CIRCUIT COURT OF THE STATE OF OREGON
FOURTH JUDICIAL DISTRICT
MULTNOMAH COUNTY COURTHOUSE
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TESTIMONY REGARDING HB 3117 – LEGAL SHOWING IN CONTESTED FAPA HEARINGS
Before the Senate Judiciary Committee of the Oregon Legislature
May 2, 2019

Submitted by:
Maureen McKnight, Circuit Court Judge
Multnomah County

Chair Prozanski, Vice-Chair Thatcher, and Members of the Committee:

My name is Maureen McKnight and I am a Circuit Court Judge in Multnomah County. I have served in the Family Law Department there the last 17 years after practicing family law exclusively as an attorney for 22 years. I am the immediate past Chief Judge of that department and a member of the court's Statewide Family Law Committee. I do not speak for those groups or the Oregon Judicial Department but for myself and Judges Katherine Tennyson and Beth Allen of our family bench. All of us have decades of experience as attorneys and judges in domestic violence cases and we have chaired national or statewide professional groups focusing on the issue.

We are writing to support HB 3117.

Recent decisions from the Oregon Court of Appeals have had a significant impact on our handling of matters under the Family Abuse Prevention Act (FAPA). These appellate opinions interpreting the "imminent danger of further abuse" prong of the required showing have compelled us to dismiss FAPA orders at contested hearings even when we have found that recent abuse occurred and that the Respondent remains a credible threat to the Petitioner's safety. We've dismissed because we cannot find that the danger of further abuse is "imminent" within the meaning of the recent appellate cases. Those cases include *MAB v Buell,* 296 Or App 380 (2019) and *Kargol v Kargol,* 295 Or App 529 (2019,) and derive in large part from a 2014 case, *CMV v Ackley,* 261 Or App 491 (2014). We write to stress that in our experience an end to cohabitation, or a period of relative calmness or even contrition and wooing of the victim, or a

lack of an overt physical threat after the Respondent has been served with a restraining order are just as commonly indications that domestic violence is cyclical than they are evidence that no danger is "imminent."

When victims of domestic violence do what our community asks of them – separate from their abusers and obtain restraining orders – they have indeed, as the Court of Appeals states, "necessarily changed their relationship" with their abusers. But this does not necessarily mean they are safer. Research on domestic violence is compelling that separation is often the time of highest danger for victims; that many abusers are sophisticated, calculating, and patient in the nature and timing of their actions; and many are able to present as controlled and downright affable in family or employment situations even with the victim present. But neither separation, nor delay, nor affability necessarily evidences a reduction in danger. Domestic violence has complex dynamics and relationships differ. Judges need to be able to assess risk against a backdrop of that complexity and not be tied to an assumption that – once abuse has occurred within the last 6 months – recent separation, inactivity, or affability means no danger.

We understand that the "imminence" requirement would still be required under HB 3117 at the *ex parte* application stage. When we are hearing from just one side on an emergency basis, it makes sense that we find a need for immediate protection. But at a contested hearing, we believe our focus should be on the reasonableness of the threat and the reasonableness of the fear.

Finally, we want to emphasize that FAPA matters are a substantial part of our judicial practice. Our county issues approximately 185 FAPA orders monthly and approximately 35% (65/month) result in contested hearings. Statewide, approximately 825 FAPA orders are issued monthly. Moreover, domestic violence is a factor in thousands of other divorce, custody, parenting time, and dependency matters. Sending victims of abuse the message that it will be hard to keep the restraining order if they've moved out or if their abuser is likely to obey the order is not the message we as Judges want to send.

Thank you very much for considering our remarks.

Respectfully submitted,

MAUREEN McKNIGHT, Circuit Court Judge

cc: Members of the House Judiciary Committee
Nancy Cozine and Phil Lemman, State Court Administrator's Office
Gillian Fischer, Senate Judiciary Counsel