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August 22, 1994

Larry G. Mann
Rt. 1 Box 825
Powell Butte, OR 97353

Re: *Petition for Public Records Disclosure Order: Records of Judge Gary S. Thompson/Crook County Circuit Court Records*

Dear Mr. Mann:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on August 15, 1994, asks the Attorney General to direct Judge Gary S. Thompson, Crook County Circuit Court Judge Pro-tem, to make available certain records concerning a supplemental judgment and demand to comply with judgment. For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any "public records of a public body" in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. The custodian of the public records is required to furnish proper and reasonable opportunities for inspection and examination, and to provide upon demand copies of any public records which a person has a right to inspect. ORS 192.430, 192.440.

In this case, the request appears to be related to two documents, described in the petition as a "DEMAND TO COMPLY WITH Judgment" and "SUPPLEMENTAL Judgment", copies of which were not provided to us. We understand that these documents are part of a circuit court file. In his letter to you dated July 29, 1994, Judge Thompson informed you that the court file is available for inspection, and that copies of documents in the file may be made for you at your expense.

The petition asks for "documents which disclose" definitions for words or phrases "as used in" those court documents, as well as "the best information you had available for making this claim," "this finding" or "this judgment" (referring to language in the

Supplemental Judgment). The petition also requests citations to articles of the Oregon Constitution that give authority to make this "judgment". Finally, the petition cites ORS 9.010 and requests "documents" that disclose Judge Thompson's admittance to practice law in this state, documents that define phases in ORS 9.010 and the Article of the Oregon Constitution that give "validity" to ORS chapter 9.

The petition is ambiguous as to which public body's records are being sought. The Public Records Law provides that the custodian of ***court records*** is the trial court administrator. ORS 192.410(1)(a). The petition does not allege that a public records request was made to, or denied by, the trial court administrator. To the extent that any of the records sought by the petition are court records, we deny the petition because there has been no request to, and denial by, the court administrator. Absent such a request and denial, the Attorney General has no authority to issue an order to the trial court administrator. See ORS 192.450.

To the extent that the records sought by the petition are records of Judge Thompson in his capacity as a judge, we deny the petition because this office lacks jurisdiction. ORS 192.480 provides

> In any case in which a person is denied the right to inspect or to receive a copy of a public record in the custody of an elected official, or in the custody of any other person but as to which an elected official claims the right to withhold disclosure, no petition to require disclosure may be filed with the Attorney General * * * or if a petition is filed it shall not be considered by the Attorney General * * * after a claim of right to withhold disclosure by an elected official.

Judge Thompson is an elected district court judge. In that capacity, he has been assigned to serve also as judge pro tempore of the circuit court. See ORS 1.615. Accordingly, the Attorney General may not consider your petition with respect to any records sought from Judge Thompson in his capacity as a judge to the extent that Judge Thompson has denied disclosure of those records.[1/]

[1/] It is not evident that Judge Thompson actually has denied a request for public records. Moreover, it is not evident that the petition seeks records at all; instead it appears to ask a judge to render legal advice by interpreting and explaining a judgment issued in litigation or to provide justification for certain judicial decisions. Those matters are not properly the subject of a public records request. The Public Records Law only requires that existing documents be open for inspection and copying upon request. See ORS 192.420, 192.430.

The only document that appears to be specifically identified in the petition is a copy of Judge Thompson's "admittance to practice in this state". Judge Thompson's bar membership is personal to him. It is not a public record held by the Crook County Circuit Court or by Judge Thompson in his capacity as a judge. Accordingly, as to this document, we deny your petition because it does not seek "public records" of a "public body." See ORS 192.420; see also Public Records Order dated August 18, 1994, Mann (records of private attorney are not "prepared, owned, used or retained by a public body").

As noted, the circuit court file for the litigation at issue is open for inspection and copying. For the reasons stated above, we deny your petition to compel disclosure.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the Attorney General

ESH:krg:JAA01356

c: The Honorable Gary S. Thompson, Circuit Judge Pro-Tem
Crook County Courthouse
Prineville, OR 97754

Linda Zuckerman
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Office of the State Court Administrator