

FILING FOR CUSTODY, VISITATION & SUPPORT
CAO Instruction 3A

Step 1: Talk to 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, a lawyer can 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.

Fill in the forms by typing or by printing neatly and legibly in black ink. Always keep a copy of the completed form for your records.

YOU WILL BE SIGNING A SWORN STATEMENT THAT YOU HAVE READ THE COMPLAINT FOR CUSTODY, VISITATION AND SUPPORT, KNOW THE CONTENTS AND BELIEVE THE CONTENTS TO BE TRUE. TO AVOID MAKING ANY MISSTATEMENTS, BE SURE TO READ THE ENTIRE FORM.

Step 2: Obtain and Complete the Required Forms to start your court case.

Before you begin to complete the forms, make a copy of the entire set of forms to use as a “working copy”. The court will accept your forms ONLY if they are neat and clean.

You will need to obtain the following forms:

- Complaint for Custody, Visitation and Child Support, CAO 13-5
- Divorce or Custody Summons (with Orders), CAO 1-1B
- Child Support Affidavit, CAO 1-11
- Child Support Worksheet, CAO 1-12
- Parenting Plan, CAO 6-3
- Family Law Case Information Sheet

If the other parent will cooperate by voluntarily accepting service, you will also need:
Acknowledgment of Service, CAO 2-1

If you do not know where the other parent lives, you will also need:
Affidavit and Motion for Service by Publication, CAO 1-7
Order for Service, CAO 1-8

Complete the forms listed above. At the top left-hand corner of page 1 of each court form fill in your full legal name, address, and telephone number, followed by “Plaintiff, Pro Se”. Fill in the

county and judicial district in the heading (for example, “In the District Court of the Sixth Judicial District in and for the County of Bannock”). Fill in your names in the caption (Your Name, Plaintiff; Other Parent’s Name, Defendant). Fill out the remainder of each individual form, providing the information requested. If specific instructions are provided for a particular form, follow those instructions.

Child Support. You will first need to complete an Affidavit Verifying Income and a Child Support Worksheet. A Court Assistance Officer can help you generate these documents if you provide the required information. The Child Support Worksheet will be used to complete this section.

Make 2 copies of the Parenting Plan so you can attach a copy to your Complaint, and one the original to attach to the Court Order.

You should sign all documents in the presence of a Notary Public where indicated. You can often locate a Notary at a bank, or insurance, real estate or payroll offices.

Step 3: Make Copies and File with the Clerk.

After signing the Complaint before a Notary, make two copies of the Summons and the Complaint (with all attachments) and one copy of all other necessary documents.

Go to the window in the Clerk's Office. Give the Clerk the following:

Filing fee (\$88.00 as of July 1, 2008) payable in cash or money order, not by personal check OR a Motion and Affidavit for Fee Waiver, CAO 1-10A, and a proposed Order for Fee Waiver, CAO 1-10B.

The completed, signed originals, with two copies underneath each original, of the following forms:

- Complaint for Custody, Visitation & Support (Parenting Plan, Affidavit Verifying Income, and Child Support Worksheet will be attached as Exhibits to the Complaint).
- Summons (with Orders)

A completed Family Law Case Information Sheet

The Clerk will give you an Order to Attend the “Focus on the Children Parenting Workshop” or other parent education class. You will need to serve this Order on the other parent, along with the Summons and Complaint.

The Clerk will “conform” your copies 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.

Step 4: Obtain Service on the Other Parent.

You now need to serve the Summons, Complaint, and Order to Attend Parenting Workshop on the other parent. There are three different ways you can do this. You only need to serve the other parent one of these ways. To avoid confusion read only the one which applies to your situation.

A. If the other parent will cooperate by accepting service:

Fill out the Acknowledgement of Service, CAO 2-1A, and make two copies.

Take or mail to the other parent the original and one copy of the Acknowledgment of Service, conformed copies of the Complaint, and Summons and the Order to Attend the Parent Workshop.

Have the other parent sign the original Acknowledgment of Service in the presence of a Notary Public.

Have the other parent return to you the original Acknowledgment of Service. The other parent is to keep a copy of the Acknowledgment of Service, the conformed copies of the Complaint and Summons and the Order to Attend the Parent Workshop.

Take the original and your copy of the Acknowledgment of Service, plus the original Summons back to the Clerk at the courthouse. Ask to have your copy of the Acknowledgment of Service conformed. The conformed copy will then be returned to you. The Clerk will keep and file the original Summons and Acknowledgment of Service.

B. If the other parent will not cooperate:

Deliver or mail the original and a copy of the Summons, a copy of the Complaint and an original Affidavit of Service to a sheriff, professional process server or other person over 18 in the county where the other parent lives, who will serve the papers. Include a letter stating where the other parent can be served, a description or photograph of the other parent, a description of the vehicle the other parent usually drives, and any other information that may help the process server locate and identify the other parent. If using the sheriff or a professional process server, call first to find out what they charge for serving a Summons and Complaint in a custody case, and include a money order or check for the correct amount when you send the papers.

The person who serves the forms will send the Affidavit of Service and original Summons back to you. You should make a copy of the Affidavit of Service for yourself, file the original Affidavit of Service and the original Summons with the Court and have your copy of the Affidavit of Service conformed.

C. If you do not know where the other parent is:

See the separate instructions and forms for Service By Publication, CAO Instruction No. 8.

Step 5: Wait 20 Days.

Idaho has a 20-day waiting period between the time the other parent was served and the time you can finalize your custody proceeding by default if the other parent does not respond in writing. 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 start counting the next following day.

You are required to attend the court's Parenting Workshop before you can finalize your custody proceeding.

If you and the other parent agree on all the issues and have both attended the Parenting Workshop, you can file a Stipulation for Entry of Order (CAO 6-9) and Order (CAO 13-7) and not have to wait 20 days. CAO Instruction 5B outlines the procedure.

If the other parent does not respond to the court in writing within 20 days of receiving service, you may FINALIZE YOUR CUSTODY PROCEEDING BY DEFAULT (see CAO Instruction 5B).

If the other parent does respond in writing, follow the steps below:

Step 6: Determine Whether a Reply is Necessary.

Read the other parent's response carefully. If the other parent's response was an "Answer", it is not necessary (or proper) for you to file a written reply. HOWEVER, if the other parent filed an "ANSWER AND COUNTERCLAIM", you will have 20 days from the date the counterclaim was served (received by you) to file a written reply.

IF YOU DO NOT RESPOND BY THE APPROPRIATE DEADLINE, THE COURT MAY ENTER AN ORDER OF DEFAULT AGAINST YOU AND THE RESPONDENT MAY RECEIVE EVERYTHING REQUESTED IN THE COUNTERCLAIM.

If you agree with the Counterclaim, and do not object to the terms of the custody, visitation and support proposed by the other parent, it is not necessary for you to take any action before the deadline. The court will send you a copy of the Order based on the Counterclaim after it has been entered. But if you disagree, or are unsure about any of the allegations or terms in the Counterclaim, you should talk to an attorney as soon as possible to learn what your rights are and what course of action to take.

If you will be unable to talk to an attorney before the 20-day deadline, you may want to file a Reply to Counterclaim. This will at least prevent the entry of an Order of Default against you. Make two copies of your reply, file the original with the court clerk, and mail, fax or hand-deliver a copy to the Defendant or the Defendant's attorney at the address in the upper left corner

of the first page of the Answer and Counterclaim. Be sure to complete the Certificate of Service at the end of the Reply form.

Step 7: Follow Notice of Status Conference, Scheduling Order or Other Court Orders.

Ordinarily, you will have a trial within six months if an Answer or Answer and Counterclaim have been filed. In the meantime, you will receive various notices and orders from the court. Other important papers you will receive may include Notice of Status Conference or Pre-trial Conference, Scheduling Order, or a Notice of Trial Setting. Read all court notices and orders carefully, and note the deadlines and hearing dates contained in them. Failure to meet court deadlines or to appear at scheduled conferences, hearings or at trial may result in punishment for contempt of court or in other sanctions. Such failure may also cause you to lose your case in whole or in part.

Step 8: Consider Negotiation, Mediation, or Other Means to Settle Your Case.

The overwhelming majority of civil cases settle before trial. You should attempt to settle your case with the other parent. You can either discuss settlement in person with the other parent or his/her attorney, or you may submit a written settlement offer. You might consider mediation to resolve your dispute. Mediation is a process in which a neutral third party (called a mediator) assists the parties in their settlement negotiations. Mediation is often successful in resolving disputes concerning property division, parenting schedules or child support. Your attorney, the court clerk or court assistance officer can give you a list of local mediators and more information about the mediation process.

There are other alternative means to settle your case without trial. These include arbitration and appointment of a special master. If negotiation or mediation does not resolve your case, you should talk to an attorney about these alternative dispute resolution mechanisms.

If you do settle your case before trial, fill out form CAO6-9, SWORN STIPULATION FOR ENTRY OF ORDER, and attach an appropriate ORDER that you both have signed. There is room for your signatures after the Clerk's Certificate of Service. Follow the detailed instructions for completing the Order form. Fill out the Child Support Transmittal form, CAO 1-14. You will need to ask the court clerk or court assistance officer whether a hearing will be required by your judge. Follow the instructions in "FINALIZING COMPLAINT FOR CUSTODY/VISITATION/SUPPORT", CAO Instruction 5B.

If your case does not settle before trial, see "Guidelines for Courtroom Behavior", CAO Instruction #12, for general information on how to proceed. The trial will be conducted according to formal rules of evidence and procedure, so you should talk to an attorney as to how to comply with those evidentiary and procedural rules and requirements.

For further information, please ask to see the video "The Idaho State Court System: Family Law" at your Court Assistance Office or public library.