

TABLE OF CONTENTS

I.	General Statutory Changes.	5-1
A.	Oregon Laws 2009, Chapter 231 (SB 262).	5-1
B.	Oregon Laws 2009, Chapter 351 (HB 2272).	5-3
C.	Oregon Laws 2009, Chapter 80 (HB 2275).	5-5
D.	Oregon Laws 2009, Chapter 352 (HB 2276).	5-8
E.	Oregon Laws 2009, Chapter 211 (HB 2310).	5-8
F.	Oregon Laws 2009, Chapter 561 (HB 2839).	5-8
II.	Amendments to the Rules of Civil Procedure.	5-8
A.	HB 2394.	5-8
B.	Council On Court Procedures Amendment to ORCP 69 A(1).	5-9
III.	Amendment of OEC 503 by Oregon Laws 2009, Chapter 516 (HB 2453).	5-9

I. General Statutory Changes.

A. Oregon Laws 2009, Chapter 231 (SB 262).

This law alters the appellate courts' standard of review in equity cases and in family law cases in particular. *De novo* review is preserved in juvenile dependency cases. The bill contains an emergency clause, and the new law is presently in effect for new appeals filed on or after June 4, 2009.

ORS 19.415 is amended as follows:

(1) **Except as provided in this section, upon an appeal ~~from a judgment~~ in an action ~~at law or proceeding~~, without regard to whether the action or proceeding was triable to the court or a jury,** the scope of review shall be as provided in section 3, Article VII (Amended) of the Oregon Constitution.

(2) No judgment shall be reversed or modified except for error substantially affecting the rights of a party.

(3) Upon an appeal ~~from a judgment~~ in an equitable action or proceeding, **review by** the Court of Appeals shall ~~try the cause anew upon the record~~ be as follows:

(a) **Upon an appeal from a judgment in a proceeding for the termination of parental rights, the Court of Appeals shall try the cause anew upon the record; and**

(b) **Upon an appeal in an equitable action or proceeding other than an appeal from a judgment in a proceeding for the termination of parental rights, the Court of Appeals, acting in its sole discretion, may try the cause anew upon the record or make one or more factual findings anew upon the record.**

(4) When the Court of Appeals has tried a cause anew upon the record **or has made one or more factual findings anew upon the record,** the Supreme Court may limit its review of the decision of the Court of Appeals to questions of law.

The Court of Appeals has adopted an amendment to ORAP 5.40 that sets forth the new standards for *de novo* review:

(a) In those proceedings in which the Court of Appeals has discretion to try the cause anew on the record and the appellant seeks to have the court exercise that discretion, the appellant shall concisely state the reasons why the court should do so.

(b) In those proceedings in which the Court of Appeals has discretion to make one or more factual findings anew on the record and the appellant seeks to have the court exercise that discretion, the appellant shall identify with particularity the factual findings that the appellant seeks to have the court find anew on the record and shall concisely state the reasons why the court should do so.

(c) The Court of Appeals will exercise its discretion to try the cause anew on the record or to make one or more factual findings anew on the record only in exceptional cases. Consistently with that presumption against the exercise of discretion, requests under paragraph (a) or (b) of this section are disfavored.

(d) The Court of Appeals considers the items set out below to be relevant to the decision whether or not to exercise its discretion to try the cause anew on the record or make one or more factual findings anew on the record. These considerations, which are neither exclusive nor binding, are published to inform and assist the bar and the public.

(i) Whether the trial court made express factual findings, including demeanor-based credibility findings.

(ii) Whether the trial court's decision comports with its express factual findings or with uncontroverted evidence in the record.

(iii) Whether the trial court was specifically alerted to a disputed factual matter and the importance of that disputed factual matter to the trial court's ultimate disposition of the case or to the assignment(s) of error raised on appeal.

(iv) Whether the factual finding(s) that the appellant requests the court find anew is important to the trial court's ruling that is at issue on appeal (*i.e.*, whether an appellate determination of the facts in appellant's favor would likely provide a basis for reversing or modifying the trial court's ruling).

(v) Whether the trial court made an erroneous legal ruling, reversal or modification of which would substantially alter the admissible contents of the record (*e.g.*, a ruling on the admissibility of evidence), and determination of factual issues on the altered record in the Court of Appeals, rather than remand to the trial court for reconsideration, would be judicially efficient.

ORAP 5.40(8) (footnotes omitted).

For those matters not reviewed *de novo*, Article VII, section 3 (Amended) of the Oregon Constitution applies: “[N]o fact * * * shall be otherwise re-examined in any court of this state, unless the court can affirmatively say there is *no evidence* to support the verdict.” (Emphasis added.)

B. Oregon Laws 2009, Chapter 351 (HB 2272).

This law relates to “medical support” and requires that every child support order, effective January 1, 2010, include a medical support clause. “‘Medical support clause’ means a provision in a child support order that requires one or both of the parents to provide medical support for the child.” § 1(8). “‘Medical support’ means cash medical support and health care coverage.” § 1(7). “‘Cash medical support’ means an amount that a parent is ordered to pay to defray the cost of health care coverage provided for a child by the other parent, or to defray uninsured medical expenses of the child.” § 1(1).

The key provision of the new law is Section 2:

[ORS 25.323] (1) Every child support order must include a medical support clause.

(2) Whenever a child support order that does not include a medical support clause is modified the modification must include a medical support clause.

(3) A medical support clause may require that medical support be provided in more than one form, and may make the requirement that medical support be provided in a particular form contingent on the availability of another form of medical support.

(4) A medical support clause must require that one or both parents provide private health care coverage for a child that is appropriate and available at the time the order is entered. If private health care coverage for a child is not appropriate and available at the time the order is entered, the order must:

(a) Require that one or both parents provide private health care coverage for the child at any time thereafter when such coverage becomes available; and

(b) Either require the payment of cash medical support, or include findings on why cash medical support has not been required.

(5) For the purposes of subsection (4) of this section, private health care coverage is appropriate and available for a child if the coverage:

(a) Is accessible, as described in subsection (6) of this section;

(b) Is reasonable in cost and does not require the payment of unreasonable deductibles or copayments; and

(c) Provides coverage, at a minimum, for medical expenses, hospital expenses, preventive care, emergency care, acute care and chronic care.

(6) Private health care coverage is accessible for the purposes of subsection (5)(a) of this section if:

(a) The coverage will be available for at least one year, based on the work history of the parent providing the coverage; and

(b) The coverage either does not have service area limitations or the child lives within 30 miles or 30 minutes of a primary care provider who is eligible for payment under the coverage.

(7) A medical support clause may not order a providing party to pay cash medical support or provide health care coverage if the providing party's income is equal to or less than the Oregon minimum wage for full-time employment.

(8) Cash medical support and the cost of other medical support ordered under a medical support clause constitute a child support obligation and must be included in the child support calculation made under ORS 25.275.

C. Oregon Laws 2009, Chapter 80 (HB 2275).

This law provides for administrative suspension or temporary modification of child support orders during times of economic crisis. The key provision is, Section 8:

[ORS 416.425] (13)(a) Notwithstanding subsections (1) to (12) of this section, any time support enforcement services are being provided under ORS 25.080, upon request of a party to a support order or judgment or on the administrator's own motion, the administrator may move to suspend the order or judgment and issue a temporary modification order under this subsection when:

(A) There is a period of significant unemployment as that term is described in paragraph (b) of this subsection; and

(B) A party to the support order or judgment experiences an employment-related change of income as defined by rule in ORS 416.455.

(b) Proceedings under this subsection may be initiated only when there is a period of significant unemployment in Oregon. The Attorney General shall determine when a "period of significant unemployment" exists in Oregon and designate the beginning and ending dates thereof. In making the determination of when a period of significant unemployment exists in Oregon, the Attorney General may consider whether there is in effect an "extended benefit period" as that term is defined in ORS 657.321.

(c) Except as otherwise provided in this subsection, the provisions of subsections (1) to (12) of this section apply to a motion for an order of suspension and temporary modification under this subsection.

(d) A party's employment-related change of income during a period of significant unemployment is considered a substantial change of circumstances for purposes of proceedings brought under this section.

(e) The motion for an order of suspension and temporary modification must be in writing and must include, but need not be limited to:

(A) The amount of the existing support order or judgment;

(B) The amount of the obligor's and obligee's income immediately preceding the party's employment-related change of income, if known;

(C) The reason for the party's employment-related change of income;

(D) How the party's employment-related change of income affects the party's employment status, income and, if applicable, ability to pay support;

(E) The obligor's and the obligee's current sources of income, if known;

(F) The proposed amount of the temporary modification order;

(G) A statement that if a party objects to the motion for an order of suspension and temporary modification, then the party may request a hearing within 14 days of service of the motion as provided in paragraph (g) of this subsection;

(H) A statement that the preexisting support order or judgment will be reinstated as provided in paragraph (h) of this subsection; and

(I) A statement that a party may request a renewal of the order of suspension and temporary modification prior to its expiration as provided in paragraph (j) of this subsection.

(f) The administrator shall serve the motion filed under this subsection upon the parties by regular first class mail, facsimile or electronic mail unless a party signs a form agreeing to accept service of the motion.

(g) A party may request a hearing within 14 days of service of the motion. If a hearing is requested, the provisions of ORS 416.427 apply. When there has been no request for hearing, the administrator may enter an order of suspension and temporary modification under this subsection. The order must be consistent with the provisions of the motion filed under this subsection and be in substantial compliance with the formula established under ORS 25.275.

(h) An order of suspension and temporary modification issued under this subsection is temporary and remains in effect for six months from the date the order is filed under ORS 416.440 or until the date specified in the notice provided under paragraph (i) of this subsection informing of the party's reemployment, whichever is earlier, at which time the pre-existing support order or judgment becomes immediately effective and payable on the first day of the following month unless an order of renewal is issued under paragraph (j) of this subsection.

(i) The administrator may issue a notice of reinstatement at any time during which an order of suspension and temporary modification is in effect under this subsection when a party obtains employment and receives income that is sufficient to reinstate support in an amount substantially similar to the amount in the preexisting support order or judgment. The notice shall be served as provided in paragraph (f) of this subsection and must state that, unless a request for hearing is received within 14 days of service of the notice, the administrator will enter an order terminating the order of suspension and temporary modification and reinstating the amount of the preexisting support order or judgment effective on a date to be specified in the notice. If a hearing is requested, the provisions of ORS 416.427 apply. When there is no request for hearing, the administrator may enter an order terminating the order of suspension and temporary modification and reinstating the preexisting support order or judgment effective upon the date specified in the notice.

(j) Prior to expiration of an order of suspension and temporary modification under this subsection and upon request of a party, the administrator may renew the order of suspension and temporary modification for additional six-month periods or until the party obtains employment as described in paragraph (i) of this subsection, whichever occurs first, if the circumstances under which the order was originally issued continue to exist unchanged.

The new law took effect on May 5, 2009. The Attorney General declared a “period of significant unemployment” on May 6, 2009, and created an expedited modification process through a series of temporary administrative rules also adopted in May.

D. Oregon Laws 2009, Chapter 352 (HB 2276).

This law clarifies requirements for applying for support enforcement services and provides that a support judgment requiring payment to the Department of Justice must have an application for services *contained in the judgment*. The application must be signed by the person making the application, must include the last-known addresses of the obligor and the obligee, and must indicate that the person is applying for child support services. The new law is effective January 1, 2010.

E. Oregon Laws 2009, Chapter 211 (HB 2310).

This law provides for modification of abuse prevention restraining orders for good cause. It permits the holder of an order to petition the court *ex parte* for less restrictive terms. It is effective January 1, 2010.

F. Oregon Laws 2009, Chapter 561 (HB 2839).

This law brings the options for change of name upon registration of a domestic partnership into conformance with those of marriage contained in ORS 106.220. It takes effect on September 28, 2009.

II. Amendments to the Rules of Civil Procedure.

A. HB 2394.

This amendment alters the requirements for service of a subpoena upon a minor child in ORCP 55 D(1). “If the witness is under 14 years of age, the subpoena may be

served by delivering a copy to the witness or to the witness's parent, guardian or guardian ad litem." It is effective January 1, 2010.

B. Council On Court Procedures Amendment to ORCP 69 A(1).

This amendment requires that the petitioner give notice of intent to take a default in court pleading format, as prescribed by UTCR 2.010. It is a clarification, if not a codification, of existing case law. *See, e.g., Denkers v. Durham Leasing Co., Inc.*, 299 Or 544, 548, 704 P2d 114 (1985). The amendment is effective January 1, 2010.

III. Amendment of OEC 503 by Oregon Laws 2009, Chapter 516 (HB 2453).

This amendment to the lawyer-client privilege broadens the definition of "representative of the client" beyond the traditional categories of principal, employee, officer and director. Under the new law, a "representative of the client" is also "a person who has authority to obtain professional legal services, or to act on legal advice rendered, on behalf of the client, or a person who, for the purpose of effectuating legal representation for the client, makes or receives a confidential communication while acting in the person's scope of employment for the client." The act is effective on January 1, 2010, but it applies "to all communications, whether made before, on or after the effective date."