

20 Family Court Paper Traps - Part 1

Documents submitted to family court are frequently returned for some deficiency. This is the first in a two-part series describing the most common reasons for rejection or correction of family law papers. Here are 10 traps to avoid. Part II will follow in a future issue of *In Brief*.

1. Missing Signatures on a “Stipulated” Judgment. The court needs signatures from all parties.

2. Referenced Exhibits Not Provided. This situation arises most frequently with child support worksheets or parenting plans. Even if you attached these exhibits to the petition, you need to provide new copies for the judgment.

3. No Filing Fee Paid for Supplemental Judgment. ORS 21.111(3) authorizes a \$50 base fee for post-judgment filings. Counties may assess additional statutorily allowed surcharges for family mediation services, the law library, and Legal Aid. Also, the charge for a movant’s modification motion differs in marital actions and in unmarried (ORS 109.103) cases. Check with the county where you are filing for the correct total amount.

4. No Finding of “Unjustness” or “Inappropriateness” Regarding Presumptive Amount of Child Support and/or No Financially Related Factual Basis for Rebuttal Finding. Federal statute, state statute, and state regulation all require this finding. 42 U.S.C. §667(b)(2); ORS 25.280; OAR 137-050-0333(2). The finding must include (1) the presumptive amount of the child support award, (2) the specific finding of “unjustness” or “inappropriateness,” and (3) the reason for the variance. OAR 137-050-0333(2). The finding could be made orally on the record, but that approach is useless to a subse-

quent agency or judicial trier without a transcript. A written finding is what is needed. “Unjustness” and “inappropriateness” can be based on parental agreement regarding a financial factor, but even a stipulation should provide a financially related reason. *Petersen and Petersen*, 132 Or App 190 (1994).

5. No Spousal Support Findings in General Judgment. ORS 107.105(1)(d) requires the judgment to name the category of support (transitional, compensatory, or maintenance) and make relevant findings. This mandate was enacted to enable the court to determine more readily whether it is appropriate to modify or terminate support. Findings regarding post-judgment/modified support are required only when support is terminated. *See* ORS 107.135(5). Findings are advisable, however, whenever support is modified, for the same reason they are required in general judgments.

6. Missing Certificate of Pending Child Support and/or Preexisting Child Support Order. If you submit a proposed child support order and an order is already in effect for the same child and obligor from a different proceeding (except for a temporary order, i.e., a limited judgment pending final judgment), the court can only (1) honor, (2) modify, or (3) vacate the preexisting order as set out by law. *See* ORS 25.089(3); ORS 107.085(1)(d); UTCR 8.090; and UTCR Appendix.

The Certificate of Pending Child Support is required by statute to put the court and parties on notice about the preexisting order. If the court ignores the preexisting order, the Child Support Program will hold a “governing order” proceed-

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ing to determine which is the controlling order. So even if you did not follow proper procedure in filing a motion to vacate or moving to modify the preexisting order in the other case, the new order must contain a finding that a change of circumstance has occurred since the preexisting order (and name that case number) or state what statutorily recognized grounds exist to consider that order vacated. Again, *see* ORS 25.089. It is very helpful to include a duplicate of the preexisting order for filing in the other (earlier) case.

NOTE: If the court becomes aware of a preexisting order, it *may* determine the controlling order after notice to the parties even if no party has so requested (ORS 25.091), and it *must* do so if asked to enforce one of multiple orders (ORS 25.089(5)).

7. Confusion about the Petitioner’s or Parties’ Intentions. This could be anything. Some examples include listing real property and failing to describe who is awarded the property; ordering a sale without specifying the disposition of the proceeds; and attempting to define parenting-time terms and awarding the same holiday to both parents.

8. Missing Required Notices in Cases Involving Support. ORS 107.106 requires notices regarding support and parenting time responsibility whenever support is involved. ORS 25.384 requires a notice that support will be paid by withholding unless exceptions apply. ORS 25.020(8)(b)(B) requires a notice about the availability of periodic review for cases on the DCS/DA system (Division of Child Support in District Attorney offices). As a result of recent state and federal legislation, the frequency of periodic reviews on request is now three years, rather than two. ORS 20.020(8)(b)(B); OAR 137-055-3420(4). Practitioners should change their word processing templates to reflect this legislative amendment.

9. Adult Child Has Not Been Served, Waived Rights, or Signed Stipulated Judgment. ORS 107.108 affords notice and participatory rights to *any* 18- to 20-year-old child of the parties. If the child is a child attending school (CAS), he or she has a claim for relief against the parents for support. The court must be informed whether the adult child was given an opportunity to participate in the support proceedings or chose to waive his or her rights.

10. Parties Haven’t Completed Mandatory Parenting Education Class. Some county Supplemental Local Rules require attendance at parenting classes if the case involves marital actions, ORS 109.103 custody or support proceedings, or post-judgment custody and parenting-time litigation in which the parents have not already taken the class. Some counties will not hear the non-complying par-

ties on any matter – outside of emergency relief involving the children – until they file proof of compliance. Check with the applicable county to determine the local rules.

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This article was approved by Chief Family Law Judge Nan Waller of Multnomah County Circuit Court. [Revised in January 2008 to reflect 2007 legislative changes, the article is also posted on the court’s Web site at www.ojd.state.or.us/mul/family.html.] Comments or concerns may be directed to Judge McKnight at (503) 988-3986 or maureen.mcknight@ojd.state.or.us.