

COUNCIL ON COURT PROCEDURES

**Saturday, May 20, 1989, Meeting
9:30 a.m.**

**Oregon State Bar Offices
5200 SW Meadows Road
Lake Oswego, Oregon**

A G E N D A

1. Approval of minutes of meeting held March 4, 1989
2. Report on HB 2127 (Ron Marceau)
3. Role of the Council during legislative sessions
(Ron Marceau)
4. Financial report (Executive Director)
5. Changes in Council membership (report of Executive
Director)
6. Plans for the next biennium (see memo dated January 20,
1989)
7. **NEW BUSINESS**

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COUNCIL ON COURT PROCEDURES

Minutes of Meeting of May 20, 1989

Oregon State Bar Building

Lake Oswego, Oregon

Present:	John H. Buttler	Ronald Marceau
	Lafayette Harter	James E. Redman
	Bernard Jolles	Martha Rodman
	Lee Johnson	J. Michael Starr
	Henry Kantor	Larry Thorp
	Winfrid Liepe	Elizabeth Yeats
	Robert B. McConville	
Absent:	Richard L. Barron	Richard P. Noble
	John V. Kelly	Steven H. Pratt
	Paul J. Lipscomb	William F. Schroeder
	Jack L. Mattison	George A. Van Hoomissen

(Also present was Fredric R. Merrill, Executive Director.)

The meeting was called to order at 9:30 a.m. by Chairer Ron Marceau.

Ron Marceau reported on the status of HB 2127. The bill, with the amendments worked out by the Council, the Court Administrator, and the State Bar Procedure and Practice Committee, has passed the House and is awaiting hearing in the Senate Judiciary Committee. A copy of a letter from the Chairer of the State Bar Procedure and Practice Committee dated May , 1989 (attached as Exhibit A to these minutes) was distributed to Council members. The Chairer asked the members of the Council judgments subcommittee to coordinate their work on judgments during the next biennium with the State Bar Procedure and Practice Committee and the State Court Administrator. He suggested that they look at the revisions to ORCP 69, which had been deleted from HB 2127 by agreement, as a beginning point for their consideration of that rule.

Ron Marceau also raised the question of the role of the Council during the legislative sessions. He stated that he had written to the Speaker of the House, the President of the Senate, and to the chairers of the various judiciary committees and subcommittees suggesting that, when bills are submitted which amend the ORCP, the legislature ask that the amendments be

submitted first to the Council. Mr. Marceau indicated that the chairer of the House Civil Judiciary Subcommittee was interested in having the Council play a more active role during the session, including comment and advice to the legislative committees on bills relating to the ORCP.

Council members discussed the possibility of reviewing and commenting on legislative bills that affect the ORCP. It was suggested that more frequent meetings would be required during the legislative session. It was also suggested that appointment of a legislative subcommittee to review and comment on legislative bills or use of telephone conference calls would be preferable to meeting more frequently. It was also suggested that the Council budget was not sufficient to cover more frequent meetings.

Several Council members stated that they believed that advising the legislature on proposed legislation was inconsistent with the role of the Council on Court Procedures. The process of lengthy review and consideration outside the hurried legislative session is designed to develop better balanced and more thoughtful rules of procedure. It was suggested that we ask the legislature to develop procedural rules that would direct that no legislative amendments to the ORCP be considered unless they had been submitted to the Council for action prior to the legislative session.

The consensus reached by the Council was that the chairer should continue to seek to convince the legislature to adopt a policy of refusing to consider amendments to the ORCP unless they had been first considered by the Council, but that in future legislative sessions the Council should review and comment on legislation that adversely affected the ORCP and should stand ready to respond to requests for assistance from the legislature. Ron Marceau indicated that he planned to meet further with representatives of the legislative judiciary committees on this subject following the legislative session.

The Executive Director reported on the financial situation of the Council. The budget for the next biennium has been passed and contains slightly more than an 8% increase in all categories. The funds for the present biennium have been almost completely exhausted. There is sufficient money to pay expenses for the present meeting, but no funds are available for meetings until after July 1, 1989.

The Council discussed the expiration of the terms of Council member next fall. The terms of Council members Van Hoomissen, Buttler, Lipscomb, Barron, Johnson, Harter, Jolles, Marceau, Noble, Pratt, Redman, and Rodman will expire. There is also one circuit court judge vacancy which has not been filled and which expires in 1989. The Chairer agreed to consult with the Oregon

State Bar to assure that members are reappointed or new members appointed before the fall Bar convention. Judge Johnson agreed to talk to the Circuit Court Judges Association, and Judge Liepe agreed to talk to the District Court Judges Association to see that appointments are made by those organizations.

The Council discussed plans for the work of the next biennium. The Executive Director suggested that the Council work through subcommittees during the summer and meet next during the September 1989 Bar convention. A subcommittee, consisting of John Buttler, Jack Mattison, Robert McConville, Martha Rodman and Larry Thorp, will be working on the rules relating to judgments. Another subcommittee, consisting of John Buttler, Lee Johnson and Mike Starr, will consider portions of ORCP 7 relating to service of summons in motor vehicle cases. The Chairer appointed a new subcommittee, consisting of Bernard Jolles, Henry Kantor, and Elizabeth Yeats, to review letters and suggestions which have been received by the Council since work was completed last fall. The Executive Director stated that he would try to furnish a preliminary memorandum to each subcommittee by June 15, 1989, and anticipated that the subcommittees could report to the full Council at the Bar Convention meeting. The Chairer asked Jack Mattison to chair the Judgments Subcommittee, Mike Starr to chair the Motor Vehicle Service Subcommittee, and Henry Kantor to chair the General Inquiries Subcommittee.

Henry Kantor reported upon an inquiry by legislators relating to the possibility of establishing a Council of Criminal Procedure. He stated that the proposal probably would not be acted upon during this legislative session, but that he anticipated that there would be further consideration of a new council or expanding the Council on Court Procedures to deal with criminal procedure.

The Chairer thanked all of the membership for their outstanding efforts during this biennium.

The meeting adjourned at 10:45 a.m.

Respectfully submitted,

Fredric R. Merrill
Executive Director

FRM:gh



JUDICIAL DEPARTMENT

Supreme Court Building
Salem, Oregon 97310

March 16, 1989

Fredric R. Merrill
Executive Director
Council On Court Procedures
University of Oregon
School of Law
Eugene, OR 97403-1221

RE: Additional Amendments to HB 2127

Dear Fred:

I have enclosed a draft copy of the revised amendments to HB 2127 for your review, along with a draft hand-engrossed version of the bill. The new amendments incorporate: (1) the Council's suggestion that Section 2 be deleted from the bill, (2) the Council's suggested changes to the form of Section 1 of the bill, and (3) the Department of Justice suggested amendments to ORS 20.220. Please note that the amendments to ORS 20.220 have been revised to reflect the deletion of Section 2 of the bill.

I would like to bring one point to your attention. The form changes to ORCP 70 deleted the sentence "The requirements of this part are not jurisdictional for purposes of appellate review." I do not know the history of that language. Would the deletion of that sentence create any difficulties?

If you find that any changes need to be made to these proposed amendments, please contact Karen Hightower of my office.

Thank you for your continued cooperation. My office will contact you when HB 2127 is scheduled for hearing; as of this date, it has not been scheduled.

Sincerely,

R. William Linden, Jr.
State Court Administrator

RWL:KH:klb/E1K89015.F

Enclosure

cc: Ron Marceau

DRAFT

HB 2127-4
March 16, 1989

PROPOSED AMENDMENTS TO HB 2127
(Offered by the Oregon Judicial Department)

On page 1 of the printed bill, in line 2, after "18.410," insert "20.220, 23.030," and after "24.125" delete "and ORCP 68 C. and" and insert ",416.440 and ORCP".

Delete lines 15 through 25 and insert:

"A.(2)(a) Contents. Money judgments shall include all of the following:"

In line 26, after "(a)" insert "(i)".

In line 27, delete "(b)" and insert "(a)(ii)".

In line 28, delete "(c)" and insert "(a)(iii)".

In line 29, delete "(d)" and insert "(a)(iv)".

On page 2, in line 3, delete "(e)" and insert "(a)(v)".

In line 7, delete "(f)" and insert "(a)(vi)".

In line 9, delete "(g)" and insert "(a)(vii)".

In line 19, delete "(3) Money judgments; form." and insert "(2)(b) Form." and delete "subsection A.(2)" and insert "paragraph A.(2)(a)".

In line 20, delete "subsection" and insert "paragraph".

In line 22, delete "(3)(a)" and insert "(2)(b)(i)".

In line 24, delete "subsection A. (2)" and insert "paragraph A.(2)(a)".

In line 25, delete "(3)(b)" and insert "(2)(b)(ii)".

In line 27, delete "(3)(c)" and insert "(2)(b)(iii)".

In line 29, delete "(3)(d)" and insert "(2)(b)(iv)" and delete "subsection A.(2)" and insert "paragraph A.(2)(a)".

In line 30, delete "subsection" and insert "paragraph".

After line 30 insert:

"A.(2)(c) If the judgment does not comply with the requirements in subsection A.(2) of this rule, it shall not be signed by the judge. If the judge signs the judgment, it shall be entered in the register whether or not it complies with the requirements in subsection A.(2) of this rule."

On page 3 delete lines 13 through 44.

On page 4 delete lines 1 through 44.

On page 5 delete lines 1 through 29.

On page 5, in line 30, delete "3" and insert "2".

In line 36, delete "4" and insert "3".

On page 6, in line 1, delete "5" and insert "4".

In line 30, delete "and (3)".

In line 32, delete "and (3)".

After line 32, insert:

"(4) The clerk is not liable for any entering of information in the judgment docket that reflects information actually contained in a judgment or decree whether or not the information in the judgment or decree is correct or properly presented."

In line 33, delete "6" and insert "5".

In line 37, delete "and (3)".

In line 39, after the period delete the rest of the line.

Delete lines 40 and 41.

On page 7, in line 13, delete "7" and insert "6".

At line 41 delete "14" and insert "21".

On page 8, after line 14 insert:

"(c) If the court finds that the judgment creditor's failure to file a satisfaction of judgment pursuant to ORS 18.350 was willful, the court, on motion, may do either or both of the following:

"(A) The court may require the judgment creditor to pay to the demanding party a sum of money determined to be reasonable as attorney fees, costs and disbursements by awarding the demanding party a separate judgment for such costs.

"(B) The court's order may specify that the demanding party may satisfy the judgment by paying such amounts determined by the court to be necessary to satisfy the judgment less that sum of money the court determines to be reasonable as attorney fees, and costs and disbursements."

After line 32 insert:

" SECTION 7. ORS 20.220 is amended to read:

" 20.220. (1) An appeal may be taken from a judgment under ORCP 68C.(4) [on the allowance and taxation of] allowing or denying attorney fees [and] or costs and disbursements on questions of law only, as in other cases. On such appeal the statement of attorney fees [and] or costs and disbursements, the objections thereto[,] and the judgment rendered thereon[, and the exceptions, if any,] shall constitute the trial court file, as defined in ORS 19.005.

"(2) If an appeal is taken from a judgment under ORS 19.010 before the trial court enters a judgment under ORCP 68C.(4), any necessary modification of the appeal shall be pursuant to rules of the appellate court.

"(3) When an appeal is taken from a judgment under ORS 19.010 to which an award of attorney fees or costs and disbursements relates:

"(a) If the appellate court reverses the judgment, the award of attorney fees or costs and disbursements shall be deemed reversed; or

"(b) If the appellate court modifies the judgment such that the party who was awarded attorney fees or costs and disbursements is no longer entitled to the award, the party against whom attorney fees or costs and disbursements were awarded may move for relief under ORCP 71B.(1)(e)."

In line 38, before the period insert "(2)(a)".

On page 9, after line 5, insert:

"SECTION 9. ORS 23.030 is amended to read:

"23.030. Except as otherwise provided in this section, the party in whose favor a judgment is given, which requires the payment of money, the delivery of real or personal property, or either of them, [may] at any time after the entry thereof, [and so long as the judgment remains a lien,] may have a writ of execution issued for its enforcement. In the case of real property[,];

"(1) No writ shall be issued under this section unless, at the time the application for writ is made, the judgment upon which the writ is issued is docketed in the judgment docket.

"(2) Upon issuance of the writ, the party requesting the writ shall have a certified copy of the writ or an abstract of the writ recorded in the County Clerk Lien Record of the county in which the real property is located."

"SECTION 10. ORS 416.440 is amended to read:

"416.440. (1) The documents required to be filed for purposes of subsection (2) include all the following:

"(a) A true copy of any order entered by the administrator or hearings officer pursuant to ORS 416.400 to 416.470_[, along with]

"(b) A true copy of the return of service, if applicable.

"(c) A separate statement containing the information required to be contained in a judgment under ORCP 70 A.(2)(a).

"(2) The documents described under subsection (1) of this section[,] may be filed in the office of the clerk of the circuit court in the county in which either the parent or the dependent child resides. Upon receipt of the documents, the clerk shall docket the order in the circuit court judgment docket.

"(3) Upon docketing under subsection (2) of this section, the order shall have all the force, effect and attributes of a docketed order or decree of the circuit court, including but not limited to:

"(a) Lien effect[,];

"(b) Ability to be renewed pursuant to ORS 18.360[,]; and

"(c) Ability to be enforced by supplementary proceedings, contempt of court proceedings, writs of execution and writs of garnishment."

In line 6, delete "9" and insert "11".

DRAFT

HAND ENGROSSED

House Bill 2127

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Judicial Department)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Modifies certain requirements relating to judgments.

20.220, 23.030

A BILL FOR AN ACT

416.440 and ORCP

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Relating to courts; amending ORS 7.010, 7.020, 7.040, 18.320, 18.410, 24.125 and ORCP 68 C. and 70; and repealing ORS 7.050.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORCP 70 is amended to read:

A. Form. Every judgment shall be in writing plainly [labeled] titled as a judgment and set forth in a separate document. A default or stipulated judgment may have appended or subjoined thereto such affidavits, certificates, motions, stipulations, and exhibits as may be necessary or proper in support of the entry thereof.

A.(1) Content. No particular form of words is required, but every judgment shall:

A.(1)(a) Specify clearly the party or parties in whose favor it is given and against whom it is given and the relief granted or other determination of the action.

A.(1)(b) Be signed by the court or judge rendering such judgment or, in the case of judgment entered pursuant to Rule 69 B.(1), by the clerk.

~~A.(1)(c) If the judgment provides for the payment of money, [contain a summary of the type described] comply with the requirements in [section 70] subsection A.(2) of this rule. If the judgment does not comply with the requirements in subsection A.(2) of this rule, it shall not be docketed in the judgment docket as provided under ORS 18.520.~~

~~A.(2) [Summary. When] Money judgments; requirements. As required under [section 70] paragraph A.(1)(c) of this rule, a judgment [shall] for the payment of money must comply with the requirements of this part, listed below, and must comply with subsection A.(3) of this rule relating to the form of presentation of the requirements. [These] The requirements [relating to a summary] of this part are not jurisdictional for purposes of appellate review. [and are subject to] The requirements [under section 70 A.(3) of this rule. A summary shall include] of a money judgment include all of the following:~~

"A.(2)(a) Contents. Money judgments shall include all of the following:"

A.(2)(a)(i) The names of the judgment creditor and the creditor's attorney.

A.(2)(a)(ii) The name of the judgment debtor.

A.(2)(a)(iii) The amount of the judgment.

A.(2)(a)(iv) The interest owed to the date of the judgment, either as a specific amount or as accrual information, including the rate or rates of interest, the balance or balances upon which interest accrues, the date or dates from which interest at each rate on each balance runs, and whether interest is simple or compounded and, if compounded, at what intervals.

NOTE: Matter in bold face in an amended section is new; matter [italic and bracketed] is existing law to be omitted.

1 [A.(2)(e) Any specific amounts awarded in the judgment that are taxable as costs or attorney
2 fees.] (a)(v)

3 A.(2)(f) ~~(f)~~ Post-judgment interest accrual information, including the rate or rates of interest,
4 the balance or balances upon which interest accrues, the date or dates from which interest at each
5 rate on each balance runs, and whether interest is simple or compounded and, if compounded, at
6 what intervals. (a)(vi)

7 A.(2)(g) ~~(g)~~ For judgments that accrue on a periodic basis, any accrued arrearages, required
8 further payments per period and accrual dates. (a)(vii)

9 A.(2)(~~e~~) If the judgment awards costs and disbursements or attorney fees, that they are
10 awarded and any specific amounts awarded. This paragraph does not require inclusion of
11 specific amounts where such will be determined later under Rule 68 C.

12 [A.(3) Submitting and certifying summary. The following apply to the summary described under
13 section 70 A.(2) of this rule:]

14 [A.(3)(a) The summary shall be served on the opposing parties who are not in default or on their
15 attorneys of record as required under ORCP 9.]

16 [A.(3)(b) The attorney for the party in whose favor the judgment is rendered or the party directed
17 to prepare the judgment shall certify on the summary that the information in the summary accurately
18 reflects the judgment.]

19 A.(3) ~~Money judgments, form.~~ To comply with the requirements of ^{paragraph A.(2)(a)} subsection A.(2) of
20 this rule, the requirements in that ^{paragraph} subsection must be presented in a manner that complies
21 with all of the following:

22 A.(3)(a) ^{(2)(b)(i)} The requirements must be presented in a separate, discrete section immediately
23 above the judge's signature if the judgment contains more provisions than just the require-
24 ments of ^{paragraph A.(2)(a)} subsection A.(2) of this rule.

25 A.(3)(b) ^{(2)(b)(ii)} The separate section must be clearly labeled at its beginning as a money judg-
26 ment. ^{(2)(b)(iii)}

27 A.(3)(c) ^{(2)(b)(iv)} The separate section must contain no other provisions except what is specifically
28 required by this rule for judgments for the payment of money.

29 A.(3)(d) ^{paragraph A.(2)(a)} The requirements under ~~subsection A.(2)~~ of this rule must be presented in the
30 same order as set forth in that ^{paragraph} subsection.

"A.(2)(c) If the judgment does not comply with the requirements in subsection A.(2) of this rule, it shall not be signed by the judge. If the judge signs the judgment, it shall be entered in the register whether or not it complies with the requirements in subsection A.(2) of this rule."

31 B. Entry of judgments.

32 B.(1) Filing; entry; notice. All judgments shall be filed and notation of the filing shall be en-
33 tered in the register by the clerk. The clerk [shall], on the date judgment is entered, shall mail a
34 notice of the date of entry of the judgment in the register and whether the judgment was
35 docketed in the judgment docket. The clerk shall mail the notice to the attorneys of record, if
36 any, of each party who is not in default for failure to appear. If a party who is not in default for
37 failure to appear does not have an attorney of record, such notice shall be mailed to the party. The
38 clerk also shall make a note in the [judgment docket] register of the mailing. In the entry of all
39 judgments, except a judgment by default under Rule 69 B.(1), the clerk shall be subject to the di-
40 rection of the court. Entry of judgment in the register and docketing of the judgment in the
41 judgment docket shall not be delayed for taxation of costs, disbursements, and attorney fees under
42 Rule 68.

43 B.(2) Judgment effective upon entry. Notwithstanding ORS 3.070 or any other rule or statute, for
44 purposes of these rules, a judgment is effective only when entered in the register as provided in

1 this rule.

2 B.(3) Time for entry. The clerk shall enter the judgment in the register within 24 hours, ex-
 3 cluding Saturdays and legal holidays, of the time the judgment is filed. When the clerk is unable to
 4 or omits to enter judgment within the time prescribed in this subsection, it may be entered any time
 5 thereafter.

6 C. Submission of forms of judgment. Attorneys shall submit proposed forms for judgment at the
 7 direction of the court rendering the judgment. **The proposed form must comply with section A.**
 8 **of this rule.** When so ordered by the court, the proposed form of judgment shall be served five days
 9 prior to the submission of judgment in accordance with Rule 9 B. The proposed form of judgment
 10 shall be filed and proof of service made in accordance with Rule 9 C.

11 D. "Clerk" defined. Reference to "clerk" in this rule shall include the clerk of court or any
 12 person performing the duties of that office.

13 **SECTION 2. ORCP 68 C. is amended to read:**

14 C. Award of and entry of judgment for attorney fees and costs and disbursements.

15 C.(1) Application of this section to award of attorney fees. Notwithstanding Rule 1 A, and the
 16 procedure provided in any rule or statute permitting recovery of attorney fees in a particular case,
 17 this section governs the pleading, proof, and award of attorney fees in all cases, regardless of the
 18 source of the right to recovery of such fees, except where:

19 C.(1)(a) ORS 105.405 (2) or 107.105 (1)(i) provide the substantive right to such items; or

20 C.(1)(b) Such items are claimed as damages arising prior to the action; or

21 C.(1)(c) Such items are granted by order, rather than entered as part of a judgment.

22 C.(2) Asserting claim for attorney fees. A party seeking attorney fees shall assert the right to
 23 recover such fees by alleging the facts, statute, or rule which provides a basis for the award of such
 24 fees in a pleading filed by that party. A party shall not be required to allege a right to a specific
 25 amount of attorney fees; an allegation that a party is entitled to "reasonable attorney fees" is suf-
 26 ficient. If a party does not file a pleading and seeks judgment or dismissal by motion, a right to at-
 27 torney fees shall be asserted by a demand for attorney fees in such motion, in substantially similar
 28 form to the allegations required by this subsection. Such allegation shall be taken as substantially
 29 denied and no responsive pleading shall be necessary. Attorney fees may be sought before the sub-
 30 stantive right to recover such fees accrues. No attorney fees shall be awarded unless a right to re-
 31 cover such fee is asserted as provided in this subsection.

32 C.(3) Proof. The items of attorney fees and costs and disbursements shall be submitted in the
 33 manner provided by subsection (4) of this section, without proof being offered during the trial.

34 [C.(4) Award of attorney fees and costs and disbursements; entry and enforcement of judgment.
 35 *Attorney fees and costs and disbursements shall be entered as part of the judgment as follows:]*

36 [C.(4)(a) Entry by clerk. *Attorney fees and costs and disbursements (whether a cost or disbursement*
 37 *has been paid or not) shall be entered as part of a judgment if the party claiming them:]*

38 [C.(4)(a)(i) Serves, in accordance with Rule 9 B., a verified and detailed statement of the amount
 39 of attorney fees and costs and disbursements upon all parties who are not in default for failure to ap-
 40 pear, not later than 10 days after the entry of the judgment; and]

41 [C.(4)(a)(ii) Files the original statement and proof of service, if any, in accordance with Rule 9 C.,
 42 with the court.]

43 [For any default judgment where attorney fees are included in the statement referred to in sub-
 44 paragraph (i) of this paragraph, such attorney fees shall not be entered as part of the judgment unless

1 approved by the court before such entry.]

2 C.(4)(b) Objections. A party may object to the allowance of attorney fees and costs and disburse-
 3 ments or any part thereof as part of a judgment by filing and serving written objections to such state-
 4 ment, signed in accordance with Rule 17, not later than 15 days after the service of the statement of
 5 the amount of such items upon such party under paragraph (a) of this subsection. Objections shall be
 6 specific and may be founded in law or in fact and shall be deemed controverted without further
 7 pleading. Statements and objections may be amended in accordance with Rule 23.]

8 C.(4)(c) Review by the court; hearing. Upon service and filing of timely objections, the court,
 9 without a jury, shall hear and determine all issues of law or fact raised by the statement and ob-
 10 jections. Parties shall be given a reasonable opportunity to present evidence and affidavits relevant to
 11 any factual issues.]

12 C.(4)(d) Entry by court. After the hearing the court shall make a statement of the attorney fees and
 13 costs and disbursements allowed, which shall be entered as a part of the judgment. No other findings
 14 of fact or conclusions of law shall be necessary.]

15 C.(4) Procedure for claiming attorney fees and costs and disbursements. The procedure
 16 for claiming attorney fees and costs and disbursements shall be as follows:

17 C.(4)(a) Filing and serving claim for attorney fees and costs and disbursements. A party
 18 claiming attorney fees or costs and disbursements shall, not later than 14 days after entry
 19 of judgment:

20 C.(4)(a)(i) File with the court a verified and detailed statement of the amount of attorney
 21 fees and costs and disbursements, together with proof of service, if any, in accordance with
 22 Rule 9 C.; and

23 C.(4)(a)(ii) Serve, in accordance with Rule 9 B., a copy of the statement on all parties
 24 who are not in default for failure to appear.

25 C.(4)(b) Objections. A party may object to a statement claiming attorney fees and costs
 26 and disbursements or any part thereof by written objections to the statement. The objections
 27 shall be signed in accordance with Rule 17 and served and filed within 14 days after service
 28 of the statement on the party under subparagraph (ii) of paragraph (a) of this subsection.
 29 The objections shall be specific and may be founded in law or in fact and shall be deemed
 30 controverted without further pleading.

31 C.(4)(c) Amendment of statements and objections. Statements and objections may be
 32 amended in accordance with Rule 23.

33 C.(4)(d) Entry by the clerk. If no objection to a statement of attorney fees or costs and
 34 disbursements is timely filed, the clerk shall docket in the judgment docket the amount
 35 claimed in the statement. For any default judgment where attorney fees are included in the
 36 statement, the attorney fees shall not be entered as part of the judgment unless approved
 37 by the court before entry.

38 C.(4)(e)(i) Hearing on objections. If objections to a statement of attorney fees or costs
 39 and disbursements are filed, the court, without a jury, shall hear and determine all issues
 40 of law or fact raised by the statement and objections. Parties shall be given a reasonable
 41 opportunity to present evidence and affidavits relevant to any factual issue.

42 C.(4)(e)(ii) Memorializing the determination of the court. The court shall deny or allow
 43 in whole or in part the statement of attorney fees and costs and disbursements. If no judg-
 44 ment has been entered disposing of the cause to which the statement of attorney fees or

1 costs and disbursements relates, the court's determination may be included in the judgment.
 2 If a judgment on the cause has been entered before the court has determined the claim for
 3 attorney fees or costs and disbursements, the determination of the court shall be set forth
 4 in an order separate from the judgment. No other findings of fact or conclusions of law shall
 5 be necessary.

6 C.(4)(f) Entry and effect of award of attorney fees and costs and disbursements. The or-
 7 der shall be filed and entered, and notice thereof shall be given to the parties, in the same
 8 manner as provided in Rule 70 B.(1), excluding the last sentence thereof. An order awarding
 9 attorney fees or costs and disbursements becomes a part of the judgment on the cause to
 10 which the attorney fees or costs and disbursements relate.

11 C.(5) Enforcement. Attorney fees and costs and disbursements entered *(as part of a judgment)*
 12 pursuant to this section may be enforced as part of *(that)* the judgment. *Upon service and filing of*
 13 *objections to the entry of attorney fees and costs and disbursements as part of a judgment, pursuant*
 14 *to paragraph (4)(b) of this section, enforcement of that portion of the judgment shall be stayed until the*
 15 *entry of a statement of attorney fees and costs and disbursements by the court pursuant to paragraph*
 16 *(4)(d) of this section] on the cause to which the award of attorney fees and costs and dis-*
 17 *bursements relates on entry thereof and not before.*

18 C.(6) Avoidance of multiple collection of attorney fees and costs and disbursements.

19 C.(6)(a) Separate judgments for separate claims. Where separate final judgments are granted in
 20 one action for separate claims, pursuant to Rule 67 B., the court shall take such steps as necessary
 21 to avoid the multiple taxation of the same attorney fees and costs and disbursements in more than
 22 one such judgment.

23 C.(6)(b) Separate judgments for the same claim. When there are separate judgments entered for
 24 one claim (where separate actions are brought for the same claim against several parties who might
 25 have been joined as parties in the same action, or where pursuant to Rule 67 B. separate final
 26 judgments are entered against several parties for the same claim), attorney fees and costs and dis-
 27 bursements may be entered in each such judgment as provided in this rule, but satisfaction of one
 28 such judgment shall bar recovery of attorney fees or costs and disbursements included in all other
 29 judgments.

30 ~~SECTION 6.~~² ORS 7.010 is amended to read:

31 7.010. (1) The records of the circuit, district and county courts include a register, judgment
 32 docket[*execution docket*] and jury register.

33 (2) The record of the Supreme Court and the Court of Appeals is a register.

34 (3) All references in this chapter to the clerk or court administrator relate to the office of the
 35 clerk or court administrator of the appropriate trial or appellate court.

36 ~~SECTION 7.~~³ ORS 7.020 is amended to read:

37 7.020. The register is a record wherein the clerk or court administrator shall enter, by its title,
 38 every action, suit or proceeding commenced in, or transferred or appealed to, the court, according
 39 to the date of its commencement, transfer or appeal. Thereafter, *(until the entry of judgment in the*
 40 *register,)* the clerk or court administrator shall note therein[*according to*] all the following:

41 (1) The date *(thereof, the)* of any filing *(or return)* of any paper or process. *[or]*

42 (2) The date of making, filing and entry of any order, *(rule)* judgment, ruling or other direc-
 43 tion of the court in or concerning such action, suit or proceeding.

44 (3) Any other information required by statute, court order or rule.

1 SECTION ⁴~~3~~ ORS 7.040 is amended to read:

2 7.040. (1) The judgment docket is a record wherein the clerk or court administrator shall
3 docket judgments for the payment of money and such other judgments and decrees [are
4 docketed] as specifically provided by statute. The judgment docket shall contain the following:

5 (a) For other than judgments for the payment of money, the judgment docket shall con-
6 tain the information specifically required by the statute requiring the information to be
7 docketed or by court order or rule.

8 (b) For judgments for the payment of money, the judgment docket shall contain the follow-
9 ing information:

10 (A) Judgment debtor. [;]

11 (B) Judgment creditor. [;]

12 (C) Amount of judgment. [;]

13 (D) Date of entry in register. [;]

14 (E) When docketed. [;]

15 (F) Date of appeal. [;]

16 (G) Decision on appeal. [;]

17 (H) Any execution or garnishment issued by the court and the return on any execution
18 or garnishment.

19 (I) Satisfaction, when entered. [;]

20 (J) Other such information as may be deemed necessary by court order or court rule.

21 (2) The judgment docket shall be maintained only during the duration of an enforceable judg-
22 ment or until such time as a full satisfaction of judgment is entered.

23 [(3) Not less than 90 days prior to the destruction of the original judgment docket, the clerk or
24 court administrator shall notify the State Archivist of the pending destruction of such docket. The State
25 Archivist may inspect the judgment docket and may retain such records for the state archives.]

26 (3) Notwithstanding paragraph (b) of subsection (1) of this section, a clerk is not liable
27 for failure to docket a judgment or to enter specific information on the judgment docket
28 where any of the following occur:

29 (a) The judgment for the payment of money is required to but does not comply with
30 ORCP 70 A.(2) ~~and (3)~~.

31 (b) The clerk is unable to ascertain the specific information from the separate section
32 under ORCP 70 A.(2) ~~and (3)~~.

"(4) The clerk is not liable for any entering of information in the judgment docket that reflects information actually contained in a judgment or decree whether or not the information in the judgment or decree is correct or properly presented."

33 SECTION ⁵~~4~~ ORS 18.320 is amended to read:

34 18.320. (1) Immediately after the entry in the register of judgment for the payment of money
35 in any action the clerk shall docket the judgment in the judgment docket, noting thereon the day,
36 hour and minute of such docketing. The clerk shall rely on the existence of a separate section
37 within the judgment for those judgments subject to ORCP 70 A.(2) ~~and (3)~~ in determining
38 whether the judgment is a judgment for the payment of money and shall only docket there-
39 from. ~~If the separate section does not exist, or does not comply with ORCP 70 A.(2) and (3),~~
40 ~~the clerk shall not docket the judgment in the judgment docket unless otherwise instructed~~
41 ~~by the court.~~

42 (2) With respect to any judgment docketed in a circuit court judgment docket, the following
43 apply:

44 (a) At any time thereafter, so long as the original judgment remains in force under ORS 18.360,

1 and is unsatisfied in whole or part, the judgment creditor, or the agent of the judgment creditor,
2 may have recorded a certified copy of the judgment or a lien record abstract in the County Clerk
3 Lien Record for any other county in this state.

4 (b) Upon receipt, the county clerk shall record a certified copy of the judgment or a lien record
5 abstract in the County Clerk Lien Record maintained under ORS 205.130, noting thereon the day,
6 hour and minute of such recording.

7 (c) A certified copy or a lien record abstract of any judgment renewed pursuant to ORS 18.360
8 may likewise be recorded in the County Clerk Lien Record in another county.

9 (d) A certified copy of the judgment, or a certified copy of any renewed judgment under ORS
10 18.360, or lien record abstract of either, shall be recorded in any county other than in the county
11 where a judgment is originally docketed in order for that judgment to be a lien upon the real
12 property of the judgment debtor in that county.

13 **SECTION 6.** ORS 18.410 is amended to read:

14 18.410. (1) This section establishes a procedure to obtain a satisfaction for a judgment for
15 the payment of money when any person, against whom exists a judgment for the payment of
16 money or who is interested in any property upon which any such judgment is a lien, is unable to
17 obtain a satisfaction from a judgment creditor for any reason. The following apply to a pro-
18 cedure under this section:

19 (a) The procedure and all filings, entries and other actions relating to the procedure are
20 to be considered as a continuation of the original action in which the judgment was entered.

21 (b) No appearance fee shall be charged for proceeding under this section.

22 (2) A person described in subsection (1) of this section may request the court which gave
23 the judgment to determine whether the judgment has been paid in full or to determine the
24 amount necessary to satisfy the judgment at a specific time in the future. To make such
25 request, the person must do all of the following:

26 (a) File a motion with the court accompanied by an affidavit setting forth all the follow-
27 ing, to the extent known to the person:

28 (A) The date of entry and principal amount of the judgment.

29 (B) The rate of interest and the date the rate of interest began.

30 (C) The date or dates and amounts of any payments on the judgment.

31 (D) Any amount the person believes is remaining to be paid on the judgment.

32 (E) Supporting mathematical calculations.

33 (F) Any other information necessary or helpful to the court in making its determination.

34 (b) Serve the motion and supporting affidavit on the judgment creditor and, if the person
35 making the request is not the judgment debtor, on the judgment debtor. If the motion is filed
36 within one year of the date of entry of the judgment to which the motion for satisfaction
37 relates, service shall be made as provided in ORCP 9. If the motion is filed more than one
38 year after the date of entry of the judgment to which the motion for satisfaction relates,
39 service shall be made as provided in ORCP 7.

40 (c) File proof of service with the court.

41 (3) Any party served under paragraph (b) of subsection (2) of this section shall have ²¹~~14~~
42 days or such additional time as may be allowed by the court within which to serve and file
43 a responding affidavit with the court setting forth those parts of the original affidavit with
44 which the person disagrees and any supporting information or mathematical calculations

1 necessary to support the contentions of the objecting party.

2 (4) Not less than seven days after notice of hearing given to the person filing the motion
 3 and to the parties served with the motion, the court shall hear and determine the issues
 4 between the parties in a summary fashion without a jury. All the following apply to the court
 5 proceeding:

6 (a) The court shall give the parties a reasonable opportunity to present evidence relevant
 7 to any factual issues in dispute as shown by the affidavits.

8 (b) If the court, based on the record and sufficient evidence, is satisfied that the person
 9 making the request is entitled to relief, the court shall issue an order stating all the follow-
 10 ing:

11 (A) That the judgment has been satisfied in full or, if the judgment has not been satisfied
 12 in full, the specific amount that will satisfy the judgment on a date or within a period of time
 13 specified in the order.

14 (B) The party or parties to whom the money is owed.

"(c) If the court finds that the judgment creditor's failure to file a satisfaction of judgment pursuant to ORS 18.350 was willful, the court, on motion, may do either or both of the following:

"(A) The court may require the judgment creditor to pay to the demanding party a sum of money determined to be reasonable as attorney fees, costs and disbursements by awarding the demanding party a separate judgment for such costs.

"(B) The court's order may specify that the demanding party may satisfy the judgment by paying such amounts determined by the court to be necessary to satisfy the judgment less that sum of money the court determines to be reasonable as attorney fees, and costs and disbursements."

15 (5) *[may pay the amount due on such judgment to the clerk of the court in which the judgment*
 16 *was rendered, and] If the order provides that the judgment has been satisfied or if money is*
 17 *paid to the clerk in the amount and within the time specified in the order, the clerk shall*
 18 *thereupon satisfy the judgment upon the records of the court.*

19 (6) If such judgment has been entered in the records or docketed in the judgment docket in any
 20 other county than the county in which it was rendered, then a certified copy of the satisfaction may
 21 be used for any of the following purposes:

22 (a) Entry *[entered]* in the register of the circuit court for such other county and the clerk of
 23 that court shall thereupon satisfy the judgment upon the records of that court.

24 (b) Recording *[A satisfaction may also be recorded]* in the County Clerk Lien Record in any
 25 county in which a certified copy of the judgment or lien record abstract was recorded---

26 (7) *[Unless the clerk of the court in which the judgment was rendered sooner turns over the money*
 27 *paid to the clerk on the judgment to the person determined by such court to be entitled thereto, the clerk*
 28 *shall turn the money over to the appropriate fiscal officer, who shall give the clerk duplicate receipts*
 29 *therefor. One of the receipts shall be filed with the papers in the case in which such judgment was*
 30 *rendered, and the other shall be retained by the clerk. The fiscal officer shall] The clerk shall, at any*
 31 *time, pay the money over to the person who shall be determined to be entitled thereto by the order*
 32 *of the court in which the judgment was [rendered] given.*

" SECTION 7. ORS 20.220 is amended to read:

" 20.220. (1) An appeal may be taken from a judgment under ORCP 68C.(4) [on the allowance and taxation of] allowing or denying attorney fees [and] or costs and disbursements on questions of law only, as in other cases. On such appeal the statement of attorney fees [and] or costs and disbursements, the objections thereto[,] and the judgment rendered thereon[, and the exceptions, if any,] shall constitute the trial court file, as defined in ORS 19.005.

"(2) If an appeal is taken from a judgment under ORS 19.010 before the trial court enters a judgment under ORCP 68C.(4), any necessary modification of the appeal shall be pursuant to rules of the appellate court.

"(3) When an appeal is taken from a judgment under ORS 19.010 to which an award of attorney fees or costs and disbursements relates:

"(a) If the appellate court reverses the judgment, the award of attorney fees or costs and disbursements shall be deemed reversed; or

"(b) If the appellate court modifies the judgment such that the party who was awarded attorney fees or costs and disbursements is no longer entitled to the award, the party against whom attorney fees or costs and disbursements were awarded may move for relief under ORCP 71B.(1)(e)."

SECTION 8. ORS 24.125 is amended to read:

35 24.125. (1) At the time of the filing of the foreign judgment, the judgment creditor or the credi-
36 tor's lawyer shall make and file with the clerk of the court an affidavit setting forth the names and
37 last-known post-office addresses of the judgment debtor and the judgment creditor, together with a
38 [summary] separate statement containing the information required to be contained in a judg-
39 ment under ORCP 70 A, (2)(a).

40 (2) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice
41 of the filing of the foreign judgment to the judgment debtor at the address given and shall make a
42 note of the mailing in the docket. The notice shall include the name and post-office address of the
43 judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment
44 creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof
of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforce-

1 ment proceedings if proof of mailing by the judgment creditor has been filed.

2 (3) No execution or other process for enforcement of a foreign judgment filed pursuant to ORS
3 24.105 to 24.125, 24.135 and 24.155 to 24.175, except a judgment, decree or order of a court of the
4 United States, shall issue until five days after the date the judgment, affidavit and separate
5 statement [and summary] required [under ORCP 70 A.] in subsection (1) of this section are filed.

"SECTION 9. ORS 23.030 is amended to read:

"23.030. Except as otherwise provided in this section, the party in whose favor a judgment is given, which requires the payment of money, the delivery of real or personal property, or either of them, [may] at any time after the entry thereof, [and so long as the judgment remains a lien,] may have a writ of execution issued for its enforcement. In the case of real property[,]:

"(1) No writ shall be issued under this section unless, at the time the application for writ is made, the judgment upon which the writ is issued is docketed in the judgment docket.

"(2) Upon issuance of the writ, the party requesting the writ shall have a certified copy of the writ or an abstract of the writ recorded in the County Clerk Lien Record of the county in which the real property is located."

"SECTION 10. ORS 416.440 is amended to read:

"416.440. (1) The documents required to be filed for purposes of subsection (2) include all the following:

"(a) A true copy of any order entered by the administrator or hearings officer pursuant to ORS 416.400 to 416.470, [, along with]

"(b) A true copy of the return of service, if applicable.

"(c) A separate statement containing the information required to be contained in a judgment under ORCP 70 A.(2)(a).

"(2) The documents described under subsection (1) of this section[,] may be filed in the office of the clerk of the circuit court in the county in which either the parent or the dependent child resides. Upon receipt of the documents, the clerk shall docket the order in the circuit court judgment docket.

"(3) Upon docketing under subsection (2) of this section, the order shall have all the force, effect and attributes of a docketed order or decree of the circuit court, including but not limited to:

"(a) Lien effect[,];

"(b) Ability to be renewed pursuant to ORS 18.360[,]; and

"(c) Ability to be enforced by supplementary proceedings, contempt of court proceedings, writs of execution and writs of garnishment."

6 ¹¹
7 SECTION ~~7~~. ORS 7.050 is repealed.

**OLSON &
MARMADUKE**
ATTORNEYS AT LAW

March 20, 1989

Representative Judith Bauman
H-286 State Capitol Building
Salem, Oregon 97310

Re: House Bill 2127

Dear Representative Bauman:

I appeared on behalf of the Oregon State Bar Procedure & Practice Committee when the above-referenced bill was considered by the Civil Law Judicial Administration Subcommittee of the House Judiciary Committee. I reported then that HB 2127 was going to be considered at the March meeting of the Procedure & Practice Committee.

The majority of the March meeting was devoted to House Bill 2127. The overwhelming majority of the committee was opposed to the bill. Enclosed is that portion of the minutes of the meeting which relate to the Practice & Procedure Committee's discussion and action relating to HB 2127.

Sincerely,


Jack F. Olson

Enclosure

cc: R. William Linden
Fredric R. Merrill

JACK F. OLSON
SUSAN D. MARMADUKE

1100 S.W. Sixth Avenue, Suite 1100
Portland, Oregon 97204
503-226-2800

MINUTES

OF THE PROCEDURE AND PRACTICE COMMITTEE

DATE: MARCH 4, 1989

LOCATION: Swanson & Walters
Suite 220
975 Oak Street
Eugene, OR 97401

MEMBERS

PRESENT: Kathryn Augustson
David Brewer
Charles Burt
Emerson Fisher
J. P. Graff
Martin Hansen
David Hytowitz
Jack Olson
Michael Starr
Les Swanson
M. D. Van Valkenburgh

ABSENT: Phillip Chadsey
Dennis Elliott
Jeff Foote
William Horner
James Roberson
James Spiekerman

I. House Bill 2127: Amendments Relating to Judgments.

A. DISCUSSION:

Mr. Graff reviewed the background and history of this bill. The bill was drafted and submitted to the legislature by the State Court Administrator without first being submitted to the Council on Court Procedures. Both the Council on Court Procedures and the Procedures and Practice Committee were supplied copies of the bill and were invited to comment on it.

Apparently the perception on the Council on Court Procedures is that there are problems with HB 2127 but it might pass.

Therefore, it decided to seek amendments rather than oppose the bill. There were meetings between the State Court Administrator's Office and Council on Court Procedures and some compromise language was worked out between them before the House Judiciary Subcommittee on Civil Law and Judicial Administration held a hearing on the bill on Monday, February 27.

The issue not resolved between the State Court Administrator's Office and the Council on Court Procedures was what to do about ORCP 68. The Council on Court Procedures preferred that nothing be done at this time. The State Court Administrator's Office would not oppose the Council's position, but would not join in a request that Section 2 of HB 2127 be stricken.

Jack Olson appeared on behalf of the Procedure and Practice Committee at the hearing on February 27. Mr. Olson reported to the House Judiciary subcommittee that the only vote taken by the Procedure and Practice Committee dealing with HB 2127 was a vote to eliminate the summary of judgment requirement entirely, but that vote ended in a tie. Mr. Olson also reported that there was substantial resistance to changes in the rules of procedure which result in either making the practice of law more difficult or more hazardous for attorneys. Further, repeated tinkering with the rules in itself can create hazards. If changes are required, the new rules should be clear improvements over existing rules.

Mr. Olson passed out to the Procedure and Practice Committee copies of the written testimony submitted by Mr. Linden and Mr.

Merrill at the hearing. He also passed out copies of the hand engrossed bill which contained the changes agreed to by the State Court Administrator's office and the Council on Court Procedures, and an amendment dated February 27 proposed by the Department of Justice.

Subsequent to the hearing on February 27, the Council on Court Procedures reviewed the amendment proposed by the Department of Justice and apparently felt that the amendment proposed by the Department of Justice addresses many of the concerns that Council had with the bills related to Rule 68C.

The fact that this bill did not go through the channels contemplated by the legislature (consideration by the Council on Court Procedures before submission to the legislature) was unfortunate and has created problems. Instead of introducing proposed legislation which has been agreed upon in advance by the State Court Administrator's office and the Council on Court Procedures, HB 2127 is a confusing, patchwork bill which may not have been adequately considered by all concerned and which may create as many problems as it solves. The Procedure and Practice Committee hopes that this will not be repeated in the future.

Discussion then turned to the detail of House Bill 2127.

Michael Starr, a member of the Council on Court Procedures, urged support of the Council's position.

There was concern with several portions of HB 2127. The bill, as amended through February 27, requires that a judgment signed by a judge be entered in the registry whether or not it

complies with the requirements of ORCP 70 A(2) which deals with the "summary of judgment". However, section 5 of House Bill 2127 amends ORS 7.040 and appears to give clerks discretion to decide whether a judgment is in compliance and needs to be entered in the judgment docket. Further, section 5 gives broad immunity to clerks who do not enter information in the judgment docket if the clerk decided that the judgment does not comply with ORCP 70 A(2) and (3) or the clerk is unable to ascertain specific information from a separate section under ORCP 70A(2) and (3).

It was reported that in some counties a significant number of money judgments are entered in the register but not docketed in the judgment docket. Committee members expressed considerable concern over this and view it as a violation of statutory directives. A writ of execution may not be issued on a judgment unless it is docketed in the judgment docket, but the judgment creditor may not know that the judgment has not been docketed.

Section 1 of House Bill 2127, at lines 32 to 35, requires that clerks mail notice of the date the judgment is entered in the registry and "whether the judgment was docketed in the judgment docket." This is an improvement, but there was concern about this language. The bill does not expressly require notice that the judgment was not docketed or was only partially docketed. Some effort was made to come up with language to clarify that requirement.

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Much of the discussion centered on the anomaly of giving the clerks discretion to determine whether a judgment needs to be docketed in the judgment docket and, at the same time, extending immunity for failure to docket the judgment in the judgment docket. There was also considerable discussion and concern about the fact that clerks apparently are simply electing not to enter some judgments in the judgment docket. If they fail to enter judgments in the judgment docket, they are in violation of ORS 7.040. The members of the committee did not think this should be tolerated.

The committee concluded that clerks should not be given discretion to docket or not docket a money judgment or to docket some but not all of a money judgment which has been signed by the court. Rather, clerks should be directed to enter and docket every money judgment as the statutes now require.

The following motions were considered and acted upon.

B. ACTION TAKEN:

1. Van Valkenbergh motion: "That the Procedure and Practice Committee oppose House Bill 2127."

The motion carried 9-1.

2. Van Valkenbergh motion: "That a bill be prepared to eliminate the 'summary of judgment' requirement from the Oregon Rules of Civil Procedure and Uniform Trial Court Rules."

The motion carried 9-1.

///

3. Van Valkenbergh motion: "If the Judiciary Committee is intent on passing some bill dealing with ORCP 70 and related statutes, then the Procedure and Practice Committee supports the position taken by the Council on Court Procedures with amendments suggested by the Procedure and Practice Committee."

The motion was defeated 9-1.

4. Graff motion: "That the Procedure and Practice Committee draft a bill requiring that the party preparing a judgment for submission to the court for signature must submit the proposed judgment to all parties who have appeared five days before presenting it to the court unless the court directs otherwise."

The motion carried.

The committee recognized that the action it has taken is probably unanticipated. Further, we will need to present, in some detail, the reasons for the positions taken. M.D. Van Valkenburgh and Charles Burt volunteered to testify before the House Judiciary Subcommittee on Civil Law and Judicial Administration when HB 2127 is taken up. Mr. Graff will draft appropriate legislation consistent with the action taken.

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JUDICIAL DEPARTMENT

Supreme Court Building
Salem, Oregon 97310

March 23, 1989

Fredric R. Merrill
Executive Director
Council On Court Procedures
University of Oregon
School of Law
Eugene, OR 97403-1221

Re: HB 2127

Dear Fred:

At a Judgment Committee meeting on March 17, the Judgment Committee discussed the Council's form changes to ORCP 70. The renumbering made the "sanction" provision ("the judge shall not sign") applicable only to money judgments.

The Judgment Committee suggested that the highlighted language on page 2 of the enclosed hand engrossed version of HB 2127 be changed to read as follows:

"A.(3) If the proposed judgment does not comply with the requirements in subsection A.(1) and (2) of this rule, it shall not be signed by the judge. If the judge signs the judgment, it shall be entered in the register whether or not it complies with the requirements in subsection A.(1) and (2) of this rule." [Proposed changes are bolded.]

This would make the "sanction" provision [new A.(3)] applicable to nonmoney judgments; i.e., all judgments must be titled as a judgment, specify the relief granted, etc.

Please let Karen Hightower know whether or not this change would be acceptable to the Council.

Fredric R. Merrill
Page 2
March 23, 1989

HB 2127 has been scheduled for public hearing and possible work session on April 3, 1989, at 1:30 p.m., in Room 357 before the House Judiciary Civil Law and Judicial Administration Subcommittee.

Sincerely,

A handwritten signature in black ink, appearing to read "R. William Linden, Jr.", written in a cursive style.

R. William Linden, Jr.
State Court Administrator

RWL:KH:dc/E1D89045.F

Enclosure

cc: Ron Marceau

DRAFT

HAND ENGROSSED

House Bill 2127

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Judicial Department)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Modifies certain requirements relating to judgments.

20.220, 23.030

A BILL FOR AN ACT

3416.440 and ORCP

Relating to courts; amending ORS 7.010, 7.020, 7.040, 18.320, 18.410, 24.125 and ORCP 68 C. and 70; and repealing ORS 7.050.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORCP 70 is amended to read:

A. Form. Every judgment shall be in writing plainly [labeled] titled as a judgment and set forth in a separate document. A default or stipulated judgment may have appended or subjoined thereto such affidavits, certificates, motions, stipulations, and exhibits as may be necessary or proper in support of the entry thereof.

A.(1) Content. No particular form of words is required, but every judgment shall:

A.(1)(a) Specify clearly the party or parties in whose favor it is given and against whom it is given and the relief granted or other determination of the action.

A.(1)(b) Be signed by the court or judge rendering such judgment or, in the case of judgment entered pursuant to Rule 69 B.(1), by the clerk.

~~A.(1)(c) If the judgment provides for the payment of money, [contain a summary of the type described] comply with the requirements in [section 70] subsection A.(2) of this rule. If the judgment does not comply with the requirements in subsection A.(2) of this rule, it shall not be docketed in the judgment docket as provided under ORS 18.620.~~

~~A.(2) [Summary. When] Money judgments; requirements. As required under [section 70] paragraph A.(1)(c) of this rule, a judgment [shall] for the payment of money must comply with the requirements of this part, listed below, and must comply with subsection A.(3) of this rule relating to the form of presentation of the requirements. [These] The requirements [relating to a summary] of this part are not jurisdictional for purposes of appellate review. [and are subject to] The requirements [under section 70 A.(3) of this rule. A summary shall include] of a money judgment include all of the following:~~

"A.(2)(a) Contents. Money judgments shall include all of the following:"

A.(2)(a) The names of the judgment creditor and the creditor's attorney.

A.(2)(b) The name of the judgment debtor.

A.(2)(c) The amount of the judgment.

A.(2)(d) The interest owed to the date of the judgment, either as a specific amount or as accrual information, including the rate or rates of interest, the balance or balances upon which interest accrues, the date or dates from which interest at each rate on each balance runs, and whether interest is simple or compounded and, if compounded, at what intervals.

1 [A.(2)(e) Any specific amounts awarded in the judgment that are taxable as costs or attorney
2 fees.] (a)(v)

3 A.(2)(f) ~~(f)~~ Post-judgment interest accrual information, including the rate or rates of interest,
4 the balance or balances upon which interest accrues, the date or dates from which interest at each
5 rate on each balance runs, and whether interest is simple or compounded and, if compounded, at
6 what intervals. (a)(vi)

7 A.(2)(g) ~~(g)~~ For judgments that accrue on a periodic basis, any accrued arrearages, required
8 further payments per period and accrual dates. (a)(vii)

9 A.(2)(h) ~~(h)~~ If the judgment awards costs and disbursements or attorney fees, that they are
10 awarded and any specific amounts awarded. This paragraph does not require inclusion of
11 specific amounts where such will be determined later under Rule 68 C.

12 [A.(3) Submitting and certifying summary. The following apply to the summary described under
13 section 70 A.(2) of this rule:]

14 [A.(3)(a) The summary shall be served on the opposing parties who are not in default or on their
15 attorneys of record as required under ORCP 9.]

16 [A.(3)(b) The attorney for the party in whose favor the judgment is rendered or the party directed
17 to prepare the judgment shall certify on the summary that the information in the summary accurately
18 reflects the judgment.]

19 A.(3) ~~Money judgments, form.~~ To comply with the requirements of ^{Form} ~~subsection A.(2)~~ ^{paragraph A.(2)(a)} of
20 this rule, the requirements in that ~~subsection~~ ^{paragraph} must be presented in a manner that complies
21 with all of the following:

22 A.(3)(a) ~~(a)~~ The requirements must be presented in a separate, discrete section immediately
23 above the judge's signature if the judgment contains more provisions than just the require-
24 ments of ~~subsection A.(2)~~ ^{paragraph A.(2)(a)} of this rule.

25 A.(3)(b) ~~(b)~~ The separate section must be clearly labeled at its beginning as a money judg-
26 ment. (2)(b)(i)

27 A.(3)(c) ~~(c)~~ The separate section must contain no other provisions except what is specifically
28 required by this rule for judgments for the payment of money.

29 A.(3)(d) ~~(d)~~ The requirements under ~~subsection A.(2)~~ ^{paragraph A.(2)(a)} of this rule must be presented in the
30 same order as set forth in that ~~subsection~~ ^{paragraph}.

"A. (3) If the proposed judgment does not comply with the requirements in subsection A.(1) and (2) of this rule, it shall not be signed by the judge. If the judge signs the judgment, it shall be entered in the register whether or not it complies with the requirements in subsection A.(1) and (2) of this rule."

31 B. Entry of judgments.

32 B.(1) Filing; entry; notice. All judgments shall be filed and notation of the filing shall be en-
33 tered in the register by the clerk. The clerk [shall], on the date judgment is entered, shall mail a
34 notice of the date of entry of the judgment in the register and whether the judgment was
35 docketed in the judgment docket. The clerk shall mail the notice to the attorneys of record, if
36 any, of each party who is not in default for failure to appear. If a party who is not in default for
37 failure to appear does not have an attorney of record, such notice shall be mailed to the party. The
38 clerk also shall make a note in the [judgment docket] register of the mailing. In the entry of all
39 judgments, except a judgment by default under Rule 69 B.(1), the clerk shall be subject to the di-
40 rection of the court. Entry of judgment in the register and docketing of the judgment in the
41 judgment docket shall not be delayed for taxation of costs, disbursements, and attorney fees under
42 Rule 68.

43 B.(2) Judgment effective upon entry. Notwithstanding ORS 3.070 or any other rule or statute, for
44 purposes of these rules, a judgment is effective only when entered in the register as provided in

1 this rule.

2 **B.(3) Time for entry.** The clerk shall enter the judgment in the register within 24 hours, ex-
 3 cluding Saturdays and legal holidays, of the time the judgment is filed. When the clerk is unable to
 4 or omits to enter judgment within the time prescribed in this subsection, it may be entered any time
 5 thereafter.

6 **C. Submission of forms of judgment.** Attorneys shall submit proposed forms for judgment at the
 7 direction of the court rendering the judgment. **The proposed form must comply with section A.**
 8 **of this rule.** When so ordered by the court, the proposed form of judgment shall be served five days
 9 prior to the submission of judgment in accordance with Rule 9 B. The proposed form of judgment
 10 shall be filed and proof of service made in accordance with Rule 9 C.

11 **D. "Clerk" defined.** Reference to "clerk" in this rule shall include the clerk of court or any
 12 person performing the duties of that office.

13 **SECTION 2. ORCP 68 C. is amended to read:**

14 **C. Award of and entry of judgment for attorney fees and costs and disbursements.**

15 **C.(1) Application of this section to award of attorney fees.** Notwithstanding Rule 1 A. and the
 16 procedure provided in any rule or statute permitting recovery of attorney fees in a particular case,
 17 this section governs the pleading, proof, and award of attorney fees in all cases, regardless of the
 18 source of the right to recovery of such fees, except where:

19 C.(1)(a) ORS 105.405 (2) or 107.105 (1)(i) provide the substantive right to such items; or

20 C.(1)(b) Such items are claimed as damages arising prior to the action; or

21 C.(1)(c) Such items are granted by order, rather than entered as part of a judgment.

22 **C.(2) Asserting claim for attorney fees.** A party seeking attorney fees shall assert the right to
 23 recover such fees by alleging the facts, statute, or rule which provides a basis for the award of such
 24 fees in a pleading filed by that party. A party shall not be required to allege a right to a specific
 25 amount of attorney fees; an allegation that a party is entitled to "reasonable attorney fees" is suf-
 26 ficient. If a party does not file a pleading and seeks judgment or dismissal by motion, a right to at-
 27 torney fees shall be asserted by a demand for attorney fees in such motion, in substantially similar
 28 form to the allegations required by this subsection. Such allegation shall be taken as substantially
 29 denied and no responsive pleading shall be necessary. Attorney fees may be sought before the sub-
 30 stantive right to recover such fees accrues. No attorney fees shall be awarded unless a right to re-
 31 cover such fee is asserted as provided in this subsection.

32 **C.(3) Proof.** The items of attorney fees and costs and disbursements shall be submitted in the
 33 manner provided by subsection (4) of this section, without proof being offered during the trial.

34 **[C.(4) Award of attorney fees and costs and disbursements; entry and enforcement of judgment.**
 35 ***Attorney fees and costs and disbursements shall be entered as part of the judgment as follows:]***

36 **[C.(4)(a) Entry by clerk.** *Attorney fees and costs and disbursements (whether a cost or disbursement*
 37 *has been paid or not) shall be entered as part of a judgment if the party claiming them:]*

38 **[C.(4)(a)(i) Serves, in accordance with Rule 9 B., a verified and detailed statement of the amount**
 39 **of attorney fees and costs and disbursements upon all parties who are not in default for failure to ap-
 40 **pear, not later than 10 days after the entry of the judgment; and]****

41 **[C.(4)(a)(ii) Files the original statement and proof of service, if any, in accordance with Rule 9 C.,**
 42 **with the court.]**

43 **[For any default judgment where attorney fees are included in the statement referred to in sub-**
 44 **paragraph (i) of this paragraph, such attorney fees shall not be entered as part of the judgment unless**

approved by the court before such entry.]

2 ~~[C.(4)(b) Objections. A party may object to the allowance of attorney fees and costs and disburse-~~
 3 ~~ments or any part thereof as part of a judgment by filing and serving written objections to such state-~~
 4 ~~ment, signed in accordance with Rule 17, not later than 15 days after the service of the statement of~~
 5 ~~the amount of such items upon such party under paragraph (a) of this subsection. Objections shall be~~
 6 ~~specific and may be founded in law or in fact and shall be deemed controverted without further~~
 7 ~~pleading. Statements and objections may be amended in accordance with Rule 23.]~~

8 ~~[C.(4)(c) Review by the court; hearing. Upon service and filing of timely objections, the court,~~
 9 ~~without a jury, shall hear and determine all issues of law or fact raised by the statement and ob-~~
 10 ~~jections. Parties shall be given a reasonable opportunity to present evidence and affidavits relevant to~~
 11 ~~any factual issues.]~~

12 ~~[C.(4)(d) Entry by court. After the hearing the court shall make a statement of the attorney fees and~~
 13 ~~costs and disbursements allowed, which shall be entered as a part of the judgment. No other findings~~
 14 ~~of fact or conclusions of law shall be necessary.]~~

15 ~~**C.(4) Procedure for claiming attorney fees and costs and disbursements. The procedure**~~
 16 ~~**for claiming attorney fees and costs and disbursements shall be as follows:**~~

17 ~~**C.(4)(a) Filing and serving claim for attorney fees and costs and disbursements. A party**~~
 18 ~~**claiming attorney fees or costs and disbursements shall, not later than 14 days after entry**~~
 19 ~~**of judgment:**~~

20 ~~**C.(4)(a)(i) File with the court a verified and detailed statement of the amount of attorney**~~
 21 ~~**fees and costs and disbursements, together with proof of service, if any, in accordance with**~~
 22 ~~**Rule 9 C.; and**~~

23 ~~**C.(4)(a)(ii) Serve, in accordance with Rule 9 B., a copy of the statement on all parties**~~
 24 ~~**who are not in default for failure to appear.**~~

25 ~~**C.(4)(b) Objections. A party may object to a statement claiming attorney fees and costs**~~
 26 ~~**and disbursements or any part thereof by written objections to the statement. The objections**~~
 27 ~~**shall be signed in accordance with Rule 17 and served and filed within 14 days after service**~~
 28 ~~**of the statement on the party under subparagraph (ii) of paragraph (a) of this subsection.**~~
 29 ~~**The objections shall be specific and may be founded in law or in fact and shall be deemed**~~
 30 ~~**controverted without further pleading.**~~

31 ~~**C.(4)(c) Amendment of statements and objections. Statements and objections may be**~~
 32 ~~**amended in accordance with Rule 23.**~~

33 ~~**C.(4)(d) Entry by the clerk. If no objection to a statement of attorney fees or costs and**~~
 34 ~~**disbursements is timely filed, the clerk shall docket in the judgment docket the amount**~~
 35 ~~**claimed in the statement. For any default judgment where attorney fees are included in the**~~
 36 ~~**statement, the attorney fees shall not be entered as part of the judgment unless approved**~~
 37 ~~**by the court before entry.**~~

38 ~~**C.(4)(e)(i) Hearing on objections. If objections to a statement of attorney fees or costs**~~
 39 ~~**and disbursements are filed, the court, without a jury, shall hear and determine all issues**~~
 40 ~~**of law or fact raised by the statement and objections. Parties shall be given a reasonable**~~
 41 ~~**opportunity to present evidence and affidavits relevant to any factual issue.**~~

42 ~~**C.(4)(e)(ii) Memorializing the determination of the court. The court shall deny or allow**~~
 43 ~~**in whole or in part the statement of attorney fees and costs and disbursements. If no judg-**~~
 44 ~~**ment has been entered disposing of the cause to which the statement of attorney fees or**~~

1 ~~costs and disbursements relates, the court's determination may be included in the judgment.~~
 2 ~~If a judgment on the cause has been entered before the court has determined the claim for~~
 3 ~~attorney fees or costs and disbursements, the determination of the court shall be set forth~~
 4 ~~in an order separate from the judgment. No other findings of fact or conclusions of law shall~~
 5 ~~be necessary.~~

6 ~~C.(4)(f) Entry and effect of award of attorney fees and costs and disbursements. The or-~~
 7 ~~der shall be filed and entered, and notice thereof shall be given to the parties, in the same~~
 8 ~~manner as provided in Rule 70 B.(1), excluding the last sentence thereof. An order awarding~~
 9 ~~attorney fees or costs and disbursements becomes a part of the judgment on the cause to~~
 10 ~~which the attorney fees or costs and disbursements relate.~~

11 ~~C.(5) Enforcement. Attorney fees and costs and disbursements entered [as part of a judgment]~~
 12 ~~pursuant to this section may be enforced as part of [that] the judgment[. Upon service and filing of~~
 13 ~~objections to the entry of attorney fees and costs and disbursements as part of a judgment, pursuant~~
 14 ~~to paragraph (4)(b) of this section, enforcement of that portion of the judgment shall be stayed until the~~
 15 ~~entry of a statement of attorney fees and costs and disbursements by the court pursuant to paragraph~~
 16 ~~(4)(d) of this section] on the cause to which the award of attorney fees and costs and dis-~~
 17 ~~bursements relates on entry thereof and not before.~~

18 ~~C.(6) Avoidance of multiple collection of attorney fees and costs and disbursements.~~

19 ~~C.(6)(a) Separate judgments for separate claims. Where separate final judgments are granted in~~
 20 ~~one action for separate claims, pursuant to Rule 67 B., the court shall take such steps as necessary~~
 21 ~~to avoid the multiple taxation of the same attorney fees and costs and disbursements in more than~~
 22 ~~one such judgment.~~

23 ~~C.(6)(b) Separate judgments for the same claim. When there are separate judgments entered for~~
 24 ~~one claim (where separate actions are brought for the same claim against several parties who might~~
 25 ~~have been joined as parties in the same action, or where pursuant to Rule 67 B. separate final~~
 26 ~~judgments are entered against several parties for the same claim), attorney fees and costs and dis-~~
 27 ~~bursements may be entered in each such judgment as provided in this rule, but satisfaction of one~~
 28 ~~such judgment shall bar recovery of attorney fees or costs and disbursements included in all other~~
 29 ~~judgments.~~

30 ~~SECTION 6~~²~~AORS 7.010 is amended to read:~~

31 ~~7.010. (1) The records of the circuit, district and county courts include a register, judgment~~
 32 ~~docket[, execution docket] and jury register.~~

33 ~~(2) The record of the Supreme Court and the Court of Appeals is a register.~~

34 ~~(3) All references in this chapter to the clerk or court administrator relate to the office of the~~
 35 ~~clerk or court administrator of the appropriate trial or appellate court.~~

36 ~~SECTION 7~~³~~AORS 7.020 is amended to read:~~

37 ~~7.020. The register is a record wherein the clerk or court administrator shall enter, by its title,~~
 38 ~~every action, suit or proceeding commenced in, or transferred or appealed to, the court, according~~
 39 ~~to the date of its commencement, transfer or appeal. Thereafter, [until the entry of judgment in the~~
 40 ~~register,] the clerk or court administrator shall note therein[, according to] all the following:~~

41 ~~(1) The date [thereof, the] of any filing [or return] of any paper or process. [or]~~

42 ~~(2) The date of making, filing and entry of any order, [rule] judgment, ruling or other direc-~~
 43 ~~tion of the court in or concerning such action, suit or proceeding.~~

44 ~~(3) Any other information required by statute, court order or rule.~~

SECTION ⁴~~5~~ ORS 7.040 is amended to read:

7.040. (1) The judgment docket is a record wherein the clerk or court administrator shall docket judgments for the payment of money and such other judgments and decrees [are docketed] as specifically provided by statute. The judgment docket shall contain the following:

(a) For other than judgments for the payment of money, the judgment docket shall contain the information specifically required by the statute requiring the information to be docketed or by court order or rule.

(b) For judgments for the payment of money, the judgment docket shall contain the following information:

(A) Judgment debtor. [;]

(B) Judgment creditor. [;]

(C) Amount of judgment. [;]

(D) Date of entry in register. [;]

(E) When docketed. [;]

(F) Date of appeal. [;]

(G) Decision on appeal. [;]

(H) Any execution or garnishment issued by the court and the return on any execution or garnishment.

(I) Satisfaction, when entered. [;]

(J) Other such information as may be deemed necessary by court order or court rule.

(2) The judgment docket shall be maintained only during the duration of an enforceable judgment or until such time as a full satisfaction of judgment is entered.

[(3) Not less than 90 days prior to the destruction of the original judgment docket, the clerk or court administrator shall notify the State Archivist of the pending destruction of such docket. The State Archivist may inspect the judgment docket and may retain such records for the state archives.]

(3) Notwithstanding paragraph (b) of subsection (1) of this section, a clerk is not liable for failure to docket a judgment or to enter specific information on the judgment docket where any of the following occur:

(a) The judgment for the payment of money is required to but does not comply with ORCP 70 A.(2) ~~and (3)~~.

(b) The clerk is unable to ascertain the specific information from the separate section under ORCP 70 A.(2) ~~and (3)~~.

"(4) The clerk is not liable for any entering of information in the judgment docket that reflects information actually contained in a judgment or decree whether or not the information in the judgment or decree is correct or properly presented."

SECTION ⁵~~4~~ ORS 18.320 is amended to read:

18.320. (1) Immediately after the entry in the register of judgment for the payment of money in any action the clerk shall docket the judgment in the judgment docket, noting thereon the day, hour and minute of such docketing. The clerk shall rely on the existence of a separate section within the judgment for those judgments subject to ORCP 70 A.(2) ~~and (3)~~ in determining whether the judgment is a judgment for the payment of money and shall only docket therefrom. ~~if the separate section does not exist, or does not comply with ORCP 70 A.(2) and (3), the clerk shall not docket the judgment in the judgment docket unless otherwise instructed by the court.~~

(2) With respect to any judgment docketed in a circuit court judgment docket, the following apply:

(a) At any time thereafter, so long as the original judgment remains in force under ORS 18.360,

1 and is unsatisfied in whole or part, the judgment creditor, or the agent of the judgment creditor,
2 may have recorded a certified copy of the judgment or a lien record abstract in the County Clerk
3 Lien Record for any other county in this state.

4 (b) Upon receipt, the county clerk shall record a certified copy of the judgment or a lien record
5 abstract in the County Clerk Lien Record maintained under ORS 205.130, noting thereon the day,
6 hour and minute of such recording.

7 (c) A certified copy or a lien record abstract of any judgment renewed pursuant to ORS 18.360
8 may likewise be recorded in the County Clerk Lien Record in another county.

9 (d) A certified copy of the judgment, or a certified copy of any renewed judgment under ORS
10 18.360, or lien record abstract of either, shall be recorded in any county other than in the county
11 where a judgment is originally docketed in order for that judgment to be a lien upon the real
12 property of the judgment debtor in that county.

13 **SECTION 6.** ORS 18.410 is amended to read:

14 18.410. (1) This section establishes a procedure to obtain a satisfaction for a judgment for
15 the payment of money when any person, against whom exists a judgment for the payment of
16 money or who is interested in any property upon which any such judgment is a lien, is unable to
17 obtain a satisfaction from a judgment creditor for any reason. The following apply to a pro-
18 cedure under this section:

19 (a) The procedure and all filings, entries and other actions relating to the procedure are
20 to be considered as a continuation of the original action in which the judgment was entered.

21 (b) No appearance fee shall be charged for proceeding under this section.

22 (2) A person described in subsection (1) of this section may request the court which gave
23 the judgment to determine whether the judgment has been paid in full or to determine the
24 amount necessary to satisfy the judgment at a specific time in the future. To make such
25 request, the person must do all of the following:

26 (a) File a motion with the court accompanied by an affidavit setting forth all the follow-
27 ing, to the extent known to the person:

28 (A) The date of entry and principal amount of the judgment.

29 (B) The rate of interest and the date the rate of interest began.

30 (C) The date or dates and amounts of any payments on the judgment.

31 (D) Any amount the person believes is remaining to be paid on the judgment.

32 (E) Supporting mathematical calculations.

33 (F) Any other information necessary or helpful to the court in making its determination.

34 (b) Serve the motion and supporting affidavit on the judgment creditor and, if the person
35 making the request is not the judgment debtor, on the judgment debtor. If the motion is filed
36 within one year of the date of entry of the judgment to which the motion for satisfaction
37 relates, service shall be made as provided in ORCP 9. If the motion is filed more than one
38 year after the date of entry of the judgment to which the motion for satisfaction relates,
39 service shall be made as provided in ORCP 7.

40 (c) File proof of service with the court.

41 (3) Any party served under paragraph (b) of subsection (2) of this section shall have ²¹
42 days or such additional time as may be allowed by the court within which to serve and file
43 a responding affidavit with the court setting forth those parts of the original affidavit with
44 which the person disagrees and any supporting information or mathematical calculations

1 necessary to support the contentions of the objecting party.

2 (4) Not less than seven days after notice of hearing given to the person filing the motion
3 and to the parties served with the motion, the court shall hear and determine the issues
4 between the parties in a summary fashion without a jury. All the following apply to the court
5 proceeding:

6 (a) The court shall give the parties a reasonable opportunity to present evidence relevant
7 to any factual issues in dispute as shown by the affidavits.

8 (b) If the court, based on the record and sufficient evidence, is satisfied that the person
9 making the request is entitled to relief, the court shall issue an order stating all the follow-
10 ing:

11 (A) That the judgment has been satisfied in full or, if the judgment has not been satisfied
12 in full, the specific amount that will satisfy the judgment on a date or within a period of time
13 specified in the order.

14 (B) The party or parties to whom the money is owed.

"(c) If the court finds that the judgment creditor's failure to file a satisfaction of judgment pursuant to ORS 18.350 was willful, the court, on motion, may do either or both of the following:

"(A) The court may require the judgment creditor to pay to the demanding party a sum of money determined to be reasonable as attorney fees, costs and disbursements by awarding the demanding party a separate judgment for such costs.

"(B) The court's order may specify that the demanding party may satisfy the judgment by paying such amounts determined by the court to be necessary to satisfy the judgment less that sum of money the court determines to be reasonable as attorney fees, and costs and disbursements."

15 (5) *[may pay the amount due on such judgment to the clerk of the court in which the judgment*
16 *was rendered, and] If the order provides that the judgment has been satisfied or if money is*
17 *paid to the clerk in the amount and within the time specified in the order, the clerk shall*
18 *thereupon satisfy the judgment upon the records of the court.*

19 (6) If such judgment has been entered in the records or docketed in the judgment docket in any
20 other county than the county in which it was rendered, then a certified copy of the satisfaction may
21 be used for any of the following purposes:

22 (a) Entry *[entered]* in the register of the circuit court for such other county and the clerk of
23 that court shall thereupon satisfy the judgment upon the records of that court.

24 (b) Recording *[A satisfaction may also be recorded]* in the County Clerk Lien Record in any
25 county in which a certified copy of the judgment or lien record abstract was recorded---

26 (7) *[Unless the clerk of the court in which the judgment was rendered sooner turns over the money*
27 *paid to the clerk on the judgment to the person determined by such court to be entitled thereto, the clerk*
28 *shall turn the money over to the appropriate fiscal officer, who shall give the clerk duplicate receipts*
29 *therefor. One of the receipts shall be filed with the papers in the case in which such judgment was*
30 *rendered, and the other shall be retained by the clerk. The fiscal officer shall] The clerk shall, at any*
31 *time, pay the money over to the person who shall be determined to be entitled thereto by the order*
32 *of the court in which the judgment was [rendered] given.*

" SECTION 7. ORS 20.220 is amended to read:

" 20.220. (1) An appeal may be taken from a judgment under ORCP 68C.(4) [on the allowance and taxation of] allowing or denying attorney fees [and] or costs and disbursements on questions of law only, as in other cases. On such appeal the statement of attorney fees [and] or costs and disbursements, the objections thereto[,] and the judgment rendered thereon[, and the exceptions, if any,] shall constitute the trial court file, as defined in ORS 19.005.

"(2) If an appeal is taken from a judgment under ORS 19.010 before the trial court enters a judgment under ORCP 68C.(4), any necessary modification of the appeal shall be pursuant to rules of the appellate court.

"(3) When an appeal is taken from a judgment under ORS 19.010 to which an award of attorney fees or costs and disbursements relates:

"(a) If the appellate court reverses the judgment, the award of attorney fees or costs and disbursements shall be deemed reversed; or

"(b) If the appellate court modifies the judgment such that the party who was awarded attorney fees or costs and disbursements is no longer entitled to the award, the party against whom attorney fees or costs and disbursements were awarded may move for relief under ORCP 71B.(1)(e)."

33 SECTION 8. ORS 24.125 is amended to read:

34 24.125. (1) At the time of the filing of the foreign judgment, the judgment creditor or the credi-
35 tor's lawyer shall make and file with the clerk of the court an affidavit setting forth the names and
36 last-known post-office addresses of the judgment debtor and the judgment creditor, together with a
37 [summary] separate statement containing the information required to be contained in a judg-
38 ment under ORCP 70 A, (2)(a).

39 (2) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice
40 of the filing of the foreign judgment to the judgment debtor at the address given and shall make a
41 note of the mailing in the docket. The notice shall include the name and post-office address of the
42 judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment
43 creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof
44 of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforce-

1 ment proceedings if proof of mailing by the judgment creditor has been filed.

2 (3) No execution or other process for enforcement of a foreign judgment filed pursuant to ORS
3 24.105 to 24.125, 24.135 and 24.155 to 24.175, except a judgment, decree or order of a court of the
4 United States, shall issue until five days after the date the judgment, affidavit and separate
5 statement [and summary] required [under ORCP 70 A.] in subsection (1) of this section are filed.

"SECTION 9. ORS 23.030 is amended to read:

"23.030. Except as otherwise provided in this section, the party in whose favor a judgment is given, which requires the payment of money, the delivery of real or personal property, or either of them, [may] at any time after the entry thereof, [and so long as the judgment remains a lien,] may have a writ of execution issued for its enforcement. In the case of real property[,]:

"(1) No writ shall be issued under this section unless, at the time the application for writ is made, the judgment upon which the writ is issued is docketed in the judgment docket.

"(2) Upon issuance of the writ, the party requesting the writ shall have a certified copy of the writ or an abstract of the writ recorded in the County Clerk Lien Record of the county in which the real property is located."

"SECTION 10. ORS 416.440 is amended to read:

"416.440. (1) The documents required to be filed for purposes of subsection (2) include all the following:

"(a) A true copy of any order entered by the administrator or hearings officer pursuant to ORS 416.400 to 416.470_[, along with]

"(b) A true copy of the return of service, if applicable.

"(c) A separate statement containing the information required to be contained in a judgment under ORCP 70 A.(2)(a).

"(2) The documents described under subsection (1) of this section[,] may be filed in the office of the clerk of the circuit court in the county in which either the parent or the dependent child resides. Upon receipt of the documents, the clerk shall docket the order in the circuit court judgment docket.

"(3) Upon docketing under subsection (2) of this section, the order shall have all the force, effect and attributes of a docketed order or decree of the circuit court, including but not limited to:

"(a) Lien effect[,];

"(b) Ability to be renewed pursuant to ORS 18.360[,]; and

"(c) Ability to be enforced by supplementary proceedings, contempt of court proceedings, writs of execution and writs of garnishment."

6 11
7 SECTION 7. ORS 7.050 is repealed.



JUDICIAL DEPARTMENT

Supreme Court Building
Salem, Oregon 97310

April 11, 1989

Fredric R. Merrill
Executive Director
Council on Court Procedures
University of Oregon
School of Law
Eugene, OR 97403-1221

Re: Amendments to HB 2127 for Senate Consideration

Dear Fred:

Thank you for attending the meeting on April 7, 1989, with representatives of the Council on Court Procedures, the OSB Procedure and Practice Committee, and the Oregon Judicial Department.

The meeting was very productive, and I believe that as a result of that meeting, the Judicial Department will be able to present a "unified" position to the Senate Judiciary Committee on HB 2127.

At the meeting, the Judicial Department agreed to propose four additional amendments to HB 2127 when it is heard on the Senate side. These amendments are intended to address a number of concerns raised by the OSB Procedure and Practice Committee.

The four amendments are as follows:

1. A definition of "money judgment" will be added to ORCP 70A.(2)(a) on page 1, line 25 of the bill as follows:

"70A.(2)(a) Money judgments, contents. Money judgments are judgments that require the payment of money, including judgments for the payment of costs or attorney fees...."

2. In order to meet the concern that HB 2127 does not clearly require notice if a judgment is either not docketed or only partially docketed, the following language will be added at ORCP 70B.(1) on page 2, line 34 of the bill:

"The clerk, on the date judgment is entered, shall mail a notice of the date of entry of judgment in the register and

Fredric Merrill
Page 2
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shall mail a copy of the entry in the judgment docket. If the judgment was not docketed in the judgment docket the clerk shall give notice of this fact."

3. The Procedure and Practice Committee expressed the concern that Section 4 of the bill, which specifies the circumstances under which a clerk is not required to docket a judgment, are too broadly worded and establish a subjective rather than objective standard. For this reason, the sentence on page 6, lines 31-32, which states that the clerk need not docket a money judgment when the "clerk is unable to ascertain the specific information from the separate section under ORCP 70A.(2)" will be deleted.
4. The amendment to ORS 23.030 adds an exception clause that did not exist before. The Practice and Procedure Committee felt that other laws, such as ORS 19.040, which stays execution of a judgment once a supersedeas bond on appeal is filed, may now be affected by ORS 23.030; therefore, the amendment to ORS 23.030 on page 9, line 5 of the bill will be changed as follows:

"23.030. Except as otherwise provided in this section, or as otherwise provided by law, ..."

I have enclosed a draft copy of the proposed amendments to HB 2127 for your convenience.

Thank you for your assistance with this bill.

Sincerely,



R. William Linden, Jr.
State Court Administrator

RWL:KH:dc/E1D89071.F

Enclosure

cc/enc: Bill Taylor

With Amendments Offered By
Oregon Judicial Department

HAND ENGROSSED

House Bill 2127

Ordered printed by the Speaker pursuant to House Rule 12.00A (3). Preparation filed (at the request of Judicial Department)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Modifies certain requirements relating to judgments.

20.220, 23.030

A BILL FOR AN ACT

416.440 and ORCP

1
2 Relating to courts; amending ORS 7.010, 7.020, 7.040, 18.320, 18.410, 24.125 and ORCP 66 C and 70;
3 and repealing ORS 7.050.

4 Be It Enacted by the People of the State of Oregon:

5 SECTION 1. ORCP 70 is amended to read:

6 A. Form Every judgment shall be in writing plainly [labeled] titled as a judgment and set forth
7 in a separate document. A default or stipulated judgment may have appended or subjoined thereto
8 such affidavits, certificates, motions, stipulations, and exhibits as may be necessary or proper in
9 support of the entry thereof.

10 A.(1) Content. No particular form of words is required, but every judgment shall:

11 A.(1)(a) Specify clearly the party or parties in whose favor it is given and against whom it is
given and the relief granted or other determination of the action.

13 A.(1)(b) Be signed by the court or judge rendering such judgment or, in the case of judgment
14 entered pursuant to Rule 69 B.(1), by the clerk.

15 ~~A.(1)(c) If the judgment provides for the payment of money, [contain a summary of the type de-~~
16 ~~scribed] comply with the requirements in [section 70] subsection A.(2) of this rule. If the judg-~~
17 ~~ment does not comply with the requirements in subsection A.(2) of this rule, it shall not be~~
18 ~~docketed in the judgment docket as provided under ORS 18.620.~~

19 ~~A.(2) [Summary. When] Money judgments; requirements. As required under [section 70] par-~~
20 ~~agraph A.(1)(c) of this rule, a judgment [for] the payment of money must comply with the~~
21 ~~requirements of this part, listed below, and must comply with subsection A.(3) of this rule re-~~
22 ~~lating to the form of presentation of the requirements. [These] The requirements [relating to a~~
23 ~~summary] of this part are not jurisdictional for purposes of appellate review. [and are subject to]~~
24 ~~The requirements [under section 70 A.(3) of this rule. A summary shall include] of a money judg-~~
25 ~~ment include all of the following:~~

"A.(2)(a) Money judgment; contents. Money judgments are judgments that require the payment of money, including judgments for the payment of costs or attorney fees. The requirements of this subsection are not jurisdictional for purposes of appellate review. Money judgments shall include all of the following:"

26 A.(2)(a) ~~(i)~~ The names of the judgment creditor and the creditor's attorney.

27 A.(2)(a) ~~(ii)~~ The name of the judgment debtor.

28 A.(2)(a) ~~(iii)~~ The amount of the judgment.

29 A.(2)(a) ~~(iv)~~ The interest owed to the date of the judgment, either as a specific amount or as accrual
30 information, including the rate or rates of interest, the balance or balances upon which interest
31 accrues, the date or dates from which interest at each rate on each balance runs, and whether in-
32 terest is simple or compounded and, if compounded, at what intervals.

1 A.(2)(e) Any specific amounts awarded in the judgment that are taxable as costs or attorney
2 fees.] (a)(v)

3 A.(2)(f) ~~(f)~~ Post-judgment interest accrual information, including the rate or rates of interest,
4 the balance or balances upon which interest accrues, the date or dates from which interest at each
5 rate on each balance runs, and whether interest is simple or compounded and, if compounded, at
6 what intervals.

7 A.(2)(g) ~~(g)~~ For judgments that accrue on a periodic basis, any accrued arrearages, required
8 further payments per period and accrual dates.

9 A.(2)(h) ~~(h)~~ If the judgment awards costs and disbursements or attorney fees, that they are
10 awarded and any specific amounts awarded. This paragraph does not require inclusion of
11 specific amounts where such will be determined later under Rule 68 C.

12 A.(3) Submitting and certifying summary. The following apply to the summary described under
13 section 70 A.(2) of this rule.:

14 A.(3)(a) The summary shall be served on the opposing parties who are not in default or on their
15 attorneys of record as required under ORCP 9.)

16 A.(3)(b) The attorney for the party in whose favor the judgment is rendered or the party directed
17 to prepare the judgment shall certify on the summary that the information in the summary accurately
18 reflects the judgment.]

19 A.(3)(b) ~~Money judgments, form~~ ^{Form} To comply with the requirements of ^{paragraph A.(2)(a)} subsection A.(2) of
20 this rule, the requirements in that ^{paragraph} subsection must be presented in a manner that complies
21 with all of the following:

22 A.(3)(a) ~~(i)~~ The requirements must be presented in a separate, discrete section immediately
23 above the judge's signature if the judgment contains more provisions than just the require-
24 ments of ^{paragraph A.(2)(a)} subsection A.(2) of this rule.

25 A.(3)(b) ~~(i)~~ The separate section must be clearly labeled at its beginning as a money judg-
26 ment.

27 A.(3)(c) ~~(i)~~ The separate section must contain no other provisions except what is specifically
28 required by this rule for judgments for the payment of money.

29 A.(3)(d) ~~(i)~~ The requirements under ^{paragraph A.(2)(a)} subsection A.(2) of this rule must be presented in the
30 same order as set forth in that ^{paragraph} subsection.

"A.(3) If the proposed judgment does not comply with the requirements in subsection A.(1) and (2) of this rule, it shall not be signed by the judge. If the judge signs the judgment, it shall be entered in the register whether or not it complies with the requirements in subsection A.(1) and (2) of this rule."

31 B. Entry of judgments.

32 B.(1) Filing, entry, notice. All judgments shall be filed and notation of the filing shall be en-
33 tered in the register by the clerk. The clerk ~~(shall)~~, on the date judgment is entered, shall mail a
34 notice of the date of entry of the judgment in the register and ~~whether the judgment was~~
"shall mail a copy of the entry in the judgment docket. If the judgment was not docketed in the judgment docket the clerk shall give notice of this fact."

35 ~~docketed in the judgment docket.~~ The clerk shall mail the notice to the attorneys of record, if
36 any, of each party who is not in default for failure to appear. If a party who is not in default for
37 failure to appear does not have an attorney of record, such notice shall be mailed to the party. The
38 clerk also shall make a note in the [judgment docket] register of the mailing. In the entry of all
39 judgments, except a judgment by default under Rule 69 B.(1), the clerk shall be subject to the di-
40 rection of the court. Entry of judgment in the register and docketing of the judgment in the
41 judgment docket shall not be delayed for taxation of costs, disbursements, and attorney fees under
42 Rule 68.

43 **B.(2) Judgment effective upon entry. Notwithstanding ORS 3.070 or any other rule or statute, for**
44 **purposes of these rules, a judgment is effective only when entered in the register as provided in**

1 this rule.

2 **B.(3) Time for entry.** The clerk shall enter the judgment in the register within 24 hours, ex-
 3 cluding Saturdays and legal holidays, of the time the judgment is filed. When the clerk is unable to
 4 or omits to enter judgment within the time prescribed in this subsection, it may be entered any time
 5 thereafter.

6 **C. Submission of forms of judgment.** Attorneys shall submit proposed forms for judgment at the
 7 direction of the court rendering the judgment. The proposed form must comply with section A.
 8 of this rule. When so ordered by the court, the proposed form of judgment shall be served five days
 9 prior to the submission of judgment in accordance with Rule 9 B. The proposed form of judgment
 10 shall be filed and proof of service made in accordance with Rule 9 C.

11 **D. "Clerk" defined.** Reference to "clerk" in this rule shall include the clerk of court or any
 12 person performing the duties of that office.

13 **SECTION 2. ORCP 68 C. is amended to read:**

14 **C. Award of and entry of judgment for attorney fees and costs and disbursements.**

15 **C.(1) Application of this section to award of attorney fees.** Notwithstanding Rule 1 A and the
 16 procedure provided in any rule or statute permitting recovery of attorney fees in a particular case,
 17 this section governs the pleading, proof, and award of attorney fees in all cases, regardless of the
 18 source of the right to recovery of such fees, except where:

19 C.(1)(a) ORS 105.405 (2) or 107.105 (1)(i) provide the substantive right to such items; or

20 C.(1)(b) Such items are claimed as damages arising prior to the action; or

21 C.(1)(c) Such items are granted by order, rather than entered as part of a judgment.

22 **C.(2) Asserting claim for attorney fees.** A party seeking attorney fees shall assert the right to
 23 recover such fees by alleging the facts, statute, or rule which provides a basis for the award of such
 24 fees in a pleading filed by that party. A party shall not be required to allege a right to a specific
 25 amount of attorney fees; an allegation that a party is entitled to "reasonable attorney fees" is suf-
 26 ficient. If a party does not file a pleading and seeks judgment or dismissal by motion, a right to at-
 27 torney fees shall be asserted by a demand for attorney fees in such motion, in substantially similar
 28 form to the allegations required by this subsection. Such allegation shall be taken as substantially
 29 denied and no responsive pleading shall be necessary. Attorney fees may be sought before the sub-
 30 stantive right to recover such fees accrues. No attorney fees shall be awarded unless a right to re-
 31 cover such fee is asserted as provided in this subsection.

32 **C.(3) Proof.** The items of attorney fees and costs and disbursements shall be submitted in the
 33 manner provided by subsection (4) of this section, without proof being offered during the trial.

34 **C.(4) Award of attorney fees and costs and disbursements; entry and enforcement of judgment.**
 35 *Attorney fees and costs and disbursements shall be entered as part of the judgment as follows:*

36 **C.(4)(a) Entry by clerk.** *Attorney fees and costs and disbursements (whether a cost or disbursement
 37 has been paid or not) shall be entered as part of a judgment if the party claiming them:*

38 **C.(4)(a)(i) Serves, in accordance with Rule 9 B., a verified and detailed statement of the amount
 39 of attorney fees and costs and disbursements upon all parties who are not in default for failure to ap-
 40 pear, not later than 10 days after the entry of the judgment; and]**

41 **C.(4)(a)(ii) Files the original statement and proof of service, if any, in accordance with Rule 9 C.,
 42 with the court.]**

43 *(For any default judgment where attorney fees are included in the statement referred to in sub-
 44 paragraph (i) of this paragraph, such attorney fees shall not be entered as part of the judgment unless*

approved by the court before such entry.]

2 C.(4)(b) Objections. A party may object to the allowance of attorney fees and costs and disburse-
 3 ments or any part thereof as part of a judgment by filing and serving written objections to such state-
 4 ment, signed in accordance with Rule 17, not later than 15 days after the service of the statement of
 5 the amount of such items upon such party under paragraph (a) of this subsection. Objections shall be
 6 specific and may be founded in law or in fact and shall be deemed controverted without further
 7 pleading. Statements and objections may be amended in accordance with Rule 23.]

8 C.(4)(c) Review by the court; hearing. Upon service and filing of timely objections, the court,
 9 without a jury, shall hear and determine all issues of law or fact raised by the statement and ob-
 10 jections. Parties shall be given a reasonable opportunity to present evidence and affidavits relevant to
 11 any factual issues.]

12 C.(4)(d) Entry by court. After the hearing the court shall make a statement of the attorney fees and
 13 costs and disbursements allowed, which shall be entered as a part of the judgment. No other findings
 14 of fact or conclusions of law shall be necessary.]

15 C.(4) Procedure for claiming attorney fees and costs and disbursements. The procedure
 16 for claiming attorney fees and costs and disbursements shall be as follows:

17 C.(4)(a) Filing and serving claim for attorney fees and costs and disbursements. A party
 18 claiming attorney fees or costs and disbursements shall, not later than 14 days after entry
 19 of judgment:

20 C.(4)(a)(i) File with the court a verified and detailed statement of the amount of attorney
 21 fees and costs and disbursements, together with proof of service, if any, in accordance with
 22 Rule 9 C.; and

23 C.(4)(a)(ii) Serve, in accordance with Rule 9 B., a copy of the statement on all parties
 24 who are not in default for failure to appear.

25 C.(4)(b) Objections. A party may object to a statement claiming attorney fees and costs
 26 and disbursements or any part thereof by written objections to the statement. The objections
 27 shall be signed in accordance with Rule 17 and served and filed within 14 days after service
 28 of the statement on the party under subparagraph (ii) of paragraph (a) of this subsection.
 29 The objections shall be specific and may be founded in law or in fact and shall be deemed
 30 controverted without further pleading.

31 C.(4)(c) Amendment of statements and objections. Statements and objections may be
 32 amended in accordance with Rule 23.

33 C.(4)(d) Entry by the clerk. If no objection to a statement of attorney fees or costs and
 34 disbursements is timely filed, the clerk shall docket in the judgment docket the amount
 35 claimed in the statement. For any default judgment where attorney fees are included in the
 36 statement, the attorney fees shall not be entered as part of the judgment unless approved
 37 by the court before entry.

38 C.(4)(e)(i) Hearing on objections. If objections to a statement of attorney fees or costs
 39 and disbursements are filed, the court, without a jury, shall hear and determine all issues
 40 of law or fact raised by the statement and objections. Parties shall be given a reasonable
 41 opportunity to present evidence and affidavits relevant to any factual issue.

42 C.(4)(e)(ii) Memorializing the determination of the court. The court shall deny or allow
 43 in whole or in part the statement of attorney fees and costs and disbursements. If no judg-
 44 ment has been entered disposing of the cause to which the statement of attorney fees or

1 costs and disbursements relates, the court's determination may be included in the judgment.
 2 If a judgment on the cause has been entered before the court has determined the claim for
 3 attorney fees or costs and disbursements, the determination of the court shall be set forth
 4 in an order separate from the judgment. No other findings of fact or conclusions of law shall
 5 be necessary.

6 C.(4)(f) Entry and effect of award of attorney fees and costs and disbursements. The or-
 7 der shall be filed and entered, and notice thereof shall be given to the parties, in the same
 8 manner as provided in Rule 70 B.(1), excluding the last sentence thereof. An order awarding
 9 attorney fees or costs and disbursements becomes a part of the judgment on the cause to
 10 which the attorney fees or costs and disbursements relate.

11 C.(5) Enforcement. Attorney fees and costs and disbursements entered [as part of a judgment]
 12 pursuant to this section may be enforced as part of [that] the judgment. Upon service and filing of
 13 objections to the entry of attorney fees and costs and disbursements as part of a judgment, pursuant
 14 to paragraph (4)(b) of this section, enforcement of that portion of the judgment shall be stayed until the
 15 entry of a statement of attorney fees and costs and disbursements by the court pursuant to paragraph
 16 (4)(d) of this section] on the cause to which the award of attorney fees and costs and dis-
 17 bursements relates on entry thereof and not before.

18 C.(6) Avoidance of multiple collection of attorney fees and costs and disbursements.

19 C.(6)(a) Separate judgments for separate claims. Where separate final judgments are granted in
 20 one action for separate claims, pursuant to Rule 67 B., the court shall take such steps as necessary
 21 to avoid the multiple taxation of the same attorney fees and costs and disbursements in more than
 22 one such judgment.

23 C.(6)(b) Separate judgments for the same claim. When there are separate judgments entered for
 24 one claim (where separate actions are brought for the same claim against several parties who might
 25 have been joined as parties in the same action, or where pursuant to Rule 67 B. separate final
 26 judgments are entered against several parties for the same claim), attorney fees and costs and dis-
 27 bursements may be entered in each such judgment as provided in this rule, but satisfaction of one
 28 such judgment shall bar recovery of attorney fees or costs and disbursements included in all other
 29 judgments.

30 ²
 SECTION 7.010 is amended to read:

31 7.010. (1) The records of the circuit, district and county courts include a register, judgment
 32 docket, [execution docket] and jury register.

33 (2) The record of the Supreme Court and the Court of Appeals is a register.

34 (3) All references in this chapter to the clerk or court administrator relate to the office of the
 35 clerk or court administrator of the appropriate trial or appellate court.

36 ³
 SECTION 7.020 is amended to read:

37 7.020. The register is a record wherein the clerk or court administrator shall enter, by its title,
 38 every action, suit or proceeding commenced in, or transferred or appealed to, the court, according
 39 to the date of its commencement, transfer or appeal. Thereafter, [until the entry of judgment in the
 40 register,] the clerk or court administrator shall note therein, [according to] all the following:

41 (1) The date [thereof, the] of any filing [or return] of any paper or process. [or]

42 (2) The date of making, filing and entry of any order, [rule] judgment, ruling or other direc-
 43 tion of the court in or concerning such action, suit or proceeding.

44 (3) Any other information required by statute, court order or rule.

SECTION ⁴ 7.040 is amended to read:

7.040. (1) The judgment docket is a record wherein the clerk or court administrator shall docket judgments for the payment of money and such other judgments and decrees [are docketed] as specifically provided by statute. The judgment docket shall contain the following:

(a) For other than judgments for the payment of money, the judgment docket shall contain the information specifically required by the statute requiring the information to be docketed or by court order or rule.

(b) For judgments for the payment of money, the judgment docket shall contain the following information:

(A) Judgment debtor. [;]

(B) Judgment creditor. [;]

(C) Amount of judgment. [;]

(D) Date of entry in register. [;]

(E) When docketed. [;]

(F) Date of appeal. [;]

(G) Decision on appeal. [;]

(H) Any execution or garnishment issued by the court and the return on any execution or garnishment.

(I) Satisfaction, when entered. [;]

(J) Other such information as may be deemed necessary by court order or court rule.

(2) The judgment docket shall be maintained only during the duration of an enforceable judgment or until such time as a full satisfaction of judgment is entered.

(3) *Not less than 90 days prior to the destruction of the original judgment docket, the clerk or court administrator shall notify the State Archivist of the pending destruction of such docket. The State Archivist may inspect the judgment docket and may retain such records for the state archives.*

(3) Notwithstanding paragraph (b) of subsection (1) of this section, a clerk is not liable for failure to docket a judgment or to enter specific information on the judgment docket where "the judgment for the payment of money is required to but does not comply with ORCP 70 A.(2)."

~~(b) The clerk is unable to ascertain the specific information from the separate section under ORCP 70 A.(2) and (3).~~

"(4) The clerk is not liable for any entering of information in the judgment docket that reflects information actually contained in a judgment or decree whether or not the information in the judgment or decree is correct or properly presented."

SECTION ⁵ 18.320 is amended to read:

18.320. (1) Immediately after the entry in the register of judgment for the payment of money in any action the clerk shall docket the judgment in the judgment docket, noting thereon the day, hour and minute of such docketing. The clerk shall rely on the existence of a separate section within the judgment for those judgments subject to ORCP 70 A.(2) ~~and (3)~~ in determining whether the judgment is a judgment for the payment of money and shall only docket therefrom. ~~If the separate section does not exist or does not comply with ORCP 70 A.(2) and (3) the clerk shall not docket the judgment in the judgment docket unless otherwise instructed by the court.~~

(2) With respect to any judgment docketed in a circuit court judgment docket, the following apply:

(a) At any time thereafter, so long as the original judgment remains in force under ORS 18.360,

1 and is unsatisfied in whole or part, the judgment creditor, or the agent of the judgment creditor,
2 may have recorded a certified copy of the judgment or a lien record abstract in the County Clerk
3 Lien Record for any other county in this state.

4 (b) Upon receipt, the county clerk shall record a certified copy of the judgment or a lien record
5 abstract in the County Clerk Lien Record maintained under ORS 205.130, noting thereon the day,
6 hour and minute of such recording.

7 (c) A certified copy or a lien record abstract of any judgment renewed pursuant to ORS 18.360
8 may likewise be recorded in the County Clerk Lien Record in another county.

9 (d) A certified copy of the judgment, or a certified copy of any renewed judgment under ORS
10 18.360, or lien record abstract of either, shall be recorded in any county other than in the county
11 where a judgment is originally docketed in order for that judgment to be a lien upon the real
12 property of the judgment debtor in that county.

13 SECTION 4. ORS 18.410 is amended to read:

14 18.410. (1) This section establishes a procedure to obtain a satisfaction for a judgment for
15 the payment of money when any person, against whom exists a judgment for the payment of
16 money or who is interested in any property upon which any such judgment is a lien, is unable to
17 obtain a satisfaction from a judgment creditor for any reason. The following apply to a pro-
18 cedure under this section:

19 (a) The procedure and all filings, entries and other actions relating to the procedure are
20 to be considered as a continuation of the original action in which the judgment was entered.

21 (b) No appearance fee shall be charged for proceeding under this section.

22 (2) A person described in subsection (1) of this section may request the court which gave
23 the judgment to determine whether the judgment has been paid in full or to determine the
24 amount necessary to satisfy the judgment at a specific time in the future. To make such
25 request, the person must do all of the following:

26 (a) File a motion with the court accompanied by an affidavit setting forth all the follow-
27 ing, to the extent known to the person:

28 (A) The date of entry and principal amount of the judgment.

29 (B) The rate of interest and the date the rate of interest began.

30 (C) The date or dates and amounts of any payments on the judgment.

31 (D) Any amount the person believes is remaining to be paid on the judgment.

32 (E) Supporting mathematical calculations.

33 (F) Any other information necessary or helpful to the court in making its determination.

34 (b) Serve the motion and supporting affidavit on the judgment creditor and, if the person
35 making the request is not the judgment debtor, on the judgment debtor. If the motion is filed
36 within one year of the date of entry of the judgment to which the motion for satisfaction
37 relates, service shall be made as provided in ORCP 9. If the motion is filed more than one
38 year after the date of entry of the judgment to which the motion for satisfaction relates,
39 service shall be made as provided in ORCP 7.

40 (c) File proof of service with the court.

41 (3) Any party served under paragraph (b) of subsection (2) of this section shall have ²¹~~14~~
42 days or such additional time as may be allowed by the court within which to serve and file
43 a responding affidavit with the court setting forth those parts of the original affidavit with
44 which the person disagrees and any supporting information or mathematical calculations

necessary to support the contentions of the objecting party.

(4) Not less than seven days after notice of hearing given to the person filing the motion and to the parties served with the motion, the court shall hear and determine the issues between the parties in a summary fashion without a jury. All the following apply to the court proceeding:

(a) The court shall give the parties a reasonable opportunity to present evidence relevant to any factual issues in dispute as shown by the affidavits.

(b) If the court, based on the record and sufficient evidence, is satisfied that the person making the request is entitled to relief, the court shall issue an order stating all the following:

(A) That the judgment has been satisfied in full or, if the judgment has not been satisfied in full, the specific amount that will satisfy the judgment on a date or within a period of time specified in the order.

(B) The party or parties to whom the money is owed.

"(c) If the court finds that the judgment creditor's failure to file a satisfaction of judgment pursuant to ORS 18.350 was willful, the court, on motion, may do either or both of the following:

"(A) The court may require the judgment creditor to pay to the demanding party a sum of money determined to be reasonable as attorney fees, costs and disbursements by awarding the demanding party a separate judgment for such costs.

"(B) The court's order may specify that the demanding party may satisfy the judgment by paying such amounts determined by the court to be necessary to satisfy the judgment less that sum of money the court determines to be reasonable as attorney fees, and costs and disbursements."

(5) [may pay the amount due on such judgment to the clerk of the court in which the judgment was rendered, and] If the order provides that the judgment has been satisfied or if money is paid to the clerk in the amount and within the time specified in the order, the clerk shall thereupon satisfy the judgment upon the records of the court.

(6) If such judgment has been entered in the records or docketed in the judgment docket in any other county than the county in which it was rendered, then a certified copy of the satisfaction may be used for any of the following purposes:

(a) Entry [entered] in the register of the circuit court for such other county and the clerk of that court shall thereupon satisfy the judgment upon the records of that court.

(b) Recording [A satisfaction may also be recorded] in the County Clerk Lien Record in any county in which a certified copy of the judgment or lien record abstract was recorded.

(7) [Unless the clerk of the court in which the judgment was rendered sooner turns over the money paid to the clerk on the judgment to the person determined by such court to be entitled thereto, the clerk shall turn the money over to the appropriate fiscal officer, who shall give the clerk duplicate receipts therefor. One of the receipts shall be filed with the papers in the case in which such judgment was rendered, and the other shall be retained by the clerk. The fiscal officer shall] The clerk shall, at any time, pay the money over to the person who shall be determined to be entitled thereto by the order of the court in which the judgment was [rendered] given

" SECTION 7. ORS 20.220 is amended to read:

" 20.220. (1) An appeal may be taken from a judgment under ORCP 68C.(4) [on the allowance and taxation of] allowing or denying attorney fees [and] or costs and disbursements on questions of law only, as in other cases. On such appeal the statement of attorney fees [and] or costs and disbursements, the objections thereto[,] and the judgment rendered thereon[, and the exceptions, if any,] shall constitute the trial court file, as defined in ORS 19.005.

"(2) If an appeal is taken from a judgment under ORS 19.010 before the trial court enters a judgment under ORCP 68C.(4), any necessary modification of the appeal shall be pursuant to rules of the appellate court.

"(3) When an appeal is taken from a judgment under ORS 19.010 to which an award of attorney fees or costs and disbursements relates:

"(a) If the appellate court reverses the judgment, the award of attorney fees or costs and disbursements shall be deemed reversed; or

"(b) If the appellate court modifies the judgment such that the party who was awarded attorney fees or costs and disbursements is no longer entitled to the award, the party against whom attorney fees or costs and disbursements were awarded may move for relief under ORCP 71B.(1)(e)."

13 SECTION 8. ORS 24.125 is amended to read:

14 24.125. (1) At the time of the filing of the foreign judgment, the judgment creditor or the credi-
15 tor's lawyer shall make and file with the clerk of the court an affidavit setting forth the names and
16 last-known post-office addresses of the judgment debtor and the judgment creditor, together with a
17 [summary] separate statement containing the information required to be contained in a judg-
18 ment under ORCP 70 A, (a)(a).

19 (2) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice
20 of the filing of the foreign judgment to the judgment debtor at the address given and shall make a
21 note of the mailing in the docket. The notice shall include the name and post-office address of the
22 judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment
23 creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof
24 of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforce-

1 ment proceedings if proof of mailing by the judgment creditor has been filed.

2 (3) No execution or other process for enforcement of a foreign judgment filed pursuant to ORS
3 24.105 to 24.125, 24.135 and 24.155 to 24.175, except a judgment, decree or order of a court of the
4 United States, shall issue until five days after the date the judgment, affidavit and separate
5 statement [and summary] required [under ORCP 70 A.] in subsection (1) of this section are filed.

"SECTION 9. ORS 23.030 is amended to read:

"23.030. Except as otherwise provided in this section, or as otherwise provided by law, the party in whose favor a judgment is given, which requires the payment of money, the delivery of real or personal property, or either of them, at any time after the entry thereof, may have a writ of execution issued for its enforcement. In the case of real property[,];

"(1) No writ shall be issued under this section unless, at the time the application for writ is made, the judgment upon which the writ is issued is docketed in the judgment docket.

"(2) Upon issuance of the writ, the party requesting the writ shall have a certified copy of the writ or an abstract of the writ recorded in the County Clerk Lien Record of the county in which the real property is located."

"SECTION 10. ORS 416.440 is amended to read:

"416.440. (1) The documents required to be filed for purposes of subsection (2) include all the following:

"(a) A true copy of any order entered by the administrator or hearings officer pursuant to ORS 416.400 to 416.470, [, along with]

"(b) A true copy of the return of service, if applicable,

"(c) A separate statement containing the information required to be contained in a judgment under ORCP 70 A.(2)(a).

"(2) The documents described under subsection (1) of this section[,] may be filed in the office of the clerk of the circuit court in the county in which either the parent or the dependent child resides. Upon receipt of the documents, the clerk shall docket the order in the circuit court judgment docket.

"(3) Upon docketing under subsection (2) of this section, the order shall have all the force, effect and attributes of a docketed order or decree of the circuit court, including but not limited to:

"(a) Lien effect[,];

"(b) Ability to be renewed pursuant to ORS 18.360[,]; and

"(c) Ability to be enforced by supplementary proceedings, contempt of court proceedings, writs of execution and writs of garnishment."

6 ||
7 SECTION ~~7~~. ORS 7.050 is repealed.

MEMORANDUM

April 17, 1989

TO: MEMBERS, COUNCIL ON COURT PROCEDURES
FROM: Fred Merrill, Executive Director

Due to financial limitations, we will probably be able to meet only once more this biennium. It seems advisable to have it a bit later in the legislative session, so we are rescheduling the meeting now scheduled for May 13, 1989 to May 20, 1989. The next meeting will be held:

**SATURDAY, MAY 20, 1989, 9:30 a.m.
OREGON STATE BAR OFFICES
LAKE OSWEGO, OREGON**

Ron Marceau and I attended another 1989 legislative hearing on HB 2127 and met several times with representatives of the State Bar Procedure and Practice Committee and the State Court Administrator's Office relating to the Bill. The results were quite favorable. All recommendations made by the Council have been incorporated in the Bill, which has been accepted with a do pass recommendation by the House Judiciary Committee. The Procedure and Practice Committee had some further recommended changes. In our opinion, they are not inconsistent with the position taken by the Council and generally improve the Bill. We so indicated to the Court Administrator's Office and to the House Judiciary Committee. These amendments will probably be added by the Senate. The changes are set out in the attached letter from the Court Administrator dated April 11, 1989. A hand-engrossed version of the of the current Bill is also enclosed.

The discussions relating to this Bill have revealed that there are some further problems relating to docketing judgments that should be addressed. It is anticipated that the subcommittee which the Council has appointed in this area will work closely with the Procedure and Practice Committee and the Court Administrator's Office during the next biennium.

A copy of the agenda is also enclosed.

FRM:gh

Enclosures

M E M O R A N D U M

May 5, 1989

TO: MEMBERS, COUNCIL ON COURT PROCEDURES
FROM: Fred Merrill, Executive Director
RE: Next meeting and HB 2127

Enclosed is the A-Engrossed version of HB 2127 which contains the changes finally worked out by the Council, the Procedure and Practice Committee, and the State Court Administrator's Office. Some of you may have received some inquiries about the bill due to the article on page 4 of the April issue of the Oregon State Bar For the Record. At the top of the last column on that page there is a typographical error. It says if the judge signs a money judgment that does not contain the required information for money judgments, the judgment is "invalid." It should have said "valid." This is covered by the last sentence of 70 A(3) (page 2, lines 42-43, of the A-Engrossed Bill) which says that if the judge signs a judgment, it must be entered whether or not it has proper money judgment information.

Please be reminded that our next meeting is scheduled for Saturday, May 20, 1989, at 9:30 a.m., in the State Bar building in Lake Oswego, Oregon.

Enclosure

**A-Engrossed
House Bill 2127**

Ordered by the House April 25
Including House Amendments dated April 25

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Judicial Department)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Revises certain requirements relating to judgments.

A BILL FOR AN ACT

1
2 Relating to courts; amending ORS 7.010, 7.020, 7.040, 18.320, 18.410, 20.220, 23.030, 24.125, 416.440
3 and ORCP 70; and repealing ORS 7.050.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORCP 70 is amended to read:

6 A. Form. Every judgment shall be in writing plainly *[labeled]* **titled** as a judgment and set forth
7 in a separate document. A default or stipulated judgment may have appended or subjoined thereto
8 such affidavits, certificates, motions, stipulations, and exhibits as may be necessary or proper in
9 support of the entry thereof.

10 A.(1) Content. No particular form of words is required, but every judgment shall:

11 A.(1)(a) Specify clearly the party or parties in whose favor it is given and against whom it is
12 given and the relief granted or other determination of the action.

13 A.(1)(b) Be signed by the court or judge rendering such judgment or, in the case of judgment
14 entered pursuant to Rule 69 B.(1), by the clerk.

15 **A.(2)(a) Money judgment contents. The requirements of this subsection are not jurisdic-**
16 **tional for purposes of appellate review. Money judgments shall include all of the following:**

17 *[A.(1)(c) If the judgment provides for the payment of money, contain a summary of the type de-*
18 *scribed in section 70 A.(2) of this rule.]*

19 *[A.(2) Summary. When required under A.(1)(c) of this rule a judgment shall comply with the re-*
20 *quirements of this part. These requirements relating to a summary are not jurisdictional for purposes*
21 *of appellate review and are subject to The requirements under section 70 A.(3) of this rule. A summary*
22 *shall include all of the following:]*

23 A.(2)(a)(i) **The names of the judgment creditor and the creditor's attorney.**

24 A.(2)(b) **(a)(ii) The name of the judgment debtor.**

25 A.(2)(c) **(a)(iii) The amount of the judgment.**

26 A.(2)(d) **(a)(iv) The interest owed to the date of the judgment, either as a specific amount or**
27 **as accrual information, including the rate or rates of interest, the balance or balances upon which**
28 **interest accrues, the date or dates from which interest at each rate on each balance runs, and**
29 **whether interest is simple or compounded and, if compounded, at what intervals.**

NOTE: Matter in **bold face** in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.

1 [A.(2)(e) Any specific amounts awarded in the judgment that are taxable as costs or attorney
2 fees.]

3 A.(2)[(f)] (a)(v) Post-judgment interest accrual information, including the rate or rates of inter-
4 est, the balance or balances upon which interest accrues, the date or dates from which interest at
5 each rate on each balance runs, and whether interest is simple or compounded and, if compounded,
6 at what intervals.

7 A.(2)[(g)] (a)(vi) For judgments that accrue on a periodic basis, any accrued arrearages, required
8 further payments per period and accrual dates.

9 A.(2)(a)(vii) **If the judgment awards costs and disbursements or attorney fees, that they
10 are awarded and any specific amounts awarded. This subparagraph does not require inclusion
11 of specific amounts where such will be determined later under Rule 68 C.**

12 [A.(3) Submitting and certifying summary. The following apply to the summary described under
13 section 70 A.(2) of this rule:]

14 [A.(3)(a) The summary shall be served on the opposing parties who are not in default or on their
15 attorneys of record as required under ORCP 9.]

16 [A.(3)(b) The attorney for the party in whose favor the judgment is rendered or the party directed
17 to prepare the judgment shall certify on the summary that the information in the summary accurately
18 reflects the judgment.]

19 A.(2)(b) Form. To comply with the requirements of paragraph A.(2)(a) of this rule, the
20 requirements in that paragraph must be presented in a manner that complies with all of the
21 following:

22 A.(2)(b)(i) The requirements must be presented in a separate, discrete section imme-
23 diately above the judge's signature if the judgment contains more provisions than just the
24 requirements of paragraph A.(2)(a) of this rule.

25 A.(2)(b)(ii) The separate section must be clearly labeled at its beginning as a money
26 judgment.

27 A.(2)(b)(iii) The separate section must contain no other provisions except what is specif-
28 ically required by this rule for judgments for the payment of money.

29 A.(2)(b)(iv) The requirements under paragraph A.(2)(a) of this rule must be presented in
30 the same order as set forth in that paragraph.

31 A.(3) **If the proposed judgment does not comply with the requirements in subsections
32 A.(1) and (2) of this rule, it shall not be signed by the judge. If the judge signs the judgment,
33 it shall be entered in the register whether or not it complies with the requirements in sub-
34 sections A.(1) and (2) of this rule.**

35 B. Entry of judgments.

36 B.(1) Filing; entry; notice. All judgments shall be filed and **notation of the filing** shall be en-
37 tered **in the register** by the clerk. The clerk [shall], on the date judgment is entered, **shall** mail a
38 notice of the date of entry of the judgment **in the register and whether the judgment was**
39 **docketed in the judgment docket.** The clerk shall mail the notice to the attorneys of record, if
40 any, of each party who is not in default for failure to appear. If a party who is not in default for
41 failure to appear does not have an attorney of record, such notice shall be mailed to the party. The
42 clerk also shall make a note in the [judgment docket] **register** of the mailing. In the entry of all
43 judgments, except a judgment by default under Rule 69 B.(1), the clerk shall be subject to the di-
44 rection of the court. **Entry of judgment in the register and docketing of the judgment in the**

1 judgment docket shall not be delayed for taxation of costs, disbursements, and attorney fees under
2 Rule 68.

3 B.(2) Judgment effective upon entry. Notwithstanding ORS 3.070 or any other rule or statute, for
4 purposes of these rules, a judgment is effective only when entered in the register as provided in
5 this rule.

6 B.(3) Time for entry. The clerk shall enter the judgment in the register within 24 hours, ex-
7 cluding Saturdays and legal holidays, of the time the judgment is filed. When the clerk is unable to
8 or omits to enter judgment within the time prescribed in this subsection, it may be entered any time
9 thereafter.

10 C. Submission of forms of judgment. Attorneys shall submit proposed forms for judgment at the
11 direction of the court rendering the judgment. **The proposed form must comply with section A.**
12 **of this rule.** When so ordered by the court, the proposed form of judgment shall be served five days
13 prior to the submission of judgment in accordance with Rule 9 B. The proposed form of judgment
14 shall be filed and proof of service made in accordance with Rule 9 C.

15 D. "Clerk" defined. Reference to "clerk" in this rule shall include the clerk of court or any
16 person performing the duties of that office.

17 **SECTION 2.** ORS 7.010 is amended to read:

18 7.010. (1) The records of the circuit, district and county courts include a register, judgment
19 docket[, *execution docket*] and jury register.

20 (2) The record of the Supreme Court and the Court of Appeals is a register.

21 (3) All references in this chapter to the clerk or court administrator relate to the office of the
22 clerk or court administrator of the appropriate trial or appellate court.

23 **SECTION 3.** ORS 7.020 is amended to read:

24 7.020. The register is a record wherein the clerk or court administrator shall enter, by its title,
25 every action, suit or proceeding commenced in, or transferred or appealed to, the court, according
26 to the date of its commencement, transfer or appeal. Thereafter, [*until the entry of judgment in the*
27 *register,*] the clerk or court administrator shall note therein[, *according to*] **all the following:**

28 (1) The date [*thereof, the*] of any filing [*or return*] of any paper or process. [, *or*]

29 (2) The date of making, filing and entry of any order, [*rule*] **judgment, ruling** or other direc-
30 tion of the court in or concerning such action, suit or proceeding.

31 (3) **Any other information required by statute, court order or rule.**

32 **SECTION 4.** ORS 7.040 is amended to read:

33 7.040. (1) The judgment docket is a record wherein the clerk or court administrator shall
34 docket judgments for the payment of money and such other judgments and decrees [*are*
35 *docketed*] as specifically provided by statute. **The judgment docket shall contain the following:**

36 (a) **For other than judgments for the payment of money, the judgment docket shall con-**
37 **tain the information specifically required by the statute requiring the information to be**
38 **docketed or by court order or rule.**

39 (b) **For judgments for the payment of money, the judgment docket shall contain the follow-**
40 **ing information:**

41 (A) Judgment debtor. [;]

42 (B) Judgment creditor. [;]

43 (C) Amount of judgment. [;]

44 (D) Date of entry in register. [;]

- 1 (E) When docketed. [;]
- 2 (F) Date of appeal. [;]
- 3 (G) Decision on appeal. [;]
- 4 (H) **Any execution or garnishment issued by the court and the return on any execution**
- 5 **or garnishment.**
- 6 (I) Satisfaction, when entered. [;]
- 7 (J) Other such information as may be deemed necessary by court order or court rule.
- 8 (2) The judgment docket shall be maintained only during the duration of an enforceable judg-
- 9 ment or until such time as a full satisfaction of judgment is entered.
- 10 [(3) *Not less than 90 days prior to the destruction of the original judgment docket, the clerk or*
- 11 *court administrator shall notify the State Archivist of the pending destruction of such docket. The State*
- 12 *Archivist may inspect the judgment docket and may retain such records for the state archives.*]
- 13 (3) **Notwithstanding paragraph (b) of subsection (1) of this section, a clerk is not liable**
- 14 **for failure to docket a judgment or to enter specific information on the judgment docket**
- 15 **where any of the following occur:**
- 16 (a) **The judgment for the payment of money is required to but does not comply with**
- 17 **ORCP 70 A.(2).**
- 18 (b) **The clerk is unable to ascertain the specific information from the separate section**
- 19 **under ORCP 70 A.(2).**
- 20 (4) **The clerk is not liable for any entering of information in the judgment docket that**
- 21 **reflects information actually contained in a judgment or decree whether or not the infor-**
- 22 **mation in the judgment or decree is correct or properly presented.**
- 23 **SECTION 5.** ORS 18.320 is amended to read:
- 24 18.320. (1) **Immediately after the entry in the register of judgment for the payment of money**
- 25 **in any action the clerk shall docket the judgment in the judgment docket, noting thereon the day,**
- 26 **hour and minute of such docketing. The clerk shall rely on the existence of a separate section**
- 27 **within the judgment for those judgments subject to ORCP 70 A.(2) in determining whether**
- 28 **the judgment is a judgment for the payment of money and shall only docket therefrom.**
- 29 (2) **With respect to any judgment docketed in a circuit court judgment docket, the following**
- 30 **apply:**
- 31 (a) **At any time thereafter, so long as the original judgment remains in force under ORS 18.360,**
- 32 **and is unsatisfied in whole or part, the judgment creditor, or the agent of the judgment creditor,**
- 33 **may have recorded a certified copy of the judgment or a lien record abstract in the County Clerk**
- 34 **Lien Record for any other county in this state.**
- 35 (b) **Upon receipt, the county clerk shall record a certified copy of the judgment or a lien record**
- 36 **abstract in the County Clerk Lien Record maintained under ORS 205.130, noting thereon the day,**
- 37 **hour and minute of such recording.**
- 38 (c) **A certified copy or a lien record abstract of any judgment renewed pursuant to ORS 18.360**
- 39 **may likewise be recorded in the County Clerk Lien Record in another county.**
- 40 (d) **A certified copy of the judgment, or a certified copy of any renewed judgment under ORS**
- 41 **18.360, or lien record abstract of either, shall be recorded in any county other than in the county**
- 42 **where a judgment is originally docketed in order for that judgment to be a lien upon the real**
- 43 **property of the judgment debtor in that county.**

44 **SECTION 6.** ORS 18.410 is amended to read:

1 18.410. (1) This section establishes a procedure to obtain a satisfaction for a judgment for
2 the payment of money when any person, against whom exists a judgment for the payment of
3 money or who is interested in any property upon which any such judgment is a lien, is unable to
4 obtain a satisfaction from a judgment creditor for any reason. The following apply to a pro-
5 cedure under this section:

6 (a) The procedure and all filings, entries and other actions relating to the procedure are
7 to be considered as a continuation of the original action in which the judgment was entered.

8 (b) No appearance fee shall be charged for proceeding under this section.

9 (2) A person described in subsection (1) of this section may request the court which gave
10 the judgment to determine whether the judgment has been paid in full or to determine the
11 amount necessary to satisfy the judgment at a specific time in the future. To make such
12 request, the person must do all of the following:

13 (a) File a motion with the court accompanied by an affidavit setting forth all the follow-
14 ing, to the extent known to the person:

15 (A) The date of entry and principal amount of the judgment.

16 (B) The rate of interest and the date the rate of interest began.

17 (C) The date or dates and amounts of any payments on the judgment.

18 (D) Any amount the person believes is remaining to be paid on the judgment.

19 (E) Supporting mathematical calculations.

20 (F) Any other information necessary or helpful to the court in making its determination.

21 (b) Serve the motion and supporting affidavit on the judgment creditor and, if the person
22 making the request is not the judgment debtor, on the judgment debtor. If the motion is filed
23 within one year of the date of entry of the judgment to which the motion for satisfaction
24 relates, service shall be made as provided in ORCP 9. If the motion is filed more than one
25 year after the date of entry of the judgment to which the motion for satisfaction relates,
26 service shall be made as provided in ORCP 7.

27 (c) File proof of service with the court.

28 (3) Any party served under paragraph (b) of subsection (2) of this section shall have 21
29 days or such additional time as may be allowed by the court within which to serve and file
30 a responding affidavit with the court setting forth those parts of the original affidavit with
31 which the person disagrees and any supporting information or mathematical calculations
32 necessary to support the contentions of the objecting party.

33 (4) Not less than seven days after notice of hearing given to the person filing the motion
34 and to the parties served with the motion, the court shall hear and determine the issues
35 between the parties in a summary fashion without a jury. All the following apply to the court
36 proceeding:

37 (a) The court shall give the parties a reasonable opportunity to present evidence relevant
38 to any factual issues in dispute as shown by the affidavits.

39 (b) If the court, based on the record and sufficient evidence, is satisfied that the person
40 making the request is entitled to relief, the court shall issue an order stating all the follow-
41 ing:

42 (A) That the judgment has been satisfied in full or, if the judgment has not been satisfied
43 in full, the specific amount that will satisfy the judgment on a date or within a period of time
44 specified in the order.

1 (B) The party or parties to whom the money is owed.

2 (c) If the court finds that the judgment creditor's failure to file a satisfaction of judg-
3 ment pursuant to ORS 18.350 was wilful, the court, on motion, may do either or both of the
4 following:

5 (A) The court may require the judgment creditor to pay to the demanding party a sum
6 of money determined to be reasonable as attorney fees, costs and disbursements by awarding
7 the demanding party a separate judgment for such costs.

8 (B) The court's order may specify that the demanding party may satisfy the judgment
9 by paying such amounts determined by the court to be necessary to satisfy the judgment less
10 that sum of money the court determines to be reasonable as attorney fees, costs and dis-
11 bursements.

12 (5) *[may pay the amount due on such judgment to the clerk of the court in which the judgment*
13 *was rendered, and]* If the order provides that the judgment has been satisfied or if money is
14 paid to the clerk in the amount and within the time specified in the order, the clerk shall
15 thereupon satisfy the judgment upon the records of the court.

16 (6) If such judgment has been entered in the records or docketed in the judgment docket in any
17 other county than the county in which it was rendered, then a certified copy of the satisfaction may
18 be used for any of the following purposes:

19 (a) **Entry** *[entered]* in the register of the circuit court for such other county and the clerk of
20 that court shall thereupon satisfy the judgment upon the records of that court.

21 (b) **Recording** *[A satisfaction may also be recorded]* in the County Clerk Lien Record in any
22 county in which a certified copy of the judgment or lien record abstract was recorded.

23 (7) *[Unless the clerk of the court in which the judgment was rendered sooner turns over the money*
24 *paid to the clerk on the judgment to the person determined by such court to be entitled thereto, the clerk*
25 *shall turn the money over to the appropriate fiscal officer, who shall give the clerk duplicate receipts*
26 *therefor. One of the receipts shall be filed with the papers in the case in which such judgment was*
27 *rendered, and the other shall be retained by the clerk. The fiscal officer shall]* The clerk shall, at any
28 time, pay the money over to the person who shall be determined to be entitled thereto by the order
29 of the court in which the judgment was *[rendered]* given.

30 **SECTION 7.** ORS 20.220 is amended to read:

31 20.220. (1) An appeal may be taken from a judgment under ORCP 68 C.(4) *[on the allowance and*
32 *taxation of]* **allowing or denying** attorney fees *[and]* **or** costs and disbursements on questions of law
33 only, as in other cases. On such appeal the statement of attorney fees *[and]* **or** costs and disburse-
34 ments, the objections thereto[,] **and** the judgment rendered thereon[, *and the exceptions, if any,*] shall
35 constitute the trial court file, as defined in ORS 19.005.

36 (2) If an appeal is taken from a judgment under ORS 19.010 before the trial court enters
37 a judgment under ORCP 68 C.(4), any necessary modification of the appeal shall be pursuant
38 to rules of the appellate court.

39 (3) When an appeal is taken from a judgment under ORS 19.010 to which an award of
40 attorney fees or costs and disbursements relates:

41 (a) If the appellate court reverses the judgment, the award of attorney fees or costs and
42 disbursements shall be deemed reversed; or

43 (b) If the appellate court modifies the judgment such that the party who was awarded
44 attorney fees or costs and disbursements is no longer entitled to the award, the party

1 against whom attorney fees or costs and disbursements were awarded may move for relief
2 under ORCP 71 B.(1)(e).

3 SECTION 8. ORS 24.125 is amended to read:

4 24.125. (1) At the time of the filing of the foreign judgment, the judgment creditor or the credi-
5 tor's lawyer shall make and file with the clerk of the court an affidavit setting forth the names and
6 last-known post-office addresses of the judgment debtor and the judgment creditor, together with a
7 [summary] separate statement containing the information required to be contained in a judg-
8 ment under ORCP 70 A.(2)(a).

9 (2) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice
10 of the filing of the foreign judgment to the judgment debtor at the address given and shall make a
11 note of the mailing in the docket. The notice shall include the name and post-office address of the
12 judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment
13 creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof
14 of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforce-
15 ment proceedings if proof of mailing by the judgment creditor has been filed.

16 (3) No execution or other process for enforcement of a foreign judgment filed pursuant to ORS
17 24.105 to 24.125, 24.135 and 24.155 to 24.175, except a judgment, decree or order of a court of the
18 United States, shall issue until five days after the date the judgment, affidavit and separate
19 statement [and summary] required [under ORCP 70 A.] in subsection (1) of this section are filed.

20 SECTION 9. ORS 23.030 is amended to read:

21 23.030. Except as otherwise provided in this section, the party in whose favor a judgment is
22 given, which requires the payment of money, the delivery of real or personal property, or either of
23 them, [may] at any time after the entry thereof, [and so long as the judgment remains a lien,] may
24 have a writ of execution issued for its enforcement. In the case of real property: [.]

25 (1) No writ shall be issued under this section unless, at the time the application for writ
26 is made, the judgment upon which the writ is issued is docketed in the judgment docket.

27 (2) Upon issuance of the writ, the party requesting the writ shall have a certified copy of the
28 writ or an abstract of the writ recorded in the County Clerk Lien Record of the county in which
29 the real property is located.

30 SECTION 10. ORS 416.440 is amended to read:

31 416.440. (1) The documents required to be filed for purposes of subsection (2) of this sec-
32 tion include all the following:

33 (a) A true copy of any order entered by the administrator or hearings officer pursuant to ORS
34 416.400 to 416.470. [along with]

35 (b) A true copy of the return of service, if applicable.[.]

36 (c) A separate statement containing the information required to be contained in a judg-
37 ment under ORCP 70 A.(2)(a).

38 (2) The documents described under subsection (1) of this section may be filed in the office
39 of the clerk of the circuit court in the county in which either the parent or the dependent child
40 resides. Upon receipt of the documents, the clerk shall docket the order in the circuit court judg-
41 ment docket.

42 (3) Upon docketing under subsection (2) of this section, the order shall have all the force,
43 effect and attributes of a docketed order or decree of the circuit court, including but not limited
44 to:

(a) Lien effect; []

(b) Ability to be renewed pursuant to ORS 18.360; [] and

(c) Ability to be enforced by supplementary proceedings, contempt of court proceedings, writs
seizure and writs of garnishment.

SECTION 11. ORS 7.050 is repealed.

feet, board measure, on the harvesting of all merchantable forest products harvested on forest land on or after July 1, 1989, and prior to July 1, 1991.

SECTION 3. ORS 321.028 is amended to read:
 321.028. (1) The purpose of the tax levied by ORS 321.015 (3) is to derive revenues to defray the costs of administering the Oregon Forest Practices Act, ORS 527.610 to 527.730, in an amount not to exceed 40 percent of the total expenditures approved by the Legislative Assembly for this purpose, including salary adjustments approved by the Legislative Assembly for fiscal years [1988 and 1989] 1990 and 1991.

(2) Notwithstanding ORS 291.238, the moneys transferred to the State Forestry Department Account under ORS 321.152 (3) are appropriated continuously for and shall be used by the State Forester, under the supervision and direction of the board, for the purposes of administering the Oregon Forest Practices Act (ORS 527.610 to 527.730).

Approved by the Governor July 22, 1989
 Filed in the office of Secretary of State July 24, 1989

CHAPTER 767

AN ACT

HB 2100

Relating to forest log brand fees; amending ORS 532.110 and 532.120.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 532.110 is amended to read:
 532.110. The fees to be paid to the State Forester are as follows:

(1) For filing an application to register a mark or brand and registering the same, including the certificate, [\$10] \$20.

(2) For filing an application for an assignment of a registered mark or brand and registering such assignment, including the certificate, [\$10] \$20.

(3) For every other certificate of registration, including a copy of the written statement or assignment, [\$10] \$20.

(4) For each copy of any drawing, the reasonable expense of preparing it.

(5) For renewing brands or marks, [\$10] \$20.

SECTION 2. ORS 532.120 is amended to read:
 532.120. All fees collected by the State Forester under ORS 532.010 to 532.140 shall be paid into the State Treasury, credited [to the General Fund and available for general governmental expenses] to the State Forestry Department Account and available for expenses associated with ORS 532.010 to 532.140.

Approved by the Governor July 22, 1989
 Filed in the office of Secretary of State July 24, 1989

CHAPTER 768

AN ACT

HB 2127

Relating to courts; amending ORS 7.010, 7.020, 7.040, 18.320, 18.410, 19.028, 20.220, 23.030, 24.125, 416.440 and ORCP 70; and repealing ORS 7.050.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORCP 70 is amended to read:

A. Form. Every judgment shall be in writing plainly [labeled] titled as a judgment and set forth in a separate document. A default or stipulated judgment may have appended or subjoined thereto such affidavits, certificates, motions, stipulations, and exhibits as may be necessary or proper in support of the entry thereof.

A.(1) Content. No particular form of words is required, but every judgment shall:

A.(1)(a) Specify clearly the party or parties in whose favor it is given and against whom it is given and the relief granted or other determination of the action.

A.(1)(b) Be signed by the court or judge rendering such judgment or, in the case of judgment entered pursuant to Rule 69 B.(1), by the clerk.

A.(2)(a) Money judgment; contents. Money judgments are judgments that require the payment of money, including judgments for the payment of costs or attorney fees. The requirements of this subsection are not jurisdictional for purposes of appellate review. Money judgments shall include all of the following:

[A.(1)(c) If the judgment provides for the payment of money, contain a summary of the type described in section 70 A.(2) of this rule.]

[A.(2) Summary. When required under A.(1)(c) of this rule a judgment shall comply with the requirements of this part. These requirements relating to a summary are not jurisdictional for purposes of appellate review and are subject to The requirements under section 70 A.(3) of this rule. A summary shall include all of the following:]

A.(2)(a)(i) The names of the judgment creditor and the creditor's attorney.

A.(2)(b) (a)(ii) The name of the judgment debtor.

A.(2)(c) (a)(iii) The amount of the judgment.

A.(2)(d) (a)(iv) The interest owed to the date of the judgment, either as a specific amount or as accrual information, including the rate or rates of interest, the balance or balances upon which interest accrues, the date or dates from which interest at each rate on each balance runs, and whether interest is simple or compounded and, if compounded, at what intervals.

[A.(2)(e) Any specific amounts awarded in the judgment that are taxable as costs or attorney fees.]

A.(2)(f) (a)(v) Post-judgment interest accrual information, including the rate or rates of interest, the balance or balances upon which interest accrues, the date or dates from which interest at each rate

on each balance runs, and whether interest is simple or compounded and, if compounded, at what intervals.

A.(2)(g) (a)(vi) For judgments that accrue on a periodic basis, any accrued arrearages, required further payments per period and accrual dates.

A.(2)(a)(vii) If the judgment awards costs and disbursements or attorney fees, that they are awarded and any specific amounts awarded. This subparagraph does not require inclusion of specific amounts where such will be determined later under Rule 68 C.

[A.(3) Submitting and certifying summary. The following apply to the summary described under section 70 A.(2) of this rule:]

[A.(3)(a) The summary shall be served on the opposing parties who are not in default or on their attorneys of record as required under ORCP 9.]

[A.(3)(b) The attorney for the party in whose favor the judgment is rendered or the party directed to prepare the judgment shall certify on the summary that the information in the summary accurately reflects the judgment.]

A.(2)(b) Form. To comply with the requirements of paragraph A.(2)(a) of this rule, the requirements in that paragraph must be presented in a manner that complies with all of the following:

A.(2)(b)(i) The requirements must be presented in a separate, discrete section immediately above the judge's signature if the judgment contains more provisions than just the requirements of paragraph A.(2)(a) of this rule.

A.(2)(b)(ii) The separate section must be clearly labeled at its beginning as a money judgment.

A.(2)(b)(iii) The separate section must contain no other provisions except what is specifically required by this rule for judgments for the payment of money.

A.(2)(b)(iv) The requirements under paragraph A.(2)(a) of this rule must be presented in the same order as set forth in that paragraph.

A.(3) If the proposed judgment does not comply with the requirements in subsections A.(1) and (2) of this rule, it shall not be signed by the judge. If the judge signs the judgment, it shall be entered in the register whether or not it complies with the requirements in subsections A.(1) and (2) of this rule.

B. Entry of judgments.

B.(1) Filing; entry; notice. All judgments shall be filed and notation of the filing shall be entered in the register by the clerk. The clerk [shall], on the date judgment is entered, shall mail a notice of the date of entry of the judgment in the register and shall mail a copy of the entry in the judgment docket. If the judgment was not docketed in the judgment docket, the clerk shall give notice of this fact. The clerk shall mail the notice to the attorneys of record, if any, of each party who is not in default for failure to appear. If a party who is not in default for failure to appear does not have an at-

torney of record, such notice shall be mailed to the party. The clerk also shall make a note in the [judgment docket] register of the mailing. In the entry of all judgments, except a judgment by default under Rule 69 B.(1), the clerk shall be subject to the direction of the court. Entry of judgment in the register and docketing of the judgment in the judgment docket shall not be delayed for taxation of costs, disbursements, and attorney fees under Rule 68.

B.(2) Judgment effective upon entry. Notwithstanding ORS 3.070 or any other rule or statute, for purposes of these rules, a judgment is effective only when entered in the register as provided in this rule.

B.(3) Time for entry. The clerk shall enter the judgment in the register within 24 hours, excluding Saturdays and legal holidays, of the time the judgment is filed. When the clerk is unable to or omits to enter judgment within the time prescribed in this subsection, it may be entered any time thereafter.

C. Submission of forms of judgment. Attorneys shall submit proposed forms for judgment at the direction of the court rendering the judgment. The proposed form must comply with section A. of this rule. When so ordered by the court, the proposed form of judgment shall be served five days prior to the submission of judgment in accordance with Rule 9 B. The proposed form of judgment shall be filed and proof of service made in accordance with Rule 9 C.

D. "Clerk" defined. Reference to "clerk" in this rule shall include the clerk of court or any person performing the duties of that office.

SECTION 2. ORS 7.010 is amended to read:

7.010. (1) The records of the circuit, district and county courts include a register, judgment docket[, execution docket] and jury register.

(2) The record of the Supreme Court and the Court of Appeals is a register.

(3) All references in this chapter to the clerk or court administrator relate to the office of the clerk or court administrator of the appropriate trial or appellate court.

SECTION 3. ORS 7.020 is amended to read:

7.020. The register is a record wherein the clerk or court administrator shall enter, by its title, every action, suit or proceeding commenced in, or transferred or appealed to, the court, according to the date of its commencement, transfer or appeal. Thereafter, [until the entry of judgment in the register,] the clerk or court administrator shall note therein[, according to] all the following:

(1) The date [thereof, the] of any filing [or return] of any paper or process. [or]

(2) The date of making, filing and entry of any order, [rule] judgment, ruling or other direction of the court in or concerning such action, suit or proceeding.

(3) Any other information required by statute, court order or rule.

SECTION 4. ORS 7.040 is amended to read:

7.040. (1) The judgment docket is a record wherein the clerk or court administrator shall docket judgments for the payment of money and such other judgments and decrees [are docketed] as specifically provided by statute. The judgment docket shall contain the following:

(a) For other than judgments for the payment of money, the judgment docket shall contain the information specifically required by the statute requiring the information to be docketed or by court order or rule.

(b) For judgments for the payment of money, the judgment docket shall contain the following information:

- (A) Judgment debtor. [;]
- (B) Judgment creditor. [;]
- (C) Amount of judgment. [;]
- (D) Date of entry in register. [;]
- (E) When docketed. [;]
- (F) Date of appeal. [;]
- (G) Decision on appeal. [;]

(H) Any execution or garnishment issued by the court and the return on any execution or garnishment.

(I) Satisfaction, when entered. [;]

(J) Other such information as may be deemed necessary by court order or court rule.

(2) The judgment docket shall be maintained only during the duration of an enforceable judgment or until such time as a full satisfaction of judgment is entered.

[(3) Not less than 90 days prior to the destruction of the original judgment docket, the clerk or court administrator shall notify the State Archivist of the pending destruction of such docket. The State Archivist may inspect the judgment docket and may retain such records for the state archives.]

(3) Notwithstanding paragraph (b) of subsection (1) of this section, a clerk is not liable for failure to docket a judgment or to enter specific information on the judgment docket where the judgment for the payment of money is required to but does not comply with ORCP 70 A.(2).

(4) The clerk is not liable for any entering of information in the judgment docket that reflects information actually contained in a judgment or decree whether or not the information in the judgment or decree is correct or properly presented.

SECTION 5. ORS 18.320 is amended to read:

18.320. (1) Immediately after the entry in the register of judgment for the payment of money in any action the clerk shall docket the judgment in the judgment docket, noting thereon the day, hour and minute of such docketing. The clerk shall rely on the existence of a separate section within the judgment for those judgments subject to ORCP 70 A.(2) in determining whether the judgment is a judgment for the payment of money and shall only docket therefrom.

(2) With respect to any judgment docketed in a circuit court judgment docket, the following apply:

(a) At any time thereafter, so long as the original judgment remains in force under ORS 18.360, and is unsatisfied in whole or part, the judgment creditor, or the agent of the judgment creditor, may have recorded a certified copy of the judgment or a lien record abstract in the County Clerk Lien Record for any other county in this state.

(b) Upon receipt, the county clerk shall record a certified copy of the judgment or a lien record abstract in the County Clerk Lien Record maintained under ORS 205.130, noting thereon the day, hour and minute of such recording.

(c) A certified copy or a lien record abstract of any judgment renewed pursuant to ORS 18.360 may likewise be recorded in the County Clerk Lien Record in another county.

(d) A certified copy of the judgment, or a certified copy of any renewed judgment under ORS 18.360, or lien record abstract of either, shall be recorded in any county other than in the county where a judgment is originally docketed in order for that judgment to be a lien upon the real property of the judgment debtor in that county.

SECTION 6. ORS 18.410 is amended to read:

18.410. (1) This section establishes a procedure to obtain a satisfaction for a judgment for the payment of money when any person, against whom exists a judgment for the payment of money or who is interested in any property upon which any such judgment is a lien, is unable to obtain a satisfaction from a judgment creditor for any reason. The following apply to a procedure under this section:

(a) The procedure and all filings, entries and other actions relating to the procedure are to be considered as a continuation of the original action in which the judgment was entered.

(b) No appearance fee shall be charged for proceeding under this section.

(2) A person described in subsection (1) of this section may request the court which gave the judgment to determine whether the judgment has been paid in full or to determine the amount necessary to satisfy the judgment at a specific time in the future. To make such request, the person must do all of the following:

(a) File a motion with the court accompanied by an affidavit setting forth all the following, to the extent known to the person:

(A) The date of entry and principal amount of the judgment.

(B) The rate of interest and the date the rate of interest began.

(C) The date or dates and amounts of any payments on the judgment.

(D) Any amount the person believes is remaining to be paid on the judgment.

(E) Supporting mathematical calculations.

(F) Any other information necessary or helpful to the court in making its determination.

(b) Serve the motion and supporting affidavit on the judgment creditor and, if the person making the request is not the judgment debtor, on the judgment debtor. If the motion is filed within one year of the date of entry of the judgment to which the motion for satisfaction relates, service shall be made as provided in ORCP 9. If the motion is filed more than one year after the date of entry of the judgment to which the motion for satisfaction relates, service shall be made as provided in ORCP 7.

(c) File proof of service with the court.

(3) Any party served under paragraph (b) of subsection (2) of this section shall have 21 days or such additional time as may be allowed by the court within which to serve and file a responding affidavit with the court setting forth those parts of the original affidavit with which the person disagrees and any supporting information or mathematical calculations necessary to support the contentions of the objecting party.

(4) Not less than seven days after notice of hearing given to the person filing the motion and to the parties served with the motion, the court shall hear and determine the issues between the parties in a summary fashion without a jury. All the following apply to the court proceeding:

(a) The court shall give the parties a reasonable opportunity to present evidence relevant to any factual issues in dispute as shown by the affidavits.

(b) If the court, based on the record and sufficient evidence, is satisfied that the person making the request is entitled to relief, the court shall issue an order stating all the following:

(A) That the judgment has been satisfied in full or, if the judgment has not been satisfied in full, the specific amount that will satisfy the judgment on a date or within a period of time specified in the order.

(B) The party or parties to whom the money is owed.

(c) If the court finds that the judgment creditor's failure to file a satisfaction of judgment pursuant to ORS 18.350 was wilful, the court, on motion, may do either or both of the following:

(A) The court may require the judgment creditor to pay to the demanding party a sum of money determined to be reasonable as attorney fees, costs and disbursements by awarding the demanding party a separate judgment for such costs.

(B) The court's order may specify that the demanding party may satisfy the judgment by paying such amounts determined by the court to be necessary to satisfy the judgment less that sum of money the court determines to be reasonable as attorney fees, costs and disbursements.

(5) [may pay the amount due on such judgment to the clerk of the court in which the judgment was rendered, and] If the order provides that the judgment has been satisfied or if money is paid to the clerk in the amount and within the time specified in the order, the clerk shall thereupon satisfy the judgment upon the records of the court.

(6) If such judgment has been entered in the records or docketed in the judgment docket in any other county than the county in which it was rendered, then a certified copy of the satisfaction may be used for any of the following purposes:

(a) Entry [entered] in the register of the circuit court for such other county and the clerk of that court shall thereupon satisfy the judgment upon the records of that court.

(b) Recording [A satisfaction may also be recorded] in the County Clerk Lien Record in any county in which a certified copy of the judgment or lien record abstract was recorded.

(7) [Unless the clerk of the court in which the judgment was rendered sooner turns over the money paid to the clerk on the judgment to the person determined by such court to be entitled thereto, the clerk shall turn the money over to the appropriate fiscal officer, who shall give the clerk duplicate receipts therefor. One of the receipts shall be filed with the papers in the case in which such judgment was rendered, and the other shall be retained by the clerk. The fiscal officer shall] The clerk shall, at any time, pay the money over to the person who shall be determined to be entitled thereto by the order of the court in which the judgment was [rendered] given.

SECTION 7. ORS 20.220 is amended to read:

20.220. (1) An appeal may be taken from a judgment under ORCP 68 C.(4) [on the allowance and taxation of] allowing or denying attorney fees [and] or costs and disbursements on questions of law only, as in other cases. On such appeal the statement of attorney fees [and] or costs and disbursements, the objections thereto[,] and the judgment rendered thereon[, and the exceptions, if any,] shall constitute the trial court file, as defined in ORS 19.005.

(2) If an appeal is taken from a judgment under ORS 19.010 before the trial court enters a judgment under ORCP 68 C.(4), any necessary modification of the appeal shall be pursuant to rules of the appellate court.

(3) When an appeal is taken from a judgment under ORS 19.010 to which an award of attorney fees or costs and disbursements relates:

(a) If the appellate court reverses the judgment, the award of attorney fees or costs and disbursements shall be deemed reversed; or

(b) If the appellate court modifies the judgment such that the party who was awarded attorney fees or costs and disbursements is no longer entitled to the award, the party against whom attorney fees or costs and disbursements

were awarded may move for relief under ORCP 71 B.(1)(e).

SECTION 8. ORS 24.125 is amended to read:

24.125. (1) At the time of the filing of the foreign judgment, the judgment creditor or the creditor's lawyer shall make and file with the clerk of the court an affidavit setting forth the names and last-known post-office addresses of the judgment debtor and the judgment creditor, together with a [summary] separate statement containing the information required to be contained in a judgment under ORCP 70 A.(2)(a).

(2) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post-office address of the judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

(3) No execution or other process for enforcement of a foreign judgment filed pursuant to ORS 24.105 to 24.125, 24.135 and 24.155 to 24.175, except a judgment, decree or order of a court of the United States, shall issue until five days after the date the judgment, affidavit and separate statement [and summary] required [under ORCP 70 A.] in subsection (1) of this section are filed.

SECTION 9. ORS 23.030 is amended to read:

23.030. Except as otherwise provided in this section, or as otherwise provided by law, the party in whose favor a judgment is given, which requires the payment of money, the delivery of real or personal property, or either of them, [may] at any time after the entry thereof, [and so long as the judgment remains a lien,] may have a writ of execution issued for its enforcement. In the case of real property: []

(1) No writ shall be issued under this section unless, at the time the application for writ is made, the judgment upon which the writ is issued is docketed in the judgment docket.

(2) Upon issuance of the writ, the party requesting the writ shall have a certified copy of the writ or an abstract of the writ recorded in the County Clerk Lien Record of the county in which the real property is located.

SECTION 10. ORS 416.440 is amended to read:

416.440. (1) The documents required to be filed for purposes of subsection (2) of this section include all the following:

(a) A true copy of any order entered by the administrator or hearings officer pursuant to ORS 416.400 to 416.470. [along with]

(b) A true copy of the return of service, if applicable. []

(c) A separate statement containing the information required to be contained in a judgment under ORCP 70 A.(2)(a).

(2) The documents described under subsection (1) of this section may be filed in the office of the clerk of the circuit court in the county in which either the parent or the dependent child resides. Upon receipt of the documents, the clerk shall docket the order in the circuit court judgment docket.

(3) Upon docketing under subsection (2) of this section, the order shall have all the force, effect and attributes of a docketed order or decree of the circuit court, including but not limited to:

(a) Lien effect; []

(b) Ability to be renewed pursuant to ORS 18.360; [] and

(c) Ability to be enforced by supplementary proceedings, contempt of court proceedings, writs of execution and writs of garnishment.

SECTION 11. ORS 7.050 is repealed.

SECTION 12. ORS 19.028 is amended to read:

19.028. (1) Filing a notice of appeal in the Court of Appeals or the Supreme Court may be accomplished by mail. The date of filing such notice shall be the date of mailing, provided it is mailed by registered or certified mail and the party filing the notice has proof from the post office of such mailing date. Proof of mailing shall be certified by the party filing the notice and filed thereafter with the court to which the appeal is taken. If the notice is received by the court on or before the date by which such notice is required to be filed, the party filing the notice is not required to file proof of mailing.

(2) Service of notice of appeal on a party, court reporter or the clerk of the trial court, or service of a petition for judicial review on a party or administrative agency may be accomplished by first class, registered or certified mail, subject to the same requirements as filing notice of appeal by mail as provided in subsection (1) of this section. The date of serving such notice shall be the date of mailing. Proof of mailing shall be certified by the party filing the notice and filed thereafter with the court to which the appeal is taken.

(3) Except as otherwise provided by law, the provisions of subsections (1) and (2) of this section are applicable to petitions for judicial review, cross petitions for judicial review and petitions under the original jurisdiction of the Supreme Court or Court of Appeals.

SECTION 13. If House Bill 2460 becomes law, section 4, chapter 566, Oregon Laws 1989 (Enrolled House Bill 2460), is repealed and ORS 416.440, as amended by section 10 of this Act, is further amended to read:

416.440. (1) The documents required to be filed for purposes of subsection (2) of this section include all the following:

(a) A true copy of any order entered by the administrator or hearings officer pursuant to ORS 416.400 to 416.470.

(b) A true copy of the return of service, if applicable.

(c) A separate statement containing the information required to be contained in a judgment under ORCP 70 A.(2)(a).

(2) The documents described under subsection (1) of this section *[may]* shall be filed in the office of the clerk of the circuit court in the county in which either the parent or the dependent child resides. Upon receipt of the documents, the clerk shall docket the order in the circuit court judgment docket.

(3) Upon docketing under subsection (2) of this section, the order shall have all the force, effect and attributes of a docketed order or decree of the circuit court, including but not limited to:

(a) Lien effect;

(b) Ability to be renewed pursuant to ORS 18.360; and

(c) Ability to be enforced by supplementary proceedings, contempt of court proceedings, writs of execution and writs of garnishment.

(4) Notwithstanding subsections (2) and (3) of this section, the docketing of an order entered by the administrator or hearings officer does not preclude any subsequent proceeding or remedy available under ORS 416.400 to 416.470.

Approved by the Governor July 22, 1989

Filed in the office of Secretary of State July 24, 1989

CHAPTER 769

AN ACT

HB 2237

Relating to forest lands; creating new provisions; amending ORS 321.015, 477.230, 477.295, 477.750, 477.760, 477.775 and 477.880; and repealing ORS 477.275 and 477.285.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 321.015 is amended to read:

321.015. (1) There hereby is levied a privilege tax of five cents per thousand feet, board measure, upon taxpayers on the harvesting of all merchantable forest products harvested on forest lands.

(2) In addition to the tax levied by subsection (1) of this section, there hereby is levied a forest products harvest tax upon taxpayers of *[15]* 30 cents per thousand feet, board measure, on all merchantable forest products harvested on *[protected]* forest lands for the payment of benefits as provided in ORS 321.005 to 321.185, 321.560 to 321.600 and 477.440 to 477.460.

(3) In addition to the taxes levied under subsections (1) and (2) of this section, there hereby is

levied a privilege tax upon taxpayers on the harvesting of all merchantable forest products harvested on forest land for the purposes described in ORS 321.028.

(4) Subject to subsection (5) of this section, the taxes shall be measured by and be applicable to each per thousand feet, board measure, on the total quantity of forest products harvested in this state measured by use of any log scale which is or may be in general use in the logging industry and which is designed to measure total volume of merchantable forest products in board feet. However, if the department finds that the scale used by any taxpayer in computing the taxes due under ORS 321.005 to 321.185 and 321.560 to 321.600 does not accurately reflect the total quantity of merchantable forest products harvested by the taxpayer, it may require the taxpayer to adopt another log scale in general use in the industry which in the department's opinion will accurately reflect merchantable harvest in board feet.

(5) The first 25,000 feet, board measure, of forest products harvested annually by any taxpayer during each fiscal year shall be excluded from the total quantity of harvested forest products which constitutes the measure of the taxes under ORS 321.005 to 321.185 and 321.560 to 321.600.

SECTION 2. Section 3 of this Act is added to and made a part of ORS 477.205 to 477.291.

SECTION 3. (1) In addition to any other assessment prescribed by ORS 477.205 to 477.291, in any fiscal year in which the Emergency Fire Cost Committee determines that the reserve base of the Oregon Forest Land Protection Fund is less than \$10 million, a surcharge shall be levied and assessed in the amount of \$20 for each improved lot or parcel.

(2) All surcharge moneys collected pursuant to this section shall be paid into the Oregon Forest Land Protection Fund.

(3) As used in this section, a lot or parcel is "improved" if it is indicated as improved in the county assessor's property classification files.

SECTION 4. ORS 477.760 is amended to read:

477.760. (1) The reserve base of the Oregon Forest Land Protection Fund is *[\$6]* \$10 million. On or about the last day of February of each year the Emergency Fire Cost Committee shall meet and determine the unencumbered balance of the fund as of the preceding February 16.

(2) In order to maintain the reserve base of the fund at \$10 million, the Emergency Fire Cost Committee may request appropriate transfers of moneys by the State Treasurer to the fund in accordance with ORS 293.205 to 293.225. Repayment of any such transfers shall be made from moneys paid into the fund pursuant to ORS 321.015 (2), 477.880 and section 3 of this 1989 Act and from such other moneys as may be credited to the fund therefor.