OLC Municipal & Justice Court II

Work Group Meeting

April 15, 2026

Meeting Notes

Attendees: Judge Mary James, Amy Zubko, Mike Hughes (OPDC), Judge Kidd, Judge Oberdorfer, Judge Britton, Tim Dooley, Lindsey Detweiller, Kimberly McCullough, Monte Ludington, Heather Merek, Jessica Minifie, Chris Perdue, Cara Goldfarb, Judge Cross

OPDC: Mike Hughes stood in for Lisa Taylor

Topics Discussed in this Meeting

1) **Updated Schedule Discussion**
    a. Waiver for Undertakings Conversation (ORS 55.305)
    b. 50-Mile Radius Restriction on Justice Courts of Record
    c. Should Appeals From Local Court to Circuit Court and then to Court of Appeals Proceed Under ORS 19 or 138?
    d. Transfers of Municipal Offenses First Tried in A Municipal Court not a Court of Record
    e. Records of Abolished Local Courts

2) **FED Waiver for Undertaking Conversation (ORS 55.305)**

Judge James presented to the group that the smaller workgroup was ready to recommend drafted language to amend ORS 55.305. Those updates mainly concern parameters around undertaking for costs, supersedeas undertakings, and defining "security" means and "surety."

Judge James provided background on why these updates were made, framing the initial issue around a lack of certainty about what justice courts could impose.

For the undertaking for costs, this cost seemed to fluctuate, and at times might include the cost of attorney fees and other items, and at other times might not. For certainty, the smaller workgroup distilled the ambiguity down to an amount for undertaking for costs (at $400). This was done at the recommendation of the justice courts, who were supportive of a flat fee for undertaking, which then could be subject to court's discretion if court determines, for example, that for indigency or other reasons that it should be reduced

As it relates to supersedeas undertaking, anecdotally one or more justice courts were imposing a requirement that person pays all of the back rent or back damages that had been awarded as part of the supersedeas undertaking. The smaller workgroup landed on the cost being the fair market value at the time of the action, and have that be deposited so that the person, in order to stay on the property, is maintaining the status quo by continuing to live in the rental property and the landlord isn't losing further rents by having the appeal proceed.

This led to a discussion on **Subsection 6(b)** and a changes that have been made or still need to be made in order to clarify the language. One change involved moving from what a supersedeas shall not be to what is shall be, so justice courts could have a better sense of what they can impose. That updated language is the following:

> Justice court may determine the fair market rental value of the real property based on the written or oral rental agreement between the parties or other evidence of the monthly rent amount due or in effect at the time the court's determination is made

The change that needs to be made concerned the following language:

> The undertaking shall be the fair market value of the anticipated rental value of the real property during the period of the appeal

What the work group wants to do is say that the undertaking shall be the monthly rent amount **DUE** during the period of appeal (as to maintain the status quo previously mentioned).

Next, the group had an extended conversation on the interlocutory appeal of the undertaking amount while the appeal is pending. The consensus of the smaller workgroup was that **Section 7** was not needed due to the nature of the timing of appeal on an FED matter, which is a quick process. The judicial dept had expressed concerns about another another form of appeal leading to hearing within a hearing that would have to go to circuit court, which was seen as not tenable due to cost and delay and additional burden on circuit court.

On this issue, Jim Nass and Heather Mareck shared some concerns. (Jim Nass previously spoke on the issue as he was unable to be at this meeting). Their concerns were that while the justice court gets the undertaking right most of the time, in rare cases they might not then the appellant is kicked out of their living place because they can't have an interlocutory appeal about the supersedeas undertaking amount.

The group proceeded to have a long discussion on this topic and for the purposes of making progress landed on the following: the group was charged with providing clarity in

the undertaking process. The language provided now provides the requested level of clarity and still allows for appellant to access courts. In event that this lack of an interlocutory appeal becomes a barrier to people in FED cases, as well as other cases, then OLC can revisit it. There is a broader concern that if the interlocutory appeal is reinstated, that no changes would occur because of a lost timeline due to the quick timeframe of landlord-tenant decisions, and other substantive changes would be lost, including determinations for what undertaking should be and what supersedeas undertaking should be.

The group wants to do something that at least improves process for litigants, rather than getting caught up in fiscal process of having two appeals (that might get bogged down in Ways & Means), which is confusing and may disincentivize people from filing appeals.

- **Motion to approve language as is**: Judge Kidd
- **Second**: Judge Britton
- **In Favor**: Unanimous
- **Opposed**: None
- **Absentees**: Yes (OJD, for example, unable to vote due to policy decision involved)
- **Motion**: Passes

3) **<u>50-Mile Radius Restriction on Justice Courts of Record</u>**

Next, the workgroup revisited the proposal to remove statutory language that a justice court cannot be a court of record if it is within a 50-mile radius of a circuit court. This amendment would not require justice courts to become courts of record but would allow municipalities to opt-in to making their justice court a court of record (as the law currently provides for municipal courts). The statutory requirement that a court of record be led by a bar licensee would remain. While previous conversations on the topic seemingly produced a consensus, no final vote had been conducted. OJD shared that internally, OJD views courts of record as good for litigants and that they did not foresee this revision leading to a workload issue for the courts, making them officially neutral on the topic.

- **Motion to have all justice courts become courts of record if they elect, and to remove restrictive mileage language that's currently in statute:** Judge Britton
- **Second:** Judge Kidd second
- **In Favor:** Unanimous
- **Opposed:** None
- **Absentees**: Yes (OJD unable to vote due to policy decision involved)

4) **<u>Should Appeals from Local Court to Circuit Court and then to Court of Appeals Proceed Under ORS 19 or 138?</u>**

Jim Nass had originally brought this issue to the Commission, and because he was unable to attend this meeting, Judge James, Amy Zubko, and Jessica Minifie aimed to clarify it.

Generally, Jim's concern is that the statutory scheme that appeals currently move under are primarily civil and should be moving forward under criminal statutory language. Thus, the question is whether violations appealed from local court to circuit court and then to court of appeals should proceed under Chapter 19 (civil) or Chapter 138 (criminal).

It was shared that this issue did not have much to do specifically with justice and municipal courts so much as it did with the paths that all violations take from the circuit court to the court of appeals. A lot of statutes in Chapter 19 have no bearing on violations. When the legislative decision was made in the 1990s to have violations go the civil route, it is now understood that this may have been the result of some misunderstandings about the appeals process for civil versus criminal offenses. The suggested reform would be a broad change that people were shy to do during the original HB 2460 workgroup because it wasn't directly related to justice and municipal courts, and there was a capacity issue.

The workgroup decided that to move forward, this would be a topic for a smaller workgroup to look into to determine whether this is a good topic for this workgroup, or whether it should be sent to another workgroup within the Commission. It was noted that there is a potential for many statutes to be impacted by this and that those implications should be considered closely, including any relevant existing case law that may be impacted it.

5) **Transfers of Municipal Offenses First Tried in A Municipal Court not a Court of Record:**

This topic concerns the appealability of municipal offenses first tried in municipal courts that are not a court of records that would go to circuit courts. The question is to what degree a court of appeals can review those convictions. Currently, there's a limitation on those appeals. The topic doesn't address the procedure of appeals but whether the municipal court decision is appealable.

Leage of Oregon Cities (LOC) was opposed to this topic during the discussion of HB 2460, so the thought amongst this group is that the issue be separated out (along with the appeals topic above), to enable to broader bill that the workgroup has worked on to go through. A recommendation was made to have LOC share their particular concerns on this issue. The workgroup determined that a smaller workgroup should look into this issue.

Records of Abolished Local Courts

The issue here is whether the records of abolished local courts should go to circuit court or county. This issue may be a bit more complicated as it seems, due to the real-world money

implications. Furthermore, some cities with defunct courts may not want to get rid of the records. Amy to reach out to LOC on this issue to see what type of discussion they might want to contribute to it.

6) **Conclusion/Upcoming Dates:**

- Next Meeting: May 20th
- Next Full Commission: June 5th