

## CIRCUIT COURT OF OREGON

A. MICHAEL ADLER, *Judge*  
ALTA J. BRADY, *Judge*  
STEPHEN P. FORTE, *Judge*  
BARBARA A. HASLINGER, *Judge*

**ELEVENTH JUDICIAL DISTRICT**  
DESCHUTES COUNTY JUSTICE BUILDING 1100 NW  
BOND STREET BEND, OREGON 97701

EDWARD L. PERKINS, *Judge*  
MICHAEL C. SULLIVAN, *Presiding Judge*  
STEPHEN N. TIKTIN, *Judge*

(541) 388-5300

### MEMORANDUM

**December 21, 2005**

**TO: Central Oregon Bar Association**

**FROM: Michael C. Sullivan, Presiding Judge**

**RE: pre- and post judgment temporary custody orders**

Oregon statutes provide for various forms of temporary custody orders in dissolution, separation and custody cases. Each form has a unique set of requirements regarding motion, supporting affidavit and order contents, service, notice, timing of hearings and scope of hearings. The following procedures have been adopted by the Deschutes County Circuit Court to assist the attorneys, parties and court. We recommend that you review the applicable statutes prior to filing a motion for any type of temporary custody order. This Memorandum is not a complete recitation of all of the statutory requirements.

#### ***Pre-judgment temporary protective order of restraint pursuant to ORS 107.097 (2)***

A temporary protective order of restraint (also referred to as a “status quo order”) will be issued ex parte upon filing of a motion and a supporting affidavit that conforms to the requirements of ORS 109.767. A copy of the order and supporting affidavit must be served on the other party in the manner of service of a summons under ORCP 7 and must include the notice set forth in ORS 107.097(2)(c).

If the party against whom the order is entered requests a hearing, the Court shall hold a hearing no later than 21 days after receipt of the request for hearing. If the party against whom the order was entered fails to appear at the hearing without good cause, the Court shall continue the order in effect. If the party who obtained the order fails to appear at the hearing without good cause, the court shall vacate the order.

The issue at the hearing is limited to a determination of the status quo at the time the order was issued. If the child(ren)’s usual place of residence cannot be determined, the Court may make any further order it finds appropriate in the best interests of the child(ren).

**Pre-judgment temporary emergency custody order pursuant to ORS 107.097(3)**

If a motion for a temporary custody order (also referred to as “emergency temporary custody order”) and supporting affidavit is filed before 10:00 a.m. on any court day, the attorney and party seeking the order shall appear in the courtroom of the assigned judge at 1:15 p.m. on the same day unless instructed otherwise by the Court. If the motion is filed after 10:00 a.m., the attorney and party seeking the order shall appear in the courtroom of the assigned judge at 1:15 p.m. the following judicial day unless instructed otherwise by the Court. A copy of the order and the supporting affidavit must be served on the other party in the manner of service of a summons under ORCP 7 and must include the notice set forth in ORS 107.097(3)(c). The judge will review the motion and supporting affidavit and, if necessary, take testimony.

If the party against whom the order is entered requests a hearing, the Court shall hold a hearing no later than 21 days after receipt of the request for hearing. If the party against whom the order was entered fails to appear at the hearing without good cause, the Court shall continue the order in effect. If the party who obtained the order fails to appear at the hearing without good cause, the court shall vacate the order.

The issue at the hearing is limited to whether the child(ren) was in immediate danger at the time the order was issued.

**Post judgment temporary status quo order pursuant to ORS 107.138**

A motion for temporary status quo order in a form consistent with the form attached to this Memorandum and supporting affidavit shall be filed currently with or subsequent to the filing of a motion to modify pursuant to ORS 107.135. The affidavit must contain the information required by ORS 107.767 and ORS 107.138(1)(b). A proposed order shall be submitted in conjunction with the motion and supporting affidavit consistent with the form attached to this Memorandum. A hearing will be set no less than 21 days from after receipt of the motion, supporting affidavit and proposed order. Notice to the party against whom the order is sought must be served at least 21 days before the date set for the hearing.

The issue at the hearing is limited to a determination of the status quo at the time the motion was filed.

**Post judgment temporary emergency custody order pursuant to ORS 107.139**

A motion for temporary emergency custody order must be filed concurrently with or subsequent to the filing of a motion to modify pursuant to ORS 107.135. If a motion for a temporary emergency custody order and supporting affidavit is filed before 10:00 a.m. on any court day, the attorney and party seeking the order shall appear in the courtroom of the assigned judge at 1:15 p.m. on the same

day unless instructed otherwise by the Court. If the motion is filed after 10:00 a.m., the attorney and party seeking the order shall appear in the courtroom of the assigned judge at 1:15 p.m. the following judicial day unless instructed otherwise by the Court. The attorney or party must make a good faith effort to confer with the opposing party regarding the purpose and time of the court appearance. A copy of the order and supporting affidavit must be served on the other party in the manner of service of a summons under ORCP 7. The order must include the notice set forth in ORS 107.139(1)(c).

If the opposing party does not appear at 1:15 p.m., the judge will review the motion and supporting affidavit and, if necessary, take testimony. If both parties appear, the judge may hold a hearing at that time or, in his or her discretion, set an expedited hearing at a future date.