

CAO P INSTRUCTION 1-1 JOINT PETITION FOR CUSTODY

If child support was established by the Department of Health & Welfare in the same county as the county where you will file your Joint Petition for Custody, you should file your documents in that same case. Forms to join in that case as a party are available at the Court Assistance Office. If the State of Idaho Department of Health and Welfare has filed a case to establish a Child Support Order, you need to serve a copy of the Petition upon the Department of Health & Welfare.

Talk to an attorney, if possible.

WARNING: These instructions are not a substitute for legal advice. The laws and court rules are complex and following these instructions will not guarantee you a favorable result. We always recommend you talk to a lawyer about your problem before filing your paperwork. If you cannot afford to hire an attorney to represent you, you may be able to pay a lawyer to give you advice and review your paperwork for a lesser cost. Contact the Idaho State Bar Lawyer Referral Service (208-334-4500) for the name of an attorney in your area who will provide an initial half-hour consultation for \$35. 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/>.

You will be signing a sworn statement that you have read the Petition, know what it says, and believe it's true. To guarantee the truthfulness of that statement, be sure to read the entire completed form.

Instructions.

Use form CAO P 1-1 Joint Petition for Custody only if you and the other parent are in complete agreement on paternity, custody and support of your child/ren and want to jointly petition the court for an order which reflects your agreement. If you and the other parent do not agree, other forms are available through the Court Assistance Office to establish paternity, custody and support.

Fill in the forms by typing or by printing neatly and legibly in black ink. The documents have a boldface "or" at the start of optional sections. If the section does not contain a boldface "or" it is necessary and you should type in the appropriate information (which might be the word "none"). Always keep a copy of the completed form for your records.

At the top left-hand corner of page 1, fill in your full legal name, mailing address and telephone number and the same information for the other parent.

The Court Heading. Fill in the county and judicial district in capital letters (for example, "IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT, IN AND FOR THE COUNTY OF KOOTENAI").

The Caption. Fill in the Full Legal Names of both parents on the lines above Father and Mother.

The Case No. If this is a new case, the case number will be assigned by court personnel when you file the Petition. If you are filing in an existing case, use that case number. You should write in the case number on all other documents.

The **Court Heading, Caption and Case Number** will be the same on all other documents you prepare for this case.

1. Minor Child/ren of the Petitioners.

Fill in the name and date of birth for each minor child and the city and state where each child has lived for the last five years. WARNING: If any of your children have not resided in Idaho for at least six uninterrupted months before the filing of the Petition (or for their entire lives if they are less than six months of age), the Idaho court may lack authority (“jurisdiction”) to determine custody of that child. In that event you should talk to an attorney to determine if there may be other grounds for jurisdiction under Idaho’s laws.

2. Jurisdiction/Paternity.

- Check the first box if paternity has NOT been established. Do not check the box if there is an Order signed by a Judge stating the Father is the father of your child/ren. (The order may be called an Order of Filiation or a Paternity Order.) Do not check the box if there is a Voluntary Acknowledgment of Paternity, signed by both parents, which has been filed with the Bureau of Vital Statistics, stating you are the parents of the child/ren.
 - Write father’s full legal name in the blank **and**
 - Check all boxes that are true in your situation. **or**

If there is an Order of Filiations or Paternity Order, check the box for that paragraph **and**

- Make a copy of the Order to attach (staple) to the Petition. **or**

If there is a Voluntary Acknowledgment of Paternity, check the box for that paragraph **and**

- Make a copy of the Voluntary Acknowledgment of Paternity to attach (staple) to the Petition. A copy of the Voluntary Acknowledgment of Paternity should be filed with the Bureau of Vital Statistics in the state where the child was born, or the local office for Child Support Services may have a copy if the Department of Health & Welfare has filed a child support action.

3. Residence of Petitioners.

Write in the residence of each parent (city, county and state).

4. You do not need to fill in anything.

5. UCCJEA Jurisdiction.

This is your statement that each child has resided in Idaho for at least the past 6 uninterrupted months. Additionally, you are required to inform the court if there have been any other cases involving your child/ren in any other court, or if there are any other people claiming custody or visitation rights with the child/ren.

In paragraphs 5a, b, c and d, provide all requested information or write “none”

6. Paternity. Insert Father’s full legal name.

7. Legal Custody.

“Joint legal custody” means the parents are required to share the decision-making rights, responsibilities and authority relating to the health, education and general welfare of the child/ren. The court will award joint legal custody unless you can prove it would not be in the best interest of the minor child/ren for the other parent to share the decision-making rights.

- Check the first box if both parents are fit persons to share the decision-making rights, responsibilities and authority relating to the health, education and general welfare of the child/ren, **or**

- Check the second box if you are declaring that one parent should have sole legal custody of the child/ren, **and**
 - Write in the name of the parent who should be awarded sole legal custody **and**
 - State why the other parent should NOT be allowed to share legal custody.

8. Physical Custody.

“Joint physical custody” means each parent has significant periods of time in which a child resides with or is under his/her care and supervision. Joint physical custody assures the child/ren frequent and continuing contact with both parents but does not necessarily mean the child spends exactly the same amount of time with each parent. The court will award joint physical custody unless you can prove it would not be in the best interest of the minor child/ren.

- Check the first box if both parents should be given physical custody of the child/ren **and**
 - Check the second box if you are using a Parenting Plan to describe the plan you want the court to order. Complete the **Parenting Plan**. (Both parents may sign the Parenting Plan, but it is not required). Write **Exhibit A** on the bottom of the first page of the Parenting Plan and attach (staple) it to the Answer and Counterclaim. **IMPORTANT: The Parenting Plan must be attached to make it a part of the Answer and Counterclaim.** Make an extra copy of the Parenting Plan to attach (staple) to the final Order or Decree. **or**
 - Check the third box if you are not attaching a Parenting Plan and describe the physical custody plan you want the court to order.
- or**
- Check the fourth box if you are asking the court to give sole physical custody of the child/ren to only one parent, **and**
 - Write in the name of the parent should be given sole physical custody **and**
 - State why the other parent should NOT be given periods of time when the child/ren resides with or is under his/her care and supervision.
 - Check the fifth box if you want the court’s order to give the other parent restricted or conditional time with the child/ren and write in the parent’s name **and**
 - State specifically what you want the court to order.

9. Child Support.

If there is already an order signed by a judge, for example in a different case filed by the Department of Health & Welfare, that sets child support, check the first box, **and**

- If you want that order to continue and control child support instead of getting a new order, check the second box. Then make a copy of that Order, mark it as **Exhibit E** and attach (staple) it to the Joint Petition for Custody. Then proceed directly to Section 10 of the Joint Petition for Custody. **Or**
- Check the third box if you believe there are substantial and material reasons why the child support set in the other case should be changed by an order issued in this case which would control future child support payments.

Warning: You should be aware that jurisdiction as to child support is a complicated issue and having a child support order in a separate case can create problems for enforcement and future modifications of the order. Also, your judge may require you to join the Department of Health and Welfare as a party in this case, or consolidate the two cases, before a new child support order can be issued in this case.

or

If there is NOT a child support order, check the fourth box.

Note: You will first need to complete an Affidavit Verifying Income and a Child Support Worksheet. A Court Assistance Officer will be able to help you generate these documents if you provide the required information. The Child Support Worksheet will be used to complete this section. If you want the court to enter a support amount that is different from the Idaho Child support Guidelines amount, you must come to court for a court hearing and persuade a judge why that is in the best interests of your children and meets their financial needs.

- Write in the name of the parent who will pay child support and from the child support worksheet, insert the basic monthly child support before any adjustments and the day of the month you want the payments to be made.
- In paragraph 9a, if you have more than one minor child, check the box. You will need to have a separate calculation to reflect the changed amount of support as each child is no longer eligible for support under Idaho law. These calculations are provided if you have used a computer program to calculate child support. A Court Assistance Officer can help you with these calculations if you do not have them.

Warning: If you are the parent paying child support (the “obligor”) you should be aware the Order will provide for collection of child support from your wages and from your real estate or personal property. The Order will also provide that if you move to another state, the child support can be enforced directly by courts in other states. Additionally, you should be aware that, according to Idaho law, if unpaid child support equals or exceeds the total support owing for ninety (90) days or the sum of \$2,000, whichever is less, you are subject to suspension of any license to practice or engage in any business, occupation or profession, operate a motor vehicle, carry a concealed weapon, or engage in any recreational activity, including hunting or fishing. Further, the State Tax Commission will withhold and set-off any state tax refund to collect any unpaid child support, or unpaid spousal support, and the Idaho State Lottery will likewise withhold and set-off a prize of a lottery prize-winner.

Extended Visits

In paragraph 9b, check the first box if the child/ren will be living in the home of one parent at least 75% of the time under your proposed parenting plan. If you do not check this box, go directly to paragraph 9c. Otherwise,

- Check the second box in paragraph 9b if you want the court to order a reduction in child support when the parent paying child support has physical custody of the child/ren for 14 or more overnights in a row. Next, check the appropriate box to indicate if the reduction should be 50% or some other percentage.
- Check the next box if you have more than one child, but the parent paying child support will have some, but not all of the children for a period of 14 overnights in a row. If this box is selected, the reduction of support will be applied only to the child/ren who are actually with the parent paying child support during those 14 overnights in a row.

Note: If the child/ren reside with each parent more than 25% of the time (overnights), this is considered shared physical custody and certain adjustments are made in the calculation of child support. Section 10(e) of the Idaho Child Support Guidelines, Rule 6(c)(6) of the Idaho Rules of Civil Procedure, describe “Shared Physical Custody” and computation of child support with that parenting arrangement. The reduction of child support for extended visits is not permitted if child support has been calculated with a shared physical custody adjustment. You can get a copy of the Child Support Guidelines from a Court Assistance Office or the Internet at <http://www.courtselfhelp.idaho.gov/>.

Work-Related Child Care Costs

Work related child care costs are separate from the basic monthly child support amount. Check the box in paragraph 9c you want the court to order the parent paying child support to also contribute to the payment of work related child care costs.

- Fill in the percentages each parent will pay.
- Note: Under this section you are asking the court to require each parent to pay their share directly to the care provider if permitted by the provider, otherwise, the parent who pays the costs must be reimbursed within ten days after the other parent receives a copy of the bill and proof of payment.

Medical Insurance

The cost of medical, dental and/or optical insurance for the child/ren is separate from the basic monthly child support amount. The cost is prorated between the parents in proportion to their Guidelines income. Check the first, second or third box to indicate how health insurance coverage for the child/ren is now being provided. If you select the first paragraph, write in the name of the parent(s) currently providing health insurance.

Warning: The Order will provide: Failure to provide medical insurance coverage may result in the direct enforcement of a medical support order by either the obligee (party or parent other than the parent ordered to carry or provide a health benefit plan for the parties' minor child/ren) or the Department of Health and Welfare. A national medical support notice will be sent to your employer, requiring your employer to enroll the child in a health benefit plan as provided by Sections 32-1214A through 32-1214J, Idaho Code, and applicable rules of the department.

Health Care Costs Not Paid by Insurance

The actual cost incurred for health care expenses for the child/ren not paid in full by insurance is separate from the basic monthly child support amount and is also prorated between the parents in proportion to their Guidelines income. Insert the correct percentages for the division of these costs. (Refer to the child support worksheets for these percentages)

Next, check the appropriate box indicating how insurance and health care costs should be paid.

Income Tax Exemption

Both parents are entitled to share in the benefits of income tax credits and exemptions for the child/ren regardless of which parent actually claims those benefits in a tax return.

- Check the first box in paragraph 9f to divide the value of tax benefits and exemptions for the child/ren according to the Child Support Guidelines. Insert the name of the parent who will claim each child as a dependent on their income tax return(s). (If you do not agree otherwise, the parent with the most income will claim the children.) Note: The child support calculation must reflect the same designation.
- Check the second box if both parents want to agree to a different division of these benefits. Note: If you select this option you will be required to provide the judge a written document signed by both parties showing your agreement. Do not select this option unless you have, or are sure you can obtain that written document. If you select the first check box option, you may always agree later to a different division by filing a written stipulation with the court.

Summary of Basic Child Support and Adjustments

Paragraph 9g is a summary of all of the choices on child support you have selected in the prior

sections. Refer to all of the sections of paragraph 9 and your Affidavit Verifying Income and Child Support Worksheets, then insert the correct percentages and amounts in the summary. The options, amounts and percentages you insert in the summary, must be exactly the same as those you selected or inserted in the prior sections. Attach (staple) a copy of your Affidavit Verifying Income and Child Support Worksheets to the Answer and Counterclaim, marking each as **Exhibit B**.

10. Name Change.

If you want to have the last name of your child/ren changed and/or want to have your child/ren's birth certificate(s) changed, the Bureau of Vital Statistics in the state where your child/ren was born will require a court order.

- If you want a court order to change the last name of your child/ren, check the box **and**
- Write in the last name. (Accurate spelling is very important.)
- If you want the court to order that your child/ren's last name be changed on the child/ren's birth certificate, check the box.

11. Amend Birth Certificate.

If your child/ren's birth certificate(s) do/es not include the name of the father the Bureau of Vital Statistics in the state where your child/ren was/were born will require a court order to add the father's name to the birth certificate(s).

- Write in father's full legal name as it should appear on the child/ren's birth certificate.

Signatures: Leave the spaces for the State and County blank. Go to an office where there's a Notary. Have the notary fill in the spaces. Sign the Joint Petition in front of the Notary and have your signatures notarized.

Exhibits: Before attaching the Exhibits to the Petition make an extra copy of the ones you will use with the Order for Custody.

Attach (staple) Exhibits to the Motion with a staple. Make additional copies of the Petition with Exhibits attached (stapled) so there is a copy for each party. Take the original and copies to the clerk of the court for filing and conforming.