Support Enforcement in the envelopes you provided.

If you need additional copies, you can purchase regular or certified copies of your final documents any time after your final hearing from the Clerk's Office. However, there is a charge of \$1.00 per page for such additional copies. That is why it is important for you to supply at least two copies to be conformed by the clerk after the hearing. To have a copy certified you will be charged \$.50 per page plus \$1.00 for the seal if you provide the copy, otherwise the Clerk will have to charge \$1.00 per page, plus \$1.00 for the seal.

If for some reason you cannot make your court date or if you will be late, call the court clerk to ask for an extension of time and a new court date.

FINALIZING A CUSTODY OR MODIFICATION CASE BY STIPULATION (AGREEMENT)

This procedure should be followed if you and the other parent want the Judge to sign (enter) a Custody Decree or Modification Judgment with different terms than those contained in the Petition that was filed, or to settle the case after the other party filed an Response, or to simply agree to settle the case without a default being entered against the Respondent. This procedure will allow the judge to sign a Decree or Judgment both of you agree upon.

Step 1: Obtain and Complete the Required Forms

Step 2: Sign the Completed Forms

Step 3: Make Copies, File With the Clerk and Obtain a Court Date to Finalize Your Custody Case

Step 4: Finalize Your Case

Step 1: Complete the Required Forms.

Forms you will need are:

- Sworn Stipulation for Entry of Order, Judgment or Decree (CAO FLPi 6-1)
- Decree for Paternity, Custody, Visitation, and Support (CAO P 8-2) **or** Judgment of Modification (CAO M 8-1)
- Parenting Plan (CAO FL-3 3) if you have agreed to changes in the Parenting Plan; if the Parenting Plan attached to the Petition is your agreement, simply copy that Plan to attach to the Judgment or Decree.
- Child Support Transmittal form, CSS 809 (if your Decree or Judgment includes a new child support amount).
- You may need another Affidavit Verifying Income and Child Support Worksheet(s) if the child support amount requested in the Petition has not been calculated accurately pursuant to the Idaho Child Support Guidelines and the amount of child support you want to have ordered is different from what you put in your Petition to Modify. The Court Assistance Office can help you prepare and print the child support forms using the child support program)

At the top left-hand corner of page 1 of your forms, fill in the Petitioner's full legal name, current address, telephone number, and email address (if you have one). Fill in the county and judicial district in capital letters in the heading (for example, "IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT IN AND FOR THE COUNTY OF ADA"). Fill in your Full Legal Names on the lines above "Petitioner" and "Respondent" or "Father" and "Mother" (depending on which forms you are using). Fill out the remainder of each form.

Step 2: Sign the Completed Forms.

- Both you and the other parent must sign the Sworn Stipulation. By signing you are certifying that the information is true and accurate, subject to the penalty of perjury if it is not.

Step 3: Make Copies and File With the Clerk

If you have not already done so, you should return the Original Summons or Notice and file your proof of service on the other parent. (See your instructions "Filing for Custody . . ." or "Filing for Modification.")

Also file with the clerk:

- The original Sworn Stipulation (the original Sworn Stipulation is the one both parties signed – each party should keep a copy of the Sworn Stipulation).

- ❑ If the child support amount requested in the Petition needs to be changed, the original Affidavit Verifying Income and Child Support Worksheet(s) for the corrected child support. – each of you should keep a copy.
You will also bring to the court clerk's office:
- ❑ The original and two copies of the new Decree or Judgment if it does not include a new child support amount **or**
- ❑ The original and three copies of the new Decree or Judgment if it does include a new child support amount.

Be sure to attach your Parenting Plan (if you are using one) to every copy of the Decree or Judgment.

- ❑ The Child Support Order Transmittal Form if your Decree or Judgment includes a new child support amount.
- ❑ Two envelopes which the Clerk will use to mail the final Decree or Judgment along with any attachments to you and to the other parent. The envelopes must be addressed (one to you and one to the other parent). In addition, the envelopes must have the right amount of postage on them. If you are finalizing a custody case, you may have documents, such as a Parenting Plan, attached to your final Decree or Judgment. You should provide a large envelope with enough postage to send the decree or judgment and all attachments.

The court clerk will file your paperwork, including the Sworn Stipulation, and send the file with all the paperwork and the Decree or Judgment to the judge. If the judge signs your Decree or Judgment, you will receive a copy of the new Decree or Judgment in the mail. If the judge requires a hearing for any reason, you will be notified.

If you wish to have a copy of the Decree or Judgment certified so you can record it or provide it to agencies, the fee is \$1.00 PLUS \$.50 per page if you supply the copy, \$1.00 a page if the court clerk has to make a copy.