OREGON LAW COMMISSION

Date September 19, 2014
3:30 p.m.

Oregon Civic Justice Center
Melvin Henderson-Rubio Hearing Room
Salem, OR

MEMBERS PRESENT:	**Lane Shetterly, Chair** **Prof. Bernie Vail, Vice Chair (on phone)** **Chief Judge Rick T. Haselton** **Judge Stephen Bushong (on phone)** **John DiLorenzo, Jr. (on phone)** **Rep. Jennifer Williamson (on phone)** **Hardy Myers** **Scott Shorr** **Assoc. Dean Norman Williams (for Dean Bridgeman)** **Julie McFarlane** **Justice Martha Walters (for Chief Justice Thomas Balmer)** **Cheryl Hiemstra (for Attorney General Ellen Rosenblum)**
MEMBERS EXCUSED:	**Sen. Floyd Prozanski** **Prof. Susan Gary**
STAFF PRESENT:	**Jeffrey C. Dobbins, Executive Director** **Wendy J. Johnson, Deputy Director and General Counsel** **Dexter Johnson, Legislative Counsel** **Corey Driscoll, Law Clerk** **Brett Smith, Law Clerk** **Chris Strum, Assistant** **Jenna Jones, Office Assistant**
GUESTS:	**Paul Cosgrove, Oregon Bankers Association** **Prof. Carl Bjerre, Work Group Reporter**
SPECIAL GUEST:	**Lisa Ehlers, Legal Assistant**
MEASURE/ISSUES HEARD:	**Program Committee Recommendations for Work Group Formation** **Juvenile Delinquency Judgments** **Update and review of UCC Article 9 Debtor Name Recommendation** **Executive Director and Deputy Director's Report**

Speaker	**Comments**
Shetterly	Confirmed the presence of a quorum. Called to order meeting of Oregon Law Commission September 19, 2014 and welcomed commissioners present and also those on the phone. Want to recognize special guest Lisa Ehlers and thank her for 8 years of exemplary and outstanding service. She will be sorely missed because she did it so well. She is moving across the street to the Legislative Counsel Office at the Capitol. What we have here is a plaque which reads: "The Oregon Law Commission and Willamette University College of Law recognize with appreciation Lisa Ehlers for her dedicated service as legal assistant May 2006 through August 2014." The plaque is signed by Lane P. Shetterly, Chair of the Oregon Law Commission, Jeffrey C. Dobbins, Professor & Executive Director, and Wendy J. Johnson, Deputy Director & General Counsel. A real hearty thanks to Lisa; we know our paths will still cross and we're glad to have you over there. Thanks Lisa again for all her service and the work she's done for us. Welcomes Cheryl Hiemstra attending for Attorney General Ellen Rosenblum. Asked staff to proceed with the agenda.
Wendy Johnson	The program committee recommends the acceptance of Joshua Nasbe's proposal on Juvenile Delinquency Judgments presented on behalf of the Oregon Judicial Department. There is a copy of the supporting memo in the meeting packets.
Shetterley	Are there questions or discussion on the motion?
McFarlane	I move that the Oregon Law Commission accept the recommendation of the Program Committee to authorize the formation of a Juvenile Delinquency Judgments Work Group as outlined by the proposal request made by the Oregon Judicial Department and submitted by Josh Nasbe. The Commission's acceptance is made with projected completion for the 2016 legislative session, but if possible for the 2015 session.
Comstock	Second.
Shetterly	Discussion on motion? Hearing no discussion, all in favor of the motion to approve the program committee's recommendation that we accept the project juvenile delinquency judgments clarification of legal definition and status signify by saying aye. (Ayes from commissioners.) Opposed? (Silence) The motion is approved. Next-three years ago the Oregon Law

	Commission did an update and review of UCC Article 9. One of the issues addressed how to designate the debtor's name for filing and protection of a security interest. Oregon went with Alternative B which is the true name version of the debtor's name. Wendy, please talk briefly about Alternatives A and B.
Wendy Johnson	There is a three page document in the meeting packet outlining reasons why the work group chose Alternative B, and not A. The bar's debtor/creditor section did formally oppose the change this last session. The Oregon Farm Bureau also opposed it and those are noted. The debtor/creditor section largely for the first reason seeing that Alternative B is a "safe harbor" for folks who do choose the driver's license name under Alternative B one can choose driver's license name. But to require the driver's license name is too much of a burden and too much of a trap. For the Farm Bureau it's because the same documents are used for processing and there's a fear that people who've been doing this for years and years the same way won't have the priority that they otherwise did. Alternative B includes a safe harbor provision for using the driver license name of a debtor but it does not require that name. Alternative B provides three name forms that will suffice. Alternative A is generally limited to the driver license name. The Oregon Bankers Association opposed alternative B. Oregon is in the minority with its adoption of B, but it is the option that the work group determined should be recommended at the time.
Vail	Is the current version not working?
Shetterly	Not to my knowledge. The Oregon Farm Bureau has had representation in the work group. The Farm Bureau opposed the Alternative A bill.
Wendy Johnson	What passed in 2012 became effective in 2013.
Cosgrove	The circumstances have changed. There are three reasons to adopt Alternative A now. One: true uniformity. The majority of states have chosen A (42) and Oregon needs to for uniformity

and consistency. The driver's license fulfills the function of a national ID card. It is logical to use and searchable. Two: it is consistent with other standards on how we identify individual and corporate entities and other fictitious entities; it is the most generally identifiable name. Three: There are examples of people with plenty of names. For example, Bill Clinton. It is useful for searching very common names. It is also useful for Oregonians who function across borders. Washington recently tried Alternative B and switched back to Alternative A. We recommend a move to Alternative A. Based on current polling of status, we believe the Farm Bureau will not oppose Alternative A anymore.

Bjerre

It is one reliable way to find lending statements. It is a very important point: prospective lenders want to find financial statements and also correctly file their own financial statements, on pain of security interest being virtually worthless. Paul's concern is every lender's statement should be findable; I'm stressing the concern that financing statements be effective in the first place. Today's lenders' security interest is virtually worthless unless effective, and the issue is not just finding it but making sure it is effective. That's why we chose Alternative B.

We want to avoid hyper-technicality in how the statement is filed to be effective. On the spot transactions (airport screening, writing a check) are not secured transactions. We expect that lenders know their borrower. A driver's license is simply not the only indication of a person's name. We're concerned about the infrequent lender who doesn't know the requirements. The Oregon Secretary of State has a free and instantaneous searching system to find additional names. Infrequent or unsophisticated users don't have a back-up for hyper-technicality requirements of a driver's license. The point of alternative drafting is it allows statutes to move forward despite lack of consensus.

Walters

The alternative where a bank uses the Oregon driver's license of Martha Lee Walters. If the bank uses Martha L. Walters from other documents then are they not protected because it isn't effective?

Cosgrove

Under A they're not protected, under B they are. A driver's license is a safe harbor under Alternative B but a requirement under A.

Comstock

The hyper-technicality of Alternative A gives someone else a shot at proof of claim. That is a pitfall for unsophisticated lenders. The uniform commercial code has never been uniform. I appreciate Paul Cosgrove's point but don't want to move away

	from something that's worked for a long time.
Shetterly	There are more than just Article 9 financing statements that are searchable in the Secretary of State's database, tax liens are an example, and someone searching will search variants anyway. Two, the Secretary's search logic does pick up variants.
Cosgrove	It is a relatively flexible search engine. The problem is for the unsophisticated lender. I think they're in the same pinch with Alternative B.
Bjerre	The central point is the need to search on all possible variations. How is the person known and how do they conduct their business? It is inherently open-ended; there are also artificial entities with mandated search names.
Shetterly	Which entities doing business as alternate will protect you? XYZ LLX or Best Spas in the World?
Bjerre	XYZ LLC will protect you; Best Spas will not. Trade names are not legitimate. In all 53 jurisdictions trade names will not protect you.
Wendy Johnson	It's searchable in the data base.
Shetterly	In the business registry but not a UCC search.
Wendy Johnson	Point #7 is important. Oregon has a DMV search problem because the state does not allow online access to DMV records.
Cosgrove	There's the issue of a birth certificate which is the basis of issuing a driver's license and social security card and passport. It is the most commonly held piece of ID we can rely on.
Myers	How long has a Alternative B been law?
Bjerre	2012.
Myers	Before that?
Bjerre	Article 9 as a whole was enacted in the early 1960's and simply states "the name of the debtor" and lending proceeded. There have been no complaints from debtors.
Myers	Did the work group deliberate anew the question of what position it thought was appropriate vis a vis this issue? When the bill was introduced in 2014 to adopt Alternative A, did you poll the work group?
Shetterly	Wendy, earlier this year when the bill was introduced to change to Alternative A, you did poll the work group?
Wendy Johnson	In 2013 and 2014 we did poll the work group to see if anybody had changed. Reason 7 was key and also the safe harbor provision.

DiLorenzo	What if the debtor does not have a driver's license? What is the rule?
Cosgrove	If the debtor does not have a driver's license or other state issued ID then you have the same options as under Alternative B. Alternative A only applies if there is a driver's license or other state issued ID.
Williams	As I understand it, both options A & B both pose risks. Is there any empirical evidence that the magnitude of errors is different under Alternative A states than Alternative B states?
Cosgrove	I know of none; don't know of any empirical studies.
Bjerre	It's not just the magnitude of error but the nature of the error and where does it fall. What kind of shortcoming can we best live with? Banks are able to search and find what they need to find easier. An unsophisticated creditor has a large risk if Alternative B is used.
Shetterly	Any further questions or comments? We want to give full consideration.
DiLorenzo	I support Alternative A; there's a great deal to be said for uniformity. I'm in the minority but will continue to support Alternative A.
Shetterly	While absolute uniformity would be desirable, as long as one state uses Alternative B then whoever is filing in a different state has to check the particular state's choice of alternative. Responsible filers will have to check when filing outside their state.
Wendy Johnson	What resonates with legislators is that Alternative B protects the filer more, and Alternative A protects the searcher more. There's a search problem with B, a filing problem with A. If Oregon switched DMV record methods it would be easier to change to Alternative A. There wasn't help from the DMV because it's not an online search. Most states have online search capability.
Walters	So if a business searches for a name they have to first know the driver's license name to search for it and there's nowhere to search that with the DMV.
Haselton	Is there a good reason to revisit the earlier recommendation or is it a *de novo* if we were voting today?
Shetterly	Let's call it *de novo.* The functional test may be the same for us individually. I don't want to create an artificially high burden of decision.
Dobbins	In conversation with Dean Bridgeman who is unable to be here today, his initial response is in the direction of Alternative A.
Shetterly	If there is no motion, effectively our recommendation remains

	unchanged.
DiLorenzo	I move that the commission substitute Alternative A for its prior recommendation of Alternative B.
Shetterly	There is a motion on the floor, and operating under Mason's Rules of Order as we do in the Law Commission it doesn't require a second so let's vote in the room first then I'll poll those on the phone. All those in favor of Commissioner DiLorenzo's motion please say Aye. (Silence followed by two "Ayes.") Those opposed? Several no's. Is anyone else on the phone an Aye vote? (Silence.) Then I'll declare the motion to have failed which I will take as an affirmation of the recommendation the Commission made originally.
DiLorenzo	I'm possibly in error but rarely in doubt.
Shetterly	Thank you to Paul Cosgrove and Carl Bjerre for attending.
Dobbins	We have staffing updates. Chris Strum is joining the staff. Also in attendance are our student staff members Jenna Jones, Corey Driscoll and Brett Smith. Jenna is an undergrad office assistant and Corey and Brett are our new law clerks.
	Discussion of budget update.
Wendy Johnson	There are 7 work groups at present. Adoption is working on 2 bills, one continues a records clean up and one is a substantive bill. The Appellate Judicial Selection Work Group is working on a report to finish the project up. The Election Law Work Group has been put together and will be co-chaired by Rep. Williamson and Mr. DiLorenzo. The decision is to focus on chapter 254, the Conduct of Elections and Vote by Mail. The Juvenile Records Work Group is working on a clean up bill. The Probate Work Group has a focus on chapter 112, Intestate Succession in Wills and is finishing up. The Uniform Collateral Consequences Work Group has been formed and is working on an agenda. The Standing Modification Work Group is almost complete, there is one remaining vacancy and they are working on materials. With the Commission's approval I would like to put in placeholder requests to meet the deadline on Monday. Most of our work groups still need to meet and I'll put in 7 or 8 requests.
Shetterly	What will they say?
Dexter Johnson	I will prepare them on Monday. They will be traditional task force placeholder bills that can be gutted and stuffed.
Shetterly	Is there a motion to authorize the filing of those placeholder bills?
	So moved. *[Indistinct]*
Shetterly	Any discussion? (Silence) All those in favor? (Many Ayes.)

	All opposed? (Silence) Motion to file placeholder bills for each group unanimously passed.
	Thank you. We stand adjourned at 4:14.
Wendy Johnson	Thanks those on phone before hanging up.

Submitted By, Reviewed By,

Chris Strum
Administrative Assistant

Philip Schradle
Interim Deputy Director and General Counsel

<u>EXHIBIT SUMMARY</u>
Meeting Agenda
UCC Article 9, Debtor Name, (ORS 79.0503(1)(d), dated 9/12/14
UCC Article 9, ORS 79.0503 <u>and</u> UCC 9-503 (Name of debtor and secured party)
SB 1552 (2014)
Joshua Nasbe, Assistant Legal Counsel, Juvenile Delinquency Judgments project proposal on behalf of the Oregon Judicial Department, dated 5/28/14
Roster of Commissioners