Approved by Chief Family Law Judge Maureen McKnight
October 2016 revision

Top 20 Reasons Why Family Law Papers are Returned or Not Signed by the Court in Multnomah County

1. Missing signatures on a "Stipulated" Judgment
We need signatures from all parties, for obvious reasons.

2. Referenced Exhibits not provided
This situation arises most frequently with child support worksheets or parenting plans. Frequently exhibits are attached to the petition and referenced in the Judgment, but copies are not attached to the Judgment. This omission is problematic for several reasons, including the court's obligation to provide a copy of the Judgment to the Child Support Program. If worksheets are not attached to the Judgment, DOJ will not receive them from the court.

3. No finding of "unjustness" or "inappropriateness" re presumptive amount of child support and/or no financially-related factual basis for rebuttal finding.
Federal statute, state statute, and state regulation all require the finding. 42 U.S.C. §667(b)(2); ORS 25.280; OAR 137-050-0760(1). The finding must include (1) the presumptive amount *and* (2) the specific finding of "unjustness" or "inappropriateness" *and* (3) the reason for the variance. OAR 137-050-0760(1). The finding could be made orally on the record, but that approach is useless to a subsequent agency or judicial trier without a transcript. A written finding in the judgment is what is needed. "Unjustness" and "inappropriateness" can be based on parental agreement related to any financial factor. *Petersen and Petersen*, 132 Or App 190 (1994).

4. No findings re spousal support ordered in General Judgment
ORS 107.105(1)(d) requires that the category of support be named (transitional, compensatory, or maintenance) and findings be made. This mandate was enacted to enable judges to determine more readily whether it is appropriate to modify or terminate support. No statute requires findings regarding temporary support and findings re post-judgment/modified support are required only when support is terminated. *See* ORS 107.135(5). But findings are helpful and strongly encouraged whenever support is modified for the same reason they are required in General Judgments.

5. Missing Certificate of Pending Child Support and/or
New Child Support order is proposed when an order already exists involving the same obligor and same child in another case.
Since 2003, Oregon law has prohibited the previously-practiced approach that assumed "an agency order is trumped by a subsequent judicial order." Because of federal full faith and credit law re child support orders (FCCSOA at 28 U.S.C. §1738B), agency orders are entitled to the same recognition as judicial orders. So, when litigants submit a proposed support order and a child support order is already in effect re the same child and obligor, <u>a judge cannot do anything but (1) honor, (2) modify, or (3) vacate that existing order as set out by law</u>. See ORS 25.089(3) for details.

The Certificate of Pending Child Support (in a form substantially compliant with that set out in the UTCR Appendix) is required by statute to put the court and parties on notice about the already existing order. If the Court ignores the existing order, the Child Support Program ends up holding a "governing order" proceeding to clean up the judicial mess. So, if the litigant has not been procedurally pure in filing *in that other case* a motion to vacate or modify, <u>the new order the Judge signs in the second case must contain a finding that a change of circumstance has occurred since the prior order (and provide the case #) or state what statutorily-recognized grounds exist to consider that order vacated</u>. Again, see ORS 25.089. *See also* ORS 107.085(3)(regarding initial petitions) and

ORS 107.135(2)(a)(B) (regarding modification cases), UTCR 8.090, and UTCR Appendix. It is very helpful to file a duplicate of that order for filing in the other (earlier) case, but be sure to include the earlier case number on that order.

> NOTE: When Judges become aware that more than one order exists for same child / same obligor / same period, we *may* determine the controlling order after notice to the parties even if no party has requested that we do so (ORS 25.091) but we *must* do so if we are being asked to enforce one of multiple orders (ORS 25.089(5)).

6. General Confusion about What the Petitioner or Parties Intend

This situation could be anything from listing real property and not describing who is awarded the property, ordering a sale without specifying the disposition of the proceeds, or parenting time terms that award the same holiday to both parents, or anything in this vein. If we don't understand the proposed term, we'd like to fix it now to avoid the enforcement problems down the line.

7. Missing Facts Supporting Default (i.e., reasons *why* Petitioner knows the Respondent is not in military).

The federal Servicemembers Civil Relief Act (SCRA) requires sworn or declared-under-perjury-penalty facts supporting the allegation of non-service. 50 U.S.C. App. §521(b)(1) & (4). ORCP 69C(2). This means facts that support *why* the petitioner believes the respondent is not in the military, not just the bald assertion that the respondent is not in the military. Attachment of the Department of Defense print-out is helpful.

8. Required Notices are Missing in Cases involving Support

ORS 107.106 requires notices re support/parenting time responsibility whenever support is involved. ORS 25.384 requires a notice that support will be paid by withholding unless exceptions apply. ORS 25.020(8)(b)(B) requires a notice about the availability of periodic review for cases on the DCS/DA system. The frequency of periodic reviews on request is three years. ORS 25.020(8)(b)(B); OAR 137-055-3420(4).

9. Adult Child is Not Served, or has Not Waived Rights or has Not Signed Stip Judgment

ORS 107.108 affords notice and participatory rights to *any* 18-20 year old child of the parties. Only if the child is a CAS (child attending school) does a claim for relief exist, but the Legislature created party status for any joint 18-20 year old. These adult children are entitled to a <u>chance</u> to say "Hey, you're getting a divorce, and I'm going to go to PCC in the fall, so I want support." We need to know this adult child was given that chance or chose to waive his/her chance.

10. Haven't Done the Parenting Education Class

Multnomah County Supplemental Local Rule 8.125 requires attendance at this Family Services-administered session in marital actions, ORS 109.103 matters, and post-judgment litigation re custody and parenting time in which the parents have not already taken the class. We have a local form that addresses the "I've done it but s/he hasn't; I did it in another case/ I did an equivalent program" situation. The local form is available on the Multnomah County Circuit Court website *(see page 4, below)* but any motion and proposed order that appropriately addresses the issues is acceptable. It is local practice that the order reflect that until proof of compliance is filed, the non-complying party shall not be heard on any matter under the judgment except for emergency relief involving the children.

11. Required Term re Unreimbursed Health Insurance is Missing

ORS 107.106(1) requires that any custody/parenting-time or support order – under any ORS chapter – "include provisions addressing (1) payment of uninsured medical expenses of the child and (2) maintenance of insurance or other security for support." These provisions are included because the federal government does not pay the state Child Support Program to establish, modify, or enforce unreimbursed medical expenses not included in cash medical support.

12. No Facts to Support Personal Jurisdiction when service is effected out of state.
The *prima facie* affidavit or some evidence must indicate why Oregon has minimum contacts with a Respondent served out of state. These contacts must be sufficient to exercise personal jurisdiction when monetary awards or other personal obligations (""pay this," "deliver that") are sought. ORCP 4K lists the "long arm" test for domestic relations but the catch-all is minimum contacts consistent with due process. ORCP 4L. See also ORS 110.318.

13. Judgment contains terms less advantageous to Respondent than those in Petition (and no Stip)
This issue usually involves self-represented parties and stems from ignorance of legal concepts. It is rare but not unheard of in the inadvertence of attorneys. If the Judgment terms are less beneficial to the Respondent, we need the Respondent's stipulation to the (new) terms in the judgment, or the Petitioner will need to finalize the case based on the terms in the served petition, or the Petitioner will need to amend the petition and re-serve the respondent.

14. Court Fees are owing but no Disposition re State Judgment for Deferred Fees is Included
Where a party has had an order deferring court fees signed in the proceeding, the General Judgment (or the Supplemental Judgment for post-judgment matters) must address the unpaid balance. ORS 21.692. If a litigant-prepared or attorney-prepared General Judgment does not include the money award and court staff miss the issue in screening, a separate Supplemental Judgment for the full balance of the fees will later be entered by the court without notice to the parties. It is the practice in Multnomah County Family Court, to try to catch this issue at the point the judgment on the merits is screened. Note that Judges may be willing to re-examine a party's financial situation at the time the final Judgment on the merits is being considered to see if some or all of the deferred costs should be waived (or some of the waived costs imposed with the waiver vacated) but the party needs to provide information in a declaration or affidavit that supports this request. Once a fee judgment has been entered, ORS 21.692(3) controls the process and requires a showing of changed circumstance.

15. UCCJEA information is lacking or reveals problems.
UCCJEA information set out in ORS 109.767 is required in *any* "custody" proceeding as defined under that Uniform Act (divorce cases, unmarried parent petitions under ORS 109.103, modifications of parenting time, third party custody under ORS 109.119, etc.) When the UCCJEA information is lacking, it is usually in a modification context. Even if the legal file shows a prior Oregon judgment on custody/parenting time, we need to know that no UCCJEA matters are pending in other jurisdictions (e.g., dependencies, protection orders, or guardianships) and that no other orders/judgments were entered elsewhere after Oregon made its judgment. We also need to make sure that the child is not residing with someone other than a parent. Positive answers on any of these questions can affect our jurisdiction to proceed with the modification. *In other words, we essentially need in modifications the same ORS 109.767 information that is required in the original petition*. We can often piece together this information from file data but it is an immense timesaver if we can avoid going through all the file documents and instead rely on the parties' pleading of the ORS 109.767 information. And, if the case is at the "initial order" phase (ORS 109.741) and another home state exists, this issue should be dealt with (in terms of obtaining the home state's declination of jurisdiction) *before* the papers are forwarded to the Judge for final signature. Remember that Multnomah County SLR 8.011(2) requires the party asserting that Oregon lacks or should decline UCCJEA jurisdiction to include in their pleading or motion contact information for the other jurisdiction.

16. No second copy of support order for DOJ. – NO LONGER NEEDED
Inclusions of this second copy won't result in rejection. This is just a reminder that with the transition to eCourt, the requirement that litigants provide a copy of all support judgments to the Court for forwarding to DOJ was deleted in May 2014.

17. Correct Captioning on Judgments and Orders (particularly Limited Judgment vs. Temporary Orders)

This situation has improved substantially in the last few years. Our Court often uses a cover sheet for return of documents on this issue. Pertinent sections of that cover sheet about temporary orders are printed here:

- The Court of Appeals has ruled that trial courts do not have authority to enter Limited Judgments regarding temporary domestic relations relief *outside of child support, spousal support, or other orders for the payment of money.* Explicit statutory authority for Limited Judgments addressing the payment of support or other money is set out at ORS 107.095(2). *Order to Dismiss Appeal on Court's Motion in Mullarkey and Nemiroff*, Court of Appeals case no. CA A130533 (Dec. 2005) (Justice Brewer).
- Because a money award implicates a judgment (ORS 18.005(14)) and because a "judgment document must be separate from any other document in the action" (ORS 18.038(3)), temporary terms for payment of support or money must be in a *separate* document labeled a "Limited Judgment" and containing a money award section (ORS 18.042(1)) <u>if you wish those terms to have judgment lien effect.</u>
- If you do <u>not</u> wish the temporary orders for payment of support or money to have judgment lien effect, such terms may be included in a Temporary *Order* that also addresses custody, parenting time, or non-financial obligations. No money award section is necessary. ORS 18.042.

18. Errors in Preparing CIFs (Confidential Information Forms) and Money Award Sections

ORS 25.020(8) requires certain content for child support orders and judgments. ORS 18.042 requires that money award sections in judgments contain specific content, as well, including the final four digits (not the full number) of social security numbers and driver's licenses. And UTCR 2.130 requires that data defined as "confidential personal information" be provided in a CIF, not in the pleading or other court document. <u>But statutory amendments and rule changes made the CIF procedure inapplicable to money awards.</u> The interplay between the requirements for CIFs, support judgments, and money award sections money is complicated. The Family Court has prepared a hand-out for attorneys, available on the court's website on the "Rules and Procedures" page. *See below.* The document is entitled "UTCR Changes re Confidential Information Forms (CIFs) Affecting Family Law Documents."

19. Missing Certificate of Service/Readiness Required by UTCR 5.100

The facts detailing (1) when and how you provided a copy of the proposed order or judgment to the other party and (2) why your proposed order or judgment is ready for signature must be in the same document as the proposed order (the same unified PDF if efiled). The Certificate should follow the space for the Judge's signature. Unless the document is stipulated, <u>do not send proposed orders or judgments to court *before* the notice period for the other side has lapsed</u> (7 + 3 days for service on the self-represented [SRL], 3 + 3 days for service on attorneys). Make sure you notify SRLs of the objection period. A separate FAQ sheet about UTCR 5.100 is available online. *See address below.*

The **WEBSITE** for the **FAMILY COURT**
of Multnomah County Circuit Court can be accessed at
http://courts.oregon.gov/Multnomah/.

Click on the **"Family Court"** prompt listed in the "Quick Links" on the right side of the page. You will be directed to several pages, including:

- Family Court Home page
- FAQs
- Finding Legal Help
- Rules and Procedures and
- Committees