

20 Family Court Paper Traps – Part II

Documents submitted to family court are frequently returned for some deficiency. This is the second in a two-part series describing the most common reasons for rejection or correction of family law papers. Part I was published in the August 2008 issue of *In Brief*. Here are 10 more traps to avoid.

11. Required Term Regarding Unreimbursed Health Insurance Is Missing. ORS 107.106(1) requires that any custody/parenting time or support order – under any ORS chapter – must address (1) payment of the child’s uninsured medical expenses and (2) maintenance of insurance or other security for support. The federal government does not pay the state child support program to establish, modify, or enforce unreimbursed medical expenses unless those costs have been assigned a specific value as part of the child support formula or have been liquidated to a judgment establishing the obligor’s share of a percentage-assigned responsibility.

12. Findings Regarding “Cash Medical Support” Are Missing When Required. Under statutes effective in October 2007, the child support judgment must contain findings to explain the award (or denial) of “cash medical support” when no coverage (public or private) is available for the child at the time the order is issued. This is the sum the court may award (as part of the child support formula calculation) to reimburse a parent for any out-of-pocket medical expenses exceeding \$250 a year per child or to repay the state for OHP (Oregon Health Plan) coverage. The court has discretion to designate a “cash medical” sum in any case and factor it into the child support calculation but must make findings (explaining the award or denial of award)

when no private or public insurance is currently provided from either parent. ORS 137-050-410(4)(b), (5)(d).

13. No Facts to Support Personal Jurisdiction for Out-of-State Service. The *prima facie* affidavit or some evidence must indicate why Oregon has minimum contacts with a respondent served out of state sufficient to exercise personal jurisdiction when monetary awards or other personal obligations are sought. ORCP 4K lists the “long arm” test for domestic relations, but the catch-all is minimum contacts consistent with due process. ORCP 4L. See also ORS 110.318.

14. Judgment Contains Terms Less Advantageous to Respondent Than Those in Petition (and No Stipulation). If the judgment terms are less beneficial to the respondent, the court needs the respondent’s stipulation to the judgment terms, or the petitioner will need to seek relief through the judgment terms consistent with those pled in the petition or amend and re-serve.

15. Waiver of the 90 Days Is Sought Simply Through Judgment Rather Than by Motion and Affidavit. Although it may be more efficient to address the waiver of the dissolution waiting period entirely in the judgment, ORS 107.097 requires a motion and an affidavit in addition to the judgment, which must find and recite the grounds of emergency or necessity and the supporting facts. ORS 107.065(2)(c). While a sworn judgment could constitute the required affidavit if no separate affidavit is prepared, a motion is still required by statute.

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16. Court Fees Are Owing but no Disposition Regarding State Judgment for Deferred Fees Is Included. ORS 21.692 allows a judgment when fees are deferred but not waived. Local practice in some counties requires that the proposed domestic relations judgment set out the proposed disposition (stipulated or otherwise) of the deferred costs. Note that ORS 21.111(5) prohibits refunds of filing fees.

17. UCCJEA Information Is Lacking or Reveals Problems. When the UCCJEA (Uniform Child Custody Jurisdiction and Enforcement Act) information is lacking, it is usually in a modification proceeding. Even if the legal file shows a prior Oregon judgment on custody/parenting time, the court needs to know whether any UCCJEA matters are pending in other jurisdictions (e.g., dependencies, protective orders, or guardianships) and whether any other orders or judgments were entered elsewhere since Oregon made its judgment. The court also needs to know whether the child is residing with someone other than a parent. Positive answers to any of these questions can affect the court’s jurisdiction to proceed with the modification. The court essentially needs the same ORS 109.767 information that is required in the original petition. If the case is at the “initial order” phase (ORS 109.741) and another home state exists, the parties should ensure that the issue is dealt with (i.e., obtain the home state’s declination of jurisdiction) before the papers are forwarded to the judge for final signature.

18. No Second Copy of Support Order for DOJ. Even if support is not paid through the Department of Justice (DOJ), a second copy of the support order is required by ORS 25.140 and UTCR 8.010(8)(a). The agency makes an electronic image and keeps it for when/if a state case is ever opened. Because the court must make sure that the agency gets a copy, the attorneys/litigants need to provide that extra copy to the court when the judgment is signed.

19. Incorrect Captioning on Judgments and Orders (Particularly Limited Judgments vs. Temporary Orders).

- The Oregon Court of Appeals has ruled that trial courts do not have authority to enter limited judgments regarding temporary domestic relations relief outside of child support, spousal support, or other orders for the payment of money. Explicit statutory authority for limited judgments addressing the payment of support or other money is set out at ORS 107.095(2). Order to Dismiss Appeal on Court’s Motion in *Mullarkey and Nemiroff*, Oregon Court of Appeals Case No. CA A130533 (Dec. 2005) (Justice Brewer).

- Because a money award implicates a judgment (ORS 18.005(14)) and because a “judgment document must be separate from any other document in the action” (ORS 18.038(3)), temporary terms for payment of support or money must be in a separate document labeled a “Limited Judgment” and containing a money award section (ORS 18.042(1)) if you wish those terms to have judgment lien effect.

- If you do not wish the temporary orders for payment of support or money to have judgment lien effect, such terms may be included in a temporary order that also addresses custody, parenting time, or non-financial obligations. No money award section is necessary. ORS 18.042.

20. Facts Supporting Default (i.e., Reasons Why Petitioner Knows Respondent Is Not in Military). The federal Servicemembers Civil Relief Act (SCRA) requires sworn or declared-under-perjury-penalty facts supporting the allegation of non-service. 50 U.S.C. App. §521. ORCP 69B(2), (4). This means facts that support why the petitioner believes the respondent is not in the military, not just the bald assertion that the respondent is not in the military. Local practice in some family courts requires attachment of the Department of Defense printout.

NOTE: APPLYING FOR CHILD SUPPORT SERVICES IN JUDGMENTS. Parties may apply for child support services through the state (District Attorney’s office and Department of Justice) by appropriate language in child support judgments.

A. For LIMITED services (only collection and accounting), the following language in the payment section of the judgment is sufficient. No application signed by the parents is necessary:

“All payments of child support shall be made to the Oregon Department of Justice, Child Support Accounting Unit, P.O. Box 14506, Salem, Oregon, 97309.”

B. For FULL services (collection, accounting, enforcement, modification, etc.), federal audit standards from the federal Office of Child Support Enforcement require that the judgment contain a signed request by the party asking for program services. The Child Support Program recommends the following language in the judgment, preferably inserted beneath the judge’s signature. The parent’s signature is needed; the attorney’s won’t be accepted:

“By signing below, I am applying for full child support enforcement services (including enforcement) from the Child Support Program (CSP). I understand that an annual \$25 fee

will apply if over \$500 is collected and distributed to the family each year, if I have never received TANF, tribal TANF, or AFDC in any state.

Signature of Party

Date

Parties do not need to apply for child support services through child support judgments. A separate application form can be used at any time and is available at the Department of Justice's (DOJ's) Division of Child Support Web site, <http://dcs.state.or.us/forms/default.htm> (see Form CSF 03-0574), or from the District Attorney/Division of Child Support (DA/DCS) offices (see http://dcs.state.or.us/office_info/das.htm).

HON. MAUREEN H. MCKNIGHT
MULTNOMAH COUNTY CIRCUIT COURT JUDGE

This article was approved by Chief Family Law Judge Nan Waller of Multnomah County Circuit Court and is 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.

Editor's Note: In Part I of this article, published in the August 2008 issue of *In Brief*, on page 9, paper trap number 8 cited ORS 20.020(8)(b)(B) in the third-to-last line of the paragraph. That citation should have been ORS 25.020(8)(b)(B), consistent with the proper citation in the third line of the same paragraph. Please make note of this change.