

**TESTIMONY ON HB 2225
BEFORE THE HOUSE COMMITTEE ON JUDICIARY
FEBRUARY 8, 2023**

**PRESENTED BY: PHILLIP LEMMAN, DEPUTY STATE COURT ADMINISTRATOR
OREGON JUDICIAL DEPARTMENT**

Chair Kropf, Vice-Chairs Andersen and Wallan, and Members of the Committee:

I'm Phil Lemman, Deputy State Court Administrator at the Oregon Judicial Department (OJD), here in support of HB 2225. As the Chief Justice said, this bill has several provisions that OJD thinks will improve justice in Oregon. I will go through the bill and explain its several pieces.

Section 1 would increase the amount able to be charged by the people who transcribe trial court proceedings into written transcripts in preparation for an appeal. The bill would increase the statutory rate of \$3.00/page, which has been in place since 2013, to \$4.25/page. That would return Oregon to a market rate, which would in turn reduce delays and court extensions of time to obtain these transcripts, and, we believe, improve the quality of those transcripts.

This change primarily would affect the Office of Public Defense Services (OPDS), since appeals by a person convicted of a crime constitute the largest single group of appeals needing transcripts. The change also would affect private-sector and other appellants. Not having a competitive payment rate encourages transcribers to focus on higher-paying work first and has encouraged many transcribers to leave the Oregon market entirely. It also has contributed to higher error rates in these transcripts, which again, requires more attorney time to review and correct these documents.

OJD has been working with appellate lawyers in OPDS, the Department of Justice (DOJ), and the private bar for some time. And while there are concerns about the fiscal impact to OPDS and questions about whether increasing the rate will quickly improve quality, we believe there is consensus that raising the rates is necessary and appropriate and will have the effect of improving quality.

Section 1 also gives OJD the authority to apply a cost-of-living increase to the statutory amount. The legislature has given this responsibility to OJD in other areas – increasing the tort claims limit for one. We would exercise this authority after consulting with OPDS and other stakeholders, and we have structured this authority so that it would give OPDS and other state entities time to prepare any necessary budget requests to accommodate any increase.

Section 2 would streamline the appointment and assignment process for senior judges. When a sitting judge retires, the Supreme Court can approve them as a senior judge, which allows them to continue to exercise judicial authority. Having senior judges available has been a critical element in supporting courts to address caseload needs, especially during the pandemic when they could be assigned to a case settlement docket or other areas of focused need.

The bill would continue the requirements that they be approved by the Supreme Court and that they consent to any assignment, but it would allow the Chief Justice to delegate her authority to administrative staff to carry out the assignments without the need for specific Chief Justice Orders. It also would allow a senior judge assignment to include assignment to more than one county or judicial district in a single assignment order.

Section 3 would clarify that a senior judge assigned to a circuit court may, with the approval of the presiding judge of that court, authorize search warrants. This would allow a senior judge to have the full authority of an elected circuit judge to issue warrants, with the approval of the presiding judge. We believe this strikes an appropriate balance between effectively using senior judges to support the courts, while maintaining local authority to guide the actions of those visiting judges, and not requiring law enforcement to have to certify that an elected judge is not available within a reasonable time. This proposal arose in the marijuana task force chaired by Senator Prozanski and on which Representative Morgan served.

Section 4 clarifies and makes consistent statewide the requirements to serve a motion to amend parenting time and was the recommendation of the State Family Law Advisory Committee, a statutory body comprised of family law judges, attorneys, stakeholders, and court staff. Parties have been using two different rules of civil procedure to serve these motions, and this provision establishes that the appropriate process is the same as service of a summons. This change will eliminate confusion by parties on which process to use, as well as some disagreement among courts on whether to accept that process. This recommendation also came from the State Family Law Advisory Committee.

Section 5 is very simple. It just corrects outdated references to two Oregon Rules of Civil Procedure (ORCP).

The amendment in **Section 6** to ORS 7.095(1) is to address concerns that have been raised about the disclosure of confidential personal information that may be improperly or erroneously filed with the court, especially by self-represented litigants. The amendment would clarify and codify current practice under the Uniform Trial Court Rules (UTCRC) that documents submitted to the court do not become records potentially available to the public until court staff have had the opportunity to ensure they have been filed correctly.

Similarly to Section 4, the amendments in **Sections 7, 8, and 9** modify the process to file a remedial contempt action. Current statutes require filing a motion in an underlying case to initiate a remedial contempt action. Due to limitations inherent in OJD's Odyssey case management system, OJD has been treating remedial contempt of court matters as standalone cases once the motion is filed in the underlying case.

In addition to the technical challenges with these actions, if there is an appeal on the remedial contempt issue there can be confusion at the appellate level as to whether the underlying matter's record should be considered part of the record on appeal. The current statutory structure has caused confusion for parties and can cause confusion as to the record on appeal.

These changes include removal of references to a "motion" and to clarify that such an action requires filing a new case. In addition, the change from filing a motion to filing a new case requires a shift in the filing fee structure as current statutes require a filing fee of \$56.00 for remedial contempt motions in domestic relations cases and \$111.00 for remedial contempt motions in other civil cases. OJD's proposed changes would streamline the filing fee to a single, set amount and would set the filing fee at \$56.00 for all remedial contempt actions, regardless of the related case-type.

Sections 12, 13, and 14 establish the effective and operative dates for the various provisions of the bill. Sections 2, 3, 5 and 6, relating to senior judges, the ORCP corrections, and disclosure of confidential records would take effect on passage. Sections 1 and 4, dealing with transcriber fees and service of parenting time motions would take effect on the 91st day after session. And

sections 7 through 10, which affect filing fees, would take effect on October 1, 2023, when we regularly publish a new filing fee schedule.

Thank you for your time and attention. I would be glad to answer questions.