

Comments

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Locked Out: The Oregon Rules of Civil Procedure Increasing Access to Justice in Oregon’s Eviction Courts

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INTRODUCTION

Just before Christmas in 2021, I spoke with Ms. Danielle, a single mother of four young children facing eviction. At the time, I was a paralegal working to prevent the eviction of my neighbors. As Ms. Danielle picked up my call, she was finishing another conversation, thanking a friend who was dropping off Christmas gifts for her kids. “Thank you, Santa!” she said with a laugh. I heard her hurriedly hide the gifts and take a deep breath before telling me her story.

Ms. Danielle said she had left home a few days ago to buy groceries when her fourteen-year-old son answered the door to her landlord and the police, who were there to evict her. Ms. Danielle was laid off at the beginning of the pandemic, and she had been unable to pay rent. Her landlord had access to the legal system and to law enforcement, whereas Ms. Danielle’s only hope for assistance was my organization.

I was determined to do everything in my power to protect Ms. Danielle and her children's home. During my time working in eviction defense, I saw how eviction laws can result in terrible consequences for marginalized and minoritized people.

Eviction is a predatory practice that primarily targets low-income and marginalized populations.¹ The context for eviction and eviction courts is one "where housing is a scarce and unstable resource for subordinated people, and such scarcity generates profit for those who benefit."² Indeed, "[e]viction courts do not merely operate against this social backdrop; they help to create it."³ Some suggest landlords even use eviction courts as a forum for tenant discipline and to "instill fear and maintain control."⁴

On top of the predatory practice itself, tenants facing eviction confront various hurdles when seeking to access the judicial system. For some tenants, obtaining a lawyer and going to court for a civil justice issue requires subjecting themselves to an institution that they do not understand and one in which they are often made to feel lost, shamed, or like a failure.⁵ Past experience with and connotation of the *criminal* justice system leaves tenants, particularly tenants from marginalized backgrounds, hesitant to pursue legal assistance and remedies in civil court.⁶

The Oregon Rules of Civil Procedure (ORCPs) are an underutilized tool to improve access to justice in eviction court proceedings. Rules that prescribe procedures to notify parties of the court case,⁷ to provide a deadline by which defendants must respond to those motions,⁸ and for the court to issue a default judgment if a party does not appear at the hearing⁹ all manifest as barriers to defendants' access to justice and their day in court. Oregon's eviction courts operate within the rules provided by the Oregon Residential Landlord Tenant Act (ORLTA), which provides procedural guidelines as well as pleading

¹ See Kathryn A. Sabbeth, *Eviction Courts*, 18 U. ST. THOMAS L.J. 359, 401 (2022) [hereinafter *Eviction Courts*].

² *Id.*

³ *Id.*

⁴ *Id.* at 402.

⁵ Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 IOWA L. REV. 1263, 1267 (2016).

⁶ *Id.*

⁷ OR. R. CIV. P. 7.

⁸ OR. R. CIV. P. 15.

⁹ OR. R. CIV. P. 69.

requirements.¹⁰ ORS § 105.135 provides the typical statutory guidelines about the timing and procedure of service of a summons in court cases.¹¹

This Comment proceeds in five parts. Part I briefly discusses the history of the ORCPs, exploring particular amendments made by the Council on Court Procedures to the rules of civil procedure and the rationale behind those revisions. Part II defines access to justice and analyzes which ORCPs are helpful to increase access to justice. Part III provides an overview of eviction court in Oregon—how the eviction process works, the legislative protections enacted during the COVID-19 pandemic and beyond, and the racial implications of eviction in Oregon stemming from the state’s racist history. Part III also discusses the ongoing fight for tenants’ rights in Oregon. Part IV analyzes the recent efforts to establish a civil right to counsel, as well as two Oregon-specific efforts to increase access to justice: a paralegal licensure program and an alternative to the bar exam. Finally, Part V recommends two potential solutions: (1) enforcing required notice procedures and (2) amending ORCP 15 to better account for low-income parties.

I

A BRIEF HISTORY OF THE OREGON RULES OF CIVIL PROCEDURE

The ORCP have a unique¹² and complicated history. In 1862, the Oregon Legislature adopted the Oregon Code of Civil Procedure (Code), which framed state civil procedure for more than 100 years.¹³ As early as the 1920s, the longevity of the 1862 Code led to sharp criticism of Oregon’s procedural system and widespread calls for reform.¹⁴ The 1862 Code was severely outdated and, in some circumstances, an unconstitutional statutory scheme governing

¹⁰ *Chapter 90 Residential Landlord and Tenant*, OREGONLAWS, https://oregon.public.law/statutes/ors_chapter_90 [<https://perma.cc/8ZNN-J55Q>] (last visited Mar. 28, 2024).

¹¹ OR. REV. STAT. § 105.135 (2023).

¹² *Survey of the Oregon Bench & Bar on the Oregon Rules of Civil Procedure*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. 4 (Mar. 1, 2010), https://iaals.du.edu/sites/default/files/documents/publications/survey_oregon_bench_bar2010.pdf [<https://perma.cc/3PC2-CPPX>] [hereinafter *Oregon Bench Survey*].

¹³ *Id.*; see also Fredric R. Merrill, *The Oregon Rules of Civil Procedure—History and Background, Basic Application, and the “Merger” of Law and Equity*, 65 OR. L. REV. 527, 530 (1986), for more on the early histories of civil procedure rules in Oregon.

¹⁴ Merrill, *supra* note 13, at 530 (“The longevity of the 1862 Oregon Code of Civil Procedure led, as early as the mid-1920s, to criticism of the Oregon civil procedure system and a call for substantial reform.”).

jurisdiction and process that was in dire need of revision.¹⁵ Federal reform of procedural rules in 1938 eventually inspired Oregon to enact its own procedural reforms.¹⁶ Beginning in 1939 and continuing through 1962, Oregon judicial bar committees, legislative groups, and recommendation commissions brainstormed workable reforms.¹⁷

Finally, in 1975, after concerns arose about the Oregon Supreme Court's unilateral authority to create the new rules of civil procedure, the Oregon Legislature vested the power to create and modify the rules in a separate judicial agency: the Council on Court Procedures (Council).¹⁸ The Council had the power to promulgate rules "governing pleading, practice and procedure . . . in all civil proceedings in all courts of the state which shall not abridge, enlarge, or modify the substantive rights of any litigant."¹⁹ The Council is responsible for continuous review and modification of the rules governing civil procedure.²⁰

From September 1977 to January 1979, the original Council created and formulated ORCP Rules 1–64, which cover general civil procedure through the completion of trial.²¹ The Oregon Legislature adopted ORCPs 1–64 in the early 1980s.²² Between 1979 and 1981, Oregon's legislative assemblies promulgated ORCP 65–85 and submitted these

¹⁵ Lois Lindsay Davis, Note, *Civil Procedure*, 16 WILLAMETTE L. REV. 703, 704 (1980).

¹⁶ Merrill, *supra* note 13, at 530.

¹⁷ *Id.* at 530–31.

¹⁸ *Id.* at 530–32. The previous construction of the Council on Court Procedures was "23 members. Ten of the members [were] judges: one supreme court justice, one court of appeals judge, six circuit court judges, and two district court judges." *Id.* at 533 (quoting OR. REV. STAT. § 1.730 (1985)). Today, the composition of the Council is fairly similar, with slight differences. Members serve up to two four-year terms, commencing in August of odd numbered years. *Membership*, OR. COUNCIL ON CT. PROCS., <https://counciloncourtprocedures.org/membership/> [<https://perma.cc/EYV4-VHRH>] (last visited Dec. 1, 2023). Pursuant to ORS 1.730, the Council consists of: One Supreme Court justice (chosen by the Supreme Court), one court of appeals judge (chosen by the court of appeals), eight circuit court judges (chosen by the Circuit Court Judges Association Executive Committee), twelve lawyers (appointed by the Oregon State Bar Board of Governors), and a public member (chosen by the Supreme Court). *Id.* Attorneys and members of the public interested in joining the Council can fill out a Volunteer Survey or contact the Court's office directly. *Id.*

¹⁹ Merrill, *supra* note 13, at 533 (quoting OR. REV. STAT. § 1.735 (1985)).

²⁰ *Oregon Bench Survey*, *supra* note 12, at 4. More information about the duties of the Council is described online. See *About the Council*, OR. COUNCIL ON CT. PROCS., <https://counciloncourtprocedures.org/about-the-council/> [<https://perma.cc/AEQ7-4N2D>] (last visited Dec. 3, 2023).

²¹ Merrill, *supra* note 13, at 535; see also *Oregon Bench Survey*, *supra* note 12, at 4.

²² *Oregon Bench Survey*, *supra* note 12, at 4.

rules to the Legislature—rules that are still in use today.²³ To this day, the Council continues to review and edit the ORCPs every two years, with the goal of “[ensuring] that the rules remain practical and up to date, and promote the fair and efficient administration of justice.”²⁴

II

ACCESS TO JUSTICE:

DEFINITIONS AND THREE ORCPs TO INCREASE ACCESS TO JUSTICE

A. Defining “Access to Justice”

Defining the phrase “access to justice” is essential to understanding how to both identify a lack of access to justice and design policy solutions. Deborah L. Rhode, a leading scholar on legal ethics and access to justice,²⁵ formulated a definition throughout her work. She started with founding-era concepts: “‘Equal justice under law’ is one of America’s most firmly embedded and widely violated legal principles. It embellishes courthouse entries, ceremonial occasions, and occasionally even constitutional decisions.”²⁶ These ideals trace back to the founding era, and even before that.²⁷ Indeed, in 1215, England’s Magna Carta pledged: “To no one will we sell, to no one will we refuse or delay, right or justice.”²⁸

For most of American history, access to law was considered a basic right, but access to lawyers was not.²⁹ As Rhode articulated:

Early state constitutions generally included some guarantee of equal access to justice or equal protection of the law, and as noted below,

²³ Merrill, *supra* note 13, at 536.

²⁴ *About the Council*, *supra* note 20 (“The Council considers proposed rule changes from a wide variety of sources. Council members also consider the potential need for amendments that may arise because of developments in case law, new Oregon statutes or federal legislation, innovations in technology, or changes in legal practice. The Council strives to make sure that the rules remain practical and up to date, and promote the fair and efficient administration of justice. The Council welcomes comments and suggestions regarding the Oregon Rules of Civil Procedure.”).

²⁵ Deborah L. Rhode passed away in 2021, but the significance of her work and scholarly research on legal ethics remains pivotal and invaluable in the field today. *Deborah L. Rhode*, STANFORD L. SCH., <https://law.stanford.edu/deborah-l-rhode/> [https://perma.cc/2U39-8T4M] (last visited Mar. 28, 2024); Sharon Driscoll, *Leading Legal Academic Deborah L. Rhode Dies at 68*, STANFORD REP. (Jan. 12, 2021), <https://news.stanford.edu/2021/01/12/leading-legal-academic-deborah-l-rhode-dies-68/> [https://perma.cc/K89M-ZE5R].

²⁶ Deborah L. Rhode, *Access to Justice*, 69 FORDHAM L. REV. 1785, 1785 (2001).

²⁷ DEBORAH L. RHODE, ACCESS TO JUSTICE 47 (2004).

²⁸ *Id.*

²⁹ *Id.*

the Sixth Amendment of the U.S. Constitution protected defendants' rights to retain their own counsel. But none of these guarantees encompassed access to legal assistance for those who could not afford it.³⁰

What does “equal justice” mean? “‘Equal justice’ is usually taken to mean ‘equal access to justice,’ which in turn is taken to mean access to law.”³¹ However, a purely procedural understanding does not capture the ideals or goals of the concept.³² People who receive their “day in court” do not always feel that “justice has been done,” and with good reason.³³ Procedural hurdles prevent low-income people from “translating formal rights into legal judgments.”³⁴ Furthermore, “post-judgment power relations between the parties may make legal victories too expensive and difficult to enforce, or may prompt legislative backlash.”³⁵ As Rhode stated, “Those who win in court may still lose in life.”³⁶ “Access to justice” could be defined as narrowly as one individual’s access to one individual attorney.³⁷ In the eviction context, when litigants do not have access to legal advice or their hearing, they risk losing their homes by eviction. Thus, according to Rhode, it is access to the courts and legal advice that constitutes equal access to justice, even if the outcome is not always just.

However, another law professor and scholar, Gary Blasi, argues for a wider understanding of the term “access to justice.”³⁸ He argues we should include: (1) claims that are not full legal controversies yet, but that would clearly benefit from legal assistance; (2) collective action on behalf of a group of people; and (3) monitoring and enforcing compliance with equitable relief.³⁹ Blasi’s intentions with this argument are clear: “[A]ccess to justice must mean more than individualized access to perceived or procedural justice, and it should be measured by outcomes as well as by processes and appearances.”⁴⁰

³⁰ *Id.*

³¹ Rhode, *supra* note 26, at 1786.

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 1787.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Gary Blasi, *Framing Access to Justice: Beyond Perceived Justice for Individuals*, 42 LOY. L.A. L. REV. 913, 914 (2009).

³⁸ *Id.*

³⁹ *Id.* at 924–25.

⁴⁰ *Id.* at 925.

Blasi articulates that “access to justice” as a concept must go beyond the individual level, and that societally we should strive to maintain a system of equitable access to the law and corresponding remedies.⁴¹

For purposes of this Comment, access to justice is defined as access to the courts, legal advice, and a just outcome. Some scholars argue that conflating access to justice with access to the courts is the wrong approach.⁴² But in the eviction context, when litigants do not have access to their hearing, they receive a default judgment, lose their case, and are evicted from their homes, which, under any definition of the term, is not a just outcome.⁴³

B. The Impact of ORCPs 7, 15, and 69 in Eviction Proceedings

The rules of civil procedure affect, both positively and negatively, parties’ access to justice and the court system. Three specific rules have a direct and profound connection to eviction court proceedings, and the Council on Court Procedures has considered amendments to each.⁴⁴ Those rules are ORCP 7 (Summons),⁴⁵ ORCP 15 (Time for Filing Pleadings or Motions),⁴⁶ and ORCP 69 (Default Orders and Judgments).⁴⁷

1. ORCP 7: Summons

Tenants are unable to advocate for their interests in eviction court because of the limitations of ORCP 7, the rule governing the Summons. The purpose of a summons under ORCP 7 is to “apprise the defendant of the existence and pendency of the action” and to “afford a reasonable opportunity to appear and defend”⁴⁸ within a specified time.⁴⁹ In Oregon, to determine if an action has commenced within the time limit,

⁴¹ *Id.*

⁴² See Katherine S. Wallat, *Reconceptualizing Access to Justice*, 103 MARQ. L. REV. 581 (2019).

⁴³ See generally Section II.A.

⁴⁴ See *ORCP History by Biennium*, OR. COUNCIL ON CT. PROCS., <https://counciloncourtprocedures.org/orcp-history-by-biennium/> [https://perma.cc/JD6U-URZK] (last visited Mar. 26, 2024). (For ORCP 7, click “2021-2023 Biennium History Materials.” For ORCP 15, click “2019-2021 Biennium History Materials.” For ORCP 69, click “2021-2023 Biennium History Materials.”).

⁴⁵ OR. R. CIV. P. 7.

⁴⁶ OR. R. CIV. P. 15.

⁴⁷ OR. R. CIV. P. 69.

⁴⁸ OR. R. CIV. P. 7 D(1).

⁴⁹ *Mutzig v. Hope*, 176 Or. 368, 379, 158 P.2d 110, 115 (1945) (citing *Whitney v. Blackburn*, 17 Or. 564, 21 P. 874 (1889)).

an action has commenced when the complaint is filed and the summons is served on the defendant.⁵⁰

The Council most recently edited ORCP 7 in 2022.⁵¹ The vast majority of these changes were stylistic. For example, every instance of the word “upon” was changed to the word “on.”⁵² Before these most recent edits, the last time the Council edited this rule was in the 2017–2019 biennium.⁵³ These edits to subsection D(6) regarding alternative services were designed to make the sentences in the rule parallel.⁵⁴ These amendments did not substantially change the existing rule⁵⁵ or address access to justice. The last time ORCP 7 was substantively amended was in the 2007–2009 biennium, when the Council added procedures to serve Limited Liability Corporations (LLCs) in subsection (D)(3)(c) and procedures to serve Limited Partnerships (LPs) in subsection (D)(3)(d).⁵⁶

The ORLTA also has a variety of notice requirements for eviction litigants. ORS § 90.150 states different requirements for each type of notice: verbal, written delivered, and written mailed.⁵⁷ ORS § 90.155 details the exact specifications of how such notice may be permissibly served.⁵⁸

Substandard service methods and ineffective notice procedures for eviction proceedings contribute to tenant evictions. The majority of

⁵⁰ OR. REV. STAT. § 12.020(1) (2023).

⁵¹ OR. R. CIV. P. 7; *ORCP History by Biennium*, *supra* note 44, click “2021-2023 Biennium History Materials.”

⁵² *Minutes of Meeting on Monday February 13, 2023*, OR. COUNCIL ON CT. PROCS. 3, <https://counciloncourtprocedures.org/Content/2021-2023%20Biennium/2023-02-13%20meeting%20minutes%20with%20appendices.pdf> [https://perma.cc/4RF7-6MWW] (last visited Dec. 1, 2023); *Amendments to the Oregon Rules of Civil Procedure Promulgated by the Council on Court Procedures*, OR. COUNCIL ON CT. PROCS. 1–19 (Dec. 10, 2022), <https://counciloncourtprocedures.org/Content/Promulgations/Amendments%20to%20the%20ORCP%20Promulgated%2012-10-2022.pdf> [https://perma.cc/638J-XETY].

⁵³ *ORCP History by Biennium*, *supra* note 44.

⁵⁴ *Amendments to the Oregon Rules of Civil Procedure Promulgated by the Council on Court Procedures*, OR. COUNCIL ON CT. PROCS. 12–17 (Dec. 8, 2018), <https://counciloncourtprocedures.org/Content/Promulgations/2018-12-08%20Promulgated%20Oregon%20Rules%20of%20Civil%20Procedure.pdf> [https://perma.cc/MZ7C-6UVM].

⁵⁵ *Id.*

⁵⁶ *Amendments to the Oregon Rules of Civil Procedure Promulgated by the Council on Court Procedures*, OR. COUNCIL ON CT. PROCS. 5–6 (Dec. 13, 2008), https://counciloncourtprocedures.org/Content/Promulgations/Promulgated_Amendments_to_ORCP_2008.pdf [https://perma.cc/4LYR-U6SX].

⁵⁷ OR. REV. STAT. § 90.150 (2024).

⁵⁸ OR. REV. STAT. § 90.155 (2024).

states allow landlords to notify a tenant of an eviction court case by posting the summons and complaint on the tenant's front door and then mailing the papers in the regular mail, without certification, confirmation, return receipt requested, or other measures to ensure delivery of the papers.⁵⁹ Even the U.S. Supreme Court has acknowledged that service by posting in an apartment building may not satisfy minimal standards of due process, because removal of postings by children or neighbors can prevent the notice from reaching the defendant.⁶⁰ Without knowledge of a pending court case, a tenant cannot appear in court, thereby jeopardizing their housing security.

2. ORCP 15: Time for Filing Pleadings or Motions

With a truncated timeline to file answers, pleadings, or motions, tenants are put at a disadvantage to respond to eviction lawsuits from their landlords. ORCP 15 requires that “[a]n answer to a complaint . . . or a motion responsive to either pleading, must be filed with the clerk within the time required by Rule 7C(2) to appear and defend.”⁶¹ However, under Oregon law, forcible entry and detainer proceedings “are not subject to provisions of the general statutes relating to service of process”⁶² In eviction cases, summonses give defendants four days to file an answer.⁶³ The Oregon Supreme Court has held that this process does not violate a defendant's due process rights to adequate notice.⁶⁴ ORS § 105.135, which was known as the Oregon Forcible Entry Detainer (FED) statute before the ORLTA,⁶⁵ provides details

⁵⁹ *Eviction Courts*, *supra* note 1, at 379–80 (citing JOAN BRANNON, NORTH CAROLINA SMALL CLAIMS LAW 149–50 (2009) (comparing North Carolina's service of process requirements for eviction and those in suits for small sums of money)).

⁶⁰ *Eviction Courts*, *supra* note 1, at 380 (citing *Greene v. Lindsey*, 456 U.S. 444, 454–55 (1982)).

⁶¹ OR. R. CIV. P. 15.

⁶² *Lexton-Ancira, Inc. v. Kay*, 269 Or. 1, 522 P.2d 875, 877 (1974).

⁶³ A forcible entry and detainer summons, which gives the defendant four days in which to answer, does not violate the defendant's due process rights to adequate notice. Forcible entry and detainer proceedings, including those against nonresident defendants, are not subject to the provisions for general service of process statutes, whether adopted prior to, or subsequent to, the Oregon forcible entry and detainer statutes.

OR. R. CIV. P. 7 (LEXIS, citing *Lexton-Ancira, Inc. v. Kay*, 269 Or. 1, 522 P.2d 875 (1974)).

⁶⁴ *Lexton-Ancira*, 269 Or. at 6, 522 P.2d at 878.

⁶⁵ “The Oregon FED statute (ORS 105.135) specifically provides that ‘the service shall be not less than two or more than four days before the day of trial appointed by the court’ and has been so enforced by the Oregon courts for many years.” *Id.* at 4, 522 P.2d at 877; *Landlord-Tenant Rights*, OR. LEGIS. COMM. SERVS. (Sept. 2014), <https://www.oregon>

about the timing and procedure governing service by landlords and answers by tenants.⁶⁶

The Council most recently edited ORCP 15 in the 2019–2021 biennium.⁶⁷ The amendments added language to ORCP 15 D with the goal of:

[C]larify[ing] that the court has discretion to enlarge time for filing all types of pleadings and responses and replies to motions . . . [T]he amendment gives a nod to practitioners that there may be circumstances where the court does not have discretion to grant an extension if an extension is not permitted as a matter of substantive law.⁶⁸

The ORLTA also has a variety of notice timing requirements for eviction litigants. ORS § 90.160 describes notice period calculation procedures and requirements, depending on the type of eviction case.⁶⁹ ORS § 90.370 details information for tenants asserting counterclaims against their landlords, but it does not address timing requirements.⁷⁰

After service of a summons and complaint, civil procedure rules typically allow the defendant twenty to thirty days to file an answer.⁷¹ However, in eviction court, tenants facing eviction are typically required to answer and prepare fully for trial within three to fourteen days after service of the complaint.⁷² In Oregon, tenants must respond within four days of receiving the summons and complaint.⁷³ The U.S. Supreme Court has upheld these short timeframes, ruling that an Oregon statute that provided only six days to answer and prepare for trial was constitutional on the grounds that tenants' defenses are too

legislature.gov/lpro/Publications/BB2014LandlordTenantRights.pdf [https://perma.cc/33D8-DET8].

⁶⁶ *Lexton-Ancira, Inc.*, 269 Or. at 4–5, 522 P.2d at 877, citing OR. REV. STAT. § 105.135 (2023).

⁶⁷ *ORCP History by Biennium*, *supra* note 44.

⁶⁸ *Minutes of Meeting on Saturday December 12, 2020*, OR. COUNCIL ON CT. PROCS., <https://counciloncourtprocedures.org/Content/2019-2021%20Biennium/2020-12-12%20meeting%20minutes%20w%20appendices.pdf> [https://perma.cc/9HEH-J8ZE] (last visited Dec. 1, 2023).

⁶⁹ OR. REV. STAT. § 90.160 (2024).

⁷⁰ OR. REV. STAT. § 90.370 (2024).

⁷¹ *Eviction Courts*, *supra* note 1, at 378 (citing FED. R. CIV. P. 12).

⁷² *Id.* (citing *LSC Eviction Laws Database*, LEGAL SERVS. CORP. (2021), <https://www.lsc.gov/initiatives/effect-state-local-laws-evictions/lsc-eviction-laws-database> [https://perma.cc/23UE-KBJ3] (in Oregon: 7 days)).

⁷³ OR. REV. STAT. § 105.135 (2023).

simple to deserve more time.⁷⁴ In that case, the Court also approved Oregon's substantive restrictions on defenses tenants may raise: "the simplicity of the issues in the typical [eviction] action will not usually require extended trial preparation and litigation."⁷⁵ The trouble with courts treating eviction in this manner is that eviction itself becomes a "self-fulfilling prophecy"⁷⁶—the "[Court's] treatment of eviction as simple simultaneously justifies and perpetuates the speed of the process."⁷⁷

These quick processes sacrifice careful analysis and accurate outcomes⁷⁸ for tenants and increase the disproportionate power of landlords.⁷⁹ Speeding up the eviction process can also have negative implications for the parties' relationship out of court.⁸⁰ This is particularly apparent with "[l]arge corporate landlords . . . [that] bring serial eviction actions against the same tenants, over and over, as a model for collecting rent and generating additional fees."⁸¹ This strains relationships and fosters distrust between tenants and landlords. Kathryn Sabbeth, a law professor at Rutgers Law who "teaches, writes, and litigates about civil (in)justice and housing,"⁸² writes about eviction courts:

A traditional understanding of eviction courts is that landlords use them to seize possession of real property, but recent empirical studies suggest that landlords initiate eviction proceedings to extract rental payments and fees, sometimes with no intention of actually obtaining

⁷⁴ *Eviction Courts*, *supra* note 1, at 381 (citing *Lindsey v. Normet*, 405 U.S. 56, 65 (1972)).

⁷⁵ *Id.* at 378 (citing *Lindsey v. Normet*, 405 U.S. 56, 64–69 (1972) (approving an Oregon provision that forbid consideration of any issue other than whether rent was paid, excluding consideration of the landlord's breach of the warranty of habitability)).

⁷⁶ *Id.* (citing Kathryn A. Sabbeth, *Simplicity as Justice*, 2018 WIS. L. REV. 287, 302 (2018) ("arguing that 'the underdevelopment of law on behalf of the poor recreates itself in an unfortunate feedback loop' whereby the Supreme Court denies the right to counsel to litigants with purportedly 'simple' claims, thereby decreasing the availability of lawyers who could develop the common law governing those claims.")).

⁷⁷ *Id.* (citing Kathryn A. Sabbeth, *Market-Based Law Development*, LPE PROJECT (July 21, 2021), <https://lpeproject.org/blog/market-based-law-development> [<https://perma.cc/29AE-JHFK>] ("Assumptions about whose cases are worthy of attention legitimize the simplification of entire bodies of law and de-legalization of lower status courts.")).

⁷⁸ *Id.* (citing *Simplicity as Justice*, *supra* note 76, at 294).

⁷⁹ *Id.* (citing *Simplicity as Justice*, *supra* note 76, at 295–96 (describing how delay can benefit tenant-defendants)).

⁸⁰ *Id.* at 378–79 (citing *Simplicity as Justice*, *supra* note 76, at 295–96 (describing how delay can sometimes provide the only restraint on the exertion of force)).

⁸¹ *Id.* at 402.

⁸² Kathryn Sabbeth, RUTGERS L. SCH., <https://law.rutgers.edu/directory/view/ks2017> [<https://perma.cc/8TH3-KEWK>] (last visited Mar. 28, 2024).

possession of the property In this way, the courts operate as a device for routine asset collection and extraction of wealth.⁸³

The speed of these processes also emphasizes the enforcer role that the state plays in those relationships, rather than a body to restrain uses of force.⁸⁴ As one author put it, “Short timeframes that rush cases to judgment make the courts less like fora for application of the rule of law and more like asset collection devices or means for forcible removal.”⁸⁵ Additionally, as another team of authors described, “The systematic and low-cost way in which . . . civil courts process cases—devaluing and commodifying the individuals subject to them and disregarding their procedural and substantive rights—contributes to the narrative that these individuals are not worthy of the justice system that society upholds as the ideal.”⁸⁶ Thus, although four days to respond to pleadings⁸⁷ is not a constitutional violation, that deadline still prevents many tenants from seeking legal advice and support to combat their eviction because of their fear,⁸⁸ uncertainty,⁸⁹ or distrust of the system overall.⁹⁰

3. ORCP 69: Default Orders and Judgments

Opaque notice procedures and tight deadlines cause tenants to miss their hearings and receive default judgments, which in turn cause them to lose their homes. The ORCP for default judgments states that

⁸³ *Eviction Courts*, *supra* note 1, at 401–02.

⁸⁴ *Id.* at 379 (citing *Simplicity as Justice*, *supra* note 76, at 296–98 (procedural rules “erect obstacles between the individual and the force of the state”; “noting the violent role of the state that removes evicted tenants by force.”)).

⁸⁵ *Id.* (citing *Simplicity as Justice*, *supra* note 76); Tonya L. Brito et al., *Racial Capitalism in the Civil Courts*, 122 COLUM. L. REV. 1243, 1271 (2022) (outlining that lower civil courts can tend to facilitate the transfer of assets from people of color to majority-white corporations, or even the state itself); Daniel Wilf-Townsend, *Assembly-Line Plaintiffs*, 135 HARV. L. REV. 1704, 1743 (2022) (describing civil courts “as a site for private companies to petition the state for permission to redistribute others’ assets to themselves—permission which appears to be granted frequently without much, if any, scrutiny”).

⁸⁶ Brito et al., *supra* note 85, at 1248.

⁸⁷ OR. REV. STAT. § 105.135 (2023).

⁸⁸ RHODE, *supra* note 27.

⁸⁹ Lisa K. Bates, *Fight, Flight, Freeze: How Access to Support Shapes Tenant Responses to Eviction in Multnomah County*, EVICTED IN OREGON 16, https://static1.squarespace.com/static/6131489316770434133f7644/t/65f49785e75e96277cb0eb17/1710528389585/Fight%2C+Flight%2C+Freeze_+How+Access+to+Support+Shapes+Tenant+Responses+to+Eviction+in+Multnomah+County.pdf [https://perma.cc/BC4G-EYNZ] (last visited Mar. 28, 2024) [hereinafter *Fight, Flight, Freeze*].

⁹⁰ Greene, *supra* note 5, at 1268.

“[w]hen a [defendant] . . . has been served with summons pursuant to Rule 7 . . . and has failed to appear by filing a motion or answer, . . . the party seeking affirmative relief may apply for an order . . . and a judgment by default.”⁹¹ There are additional details in the rule regarding the procedures for seeking default judgments or seeking to set aside a default judgment after it is entered,⁹² but the general rule gives an outline of the overall process.⁹³

In October 2023, the Council considered amendments to ORCP 69.⁹⁴ Before these amendments, ORCP 69 was most recently amended in the Council’s 2013–2015 biennium.⁹⁵ The primary change⁹⁶ to the rule at that time was “to clarify that the notice of intent to apply for an order of default cannot be served before the time required by Rule 7 C(2) or other applicable rule or statute has expired.”⁹⁷

In the Council’s October 2023 meeting, a councilmember suggested editing ORCP 69 to state directly that defendants have thirty days to respond to a summons, and then, if the answer is not filed, the plaintiff can seek a default judgment.⁹⁸ The councilmember argued that this would “speed things up,” and eradicate the gamesmanship that parties have used with default judgment notice procedures.⁹⁹ Other councilmembers expressed contrary opinions. One, for example, added

⁹¹ OR. R. CIV. P. 69 A. (1).

⁹² See OR. R. CIV. P. 69.

⁹³ OR. R. CIV. P. 69 A. (1).

⁹⁴ OR. R. CIV. P. 69; *Minutes of Meeting on Saturday October 14, 2023*, OR. COUNCIL ON CT. PROCS., <https://counciloncourtprocedures.org/Content/2023-2025%20Biennium/2023-10-14%20meeting%20minutes%20w%20appendices.pdf> [<https://perma.cc/Q6C5-QJBD>] (last visited Mar. 3, 2023).

⁹⁵ *ORCP History by Biennium*, *supra* note 44.

⁹⁶ See also *Minutes of Meeting on Saturday December 12, 2020*, OR. COUNCIL ON CT. PROCS. 1, <https://counciloncourtprocedures.org/Content/2019-2021%20Biennium/2020-12-12%20meeting%20minutes%20w%20appendices.pdf> [<https://perma.cc/NB8U-ZSUE>] (last visited Dec. 1, 2023), for the version at the time this amendment to ORCP 69 was implemented. See OR. R. CIV. P. 7 C. (2), for the text of the rule in the following quote.

⁹⁷ *Minutes of Meeting on Saturday December 6, 2014*, OR. COUNCIL ON CT. PROCS. 13, https://counciloncourtprocedures.org/Content/2013-2015_Biennium/2014-12-06_minutes_w_appendices.pdf [<https://perma.cc/4MP2-4CJD>] (last visited Dec. 1, 2023).

⁹⁸ *Minutes of Meeting on Saturday October 14, 2023*, OR. COUNCIL ON CT. PROCS. 14, <https://counciloncourtprocedures.org/Content/2023-2025%20Biennium/2023-10-14%20meeting%20minutes%20w%20appendices.pdf> [<https://perma.cc/M2CM-ELDC>] (last visited Dec. 1, 2023). In contrast, ORCP 69 requires the plaintiff to give notice to the defendant when seeking a default judgment. OR. R. CIV. P. 69.

⁹⁹ *Minutes of Meeting on Saturday October 14, 2023*, *supra* note 98.

that the “gamesmanship” concern was addressed in the professionalism expectations in ORCP 71.¹⁰⁰

To counter this perspective, another councilmember argued that “from an access to justice perspective, it [is concerning] to make default orders and default judgments easier to get.”¹⁰¹ By removing the notice requirement, default judgments would be easier to obtain and would occur at much higher rates. The Council eventually voted against forming a committee to consider amendments to ORCP 69 in the 2023–2025 biennium.¹⁰²

Unclear notice procedures and tight deadlines, as discussed above, cause tenants to miss their hearings and receive default judgments. Judith Fox, legal scholar and professor at Notre Dame Law School, details in one of her articles that tenants frequently offer the same reasons to explain why they miss their eviction hearings. Fox recalls: “Whenever I ask a tenant why he or she failed to appear at their eviction hearing, I get one of two answers: (1) I did not know about it, or (2) it would not matter because everyone gets evicted.”¹⁰³ I noticed these answers frequently in my work in eviction defense as well.

Despite tenants’ failure to appear at eviction hearings because they did not know about the hearing, default judgments are a significant part of how courts function, especially in terms of efficiency. Default judgments, which do not require a hearing on the merits, allow judges to process hundreds of cases in a morning, which helps clear out dockets.¹⁰⁴ One scholar noted that “[t]he smooth functioning of eviction court dockets depends on disposing of many tenants’ homes through default.”¹⁰⁵

Default judgments are particularly perilous for tenants because of the long-term financial and housing impacts they can have. In Oregon, 25% of eviction cases end in a default judgment against a tenant for

¹⁰⁰ *Id.* at 14–15.

¹⁰¹ *Id.* at 15.

¹⁰² *Id.*

¹⁰³ *Eviction Courts*, *supra* note 1, at 380 n.153 (quoting Judith Fox, *The High Cost of Eviction: Struggling to Contain a Growing Problem*, 41 MITCHELL HAMLINE J. PUB. POL’Y & PRAC. 167, 191 (2020)). For Judith Fox’s background, see *Judith Fox*, UNIV. OF NOTRE DAME L. SCH., <https://law.nd.edu/directory/judith-fox/> [<https://perma.cc/PEK3-WHAL>] (last visited Mar. 29, 2024).

¹⁰⁴ *Eviction Courts*, *supra* note 1, at 380–81.

¹⁰⁵ *Id.* at 381.

failure to appear at one of their court dates.¹⁰⁶ In that situation, not only has the tenant been displaced from their home, but also “there is a judgment on their record that can be a significant barrier to renting for years into the future.”¹⁰⁷ Eviction judgments can be prevented when a tenant has access to an attorney or more clear information about their rights in the eviction process.¹⁰⁸

Judges also tend to significantly favor landlords in eviction court cases over tenants.¹⁰⁹ “Judges regularly issue judgments for landlords without requiring them to establish their prima facie case, even where the laws are clear that the landlord has the burden of proof.”¹¹⁰ Often judges do not require landlords to support their arguments with evidence of any kind, let alone admissible evidence.¹¹¹ Some judges do not apply or recognize tenants’ rights, despite their rights being “etched into the plain language of statutes.”¹¹² Even if landlords are not represented, some judges still engage in this favoritism, which may be due to “judges’ hostility [toward tenants], tenants’ relative unfamiliarity with the process, or the racialized and gendered power relationship between landlords and tenants.”¹¹³ Otherwise generally sympathetic judges have been unwilling to push for reforms that will antagonize lawyers whose economic interests are threatened by assisting tenants without representation.¹¹⁴ Regardless, representation by counsel makes a bigger difference for tenants than for landlords.¹¹⁵ But, even when tenants are represented, judges resist enforcing laws that protect tenants while continuing to enforce laws that justify

¹⁰⁶ Lisa K. Bates, *Oregon’s Safe Harbor for Tenants: Rocky Shoals in Eviction Diversion*, EVICTED IN OREGON 8, <https://static1.squarespace.com/static/6131489316770434133f7644/t/64f0d02eb9b1c047c0d8115a/1693503537190/PP-HRAC+report+Safe+Harbor+Diversion.pdf> [<https://perma.cc/6HYC-D52G>] (last visited Dec. 1, 2023).

¹⁰⁷ *Id.* at 6.

¹⁰⁸ *Id.* at 6–7.

¹⁰⁹ See *Eviction Courts*, *supra* note 1, at 384.

¹¹⁰ *Id.* (citing Kathryn A. Sabbeth, *Housing Defense as the New Gideon*, 41 HARV. J.L. & GENDER 55, 79 (2018)).

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* (citing Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal about When Counsel Is Most Needed*, 37 FORDHAM URB. L.J. 37, 81–82 (2010)).

¹¹⁴ RHODE, *supra* note 27, at 15 (“Particularly for elected judges, support from the organized bar is critical to their reputation, election campaigns, and advancement. And encouraging parties to dispense with lawyers wins few friends in the circles that matter most.”).

¹¹⁵ *Eviction Courts*, *supra* note 1, at 384 (citing Engler, *supra* note 113, at 81–82).

judgments for landlords.¹¹⁶ “In this environment, it is not surprising [sic] that tenants often waive the rights they possess.”¹¹⁷

III

EVICITION COURT IN OREGON: PROCEDURES, PROTECTIONS, AND RACIAL IMPLICATIONS

A. Defining Eviction Procedures in Oregon

Eviction happens when a landlord wants to remove a tenant from the landlord's property.¹¹⁸ In Oregon, the eviction process begins when a landlord delivers the tenant a termination notice.¹¹⁹ Termination notices are not court proceedings, but they can turn into a court case if the tenant does not cure the violation.¹²⁰ A proper termination notice contains information about how a tenant may cure the violation and a deadline by which they must fix the problem.¹²¹ For example, if the violation is a failure to pay rent, the notice will contain information about how the tenant can pay the outstanding rent balance to stay in their home. There are different types of termination notices: Notices of Termination with Cause include Notices for Failure to Pay Rent, Notices to Cure for Lease Violations, and others.¹²² Again, notices cannot compel a tenant's eviction; only a court decision can do that.¹²³

¹¹⁶ *Id.* (citing Nicole Summers, *The Limits of Good Law: A Study of Housing Court Outcomes*, 87 U. CHI. L. REV. 145, 149 (2020)).

¹¹⁷ *Id.* (citing Nicole Summers, *Civil Probation*, 75 STAN. L. REV. 847, 856 (2023)).

¹¹⁸ *How Do Evictions Work in Oregon?*, EVICTED IN OR., <https://www.evictedinoregon.com/how-evictions-work> [<https://perma.cc/ZQM3-CD8S>] (last visited Dec. 1, 2023).

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ See Legal Aid Servs. of Or., *Eviction Notice Handout*, OR. L. HELP (Mar. 30, 2023), <https://oregonlawhelp.org/topics/housing/rental-housing/evictions-termination-notices-and-landlord-lockouts/termination-notices/how-check-if-your-landlords-termination-notice-legal> [<https://perma.cc/FQC5-XKTV>] for notice requirements.

¹²² Beth Dillman, *The Eviction Process in Oregon: Rules for Landlords and Property Managers*, NOLO, <https://www.nolo.com/legal-encyclopedia/the-eviction-process-oregon-rules-landlords-property-manager.html> [<https://perma.cc/RTQ9-QLTC>] (last visited Dec. 1, 2023).

¹²³ *Learn About Termination Notices*, OR. L. HELP, <https://oregonlawhelp.org/topics/housing/rental-housing/evictions-termination-notices-and-landlord-lockouts/termination-notices/learn-about-termination-notices> [<https://perma.cc/97VL-MSSP>] (last visited Mar. 26, 2024). Click “If I get a termination notice, can my landlord force me to move out?” to find the answer: “No. If you don’t move out by the date in the notice, your landlord must take you to eviction court before they can force you to move out.” See the link for additional details and instructions.

If the notice period expires and the tenant has failed to cure the violation within the specified timeframe, the landlord can file a summons and complaint to bring the tenant to court.¹²⁴ In Oregon, an eviction case is known as a Forcible Entry Detainer, or FED.¹²⁵ One of the many reasons eviction law is so confusing in Oregon is due to this two-stage process: termination notices and FED court cases.

Eviction law is very complex and highly technical, which leaves many tenants confused and unsure how to proceed. Unfortunately, without a clear understanding of the law, and in an extremely stressful situation, tenants feel forced out of their homes, even if they have only received a notice.¹²⁶ There is no way to estimate how many people moved out of their homes after receiving a termination notice, and unfortunately the data and research on nationwide eviction and eviction in Oregon do not account for people displaced by termination notice.¹²⁷

B. Despite Recent Legislative Support, Tenants Still Receive Default Judgments

Early in the COVID-19 pandemic, tenants in Oregon and nationwide were protected by robust eviction prevention policies.¹²⁸ The first national eviction moratorium, adopted through the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), covered a narrow period between March 27 and July 24, 2020.¹²⁹ The CARES Act eviction moratorium prohibited landlords from charging late fees on unpaid rent and from initiating eviction proceedings against a tenant for nonpayment of rent.¹³⁰

On September 4, 2020, the Center for Disease Control and Prevention (CDC) implemented a complete moratorium on evictions

¹²⁴ *Residential Eviction*, OR. JUD. BRANCH, [https://www.courts.oregon.gov/courts/coos/help/pages/residential-eviction.aspx#:~:text=\(Formerly%20known%20as%20Forcible%20Entry,space%2C%20or%20floating%20home\)](https://www.courts.oregon.gov/courts/coos/help/pages/residential-eviction.aspx#:~:text=(Formerly%20known%20as%20Forcible%20Entry,space%2C%20or%20floating%20home)) [https://perma.cc/4FW5-63UB] (last visited Dec. 1, 2023).

¹²⁵ Jonathan Clay, *Oregon HB 2001 – Changes to Eviction Process for Nonpayment Cases*, MULTIFAMILY NW (Mar. 29, 2023), <https://www.multifamilynw.org/news/oregon-hb-2001--changes-to-eviction-process-for-nonpayment-cases##> [https://perma.cc/2SQW-UHJC].

¹²⁶ Bates, *supra* note 106, at 6.

¹²⁷ *Id.*

¹²⁸ MAGGIE MCCARTY & LIBBY PERL, CONG. RSCH. SERV., IN11516, FEDERAL EVICTION MORATORIUMS IN RESPONSE TO THE COVID-19 PANDEMIC 1 (2021).

¹²⁹ *Id.*

¹³⁰ *Id.* at 2.

for nonpayment of rent.¹³¹ The goal of the moratorium was to stop the spread of COVID-19 by preventing overcrowding in shelters and homelessness.¹³² A notice from the CDC published in the Federal Register stated that “housing stability helps protect public health because homelessness increases the likelihood of individuals moving into congregate settings, such as homeless shelters, which then puts individuals at higher risk to COVID-19.”¹³³ This moratorium was scheduled to end on December 31, 2020, but was subsequently extended three times: first through January 31, 2021; again through March 31, 2021; and finally through June 30, 2021.¹³⁴ The CDC’s moratorium applied to all renters who attested to meeting income and other eligibility requirements, such as affirmation that the tenant had made efforts to obtain rent assistance.¹³⁵

During the height of the COVID-19 pandemic, the Oregon Legislature prioritized housing policy that allowed tenants to stay in their homes. In July 2021, the Oregon Legislature implemented Oregon’s “safe harbor” eviction diversion program through Senate Bill (SB) 278.¹³⁶ The bill provided a delay in eviction proceedings for tenants who provided proof that they had applied for emergency rental assistance, primarily available through the Oregon Emergency Rent Assistance Program (OERAP).¹³⁷ The safe harbor was a period of sixty to ninety days, during which the funds from OERAP were processed and sent to landlords.¹³⁸ OERAP funds faced extreme delays in distribution, however, and some cases received extra time in the safe harbor period.¹³⁹

Despite these legislative efforts, Oregon tenants who obtained the safe harbor protections were in the minority. According to a report from Portland State University’s Housing Crisis Research Collaborative,

¹³¹ *Id.* at 1.

¹³² *Id.*

¹³³ *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19*, FED. REG. (Sept. 4, 2020), <https://www.federalregister.gov/documents/2020/09/04/2020-19654/temporary-halt-in-residential-evictions-to-prevent-the-further-spread-of-covid-19> [<https://perma.cc/S65Q-WFHR>].

¹³⁴ MCCARTY & PERL, *supra* note 128, at 1.

¹³⁵ *Id.* at 2.

¹³⁶ Bates, *supra* note 106, at 3.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.* See this source, as well, for case outcomes and interesting analysis on date from eviction proceedings. *Id.* at 4.

“[o]nly 28% of tenants with nonpayment eviction cases got the ‘safe harbor’ set-over (614 cases).”¹⁴⁰ During the time when SB 278 was attempting to prevent evictions, 31% of tenants in eviction court were displaced anyway due to eviction judgments, default judgments, noncompliance with stipulated agreements, and other judgments where the tenant did not obtain the safe harbor protection (659 cases).¹⁴¹ 26% of all tenants with nonpayment of rent cases received a default judgment because the tenant did not appear on the court date (572 cases).¹⁴²

As the Portland State report supports, many tenants received default judgments for failing to appear in court.¹⁴³ In my personal experience working in eviction defense, clients frequently told me they missed their court dates because they never received the summons from the court. More concerning still were the callers I had in Portland who received a default judgment in their cases after they had successfully claimed “safe harbor.” According to a report from Evicted in Oregon, in 11% of cases that had safe harbor protections, the tenant failed to appear for the rescheduled court hearing.¹⁴⁴

1. Tenants’ Rights Advocates Are Still Fighting For Tenant Protections

The Eviction Research Network is an organization based at the University of California, Berkeley, that provides data about eviction cases in Delaware, Indiana, Minnesota, and Oregon.¹⁴⁵ The Eviction Research Network partners directly with Dr. Lisa Bates, a professor at Portland State University.¹⁴⁶ Dr. Bates directs the Evicted in Oregon team, which “tracks eviction cases, evaluates public policy, and uses community-based methods to develop insights and ideas about housing justice” and reports this information back to the Eviction Research Network.¹⁴⁷ The Evicted in Oregon website declares that:

¹⁴⁰ *Id.* at 5.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ THE EVICTION RSCH. NETWORK, <https://evictionresearch.net/> [<https://perma.cc/H4KD-EAC2>] (last visited Dec. 1, 2023).

¹⁴⁶ *Id.*; Lisa Bates, PORTLAND STATE UNIV., <https://www.pdx.edu/profile/lisa-bates> [<https://perma.cc/55GU-XE5K>] (last visited Dec. 1, 2023).

¹⁴⁷ Lisa Bates, *supra* note 146.

Evictions are [i]ncompatible with [h]ousing [j]ustice. An eviction isn't a single event. They are the culmination of a series of choices and decisions made by people with unequal knowledge, power, and resources within an *unjust legal system*. Evictions are preventable; but are inevitable in an *unjust housing system*. Evictions are violent; but are tolerated by an *unjust political system*.¹⁴⁸

With this statement, Evicted in Oregon recognizes that advocating for tenants' rights is an inherently uphill battle because of the power imbalance between landlords and tenants.

In March 2023, the Oregon Legislature passed House Bill (HB) 2001, which requires that FED claims contain a disclosure with information about free, low-cost, and other paid legal assistance options that may be available to tenants.¹⁴⁹ The disclosure must also include detailed processes for landlords when filing a FED.¹⁵⁰ HB 2001 also changed default judgments. Now, under HB 2001, a tenant's failure to appear at the first appearance in their eviction case will not automatically result in a default judgment.¹⁵¹ Instead, courts will issue a default judgment only if there is testimony from the landlord that (1) the landlord does not have knowledge that the defendant has delivered possession to the landlord and (2) the landlord reasonably believes that the defendant remains in possession of the premises.¹⁵²

a. The Racial Disparities in Eviction in Oregon Trace Back to Oregon's Racist Roots

According to the Eviction Research Network, evictions in Oregon occur most frequently in racially diverse neighborhoods.¹⁵³ Generally, eviction rates are higher in more diverse neighborhoods, but the rate of eviction of Black people specifically is higher in white neighborhoods.¹⁵⁴ "Over the past 24 months, Black [eviction] rates have mostly been twice as high as the state average" and "[b]y the

¹⁴⁸ EVICTED IN OR., <https://www.evictedinoregon.com/> [<https://perma.cc/WQ6Q-N9R8>] (last visited Dec. 1, 2023).

¹⁴⁹ Clay, *supra* note 125.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.* Although the bill uses the term "housing provider," instead of landlord, the author continues to use the term "landlord" for purposes of consistency and in historical recognition of a landlord's power over people.

¹⁵³ *Oregon Eviction Filings*, EVICTION RSCH. NETWORK, <https://evictionresearch.net/oregon/> [<https://perma.cc/UTG9-TDCQ>] (last visited Sept. 29, 2024).

¹⁵⁴ *Id.*, "Mostly [w]hite neighborhoods had the lowest eviction rate except for Black renters who had 72 evictions per 1,000 Black households."

beginning of 2024, Black renters received [eviction] filings 125% more than the state rate”¹⁵⁵ As of September 2024, the rate of eviction of Black tenants is the highest it has ever been in Oregon’s history.¹⁵⁶

This is particularly horrifying and infuriating considering the racist history of Portland as a city and Oregon as a state. Portland, Oregon, is America’s whitest major city.¹⁵⁷ This history has had many profound cultural impacts on the city.¹⁵⁸ Walidah Imarisha, an expert on Black history in Oregon, stated this most clearly: “[T]he founding idea of the state was as a racist white utopia. The idea was to come to Oregon territory and build the perfect white society you dreamed of.”¹⁵⁹ Zev Nicholson, former Organizing Director of the Urban League of Portland, commented on present-day attitudes about race, saying, “Portland’s tactic when it comes to race . . . has been to ignore it.”¹⁶⁰

Given that Portland is the whitest big city in America, the fact that the highest rates of eviction are among Black tenants is disappointing, but unsurprising. Though the city itself may seem politically progressive, the government “has facilitated the dominance of whites in business, housing, and culture.”¹⁶¹ The few predominantly Black neighborhoods in Portland throughout history have been the sites of extreme gentrification, or all-out demolition.¹⁶² Additionally, the

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ Kristine de Leon & Mark Friesen, *Is Portland Still the Whitest Big City in America?*, THE OREGONIAN (Oct. 5, 2022, 1:56 PM), <https://www.oregonlive.com/data/2022/10/is-portland-still-the-whitest-big-city-in-america.html> [<https://perma.cc/GAX8-P9L4>]; Alana Semuels, *The Racist History of Portland, the Whitest City in America*, THE ATLANTIC (July 22, 2016), <https://www.theatlantic.com/business/archive/2016/07/racist-history-portland/492035/> [<https://perma.cc/67Q9-YB26>]; Ashley Woody, *Race, Space, and Resistance in America’s Whitest Big City* (June 2021) (Ph.D. dissertation, University of Oregon) (on file with the University of Oregon Scholars’ Bank).

¹⁵⁸ One example of these cultural impacts can be summarized by this quote: “Because Oregon, and specifically Portland . . . are not very diverse, many white people may not even begin to think about, let alone understand, the inequalities.” Semuels, *supra* note 157. Another source also illustrates this point: Matt Novak, *Oregon Was Founded as a Racist Utopia*, GIZMODO (Jan. 21, 2015), <https://gizmodo.com/oregon-was-founded-as-a-racist-utopia-1539567040> [<https://perma.cc/T7WK-P4T5>].

¹⁵⁹ Semuels, *supra* note 157. Imarisha also stated in this source: “Portland has, in many ways, perfected neoliberal racism.” *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² See *id.*, for information about Albina neighborhood; see Natasha Geiling, *How Oregon’s Second Largest City Vanished in a Day*, SMITHSONIAN MAG. (Feb. 18, 2015), <https://www.smithsonianmag.com/history/vanport-oregon-how-countrys-largest-housing-project-vanished-day-180954040/?no-ist> [<https://perma.cc/L36R-SFSH>], for information

Oregon Legislature made laws to protect the property values of white homeowners by using race as a determinant factor on who could receive a loan and where investments could be made.¹⁶³ These policies discriminated particularly against Black homeowners. Low-income Black people are more likely to be trapped for multiple generations in poor neighborhoods, which makes them less upwardly mobile compared to their low-income white peers.¹⁶⁴ These racist and discriminatory practices forced Black families and other minority groups to live in segregated spaces, which eventually led to a vast wealth gap that persists today.¹⁶⁵

Oregon has always been an inhospitable place for Black people.¹⁶⁶ Mortgage redlining historically prevented Black families from owning homes, and the pervasive disparity in homeownership levels between Black and white families remains true today.¹⁶⁷ Homeownership levels for Black families are currently declining.¹⁶⁸ With less Black homeownership, more Black renters, and persistent institutionalized racism, Black tenants are at an increased risk of eviction.

The racist roots of eviction in Oregon are also consistent with national findings. The American Civil Liberties Union (ACLU) found in a nationwide report that eviction disproportionately affects people according to racial and gender group.¹⁶⁹ The ACLU's report found that

about Vanport; see *Displacement in North and Northeast Portland – Historical Overview*, PORTLAND HOUS. BUREAU, <https://www.portlandoregon.gov/phb/article/655460> [<https://perma.cc/SHF8-PWJG>] (last visited Dec. 1, 2023), for more of the overall history of housing in Portland; see Rob Davis, *Whitewashing Albina's Destruction*, THE OREGONIAN (May 30, 2023), <https://projects.oregonlive.com/publishing-prejudice/whitewashing-destruction> [<https://perma.cc/92NH-GV9V>], for more on the history of the Albina neighborhood.

¹⁶³ *Oregon Eviction Filings*, *supra* note 153.

¹⁶⁴ RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* 186 (2017).

¹⁶⁵ *Id.*; see also *The African American Community in Multnomah County: An Unsettling Profile*, COALITION OF CMTYS. OF COLOR 34 (Jan. 2014), <http://static1.squarespace.com/static/5501f6d4e4b0ee23fb3097ff/t/556d3996e4b09da5e9a521df/1433221526152/African-American-report-FINAL-January-2014.pdf> [<https://perma.cc/AA8M-2U3S>] [hereinafter *Communities of Color Report*].

¹⁶⁶ Semuels, *supra* note 157.

¹⁶⁷ *Communities of Color Report*, *supra* note 165, at 34.

¹⁶⁸ *Id.*

¹⁶⁹ Maria Roumiantseva & Liel Sterling, *New Report Illustrates How Right to Counsel Prevents Evictions and Their Discriminatory Impacts on Communities*, ACLU (May 11, 2022), <https://www.aclu.org/news/womens-rights/new-report-illustrates-how-right-to-counsel-prevents-evictions-and-their-discriminatory-impacts-on-communities> [<https://perma.cc/ND6Z-SYM6>].

33% of all eviction defendants are Black, despite comprising only roughly 20% of all adult renters.¹⁷⁰ The number of women evicted is 16% higher than the number of men evicted, and Black women face eviction filings at nearly twice the rate of white women.¹⁷¹ The report goes on to describe that having children in the household is as likely to contribute to an eviction judgment as falling four months behind on rent.¹⁷²

C. Tenants Do Not Seek Legal Assistance for a Variety of Reasons

People in the civil justice system, particularly defendants, often avoid seeking legal assistance, which can put them at a significant disadvantage. Sara Sternberg Greene, a professor at Duke University School of Law, conducted a study to investigate the reasons why people in the civil system tend to not seek support and assistance with their court cases.¹⁷³ She found a few primary reasons for this resistance.

First, people who had negative past experiences with and perceptions of the criminal justice system had a higher resistance to seeking out help to navigate the civil justice system.¹⁷⁴ Respondents in her survey specifically stated that they believed seeking help from legal institutions would likely be futile because of their impressions of fairness, or lack thereof, on the criminal side.¹⁷⁵ Her respondents frequently pointed to their perception that justice on the criminal side is “bought,” and because they do not have money for a lawyer, they cannot access support.¹⁷⁶ The respondents also expressed a common feeling that the injustices they perceive in the criminal law context translate into a belief that the overall legal system is unjust.¹⁷⁷

Second, and relatedly, Greene found that respondents shared negative past experiences with public institutions, including the criminal legal system.¹⁷⁸ She found in her study that respondents had interactions with these systems that made them feel ““disrespected,”

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*; see also *Statewide: Latest Eviction Data*, EVICTED IN OR. (Nov. 15, 2023), <https://www.evictedinoregon.com/statewide-latest-eviction-data> [https://perma.cc/D42V-CFDF], for more data.

¹⁷³ Greene, *supra* note 5, at 1266.

¹⁷⁴ *Id.* at 1266–67.

¹⁷⁵ *Id.* at 1267.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

‘pathetic,’ ‘shameful,’ ‘lost,’ and unsure how to navigate the system.”¹⁷⁹ These previous negative experiences were extremely powerful deterrents for respondents who might otherwise have sought out professional support to navigate the legal system.¹⁸⁰ As Greene described, for these respondents, “seeking out lawyers and going to court for civil justice issues would mean bringing themselves back into the claws of an institution that they do not understand and in which they feel lost, risking the very same feelings of shame and failure they wish to avoid.”¹⁸¹

Finally, Greene found that many of her respondents, due in large part to their negative experiences with public institutions, had created a narrative for themselves as “self-sufficient citizens who take care of their own problems and stay ‘out of trouble.’”¹⁸² Seeking help and support would run counter to this identity and cause more harm to those respondents’ mindsets than not seeking help.¹⁸³

Greene’s study also examined the pervasive racism that prevents litigants from excitedly entering the legal system or seeking help within it.¹⁸⁴ Greene found that, consistent with past research about the links between race and trust, Black respondents were more likely to distrust legal institutions as compared to white respondents.¹⁸⁵

Though civil cases are typically characterized as voluntary disputes among private parties, many racially and economically marginalized litigants, particularly Black individuals, enter the civil legal system involuntarily, often in a defensive or vulnerable position.¹⁸⁶ Courts have long played a role in defining race and policing racial order, contributing to the perpetuation of racial inequality and, “more specifically, white dominance.”¹⁸⁷ “Race-making” practices like these,

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.* at 1268 (“The [B]lack respondents in this study were less likely than white respondents to have sought, or considered seeking, legal help for their civil legal problems.”).

¹⁸⁵ *Id.*

¹⁸⁶ Brito et al., *supra* note 85, at 1246.

¹⁸⁷ *Id.* at 1247 (citing IAN HANEY LOPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (1996) (“[T]he courts were responsible for deciding not only who was White, but *why* someone was White. Thus, the courts had to wrestle in their decisions with the nature of race in general and of White racial identity in particular.”)); Ariela J. Gross, *Litigating*

which perpetuate ideologies of racial inferiority and exaggerate racial difference, serve to facilitate and justify social inequality more broadly.¹⁸⁸

IV

CURRENT EFFORTS TO INCREASE ACCESS TO JUSTICE AND MAKE SYSTEMIC CHANGE

Expanding access to justice in the civil court system, particularly in the eviction context, requires systemic reform. In Oregon, advocates have employed a variety of tactics to expand access to justice, counsel, and representation. First, advocates have pushed for a civil right to counsel for decades.¹⁸⁹ The fight for a civil right to counsel,¹⁹⁰ also known as “Civil Gideon”¹⁹¹ in reference to the seminal case *Gideon v. Wainwright*, which gave criminal defendants a right to counsel in court, continues in Oregon today.¹⁹²

Additionally, the Oregon Legislature recently enacted two efforts to increase access to legal advice in the courts: a paralegal licensing program and an alternative path to attorney licensure.¹⁹³ Although these reforms are a step in the right direction, as discussed below, they

Whiteness: Trials of Racial Determination in the Nineteenth-Century South, 108 YALE L.J. 109, 112–14 (1998) (“[The] law, broadly defined, played an important role in constituting the cultural meaning of racial identities. . . . [In] the antebellum period, law made the ‘performance’ of whiteness increasingly important to the determination of racial status.”).

¹⁸⁸ Brito et al., *supra* note 85, at 1258 (citing DESTIN JENKINS & JUSTIN LEROY, *Introduction: The Old History of Capitalism*, in HISTORIES OF RACIAL CAPITALISM 1, 7–8 (Destin Jenkins & Justin Leroy eds., 2021)).

¹⁸⁹ *Backdrop: The Access to Justice Crisis*, NAT’L COAL. FOR A CIV. RIGHT TO COUNS., <http://civilrighttocounsel.org/about/history> [https://perma.cc/Z9LS-NRMJ] (last visited Mar. 28, 2024).

¹⁹⁰ *Id.*; *Civil Right to Counsel*, A.B.A., https://www.americanbar.org/groups/legal_aid_indigent_defense/civil_right_to_counsel/ (last visited Dec. 2, 2023).

¹⁹¹ Robert J. Derocher, *Access to Justice: Is Civil Gideon a Piece of the Puzzle?*, A.B.A. (July-Aug. 2008), https://www.americanbar.org/groups/bar-leadership/publications/bar_leader/2007_08/3206/gideon/; see also Deborah L. Rhode, *Whatever Happened to Access to Justice*, 42 LOY. L.A. L. REV. 869, 892–97 (2009).

¹⁹² See *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Oregon Directory of Law Governing Appointment of Counsel in State Civil Proceedings*, A.B.A. (2014), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lisclaid_judges_manual_or.pdf (last visited Dec. 2, 2023).

¹⁹³ Anumita Kaur, *Oregon’s New Bar-Exam Alternative Is the First of Its Kind*, THE WASH. POST (Nov. 16, 2023, 8:47 PM), <https://www.washingtonpost.com/politics/2023/11/16/oregon-bar-exam-alternative-apprenticeship/> [https://perma.cc/8E9V-VA7S]; Debra Cassens Weiss, *Licensed Paralegals Program in Oregon Gets Final Approval*, A.B.A. J. (July 25, 2022, 9:02 AM), <https://www.abajournal.com/news/article/licensed-paralegal-program-in-oregon-gets-final-approval> [https://perma.cc/F9FN-RQ35].

fall short of the comprehensive change necessary to achieve equal access to justice in the eviction context. The following sections analyze these changes and propose alternative reforms.

*A. The Decades-Long Push for a Right to Counsel in Civil Cases
Supports Access to Justice*

First, the right to counsel is an important aspect of the criminal legal system that, in many states, has since been interpreted to extend to civil cases.¹⁹⁴ As early as 1932, the U.S. Supreme Court observed that an individual's "right to be heard [in legal proceedings] would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel."¹⁹⁵ In 1981, however, the Court "interpreted the due process clause to require appointment of counsel in civil cases *only if* the proceeding would otherwise prove fundamentally unfair."¹⁹⁶ Based on this later decision, courts are asked to consider three factors when determining if appointment of council in a civil case is required: "the private interests at stake, the government's interest, and the risk that [lack of counsel] will lead to an erroneous decision."¹⁹⁷ Even if these factors are present, precedent shows that courts do not consistently find a right to counsel in civil cases.

There are nationwide efforts to provide a right to counsel in civil cases.¹⁹⁸ The American Bar Association (ABA) has published ample information about the right to counsel in civil cases.¹⁹⁹ The ABA describes this right as "the idea that people who are unable to afford lawyers in legal matters involving basic human needs—such as shelter, sustenance, safety, health, and child custody—should have access to a lawyer at no charge."²⁰⁰ The federal statutory authority supporting a right to counsel is found at 42 U.S.C. § 3613(b). It states that "[u]pon application by a person alleging a discriminatory housing practice or a

¹⁹⁴ Derocher, *supra* note 191.

¹⁹⁵ RHODE, *supra* note 27, at 8 (quoting *Powell v. Alabama*, 287 U.S. 45, 68–69 (1932)).

¹⁹⁶ *Id.* at 9 (quoting *Lassiter v. Dep't of Soc. Servs. of Durham Cnty., N.C.*, 452 U.S. 18, 27, 31 (1981) (emphasis added)).

¹⁹⁷ *Id.*

¹⁹⁸ NAT'L COAL. FOR A CIV. RIGHT TO COUNS., <http://civilrighttocounsel.org/> [https://perma.cc/67B3-Q8AD] (last visited Mar. 28, 2024); *Civil Right to Counsel*, *supra* note 190.

¹⁹⁹ *Civil Right to Counsel*, *supra* note 190.

²⁰⁰ *Id.*

person against whom such a practice is alleged, the court may—
(1) appoint an attorney for such person”²⁰¹

The ABA provides a report for each state that compiles and analyzes the existing authority to appoint a right to counsel in civil cases.²⁰² The Oregon report was published in 2014.²⁰³ As the report illuminates, there was no constitutional or statutory authority supporting a right to counsel in civil cases in Oregon in 2014,²⁰⁴ and to this day, there is still no authority.

However, despite these efforts, there are two significant limitations regarding the right to counsel movement. First, the ABA’s efforts to support the right to counsel in civil cases falls short because of outdated reference materials and an insufficient number of attorneys. Disappointingly, all the resources on the ABA’s website are from more than ten years ago, the majority of which are from 2006 and 2013–2014.²⁰⁵ Considering the suggestions put forth in these resources in the context of 2024, the suggested reforms seem outdated. Especially after the COVID-19 pandemic and housing crisis, reform ideas from the early- to mid-2000s are limited in their capacity to address more modern dilemmas. Outdated resources and support from the ABA make implementation more difficult, if not impossible.

Second, there are not enough attorneys to support a civil right to counsel in every case. Although a right to counsel in civil cases may seem like a cure-all remedy, problems tend to arise when courts or legislatures mandate the appointment of counsel for indigent litigants.²⁰⁶ There is a distinct lack of attorneys willing to provide legal advice to marginalized populations, in part because law school itself is an overwhelmingly white space.²⁰⁷ Law schools, as the primary gatekeepers to the practice of law, “are responsible for the whiteness of

²⁰¹ 42 U.S.C. § 3613(b).

²⁰² See *id.* and all sources linked on this page.

²⁰³ *Oregon Directory of Law Governing Appointment of Counsel in State Civil Proceedings*, A.B.A. pp. i (2014), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_judges_manual_or.pdf (last visited Dec. 2, 2023).

²⁰⁴ *Id.*

²⁰⁵ See *Civil Right to Counsel*, *supra* note 190, and all sources linked on this page; *ABA Toolkit for a Right to Counsel in Civil Proceedings*, A.B.A. 25 (Aug. 2010), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_toolkit_for_crtc.pdf.

²⁰⁶ RHODE, *supra* note 27, at 16.

²⁰⁷ Michelle J. Anderson, *Legal Education Reform, Diversity, and Access to Justice*, 61 RUTGERS L. REV. 1011, 1011 (2009).

the legal profession.”²⁰⁸ Though addressing the justice gap should not solely be the work of minority attorneys, attorneys of color do more to address the justice gap than do white attorneys.²⁰⁹ Therefore, “[l]aw schools’ failure to admit diverse student bodies . . . not only affects the individuals denied admission, but it also contributes to the crisis in lack of service to and justice in minority communities.”²¹⁰ Thus, a lack of access to justice is fundamentally intertwined with racism.²¹¹ There are simply not enough nonprofit attorneys or attorneys willing to practice public interest law or to represent low-income parties.²¹²

Despite the nationwide push for a right to counsel in civil cases, legal aid programs have been able to meet only a small fraction of the needs of the low-income communities.²¹³

B. Oregon's Two Reform Efforts Also Promote Access to Justice

In 2023, the Oregon Legislature approved two alternative pathways to practice law: (1) a licensure program for paralegals and (2) a supervised apprenticeship program for aspiring attorneys following graduation from law school.²¹⁴

The first alternative pathway allows Licensed Paralegals to perform limited legal tasks in housing and family law, the two legal areas with the greatest need in Oregon.²¹⁵ The program began licensing paralegals in 2024, and the Oregon State Bar (OSB) is currently accepting applications.²¹⁶ There are stringent requirements to become a Licensed Paralegal.²¹⁷ For example, the applicant must complete twenty hours

²⁰⁸ *Id.* at 1015.

²⁰⁹ *Id.* at 1016.

²¹⁰ *Id.* at 1016–17.

²¹¹ *Id.*

²¹² *Id.*

²¹³ RHODE, *supra* note 27, at 58.

²¹⁴ Kaur, *supra* note 193; Weiss, *supra* note 193.

²¹⁵ *Oregon Licensed Paralegals*, OR. STATE BAR, <https://www.osbar.org/lp> [<https://perma.cc/52AB-REQH>] (last visited Dec. 3, 2023). This license is very similar to a program Oregon previously worked with, the Oregon Certified Paralegal program, which was enacted in 2017. *Oregon Certified Paralegal (OCP)*, OR. PARALEGAL ASS'N, <https://www.oregonparalegals.org/Oregon-Certified-Paralegal> [<https://perma.cc/8DMG-9PG8>] (last visited Mar. 28, 2024).

²¹⁶ *Oregon Licensed Paralegals*, *supra* note 215.

²¹⁷ *Id.*; *Oregon Begins Licensing Paralegals Through the Oregon State Bar*, OR. PARALEGAL ASS'N (Mar. 8, 2024, 12:10 PM), <https://oregonparalegals.org/news/13326878> [<https://perma.cc/R96A-9M34>]. Click “Rules for Licensed Paralegals” to view the Rules PDF.

of professional education courses approved by the Admissions Department within eighteen months prior to licensure.²¹⁸ However, the goal of the program is clear: to help more people in court.²¹⁹ The OSB has also enacted professional responsibility rules for Licensed Paralegals.²²⁰ Most of the commentary on the effectiveness of the program is from 2022, when the bill enacting the program was before the Oregon Legislature; however, it is overwhelmingly positive.²²¹

There has been nationwide hesitancy to enact licensure programs, due primarily to state bars' concerns about the "unauthorized practice of law."²²² State bar organizations' fear about the unauthorized practice of law has shaped the dominant approach prohibiting individuals who are not members of the state bar from providing personalized legal advice.²²³ However, having Licensed Paralegals would reduce the cost of representation, which could enable many individuals to more effectively address their law-related problems.²²⁴

The second alternative pathway is a program that allows law school graduates to obtain their law licenses through an apprenticeship program as opposed to taking the bar exam.²²⁵ The Oregon Supreme

²¹⁸ *Requirements for LP Licensure*, https://www.osbar.org/_docs/LP/LPRequirementsforLPLicensure.pdf [<https://perma.cc/P5G7-37AD>] (last visited Mar. 28, 2024).

²¹⁹ Bryce Dole, *New Law Allows Oregon's Paralegals to Help More People*, THE BULLETIN (June 29, 2024), https://www.bendbulletin.com/localstate/new-law-allows-oregons-paralegals-to-help-more-people/article_38f93cbc-f69e-11ed-9ba3-cfc0d0487c55.html [<https://perma.cc/6WE5-5GKZ>].

²²⁰ *Oregon Licensed Paralegals*, *supra* note 215. Click "Oregon Rules of Professional Conduct-Licensed Paralegals (ORPC-LP)" to view the Rules of Professional Conduct PDF.

²²¹ The Oregonian Editorial Board, *Editorial: Creating a Licensed Paralegal Program Should Be an Easy Call to Broaden Access to Legal Help*, THE OREGONIAN (June 5, 2022, 6:15 AM), <https://www.oregonlive.com/opinion/2022/06/editorial-creating-a-licensed-paralegal-program-should-be-an-easy-call-to-broaden-access-to-legal-help.html> [<https://perma.cc/K5F2-2KKB>]; Nigel Jaquiss, *Oregon State Bar Wants Paralegals to Represent Clients in Eviction and Divorce Cases*, WILLAMETTE WK. (Mar. 22, 2023, 6:44 AM), <https://www.wweek.com/news/2023/03/22/oregon-state-bar-wants-paralegals-to-represent-clients-in-eviction-and-divorce-cases/> [<https://perma.cc/9P5R-JUER>]. We will have to watch for future commentary on the implementation of this program.

²²² MODEL RULES OF PRO. CONDUCT r. 5.5 (A.B.A. 2024); MODEL RULES OF PRO. CONDUCT r. 5.5 cmt. 2 (A.B.A. 2024) ("The definition of the practice of law is established by law and varies from one jurisdiction to another."). Definitions of "unauthorized practice of law" are circular, as well, such as "law practice that is not authorized." See RHODE, *supra* note 27, at 75 ("What constituted legal practice was, however, extremely murky around the edges.").

²²³ RHODE, *supra* note 27, at 20.

²²⁴ *Id.*

²²⁵ Zane Sparling, *Oregon First in US to Allow Law Students to Become Lawyers Through Apprenticeships, Not Bar Exam*, THE OREGONIAN (Nov. 20, 2023, 12:11 PM),

Court approved this first-of-its-kind program in the country on November 14, 2023.²²⁶ The program requires law school graduates to work 675 hours under the supervision of an experienced attorney, and then submit a portfolio of legal work product to OSB officials to be graded.²²⁷ The program has officially been named the Supervised Practice Portfolio Examination (SPPE).²²⁸ Discussions about an alternative pathway to the traditional bar exam began in 2020,²²⁹ when Oregon enacted emergency diploma privilege for law school graduates in the height of the pandemic.²³⁰ Oregon's persistent public defense crisis²³¹ has also helped to kick-start the program.²³²

Programs advancing alternatives to practice and the civil right to counsel have a multitude of benefits but also a significant burden. There are numerous structural and systemic resource constraints to

<https://www.oregonlive.com/pacific-northwest-news/2023/11/oregon-first-in-us-to-allow-law-students-to-become-lawyers-through-apprenticeships-not-bar-exam.html> [https://perma.cc/2UKD-MP35].

²²⁶ Enjuris Attorney Editor, *Oregon Approves Alternative to the Bar Exam*, ENJURIS, <https://www.enjuris.com/blog/news/oregon-bar-exam-alternative/> [https://perma.cc/K69N-VR7H] (last visited Dec. 3, 2023).

²²⁷ *Id.*

²²⁸ Marin McCall, *Oregon Becomes Third State to Approve Alternative to the Bar Exam*, 2CIVILITY (Nov. 20, 2023), <https://www.2civility.org/oregon-becomes-third-state-to-approve-bar-exam-alternative/> [https://perma.cc/P2T9-DNXN]; *The Oregon Supervised Practice Portfolio Examination*, <https://lpdc.osbar.org/files/SPPEfinalrulesapprovedbyOregonSCT11.7.23clean.pdf> [https://perma.cc/Z7JK-P3U9] (last visited Mar. 28, 2024).

²²⁹ McCall, *supra* note 228.

²³⁰ *July 2020 Bar Exam Jurisdiction Information*, NAT'L CONF. OF BAR EXAM'RS (NCBE), <https://www.ncbex.org/july-2020-bar-exam-jurisdiction-information#Oregon> [https://perma.cc/7KYT-WGC2] (last visited Mar. 28, 2024).

²³¹ Conrad Wilson, *Oregon's Public Defense Crisis Leaves Defendants to Navigate Legal System on Their Own*, OPB (Nov. 9, 2023, 6:00 AM), <https://www.opb.org/article/2023/11/09/oregon-public-defender-shortage-supreme-court-law-courts-crime/> [https://perma.cc/U5DN-3RAR]; Lucas Manfield, *Record Number of People Face Criminal Charges in Multnomah County With No Defense Attorney*, WILLAMETTE WK. (Jan. 24, 2024 5:23 AM), <https://www.wweek.com/news/2024/01/24/record-numbers-of-people-face-criminal-charges-in-multnomah-county-with-no-defense-attorney/> [https://perma.cc/3BCJ-SNSU]; Conrad Wilson, *Oregon Public Defense Report Lays Out Plan for More Hires, Funds to Address Crisis*, OR. CAP. CHRON. (Mar. 25, 2024, 5:30 AM), <https://oregoncapitalchronicle.com/2024/03/25/oregon-public-defense-report-lays-out-plan-for-more-hires-funds-to-address-crisis/#:~:text=In%202022%2C%20Moss%20Adams%20and,shortage%2C%20or%201%2C296%20public%20defenders> [https://perma.cc/VC6A-XRZP].

²³² Jamie Parfitt & Colten Weekley, *Law School Graduates Will Soon Have an Alternative to the Bar Exam in Oregon*, KGW8 (Nov. 10, 2023, 6:04 PM), <https://www.kgw.com/article/news/local/the-story/oregon-state-bar-exam-alternative-attorney-licensure-practice-lawyer/283-26c48c53-66ae-4f90-b86e-9b43a4c6601a> [https://perma.cc/4388-EMPZ].

access, such as long waitlists for free legal service lawyers, unrealistic income ceilings for free legal services, and reductions in pro bono requirements in big law firms.²³³

Harvard Law School's Center on the Legal Profession interviewed Brian Gallini, dean and professor of law at Willamette Law, to specifically discuss the bar alternative program.²³⁴ Gallini described that the main objection to the alternative to the bar program was that "people distrusted whether something new would protect the public."²³⁵ However, Gallini described that the undertones of those concerns are retributively transactional: "Well, I had to do it; you should, too."²³⁶ Gallini goes on to describe that when attorneys receive pushback on that point, they tend to support their reasoning by stating that "the bar exam is the way that we measure minimum competence."²³⁷ Gallini pushes back on those assumptions by asking what the bar measures, how we can better prepare law students for practice while they are in school, and why we are comfortable with not being prepared for practice when leaving law school.²³⁸

Gallini describes that despite concerns about alternative pathways to practice, these pathways are methods of increasing access to justice and the profession.²³⁹ He states that the bar exam is one of privilege: "[I]t favors those who don't have to work, those who don't have families to care for, those who have the time to put in because of their life circumstances, and perhaps some candidates even have a job that is paying for their bar prep program and a living stipend."²⁴⁰ Alternatives to practice pathways attempt to alleviate that inequity.

²³³ Greene, *supra* note 5, at 1269 (citing RHODE, *supra* note 27, at 185–93).

²³⁴ *New Practice Pathways*, CTR. ON THE LEGAL PRO. (Jan. 2024), <https://clp.law.harvard.edu/knowledge-hub/magazine/issues/rethinking-licensure/new-practice-pathways/> [https://perma.cc/6HHF-EVWC].

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

*C. Tenants Achieve Better Outcomes in Court When They Are
Represented by an Attorney*

Providing tenants with access to legal representation and assistance makes tenants far less likely to experience eviction.²⁴¹ A report from the ACLU states that “right to counsel is an effective means of ameliorating and preventing the serious harms of eviction and giving families a fighting chance to have a home.”²⁴² Big cities like Cleveland, San Francisco, and New York City have implemented right to counsel programs in eviction courts, and the programs have clearly supported tenants and affected case outcomes.²⁴³ Cities across Oregon lag behind these, as well as states like Washington, where courts delay the case when a tenant does not have an attorney.²⁴⁴

Deborah Rhode articulated some of these limitations in her book *Access to Justice*. All too often, whether because of fear, pressure, or other external motivations, “parties without lawyers confront procedures of excessive and bewildering complexity, and forms with archaic jargon left over from medieval England.”²⁴⁵ Additionally:

Counsel for more powerful litigants in landlord-tenant . . . disputes have often misled weaker unrepresented parties into waiving important rights and accepting inadequate settlements. Since these individuals typically do not know, cannot prove, or cannot afford lawsuits to prove that they were misinformed by opposing counsel, such conduct has rarely resulted in any disciplinary sanctions or legal remedies.²⁴⁶

²⁴¹ *No Eviction Without Representation*, ACLU 12, https://www.aclu.org/sites/default/files/field_document/no_eviction_without_representation_research_brief_0.pdf [https://perma.cc/99LY-AXBQ] (last visited Dec. 2, 2023); Benjamin Kamelhar, *Who Deserves a Lawyer? The Case For a Right to Counsel in Housing Proceedings*, GEO. J. ON POVERTY L. & POL’Y (Jan. 28, 2020), <https://www.law.georgetown.edu/poverty-journal/blog/who-deserves-a-lawyer-the-case-for-a-right-to-counsel-in-housing-proceedings/> [https://perma.cc/K3C3-D695]; Deborah L. Rhode, *Whatever Happened to Access to Justice*, 42 LOY. L.A. L. REV. 869, 884 (2009).

²⁴² *No Eviction Without Representation*, *supra* note 241, at 15.

²⁴³ John Pollock, *Using Right to Counsel as an Eviction Diversion Strategy*, NAT’L LEAGUE OF CITIES (Oct. 26, 2021), <https://www.nlc.org/article/2021/10/26/using-right-to-counsel-as-an-eviction-diversion-strategy/> [https://perma.cc/6A43-K74U]. For more stories, see Jennifer Ludden, *More Renters Facing Eviction Have a Right to a Lawyer. Finding One Can Be Hard*, NPR OPB (July 8, 2023, 10:19 AM), <https://www.npr.org/2023/07/08/1185888943/renters-tenant-rights-eviction-lawyer-right-to-counsel-court> [https://perma.cc/Z7X5-8FES].

²⁴⁴ Ludden, *supra* note 243.

²⁴⁵ RHODE, *supra* note 27, at 14.

²⁴⁶ *Id.* at 16.

These predatory practices perpetuate the fear that prevents tenants from reaching out for help and support in the first place.

A March 2024 report by Evicted in Oregon shed light on three common responses from tenants when they receive a termination notice from their landlord: fight, flight, or freeze.²⁴⁷ By the numbers, 51% of respondents experienced a *fight* response, meaning they took action to avoid or challenge the eviction; 58% experienced a *flight* response, meaning they vacated their home to avoid trouble with the legal system or their landlord; and 17% experienced a *freeze* response, meaning they were overwhelmed with fear or uncertainty and were therefore unable to act.²⁴⁸ The report found a direct link between tenants' responses and their awareness of legal services: Tenants who were aware of legal services available to them tended to fight their evictions, whereas tenants who did not know of available legal services tended to flee.²⁴⁹

The report placed a distinct emphasis on eviction's health impacts.²⁵⁰ During focus group sessions, participants described experiencing an overwhelming amount of stress during the eviction process.²⁵¹ The participants described this stress as stemming not only from concerns about being displaced but also from the difficulties of navigating the legal system, seeking legal assistance, and trying to pay outstanding rent.²⁵² For many tenants, their stress resulted in serious mental and physical health impacts, including anxiety, depression, insomnia, and high blood pressure.²⁵³

The report also highlighted how immigrant communities and communities of color are disproportionately harmed by eviction in Oregon.²⁵⁴ Latine immigrant respondents reported facing language

²⁴⁷ *Fight, Flight, Freeze*, *supra* note 89, at 1 (“Facing eviction is a traumatic event that forces tenants into a fight, flight or freeze response.”).

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.* at 2 (“Facing eviction is traumatic. Tenants experiencing the threat of eviction often endure severe stress and adverse health impacts The adverse impacts of eviction can also compound preexisting conditions that made tenants vulnerable to eviction, such as poverty, unemployment, racial inequality and health issues. Despite the implementation of new forms of eviction support, Oregon tenants rarely obtain the assistance they need. Many fall through the cracks, due to a lack of awareness of available resources, feeling too overwhelmed to seek support or encountering barriers (e.g., time limitations, language barriers, unresponsive organizations or programs) when trying to access support.”).

²⁵¹ *Id.* at 14.

²⁵² *Id.*

²⁵³ *Id.* (citing Hugo Vásquez-Vera et al., *The Threat of Home Eviction and Its Effects on Health Through the Equity Lens: A Systematic Review*, 175 SOC. SCI. & MED. 199 (2017)).

²⁵⁴ *Id.* at 12.

barriers, particularly between themselves and potential legal assistance, which caused them to “give up.”²⁵⁵ Respondents also stated that it was difficult to find assistance at all, given the language barrier.²⁵⁶ Additionally, Black tenant respondents reported being more likely to be evicted than white tenants.²⁵⁷ Black women, in particular, experienced landlord harassment and a lack of social support.²⁵⁸

Evicted in Oregon also asked tenants what their most urgent needs were while facing eviction.²⁵⁹ Understandably, the vast majority of tenants cited money as their biggest need.²⁶⁰ Tenants stated that they either needed financial assistance or the ability to work extra hours at their job to make ends meet.²⁶¹ The second most cited need was finding a new place to stay, a process that is far from easy.²⁶² Tenants recalled asking friends or family if they could move in “temporarily” with them while they conducted their housing search.²⁶³ The third most cited need was stable, well-paid employment.²⁶⁴ The fourth most cited need was legal advice from or representation in court by an attorney.²⁶⁵ One low-income tenant indicated needing legal representation or advice, but said they did not think they could afford a lawyer.²⁶⁶

The Evicted in Oregon report also asked tenants if they sought or received support when facing eviction.²⁶⁷ Many of the tenants did not seek support because they were unaware of available resources, did not have the time to locate resources, or perceived the search for resources

²⁵⁵ *Id.* at 11–12.

²⁵⁶ *Id.*

²⁵⁷ *Id.* at 12 (citing Breanca Merritt & Morgan D. Farnworth, *State Landlord–Tenant Policy and Eviction Rates in Majority-Minority Neighborhoods*, 31 HOUS. POL’Y DEBATE 562 (2020)).

²⁵⁸ *Id.* (citing H. Shellae Versey & Charity N. Russell, *The Impact of COVID-19 and Housing Insecurity on Lower-Income Black Women*, 79 J. OF SOC. ISSUES 773 (2022)).

²⁵⁹ *Id.* at 15.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.* I say “temporarily” because finding housing is so challenging that some tenants stay with their friends or family for an extended period of time—much longer than they initially anticipated.

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.* at 15–16. This is particularly disheartening because of recent legislative efforts to make all tenants facing eviction aware of the free or low-cost support they could seek. See the report for more.

²⁶⁷ *Id.* at 16.

to be too complicated.²⁶⁸ However, even tenants who did seek resources faced obstacles that prevented them from accessing formal support.²⁶⁹ Tenants reported instances where they failed to receive responses from organizations they contacted, applications were rejected, and they encountered organizations that failed to follow through on promised services.²⁷⁰

The report concluded powerfully that because of these systemic limitations, “thousands of Oregonians every year must undergo traumatizing eviction experiences without getting the help they desperately need.”²⁷¹ The report also included a call to action to the Oregon Legislature and nonprofits around the state.²⁷² It stated that the legislature should enact outreach programs and eviction navigation programs, a Tenant Right to Counsel, and expand emergency rental assistance to promote public health.²⁷³

V

RECOMMENDATIONS TO IMPROVE ACCESS TO JUSTICE

A. Enforcing Notice Procedures and Amending ORCP 15 to Give Tenants More Time to Respond to Pleadings

In the paragraphs that follow, I describe two recommendations to support tenants in Oregon. First, courts should uphold and enforce already-required notice procedures to ensure tenants are actually apprised of their court cases. Second, the Council on Court Procedures should amend ORCP 15 to give defendants more time to respond to pleadings, with the goal of better recognizing tenants’ stress and anxiety about their housing.

To dramatically understate the problem, low-income defendants in eviction court proceedings face high levels of stress.²⁷⁴ They experience immense pressure to protect their family, keep their home, avoid homelessness, provide dinner for their children and themselves, get enough sleep, maintain their job, and pay their other bills, all the while being threatened by a landlord or property management

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.* at 19.

²⁷¹ *Id.* at 24.

²⁷² *Id.* at 25–28.

²⁷³ *Id.* at 25.

²⁷⁴ *Id.* at 14.

company.²⁷⁵ Eviction feels personal and vindictive to tenants, especially because it is in some cases.²⁷⁶

On top of this extreme stress and anxiety, tenants are expected to navigate a confusing, opaque, and unforgiving legal system.²⁷⁷ Though the ultimate goal should be legal representation for all tenants in eviction court, there are still a number of pro se defendants who attempt to navigate the system on their own.²⁷⁸ For these tenants, knowledge of their hearing dates and additional time to file responsive pleadings would help significantly.

First, there are already stringent notice and summons requirements, both within the ORCP and the ORLTA.²⁷⁹ Courts should continue to enforce and require these notice requirements to ensure tenants are aware of their court hearings. As discussed above, service of a summons by posting is often insufficient.²⁸⁰ If the goal of ORCP 7, the rule for summons, is to “apprise the defendant of the existence and pendency of the action” and “afford a reasonable opportunity to appear and defend,”²⁸¹ courts should ensure that the summons paperwork does, in fact, make its way into the hands of the defendant in each case.

Second, the Council should amend ORCP 15 to give tenants additional time to respond to pleadings. Although the Oregon Supreme Court has ruled that four days to respond is constitutional and not a violation of defendants’ due process rights,²⁸² four days does not account for the extreme stress that eviction defendants face. As the rule stands right now, there is simply not enough time for tenants to understand the pleadings and allegations against them, emotionally process the information that their home and livelihood is at risk, seek external support, and file a response. As the Evicted in Oregon study shows, tenants in Oregon are not able to live their lives and support their families while also addressing their eviction situation.²⁸³ To this end, I suggest ORCP 15 be amended to provide eviction defendants ten business days to respond to pleadings before their first court

²⁷⁵ *Id.*

²⁷⁶ *Eviction Courts*, *supra* note 1, at 378–79, 401–02.

²⁷⁷ *Fight, Flight, Freeze*, *supra* note 89, at 1.

²⁷⁸ *Id.* at 16–23.

²⁷⁹ *See supra* Section II.B.2.

²⁸⁰ *See supra* Section II.B.1.

²⁸¹ OR. R. CIV. P. 7 D (1).

²⁸² *Lexton-Ancira, Inc. v. Kay*, 269 Or. 1, 7, 522 P.2d 875, 878 (1974).

²⁸³ *Fight, Flight, Freeze*, *supra* note 89.

appearance. This would allow defendants time to understand the pleadings, begin to process their emotions, seek support, appear at their hearings to avoid default judgments, and fight for their homes.

B. Addressing Possible Objections to These Recommendations

Foreseeable objections to these recommendations include the possibility that tenants would not seek legal help, even if given the time to do so.²⁸⁴ Additionally, landlords take their tenants to court as a fast way to address concerns.²⁸⁵ Because eviction proceedings have historically been viewed as “simple,” courts have moved at a fast speed with eviction dockets.²⁸⁶ I anticipate a variety of pushback from landlords and landlords’ attorneys. First, I anticipate pushback concerning my proposal to give tenants additional time to respond to pleadings because it would make the proceedings take too long. Second, I anticipate pushback concerning the enforcement of notice requirements because landlords win cases when their tenants do not appear in court.²⁸⁷

These concerns do not outweigh the benefits that are associated with these recommendations. First, we do not know if tenants would seek out legal advice if they had more time to do so. As the Evicted in Oregon report highlighted, there are multitudes of reasons why tenants do not seek legal advice, including a lack of awareness concerning available resources, insufficient time to locate resources, and a difficult search process associated with finding adequate legal resources.²⁸⁸ Thus, given extra time and resources to look for external support, tenants would have the opportunity to take advantage of available legal support and resources.

Second, eviction court is decidedly not “simple,” and landlords using eviction court as a low-cost and catch-all device to address any and all concerns they might have with their tenants is not consistent

²⁸⁴ *Id.*

²⁸⁵ *Eviction Courts*, *supra* note 1, at 379 (citing *Lindsey v. Normet*, 405 U.S. 56, 65 (1972)).

²⁸⁶ *Id.* (citing Kathryn A. Sabbeth, *Market-Based Law Development*, LPE PROJECT (July 21, 2021), <https://lpeproject.org/blog/market-based-law-development> [https://perma.cc/29AE-JHFK] (“Assumptions about whose cases are worthy of attention legitimize the simplification of entire bodies of law and de-legalization of lower status courts.”)).

²⁸⁷ *Id.* at 380 (citing Judith Fox, *The High Cost of Eviction: Struggling to Contain a Growing Social Problem*, 41 MITCHELL HAMLINE J. OF PUB. POL’Y & PRAC. 167, 191 (2020)).

²⁸⁸ *Fight, Flight, Freeze*, *supra* note 89, at 16.

with the normative principles underlying the judicial system.²⁸⁹ Practitioners in eviction court should interrogate why they might feel that eviction cases are “simple,” and work toward advocating for justice for tenants.

Third, and finally, the failure to inform a defendant of a court proceeding is a constitutional violation.²⁹⁰ The purpose of a summons is to “apprise the defendant of the existence and pendency of the action” and “afford a reasonable opportunity to appear and defend.”²⁹¹ A landlord who wins a case based on bad notice procedures is not a victory for due process, and courts should not tolerate such an outcome.

Amending these rules would require active judicial support, a practice termed “active judging.”²⁹² In contrast to the judges and judging practices described above,²⁹³ an active judge is “one who maintains impartiality while promoting access and fairness for pro se parties by making procedural adjustments, explaining law and the hearing process, and eliciting information to develop the record.”²⁹⁴ Active judging is something that would support other reform efforts but is not itself sufficient. Litigants cannot depend on one person to explain the law to an entire group of parties in the mass quantity required. Judges can and should play an active role in eviction proceedings and clarify confusing aspects to parties, but relying on this alone as a reform does not go far enough to support the eviction crisis in Oregon and across the country. However, paired with other reforms such as the amendment of the rules of civil procedure, active judging could play an important role in future eviction litigation.

CONCLUSION

In conclusion, ORCP could be used as a tool to increase access to justice in eviction court, if the Council amends the rules to account for

²⁸⁹ See Kathryn A. Sabbeth, *Market-Based Law Development*, LPE PROJECT (July 21, 2021), <https://lpeproject.org/blog/market-based-law-development> [https://perma.cc/29AE-JHFK], which describes the power imbalance inherent in the development of legal systems: “[T]he U.S. legal system actively underdevelops poor people’s law, and underdevelopment is always a political choice.” Indeed, Sabbeth reflects that “these judgments are not neutral; rather, they reflect the interests of those in power.”

²⁹⁰ *Id.* at 380 (citing *Greene v. Lindsey*, 456 U.S. 444, 454–55 (1982)).

²⁹¹ OR. R. CIV. P. 7 D(1).

²⁹² Anna E. Carpenter, *Active Judging and Access to Justice*, 93 NOTRE DAME L. REV. 647, 658 (2017).

²⁹³ See *supra* Section II.B.3.

²⁹⁴ Carpenter, *supra* note 292, at 658.

the emotional labor and stress that tenants experience in an eviction court case. The racial implications of eviction also cannot be ignored. To continue to work toward anti-racism, our community needs to address the housing crisis as a keystone of societally entrenched racism.

Eviction targets low-income and marginalized populations most poignantly.²⁹⁵ Tenants find that “housing is a scarce and unstable resource for subordinated people, and such scarcity generates profit for those who benefit.”²⁹⁶ Indeed, “[e]viction courts do not merely operate against this social backdrop; they help to create it.”²⁹⁷

On top of the predatory practice itself, tenants experience fear, shame, and an inability to seek out legal assistance when facing eviction, to the point that they do not seek it out at all.²⁹⁸ For some tenants, obtaining a lawyer and going to court would mean subjecting themselves to an institution that they do not understand and in which they feel lost and like a failure.²⁹⁹

To increase access to justice for tenants like my former client Ms. Danielle, we should uphold and enforce already-required notice procedures to ensure tenants are actually apprised of their court cases, and we should amend ORCP 15 to give defendants more time to respond to pleadings to better account for tenants’ stress and anxiety about their housing. Breaking the cycle of eviction is crucial to empowering tenants, standing for justice, and stopping the cycle of poverty across Oregon and beyond.

²⁹⁵ See *Eviction Courts*, *supra* note 1, at 401.

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Fight, Flight, Freeze*, *supra* note 89, at 19–24.

²⁹⁹ Greene, *supra* note 5, at 1267.