

**CAO FL INSTRUCTION 3-5
FAMILY CASE RESPONSE AND COUNTERCLAIM (WITH CHILD/REN)**

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 statement that you have read the Petition, know what it says, and believe it's true. Be sure to read the entire completed form.

You may be responding to (answering) a Complaint, Petition, Counterclaim, Petition to Modify or a document with some other name. The procedure for responding is the same. To simplify these instructions, we will use the term "Petition" in referring to the document you are answering.

Instructions.

Fill in the forms by typing or by printing neatly and legibly in **black ink**. Fill in "N/A" or in "none" if a section doesn't apply. 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.

Completing the RESPONSE Portion of the Form

At the top left-hand corner of page 1, fill in your full legal name, mailing address, telephone number, and email address (if you have one).

The Court Heading. Fill in the county and judicial district in the court heading the same way they are on the Petition you were served.

The Caption. Fill in the names of Petitioner and Respondent exactly as they are in the Petition. **The Case No.** Write in the case number shown on the Petition.

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

Review the Petition carefully. You must admit or deny each paragraph in the Petition individually, using paragraphs 1-5 of the Response form. If you only agree with some of the facts in any paragraph, you must state specifically which facts you admit and which facts you deny. There is a **prayer** portion of the Petition that you do not have to specifically answer. It usually starts with "Wherefore Petitioner prays for judgment as follows:" You **do not** have to respond to any of the numbered paragraphs in the prayer of the Petition.

After filling in your name, complete the next blank by filling in the name of the document you are answering.

Note: There are several options for answering the document.

Paragraph 1: Decide the numbered Petition paragraphs you completely agree with. Fill in those paragraph numbers, letters, or Roman numerals (as used in the Petition). If you can only admit some of the facts in any numbered paragraph, you must use paragraphs 2 and 3.

Paragraphs 2 & 3: If you disagree with only a portion of a paragraph in the Petition, state the paragraph number, letter or Roman numeral (as used in the Petition) plus specifically what you admit.

Paragraph 4: Decide the paragraphs of the Petition you don't have enough information to answer. Fill in those paragraph numbers, letters, or roman numerals (as used in the Petition). If the information is something you can easily find out, you should try to find out before you deny it.

Paragraph 5 is a general denial of any statements made in the Petition that you did not specifically admit.

Paragraph 6 is where you list information about the minor children involved in the case.

Paragraph 7 is for listing the places the child/ren has lived for the past 5 years, plus anyone a child has lived with.

Paragraphs 8-10 are where you let the court know if there are other court cases involving the children, or other people who claim rights with the children.

Paragraph 11 gives you the option of asking that the Petition be dismissed. Check the box if that is what you want.

Affirmative Defense(s) Paragraph: Rule 208(C) I.R.F.L.P. lists the following affirmative defenses: accord and satisfaction, arbitration and award, assumption of risk, contributory or comparative negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver and any other matter constituting an avoidance or affirmative defense. You can use a legal dictionary to find out what the terms mean. You should talk to an attorney to determine whether any of these affirmative defenses are available to you. Fill in those affirmative defenses that apply to your case, listing each as a separate numbered paragraph.

Completing the COUNTERCLAIM Portion of the Form

1. Residence of the Parties.

Fill in the state where you live and the state where your spouse lives.

2. Marriage of Parties.

Fill in the city and state (or country if you were married outside the USA) and the month, day and year of your marriage.

3. Grounds.

This paragraph states the reason for the divorce is irreconcilable differences. If you want to state other grounds for the divorce, you should talk to an attorney.

4. Minor Child/ren of the Parties.

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.

- Check the first box if Wife is NOT now pregnant **or**
- Check the second box if Wife IS now pregnant with Husband’s child **and**
 - Fill in the expected date of birth for the child. (A Modification will need to be filed after the birth of the child to establish custody and child support.)

5. UCCJEA Jurisdiction.

This is your statement that each child has resided in Idaho for at least the past 6 uninterrupted months. In paragraph 5a you must list the places the child/ren has lived for the past 5 years, plus anyone a child has lived with. 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 5b, c, and d,** check the appropriate box and provide all requested information.

6. 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.

7. 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**. Attach (staple) it to the Response and Counterclaim. **IMPORTANT: The Parenting Plan must be attached to make it a part of the Response 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.

8. 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 Response and Counterclaim. Then proceed directly to Section 9 of the Counterclaim. **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 8a, 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 8b, 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 8c. Otherwise,

- Check the second box in paragraph 8b 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 J(5) of the Idaho Child Support Guidelines, Rule 126 of the Idaho Rules of Family Law 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.isc.idaho.gov/irflp126>.

Work-Related Child Care Costs

Work related child care costs are separate from the basic monthly child support amount. Check the box in paragraph 8c 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 8f 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 8g 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 8 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 Response and Counterclaim.

9. Wife's Child/ren of Another Relationship.

Complete this paragraph if any child/ren born or conceived during the marriage was not fathered by the Husband.

Paragraphs 10, 11, and 12

WARNING: The rules of separate property (owned by only one of you) and community property (owned by both of you) can be extremely complex and technical. The following general principles may not apply to your situation. For example, some separate property may have been improved with community funds (or vice versa). Also, interest or other income from separate property is considered to be community property. If you have a lot of property or have any questions about whether it is separate or community property, please talk to an attorney.

Separate property is property either of you owned before the marriage or received during the marriage by gift or inheritance or in exchange for other separate property.

Community property is property acquired by one or both of you during the marriage unless the property was given to either of you separately as a gift, inheritance or in exchange for other separate property.

Real property or real estate is land with or without buildings. If the property you list is real estate, include legal descriptions from the deeds to the property. It is important that your description be exactly the same as that in the deed. If the legal description is lengthy, you may want to photocopy the deed, cut out the legal description and paste it on a separate sheet of paper to use as an attachment to the Property and Debt Schedule. Attach (staple) the Schedule to the Petition and refer to the Schedule in the Petition.

Personal property is all property that is not real estate. Personal property includes furniture, clothing, vehicles, cash, bank accounts, securities and debts owed to you. It also includes retirement accounts; but, if either of you have retirement accounts you definitely should talk to an attorney before proceeding.

10. Separate Property.

- If you do not want any order about ownership of separate property, check the first box.
- If you want the court to order that specific separate property belongs to the Husband and/or an order that Husband's separate property, now in the possession of the Wife, be returned to the Husband, check the second box and describe the property in the Property and Debt Schedule.
- If you want the court to order that specific separate property belongs to the Wife and/or an order that Wife's separate property, now in the possession of Husband, be returned to the Wife, check the third box and describe the property in the Property and Debt Schedule.

11. Community Real Property.

- If you have not acquired community real property during the marriage, check the first box.
- If you have acquired community real property during the marriage, check the second box **and** in the Property and Debt Schedule
 - Fill in the residential address of the property (house number and street name),
 - The name of the city and county, and
 - The legal description for the property (use the legal description in the deed).

Disposition of Real Property. A “**lien**” is a legal right or interest that a creditor has in another's property (for example the mortgage loan). The mortgage loan and any other lien against the property should be listed in the Debt Section of the Petition. We recommend you discuss your mortgage loan or any other lien on your property with your lending institution or lien holder and talk to an attorney before proceeding. As long as both of your names are on the loan, you will both continue to be responsible for payment until the loan is paid in full. If the payment isn't paid by the one assigned to make it, the creditor may collect from either of you. Also, if the property is foreclosed, both of you could be held responsible for any deficiency in paying off the loan after foreclosure sale. “**Equity**” is the difference between the value of the property and all encumbrances (liens) upon the property.

- Check one of the first three boxes to indicate what will be done with the community real property and any equity, and fill in the blanks **or**
- Check the fourth box and write in your own words what will be done with the property and any equity in the property.

Note: If the amount of the equity payment is large and will be spread out into periodic payments, you should talk to an attorney about the right way to insure the payments are made.

12. Community Personal Property.

- If you have not acquired any community personal property, check the first box **or**
- If you have already divided your community personal property and each of you has the property in your possession, check the second box **and/or**
- If you want the court to order that specific property be given to the Husband and the property is already in Husband's possession, check the third box and list the property in the Property and Debt Schedule **and/or**
- If you want the court to order that specific property be given to the Wife and the property is already in Wife's possession, check the fourth box and list the property in the Property and Debt Schedule.
- If there is property that the Husband should have given to him which is still in the possession of the Wife, check the third box **and** list the property in the Property and Debt Schedule.
- If there is property that the Wife should have given to her which is still in the possession of the Husband, check the fourth box **and** list the property in the Property and Debt Schedule.

Note: The Decree of Divorce can be used to transfer titles or deeds; but only if the description of the property is first listed in the Petition and is complete and accurate (example: for vehicles, include all identifying information on the title; for real property, include a legal description of the property from the deed and not just the residential address of the property).

Paragraphs 10, 11, and 12 Reminder.

If you have listed any property on the Property and Debt Schedule, the Schedule must be attached (stapled) to every copy of the Petition.

13. Debts.

Generally, separate debts are debts incurred by either of you prior to marriage, or during marriage if incurred to improve or maintain separate property (see the description of community and separate property above). Community debts are all other debts incurred during marriage.

- If you do not know of any unpaid debts, check the first box **or**
- If there are debts the Husband should be ordered to pay, check the second box and list each creditor in the Property and Debt Schedule.
- If there are debts the Wife should be ordered to pay, check the third box and list each creditor in the Property and Debt Schedule.

Note: If both of you are going to pay a part of the same debt, also put in the amount each of you should be ordered to pay.

Note: A divorce is between you and your spouse. Your debts are between you and your creditors and, if a bill doesn't get paid, the creditor may be able to collect from either of you, especially if both of your names are on a loan contract. However, if the debt is listed in the divorce papers and either of you is assigned and ordered to pay a debt and does not make payment, the other party may have some remedy before the court; however, if the bill doesn't get paid, the creditor may be able to collect from either of you.

14. Debts Incurred Since Separation.

If you want the judge to order that each party will pay any debt incurred by them after the separation date, check the box and fill in the date you stopped living together.

15. Name Change.

Check the box if either party wants to stop using the last name of the spouse and go back to using their former last name (any name legally used). Fill in the current name of the person wanting the name change and fill in the former last name. (Accurate spelling is very important.)

Signature: Sign and date certifying that the information is true and accurate, subject to the penalty of perjury if it is not.

Certificate of Service

You are required to deliver a copy of any document you file in this case to your spouse (or her/his attorney if s/he is represented by an attorney). Because your spouse has already “appeared” in the case by filing the Petition, you can serve him/her your response by mailing, hand-delivery or fax.

- Fill in the name and address for the other party (or his/her attorney) exactly as it appears in the upper left corner of page one of the Petition. If you are going to serve the Response by fax or personal delivery, write in the address you will use.
- Check the box to indicate how you are getting a copy to the other party (or his/her attorney).
- Fill in the date and sign the Certificate of Service.

Note: A copy of every document you file with the court in this case must be sent to the other party, either directly or through the attorney if s/he has an attorney.

Make your copies.

Serve one copy on the person named in the upper left hand corner of page 1 of the Petition by the method specified in your Affidavit of Service.

File your Response and Counterclaim. Take the original (the one you signed) and your copy (with the required filing fee) to the court clerk. The original will be kept in the court’s file and you can ask that the clerk “conform,” or stamp your copy. **(See CAO D Instruction 3-1 “Responding to a Divorce Petition” for complete instructions).**