

Enrolled
House Bill 2357

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon State Bar Board of Governors)

CHAPTER

AN ACT

Relating to courts; creating new provisions; and amending ORS 1.002, 7.020, 7.090, 7.110, 7.250, 8.120, 8.225, 18.412, 19.500, 21.040, 21.110, 21.111, 21.114, 21.275, 21.310, 21.410, 21.480, 21.605, 46.570, 108.130 and 130.200 and ORCP 7 C, 9 A, 9 B, 9 E, 17 A, 17 C and 17 D.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 1.002 is amended to read:

1.002. (1) The Supreme Court is the highest judicial tribunal of the judicial department of government in this state. The Chief Justice of the Supreme Court is the presiding judge of the court and the administrative head of the judicial department of government in this state. The Chief Justice shall exercise administrative authority and supervision over the courts of this state consistent with applicable provisions of law and the Oregon Rules of Civil Procedure. The Chief Justice, to facilitate exercise of that administrative authority and supervision, may:

- (a) Make rules and issue orders appropriate to that exercise.
- (b) Require appropriate reports from the judges, other officers and employees of the courts of this state and municipal courts.
- (c) Pursuant to policies approved by the Judicial Conference of the State of Oregon, assign or reassign on a temporary basis all judges of the courts of this state to serve in designated locations within or without the county or judicial district for which the judge was elected.
- (d) Set staffing levels for all courts of the state operating under the Judicial Department and for all operations in the Judicial Department.
- (e) Establish time standards for disposition of cases.
- (f) Establish budgets for the Judicial Department and all courts operating under the Judicial Department.
- (g) Assign or reassign all court staff of courts operating under the Judicial Department.
- (h) Pursuant to policies approved by the Judicial Conference of the State of Oregon, establish personnel rules and policies for judges of courts operating under the Judicial Department.
- (i) Take any other action appropriate to the exercise of the powers specified in this section and other law, and appropriate to the exercise of administrative authority and supervision by the Chief Justice over the courts of this state.

(2) [*Subject to all other laws governing courts and court procedures,*] The Chief Justice may make rules for the use of electronic applications in the courts, including but not limited to rules relating to:

- (a) Applications based on the use of the Internet and other similar technologies;

[(b) Filing of electronic documents in court proceedings in lieu of hard copies of those documents;]

(b) The use of an electronic document, or use of an electronic image of a paper document in lieu of the original paper copy, for a document, process or paper that is served, delivered, received, filed, entered or retained in any action or proceeding;

(c) The use of electronic signatures or another form of identification for any document, process or paper that is served, delivered, received, filed, entered or retained in any action or proceeding and that is required by any law or rule to be signed;

(d) The use of electronic transmission for the service of documents in a proceeding, other than service of a summons or service of an initial complaint or petition;

[(c)] **(e)** Payment of statutory or court-ordered monetary obligations through electronic media;

[(d)] **(f)** Electronic storage of court documents;

[(e)] **(g)** Use of electronic citations in lieu of the paper citation forms as allowed under ORS 153.770, including use of electronic citations for parking ordinance violations that are subject to ORS 221.333 or 810.425;

[(f)] **(h)** Public access through electronic means to court documents that are required or authorized to be made available to the public by law; and

[(g)] **(i)** Transmission of open court proceedings through electronic media.

(3) Rules adopted by the Chief Justice under subsection (2) of this section must be consistent with the laws governing courts and court procedures, but any person who serves, delivers, receives, files, enters or retains an electronic document, or an electronic image of a paper document in lieu of the original paper copy, in the manner provided by a rule of the Chief Justice under subsection (2) of this section shall be considered to have complied with any rule or law governing service, delivery, reception, filing, entry or retention of a paper document.

[(3)] **(4)** Rules made and orders issued by the Chief Justice under this section shall permit as much variation and flexibility in the administration of the courts of this state as are appropriate to the most efficient manner of administering each court, considering the particular needs and circumstances of the court, and consistent with the sound and efficient administration of the judicial department of government in this state.

[(4)] **(5)** The judges, other officers and employees of the courts of this state shall comply with rules made and orders issued by the Chief Justice. Rules and orders of a court of this state, or a judge thereof, relating to the conduct of the business of the court shall be consistent with applicable rules made and orders issued by the Chief Justice.

[(5)] **(6)** The Chief Judge of the Court of Appeals and the presiding judge of each judicial district of this state are the administrative heads of their respective courts. They are responsible and accountable to the Chief Justice of the Supreme Court in the exercise of their administrative authority and supervision over their respective courts. Other judges of the Court of Appeals or court under a presiding judge are responsible and accountable to the Chief Judge or presiding judge, and to the Chief Justice, in respect to exercise by the Chief Justice, Chief Judge or presiding judge of administrative authority and supervision.

[(6)] **(7)** The Chief Justice may delegate the exercise of any of the powers specified by this section to the presiding judge of a court, and may delegate the exercise of any of the administrative powers specified by this section to the State Court Administrator, as may be appropriate.

[(7)] **(8)** *[Subsections (1) to (4) of]* This section *[apply]* **applies** to justices of the peace and the justice courts of this state solely for the purpose of disciplining of justices of the peace and for the purpose of continuing legal education of justices of the peace.

SECTION 2. (1) Pursuant to ORS 8.125 (11), the State Court Administrator may establish procedures that provide for the destruction of records, instruments, books, papers, transcripts and other documents filed in a circuit court after making a photographic film, microphotographic film, electronic image or other photographic or electronic copy of each document that is destroyed.

(2) A circuit court may use procedures established under subsection (1) of this section only if at the time of making the copy the trial court administrator for the court attaches to copy, attaches to the sealed container in which the copy is placed or incorporates into the copy:

(a) A certification that the copy is a correct copy of the original, or of a specified part of the original;

(b) The date on which the copy was made; and

(c) A certification that the copy was made under the trial court administrator's direction and control.

(3) A trial court administrator using film for copies under this section must promptly seal and store at least one original or negative copy of the film in a manner and place that will ensure that the film will not be lost, stolen or destroyed.

(4) A trial court administrator using electronic images for copies under procedures established under subsection (1) of this section must ensure that the electronic images are continuously updated into commonly used formats and, if necessary, transferred to media necessary to ensure that they are accessible through commonly used electronic or computerized systems.

(5) Copies of documents created under this section must be retained in lieu of the original documents for the period established by the schedule prescribed in ORS 8.125 (11).

SECTION 3. ORS 7.020 is amended to read:

7.020. The register is a record wherein the clerk or court administrator shall enter, by its title, every action, suit or proceeding commenced in, or transferred or appealed to, the court, according to the date of its commencement, transfer or appeal. Thereafter, the clerk or court administrator shall note therein all the following:

(1) The date of any filing of any *[paper or process]* **document**.

(2) The date of making, filing and entry of any order, judgment, ruling or other direction of the court in or concerning such action, suit or proceeding.

(3) Any other information required by statute, court order or rule.

SECTION 4. ORS 7.090 is amended to read:

7.090. The files of the court are all *[papers or process]* **documents** filed with or by the clerk of the court or court administrator, in any action, suit or proceeding therein, or before the judge.

SECTION 5. ORS 7.110 is amended to read:

7.110. (1) The records and files of the court shall be *[kept in the office of]* **maintained by** the clerk or court administrator of the respective trial or appellate court, and the clerk or court administrator is the custodian of and responsible for those records and files. *[The]* **Paper** records and files *[shall]* **may** not be taken out of the office, **and electronic records may not be removed from any file or electronic database**, by any person except[,] when allowed by special order of the court or a judge *[thereof]* or general rule made by the court[, *by a judge of the court or an attorney*].

(2) Custody of and responsibility for records and files of the court relating to an action, suit or proceeding may be transferred to the clerk or court administrator of another court, for the purposes of storage and servicing, after the expiration of 25 years after the entry of final judgment in the action, suit or proceeding.

SECTION 6. ORS 7.250 is amended to read:

7.250. (1) The State Court Administrator and the courts of this state shall encourage persons who make **paper** filings in the courts, including all pleadings, motions, copies and other documents, to use paper that has been printed on both sides of each sheet. The courts of this state may not decline to accept any **paper** filing because the filing is printed on both sides of each sheet of paper.

(2) All **paper** filings in the courts of this state, including all pleadings, motions, copies and other documents, shall be printed on recycled paper if recycled paper is readily available at a reasonable price. The State Court Administrator and the courts of this state shall encourage persons who make **paper** filings in the courts to use recycled paper that has the highest available content of post-consumer waste, as defined in ORS 279A.010, and that is recyclable in office paper recycling pro-

grams in the community in which the filing is made. A court of this state may not decline to accept any **paper** filing because the paper does not comply with the requirements of this subsection.

SECTION 7. ORS 8.120 is amended to read:

8.120. (1) The State Court Administrator shall, for the Supreme Court and Court of Appeals:

- (a) Act as court administrator for the court.
 - (b) Keep the seal of the court, and affix it in all cases required by law.
 - (c) Record the proceedings of the court.
 - (d) Keep the records, files, books and [*papers*] **documents** pertaining to the court.
 - (e) File all [*papers*] **documents** delivered to the administrator for that purpose in any action or proceeding in the court.
 - (f) Attend the terms of the court, unless excused by the court, and administer oaths.
 - (g) Under the direction of the court enter its orders and judgments.
 - (h) Authenticate, by certificate or transcript, as may be required, the records, files or proceedings of the court, or any [*paper*] **document** pertaining thereto, and filed with the administrator.
 - (i) In the performance of duties pertaining to the court, conform to the direction of the court.
- (2) The State Court Administrator may delegate powers of the office of State Court Administrator to officers and employees of the Judicial Department designated by the State Court Administrator in writing.

SECTION 8. ORS 8.225 is amended to read:

8.225. (1) The trial court administrator for a judicial district has the duties, powers and functions prescribed by law or by rules of the circuit courts in the district.

- (2) A trial court administrator shall, for each court served by the officer:
- (a) Keep the seal of the court, and affix it in all cases required by law.
 - (b) Record the proceedings of the court.
 - (c) [*Keep*] **Maintain** the records, files, books and [*papers*] **other documents** pertaining to the court.
 - (d) File all [*papers*] **documents** delivered to the [*officer for that purpose*] **trial court administrator** in any action or proceeding in the court.
 - (e) Attend the terms of the court, administer oaths and receive the verdict of a jury in any action or proceeding therein, in the presence and under the direction of the court.
 - (f) Under the direction of the court enter its orders and judgments.
 - (g) Authenticate, by certificate or transcript, as may be required, the records, files or proceedings of the court, or any [*paper*] **document** pertaining thereto, and filed with the officer.
 - (h) In the performance of duties pertaining to the court, conform to the direction of the court.
- (3) A trial court administrator may take and certify the proof and acknowledgment of a conveyance of real property or any other written instrument authorized or required to be proved or acknowledged.
- (4) A trial court administrator may delegate powers of the office of trial court administrator to employees of the trial court administrator.
- (5) A trial court administrator shall designate a person to act as transcript coordinator for the court.

SECTION 9. ORS 18.412 is amended to read:

18.412. (1) At any time after the date of execution of an agreement to transfer the ownership of property in which a homestead exemption exists pursuant to ORS 18.395, the homestead owner or the owner's transferee may give notice of intent to discharge the property from the judgment lien to a judgment creditor. Each notice shall [*be styled as a paper in*] **bear the caption of** the action in which the judgment was recovered and shall:

- (a) Identify the property and the judgment and state that the judgment debtor is about to transfer, or has transferred, the property and that the transfer is intended to discharge the property from any lien effect of the judgment;
- (b) State the fair market value of the property on the date of the notice or of any applicable petition in bankruptcy, whichever is applicable, and list the encumbrances against the property, in-

cluding the nature and date of each encumbrance, the name of the encumbrancer and the amount presently secured by each encumbrance;

(c) State that the property is claimed by the person giving the notice to be wholly exempt from the lien of the judgment or, if the value of the property exceeds the sum of the encumbrances specified as required under paragraph (b) of this subsection that are senior to the judgment lien and \$30,000 or \$39,600, whichever amount of the homestead exemption is applicable under ORS 18.395 (1), that the amount of the excess or the amount due on the judgment, whichever is less, will be deposited with the court administrator for the court in which the judgment was entered for the use of the judgment holder; and

(d) Advise the holder of the judgment that the property may be discharged from any lien arising from the judgment, without further notice to the judgment creditor, unless prior to a specified date, which in no case may be earlier than 14 days after the date of mailing of the notice, the judgment creditor files objections and a request for a hearing on the matter as provided in ORS 18.415.

(2) Each notice described by subsection (1) of this section shall be sent by certified mail to the judgment creditor, as shown by the court records, at the judgment creditor's present or last-known address according to the best knowledge of the person sending the notice. A copy of each notice, together with proof of mailing, may be filed with the court administrator for the court in which the judgment was entered and shall be filed by the court administrator with the records and files of the action in which the judgment was recovered.

SECTION 10. ORS 19.500 is amended to read:

19.500. Except as otherwise provided in this chapter, when any provision of this chapter requires that a *[paper]* **document** be served and filed, the *[paper]* **document** shall be served in the manner provided in ORCP 9 B on all other parties who have appeared in the action, suit or proceeding and who are not represented by the same counsel as the party serving the *[paper]* **document**, and shall be filed, with proof of service indorsed thereon, with the trial court administrator.

SECTION 11. ORS 21.040, as amended by section 7, chapter 702, Oregon Laws 2005, is amended to read:

21.040. In cases of original jurisdiction in the Supreme Court, the plaintiff or moving party shall pay \$39 and the defendant or respondent shall pay \$22 on the filing of their first *[paper]* **document**.

SECTION 12. ORS 21.110, as amended by section 11, chapter 702, Oregon Laws 2005, is amended to read:

21.110. (1) Except as otherwise provided in this section, at the time of filing in the circuit court of any civil action, suit or proceeding, including appeals, the clerk of the circuit court shall collect from the plaintiff, appellant or moving party the sum of \$107 as a flat and uniform filing fee. In addition, at the time of filing any appearance in any such action, suit or proceeding by any defendant or respondent appearing separately, or upon the part of defendants or respondents appearing jointly, the clerk shall collect from the party or parties the sum of \$83 as a flat and uniform filing fee.

(2) In the following actions, the clerk of the circuit court shall collect the sum of \$68 as a flat and uniform filing fee from the plaintiff, appellant or moving party at the time the action is filed, and shall collect the sum of \$53 as a flat and uniform filing fee from any defendant or respondent appearing separately, or upon the part of defendants or respondents appearing jointly, at the time of filing any appearance in the action:

(a) Actions for the recovery of money or damages only when the amount claimed does not exceed \$10,000.

(b) Actions for the recovery of specific personal property when the value of the property claimed and the damages for the detention do not exceed \$10,000.

(c) Actions for the recovery of any penalty or forfeiture, whether given by statute or arising out of contract, not exceeding \$10,000.

(d) Actions to enforce, marshal and foreclose liens upon personal property where the amount claimed for such liens does not exceed \$10,000.

(e) Actions of interpleader, and in the nature of interpleader, when the amount of money or the value of the property involved does not exceed \$10,000.

(f) Actions for injunctive relief under ORS chapter 90 when the amount of any damages claimed does not exceed \$10,000.

(3) The clerk of the court shall collect the sum of \$300 as a flat and uniform filing fee from the petitioner in a proceeding under ORS 181.607 or 181.608, at the time the petition is filed. Fees collected under this subsection shall be deposited into the Judicial Department Operating Account established in ORS 1.009.

(4) For purposes of subsection (2) of this section, the amount claimed, value of property, damages or any amount in controversy does not include any amount claimed as costs and disbursements or attorney fees as defined by ORCP 68 A.

(5) A [*paper or*] pleading **or other document** shall be filed by the clerk only if the fee required under this section is paid by the person filing the [*paper or pleading*] **document**, or if a request for a fee waiver or deferral is granted by the court. No part of any such filing fee shall be refunded to any party. The uniform fee shall cover all services to be performed by the court or clerk in any such action, suit or proceeding, except where additional fees are specially authorized by law.

(6) Any plaintiff, appellant, moving party, defendant or respondent that files an action or appearance that is subject to the filing fees established under subsection (2) of this section must include in the caption of the pleading the following words: "Claim of not more than \$10,000."

(7) The fees imposed by this section do not apply to:

- (a) Protective proceedings under ORS chapter 125;
- (b) Proceedings for dissolution of marriage, annulment of marriage or separation;
- (c) Filiation proceedings under ORS 109.124 to 109.230;
- (d) Proceedings to determine custody or support of a child under ORS 109.103;
- (e) Probate, adoption or change of name proceedings;
- (f) Proceedings involving dwelling units to which ORS chapter 90 applies and for which the fee is provided by ORS 105.130; or

(g) Any counterclaim, cross-claim or third-party claim filed by a party who has appeared in the action or proceeding.

(8) The fees described in this section shall not be charged to a district attorney or to the Division of Child Support of the Department of Justice for the filing of any case, motion, document, stipulated order, process or other document relating to the provision of support enforcement services as described in ORS 25.080.

SECTION 13. ORS 21.111, as amended by section 15, chapter 702, Oregon Laws 2005, is amended to read:

21.111. (1) In the proceedings specified in subsection (2) of this section, the clerk of the circuit court shall collect the sum of \$99 as a flat and uniform filing fee from the petitioner at the time the petition is filed, and shall collect the sum of \$51 as a flat and uniform filing fee from the respondent upon the respondent making an appearance.

(2) The filing fee established by subsection (1) of this section shall be collected by the clerk in the following proceedings:

- (a) Proceedings for dissolution of marriage, annulment of marriage or separation.
- (b) Filiation proceedings under ORS 109.124 to 109.230.
- (c) Proceedings to determine custody or support of a child under ORS 109.103.

(3) In addition to all other fees collected, the clerk of the circuit court shall collect from the moving party a fee of \$50 at the time of the filing of a motion after entry of a judgment of marital annulment, dissolution or separation. A fee of \$35 shall be charged to the responding party at the time a response is filed to the motion. The fee provided for in this subsection does not apply to any pleading under ORCP 68, 69 or 71.

(4) A [*paper or*] pleading **or other document** shall be filed by the clerk only if the fee required under this section is paid or if a request for a fee waiver or deferral is granted by the court. No part of any such filing fee shall be refunded to any party. The uniform fee shall cover all services

to be performed by the court or clerk in any of the proceedings, except where additional fees are specially authorized by law.

(5) Any petitioner or respondent that files a petition or appearance that is subject to the filing fees established under subsection (1) of this section must include in the caption of the pleading the following words: "Domestic relations case subject to fee under ORS 21.111."

(6) The fees described in this section shall not be charged to a district attorney or to the Division of Child Support of the Department of Justice for the filing of any case, motion, document, stipulated order, process or other document relating to the provision of support enforcement services as described in ORS 25.080.

SECTION 14. ORS 21.114, as amended by section 19, chapter 702, Oregon Laws 2005, is amended to read:

21.114. (1) In a court having jurisdiction, the clerk of the court shall charge and collect:

(a) In an adoption proceeding, a first appearance fee of \$39 from the party filing the petition for adoption, and a first appearance fee of \$23 from an objecting party appearing separately or objecting parties appearing jointly.

(b) In a change of name proceeding, a first appearance fee of \$39 from the party filing the application for change of name, and a first appearance fee of \$23 from an objecting party appearing separately or objecting parties appearing jointly.

(2) A [*paper* or] pleading **or other document** shall be filed by the clerk only if the fee required under this section is paid or if a request for a fee waiver or deferral is granted by the court.

(3) In any adoption or change of name proceeding in a court having jurisdiction, the clerk of the court shall charge and collect in advance from the party having the affirmative of the issue, at the time the proceeding comes on for trial or hearing upon the issues of fact or law involved therein, a trial or hearing fee of \$39.

SECTION 15. ORS 21.275, as amended by section 27, chapter 702, Oregon Laws 2005, is amended to read:

21.275. (1) In any civil action, suit or proceeding in the circuit court, other than a protective proceeding under ORS chapter 125 or a probate, adoption or change of name proceeding, hearing fees for reported hearings shall be collected as provided in this section. There is no hearing fee under this section for a hearing not reported.

(2) As used in this section:

(a) "Hearing" means an actual appearance of one or more parties before the court for an examination by the court without a jury, other than a trial or during a trial for which a trial fee is required, of issues of fact or law arising from a motion, application, petition or other [*paper*] **document** filed with the court by a moving party, but does not include a conference solely for the purpose of case settlement or case scheduling.

(b) "Moving party" means a party who files with the court a motion, application, petition or other [*paper*] **document** referred to in paragraph (a) of this subsection.

(c) "Nonmoving party" means a party other than a moving party.

(3) The clerk of the circuit court shall collect the hearing fees. The fee for a reported hearing is \$33 if the hearing period is not more than three hours or \$77 if the hearing period is more than three hours. The fee does not include the preparation of transcripts of a report.

(4) If a hearing in respect to the [*paper*] **document** filed by the moving party is required by statute or rule, the [*paper*] **document** shall indicate whether the moving party requests that the hearing be reported, and if reporting is requested, shall contain an estimate of the hearing period. If the moving party requests reporting, the moving party shall pay the applicable hearing fee, based upon the estimate of the hearing period, when the [*paper*] **document** is filed. If the moving party does not request reporting and a nonmoving party files a request for reporting with the court, the request shall contain an estimate of the hearing period, and the nonmoving party shall pay the applicable hearing fee, based upon the estimate of the hearing period, when the request is filed.

(5) If a hearing in respect to the [*paper*] **document** filed by the moving party is not required by statute or rule, the [*paper*] **document** shall indicate whether the moving party requests a hear-

ing. The [paper] **document** also shall indicate whether the moving party requests that the hearing be reported, and if reporting is requested, shall contain an estimate of the hearing period. If the moving party requests reporting, the moving party shall pay the applicable hearing fee, based upon the estimate of the hearing period, when the [paper] **document** is filed. If the moving party does not request reporting and a nonmoving party files a request for reporting with the court, the request shall contain an estimate of the hearing period, and the nonmoving party shall pay the applicable hearing fee, based upon the estimate of the hearing period, when the request is filed.

(6) If a hearing in respect to the [paper] **document** filed by the moving party is not required by statute or rule or requested by the moving party and a nonmoving party files a request for hearing with the court, the request also shall indicate whether the nonmoving party requests that the hearing be reported, and if reporting is requested, shall contain an estimate of the hearing period. If the nonmoving party requests reporting the nonmoving party shall pay the applicable hearing fee, based upon the estimate of the hearing period, when the request is filed. If the nonmoving party does not request reporting and the moving party files a request for reporting with the court, the request shall contain an estimate of the hearing period, and the moving party shall pay the applicable hearing fee, based upon the estimate of the hearing period, when the request is filed.

(7) If a hearing in respect to the [paper] **document** filed by the moving party is not required by statute or rule or requested by a party, but the court on its own motion orders a hearing and a party files a request that the hearing be reported with the court, the request shall contain an estimate of the hearing period, and the party shall pay the applicable hearing fee, based upon the estimate of the hearing period, when the request is filed. If the court on its own motion orders a hearing, no party requests reporting and the court on its own motion orders that the hearing be reported, the court order shall contain an estimate of the hearing period, and each party shall pay an equal proportionate share of the applicable hearing fee, based upon the estimate of the hearing period, before the hearing is held.

(8) No [paper] **document** containing a request for reporting or other request for reporting referred to in subsections (4) to (7) of this section shall be deemed filed unless the fee required by those subsections of the filing party is paid by the party.

(9) The fees provided for in this section that are paid by a party shall be considered costs and disbursements and may be taxed and collected as other costs and disbursements by the prevailing party.

SECTION 16. ORS 21.310, as amended by section 31, chapter 702, Oregon Laws 2005, is amended to read:

21.310. (1) Except as provided in ORS 114.515, in a court having probate jurisdiction, the clerk of the court shall charge and collect the following fees for the filing of the initial [papers] **documents** in any probate proceeding, including petitions for the appointment of personal representatives, probate of wills and contest of wills, or in any conservatorship proceeding:

Where the amount of the estate is:

1. Not more than \$10,000-a fee of \$23.
2. More than \$10,000 and not more than \$25,000-a fee of \$77.
3. More than \$25,000 and not more than \$50,000-a fee of \$154.
4. More than \$50,000 and not more than \$100,000-a fee of \$231.
5. More than \$100,000 and not more than \$500,000-a fee of \$308.
6. More than \$500,000 and not more than \$1,000,000-a fee of \$385.
7. More than \$1,000,000-a fee of \$462.

(2) In determining fees under subsection (1) of this section in a probate proceeding, the amount of a settlement in a wrongful death action brought for the benefit of the decedent's surviving spouse or dependents is not part of the estate.

(3) In a court having probate jurisdiction, the clerk shall charge and collect a fee of \$23 for the filing of the initial [*papers*] **documents** in any guardianship proceeding.

(4) In a court having probate jurisdiction, the clerk shall charge and collect a fee of \$8 at the time of filing a will without a petition for probate.

(5) At the time of filing any answer, motion or objection in a probate proceeding or protective proceeding under ORS chapter 125, the party filing the answer, motion or objection shall pay a fee of \$19 to the clerk.

(6) A [*paper or*] pleading **or other document** shall be filed by the clerk only if the fee required under this section is paid or if a request for a fee waiver or deferral is granted by the court.

(7) In any probate proceeding or protective proceeding under ORS chapter 125 in a court having probate jurisdiction, the clerk shall charge and collect in advance from the party having the affirmative of the issue, at the time the proceeding comes on for trial or hearing upon the issues of fact or law involved therein, a trial or hearing fee of \$39.

SECTION 17. ORS 21.410 is amended to read:

21.410. (1) The sheriff of a county shall collect the following fees in civil actions, suits and proceedings for each case delivered to the office of the sheriff:

(a) \$28 for serving summons, subpoena, citation, order, notice, including notice of seizure and sale of personal or real property, notice of restitution and notice of seizure under writ of attachment or execution, or similar documents, including small claims or writ of execution, directed to not more than two parties at the same address. If service is requested for more than two parties at the same address, the fee is \$15 for each party at the same address. The fee authorized by this paragraph shall not be charged to the state in civil actions, suits and proceedings where one party is a person who has been appointed counsel at state expense.

(b) For seizure and sale of personal or real property, enforcement of writ of execution of judgment of restitution, or other enforcement or seizure under writ of attachment or execution, or other process or proceeding, \$47, and, in addition, such sums as may be reasonable and necessary to secure each keeper or custodian of property in custody, the expense of inventory of property in custody and expense incurred in newspaper advertising required by law in the execution of process.

(c) For making a conveyance of real property sold on any process, \$15, to be paid by, or for, the grantee.

(d) For making a copy of any process, order, notice or other instrument in writing, when necessary to complete the service thereof, for each folio, \$3; but no charge shall be made for copy of complaint or other [*paper*] **document** not actually made by the sheriff.

(e) For entering and processing distraint warrants for state agencies, \$6.25 each.

(2) Persons other than a sheriff serving process and other documents may charge any fee agreed to between the server and the person requesting service.

(3) Fees collected for service by the sheriff shall be retained for the benefit of the county where the party to be served cannot be found.

(4) No mileage or commission shall be collected by a sheriff for service of any document or process but in any service involving travel in excess of 75 miles round trip an additional fee not to exceed \$25 may be billed and collected by a sheriff. Mileage shall be measured from the location at which the service is made to the circuit court in that county.

(5) Amounts paid for service of process and other documents may be recovered as costs and disbursements to the extent provided by ORS 20.115.

(6) A sheriff may not collect a fee under this section for serving a foreign restraining order or an order that only grants relief under ORS 107.095 (1)(c).

(7) As used in this section:

(a) "Folio" means 100 words, counting two figures as one word. Any portion of a folio, when the whole paper contains less than a folio, or when such portion is an excess over the last folio, shall be deemed a folio.

(b) "Foreign restraining order" means a restraining order that is a foreign judgment as defined by ORS 24.105.

SECTION 18. ORS 21.480 is amended to read:

21.480. (1) In all counties wherein legal representation is provided for the poor without fee by a nonprofit legal aid program operating under the Legal Services Program established pursuant to ORS 9.572, the clerk of the circuit court shall collect the fees provided for in subsection (2) of this section to assist in defraying the operating costs of the legal aid program and to fund mediation programs offered through the State Department of Agriculture. The fees provided for in subsection (2) of this section are in addition to all other fees collected by the clerk of the court and shall be collected by the clerk in the same manner that other fees are collected by the clerk.

(2) The clerk shall collect the following fees from the plaintiff or other moving party in each civil suit, action or proceeding in the circuit court when the plaintiff or party files the first [paper] **document** in the suit, action or proceeding, and from a defendant or respondent when the defendant or respondent files an appearance in the suit, action or proceeding:

(a) \$9.50, for filings in the small claims department of a circuit court.

(b) \$18, upon the filing of a complaint that is subject to the filing fee established under ORS 105.130 (2). If the defendant demands a trial, the clerk shall collect a fee of \$38 from the defendant, and an additional fee of \$21 from the plaintiff. In no event shall the plaintiff in an action subject to the filing fee established under ORS 105.130 be required to pay a total fee of more than \$39 under the provisions of this subsection.

(c) \$33, if the action, suit or proceeding is subject to the filing fees established by ORS 21.111.

(d) \$30, if the action, suit or proceeding is subject to the filing fees established by ORS 21.110 (2).

(e) \$38, for any other filings in a circuit court not specifically provided for in this subsection, including all probate proceedings, protective proceedings under ORS chapter 125, adoption proceedings and change of name proceedings.

(3) In addition to the fees provided for in ORS 21.010, the State Court Administrator shall collect a fee of \$55 from an appellant or petitioner whenever a filing fee is collected under ORS 21.010 and a fee of \$15 from each respondent whenever an appearance fee is collected under ORS 21.010.

(4) All fees collected by the clerk under this section shall be deposited with the State Court Administrator. All fees collected under this section shall be distributed in the manner provided by ORS 9.574.

(5) Ten percent of the funds deposited with the State Court Administrator under this section shall be transferred by the State Court Administrator on a monthly basis to the State Department of Agriculture, until such time as the amount specified under subsection (6) of this section has been transferred to the State Department of Agriculture for the biennium. Moneys transferred to the State Department of Agriculture under this section are continuously appropriated to the department and may be used by the department only for the purpose of funding mediation programs established by the department. Moneys appropriated to the department under this subsection may not be used by the department to fund the costs of conducting individual farm credit mediations. The department shall consult with the director of the Mark O. Hatfield School of Government in establishing and operating mediation programs funded under this subsection.

(6) The amount transferred by the State Court Administrator to the State Department of Agriculture under subsection (5) of this section may not exceed \$150,000 in any biennium.

SECTION 19. ORS 21.605 is amended to read:

21.605. (1)(a) The Chief Justice of the Supreme Court, the Chief Judge of the Court of Appeals, a judge of a circuit or county court, the judge of the Oregon Tax Court, a tax court magistrate or a justice of the peace may waive in whole or in part, defer in whole or in part, or both, all fees and court costs payable by a party to a particular civil action or proceeding in the court of the justice, judge or magistrate, upon application by the party, if the justice, judge or magistrate finds that the party is unable to pay all or any part of the fees and costs. Waiver or deferral of an inmate's fees and court costs is subject to ORS 30.642 to 30.650.

(b) A fee may not be charged for filing an application under paragraph (a) of this subsection.

(c) All amounts deferred under this subsection constitute a monetary obligation payable to the public body to which the fees and court costs are owed, and may be made part of the judgment or other final written disposition of the action or proceeding by the clerk of the court or by the State Court Administrator without further notice to the debtor or further order of the court.

(d) The judgment or other final written disposition of the action or proceeding may provide that all or part of deferred amounts be waived if the court determines that the person is unable to pay the deferred amounts or may require the payment of the deferred amounts not later than a date certain. A default in payment by the person so ordered to pay shall subject the person to a contempt proceeding.

(e) A judgment or other final written disposition rendered under this subsection may be filed and entered as a judgment in any county in this state.

(2) If fees and court costs payable by a party to a civil action or proceeding have been waived or deferred under subsection (1) of this section, that party is not required to pay any fees or costs so waived or deferred except as provided in subsection (1) of this section and ORS 30.642 to 30.650, and any pleading, petition, application, request, motion, claim, demand, exception or other *[paper]* **document** or appearance presented by that party for filing or acceptance in the action or proceeding shall be filed or accepted without the payment of any such fees or costs.

(3)(a) In a civil action or proceeding, the court to which an appeal is taken may waive in whole or in part, defer in whole or in part, or partially waive and partially defer the expense of preparing a transcript on appeal, if:

(A) The party requesting the transcript is unable to pay the expense of preparing the transcript; and

(B) The party requesting the transcript makes a prima facie showing that the transcript is necessary to prosecute the appeal and would reveal reversible error in the action or proceeding.

(b) In any civil action or proceeding in which the court waives or defers any part of the expense of preparing a transcript on appeal, the court shall authorize preparation of only so much of the transcript as is necessary to prosecute the appeal.

(c) To the extent that the court waives or defers any part of the expense of preparing a transcript on appeal, the State Court Administrator shall pay the expense out of funds appropriated for that purpose.

(d) If the court defers payment of any part of the expense of preparing a transcript, and any part of the deferred expense remains unpaid at the conclusion of the appeal, the unpaid amounts may be made part of the judgment or other final written disposition of the action or proceeding in the manner provided by subsection (1) of this section.

(e) If costs on appeal are awarded to a party who has obtained a waiver or deferral under this subsection, any portion of the costs awarded for the expense of preparing the transcript on appeal shall be ordered paid to the State Court Administrator to the extent that the waived or deferred expense was paid by the State Court Administrator.

(f) Waiver or deferral of an inmate's expenses under this subsection is subject to ORS 30.642 to 30.650.

(4) In any case in which fees and court costs have been waived or deferred under this section, a judgment or other final written disposition shall be rendered as in other cases, but the state is not liable for the payment of any fees or costs awarded against a party whose fees or costs have been waived or deferred.

(5) In the exercise of the authority granted by ORS 1.002, the Chief Justice of the Supreme Court may provide by rule standards and practices for waiver or deferral of fees, court costs and expenses under this section.

SECTION 20. ORS 46.570, as amended by section 51, chapter 702, Oregon Laws 2005, is amended to read:

46.570. (1) In the small claims department of circuit court there shall be charged and collected in civil cases by the clerk of the court the following fees for the following purposes and services:

(a)(A) Plaintiff filing a claim, \$26 when the amount or value claimed does not exceed \$1,500, and \$55 when the amount or value claimed exceeds \$1,500; and

(B) Defendant demanding a hearing, \$21 when the amount or value claimed by plaintiff does not exceed \$1,500, and \$43 when the amount or value claimed by plaintiff exceeds \$1,500.

(b) Transcription of judgment from small claims department, \$7.

(c) Transfer of cause to circuit court on counterclaim, \$12.

(2) Except as otherwise provided in subsection (1) of this section, fees provided for in this section shall be collected in advance. A [*paper or*] pleading **or other document** shall be filed by the clerk only if the required fee is paid or if a request for a fee waiver or deferral is granted by the court. Fees provided for in this section may not be refunded.

SECTION 21. ORS 130.200 is amended to read:

130.200. (1) An irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. The Attorney General must consent to any modification or termination of a charitable trust, unless contingencies make the charitable interest negligible. A settlor's power to consent to a trust's modification or termination may be exercised by:

(a) An agent or attorney-in-fact under a power of attorney only to the extent expressly authorized by the terms of the trust;

(b) The settlor's conservator with the approval of the court supervising the conservatorship if an agent or attorney-in-fact is not authorized by the terms of the trust; or

(c) The settlor's guardian with the approval of the court supervising the guardianship if an agent or attorney-in-fact is not authorized by the terms of the trust and a conservator has not been appointed.

(2) An irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. An irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that the modification is not inconsistent with a material purpose of the trust. The Attorney General must consent to any modification or termination of a charitable trust, unless contingencies make the charitable interest negligible.

(3) For the purposes of subsections (1) and (2) of this section, a spendthrift provision in the terms of the trust is rebuttably presumed to constitute a material purpose of the trust.

(4) Upon termination of a trust under subsection (1) or (2) of this section, the trustee shall distribute the trust property as agreed to by the beneficiaries and, in the case of a charitable trust requiring the Attorney General's consent, as agreed to by the Attorney General.

(5) If all of the required parties do not consent to a proposed modification or termination of the trust under subsection (1) or (2) of this section, the modification or termination may be approved by the court if the court finds that:

(a) If all of the required parties had consented, the trust could have been modified or terminated under this section; and

(b) The interests of any beneficiary who does not consent will be adequately protected.

(6)(a) A trustee, or any other person interested in the trust, may file an agreement entered into under subsection (1) or (2) of this section, or a memorandum summarizing the provisions of the agreement, with the circuit court for any county where trust assets are located or where the trustee administers the trust.

(b) After collecting the fee provided for in subsection (8)(a) of this section, the clerk shall enter the agreement or memorandum of record in the court's register.

(c) Within five days after the filing of an agreement or memorandum under this subsection, the person making the filing must serve a notice of the filing and a copy of the agreement or memorandum on each person interested in the trust whose address is known at the time of the filing. Service may be made personally, or by registered or certified mail, return receipt requested. The notice of filing shall be substantially in the following form:

CAPTION OF CASE NOTICE OF FILING
 OF AGREEMENT OR
 MEMORANDUM OF
 AGREEMENT

You are hereby notified that the attached document was filed by the undersigned in the above entitled court on the _____ day of _____, _____. Unless you file objections to the agreement within 120 days after that date, the agreement will be approved and will be binding on all persons interested in the trust.

If you file objections within the 120-day period, the court will fix a time and place for a hearing. At least 10 days before the date of that hearing, you must serve a copy of your objections and give notice of the time and place of the hearing to all persons interested in the trust. See ORS 130.200.

Signature

(d) Proof of mailing of the notices required under this subsection must be filed with the court. Proof of service may be made by a certificate of service in the form provided by ORCP 7 F, by a signed acceptance of service or by a return receipt from the postal authorities.

(e) If no objections are filed with the court within 120 days after the filing of the agreement or memorandum, the agreement is effective and binding on all persons interested in the trust.

(7)(a) If objections are filed with the court within 120 days after the filing of an agreement or memorandum under this section, the clerk of the court shall collect the fee provided in subsection (8)(a) of this section. Upon the filing of objections, the court shall fix a time and place for a hearing. The person filing the objections must serve a copy of the objections on all persons interested in the trust and give notice to those persons of the time and place fixed by the court for a hearing. Service must be made at least 10 days before the date set by the court for the hearing. Service of the objections may be made personally or by registered or certified mail, return receipt requested.

(b) Proof of mailing of objections must be filed with the court. Proof of service may be made by a certificate of service in the form provided by ORCP 7 F, by a signed acceptance of service or by a return receipt from the postal authorities.

(c) The court shall approve an agreement entered into under subsection (1) or (2) of this section after a hearing upon objections filed under this subsection unless:

(A) The agreement does not reflect the signatures of all persons required by subsection (1) or (2) of this section;

(B) The agreement is not authorized by subsection (1) or (2) of this section; or

(C) Approval of the agreement would not be equitable.

(d) An agreement approved by the court after a hearing is binding on all persons interested in the trust.

(e) Persons interested in the trust may waive the notice required under subsection (6) of this section. If all persons interested in the trust waive the notice, the agreement is effective and binding on all persons interested in the trust upon filing of the agreement or memorandum with the court.

(8)(a) The clerk of the circuit court shall collect in advance a fee of \$65 for the filing of an agreement or memorandum of agreement under subsection (6) of this section, and a fee of \$32.50 for the filing of objections under subsection (7) of this section.

(b) In addition to the filing fees provided for in paragraph (a) of this subsection, the clerk shall charge and collect in proceedings under this section all additional fees authorized by law for civil actions, suits or proceedings in circuit court.

(c) A *[paper or]* pleading **or other document** is not considered filed unless the fees required by this subsection are paid. Filing fees may not be refunded to any party.

SECTION 22. ORS 108.130 is amended to read:

108.130. At the time of filing the petition for an order of support, the petitioner shall pay to the clerk of the court a fee of \$6, which shall cover all charges incident to the filing of [papers] **documents** necessary to a complete determination of the matter and no part of which shall be applied toward the library fund of the county. Payment of the fee is subject to the provisions of ORS 21.605 applicable to waiver, deferral and payment of fees.

SECTION 23. ORCP 7 C is amended to read:

C(1) Contents. The summons shall contain:

C(1)(a) Title. The title of the cause, specifying the name of the court in which the complaint is filed and the names of the parties to the action.

C(1)(b) Direction to defendant. A direction to the defendant requiring defendant to appear and defend within the time required by subsection (2) of this section and a notification to defendant that in case of failure to do so, the plaintiff will apply to the court for the relief demanded in the complaint.

C(1)(c) Subscription; post office address. A subscription by the plaintiff or by an active member of the Oregon State Bar, with the addition of the post office address at which papers in the action may be served by mail.

C(2) Time for response. If the summons is served by any manner other than publication, the defendant shall appear and defend within 30 days from the date of service. If the summons is served by publication pursuant to subsection D(6) of this rule, the defendant shall appear and defend within 30 days from the date stated in the summons. The date so stated in the summons shall be the date of the first publication.

C(3) Notice to party served.

C(3)(a) In general. All summonses, other than a summons referred to in paragraph (b) or (c) of this subsection, shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:
READ THESE PAPERS
CAREFULLY

You must “appear” in this case or the other side will win automatically. To “appear” you must file with the court a legal [paper] **document** called a “motion” or “answer.” The “motion” or “answer” must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff’s attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff.

If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar’s Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

C(3)(b) Service for counterclaim. A summons to join a party to respond to a counterclaim pursuant to Rule 22 D (1) shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:
READ THESE PAPERS
CAREFULLY

You must “appear” to protect your rights in this matter. To “appear” you must file with the court a legal [paper] **document** called a “motion” or “reply.” The “motion” or “reply” must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in

proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant.

If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

C(3)(c) Service on persons liable for attorney fees. A summons to join a party pursuant to Rule 22 D(2) shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:
READ THESE PAPERS
CAREFULLY

You may be liable for attorney fees in this case. Should plaintiff in this case not prevail, a judgment for reasonable attorney fees will be entered against you, as provided by the agreement to which defendant alleges you are a party.

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal [*paper*] **document** called a "motion" or "reply." The "motion" or "reply" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant.

If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

SECTION 24. ORCP 9 A, as amended by the Council on Court Procedures on December 9, 2006, is amended to read:

A Service; when required. Except as otherwise provided in these rules, every order; every pleading subsequent to the original complaint; every written motion other than one which may be heard ex parte; and every written request, notice, appearance, demand, offer of judgment, designation of record on appeal, and similar [*paper*] **document** shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 7.

SECTION 25. ORCP 9 B, as amended by the Council on Court Procedures on December 9, 2006, is amended to read:

B Service; how made. Whenever under these rules service is required or permitted to be made upon a party, and that party is represented by an attorney, the service shall be made upon the attorney unless otherwise ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to such attorney or party, by mailing it to such attorney's or party's last known address or, if the party is represented by an attorney, by telephonic facsimile communication device or e-mail as provided in sections F or G of this rule. Delivery of a copy within this rule means: handing it to the person to be served; or leaving it at such person's office with such person's clerk or person apparently in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at such person's dwelling house or usual place of abode with some person over 14 years of age then residing therein. A party who has appeared without providing an appropriate address for service may be served by [*placing*] **filing** a copy of the pleading or other [*papers in the court file*]

documents with the court. Service by mail is complete upon mailing. Service of any notice or other *[paper]* **document** to bring a party into contempt may only be upon such party personally.

SECTION 26. ORCP 9 E, as amended by the Council on Court Procedures on December 9, 2006, is amended to read:

E Filing with the court defined. The filing of pleadings and other *[papers]* **documents** with the court as required by these rules shall be made by filing them with the clerk of the court or the person exercising the duties of that office. The clerk or the person exercising the duties of that office shall endorse upon such pleading or *[paper]* **document** the time of day, the day of the month, the month, and the year. The clerk or person exercising the duties of that office is not required to receive for filing any *[paper]* **document** unless the name of the court, the title of the cause and the *[paper]* **document**, the names of the parties, and the attorney for the party requesting filing, if there be one, are legibly endorsed on the front of the document, nor unless the contents thereof are legible.

SECTION 27. ORCP 17 A is amended to read:

A Signing by party or attorney; certificate. Every pleading, motion and other *[paper]* **document** of a party represented by an attorney shall be signed by at least one attorney of record who is an active member of the Oregon State Bar. A party who is not represented by an attorney shall sign the pleading, motion or other *[paper]* **document** and state the address of the party. Pleadings need not be verified or accompanied by affidavit or declaration.

SECTION 28. ORCP 17 C is amended to read:

C Certifications to court.

C(1) An attorney or party who signs, files or otherwise submits an argument in support of a pleading, motion or other *[paper]* **document** makes the certifications to the court identified in subsections (2) to (5) of this section, and further certifies that the certifications are based on the person's reasonable knowledge, information and belief, formed after the making of such inquiry as is reasonable under the circumstances.

C(2) A party or attorney certifies that the pleading, motion or other *[paper]* **document** is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

C(3) An attorney certifies that the claims, defenses, and other legal positions taken in the pleading, motion or other *[paper]* **document** are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law.

C(4) A party or attorney certifies that the allegations and other factual assertions in the pleading, motion or other *[paper]* **document** are supported by evidence. Any allegation or other factual assertion that the party or attorney does not wish to certify to be supported by evidence must be specifically identified. The attorney or party certifies that the attorney or party reasonably believes that an allegation or other factual assertion so identified will be supported by evidence after further investigation and discovery.

C(5) The party or attorney certifies that any denials of factual assertion are supported by evidence. Any denial of factual assertion that the party or attorney does not wish to certify to be supported by evidence must be specifically identified. The attorney or party certifies that the attorney or party believes that a denial of a factual assertion so identified is reasonably based on a lack of information or belief.

SECTION 29. ORCP 17 D is amended to read:

D Sanctions.

D(1) The court may impose sanctions against a person or party who is found to have made a false certification under section C of this rule, or who is found to be responsible for a false certification under section C of this rule. A sanction may be imposed under this section only after notice and an opportunity to be heard are provided to the party or attorney. A law firm is jointly liable for any sanction imposed against a partner, associate or employee of the firm, unless the court determines that joint liability would be unjust under the circumstances.

D(2) Sanctions may be imposed under this section upon motion of a party or upon the court's own motion. If the court seeks to impose sanctions on its own motion, the court shall direct the party or attorney to appear before the court and show cause why the sanctions should not be imposed. The court may not issue an order to appear and show cause under this subsection at any time after the filing of a voluntary dismissal, compromise or settlement of the action with respect to the party or attorney against whom sanctions are sought to be imposed.

D(3) A motion by a party to the proceeding for imposition of sanctions under this section must be made separately from other motions and pleadings, and must describe with specificity the alleged false certification. A motion for imposition of sanctions based on a false certification under subsection C(4) of this rule may not be filed until 120 days after the filing of a complaint if the alleged false certification is an allegation or other factual assertion in a complaint filed within 60 days of the running of the statute of limitations for a claim made in the complaint. Sanctions may not be imposed against a party until at least 21 days after the party is served with the motion in the manner provided by Rule 9. Notwithstanding any other provision of this section, the court may not impose sanctions against a party if, within 21 days after the motion is served on the party, the party amends or otherwise withdraws the pleading, motion, *[paper]* **document** or argument in a manner that corrects the false certification specified in the motion. If the party does not amend or otherwise withdraw the pleading, motion, *[paper]* **document** or argument but thereafter prevails on the motion, the court may order the moving party to pay to the prevailing party reasonable attorney fees incurred by the prevailing party by reason of the motion for sanctions.

D(4) Sanctions under this section must be limited to amounts sufficient to reimburse the moving party for attorney fees and other expenses incurred by reason of the false certification, including reasonable attorney fees and expenses incurred by reason of the motion for sanctions, and upon clear and convincing evidence of wanton misconduct amounts sufficient to deter future false certification by the party or attorney and by other parties and attorneys. The sanction may include monetary penalties payable to the court. The sanction must include an order requiring payment of reasonable attorney fees and expenses incurred by the moving party by reason of the false certification.

D(5) An order imposing sanctions under this section must specifically describe the false certification and the grounds for determining that the certification was false. The order must explain the grounds for the imposition of the specific sanction that is ordered.

Passed by House February 26, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate March 29, 2007

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President of Senate

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State