



CIRCUIT COURT OF THE STATE OF OREGON

FOURTH JUDICIAL DISTRICT
MULTNOMAH COUNTY COURTHOUSE
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TESTIMONY REGARDING HB 4097 – LAW LIBRARY FUNDS & FACILITATION SERVICES

Before the Senate Judiciary Committee of the Oregon Legislature
February 23, 2018

Submitted by:

Maureen McKnight, Chief Family Court Judge
Multnomah County Circuit Court

Chair Prozanski and Members of the Committee:

My name is Maureen McKnight and I am the Chief Family Court Judge in Multnomah County. I have been on the bench for 16 years and prior to that spent 22 years as an attorney working for Oregon's Legal Aid programs. Issues involving self-representation and access to justice have been a priority for me these last four decades. I am writing in support of this legislation, which as you know is an Oregon Judicial Department bill. My testimony will address only Section 2, which addresses court-provided facilitation services.

Statutory authority currently exists for courts to provide facilitation services in family law cases. Facilitation is the procedural assistance that court staff give litigants – almost always self-represented litigants – by helping them understand the court process and providing forms and other materials and referrals needed to successfully navigate the court process. Facilitators have specific and regular training on these tools as well as the prohibition against providing legal advice. The forms and materials facilitators use are approved by Judges. Because facilitation is staff is court-supervised and provides court-developed forms, they are immunized from liability for the unauthorized practice of law. That liability might otherwise exist because Oregon appellate decisions have held that lay individuals providing legal forms to the public constitutes the practice of law.

We've had family law facilitation in Oregon since 1999. I staffed as an attorney the Oregon Family Law Legal Services Commission tasked by 1997 Oregon Legislature with evaluating an expanded role for court staff in assisting self-represented litigants. *Chapter 801, Oregon Laws 1997, §139*. That commission conducted public hearings around the state, surveyed lawyers, examined the experiences of Washington and California is using courthouse facilitators, and drafted the 1999 legislation that now exists in Chapter 3 of Oregon Revised Statutes.

Family law facilitation has been immensely successful the last 18 years. The Oregon State Bar and local bar associations have been some of the programs' biggest supporters, both because these services provide a partial recourse for individuals attorneys cannot help and because the court forms, videos, and materials are useful in their own practices. And facilitation has made a

difference for courts: individuals who for literacy, language, or other barriers have questions that our online, interactive forms don't easily address can get one-on-one assistance with court staff, and an interpreter if needed, to make sure they understand what the court process is and what the next steps are. These goals mirror the elements of procedural justice, the evidence-based concept that individuals have more trust in and are more compliant with institutional authorities perceived as being understandable, respectful, and providing an opportunity to be heard.

Section 2 extends the authority for facilitation services to case-types other than family law. We started with family law in 1999 our rates of self-representation then, and now, exceed 80% and those rates are very similar to that of our sister states. But the inability of individuals to afford attorneys is a significant challenge to the court in other areas of civil law and not just eviction cases or Small Claims Court when we expect most of the parties to be representing themselves. Cases involving everything from car accidents to home foreclosures have significant numbers of people who do not have attorneys and need help in understanding the basics and navigating the legal system.

As with family law facilitation, the Presiding Judge would plan expanded facilitation programs under Section 2 in collaboration with the local bar, Legal Aid funding recipients, and law libraries, as well as the State Court Administrator's office. The expansion is an option for local courts but one which is a significant step on the access to justice ladder.

Thank you for considering my comments.

Respectfully submitted,



MAUREEN McKNIGHT, Circuit Court Judge

cc: Members of the Senate Judiciary Committee
Nancy Cozine and Phil Lemman, State Court Administrator's Office
Channa Newell, Senate Judiciary Counsel