

## FINALIZING A CUSTODY OR MODIFICATION CASE CAO Instruction # 5B

**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.

### **First, Determine How You Can Finalize Your Case**

These instructions cover **two of the ways** you can get a final Order 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 order entered by default:

- ❑ Motion and Affidavit for Entry of Default (CAO 7-1)
- ❑ Default (CAO 7-2)
- ❑ Order for Custody, Visitation, Support (CAO 13-7) or Modification Order (CAO 10-3)
- ❑ Parenting Plan,(CAO 6-3) which you filed with your Complaint or Motion
- ❑ Child Support Transmittal form (CAO 1-14), (if your Order includes a new child support amount).

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

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

If the other parent filed an Answer or an Answer 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, and telephone number. Fill in the county and judicial district in capital letters in the heading just as it was on the Complaint you filed (for example, “IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT IN AND FOR THE COUNTY OF NEZ PERCE”). Fill in your names in the caption (“John Doe, plaintiff v. Mary Doe, defendant”) 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.

Some of the forms require your signature. Some of the form **must** be signed in the presence of a **notary public**. You can often locate a Notary Public at a bank, insurance, real estate or payroll offices, or the Courthouse.

## **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 Order and all attached Exhibits. (Make **three** copies of the Order with all exhibits if your order 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 Order **or** Modification Order (with all Exhibits attached)
- ❑ Child Support Transmittal Form (if your order sets or changes child support)
- ❑ Two envelopes which the Clerk will use to mail the final Order 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 Order 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 order. You should provide a large envelope with enough postage to send your order and all attachments, usually at least \$1.06.

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 Order (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 Order, the Child Support Transmittal form, plus any envelopes, for use after your Order 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 Complaint, 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.

**Optional Step:** If you have not already seen it, you may wish to contact the Court Assistance Office to schedule watching the 12:45 minute video called "The Idaho State Court System: Family Law" and learn more about what to expect at Court. This video is also available at your public library.

### **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 Instruction # 12 for more information) 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 Complaint or Motion. *If what you are asking the judge to give you is in any way different from what you've asked for in your original Complaint or Motion, then you must have a signed agreement with the other parent (called a Sworn Stipulation, CAO 6-9), or have served an Amended Complaint or Motion.* 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 Order, 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 order 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 or Modification Order with different terms than those contained in the Complaint that was filed, or to settle the case after the other party filed an Answer, or to simply agree to settle the case without a default being entered against the Defendant. This procedure will allow the judge to sign an Order 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 (CAO 6-9)
- Order for Custody, Visitation, Support (CAO 13-7) **or** Modification Order (CAO 10-3)
- Parenting Plan (CAO 6-3) if you have agreed to changes in the Parenting Plan; if the Parenting Plan attached to the Complaint is your agreement, simply copy that Plan to attach to the Order, and each of you sign it.
- Child Support Transmittal form, CAO 1-14 (if your Order 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 Complaint 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 Complaint or Motion 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 Plaintiff's full legal name, current address, and telephone number. Fill in the county and judicial district in capital letters in the heading (for example, "IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT IN AND FOR THE COUNTY OF NEZ PERCE"). Fill in your Full Legal Names on the lines above "Plaintiff" and "Defendant" 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 in the presence of a notary public. You can often locate a Notary at a bank, insurance, real estate or payroll offices, or the courthouse.

- On the page where the judge will sign the Order, in the space below the line for the judge's signature, each of you will write "Approved by" and then sign your name and write the current date.

### **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 for Entry of Decree (the original Sworn Stipulation is the one both parties signed before a Notary Public – each party should keep a copy of the Sworn Stipulation).
- ❑ If the child support amount requested in the Complaint or Motion 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 Order if your Order does not include a new child support amount **or**
- ❑ The original and three copies of the new Order if your Order does include a new child support amount.

### **Be sure to attach your Parenting Plan (if you are using one) to every copy of the Order.**

- ❑ The Child Support Order Transmittal Form if your Order includes a new child support amount.
- ❑ Two envelopes which the Clerk will use to mail the final Order 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 Order 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 order. You should provide a large envelope with enough postage to send the order and all attachments, usually at least \$1.06.

The court clerk will file your paperwork, including the Sworn Stipulation for Entry of Order, and send the file with all the paperwork and the Order to the judge. If the judge signs your Order, you will receive a copy of the new Order 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 Order 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.