

March 2, 2017

## **Testimony in support of HB 2733 and HB 2734**

### **Background**

My name is Jacqueline Abel and I live in Northeast Portland. From 2003 to 2015, I was employed by the Oregon Judicial Department as the Mediation Coordinator for Small Claims Court in Multnomah County Circuit Court. I have mediated hundreds of Small Claim cases, and also supervised a cadre of trained and committed volunteer mediators who mediated the bulk of the cases. Small Claims cases are sent to mediation in my county (and many others), and only go on to trial if not resolved. This saves an enormous amount of judicial and staff time spent on trials, as well as providing the most appropriate process to resolve many of these cases.

I became a member of the Oregon Bar in 1990, and am on inactive status since 2016, following my retirement.

Thank you for considering these two important bills. They would greatly improve Small Claims court, especially for low income people who are often on the verge of bankruptcy to deal with medical debts.

### **HB 2733 Comments on interest rate**

This amendment to reduce the amount of legal interest is long overdue. 9% interest is very high in recent times and urgently needs to be revisited. Tying the interest rate to the Treasury yield would be fairer and free the legislature from needing to revisit the interest rate in the foreseeable future. It also means that those who are often least able to pay do not end up being charged much higher interest than the average person outside the court system.

In Small Claims court, the current statutory interest of 9% increases the value of a debt enormously if the plaintiff holds off on filing a claim until near the statute of limitations. Some collection companies file claims after several years of interest has accrued. The 9% charged on judgements (and often on settlement agreements when a party has to make payments over time), also enlarges the original debt to the point where lower income people cannot comply.

In my years of working with parties in Small Claims court, the aspect of interest both before court and post judgment was one of the most difficult aspects of already difficult situations for many people.

### **HB 2734 Comments about only real party in interest making claim**

This bill address some of the greatest difficulties in mediating Small Claims. These changes would also create a more equal playing field at trial, by barring collection agencies *unless* they

have a complete assignment of the claim (by buying the claim) so that they are the only plaintiff involved in negotiation with the other side or at trial.

As the Mediation Coordinator, I assigned Small Claims cases from the docket to individual mediators for each session of Small Claims court. Many days, one third or more of the cases were filed in the name of collection agencies who have a partial assignment to represent a medical provider, landlord or some other business or entity during the court process. The collection agent appearing usually does not have authority to negotiate all terms of an agreement and often has only the most cursory information about the underlying dispute. Many defendants found this very confusing at the least and outright unfair in many situations. These are the most difficult cases for many court mediators because of the imbalance in power.

If we look to what other states are doing, California **does not allow** a claim in Small Claims court to be filed by the assignee of the claim (collection agency). See California Code of Civil Procedure 116.420 (a) "No claim shall be filed or maintained in small claims court by the assignee of the claim."

My understanding of the proposed amendment language in ORS 46.415 (6) would allow for a collection agency who bought the assigned claim and has become the true party in interest to still file in Small Claims. Some clearer definition in this section might be necessary, such as "If a claim has been fully assigned to another party by the sale of that claim and the original claim holder signs a full release of any claims, the assignee can then file in their own name, attaching the full release".

Small Claims is supposed to be a streamlined forum for the resolution of disputes by the true parties to the claim and without lawyers. Passing this amendment regarding who can file would improve the public's perception and experience in Small Claims court, which is the only court experience many people ever have.

#### **HB 2734 Comments about one spouse appearing on behalf of the other**

This addition to the Small Claims statute would make uniform what has become a practice of some Judges who recognize the financial and time burden for both spouses appearing for Small Claims mediation and trial. Many parties in Small Claims are low income and both taking time off work and maybe having to arrange child care is significant to their income. Many judges, but not all, have a practice that if the appearing spouse has the permission to represent the other spouse, they can bind them to a mediation agreement. Sometimes, collection agencies try to get a default judgement for the money against the spouse who is not present.

Thank you again for your consideration of these bills.