



CIRCUIT COURT OF OREGON

FIFTH JUDICIAL DISTRICT
CLACKAMAS COUNTY COURTHOUSE
OREGON CITY, OREGON 97045

ROBERT D. HERNDON
PRESIDING CIRCUIT COURT JUDGE

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Dear Chair Barker and Members of the Judiciary Committee:

I am the Presiding Judge for Clackamas County, Oregon's third largest judicial district. I am writing to encourage you to approve OJD's request for another judge for Clackamas County.

Our court today has eleven (11) elected judges and one referee. We also utilize fourteen (14) pro tem judges all of whom serve without compensation on a rotating basis to assist us with our Civil Motion Dockets, Domestic Relations Show Cause Dockets and Truancy Court. Pro tem help is frequently problematic because of their personal trial schedules, conflicts of interest, and loss of interest in continuing to serve without any compensation.

We are second only to Washington County in number of judges for the population with one judge for every 36,500¹ citizens and have consistently been identified as either the number one or number two county in need of additional judges for several years. The recent Work Load Assessment done under supervision of the National Center for State Courts identified a need for 14.35 (FTE) judges.

Clackamas County continues to be a master calendar court, which makes the best use of skimpy judicial resources. Except for homicide cases and complex civil cases, the docket clerk and the presiding judge control the trial docket. Despite a docket management plan based on best practices, we are now unable to meet the "date for disposition" requirements in most types of cases.

Criminal cases filed by the District Attorney increased by (15) percent between 2015 and 2016. We schedule all criminal cases for an "early resolution" appearance after arraignment called a Case Manager Appearance. In calendar year 2015, we had 7,679. In 2016 that number jumped to 8,725. Our judges presided over (184) criminal jury trials during 2016, but another (63) had to be reset because there was no judge available for trial. This amounts to (26) percent of the criminal cases scheduled for jury trial. In each one of those cases, defendants and just as importantly, victims had their lives placed on hold and were required to return at a later time.

¹ Based on U.S. Census Bureau estimate of Clackamas County population in 2015 of 401,515.



Although the number of civil cases has remained level, the complexity of many civil cases requires significantly more judicial management to move the cases along to either settlement or trial. The result has been more requests for complex case designation which calls for the assignment of an individual judge to manage the case during discovery and ultimately for trial.

At any given time, we have between (14) and (20) of these cases being managed by our judges. These cases are typically very hard fought and require significant judicial time for resolution of discovery disputes and very robust motion practices. These cases are a killer for a court with limited resources and when they go to trial will typically last from three (3) to six (6) weeks.

Despite the fact the need for a simple civil jury trial has remained fairly level, in 2016, there were still (47) civil cases which needed a judge for trial. Clackamas County had a judge available to try only (36) of those cases. The other (11) had to be reset at a significant expense to the litigants for trial preparation costs, expert witness fees and other witnesses who were on call for a trial which did not happen. In other words twenty-three (23) percent of those litigants had their access to justice delayed and their costs increased.

Homicide cases (Murder, Manslaughter and Negligent Homicide) must also be assigned from the beginning to an individual judge. At the present time, fourteen (14) homicide cases are assigned to judges for trial. The good news at the moment is that there has been a modest decline in the number our judges are managing. The bad news is that in the last two (2) or three (3) years, more of those cases have been Aggravated Murder cases in which the death penalty is on the table. Capital cases generate motion practice at an unprecedented level and judges assigned to those cases must devote massive amounts of time to hearing those matters. In two of our most recent capital cases, counsel for the defendants filed (420) motions in one and in the other well over (500).

On most days, six (6) to eight (8) judges are needed to cover the core functions of the court. Juvenile dependency and delinquency dockets require two (2). The criminal omnibus dockets require two (2). The abuse prevention applications and hearings require one (1) and often two (2). The FED, landlord tenant disputes, requires one (1). Some days there are mental hearings and contested guardianship matters that each requires a judge. All of those cases have strict timelines mandated by statute. There are also mandatory requirements for the hearing of parenting time enforcement matters that require a judge. The result is a lack of available judges to hear matters on the general trial docket. If one of the remaining judges is conducting proceedings on one of their homicide matters or complex civil cases, the judicial resources are further depleted. Couple that with illness, medical appointments, a family emergency or vacation and the need for an additional judge becomes critical.

Clackamas County already makes maximum use of volunteer pro tem judges and it is not appropriate for the core functions of any court to be conducted by pro tems. Litigants have a right to have their case heard by a duly elected sitting judge.

As Clackamas County's population has grown so has the diversity of our population. The increasing diversity has increased the number of cases requiring the use of interpreters. The use of interpreters significantly lengthens hearings which results in the use of more judicial time.

All counties have seen a substantial increase in the number of self-represented litigants. In a substantial majority of family law cases, one or both parties are now self-represented. We also now see a significant number of parties attempting to represent themselves in more complex civil cases and in many criminal cases. The increase in the number of family law litigants who chose to be self-represented is problematic in two respects. In the first instance, without any legal advice, they are much more likely to file a petition or motion which lacks merit. In the second instance, the self-represented litigants necessitate much more judicial time to be certain they understand the proceedings with the goal they will receive a fair hearing.

Clackamas County currently has seven (7) treatment courts, as follows:

- Adult Drug Treatment Court
- Juvenile Drug Treatment Court
- Family Drug Treatment Court
- Mental Health Specialty Court
- Domestic Violence Specialty Court
- DUII Treatment Court
- Community Court

You will see from the list, there is no Veteran's Court and we should have one, but we simply lack the number of judges needed to manage another treatment court. Such courts work because they are basically probation on "steroids" and require intense supervision by a judge coupled with treatment court coordinators and dedicated probation officers and police officers. What makes treatment courts work is not only the supervision defendants get to keep them crime free, but also to provide assistance with housing, employment and physical and mental health needs.

Currently, our veteran defendants are often plugged into one of the other treatment courts, but I believe these people who have given so much to our country are missing out on veteran benefits which will expedite their rehabilitation.

Justice delayed is justice denied. The judicial system is at the very corner stone of what makes America a great place to live. If you think about this, it is pretty neat that people can come to the courts with very real differences and find resolution of those differences. This is not to say the loser is always happy, but the public accepts the result because they have had that dispute resolved quickly and efficiently by a judge who they know has been elected by themselves and their peers. A court which can resolve disputes without delay is good not only for public safety, but good for the economy and the greater good for all. I encourage you to authorize another judicial position for Clackamas County.

Very truly yours,



ROBERT D. HERNDON

Presiding Judge

Clackamas County Circuit Court