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DEPARTMENT OF JUSTICE

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June 17, 2002

Lemuel Hentz, #6750414
Snake River Correctional Institution
777 Stanton Blvd.
Ontario, OR 97914-0595

Re: *Petition for Public Records Disclosure Order*:
Records of the State Court Administrator

Dear Mr. Hentz:

This letter is the Attorney General's order on your petition for disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on June 10, 2002, asks the Attorney General to direct the State Court Administrator to make available five categories of records related to the appointment of Charles H. Turner as *pro tempore* judge between 1993 and 1996. For the reasons that follow, we respectfully deny your petition.

According to your petition, you asked to inspect and copy the requested records on December 11, 2001 and on April 11, 2002. You submitted $110.00 with your April 11 request to pay for the cost of complying with your request. You state that, as of the date of your petition, you had not received a response from the State Court Administrator.

Under ORS 192.450, the Attorney General may order a state agency to disclose public records when that agency has denied any person the right to inspect or receive a copy of the records. The Attorney General does not have authority to order disclosure of public records until the agency has denied a request for those records. In responding to a public records request, an agency is permitted a reasonable opportunity to retrieve and review the requested records, and, if necessary, to consult with legal counsel before providing the records or denying the request. *Morse Bros., Inc. v. ODED,* 103 Or App 619, 622, 798 P2d 719 (1990).

Bradd Swank, Special Counsel for the State Court Administrator, sent you a response to your records request dated June 11, 2002. Mr. Swank provided us with a copy of his response. According to that response, Mr. Swank provided you with copies

of all of the records maintained by the State Court Administrator responsive to your request except for one type of record, namely appointment orders for Mr. Turner serving in Multnomah County during 1993. The staff of the State Court Administrator has not yet located these records. Mr. Swank's response also states that the Supreme Court does not maintain one of the categories of records that you requested, namely particular court registers. Therefore, the State Court Administrator has no records responsive to that portion of your request.

With regard to the records that the State Court Administrator's office has not yet located, Mr. Swank's response estimates the cost to locate and provide those records, and explains that the money remaining from the payment that you sent in April is insufficient to cover that cost. The response expresses Mr. Swank's willingness to provide you with the requested records upon receipt of the estimated cost, and states that he will await your reply before taking further action.

Based upon Mr. Swank's response, we conclude that the State Court Administrator has not denied your request for records. Therefore, with regard to the records provided to you and the records not maintained by the agency, we deny your petition as moot. With regard to the records that the agency has as of yet been unable to locate but is willing to search for and provide upon payment of the estimated cost for doing so, we deny your petition as premature.

Sincerely,

Peter D. Shepherd

PETER D. SHEPHERD
Deputy Attorney General

c: Bradd Swank, Special Counsel, Office of the State Court Administrator

PDS/AGS10355