

Oregon State Bar
Meeting of the Board of Governors
June 18, 2010
Open Session Minutes

The meeting was called to order by President Kathleen Evans at 1:00 p.m. on June 18, 2010, and adjourned at 3:15 p.m. Members present from the Board of Governors were Barbara DiIaconi, Kathleen Evans, Ann Fisher, Michelle Garcia, Michael Haglund, Gina Johnnie, Derek Johnson, Ethan Knight, Steve Larson, Karen Lord, Audrey Matsumonji, Kenneth Mitchell-Phillips, Mitzi Naucler, Maureen O'Connor, and Stephen Piucci. Staff present included Teresa Schmid, Sylvia Stevens, Rod Wegener, Jeff Sapiro (phone), Susan Grabe, Kay Pulju, and Teresa Wenzel. Present from PLF were Ron Bryant and Fred Ruby. Also present was Jessica Cousineau from the ONLD.

Friday, June 18, 2010

1. Departmental Presentation – Communications Department

Kay Pulju, Communications Manager, presented an overview of the Communications Department and its upcoming merger with the Member Services Department, after which the new department will be called Member and Public Services. Services provided by the current Communications Department include publication of the *Bulletin* and online BarNews; media and public relations for the bar ; special events, conferences, summits, and the former tent show; public education, LegalLinks, public pages of the website, pamphlets, and video; customer service, receptionists, and bar room rentals; and lawyer referral, modest means, and military assistance panels. Additional services anticipated after the two departments combined are development and maintenance of an MP3 library of CLEs, additional volunteer recruiting, team-based event planning, and ONLD mentoring.

2. Inspiration

Ms. Naucler read the commencement address given by The Honorable Mary Muehlen Maring of the North Dakota Supreme Court to the University of North Dakota Law School class of 2010. (See Exhibit 1)

3. Report of Officers

A. Report of the President

As written

B. Report of the President-elect

As written

C. Report of the Executive Director

As written

D. Oregon New Lawyers Division

1. ONLD Report

In addition to her written report, Ms. Cousineau reported that the ONLD was also in Baker City providing a CLE to the attorneys in the region.

4. Professional Liability Fund

A. General Update

Ron Bryant provided a general update on PLF activities. Claim volume appears to be trending downward. The PLF is implementing a trial college to train their outside defense counsel. The PLF continues to plan for the retirement of several claims attorneys, some of whom have been with the PLF since its inception.

B. Approve changes to Policy 4.400 (Settlement Authority)

Mr. Bryant summarized the proposed amendments to Policy 4.400 relating to the claims settlement authority of the claims attorneys and the Director of Claims, explaining that the changes are in response to increasing claim amounts.

Motion: Ms. DiIaconi moved, Ms. Fisher seconded, and the board unanimously approved the changes to PLF Policy 4.400 raising the settlement authority of the Director of Claims and claims attorneys.

C. Financial Update

Investment returns were up earlier in the year, but seem to be heading back down. The PLF continues to scan documents and the process is proceeding faster than expect. This has resulted in an increase to the current budget, but scanning is expected to be completed shortly.

D. Report on BarBooks™ Request

The PLF unanimously approved contributing \$600,000 to assist in making BarBooks™ a member benefit. The money will be paid in installments over a three-year period.

1. Miscellaneous

Mr. Zarov appeared by phone informing the board that he had received a Special Underwriting Assessment (SUA) appeal on June 18, 2010, and the timeframe for review was 30-60 days.

5. Joint Committee on BarBooks™

- A. Update

Ms. Evans informed the board that, with the PLF's contribution, the bar will be moving forward with the BarBooks™ project. Mr. Piucci and she announced the project to the local bars during their Eastern Oregon visit and the response was uniformly positive. Staff will continue to fine tune the project and get the word out to the members. Ms. Evans also confirmed that the subscription price for the remainder of 2010 will be prorated and existing BarBooks™ subscribers will get a pro rata refund as appropriate.

6. OSB Committees, Sections, Councils, Divisions and Task Forces

- A. Out of State Lawyers in Arbitration Task Force

1. Update

Ms. Stevens informed the board that the task force has met four times and is close to reaching a consensus about what to recommend to the board. Its principal focus has been on whether to require proof of and malpractice coverage.

- B. Mentoring Task Force

1. Update

Ms. Stevens provided the board with background and reported on activities of the Mentoring Task Force. The former president of the Utah State Bar gave a presentation at the first task force meeting, which was very helpful. Oregon's program will likely be similar to that of Utah and will include required and elective tasks that new lawyers will need to complete in the first twelve months of practice. Task force chair, Gerry Gaydos, anticipates a report for the board at its September 2010 meeting. The Chief Justice is excited about the program and would like to see it implemented for those who pass the bar exam in February 2011. Ms. Evans and Mr. Piucci received positive feedback when they discussed the program during their Eastern Oregon trip. It is anticipated that 200 mentors will be

needed by May 2011 and an additional 400 by September 2011. There likely will be a cost to the new lawyer participants. Subcommittees have been formed to consider what the program should look like, what the cost would be and how it would be administered, how to select mentors, possible changes to MCLE rules, and how to coordinate with existing local and specialty bar mentoring programs. Mr. Zarov assured the board that the PLF's "Learning the Ropes" will continue to be available to new lawyers.

7. BOG Committees, Special Committees, Task Forces and Study Groups

A. Joint Access to Justice and Budget & Finance Committee

The committee is not yet prepared to make a recommendation regarding the RIS program to the board. It is waiting for additional information reflecting how much revenue a percentage fee structure is expected to bring.

B. Budget and Finance Committee

1. Audit of OSB Financial Statements for 2008 and 2009

The board received the Moss Adams audit. Minor procedural changes have been made to conform to auditors' recommendations.

Motion: Mr. Haglund moved, Mr. Piucci seconded, and the board unanimously passed the motion to accept the audit.

C. Executive Director Evaluation Committee

The committee continues to meet regularly and is developing an evaluation instrument.

D. Member Services Committee

1. Sustainability Awards

Ms. Johnnie reported on the committee's analysis of the Sustainable Futures Section's proposal for a sustainability award. The committee recommended a single award, the recipient of which will be determined by the Board's awards committee using the criteria suggested by the section.

During the discussion the following points were raised: whether the award focuses too much on office administration and differs significantly from current awards recognizing service to the bar and the community; whether it would be more appropriate for the

section to give this award ; whether the award criteria will favor large firms that have the most money to spend on sustainability and thus eliminate most smaller firms and solos; and whether sustainability is principally a “Portland” agenda. Ms. Evans reminded the board that it has incorporated a commitment to sustainability in the bylaws and an award would reflect that continuing commitment.

Motion: The board passed the committee motion to add the sustainability award to the existing President’s awards (See Exhibit 2). Ms. Naucner, Ms. DiIaconi, Mr. Knight, and Ms. Fisher opposed the motion.

E. Policy and Governance Committee

1. Email Requirement for all Members of the Bar

Motion: The board passed the committee motion to require all bar members to provide the bar with a valid email address. Staff will draft an amendment to Bar Rule of Procedure 1.11 and present it to the Supreme Court as soon as possible. Ms. Fisher opposed the motion.

Motion: The board unanimously passed the committee motion to require all bar members to provide the bar with at least a phone number or an e-mail address for the electronic membership directory. The board also encouraged staff to develop a mechanism for bar members to purchase an “enhanced” directory listing to include photographs and information about the member’s practice.

2. MCLE Rules Changes Relating to Teaching and Writing Credit

Motion: The board passed the committee motion to approve the changes to the MCLE Rules relating to teaching and writing credit. (See Exhibit 3)

F. Public Affairs Committee

1. OSB Court Fees Task Force Report

Mr. Piucci thanked Mr. Gaydos, Mr. Kent, Mr. Johnson, and Ms. Grabe for participation in the task force. Ms. Grabe distributed copies of the report (See Exhibit 4).

The task force considered where the courts are today financially; how to administer fees in light of access to justice and legal aid issues; and whether it was wise to fund courts long-term with fees. Two issues surfaced and will come to the board: (1) how to fund

legal aid adequately and fairly and (2) if law library fees, now a percentage, should be changed a flat fee.

The report acknowledges there are inconsistencies in fees but as all courts move to e-filing, that issue should resolve itself.

Motion: The board unanimously passed the committee motion to approve the task force report and forward it to the legislature.

2. ABA Red Flag Rule Appeal

Motion: The board unanimously passed the committee motion to join with the New York bar in filing an *amicus* brief regarding the ABA Red Flag Rule.

3. Parenting Plan Work Group Report

Motion: The board passed the committee motion to accept the Parenting Group Report (See Exhibit 5). Mr. Mitchell-Phillips opposed the motion.

8. Consent Agenda

Motion: Ms. Fisher moved, Ms. DiIaconi seconded and the board unanimously passed the Consent Agenda included the Appointments Committee recommendations (See Exhibit 6)

9. Good of the Order

Mr. Johnson asked about deferment of bar dues due to financial hardship. Ms. Schmid explained that members with both financial and mental or physical disabilities can apply for a hardship exemption. Other members unable to pay their bar dues typically elect for inactive status until they are in a better financial position.

The Honorable Mary Muehlen Maring, North Dakota Supreme Court, Commencement address to the UND Law School class of 2010.

In the words of the late Ted Koskoff, a civil trial lawyer:

If you are a lawyer, you stand between the abuse of corporate power and the individual.

If you are a lawyer, you stand between the abuse of governmental power and the individual.

If you are a lawyer, you stand between the abuse of judicial power and the individual.

If you are a lawyer, you are helping to mold the rights of individuals for generations to come.

If you think about those who have been part of our professional heritage, your thoughts would, I think, turn to some of these.

A Philadelphian in New York, the first Philadelphia lawyer, who undertook the defense of John Peter Zinger to protect his right to publish what he chose, free from censorship or interference. His name was Andrew Hamilton, and he was a lawyer.

You would see him at the trial of Captain Preston, another political trial. A trial that arose out of the Boston Massacre. His name was John Adams, and he was a lawyer.

You would see him at that miracle in Philadelphia, the Constitutional Convention of 1787, fighting for the Bill of Rights, which became the basis of American freedom. His name was James Madison. He was a lawyer.

I know you would see him at Gettysburg, with tears in his eyes, gaunt and morose, rededicating our country to the principles of equal justice for all. "As I would not be a slave, so I would not be a master." His name was Abraham Lincoln, and he was a lawyer.

I know we all see him, an elemental man fighting for one cause or another, and in Dayton, Tennessee, preaching the legitimacy of evolution. His name was Clarence Darrow, and he was a lawyer.

You would see him speaking to us from his wheelchair, lifting our spirits, making us stronger with his inspirational philosophy, "the only thing we have to fear is fear itself." His name was Franklin Delano Roosevelt. He was a lawyer.

You could see her standing before the podium in the U.S. Supreme Court chambers and insisting that her client, Gerald Gault, a 15-year-old boy, had the right to due process of law, a radical and dangerous proposition at the time. Her name is Amelia Lewis. She was a lawyer.

Certainly, we see him, passionate and stubborn, brilliant and volatile, a product of segregated education, whose extraordinary skills ended it, "Separate, but equal is a legal fiction. There never was and never will be any separate equality. Our constitution cannot be used to sustain

Exhibit 1

ideologies and practices which we as a people abhor." He is the ultimate long distance runner. His name is Thurgood Marshall. He was a lawyer.

We may also see him in Birmingham, Atlanta, and Portland, modest, unassuming, soft-spoken, but with the courage to face down the enemies of liberty and to march on despite threats to himself and his family -- using the civil justice system to bring the Klan, the Skinheads, and the other hate mongers to their knees. "Remember me by my clients." His name is Morris Dees and Elden Rosenthal, and they are lawyers.

You might see her in Congress and state legislatures advocating for women's rights. The first women appointed to the federal bench. Her name is Burnita Shelton Matthews, and she was a lawyer.

You would see him pushing Hernandez v. Texas through the courts, winning Latinos equal rights protection under the 14th Amendment. Working with so few resources, he had to collect donations to pay the filing fees at the U.S. Supreme Court. His name is James De Anda, and he was a lawyer.

You would see them representing Salim Ahmed Hamdan, Osama Bin Laden's driver, taking on an unpopular cause and defending an unpopular person, challenging the constitutionality of executive power and trying the first war crimes trial of a Guantanamo detainee. Their names are Harry Schneider, Jr. and Brian Mizer, and they are lawyers.

Justice Brandies observed a century ago that "[t]here is a call upon the legal profession to do great work for this country." Many lawyers have answered this call. Lawyers not only have a responsibility to their clients; lawyers are the guardians of the rule of law.

Exhibit 1

2010 OSB SUSTAINABLE FUTURE SECTION (SFS) AWARDS

SUSTAINABLE LAW OFFICE LEADERSHIP AND SUSTAINABLE LEADERSHIP

The Sustainable Future Section is seeking nominations for a new annual awards program to recognize leadership in moving the legal profession and law office practices along the path of sustainability. The award program will recognize leadership in two categories: law office and individual lawyer.

I. BACKGROUND AND PURPOSE

On October 30, 2009, the Oregon State Bar (“OSB”) Board of Governors adopted several recommendations presented to it by the OSB Task Force on Sustainability.¹ One of the recommendations adopted was the formation of a new OSB section—the Sustainable Future Section. The Task Force further recommended five actions/initiatives to be undertaken by the Sustainable Future Section. Creation of an annual award to recognize leadership in sustainability efforts was one of these recommendations. The ten member Executive Committee of the Sustainable Future Section has met to discuss the awards program and believes that the award should be included as part of the annual OSB Awards program.

The mission of the OSB Sustainable Future Section is

to support sustainability by providing institutional expertise to the Oregon State Bar and its members, by educating attorneys and other legal professionals on sustainability and its integration into the law and in best office practices and by promoting a dialogue on how law interfaces with the needs and interests of future generations.

The Sustainable Future Section believes that the awards program will advance the mission of the Section, particularly as it pertains to educating attorneys and legal professionals about the relationship between sustainability and the practice of law and to promoting a dialogue on how law interfaces with the needs and interests of future generations.

The purpose of these awards is to recognize the efforts of law offices and individual lawyers who make exceptional voluntary efforts in advancing the societal goal of sustainability. Although advancements in providing paid legal services are important, the awards are not intended to recognize them.

¹ See <http://www.osbar.org/docs/resources/09SustainabilityTaskForceReport.pdf> for the full Task Force Report.

II. OSB SUSTAINABLE LAW OFFICE LEADERSHIP AWARDS

One award may be given annually for a law office.

1. Eligibility. A law office located in the State of Oregon comprised of OSB members.
2. Criteria. The law office has demonstrated leadership in sustainability manifested through some combination of the following modes:
 - a. Firm policy or policies
 - b. Office operations
 - c. Training/education of office personnel
 - d. Transportation practices
 - e. Firm support of organizations or initiatives through donated time, resources or other means
 - f. Other comparable modes

III. OSB SUSTAINABLE LEADERSHIP AWARDS

Up to two awards, one in each of two eligibility categories, may be given annually to lawyers who demonstrate leadership in moving the legal profession to embrace sustainability as a goal of the profession.

1. Eligibility. The two eligibility categories are: (a) an active or inactive OSB Member who passed the bar within 10 years of the date of application; and (b) an active or inactive OSB member who passed the bar more than 10 years from the date of application.
2. Criteria. A lawyer who has demonstrated leadership in sustainability by volunteering time to move any of the following along the path of sustainability:
 - a. The legal profession
 - b. Law office operations
 - c. Law schools
 - d. Judicial or administrative proceedings
 - e. Other forums where law or the practice of law provides the primary context

IV. NOMINATING GUIDELINES

To ensure full consideration of the nominee's contributions, your nomination packet should include:

1. Award Nomination Forms. Fill in all requested information and specify the desired award category. A letter can be substituted if it includes the same information.

Exhibit 2

2. Supporting Detail. The thoroughness of this information can make the difference in the selection process. Supporting detail may include resume information, narratives describing significant contributions and special qualifications, a list of references with phone numbers, letters of recommendation, articles, copies of firm policies or programs.
3. Who May Nominate. Any lawyer may nominate one or more law office or lawyers, and self-nominations are accepted and given the same weight as a nomination by others.
4. Submitting Nominations. Nominations must be postmarked or delivered by 5:00 p.m. Friday, July 23, 2010, by one of the following methods: U.S. Mail: Oregon State Bar, Attn: #####, 16037 SW Upper Boones Ferry Rd., P.O. Box 231935, Tigard, Oregon 97281-1935; email: #####@osbar.org. Electronic submissions are preferred. For further assistance, please contact ####.

IV SELECTION PROCESS

Nominations for the SFS Sustainable Leadership Awards will be reviewed by the SFS Executive Committee designated review panel. No member of the review panel or Executive Committee may be eligible for an award. Awardees shall be selected by consensus.

V. AWARDS RECOGNITION EVENT

Award recipients will be honored at the SFS Annual Meeting, date to be announced.

**2010 OSB SUSTAINABLE FUTURE SECTION (SFS) AWARDS
SUSTAINABLE LAW OFFICE LEADERSHIP
AND
SUSTAINABLE LEADERSHIP**

Nominee Information Sheet

Nominee Name _____ Bar No.: _____

Office Address _____

Office Telephone _____ Email _____

Award Category: Please indicate the award category for which this nomination is submitted (select one)

- ☐ Sustainable Office Leadership
- ☐ Sustainable Leadership (Individual 10 or fewer years)
- ☐ Sustainable Leadership (Individual more than 10 years)

Based on the criteria for the award indicated above, explain why you believe the nominee is deserving of this honor. You are encouraged to attach additional information as outlined in the nomination guidelines to completely describe the nominee's unique qualifications.

Nominating Group/Person _____

Contact Person _____

Office Telephone _____ Email _____

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Exhibit 2

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IV SELECTION PROCESS

Nominations for the SFS Sustainable Leadership Awards will be reviewed by the SFS Executive Committee designated review panel. No member of the review panel or Executive Committee may be eligible for an award. Awardees shall be selected by consensus.

V. AWARDS RECOGNITION EVENT

Award recipients will be honored at the SFS Annual Meeting, date to be announced.

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SUSTAINABLE LAW OFFICE LEADERSHIP
AND
SUSTAINABLE LEADERSHIP**

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Nominee Name _____ Bar No.: _____

Office Address _____

Office Telephone _____ Email _____

Award Category: Please indicate the award category for which this nomination is submitted (select one)

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- ☐ Sustainable Leadership (Individual 10 or fewer years)
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Based on the criteria for the award indicated above, explain why you believe the nominee is deserving of this honor. You are encouraged to attach additional information as outlined in the nomination guidelines to completely describe the nominee's unique qualifications.

Nominating Group/Person _____

Contact Person _____

Office Telephone _____ Email _____

Exhibit 2

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 18, 2010
Memo Date: April 29, 2010
From: Mitzi Naucler, Chair, Policy & Governance Committee
Re: Proposed amendments to MCLE Rules and Regulations

Action Recommended

Review requested amendments to various MCLE Rules and Regulations that were approved by the Policy and Governance Committee at its April 29, 2010 meeting.

Background

The Policy and Governance Committee recommends amending the following MCLE Rules and Regulations¹:

Rule 3.3(b) Reinstatements, Resumption of Practice After Retirement and New Admittees.

(The proposed amendment to Rule 3.3(b) recognizes that the requirements in Rule 3.2 do not all appear in subsection (a).)

(b) New admittees shall complete 15 credit hours of accredited CLE activity in the first reporting period after admission as an active member, including two credit hours in ethics (including one in child abuse reporting), and ten credit hours in practical skills. New admittees admitted prior to December 31, 2008 must also complete one access to justice credit in their first reporting period. New admittees admitted on or after January 1, 2009 must also complete a three credit hour OSB-approved introductory course in access to justice. The MCLE Administrator may waive the practical skills requirement for a new admittee who has practiced law in another jurisdiction for three consecutive years immediately prior to the member's admission in Oregon, in which event the new admittee must complete ten hours in other areas. After a new admittee's first reporting period, the ~~requirement~~ requirements in Rule 3.2(a) shall apply.

Rule 5.2 Other CLE Activities.

(The proposed amendments to 5.2(a)(1) separates the time spent preparing written materials from the time spent teaching a program. This change recognizes that the time involved in preparing written materials varies greatly between presentations. The proposed amendment to 5.2(a)(2) brings this rule into conformity with Rule 5.2(a)(3), which allows teaching credit for some activities where the primary audience is nonlawyers. The proposed amendment to 5.2(a)(4) deletes the sentence regarding two credit hours for each sixty minutes of updated courses since the proposed change to 5.2(a)(1) already allows for credit at a ratio of two credits for each sixty minutes of instruction. The limit on teaching credits has been deleted from this rule and added to Rule 6.2.)

(a) Teaching Activities.

¹ Amendments to the MCLE Rules must be approved by the Oregon Supreme Court. Amendments to the MCLE Regulations require BOG approval only.

~~(1) Teaching activities may be accredited at a ratio of four credit hours for each sixty minutes of actual instruction if the presentation includes preparation of written materials, or at a ratio of two credit hours for each sixty minutes of actual instruction, if the presentation does not include written materials. No more than 20 hours of teaching credit may be claimed in a three-year reporting period and no more than 10 hours may be claimed in a shorter reporting period.~~

(2) Teaching credit is allowed ~~only~~ for accredited continuing legal education activities or for courses in ABA or AALS accredited law schools. Credit shall not be given to an active member whose primary employment is as a full-time or part-time law teacher, but may be given to an active member who teaches on a part-time basis in addition to the member's primary employment.

(3) Teaching credit is not allowed for programs and activities for which the primary audience is nonlawyers unless the applicant establishes to the MCLE Administrator's satisfaction that the teaching activity contributed to the professional education of the presenter.

(4) No credit is allowed for repeat presentations of previously accredited courses unless the presentation involves a substantial update of previously presented material, as determined by the MCLE Administrator. ~~Updated courses satisfying this requirement may be accredited at a ratio of two credit hour for each sixty minutes of actual instruction.~~

Rule 5.2 Other CLE Activities

(The proposed amendments provide for time spent preparing written materials for teaching as a legal research and writing activity. Subsection (i) clarifies that the legal research/writing activity must deal with the types of issues for which group CLE activities may be accredited.)

(c) Legal Research and Writing.

(1) Legal research and writing activities, including the preparation of written materials for use not included in a teaching activity may be accredited provided the activity satisfies the following criteria:

- (i) It deals primarily with one or more of the types of issues for which group CLE activities can be accredited as described in Rule 5.1(b); and
- ~~(i)~~ (ii) It has been published in the form of articles, CLE course materials, chapters, or books, or issued as a final product of the Legal Ethics Committee, personally authored or edited in whole or in substantial part, by the applicant; and
- ~~(ii)~~ (iii) It contributes substantially to the legal education of the applicant and other attorneys; and
- ~~(iii)~~ (iv) It is not done in the regular course of the active member's primary employment.

(2) The number of credit hours shall be determined by the MCLE Administrator, based on the contribution of the written materials to the professional competency of the applicant and other attorneys. One hour of credit will be granted for each sixty minutes of research and writing, but no credit shall be granted for time spent on editing.

5.5 Ethics and Access to Justice.

(The proposed amendment brings this rule into conformity with ORS 9.114, which requires that members “complete one hour of training every three years.” The statute cannot be satisfied by, for example, 30 minutes of teaching credited at the rate of 2:1. This change makes that clear.)

(a) In order to be accredited as an activity in legal ethics under Rule 3.2(b), an activity shall be devoted to the study of judicial or legal ethics or professionalism, and shall include discussion of applicable judicial conduct codes, disciplinary rules, or statements of professionalism. Of the six hours of ethics credit required by Rule 3.2(b), one hour must be on the subject of a lawyer’s statutory duty to report child abuse (see ORS 9.114). The child abuse reporting training requirement can be completed only by one hour of training by participation in or screening of an accredited program.

MCLE Regulation 5.100 Other CLE Activities

(The proposed amendment recognizes that for members of teaching panels, active participation in the instruction includes more than just the time spent talking. Listening and formulating comments and responses to remarks and questions are also teaching activities. It also includes language stating the presently unexpressed policy that attendance credits may be claimed for any portion of an attended session not receiving teaching credit.)

5.100 Other CLE Activities. The application procedure for accreditation of Other CLE Activities shall be in accordance with MCLE Rule 5.2 and Regulation 4.300.

- (a) With the exception of panel presentations, when calculating credit for teaching activities pursuant to MCLE Rule 5.2, for presentations where there are multiple presenters for one session, the number of minutes of actual instruction will be divided by the number of presenters unless notified otherwise by the presenter. Members who participate in panel presentations may receive credit for the total number of minutes of actual instruction. Attendance credit may be claimed for any portion of an attended session not receiving teaching credit.

MCLE Rule Six – Credit Limitations

(The proposed amendment to Rule 6.2 changes the combined teaching and legal research and writing credits to 20 in a three year reporting period and 10 in a shorter reporting period. Currently, members may earn 20 teaching AND 20 legal research/writing credits (total of 40) in a three-year reporting period and 10 each in a shorter reporting period.)

6.2 Teaching and Legal Research and Writing Limitation. No more than 15 credit hours shall be allowed for each legal research activity for which credit is sought under MCLE Rule 5.2(c) and no more than 20 hours of combined teaching and legal research and writing credit may be claimed in one three-year reporting period. Not more than 10 hours may be claimed in any shorter reporting period.

Regulations to MCLE Rule 6 Credit Limitations

(The proposed amendment clarifies that when the limit on the number of teaching, writing or personal management assistance credits is exceeded, the excess credits may not be claimed in the current reporting period or carried over to future reporting periods.)

6.100 Carry Over Credit. No more than six ethics credits can be carried over for application to the subsequent reporting period requirement. Ethics credits in excess of the carry over limit may be carried over as general credits. Child abuse education credits earned in excess of the reporting period requirement may be carried over as general credits, but a new child abuse education credit must be earned in each reporting period. Access to justice credits may be carried over as general credits, but new credits must be earned in the reporting period in which they are required. Carry over credits from a reporting period in which the credits were completed by the member may not be carried forward more than one reporting period.

6.200 Credits Earned in Excess of Credit Limitations. Any credits earned in excess of the credit limitations set forth in MCLE Rule 6.2 and 6.3 may not be claimed in the reporting period in which they are completed or as carry over credits in the next reporting period.

OSB COURT FEES TASK FORCE

INITIAL REPORT

JUNE 2010

Oregon State Bar Task Force Members

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Executive Summary

The Oregon State Bar Board of Governors commissioned a task force of attorneys, judges, and trial court administrators to advise the legislative Interim Committee on Justice System Revenues. The charge to the task force was to prepare short-term and long-term recommendations 2009 HB 2287, the statutory fee structure, and court funding. This report contains the short-term recommendations of the task force, as approved by the BOG.

Key Findings

General Findings

- The courts are a critically important, constitutionally mandated, core function of government.
- Courts must be open and accessible to all Oregonians.
- The OSB's highest legislative priority is open and accessible courts.
- Keeping courts open and accessible requires stable and adequate funding.

Specific Findings

- The current statutory fee structure is confusing and complex even to experienced practitioners.
- Any changes to the fee structure must not impede reasonable access to justice, including access by indigent persons, un-represented litigants, and middle-income Oregonians.
- The legislature should simplify the current fee structure to make it more predictable and more uniform.
- Any changes to the fee system must maintain adequate funding for services critical to the justice system, such as Legal Aid services.
- Some of the fees enacted in 2009 HB 2287 have created unintended and high transaction costs and/or unduly impaired access to justice, and should be modified or allowed to sunset.
- Court-imposed financial obligations upon conviction of a crime or offense are an important part of the accountability process of the justice system.
- Much of the liquidated and delinquent court-imposed debt cannot be collected and/or is owed to victims of crime, and does not represent a reasonable opportunity to increase revenue to the state or local governments.

Recommendations

- Consolidate many existing fees that occur in the lifetime of a case (e.g., ex parte order and judgment fee, and fees for routine motions) into the filing and first response fees.

- Enact consistent fee amounts for motions and other individual fees, so they are consistent within and among different types of cases.
- Modify the following specific fees:
 - Sunset the \$10 ex parte order and judgment fee. This fee imposes excessive administration costs on litigants and the courts.
 - Establish a statutory cap on fees in cases involving multiple parties and/or large prayer amounts. The current structure has created excessive fees in some cases.
 - Sunset the expunction fee in cases where an arrest occurred but no conviction resulted. Imposing a substantial fee in these cases does not reflect court workload and imposes an unfair burden on persons not convicted of a crime.
 - Restore a statutory limit on the amount retained from release security deposits, but at a higher limit than the previous \$200 limit.
 - Modify the mediation/ conciliation fee and law library fee to a fixed amount set by statute, rather than a percentage of the filing fee set by individual counties.
- The legislature should encourage efficient, effective and fair collection of court-imposed financial obligations, maintain long-term judgments for accountability, and develop a mechanism to classify/ categorize debt that reasonably can be expected to be collected.

Introduction

An open, accessible and adequately funded state court system is the OSB's highest legislative priority. This includes funding our constitutional structure of state government, maintaining public access to justice, ensuring our economy succeeds, and maintaining public safety through the speedy and fair adjudication of criminal and civil matters.

The bar welcomed the creation in HB 2287 of the Joint Interim Committee on State Justice System Revenues as an opportunity for the legislature to review Oregon's filing fee and criminal fine structure. The bar formed a Court Fees Task Force to assist and provide the perspective of lawyers and other users of the justice system to the Joint Interim Committee.

This is the preliminary OSB Court Fees Task Force Report. A final report will include long range recommendations. The task force charge for the short term was to identify specific fees and fines to be retained, amended or eliminated to ensure open and accessible courts at all levels.

The OSB Court Fees Task Force has studied the impact of 2287(2009) and HB 3696 (2010) on Oregon's filing fee structure. That legislation established fees and surcharges to fund directly the operation of the Oregon Judicial Department and the Public Defense Services Commission by creating the Judicial System Surcharge Account (JSSA) and directing fees and surcharges into that account. The task force concluded that changes can be made to that structure of fees and surcharges to remove financial barriers to access to justice and to ensure that disputes involving private and public rights can be initiated and adjudicated as guaranteed by Article I, Section 10 of Oregon's Constitution.

When the judicial system is not funded adequately, the public, business, and members of the bar are adversely affected. Delay is inevitable when court resources are stretched thin and courts are partially closed, since constitutional and statutory priorities push civil and non-emergency family matters to the bottom of the docket as criminal defendants have a constitutional right to a speedy trial. Yet, all cases are of great importance to the parties involved. Justice delayed is justice denied.

The bar supports the efforts of the legislature and the judicial department to fund state courts. Attorneys recognize the importance and the necessity of court filing fees and fines in financing state government, including funding the justice system. The passage of HB 2287 in 2009, however, drew the attention of the bar to fees and violation fines more sharply than in the past. Many members of the bar and the public are concerned over the proliferation and increase in court fees which impacts access to justice.

Oregon Court Fee and Fine System

Court Fees

Base court fees in Oregon are set by statute. Fees vary by type of case. In civil actions, the fees vary based on the dollar amount at issue and with the number of parties involved, except for

claims under \$10,000 and residential landlord tenant matters. Fees and surcharges created or increased by HB 2287 will sunset on June 30, 2011 unless renewed by the legislature.

Examples of several current fee calculations illustrate the fee structure.

- In a divorce case, the petitioner's filing fee ranges from \$256 to \$405, depending on the county. The respondent's fee ranges from \$154 to \$319.
- In a civil business case, if a plaintiff alleges two out-of-state companies have caused \$300,000 harm to an Oregon company, the filing fees for the plaintiff would be \$751 and for each defendant \$399.
- The fee in a probate proceeding with the probate estate value of \$800,000 is \$559.
- In addition, fees are charged for court trials (\$110 per day), jury trials (\$150 per day for 6 person juries and \$225 per day for 12 person juries), recorded hearing fees, if the party wants the hearing recorded (\$45 for 3 hours or less, \$110 for more than 3 hours), motions (\$50 for the moving party and \$35 for the respondent), and most orders (\$10).
- If parties wish to use the court to assist in settling a dispute (which is encouraged), the parties must pay \$50.

A fee schedule from Clackamas County Circuit Court, effective May 1, 2010, is attached as Appendix 1.

In order to support the judicial system and provide access to justice and the courts, the legislature has enacted specific fees to ensure that the judicial system operates effectively.

These fees include:

- Fees that support legal services programs for low income people and agriculture mediation programs (ORS 21.480), which vary depending on case type from \$10.50 to \$58.
- Law library fees (ORS 21.350), which are 28 percent of the base filing fees. Note that the law library fee is \$154 in the civil case example.
- Dispute resolution fees (ORS 36.170) ranging from \$2 to \$6, which support dispute resolution programs housed at the University of Oregon and Portland State University. See also ORS 36.155, 36.175, 36.179.
- A \$1 fee in adoption and divorce initial filings to support Department of Human Services Office of Children's Advocate. (ORS 417.825)
- In family law proceedings, a \$10 fee to support law school domestic violence programs (ORS 21.111(4)).
- In family law proceedings, at the option of the county governing body, a fee for mediation and conciliation services ranging from \$75 to \$224 for petitioners and up to \$165 for respondents. (ORS 21.112)

If a party's fees are deferred, HB 2287 Section 34 establishes an additional \$50 to \$200 fee as an addition to the ORS 1.202 collection account fee. Fees over \$100 are to be paid to the Judicial System Surcharge Account ("JSSA"). These fees are intended to reflect the additional costs incurred to collect accounts receivable.

Criminal Fees and Fines

The system for determining fines for violations is complex, varying with the court into which the violation is cited. The system for distribution of fine revenue received is also difficult to understand, and again depends to a great extent on whether the fine is imposed in circuit, municipal or justice court.

In addition to the fines and fees already charged against criminal defendants, HB 2287 imposed these:

- Offense surcharges. On conviction of any crime or violation (excluding parking violations), Section 2 of HB 2287 requires the trial court to impose an offense surcharge in the nature of a fine in the amount of \$35 for felonies and misdemeanors and \$45 for violations. Surcharges imposed in circuit court are deposited in the JSSA.
- Security release deposits. Before October 1, 2009, the court retained 15 percent of a criminal defendant's security release deposit (bail) as a service charge up to \$200. Section 9 eliminates the \$200 cap: the court's 15 percent charge is unlimited, unless a judge orders a lower amount or waives the fee. (For example, a \$100,000 security amount for a defendant's release from jail would require a \$10,000 security deposit which would result in a \$1,500 security release cost to the person who posted the security deposit.)
- Bench probation fees and probation violation assessments. Section 21 of the bill requires the defendant to pay a \$100 fee for bench probation with a \$25 fee for each probation violation.
- Diversion program. In addition to DUI and marijuana diversion fees, the defendant pays a \$100 program administration fee under Section 26.
- Expunction fee. In addition to a fee payable to the Oregon State Police, HB 2287 created a fee to file a motion to set aside an adult record of arrest or conviction (expunction of criminal records), Section 27 of the bill calls for a fee of \$250. This fee applies both to guilty and not guilty dispositions. OJD legal counsel advises that this fee may be waived in criminal actions.
- Collection account/deferred payment fee. If a fee or fine is not paid when imposed, the court adds a collection fee of \$50 to \$200 pursuant to Section 34. Amounts in excess of \$100 are deposited in the JSSA.

These fees and surcharges apply to cases in municipal, justice and circuit courts. HB 2287 clarifies that most of the fines and fees it generates are payable to the level of government of the court that imposed them, e.g., fines and fees imposed in municipal court are payable to the city and those imposed in justice court to the county.

Principles

- 1) Access to Justice. Maintaining an open and accessible court system to make the rule of law a reality and ensure that everyone has access to the court system to resolve disputes is an integral part of our constitutional form of government. The filing fees dedicated for the support of legal services historically have been and remain crucial to ensure access to justice for low income Oregonians.

- 2) Strong Courts Help Build Strong Communities. The courts maintain public safety and social and economic order through the timely, efficient and fair adjudication of criminal offenses and civil disputes.
- 3) Core Function of Government. The judicial system is a core function of government and should be funded by General Fund dollars. The judicial system has a constitutional mandate to deliver justice. It should not be scaled back in lean economic times.
- 4) Constitutional and statutory mandate. State courts do not solicit business; nor do they turn away cases for lack of resources. Courts have constitutional and statutory mandates to hear certain types of cases within certain time constraints.
- 5) Revenue generation. It is appropriate for the judicial system to generate revenue. In *Allen v Employment Department*, 84 Or App 681 (2002), the imposition of filing fees withstood challenge in the courts under Article I, section 10 of the Oregon Constitution, which requires that “justice shall be administered, openly and without purchase***.” However, the revenue generated from fees alone will never adequately fund the courts fully, nor should it.
- 6) Balance. A healthy fee structure is a balance between generating revenue and the policy to preserve access to justice for all and an impartial judiciary.
- 7) Fee Structure. In structuring court fees and fines, the fee structure should be transparent, simple and understandable for Oregonians who use the courts.
 - Fees should not impede reasonable access to justice.
 - Fees and fines from violations should be uniform across the state and from one judicial district to the next.
 - Fees should be cost effective and transaction costs should be minimized taking into consideration the level of court resources involved.
- 8) As stewards of public funds, OJD must ensure that parties who are granted fee waivers or deferrals are qualified for them.
- 9) Revenue Neutrality. Changes proposed to the fee and fine structure should be revenue neutral at least for the 2011–13 biennium with respect to the income anticipated from HB 2287 in the 2009–11 biennium in the absence of adequate funding.

Findings

General findings

- People come to court to seek fair, prompt and effective justice.
- Court filing fee revenue should accrue to the general fund, except for designated fees.
- Thirty five percent of the revenue generated from HB 2287 is used to support the Public Defense Services Commission.

- The courts have no control over the volume or kinds of cases that will be filed and therefore budgeting based on revenue generated from fees is speculative.
- The courts have no control over selection of who will owe financial obligations to the state from court filings or adjudications. The court cannot deny service to those who have no ability to pay the debt imposed from a deferred fee or a fine imposed on conviction of a crime or violation.
- The transaction costs for some new fees – especially the *ex parte* order and judgment fees – are burdensome for litigants, lawyers and the courts. The transaction costs for litigants can be many times the amount of the fee because the attorney has to bill the client for the time spent standing in line to determine and pay the correct fee.
- Access to justice
 - Fees and fines in criminal actions have been increased to address budget shortfalls. The result is a complex and confusing structure that imposes fees at most stages of litigation leading to high transaction costs for litigants and the court, and to unreasonably high fees in some instances.
 - Access can be a problem for middle income people who do not qualify for fee waivers or deferrals. Under the current structure, with virtually every court service there is a fee. Citizens will eventually become disillusioned with the system.
 - Individuals and businesses have helped fund the courts through payment of taxes. Vulnerable and indigent citizens are also entitled to reasonable access to courts.
 - Dedicated filing fees are crucial to provision of legal services and access to justice for low income Oregonians.
- Administrative issues
 - The administration of the current system is impeded by the court's antiquated technology. The fee structure must work within this system, at least until an appropriate system is in place.
 - Uniformity in fee schedules across the state will assist in implementing the e-Court system.
 - There is inconsistency in the fees charged from court to court, and there **is** inconsistency in the application of fees within the same court.
 - OJD has substantial accounts receivable, mostly in the form of unpaid and largely uncollectible judgments for criminal fines.
- Revenue. The Judicial Department is anticipated to collect a total of \$278.4 million in revenues during the 2009-'11 biennium, including \$161.7 million from fines and forfeitures, \$104.5 million from state court fees and \$6.9 million in other revenue. Only \$25.1 million of its revenue goes to the court system itself and only \$50.6 million goes directly to the General Fund. The majority of OJD revenue is dedicated to recipients other than the court system. The recipients who receive these dedicated dollars collected by OJD – dollars that are outside the pressures of the General Fund – include counties, cities, several special recipients and the beneficiaries of the Criminal Fine and Assessment Account.
 - Revenues collected by OJD include amounts added to the base filing fees to support various services related to the justice system, including legal services, law libraries, law school domestic violence programs, mediation programs, and local mediation/ conciliation programs in domestic relations cases. Specifically designated fees have been used to support specific programs which assist in providing access to justice and assist in avoiding citizens' disillusionment with the

judicial system. These designated fees are added to the base filing fees and support various services.

- The law library fee is a percentage whereas other fees are fixed and not variable.
- In some local jurisdictions, municipal and justice courts have taken an increasing share of traffic violation cases in several counties, the fines from which inure to the benefit of the cities and counties. This trend has substantially reduced the potential revenue to the state.
- OJD charges and retains an administrative assessment of 8% of the revenue it collects, the use of which is restricted to efforts associated with the collection of revenue. In addition, the department receives a portion of the county assessment that may only be used to address court facility security issues.

Findings Specific to Practice Areas

Probate and Family Law

- In family and probate litigation, required practice involves filing multiple motions and seeking multiple orders, all of which incur additional individual small fees with large transaction costs for attorney time.
- In some family law cases, the fees are inconsistent. A motion for a set over or to compel production in a pre-judgment dissolution case requires payment only of the \$10 ex parte order fee; in a post judgment modification the same procedure would require payment of a \$50 motion fee plus a \$10 order fee.
- Fees may create special problems in protective proceedings (guardianships and conservatorships) in which the protected persons are indigent and are unable to complete an application for a fee waiver or deferral.
- Small conservatorship estates can be depleted by the repeated imposition of the annual accounting fees of \$100. (Example: a five year old who inherits \$5,000 that is placed in a conservatorship would lose \$1,300 (and more in interest foregone) in annual accounting fees, not counting the conservatorship administration costs and attorney fees to deal with the paperwork for processing the annual fee, before gaining access to the funds upon reaching age 18.)

Civil Practice

- The current fee structure specifies five different surcharges based on the amount in issue and adds an additional amount for each additional party, without limit.
- Some civil cases (including lien, foreclosure, securities, partnership and franchise matters) require joinder of many parties. The current multi-party fee severely affects litigants in these cases.
- The amount at stake and the number of parties in a case may indicate to some extent the amount of court resources that a case will require. The current fee structure places too much weight on these factors, and the result can be a significant barrier to access to justice.

- The task force received information that the multi-party fee and the fee based on amounts at issue are motivating some litigants to file in federal court rather than filing in state court. The task force received a report from the construction law practitioners of a case in which the prayer is roughly \$46,000, but 65 parties are involved. Plaintiff's filing fee in that case will be nearly \$19,000. The amount of the required fee sometimes exceeds the amount of the claim. Middle-income clients cannot afford such fees, nor would some qualify for a fee waiver or deferral.

Criminal Practice

- Some courts have implemented procedures to waive the expunction fee (on the advice of OJD legal counsel); others have ruled it must be paid. The fee applies only to adult court records and to motions to set aside adult records of arrest, where the person arrested was not prosecuted or not convicted.
- Prior to passage of HB 2287, the state could retain 15 percent of a criminal defendant's security deposit as a security release cost, up to a cap of \$200. HB 2287 removed this \$200 cap but left unchanged the judicial discretion to order a different amount be retained or to waive the fee entirely. Some courts have declined to exercise this discretion or believe their authority has been removed. The result is imposition of a security release fee which does not reflect the actual cost of the service.
- In general, due to local discretion to establish violation bureau fine amounts under ORS 153.800, fines for violations are unpredictable from court to court.
- The amount written on a violation citation as "bail" may not have a relationship to the actual amount owed following adjudication.

Recommendations

The fee and violation fine structures should be simplified, streamlined and applied statewide to be more transparent, predictable and uniform.

Civil Cases

1. Initial filing fee for plaintiff and defendant should be increased at first appearance and thus avoid many of the fees currently imposed as litigation progresses. Revenue now generated from fees imposed as litigation progresses should be included in first appearance fees.
2. The Chief Justice Order 09-052 authorizes waiver of the multiple party fee in excess of five additional parties after considering whether the fees impose a hardship on the parties and the level of judicial resources necessary to process that case. In practice, however, courts rarely do so.
3. Civil filing fees should be based on the complexity of the matters brought before the court.
 - o The number and amounts of these steps should be simplified from the current system.
 - o A cap should be placed on civil filing fees: in no event should a filing fee exceed this cap, regardless of the amount in issue or the number of parties.

- Charge higher fees for motions that require substantial court resources, e.g., summary judgment motions.
- Eliminate fees for events in cases that require little court time, e.g., the *ex parte* order fee and routine motion fees.
- Increase fees for court settlement conferences in which substantial judicial resources are required (i.e., over three hours).
- 4. Establish a default fee that applies to all proceedings other than those civil actions for which a calculated fee is charged that is set by the amount claimed as damages.
- 5. Eliminate yearly probate and conservatorship accounting fees for modest estates.
- 6. Eliminate fee anomalies, e.g., charge the same fee for the same service in a dissolution as in a modification proceeding.
- 7. With respect to dedicated fees:
 - Institute a uniform statutory fee amount for mediation and conciliation services in domestic relations cases.
 - Set uniform statutory amount for law libraries as opposed to percentage of filing fees.
 - Maintain the dedicated fee for the support of legal services for low income Oregonians.
- 8. Fee waiver or deferral process.
 - Streamline the process by which litigants petition for fee deferrals or waivers.
 - Develop a statewide web based fee waiver or deferral form for all judicial districts.
 - The legislature should classify or categorize outstanding debt that cannot reasonably be collected.

Criminal Cases and Violations

- 9. Eliminate the fee for expunctions and motions to set aside records of arrest.
- 10. Re-institute a cap on the amount the state can retain as a fee for accepting and administering security release deposits. Consider increasing the cap from the former level of \$200 to \$750.
- 11. Simplify the fine structure for violations, and make the structure uniform and more transparent statewide. One base fine table should be mandatory for state courts, and local discretion to set a higher schedule should be eliminated.

CIRCUIT COURT FEE SCHEDULE
OREGON JUDICIAL DEPARTMENT
EFFECTIVE: MAY 1, 2010

CLACKAMAS

Clarification
FEE CHANGE

Code Total Fee

Plaintiff:

Filing action, suit, proceeding ("default fee" under ORS 21.110 (6)(a))	CVL5	197.00
Second and each additional moving party filing action, suit, proceeding ("default fee")	CVLC	197.00
Additional Party Fee	APA6	150.00

Claim of \$10,000 or less	CVL3	137.00
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Defendant:

Filing or appearance ("default fee" under ORS 21.110 (6)(a))	CVL6	197.00
Second, and each additional responding party ("default fee")	CVLD	197.00

Claim of \$10,000 or less	CVL4	137.00
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CIVIL ACTIONS FOR RECOVERY OF DAMAGES

Plaintiff:

Plaintiff filing action, suit, proceeding (over \$10,000 to \$49,999)	CVL1	197.00
Second and each additional moving party filing action (over \$10,000 to \$49,999)	CVLA	197.00
Additional Party Fee (over \$10,000 to \$49,999) (except first named defendant)	APA7	150.00
Each Plaintiff filing action, suit, proceeding \$50,000 to \$149,999	CVA1	335.00
Additional party fee when claim is \$50,000 to \$149,999 (except first named defendant)	APA2	288.00
Each Plaintiff filing action, suit, proceeding \$150,000 to \$499,999	CVA3	399.00
Additional party fee when claim is \$150,000 to \$499,999 (except first named defendant)	APA3	352.00
Each Plaintiff filing action, suit, proceeding \$500,000 to \$999,999	CVA5	463.00
Additional party fee when claim is \$500,000 to \$999,999 (except first named defendant)	APA4	416.00
Each Plaintiff filing action, suit, proceeding over \$1,000,000	CVA7	527.00
Additional party fee when claim is over \$1,000,000 (except first named defendant)	APA5	480.00

Defendant:

Defendant filing response to action, suit, proceeding from \$50,000 to \$149,999	CVA2	335.00
Defendant filing response to action, suit, proceeding from \$150,000 to \$499,999	CVA4	399.00
Defendant filing response to action, suit, proceeding from \$500,000 to \$999,999	CVA6	463.00
Defendant filing response to action, suit, proceeding over \$1,000,000	CVA8	527.00

CIVIL ACTIONS - THIRD PARTY COMPLAINTS

Plaintiff:

Plaintiff Filing Third-Party complaint \$10,000 or less	TPC1	137.00
Plaintiff Filing Third Party complaint over \$10,000 to \$49,999	TPC2	197.00
Plaintiff Filing Third-Party Complaint \$50,000 to \$149,999	TPC3	335.00
Plaintiff Filing Third-Party Complaint \$150,000 to \$499,999	TPC4	399.00
Plaintiff Filing Third-Party Complaint \$500,000 to \$999,999	TPC5	463.00
Plaintiff Filing Third-Party Complaint over \$1,000,000	TPC6	527.00

Defendant:

Defendant Filing Third-Party appearance \$10,000 or less	TPA1	137.00
Defendant Filing Third-Party appearance over \$10,000 to \$49,999	TPA2	197.00
Defendant Filing Third-Party Response \$50,000 to \$149,999	TPA3	335.00
Defendant Filing Third-Party Response \$150,000 to \$499,999	TPA4	399.00
Defendant Filing Third-Party Response \$500,000 to \$999,999	TPA5	463.00
Defendant Filing Third-Party Response over \$1,000,000	TPA6	527.00

CIVIL FINES

Civil Fines imposed	CVFN	actual amount
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COPIES

Copies of Audiotape, Videotape, or any information provided on electronic media	CP	10.00 per medium
Certified copies of letters, files, testamentary, etc.	CP	5.00 plus .25/page
Copies of records, files, documents, court rules, etc	CP	.25 per page
FAX - sent outgoing or incoming as a courtesy convenience for parties, public, or counsel	CP	\$2 first page, plus \$1 ea additional page

COURT REPORTER FEE

CIRCUIT COURT FEE SCHEDULE
OREGON JUDICIAL DEPARTMENT
EFFECTIVE: MAY 1, 2010

CLACKAMAS

**Clarification
FEE CHANGE**

Court Reporter Fees	Code	Total Fee	
	RPFE	actual amount	
DOMESTIC RELATIONS CASES			
Annulment or Separation:		100%	50%
Petitioner, moving party	DRA1	380.00	190.00
Respondent	DRA2	304.00	152.00
Custody or Support of Child Determination Under ORS 109.103:			
Petitioner, moving parent	DRC1	370.00	185.00
Respondent	DRC2	294.00	147.00
Motion to modify custody or child support determination	DRC3	100.00	50.00
Response to motion	DRC4	75.00	37.50
Dissolution:			
Petitioner, moving party	DRD1	381.00	190.50
Respondent	DRD2	304.00	152.00
Dissolution of Domestic Partnership:			
Petitioner, moving party	CVL1	197.00	98.50
Respondent	CVL2	197.00	98.50
Filiations petition under ORS 109.124 to 109.230:			
Petitioner, moving party	DRF1	370.00	185.00
Respondent	DRF2	294.00	147.00
Motion to modify filiations determination	DRF3	100.00	50.00
Response to motion	DRF4	75.00	37.50
Motion After Entry of Dissolution, Annulment, or Separation Judgment:			
Moving party modification motion after judgment entry	DRM1	153.00	76.50
Moving party modification motion one year or less after judgment entry	DRM5	150.00	75.00
Moving party motion other than modification	DRM3	50.00	25.00
Response to modification motion	DRM2	115.00	57.50
Response to Motion other than modification	DRM4	40.00	20.00
Motion to Enforce Parenting Time:			
Moving party motion	DRP1	98.00	49.00
Response to motion	DRP2	35.00	17.50
EMANCIPATION OF JUVENILE			
Application for emancipation	EMJ1	150.00	
EXECUTION			
Issuing writ of execution	WRIT	18.00	
EXEMPLIFICATION			
Per Exemplification	CP	10.00 plus .25/page	
EX-PARTE ORDER OR JUDGMENT FEE			
Filing or submission of ex-parte order or judgment for judge's signature	EOJF	10.00	
Filing or submission of ex-parte order or judgment for judge's signature - District Court	EOJ1	10.00	
EXPUNCTION APPLICATION FILING FEE			
Filing application for expunction under 137.225 (1)	EXAP	250.00	
Filing application for expunction under 137.225 (1) - District Court	EXA1	250.00	

CIRCUIT COURT FEE SCHEDULE
OREGON JUDICIAL DEPARTMENT
EFFECTIVE: MAY 1, 2010

CLACKAMAS

**Clarification
FEE CHANGE**

Code Total Fee

FED-RESIDENTIAL

Plaintiff filing complaint (These fees and surcharges are non-refundable)	FED1	67.00
Defendant, demanding trial (These fees and surcharges are non-refundable)	FED2	110.00
Plaintiff's additional fees after defendant demands trial (These fees and surcharges are non-refundable)	FED3	63.00
Issuing notice of restitution	FED4	3.00
Issuing writ of execution of judgment	FED5	18.00

FIREARM PROCEEDINGS

Petition from Firearm Possession or Purchase Denial	FIR1	197.00
Petition from Concealed Handgun License Denial	FIR2	197.00

FOREIGN JUDGMENT

Filing copy of foreign judgment and affidavit under ORS 24.115 and 24.125	FJG1	41.00
Filing copy of foreign child custody determination under ORS 109.787 (UCCJEA)	FJG2	41.00
Filing copy of foreign guardianship or conservatorship under ORS 125.842 or ORS 125.845	FJG3	41.00

FORMS

Forms Sales	FORM	Actual cost
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GARNISHMENT

Issuing writ of garnishment	GARN	18.00
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HABEAS CORPUS

Petition for writ of habeas corpus	HAB1	29.00
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HEARING FEES

Hearing Fees:		
3 hours or less	HRGV	45.00
More than 3 hours	HRGW	110.00

JUDGMENT

Filing and entering transcript of judgment	TRJ1	7.00
Making/issuing transcript of judgment	TRJ2	7.00
Transcript of judgment in District Court Cases	TRJ9	7.00
Preparing certified copy of satisfaction under ORS 18.225(5)	SAT1	6.00
Preparing clerk's certificate of satisfaction after motion to court under ORS 18.235(10)	SAT2	5.00

JUDGMENT DEBTOR EXAM

Proceedings in court other than court of original judgment under ORS 18.265	JDE1	4.00
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MAILING COSTS

Actual Costs to mail documents, etc.	CP	Actual Cost
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MANDAMUS

Petition for writ of mandamus	MAN1	197.00
Answer or motion to dismiss	MAN2	197.00
Motion to intervene	MAN3	197.00

MARRIAGE

Marriage solemnized by judge	MRG1	25.00
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MOTIONS ON CIVIL PROCEEDINGS

Motion to dismiss, make more definite/certain, strike, or quash - Petition (ORCP 21)	MOD1	50.00
Motion to dismiss, make more definite/certain, strike, or quash - Response (ORCP 21)	MOD2	35.00
Motion to compel discovery - Petition (ORCP 46)	MCD1	50.00
Motion to compel discovery - Response (ORCP 46)	MCD2	35.00
Motion for summary judgment - Petition (ORCP 47)	MSJ1	50.00
Motion for summary judgment - Response (ORCP 47)	MSJ2	35.00

CIRCUIT COURT FEE SCHEDULE
OREGON JUDICIAL DEPARTMENT
EFFECTIVE: MAY 1, 2010

CLACKAMAS

Clarification
FEE CHANGE

	Code	Total Fee
Motion for judgment notwithstanding the verdict or reconsideration - Petition (ORCP 63)	MJN1	50.00
Motion for judgment notwithstanding the verdict or reconsideration- Response (ORCP 63)	MJN2	35.00
Motion for new trial or reconsideration - Petition (ORCP 64)	MNT1	50.00
Motion for new trial or reconsideration - Response (ORCP 64)	MNT2	35.00
Motions to reconsider rulings on the Motions identified above - Petition	MOQ1	50.00
Motions to reconsider rulings on the Motions identified above - Response	MOQ2	35.00
PATERNITY		
		100% 50%
Petition to initiate filiations proceedings under ORS 109.125	PAT1	320.00 160.00
Answer to filiations petition under ORS 109.125	PAT2	253.00 126.50
POSTCONVICTION RELIEF		
Petition for postconviction relief under ORS 138.510 to 138.680	POST	29.00
PROBATE		
Small Estates Act affidavit	PBSE	78.00
Filing initial papers for appointment of personal representative, conservatorship, probate, or contest of wills (based on amount of estate):		
Not more than \$10,000	PBT1	78.00
\$10,001 to \$25,000	PBT2	150.00
\$25,001 to \$50,000	PBT3	253.00
\$50,001 to \$100,000	PBT4	355.00
\$100,001 to \$500,000	PBT5	457.00
\$500,001 to \$1,000,000	PBT6	559.00
\$1,000,001 and over	PBT7	662.00
Difference Between Step 1 and Step 2	PBTA	72.00
Difference Between Step 2 and Step 3	PBTB	103.00
Difference Between Step 3 and Step 4	PBTC	102.00
Difference Between Step 4 and Step 5	PBTD	102.00
Difference Between Step 5 and Step 6	PBTE	102.00
Difference Between Step 6 and Step 7	PBTF	103.00
Filing annual or final accounting in a probate or conservatorship proceeding:		
Annual/Final Accounting less than \$500,000	PAC1	100.00
Annual/Final Accounting \$500,001-\$999,999	PAC2	200.00
Annual/Final Accounting over \$1,000,000	PAC3	300.00
Guardianship, initial papers	PRG1	78.00
Filing answer, motion, or objection	PBA2	73.00
Summary determination request when PR disallows claim	PBA3	73.00
Request for notice	PBA4	20.00
Summary determination request when trustee disallows claim	PBN1	197.00
Trustee petition to determine creditor claims	PBN2	197.00
Will without petition for probate	PBW1	8.00
Will, notice of destruction	PBW2	18.00
Trial/hearing fee	PBTX	41.00
PUBLICATIONS		
Publications	PUBS	actual cost
REAL PROPERTY		
Division of property under ORS 105.215	CVP1	197.00

CIRCUIT COURT FEE SCHEDULE
OREGON JUDICIAL DEPARTMENT
EFFECTIVE: MAY 1, 2010

CLACKAMAS

**Clarification
FEE CHANGE**

	Code	Total Fee
RECORDS		
Redaction of personal informations	PYFE	\$25 per case, plus \$1
SETTLEMENT CONFERENCE PARTY FEE		
Settlement Conference before a judge when proceeding is subject to a fee under 21.110, 21.114 or 21.310	SCPF	50.00
SEX OFFENDER REPORTING		
Petition to terminate juvenile sex offender reporting under ORS 181.607 or 181.608	SXJ1	300.00
Petition to terminate adult sex offender reporting under ORS 181.600	SXA1	197.00
SMALL CLAIMS (See also TRANSFER)		
When Plaintiff's claim is \$1,500 or less:		
Plaintiff, filing claim	SCM1	46.50
Defendant, denying claim and demanding hearing	SCM2	74.50
Plaintiff, filing formal complaint after defendant demands jury trial	SCM3	91.50
Defendant, denying claim and claiming right to jury trial (plus \$150 Trial Fee)	SCM4	137.00
When Plaintiff's claim is more than \$1,500:		
Plaintiff, filing claim	SCM5	86.50
Defendant, denying claim and demanding hearing	SCM6	143.50
Plaintiff, filing formal complaint after defendant demands jury trial	SCM7	51.50
Defendant, denying claim and claiming right to jury trial (plus \$150 Trial Fee)	SCM8	137.00
STALKING PROTECTIVE ORDER ISSUED BY COURT		
Petitioner filing action damages claimed \$10,000 or less	STK1	137.00
Defendant filing response damages claimed \$10,000 or less	STK2	137.00
Petitioner filing action damages claimed more than \$10,000	STK3	197.00
Defendant filing response damages claimed more than \$10,000	STK4	197.00
SUPPORT (See also APPEAL or DOMESTIC RELATIONS CASES)		
Petition for support under ORS 108.110	SUP1	6.00
Minor filing petition for support under ORS 109.100	SUP2	6.00
Objection to registration or enforcement of foreign support order before order is confirmed (UIFSA)	SPF5	197.00
Challenge to DCS garnishment to enforce foreign child support judgment under ORS 18.718	SPF6	197.00
TRANSCRIPT ON APPEAL		
Transcript on Appeal	TRAP	Actual Amount
TRANSFER		
From justice court to circuit court:		
Defendant, transfer for excessive counterclaim when claim \$10,000 or less	TFJ1	137.00
Defendant, transfer for excessive counterclaim when claim more than \$10,000	TFJ2	197.00
From small claims to circuit court when plaintiff's claim is \$1,500 or less		
Defendant, motion requesting transfer when claim \$10,000 or less (includes a \$12 transfer fee)	TFS2	74.50
Plaintiff, reply to counterclaim when claim \$10,000 or less	TFS1	90.50
Defendant, motion requesting transfer when claim more than \$10,000 (includes a \$12 transfer fee)	TFS4	65.50
Plaintiff, reply to counterclaim when claim more than \$10,000	TFS3	110.50
From small claims to circuit court when plaintiff's claim is more than \$1,500		
Defendant, motion requesting transfer when claim \$10,000 or less (includes a \$12 Transfer Fee)	TFM2	5.50
Plaintiff, reply to counterclaim when claim \$10,000 or less	TFM1	50.50
Defendant, motion requesting transfer when claim more than \$10,000 (includes a \$12 transfer fee)	TFM4	63.50
Plaintiff, reply to counterclaim when claim more than \$10,000	TFM3	110.50
TRIAL FEES		
Non-Jury Trial (per day)	TRLX	110.00
6 person jury trial (per day)	TRLY	150.00
12 person jury trial (per day)	TRLZ	225.00

CIRCUIT COURT FEE SCHEDULE
OREGON JUDICIAL DEPARTMENT
EFFECTIVE: MAY 1, 2010

CLACKAMAS

Clarification
FEE CHANGE

Code Total Fee

TRUST MODIFICATION AGREEMENT/MEMORANDUM OF AGREEMENT

Filing agreement or memorandum

TRM1 134.00

Filing objections under ORS 130.045 (6)

TRM2 91.50

DIVERSION AGREEMENTS

DUII Diversion - \$458.00

136.00 - OPTS

100.00 - DICO

100.00 - DPAS

25.00 - INDF

97.00 - UNAS

458.00

Marijuana Diversion - \$333.00

123.00 - OPTS

100.00 - DPAS

110.00 - DICO

333.00

**Oregon State Bar Section of Family Law
Parenting Plan Work Group**

**REPORT TO THE LEGISLATURE:
ESTABLISHING AND ENFORCING
PARENTING PLANS**

June 2010

**Reporter
Prof. Leslie Harris
University of Oregon School of Law**

Exhibit 5

I. Introduction

In October 2009 the Judiciary Committees of the Oregon State Senate and House asked the Family Law Section of the state bar to form a work group to consider the question of parenting time plans and report back to the legislature before the 2011 session. The committees made the request as a way to approach the issues that were raised by HB 3402, which was introduced into the 2009 legislative session at the request of Matt Minahan of Dads America, but not enacted.

In response to this request, the Family Law Section of the bar recruited members for the work group during the winter of 2009, and the group met throughout the first half of 2010. The members of the work group were David Gannett, attorney in private practice, Portland (chair); Anna Braun, Oregon Judicial Department staff; Sonya Fischer, attorney in private practice, Lake Oswego; Jennifer Gilmore, attorney, Child-Centered Solutions, Portland; Susan Grabe, Public Affairs Director, Oregon State Bar; Leslie Harris, University of Oregon School of Law, Eugene; Sybil Hebb, Oregon Law Center, Portland; Ronald Allen Johnston, attorney in private practice, Portland; Robert McCann Jr., attorney in private practice, Albany; Margaret Olney, attorney in private practice, Portland; Kate Richardson, attorney, Oregon Department of Justice; and Sharon A. Williams, attorney in private practice, Portland.

The work group met with a number of interested people who were invited to give information and their perspectives on the issues. They included Phil Cook, Matt Minahan, Brenda Miller, Trudi Morrison, Theresa O'Halloran, and Nitin Ray. Mr. Minahan and the other interested parties presented their view of the issues and problems with parenting plans and explained their proposed solutions to those problems. The work group agreed with the presenters that some of the most important issues regarding parenting plans and their enforcement are that 1) the development of appropriate and effective parenting plans that work for children as well as parents is a complex process, and many parents need help with this process; 2) parents are often frustrated by the difficulty of getting timely resolution of disputes about enforcing and modifying parenting plans; and 3) these problems are exacerbated by the fact that many parents who need help do not have and are not able to afford legal assistance in navigating the system.

The work group then considered Mr. Minahan's suggested legislative solutions to these problems. The work group listened to the input of the interested parties and researched current Oregon state statutes, other state statutes, and relevant national reports and data. In addition, the work group members shared their experiences and perspectives on the issue. After consideration, the work group determined that the legislative proposal presented by Mr. Minahan would not be a good solution to the problems that the work group was examining. Indeed, the work group found that that the specifics of the legislative proposal presented would be potentially harmful to parents as well as children, by imposing standardized, one-size fits all, automatic provisions on unique and varied family situations. The proposed legislation would increase, and not decrease, conflict in families, and would be contrary to well-established public policy principles. For these reasons, the workgroup does not support the legislative proposal presented.

However, the work group agreed that children, mothers, and fathers have a compelling and common interest in easily obtaining and enforcing safe, appropriate, and fair parenting plans for their families. The group spent considerable time studying alternative ways of achieving these goals. In light of the financial difficulties currently facing Oregon, the work group

identified some inexpensive short-term, immediate solutions as well as some longer-term solutions that would require greater resources. In the short term, existing groups of experts could be encouraged to collaborate to develop training materials and assistance programs to help parents understand their rights and obligations and develop parenting plans that will work best for their families and children. In the longer term, additional resources and assistance sites could be ideally located at the courthouses to help parents in creating their documents, negotiating discussions, and if necessary, filing any paperwork to modify and/or enforce their plans.

The remainder of this report first describes existing Oregon law that is relevant to these issues, and then it outlines in more detail the problems that the work group identified. The next section discusses Mr. Minahan's proposal and the reasons that the work group does not support it, and the final section outlines solutions that the work group considers likely to be helpful.

II. The development of Oregon's law of custody and visitation

Note: The statutory citations in this section are to provisions of ORS Chapter 107, which governs divorce. However, all these rules apply to unmarried parents and their children as well, once legal paternity has been established. ORS 109.103 provides in relevant part that once paternity is established, ORS 107.093 to 107.425 that relate to custody, support and parenting time apply.

By the last quarter of the twentieth century, American families had begun to change significantly, and family law changed to accommodate these changes. During the 1970s, the federal and state governments had begun to construct a complex system for establishing and enforcing child support orders that grew increasingly effective over the next 30 years. Also during the 1970s unmarried fathers gained legal protection for their relationships with their children. In the area of child custody law, two of the most important changes were acceptance of the idea that both parents should play a significant role in a child's life when this is in the child's best interests, and that parents should work out how they will share parenting of a child, with judges make the decision only when parents cannot. These ideas were incorporated into Oregon law beginning in the 1980s, and they have continued to be the topics of legislative attention since then.

Statutes enacted in Oregon in 1987 first explicitly recognized the value of having both parents regularly involved in a child's life if in the child's best interests. The main child custody statute was amended to authorize both sole custody and joint custody.¹ In Oregon, "joint custody" is defined as "an arrangement by which parents share rights and responsibilities for major decisions concerning the child, including, but not limited to, the child's residence, education, health care and religious training."² In other words, in Oregon "joint custody" means "joint legal custody." This is a term that has nothing to do with where and how *time* with parents is divided, but rather addresses only how decisions, rights, and responsibilities are allocated between parents. Oregon, like the majority of states, recognizes that successful joint decision-making about children depends upon the existence of parents who are able to engage productively in that process. Parents who are unable to effectively communicate with one another – for whatever reason (fear, abuse, lack of skills, etc.) – cannot effectively make

¹ ORS 107.105(1)(a).

² ORS 107.169(1).

important decisions for or about their children. Putting children at the center of such conflict is not good for them. Therefore, Oregon's statutes are built to encourage joint legal custody (and joint decision making powers) when parents agree to it, and discourage joint custody when parents are not able (with assistance) to agree to it. Under those statutes, a court cannot order joint custody over the objection of either parent, and if the parents agree to joint custody, the court must order it.³ If one parent requests joint custody and the other objects, the court must send the parties to mediation unless one of the parents objects and the court finds, after a hearing, that participation in mediation would subject the parent to severe emotional distress.⁴ If joint custody is ordered but either parent becomes unable or unwilling to continue to cooperate, the joint custody order must be modified.⁵

If one parent is awarded sole legal custody, the other parent still has rights to information about the child and to make decisions for the child in emergency situations unless the court explicitly limits these rights. The legislation that makes this clear was enacted at the same time that the statutes allowing joint custody were enacted. Under ORS 107.154, the parent who does not have custody still has the right to inspect and receive school records and to consult with school staff, to inspect and receive government and law enforcement records concerning the child, to consult with anyone who provides medical, dental or psychological care for the child and to receive those records, and to authorize emergency health care if the custodial parent is unavailable. The parent may also apply to be the child's conservator or guardian ad litem. ORS 107.159 provides that if either parent intends to move more than 60 miles away from the other parent, he or she must first give notice to the other parent unless a court suspends this requirement.

For purposes of determining what legal custody and parenting time arrangement is in a child's best interests, the Oregon statutes focus on the child's emotional and psychological well-being and again expresses the importance of the child's relationship with both parents. The best interests of the child standard is nationally accepted as the key principle by which to make these decisions. Oregon's main statute is ORS 107.137, which says that in determining a child's best interests, the court shall consider:

- a) The emotional ties between the child and other family members;
- (b) The interest of the parties in and attitude toward the child;
- (c) The desirability of continuing an existing relationship;
- (d) The abuse of one parent by the other;
- (e) The preference for the primary caregiver of the child, if the caregiver is deemed fit by the court; and
- (f) The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child. However, the court may not consider such willingness and ability if one parent shows that the other parent has sexually assaulted or engaged in a pattern of behavior of abuse against the parent or a child and that a continuing relationship with the other parent will endanger the health or safety of either parent or the child.

³ ORS 107.169(3) and (4).

⁴ ORS 107.179.

⁵ ORS 107.169(6)(a).

The legislation introduced in 2009 at the request of Mr. Minahan's group, HB 3402, would significantly change Oregon law regarding both legal custody and parenting time. This is not the first time that such legislation has been proposed. Since 1987, bills that would create a presumption in favor of joint custody have been introduced into the Oregon legislature several times, but they have never been enacted.

III. Procedures for creating and enforcing parenting plans in Oregon

Since 1997 Oregon law has required that there be a "parenting plan" in every case involving minor children that sets out whether the parents will have joint or sole legal custody and how they will share parenting time. The law expresses a strong preference for parents to decide these matters themselves.⁶ However, if the parents cannot reach an agreement or one parent asks the court to impose a plan, it will.⁷ If the parents later agree to a modification of the parenting plan, they may submit a notarized stipulation signed by both of them to the court, and the court must either enter an order consistent with the stipulation or order the matter set for a hearing.⁸

The statutes also include a number of provisions that are intended to facilitate the creation and enforcement of parenting time orders. First, ORS 107.425(3) allows a court to appoint an individual, a panel, or a program to help parents create and implement parenting plans. ORS 107.425(3). However, the availability of this assistance depends on the presiding judge having established qualifications for the appointment and training of people or programs to fill this role. ORS 107.425(3)(d). This legislation has not been implemented statewide, probably because of lack of funds.

Second, ORS 107.434(1) requires that the presiding judge in each judicial district create an expedited parenting time enforcement procedure that is easy to understand and initiate. The court must provide forms for: 1) a motion alleging a violation of parenting time, 2) an order requiring the parties to appear and to show cause why the parenting plan should not be enforced in a particular manner, and 3) a motion, affidavit and order providing for waiver of any mediation requirement on a showing of good cause. The procedure must require that a hearing on a motion seeking enforcement of a parenting order be conducted within 45 days of filing. If the court finds a violation of the parenting time order, it may impose any of these remedies:

- 1) modification of the parenting plan,
- 2) ordering the party who violated the parenting plan provisions to post bond or security,
- 3) ordering either or both parties to attend counseling or educational sessions that focus on the impact of violation of the parenting plan on children,
- 4) awarding the prevailing party expenses, including, but not limited to, attorney fees, filing fees and court costs, incurred in enforcing the party's parenting plan,
- 5) terminating, suspending or modifying spousal support,
- 6) terminating, suspending or modifying child support as provided in ORS 107.431, or
- 7) scheduling a hearing for modification of custody.

⁶ ORS 107.101, 107.102.

⁷ ORS 107.102, 107.105(1)(b)..

⁸ ORS 107.174(1).

If a parent's right to custody (but not visitation or parenting time) is being violated by someone else holding the child, the parent may apply to a court for an *ex parte* order of assistance directing the appropriate law enforcement agency to pick up the child and deliver him or her to the person or place that the court orders. ORS 107.437. The Uniform Child Custody Jurisdiction and Enforcement Act also provides expedited procedures for immediate enforcement of valid custody orders from out-of-state. See ORS 109.797-109.807.

In addition to these legislative provisions, intended to empower parents to make arrangements about how to care for their children following the parents' separation, the state judicial department has taken steps to make this process easier for parents. The State Family Law Advisory Committee to the Oregon judicial department and the staff of the judicial department have created model parenting plans with instructions in English and in Spanish that are available on the Web.⁹ The judicial department has developed forms for unmarried parents to use to establish custody and parenting time orders that are available on the Web,¹⁰ as well an informational brochure and forms for enforcing parenting time.¹¹ The web site also includes links to each county's website, where information specific to each locale is available.

While the legislation and materials provided by the judicial department are excellent, the work group found that parents still have problems creating and enforcing parenting plans. The work group concluded that part of the reason is that information is not always easy to find and is often difficult for parents to understand. These problems are aggravated by the fact that more than two-thirds of all Oregon family law cases involve at least one party who is unrepresented.¹²

IV. The work group's analysis of the legislative solutions proposed by Matt Minahan

On behalf of the Oregon Association for Children and Families, Matt Minahan submitted proposed legislative changes to the work group proposes legislative that he said are intended to make it easier to establish and enforce parenting plans. To a large extent, these recommendations mirror those in the legislation that Mr. Minahan supported in 2009. As stated above, the work group disagrees that these legislative changes are likely to be effective in reducing conflict and finds that some of the proposals are inconsistent with the fundamental goal of protecting the best interests of the children whose parents do not live together in the same household. This section describes each of the proposed legislative changes and the work group's analysis of them.

Expanding Parenting Plans The proposal says that parenting plans are only required in "custodial cases," that is, divorces. This is incorrect; as noted above, under ORS 109.103, all the rules set out for divorcing parents apply to unmarried parents once legal paternity is established.

Maximizing Involvement From Both Parents The proposal argues that the law should create a rebuttable presumption that a child attending school will spend half of his or her time with each parent if the parents live in the same school district, and makes similar proposals for

⁹ <http://www.oregon.gov/OJD/OSCA/cpsd/courtimprovement/familylaw/parentingplan.page?>

¹⁰ <http://www.oregon.gov/OJD/OSCA/cpsd/courtimprovement/familylaw/flpacket3.page?>

¹¹ <http://www.oregon.gov/OJD/OSCA/cpsd/courtimprovement/familylaw/flPacket5.page?>

¹² State Family Law Advisory Committee, Self-Representation in Oregon's Family Law Cases: Next Steps (2007) (hereinafter SFLAC report), available at <http://courts.oregon.gov/OJD/docs/OSCA/cpsd/courtimprovement/familylaw/FINALReportonSelfRepresentation9-6-07.pdf>.

children of other ages. The work group rejects this presumption because such arrangements are not feasible in a vast majority of circumstances and do not adequately reflect the needs of most children. The work group also rejects the notion that the presumption of specific parenting time arrangements reduces conflict. The work group studied the parenting time statutes of all 50 states and the District of Columbia. No state in the United States has a statute that prescribes a specific division of parenting time; instead, all say that this should be determined on a case-by-case basis.¹³

Relocation The proposal recommends that parents be deterred from moving more than a certain amount of time away and apparently is intended as a proposal to amend ORS 107.159, which requires parents to give notice to the other parent before moving more than 60 miles away. The work group rejects this proposal because it penalizes a parent who moves without regard to the reason. Because of the great variety of reasons for which parents move, these issues are best handled by judges on a case-by-case basis.

Major Decisions This section of the proposal would apply when a court has ordered sole legal custody in one parent, rather than joint legal custody. It calls for the parent without legal custody to share the right to make major legal decisions, including whether to have children attend counseling, to authorize medical care, and to make educational decisions. This proposal in effect goes a long way toward mandatory joint legal custody, since these are the major issues that parents share when they do have joint legal custody. The proposal also recommends that parents be allowed to participate in their children's activities, which the law currently permits, and that parents be allowed extra parenting time to take their children to activities. The work group does not support the latter proposal as a legal rule, although it agrees that parents could be encouraged to address these decisions in their parenting plans and given guidance as to how to share authority and structure their parenting time if they desire.

The work group strongly rejects mandatory joint legal custody or a presumption in favor of joint legal custody. No state in the United States mandates shared decision-making authority as this proposal would do, and only 10 establish a presumption favoring joint legal custody other than where both parents request this arrangement.¹⁴ Some states that at one time had presumptions favoring joint custody have since repealed these provisions, most notably California and Utah. California adopted joint custody in 1979 and repealed it in 1989; the Utah statute was enacted in 1988 and repealed in 1990.¹⁵ The empirical evidence shows that imposing legal custody on parents who do not want it is inconsistent with the best interests of children.

¹³ The arguable exceptions are West Virginia and Utah. West Virginia which has a statute providing that time should be divided between the parents in approximately the way each parent spent time doing actual parenting before the parents split up, unless the parents agree otherwise or this arrangement is manifestly harmful to the child. W. Va. Code § 48-9-206 (2010). Utah has a statutory model parenting time plan that operates as a presumption. Utah Stat. § 30-3-34 (2010).

¹⁴ They are the District of Columbia (does not apply in cases of domestic violence or child abuse), D.C. Stat. § 16-914 (2010); Florida (unless detrimental to the child), Fla. Stat. Ann. § 61.13(c)(2) (2010); Idaho (does not apply in cases of domestic violence), Id. Code § 32-717B(5) (2010); Iowa (does not apply in cases of domestic violence), Ia. Code § 598.41 (2010); Louisiana, La. Stat. C.C. Art. 132 (2010); Minnesota (does not apply in cases of domestic violence), Minn. Stat. §518.17 subd. 2 (2010); New Hampshire, N.H. Stat. §461-A:5 (2010); New Mexico, N.M. Stat. § 40-4-9.1 (2010); Texas (does not apply in cases of domestic violence), Tex. Fam Code. § 153.131(b) (2010); Wisconsin (does not apply in cases of domestic violence), Wis. Stat. §767.41(2)(am). In addition, a number of states provide that a court should order joint custody if both parents request it, a position similar to that taken by Oregon.

¹⁵ The legislative history of both statutes is discussed in *Thronson v. Thronson* (810 P.2d. 428 (Utah App. 1991)).

Input from the Child The proposal recommends that once children reach a certain age, they should be allowed to participate in decisions regarding what school to attend, which religion to follow, and how much time they should spend with each parent. Current Oregon statutes give judges discretion about how to gain information about children's needs and perspectives but does not give children decision-making authority. The work group believes that children's interests are not best served by telling them that they have the responsibility to decide matters which should be decided by their parents and possibly a judge and that the existing variety of mechanisms for including children's voices should be preserved.

Judicial Discretion The proposal generally seeks to reduce judicial discretion by creating rebuttable presumptions. The work group disagrees with this premise and instead believes that the best way to conserve judicial resources and to improve decision-making in these cases is to more effectively empower and assist parents in making their own decisions. As discussed above, the group does not believe that presumptions reduce conflict in this area.

Enforcement The proposal suggests that first time "offenders" be required to take parenting classes, that repeat offenders be fined, and that parenting time and custody be "reevaluated" for continued violations. The work group observes that courts already have the authority to impose these sanctions and more, as described above. The workgroup believes that automatic mandatory sanctions, as proposed by Mr. Minahan, do not reach the underlying problems that escalate to conflict over parenting plans and fail to capture the complexities of situations. Imposing mandatory sanctions could be harmful to children in some circumstances.

V. Recommended solutions

The working group supports the goal of promoting the involvement of both parents when this is in the child's best interests and recognizes the value of affirming the importance of fathers' roles in their children's lives. It also supports the policy of encouraging parents to work together to make their own plans. The group spent the great bulk of its meeting time discussing ways to help parents learn how to create their own parenting plans, to resolve conflicts before they become overwhelming, and to navigate the legal system. The group concluded that the most important tools that need to be developed would provide education and models for parents, as well as providing them expert assistance when they do not have attorneys. We understand that these proposals carry a price tag but argue that money spent helping parents solve their own problems will save judicial resources and, even more importantly, increase the well-being of children and their families.

A. More parenting plan models that are more accessible

The workgroup concluded there is a need for model parenting plans that are adapted to children's varying circumstances, including variations based on age of the child, geographical distance between the parents' homes, etc. The models should include language about modifications such as sunset clauses or dates of review and agreements to use particular dispute resolution processes such as mediation. The plans and instructions should include instructions on how to modify plans, including how to modify court orders based on the plans.

The group believes that the State Family Law Advisory Committee (SFLAC) has done good work in this area and is best situated to continue it. We urge the legislature to support SFLAC's work in this area.

The work group also believes that it is critical that the models be available on-line, easy to find, and reasonably easy to understand and use. The work group observes that SFLAC in 2007 recommended the development of "consumer-friendly, electronically-interactive forms."¹⁶ Hard copies should also be available at county courthouses.

B. Expert assistance for parents

Even with simpler, more accessible forms and informational brochures, many parents will still need assistance to develop their own plans. Assistance by courts and state agencies is a necessary service that could be provided by personnel connected to child support enforcement services or a self-standing government entity. Another possibility would be for courts to employ contract attorneys or facilitators to assist parents in formulating parenting plans. Again, the work group observes that legislation already authorizes courts to appoint parenting plan coordinators but that funds are not available to implement the legislation.

C. More education about parenting rights and responsibilities

Information about available assistance in formulating and enforcing parenting plans and resolving disputes should be provided to people at the time paternity is voluntarily acknowledged or established through an administrative or judicial process and in child support enforcement and other appropriate cases. The state Department of Human Services could also provide this information to people seeking public assistance.

The work group recommends that interested parties consider opportunities to offer, where appropriate, user-friendly classes and clinics about establishing and enforcing parenting plans.

High schools should be encouraged to offer classes on the law of parentage and parenting, as well as healthy child development and the relationships between children and parents.

D. Mandatory alternative dispute resolution programs

The work group believes that in most cases alternative dispute resolution programs, especially mediation, are a better means of solving disputes about custody and parenting time than going to court, unless safety of a child or parent precludes this alternative. Since legislation already exists to allow courts to refer these disputes to mediation, the group recommends funding to make alternative dispute resolution services available statewide.

E. The relationship between child support and parenting plans

The work group recognizes that allowing state child support enforcement agencies to coordinate parenting plan disputes resolution would respond to the belief of some parents that the

¹⁶ SFLAC Report, *supra* note 1.

state unfairly supports parents who claim that they are not getting the child support they are owed while not helping parents who claim they are not getting the access to their children that they should have. The work group also believes it is possible that if the child support enforcement agency coordinated parenting plan dispute resolution that child support compliance as well as parenting plan compliance might improve. However, the work group also recognizes that the child support agency is limited to using the federal funds it receives for purposes of the child support program. The work group has been informed that in some states, notably Texas, parenting plan mediators or coaches have offices in some child support offices to help parents with parenting plan disputes, and that the child support enforcement agency collaborates with other entities to provide clinics to parents with problems regarding custody and visitation. The work group recommends that the Department of Justice examine the feasibility of offering similar services in Oregon.

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Board of Governors Agenda

Meeting Date: June 18, 2010
Memo Date: June 18, 2010
From: Michael Haglund, Appointments Committee Vice Chair
Re: Appointments for the Consent Agenda

Action Recommended

Approve the following Appointments Committee recommendations.

Judicial Administration Committee

Recommendation: Travis Sewell, term expires 12/31/2011

Quality of Life Committee

Recommendation: Allyson Keo, term expires 12/31/2012

House of Delegates

Region 3 recommendation: Karen Ford, term expires 12/31/2012

Region 4 recommendation: Margaret Baricevic, term expires 12/31/2012

Region 4 recommendation: Rebecca Pihl Mehringer, term expires 12/31/2012

Region 4 recommendation: J. Douglas Wells, term expires 12/31/2012

Region 5 recommendation: Elizabeth Bonucci, term expires 12/31/2011

Region 5 recommendation: Paresh K. Patel, Public Member, term expires 12/31/2012

Region 6 recommendation: John C. Young, term expires 12/31/2011

Out of state region recommendation: Sara L. Watkins, term expires 12/31/2012

Oregon Law Commission

Recommendation: Scott Shorr, term expires 6/30/2014

Exhibiti 6