

CLINICAL TREATMENT FOR THE BRAIN DISEASE "OLCD" (Oregon Legislative Cognitive Deficiency) - Oregon Revised Statute 107.169(3)

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There is no doubt that mental illness can be a debilitating disease affecting one's judgment and ability to function rationally in the world. It is important for members of society to have sympathy for those suffering from cognitive disabilities. In most instances, rather than punishing the mentally ill, members of society should assist them with obtaining proper clinical treatment. Unfortunately, on occasion those suffering from the inability to make rational decisions become State legislators. In such instances, the havoc they may wreak upon the citizenry, and more importantly helpless children can be quite substantial. Empirical examples are Oregon Revised Statutes 107.169(3) and 107.169(5), which state as follows regarding child custody disputes between divorcing parents:

"The **court shall not order joint custody**, unless both parents agree to the terms and conditions of the order." ORS 107.169(3)

". . . Inability or unwillingness to continue to cooperate shall constitute a change of circumstances sufficient to modify a joint custody order. ORS 107.169(5)

The above statutory provisions are quite unusual. I am unaware of any other State that expressly prohibits a Judge from ordering joint custody to two parents, both of whom equally love and care for the child, but who can't get along with each other. Notably, the preclusion of judicial authority to award joint custody applies not only with respect to initial custody decisions, but also with respect to modifying existing joint custody orders.

Consequently, the following scenario can occur quite regularly in Oregon. Two parents get divorced when the child is a baby. For many years, they both love and care for the child, even though they constantly bicker with each other regarding who gets the child for a particular holiday or weekend. The child lives with Parent #1 five days per week, and is with Parent #2 every weekend. The child loves both parents equally. At some point, as the child gets older, Parent #1 is told about the existence of the above statutory provisions.

Upon becoming aware of the above statutory provisions, Parent #1 recognizes a golden strategic opportunity to cut #2 out of the picture. All #1 has to do is intentionally fail to cooperate with #2. This intentional failure to cooperate by #1 has the effect of virtually ensuring the Court will award sole custody to #1.

The reason is that under 107.169(3) the Court is forced to award sole custody to one of the parents. Although the Court may recognize that both parents love and care for the child, it is inevitable that sole custody will be awarded to #1 because for many years the child has been with #1 all weekdays. That's the majority of the time. Parent #2 has only had the child on weekends. The only way that #2 can be awarded sole custody is if #1 has some type of extremely serious parenting deficiency such as abusing the child, which in the above hypothetical and most cases does not exist.

It's obviously a rather cognitively demented effect the Oregon legislature has given rise to. One parent is given an "Incentive" to not cooperate with the other parent, because by doing so that parent obtains sole custody.

In the mid 1990s, the Oregonian newspaper published an article about the above statutory provisions. Apparently, they were enacted as a result of the efforts of two divorced parents who got along very well with each other. Their perspective was that even though they didn't want to be married to each other, they would cooperate in all regards regarding the child. The theory behind the enacted statute is that only parents who get along with each other should share joint custody. That's wonderful! Commendations to them!! Perhaps, if they were able to get along so well as divorced parents, they should have just stayed married in the first place for the benefit of the child.

As we now exit Oregon's Legislative Fantasyland, the bottom line is that most divorced parents don't get along. Bickering over holidays, weekends and visitation time is the norm. Rationality mandates that you don't use two divorced parents who get along so perfectly as the basis for enacting child custody statutes. Because the reality is that most people who get divorced don't get along with each other. That's the reason for the divorce. It's totally irrational to use a couple who get along perfectly to set the standard for everyone else.

The creation of a statutory "Incentive" for Parent #1 to not cooperate with Parent #2 in order to gain sole custody is nothing short of an immoral legislative atrocity. Even if an Oregon Court were to be honest, it is precluded by statute from rendering a fair and just decision. The Court can't order joint custody even if it wants to. If the parents don't agree to joint custody, the Oregon Court must award sole custody to one parent.

Logic dictates that if sole custody must be awarded, in most cases it's going to the parent who the child has been with for the most time. Yet, it is

irrational to reward #1 with sole custody, if #1 is the cause of the unwillingness to cooperate. In most cases, the Court will not even be able to discern who is responsible for the unwillingness to cooperate. It will simply be the word of #1 against the word of #2. When that occurs, #1 is going to come out the winner, even if the Court recognizes that both parents are good parents.

The foregoing irrationality of statutory law is notably caused by legislators, not Judges. It exemplifies a serious cognitive deficiency on the part of Oregon Legislators. They have irrefutably become the proximate causation for the havoc wreaked upon the lives of children who end up having their relationship with one parent largely cut off or substantially curtailed.

Parent #1 cannot be fully blamed. The reason is that #1 simply functioned in a manner to be expected based on human nature. It is the legislators who created the "Incentive" to be unwilling to cooperate. Parent #1 merely took advantage of that "Incentive." That is basic human nature and can fairly be expected when two divorced people don't get along. The culpable fault rests squarely with Oregon legislators for creating the immoral "Incentive."

Clinical treatment for the mental disability suffered by Oregon legislators is not an easy matter to address. Many mental illnesses and certain brain diseases giving rise to similar cognitive dysfunction can be treated with drugs. While that is a possible solution, I'm not entirely certain that it would be the proper resolution in this situation. I also don't really know whether the medical insurance carried by Oregon legislators would cover the cost of the necessary drugs for over 100 State Senators and State Representatives.

Psychiatric treatment and counseling for Oregon legislators is another option. The goal with respect to such would obviously be to assist them in beginning to function rationally. It might help them recognize their mistakes and accept the proper degree of responsibility for the damage they have caused to families and children. Proper psychiatric counseling might also assist them in dealing with their illness on a daily basis. Certainly, it might encourage them to accept the proper degree of remorse. Presumably, at some point they could begin a program of legislative rehabilitation.

Most importantly, as a society we need to remember that like all people suffering from cognitive disability or mental illness, the goal is to treat Oregon legislators who caused irreparable harm to children and families by these statutory provisions with compassionate understanding. By the same token, Oregon legislators need to understand that no one can help them until they're willing to help themselves.

OLCD is a damaging, tragic and debilitating cognitive disease. Hopefully, it's not contagious.