WRITTEN TESTIMONY REGARDING HOUSE BILL 2433 FOR THE SENATE JUDICIARY COMMITTEE

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HISTORY OF CONTROVERSY

I am an attorney in private practice in Roseburg, Oregon. My background includes 12 years in the Douglas County District Attorney's Office followed by 26 years in small town private practice handling divorce and custody matters, property disputes, licensing and zoning issues and criminal cases for people that are willing to promise to pay for representation. I have no ambition to be a traffic citation king.

In August 2012 the Roseburg office of the Oregon State Police switched from using the 5" x 8" traffic citation format, which had been used since before I became a lawyer in 1974, and began using long narrow strips of plasticized paper similar to receipts from cash registers in large volume stores. At that time I had three clients contact me with these citations almost simultaneously. I was curious about the process of changing the format of citations. I observed that ORS 1.525 provides:

> 1.525 Uniform citation and petition forms for certain offenses.
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> (3) Except as provided in subsection (4) of this section, **the uniform citation forms adopted by the Supreme Court under this section must be used by all enforcement officers, as defined in ORS 153.005, when issuing a violation citation or criminal citation.**
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> (4) The uniform citation forms adopted by the Supreme Court under this section need not be used for:
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> (a) Offenses created by ordinance or agency rule governing parking of vehicles; or
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> (b) Offenses created by the ordinances of political subdivisions. [1979 c.477 §3; 1981 c.692 §5; 1981 c.803 §1; 1983 c.338 §879; 1985 c.725 §9; 1999 c.1051 §73] (Emphasis added)

I saw that the Oregon Supreme Court had from time to time amended the requirements for the form of citations. There had been an order setting out the required form for citations since at least 1999. The most recent Chief Justice Order was CJO 11-050, dated October 17, 2011. That order was almost identical to the 1999 order. In CJO 11-050 Chief Justice DeMuniz required citations to be 8 inches long and 5 inches wide. The order included Forms 1 through 10 for various purposes for which citations are used. I sent each of the members of the committee a pdf with a copy of CJO 11-050 as it applies specifically to traffic violation citations with my email to you on the subject of HB 2433 on January 15, 2015.

CJO 11-050 is not an obscure order. It is found on the Judicial Department website by hitting the drop down menu titled “Materials and Resources, followed by the drop down menu “Court Forms,” and then hitting “Uniform Citations” under the heading “Criminal and Violations.”

CJO 11-050 recites that it is based on ORS 1.002, 1.525, 133.066, 153.033, 153.045 and 153.770. Of those ORS 1.002 provides that the Chief Justice is the administrative head of the Judicial Department. ORS 1.002(2) specifically provides for the Chief Justice to make rules for the use of electronic applications in the courts, and ORS 1.002(2)(g) provides that the Chief Justice shall make orders for the use of electronic citations in lieu of paper citations. I observed that the statutes and existing rules allowed police to file electronic copies of complaints issued as part of a citation with electronic signatures on the complaints, but made no changes to the requirements regarding the form of citations as set out in CJO 11-050.

I filed motions to quash the summonses served on my clients. In a traditional ticket the summons was the fourth carbon down in the uniform citation packet, and was yellow or “goldenrod” in color. The service of the summons was the legal action that ordered the person cited to appear in court. The service of the summons placed the person cited in the jurisdiction of the court. It made sense to me that service of a defective citation meant that a person cited was not in the jurisdiction of the court. If a summons is quashed and the statute of limitations has not run a plaintiff has the option to try to serve a defendant with a proper summons. If the motion to quash had been denied additional issues might have been raised because, of course, none of the other parts of the citation complied with the statute and Chief Justice Order concerning the form of all the parts of the citation.

The district attorney appeared in court and objected to my motion to quash, though no written arguments were filed by the district attorney’s office. The circuit court ruled in my favor. Two of the initial three tickets were dismissed. In the third ticket my client objected to me to the case being dismissed, because he did not want to win on a technicality, because he did not think that was honorable. We negotiated a plea to speeding 66 in a 65 mph zone in that case.

My expectation in August 2012 was that the State Police would apply to the Chief Justice for a new order approving the form of the e-citation, and that would be that. Instead it appears the police took no action to correct the problem until this legislative session. I have filed motions to quash and dismiss 21 citations and 18 of those have been dismissed. The last three pending cases were filed in September and October, 2014. The Justice Court in Canyonville scheduled a hearing on my motion to quash in those cases in May, 2015, over my objection to the delay.

House Bill 2433 was presession filed. It contains an emergency clause and, in addition, it provides in section 3 that it would apply to proceedings initiated before its effective date. That language is disadvantageous to my three clients with pending cases. I have an ethical obligation to represent their interest regarding retroactivity in this bill, and that interest is congruent with other concerns I have about this bill.

It appears to me from the testimony of Captain David Anderson of the State Police, at the hearing on this bill in the House Judiciary Committee, that it is conceded the form of the e-citations do not comply

with the statute and the Chief Justice Order. Captain Anderson's testimony was that e-citations are widely used and that they are efficient, but that "in one county in this state a defense attorney has made an issue" of the format of the tickets.

I had sent the same e-mail to the house judiciary committee members on January 15, 2015 that I sent to the members of this committee. I had hoped that by raising these issues the House Committee would ask a few questions. I was disappointed as there were no questions asked in the House Judiciary Committee and the bill sailed through the committee and through the House without delay.

I have been advised that these issues might be better presented in written testimony in a word document format. That is the genesis of this.

ISSUES

1. It is not fair to make the new bill apply to cases pending before this bill was introduced.

I have three clients that retained me and paid me money to take action on their behalf based on the law today. It will not break the bank for the state if those clients get the same relief as was obtained by the other 18 clients on whose behalf I filed this motion.

In addition, for the legislature to retroactively change the requirements for a summons, and to allow the state to rely upon a summons, which was defective when served, as a basis for jurisdiction over the person served, strikes me as a due process issue. The expense and need to litigate that issue is avoided if the new bill is not made retroactive or if it does not apply to cases in which defendants filed motions to quash before the bill is adopted.

2. Someone should ask the State Police how this problem originated.

I think there are issues of governmental transparency and of legislative oversight that should be addressed. I assume that there has been a considerable expense and investment in equipping patrol cars with hardware capable of printing these citations and transmitting data to the courts. I assume there was a considerable expense in creating the software to make this system work. I assume that those investments created an incentive for someone to cause Oregon to adopt this system and the format of citations that was used, and I am curious how it happened that the requirements in ORS 1.525 and CJO 11-050 were overlooked in making the decision to purchase and install the system that is installed.

3. Someone should ask why the Supreme Court has not been asked to adopt a rule approving the form of e-citations since August of 2012.

ORS 1.525 contains its own safety valve, so that a problem with the form of a citation can be fixed quickly and thoughtfully by adoption of a modified Supreme Court rule. Why didn't the Supreme Court adopt a rule approving this form of e-citation? Was the Supreme Court even asked? Why not?

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4. The Supreme Court should retain authority over the form of electronic citations.

This bill removes the authority of the Supreme Court over the form of electronic citations. This bill fails to appoint any other body or agency to have authority over the form of electronic citations. Under ORS 1.002(2)(g) the Supreme Court has authority over the use of e-citations, and retains that authority, but this bill provides that no electronic citation format shall be rejected on the basis that it violates a court rule. The result of this bill will be that any vender seeking to sell an electronic citation system to any police agency in Oregon will be able to sell that system on the basis that the court will have to adapt to being able to process and deal with the form of citation produced by the vender's product. That is crazy.

5. The police have not done a good job of drafting an e-citation or this bill.

The e-citation in use is confusing for the civilian user and fails to take advantage of the efficiencies of electronic filing.

ORS 153.045(3) requires that a violation citation shall consist of at least four parts. This bill does not amend ORS 153.045.

The e-citation forms are clumsy and inefficient. The form given to the driver tells the driver that a complaint will be filed in the "court shown on the front of this citation" but the document is one sided. The language implies there should be printing on the reverse. The e-citation form allows up to three offenses to be charged on one citation, but the directions to the driver on how to respond fail to tell the driver that he can respond differently to different offenses with which he is charged.

I have seen in a municipal court file a document that appears to be the result of an e-citation process transmitting information to the court. The document was a 8 ½ " by 11 " sheet of paper divided vertically in the middle. The left side consisted of a duplicate of the top 11 inches of the citation given to the driver. The right side was the 5" x 8" Form 6 of the forms attached to CJO 11-050, contorted to fit into the 4" by 11 ½" space, as if the expectation was that the court would hand write the record of the process of the case on that sheet of paper. Form 6 was drafted to combine provisions for criminal prosecutions and violation prosecutions. The adoption of the e-citation, in which the officer makes a choice as he issues the ticket whether the ticket charges a crime or a violation, is a great opportunity to have the information transmitted and recorded by the court made appropriate to the offense actually charged. This is an opportunity to make things more efficient which was missed when a clumsy attempt was made to simply copy the forms attached to CJO 11-050 and graft them onto a different format.

6. Solution

The defective format of the e-citations creates a big problem. If large numbers of sophisticated drivers become aware that e-citations for traffic offenses are invalid there could be significant cost in terms of lost fine revenue.

The format of e-citations should be drafted by the Supreme Court, with practical awareness of the needs of police agencies and of courts and of the investments in hardware already made. The format as drafted by the Supreme Court should be as understandable as possible for unsophisticated drivers and

should be as efficient as possible for courts, prosecutors and police. Drafting those formats and adopting a Chief Justice Order to approve those formats should not take six months. One hopes the software that drives the e-citations now being used is capable of modification to produce a better product.

The bill should be amended so that section 3 provides that the amendments applies to proceedings initiated after December 1, 2014. That protects my clients. If someone else wants to litigate the constitutionality of a bill retroactively modifying the requirements for a summons, relating to cases initiated between December 1, 2014 and the effective date of this bill, then that is not my problem.

HB 2433 should also be amended to apply only to proceedings initiated between December 1, 2014 and October 1, 2015. That gives more than six months for the Supreme Court to adopt a format of citation that will be consistent and efficient in application and appropriate to use in e-citations. That keeps authority over the form of citations with the Supreme Court, chief administrative officer of the court system, where it belongs.

Thank you for your attention.

Charles Lee