

NOTICE

TO: NEWS MEDIA
OREGON STATE BAR BULLETIN

January 8, 1979

FROM: Council on Court Procedures
University of Oregon Law Center
Eugene, Oregon 97403

The next meeting of the COUNCIL ON COURT PROCEDURES will be held on Saturday, January 27, 1979, at 9:30 a.m., in Judge Dale's Courtroom, Multnomah County Courthouse, Portland, Oregon. At that time, the Council will decide which rules of Oregon pleading, practice, and procedure are to be considered by the Council during the next biennium.

* * * *

A G E N D A

COUNCIL ON COURT PROCEDURES

9:30 a.m., Saturday, January 27, 1979

Judge Dale's Courtroom

Multnomah County Courthouse

Portland, Oregon

1. Approval of minutes of meeting held December 2, 1978
2. Report on status of rules in legislature
3. Agenda for 1979-1981 biennium
4. NEW BUSINESS

COUNCIL ON COURT PROCEDURES

Minutes of Meeting held January 27, 1979

Judge Dale's Courtroom

Multnomah County Courthouse

Portland, Oregon

Present:	Darst B. Atherly	Berkeley Lent
	Sidney A. Brockley	Donald W. McEwen
	John M. Copenhaver	James B. O'Hanlon
	Wm. M. Dale, Jr.	Charles P.A. Paulson
	Carl Burnham, Jr.	Val D. Sloper
	Garr M. King	Wendell H. Tompkins
	Laird Kirkpatrick	
	Harriet Meadow Krauss	
	William L. Jackson	
Absent:	E. Richard Bodyfelt	James O. Garrett
	John Buttler	Wendell E. Gronso
	Anthony L. Casciato	Randolph Slocum
	Ross G. Davis	William W. Wells

The meeting was called to order by Chairman Don McEwen at 9:40 a.m.

The minutes of the meeting of December 2, 1978, as modified by the additional paragraph relating to Rule 44 E., were unanimously approved.

The Executive Director reported that the Joint Senate and House Judiciary Committees had scheduled hearings on the rules submitted every Tuesday at 1:00 p.m. for an 8-week period beginning on Tuesday, February 6, 1979. The legislators requested that the first meeting be devoted to an overview of the rules and Council activity and any constitutional questions relating to the legislation establishing the Council. The Executive Director reported that he had been informed that constitutionality was included because some vague suggestions of constitutional problems and a potential suit had been made to Judiciary Committee members, but no specific constitutional questions had apparently been raised. The Council discussed the matter, and it was pointed out that the legislation creating the Council would be presumed to be constitutional and that the 1977 legislature had considered constitutionality in passing the bill establishing the Council and the matter had further been considered by the Governor's office. The Executive Director was asked to furnish a brief statement to this effect to the Committee and to

be prepared to deal with any specific questions that might be raised.

The Council discussed the meeting schedule for the legislative hearings and agreed that one judge and one attorney Council member should be present at all hearings. A schedule for members' attendance was agreed upon, and the Executive Director was asked to send this to all members with specific information relating to time and location of hearings. The Council discussed whether any attempt should be made to have the rules enacted as a statute, but no action to this effect was suggested.

The Council also discussed whether the Executive Director should register as a lobbyist. It was suggested that to avoid any questions, this should be done.

The Council discussed the problem of the limited number of printed copies of the rules available for distribution. The Executive Director reported that no amount had been budgeted for printing rules and that very few copies of the printed final rules remain. It was suggested that the Bar Association be asked to print further copies if they wish to distribute the final rules to members of the bar.

The Executive Director asked for clarification of the motion passed at the last Council meeting relating to sending copies of rules considered by the Council, but not incorporated in the Oregon Rules of Civil Procedure, to various attorney groups in the state. It was agreed that the Council intended to have the draft interrogatory rule, as well as the full rule relating to expert witnesses, submitted to the attorney groups. The Executive Director also reported that he had notified various members of these groups that the Council would consider future activities at this meeting and asked for suggestions. No specific suggestions have been received.

The Council discussed the schedule of work for the next biennium.

The Executive Director reported that a Ways and Means Subcommittee has approved the submitted Council budget for the next biennium. He also reported that the subcommittee intended to attach a budget note which stated that the legislature expected that the bulk of the revisions of civil procedure would be completed by the Council for submission to the 1981 Legislature and that staffing needs for the Council would be substantially reduced in the following biennium.

Sid Brockley moved, seconded by Jim O'Hanlon, that the Council concentrate during the 1979-81 biennium upon other procedural areas in ORS which should be incorporated into the Oregon Rules of Civil Procedure as set out on Pages 2 and 3 of the staff memorandum dated January 15,

1979, beginning with judgments, enforcement of judgments, provisional remedies, and costs and disbursements. The motion passed unanimously. It was suggested that pleading and proving attorneys' fees should be a priority item. Rather than determining an exact order of proceeding at this meeting, it was decided to schedule a further meeting after the legislative hearings had been completed and then decide on the order of priority at that time. The next meeting was scheduled for Saturday, April 7, 1979, at 9:30 a.m. in Judge Sloper's Courtroom, Marion County Courthouse, Salem, Oregon. The Executive Director indicated that to the extent that time was available before that meeting he would begin on judgments and costs and disbursements.

The Council discussed the contracting of some drafting of rules for the next biennium by independent drafters. The proposal of Frank R. Lacy relating to enforcement of judgments and provisional remedies was discussed. Judge Dale moved, seconded by Jim O'Hanlon, that the Council agree to contract with Mr. Lacy for the work outlined in the amount specified in Mr. Lacy's proposal. This, however, would be subject to the condition that continued rule drafting and funding be available after this legislative session and further subject to a determination by the Executive Director that no state law requires advertising or general solicitation of bids for the contract drafting work. The motion passed unanimously.

The meeting adjourned at 11:30 a.m.

Respectfully submitted,

Fredric R. Merrill
Executive Director

FRM:gh

FROM THE DESK OF
DAVE FROHNMAYER
HOUSE OF REPRESENTATIVES



HOME ADDRESS:
2875 BAKER BLVD.
EUGENE, OREGON 97403

Enclosed are copies of bills in which I
thought you might be interested.

Any comments you might care to make would
be greatly appreciated.

DAVE FROHNMAYER
State Representative

s. Requires
positions to
ounsel three
motion of

days pass
indigent defendant.

From The Desk Of
REP. DAVE FROHNMAYER
Lane County District 40
State Capitol
Salem, Oregon 97310

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted;
complete new sections begin with SECTION.

House Bill 2236

Sponsored by COMMITTEE ON JUDICIARY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits impeachment of credibility of adverse witness by evidence that he has been convicted of crime.

From The Desk Of
REP. DAVE FROHNMAYER
Lane County District 40
State Capitol
Salem, Oregon 97310

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION**.

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A BILL FOR AN ACT

Relating to impeachment of witnesses; amending ORS 45.600.

Be It Enacted by the People of the State of Oregon:

Section 1. ORS 45.600 is amended to read:

45.600. A witness may be impeached by the party against whom he was called, by contradictory evidence or by evidence that his general reputation for truth is bad or that his moral character is such as to render him unworthy of belief; but he may not be impeached by evidence of particular wrongful acts[, *except that it may be shown by his examination or by the record of the judgment,*] or by evidence that he has been convicted of a crime.

COUNCIL ON COURT PROCEDURES

Staff Memorandum

January 26, 1979

Re: Council on Court Procedures and Separation of Powers

I. INTRODUCTION.

- A. Summarize statute creating Council.
- B. Statute not bill-presumption of validity of legislative enactment.
- C. Review by Governor's counsel -- Haldane memo.
- D. Unpublished opinion by Solicitor General.
- E. Summary of argument.

II. THE POWER TO MAKE RULES GOVERNING PRACTICE AND PROCEDURE IN CIVIL CASES IS INHERENTLY A JUDICIAL POWER SUBJECT TO REASONABLE REGULATION BY THE LEGISLATURE.

- A. Nature of the power to make rules governing practice and procedure.
 1. Other states where rule-making power is vested in judiciary. Appendix 1 (44 states)
 2. Distinction between allocation of rule-making power by Constitution or cases, and allocation by legislature under a constitution with general separation of powers provisions. Appendix 1 (legislative delegation - 22 states)
 3. In other jurisdictions where statutes delegate rule-making power to the judiciary, under general separation of powers provision, cases hold that power is inherently a judicial power. Appendix 1 (Cases)
 4. Although inherently judicial, rule-making power is shared with the legislature -- in twilight zone between legislative and judicial branches. Appendix 1 (Cases)
 5. Weight of authority is that legislature has the final say as to exercise of rule-making power -- it can override, regulate, and eliminate judicial power. Appendix 1 (Cases)

B. Nature of rule-making power under Oregon Constitution is identical with other jurisdictions. Article VII, Section 1 of Oregon Constitution.

1. Oregon courts have inherent power to make rules of civil procedure. Coyote case, etc.

"Without the aid of any statutory regulation, it has been repeatedly decided that every court of record possesses the inherent power to establish and enforce rules for regulating the practice before it, not repugnant to any constitutional or legislative enactments. 'Under our system,' says Justice McArthur, in Carney v. Barrett, 'all courts have certain inherent powers, to be exercised for the purpose of methodically disposing of all cases brought before them. (4 Oregon, 471.) They can establish such rules in relation to the details of business as shall best serve this purpose, having proper regard for the rights of the parties litigant, as guaranteed and recognized by the constitution and the laws.'"

"It may, then, be safely affirmed, in the absence of any legislative authority, that the supreme court has the inherent right to prescribe rules for the orderly conduct of its business not contrary to law. But if this were questionable, the authority of 'every court of justice to provide for the orderly conduct of proceedings before it,' is expressly conferred by the statute. (Civil Code, sec. 884, sub. 3.)" 9 Or 122

2. Court's inherent power to make rules of civil procedure is subject to control of legislature and inconsistent rule is overridden by statute. Schnitzer case, etc.

3. Oregon court has never said It does not have rule-making power -- since legislature moved first to make general laws relating to civil procedure, it has limited activity to other types of rules.

4. Court has declined to act where legislature did not make a general rule. American Timber and Trading case.
5. Examples of rule-making power exercised under legislative delegation.
 - (1) Local Court Rules. ORS 1.160
 - (2) Supreme Court and Court of Appeals Appellate Rules. ORS 2.120, .130.
 - (3) Tax Court Rules. ORS 305.425
 - (4) Minor Court Rules. ORS 1.510-.530

III. LEGISLATURE IS NOT DELEGATING POWER BUT VALIDLY REGULATING MANNER IN WHICH INHERENT JUDICIAL POWER TO MAKE RULES IS BEING EXERCISED.

- A. All constitutional challenges to delegations of rule-making power by legislature, in jurisdictions with general separation of powers clause in constitution, have been rejected on the basis that the legislature is not delegating its power to make laws, but is directing judiciary in exercise of its inherent power. See Appendix 1 -- sample language from cases.
- B. Provisions of Oregon Constitution limiting power of legislature to delegate its powers and cases relating to delegation of power to administrative agencies do not apply. Article 1, Section 21, and Article IV, Section 1.
- C. Question is one of delegation of powers under Article III, Section 1 of Oregon Constitution, which sets up three branches of government and prevents officers of one branch from serving in another.
- D. Question is whether legislature can direct judiciary to make rules through agency such as Council, rather than direct Supreme Court to make rules.
 1. Delegation by legislature in most states is to state's highest court.
 - a. Case most similar to this is Hanna v. Mitchell and other New York cases under 1920 act which set up a constitutional convention to make rules -- convention included judges and attorneys (note, presently N.Y. Constitution has been changed and rule-making power specifically vested in judicial council). Courts held that

this was not violation of separation of powers; since legislature had dominant power to specify procedure, it could reasonably regulate how judiciary exercised its inherent power.

- b. Since most states vest rule-making power for all courts only in one supreme court, delegation has been challenged on grounds legislature cannot so regulate inherent power -- cases hold legislature can so regulate.
- c. In England, rules made by committee which includes lawyers but no separation of powers doctrine. New York procedure and California procedure, where judges groups make rules, are constitutional (not legislative) direction.
- d. Oregon Constitution permits legislature to reasonably control judiciary in exercise of inherent powers.
Examples:
 - (1) Disqualification of judges. U'Ren v. Bagley case
 - (2) Discipline of attorneys. Sadler case
 - (3) Defining practice of law. Security Escrows case
 - (4) Admission to Bar. In re Application of Crum case
 - (5) Contempt power. Lenske case
 - (6) Also, without challenge legislature: (a) regulates administrative supervision of courts, (b) requires integrated bar, and (c) specifies functions and controls manner of selecting jurors -- all of which would be inherent judicial power.
 - (7) Power to regulate subject to limitation that cannot be exercised in manner that unreasonably burdens or interferes with judicial department -- Ramstead, Vandenberg, and Lenske cases -- prescribing effective way to make court rules should not do that.

E. Under Oregon Constitution, reasonable regulation would include establishing separate agencies to exercise some element of inherent judicial power. Article VII, Section 1. Examples:

- (1) Oregon State Bar. ORS Chapter 9
- (2) Judicial Fitness Commission. ORS 1.410-.480
- (3) Judicial Council (abolished by legislature).
- (4) Judicial Conference. ORS 1.810-.840
- (5) State and Circuit Court Administrators. ORS 8.070, 8.060
- (6) Supreme Court Reporter. ORS 8.120 and 2.150
- (7) Minor Court Rules Committee. ORS 1.510-1.530.
- (8) Supreme Court Library and Multnomah County Law Library.
ORS 9.760-9.850

IV. SINCE COUNCIL IS A JUDICIAL AGENCY DELEGATED INHERENT JUDICIAL POWER BY THE LEGISLATURE, THERE IS NO PROBLEM WITH JUDGES SERVING ON IT AND WITH APPOINTMENTS BY COURTS AND STATE BAR, WHICH BY STATUTE IS DEFINED AS PART OF THE JUDICIAL ARM. ORS 9.010

V. ULTIMATE QUESTION IN SEPARATION OF POWERS IS THAT DOCTRINE SEEKS TO ASSURE EFFICIENT AND RESPONSIBLE EXERCISE OF GOVERNMENTAL POWERS -- MOST RESOLUTIONS OF SEPARATIONS OF POWER PROBLEMS RELATED TO PROCEDURAL RULE-MAKING HAVE BEEN IN FAVOR OF MOST EFFECTIVE METHOD.

1. Council on Court Procedures is most efficient and responsible way to exercise rule-making power.

A. Efficiency.

- i. Note, legislature decided it could not deal with complex system by piecemeal regulation.
- ii. Courts are best equipped but not necessarily Supreme Court. Discuss Lesnick, Weinstein, ABA Standards, and other recommendations.
- iii. Problems with highest court exercising authority.

No time -- advisory committees do it anyway.

Should not have same agency make rules and pass on validity.

Staff Memorandum
January 26, 1979

Supreme Court removed from daily operation of trial court procedural system.

Legislative review is desirable but legislature rejecting rules of state's highest court creates unseemly conflict between legislature and judiciary.

iv. Council solves those problems.

B. Responsibility.

1. Procedural safeguards.

a. Composition.

b. Rules of procedure.

c. Public hearings.

d. Notice to Bar.

e. Public meetings law.

2. Legislative review before effective.

MEMORANDUM

TO: COUNCIL MEMBERS
FROM: Fred Merrill
DATE: January 9, 1979

Enclosed is a final copy of the rules and submission letters. These were filed on December 29, 1978. Also enclosed is a list of the members of the legislature who are also members of the Bar. If any of you know any of these people, it might help if you would talk to them and ask if they have any questions or reservations about the rules. We have sent copies of the rules and submission letters to all of them. As soon as the House and Senate Judiciary Committees are appointed, we will send copies to them, and I will send their names to you.

PLEASE NOTE THE NEXT MEETING NOTICE AND AGENDA FOR JANUARY 27, 1979.

State Senators

Walter F. Brown
16 S.W. Monticello Drive
Lake Oswego, OR 97034

Vernon Cook
519 N.E. Fourth
Gresham, OR 97030

Edward N. Fadeley
260 Sunset Drive
Eugene, OR 97403

Jim Gardner
626 N.E. Mirimar Place
Portland, OR 97232

Ted Kulongoski
30303 Maple Drive
Junction City, OR 97448

Jan Wyers
1127 S.E. Lambert
Portland, OR 97202

State Representatives

Dave Frohnmayer
2875 Baker Boulevard
Eugene, OR 97403

Mark Gardner
880 N.W. 10th Avenue
Hillsboro, OR 97123

Ben (Kip) Lombard, Jr.
133 Manzanita
Ashland, OR 97520

Tom Mason
348 S.W. Bancroft
Portland, OR 97201

Hardy Myers
132 N.E. Laurelhurst
Portland, OR 97232

William D. Rutherford
Rt. 2, Box 157A
McMinnville, OR 97128

Norm Smith
8705 S.W. 75th Avenue
Tigard, OR 97223

HARDY, MCEWEN, NEWMAN, FAUST & HANNA

(FOUNDED AS CAKE & CAKE-1886)

ATTORNEYS AT LAW

1408 STANDARD PLAZA

PORTLAND, OREGON 97204

TELEPHONE 226-7321
AREA CODE 503

HERBERT C. HARDY
DONALD W. MCEWEN
JONATHAN U. NEWMAN
JOHN R. FAUST, JR.
JOSEPH J. HANNA, JR.
DEAN P. GISVOLD
ROBERT D. RANKIN
VICTOR W. VANKOTEN
JANICE M. STEWART
ROBERT G. BOEHMER
JEFFREY W. BOCK

RALPH H. CAKE
(1891-1973)
NICHOLAS JAUREGUY
(1896-1974)

December 22, 1978

Office of the Speaker of the House
State Capitol
Salem, Oregon 97310

Dear Sir:

Enclosed herewith are rules governing pleading, practice, and procedure of civil proceedings in the courts of this state as set forth in Rule 1, together with a list of statutory sections superseded thereby and amendments to other rules which appear as ORS sections. These rules and amendments were promulgated by the Oregon Council on Court Procedures, pursuant to ORS 1.735, and are submitted to the Legislative Assembly under that statute.

The statute provides that these rules and amendments will go into effect ninety days after the close of the session unless the Legislative Assembly, by statute, takes action to amend, repeal, or modify.

The Council was organized in September of 1977 and has met regularly through December 2, 1978, when the enclosed material was promulgated. Public hearings were held in Portland on January 28, 1978, and February 18, 1978, in Pendleton on February 4, 1978, and in Eugene on March 4, 1978, to solicit suggestions and comments. All meetings were conducted in compliance with the public meetings statute with notices sent to newspapers. Articles were also published in the Oregon State Bar Bulletin in December 1977 and May 1978 describing in detail the activities of the Council.

A tentative draft of these rules was released by the Council on September 15, 1978. Copies were immediately given to the Executive Committee of the Trial Practice Section of the Oregon State Bar. A lengthy summary of the proposed rules and notice of a public hearing on the rules and proposed final action was sent to all court clerks and administrators in the state, distributed to all registrants at the 1978 Oregon State Bar convention, sent to newspapers in the state, and printed in the October 1978 Bar Bulletin. The notice stated that the full text of the proposed rules would be furnished upon request. Approximately 230 copies

Office of the Speaker of the House
Page 2
December 22, 1978

of the proposed rules were furnished to persons requesting copies. The proposed rules were also published in the Oregon Supreme Court Advance Sheets dated November 1, 1978.

The full text of the proposed rules were included in the program materials for the Oregon State Bar Continuing Legal Education programs on October 7 in Portland, October 13 in Eugene, October 14 in Medford, October 18 in Pendleton, October 20 in Bend, and on October 27 in Portland. Members of the Council spoke at these programs and solicited comments and suggestions. A presentation relating to the rules was also made to the Trial Practice Section meeting at the Oregon State Bar Convention.

At the public meeting on November 3, 1978, and meetings on November 18, 1978, and December 2, 1978, twenty-two attorneys presented oral statements relating to the prepared rules. Approximately twenty-five written comments were also received. Among those submitting comments and suggestions were a six-person committee appointed by the Oregon State Bar Trial Practice Section, the Oregon State Bar Procedure and Practice Committee, and a representative of the American Trial Lawyers Association. All comments and suggestions received were considered by the Council, and the proposed rules were modified in response to objections and suggestions presented in these comments.

I particularly call to your attention Rules 4, 5, and 6 of the submitted Oregon Rules of Civil Procedure. These rules deal with the subject of the exercise of jurisdiction over the person by courts. ORS 1.735 provides that the Council may 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." In the course of preparing these rules, the Council carefully researched the question of whether the rule-making power granted by ORS 1.735 included power to make rules governing jurisdiction over the person. From interpretation of similar language in other jurisdictions, the Council decided that a grant of rule-making power in terms of pleading, practice, and procedure included power to make rules relating to jurisdiction over the person. Rules 4, 5, and 6 are, therefore, submitted to you as promulgated rules of the Council.

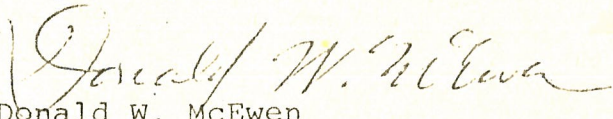
The Council recognizes that there has been no court interpretation of the language of ORS 1.735, and the question of scope of the rule-making power is ultimately one of legislative intent. If the legislature did not intend, by the language of ORS 1.735, to grant power to make rules relating to personal jurisdiction,

Office of the Speaker of the House
Page 3
December 22, 1978

this should be clarified by having the legislature take action to amend or repeal Rules 4, 5, and 6 or enact the substance of Rules 4, 5, and 6 as a statute.

If I can provide any further assistance or information in relation to these rules or the activities of the Council, please contact me. Professor Frederic Merrill of the University of Oregon Law School faculty has and is serving as the Executive Director of the Council. In that capacity he rendered outstanding service to the Council and is also prepared to render any assistance or information requested. For your convenience a conversion table, showing where the ORS sections superseded are covered by the rules, is enclosed. Our staff will be available to provide any assistance which you request in relation to the materials submitted.

Very truly yours,



Donald W. McEwen
Chairman

Council on Court Procedures

DWM:lam

Enclosures

HARDY, McEWEN, NEWMAN, FAUST & HANNA

(FOUNDED AS CAKE & CAKE-1886)

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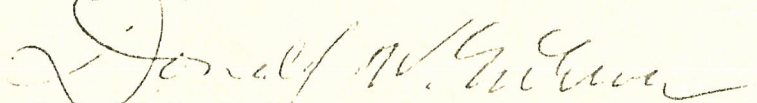
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Very truly yours,



Donald W. McEwen
Chairman
Council on Court Procedures

DWM:lam

Enclosures

ORS SECTIONS SUPERSEDED

CONVERSION TABLE

ORS to Oregon Rules of Civil Procedure

<u>ORS</u>	<u>ORCP</u>
CHAPTER 11	
11.010.....	2
11.020.....	2
11.030.....	Remains in ORS
11.050.....	53 A.
11.060.....	53 B.
CHAPTER 13	
13.010.....	None
13.020.....	20 H.
13.030.....	26
13.041.....	27 A.
13.051.....	27 B.
13.060.....	20 I.
13.070.....	20 J.
13.080.....	34
13.090.....	34
13.110.....	29 A.
13.120.....	31
13.130.....	33
13.140.....	28 A.
13.150.....	28 A.
13.161.....	28
13.170.....	29
13.180.....	22 D.
13.190.....	29 D.
13.210.....	1
13.220.....	32 A., B. and C.
13.230.....	32 D.

Enclosure
4/1-9-79
memo

<u>ORS</u>	<u>ORCP</u>
13.240.....	32 E.
13.250.....	32 F.
13.260.....	32 G.
13.270.....	32 H.
13.280.....	32 I.
13.290.....	32 J.
13.300.....	32 K.
13.310.....	Remains as statute
13.320.....	32 L.
13.330.....	32 M.
13.340.....	32 M.
13.350.....	32 M.
13.360.....	32 M.
13.370.....	32 M.
13.380.....	32 N.
13.390.....	32 O.
13.400 and 13.410.....	Remain as statutes

CHAPTER 14

14.010.....	4 A. and F.; 5; 6
14.020.....	4 A. and F.; 5; 6
14.030.....	Remains as statute
14.035.....	4 C. through N.
14.040 through 14.270.....	Remain in ORS

CHAPTER 15

15.010.....	2
15.020.....	3 and 7 B.
15.030.....	6
15.040.....	7 C.
15.060.....	7 E. and F.
15.070.....	7 B.
15.080.....	7 D.
15.085.....	None

ORS

ORCP

15.090.....	None
15.100.....	Remains in ORS
15.110.....	7 C., D. and F.
15.120.....	7 D.
15.130.....	7 D.
15.140.....	7 C. and D.
15.150.....	7 D.
15.160.....	7 F.
15.170.....	7 D.
15.180.....	7 D.
15.190.....	4 and 7
15.200.....	None
15.210.....	7 A. and 22 D.
15.220.....	7 C.

CHAPTER 16

16.010.....	2
16.020.....	2
16.030.....	13 B.
16.040.....	15 A.
16.050.....	15 D.
16.060.....	16 A.
16.070.....	17
16.080.....	17
16.090.....	16 B. and 21 E.
16.100.....	21 E.
16.110.....	21 D.
16.120.....	12 A.
16.130.....	21 B.
16.140.....	9 A. and 21 G.
16.150.....	21 G.; 23 D. and E.
16.210.....	18
16.221.....	24
16.240.....	13 B. and 19 C.

ORS

ORCP

16.250.....	21 E., F. and G.
16.260.....	21 A. and 30
16.270.....	21 A.
16.280.....	21 A., F. and G.
16.290.....	19 and 21 A.
16.305.....	22 A.
16.315.....	22 B., C. and E.
16.320.....	21 E.
16.325.....	13 B. and 21 A.
16.330.....	21 F. and G.
16.340.....	21 G.
16.360.....	23 G.
16.370.....	23 A.
16.380.....	23 D.
16.390.....	23 A. and B.
16.400.....	23 D. and E.
16.410.....	23 F.
16.420.....	15 C.
16.430.....	9 A.
16.460.....	None
16.470.....	Remains in ORS
16.480.....	20 A.
16.490.....	20 B.
16.500.....	20 C.
16.510.....	20 D.
16.530.....	20 E.
16.540.....	None
16.610.....	None
16.620.....	19 C.
16.630.....	23 B.
16.640.....	23 B.
16.650.....	23 B.
16.660.....	12 B.
16.710.....	14 A.
16.720.....	None

ORS

ORCP

16.730.....	None
16.740.....	None
16.760.....	8 A.
16.765.....	None
16.770.....	9 A.
16.780.....	9 B.
16.790.....	9 B.
16.800.....	9 B.
16.810.....	9 A.
16.820.....	7 D.
16.830.....	8 C.
16.840.....	8 D.
16.850.....	None
16.860.....	9 D.
16.870.....	None
16.880.....	None

CHAPTER 17

17.005.....	51 A.
17.010.....	None
17.015.....	None
17.020.....	None
17.025.....	None
17.030.....	51 B. and C.
17.033.....	50
17.035.....	51 C.
17.040.....	51 D.
17.045.....	None
17.050.....	52
17.055.....	54 E.
17.065 through 17.085.....	Remain as statutes
17.105.....	56
17.110.....	57 B.
17.115.....	57 A.

<u>ORS</u>	<u>ORCP</u>
17.120.....	57 D.
17.125.....	57 D.
17.130.....	57 D.
17.135.....	57 D.
17.140.....	57 D.
17.145.....	57 D.
17.150.....	57 D.
17.155.....	57 D.
17.160.....	57 D.
17.165.....	None
17.170.....	None
17.175.....	None
17.180.....	None
17.185.....	57 E.
17.190.....	57 F.
17.205.....	58 A.
17.210.....	58 B.
17.215.....	None
17.220.....	58 C.
17.225.....	58 D.
17.230.....	Remains as statute
17.235.....	None
17.240.....	None
17.245.....	None, except last sentence in 59 B.
17.250.....	Remains as statute
17.255.....	59 B.
17.305.....	59 C.
17.310.....	59 C.
17.315.....	Remains as statute
17.320.....	59 C.
17.325.....	59 D.
17.330.....	59 F.
17.335.....	59 F.
17.340.....	None

<u>ORS</u>	<u>ORCP</u>
17.345.....	59 G.
17.350.....	59 G.
17.355.....	59 G.
17.360.....	59 G.
17.405.....	61 A. and B.
17.410.....	61 D.
17.415.....	61 B. and C.
17.420.....	61 C.
17.425.....	61 A.
17.431.....	62 A. through E.
17.435.....	64 C.
17.441.....	62 F.
17.505.....	59 H.
17.510.....	59 H.
17.515.....	59 H.
17.605.....	64 A.
17.610.....	64 B.
17.615.....	64 F.
17.620.....	64 D.
17.625.....	64 E.
17.630.....	64 G.
17.705 through 17.765.....	Remain in ORS
17.990.....	Remains as statute
 CHAPTER 18	
18.010.....	Remains in ORS
18.020.....	2
18.030 through 18.100.....	Remain in ORS
18.105.....	47
18.110 through 18.125.....	Remain in ORS
18.140.....	63
18.160.....	Remains in ORS
18.210.....	54 A., B. and C.
18.220.....	None

ORS

ORCP

18.230.....	54 A., B., and C.; 60
18.240.....	None
18.250.....	None
18.260.....	54 B.
18.310.....	2
18.320 through 18.510.....	Remain in ORS

CHAPTER 41

41.010 through 41.610.....	Remain as statutes
41.616.....	36 B.; 43 A. and B.
41.617.....	46 A. and B.
41.618.....	36 C.
41.620.....	43 C.
41.622.....	36 B.
41.626.....	45 and 46 C.
41.631.....	36 C. and 46 A.
41.635.....	36 B.
41.640 through 41.910.....	Remain as statutes
41.915.....	55 H.
41.920.....	55 H.
41.925.....	55 H.
41.930.....	Remains as statute
41.935.....	55 H.
41.940.....	55 H.
41.945.....	Remains as statute
41.950 through 41.980.....	Remain as statutes

CHAPTER 44

44.010 through 44.095.....	Remain as statutes
44.110.....	55 A.
44.120.....	55 C.
44.130.....	55 C.

ORS

44.140.....
44.150.....
44.160.....
44.171.....
44.180.....
44.190.....
44.200.....
44.210.....
44.220.....
44.230.....
44.240 through 44.540.....
44.610.....
44.620.....
44.630.....
44.640.....

ORCP

55 D.
Remains as statute
55 D.
55 E.
None
55 G.; 46 D.; 39 F.
None
None
None
39 B. and 55 E.
Remain as statutes
44 A.
44 B. and C.
44 D.
44 B.

CHAPTER 45

45.010 and 45.020.....
45.030.....
45.040 and 45.050.....
45.110.....
45.120.....
45.130.....
45.140.....
45.151.....
45.161.....
45.171.....
45.185.....
45.190.....
45.200.....
45.230.....
45.240.....
45.250 through 45.270.....

Remain in ORS
39
Remain in ORS
None
None
Remains in ORS
None
39 A.
38 A. and 39 C.
39 D. and F.
39 E.
46 D. and 55 F.
39 H.
39 G.
39 G.
Remain as statutes

<u>ORS</u>	<u>ORCP</u>
45.280.....	41 C.
45.320.....	38 B.
45.325.....	40
45.330.....	38 B.
45.340.....	40
45.350.....	None
45.360.....	None
45.370.....	None
45.410.....	37 A.
45.420.....	37 A.
45.430.....	37 A.
45.440.....	37 A.
45.450.....	None, see: ORS 45.250 through 45.270
45.460.....	41
45.470.....	37 A.
45.510 through 45.630.....	Remain as statutes
45.910.....	38 C.

MISCELLANEOUS SECTIONS

20.030.....	2
23.010.....	2
29.040.....	None
29.510.....	2
30.350.....	17
35.225.....	2
46.110.....	7
46.155.....	63 and 64
46.160.....	54; 59; 60 and 64
174.120.....	10
441.810.....	44 E.
52.150.....	7 D.
52.160.....	7 D.

M E M O R A N D U M

TO: COUNCIL MEMBERS
FROM: Fred Merrill
RE: AGENDA FOR THE NEXT BIENNIUM
DATE: January 15, 1979

I need to know where to begin further research and rule drafting.

A. GENERAL AREAS TO BE INCLUDED IN OREGON RULES OF CIVIL PROCEDURE.

The following is a list of substantial areas in ORS which probably should be incorporated into the Oregon Rules of Civil

Procedure:

1. Referees. ORS 17.705 through 17.765.
2. Judgments; form, entry, and default. ORS 18.010 through 18.140.
3. Relief from judgments. ORS 18.160.
4. Docketing and liens. ORS 18.310.
5. Costs and disbursements. Ch. 20.
6. Bonds and deposits. Ch. 22.
7. Enforcement of judgments. Ch. 23.
8. Confession of judgments. Ch. 26.
9. Submission of controversies without action. Ch. 27.
10. Declaratory judgments. Ch. 28.
11. Provisional remedies. Ch. 29.
12. Receivership. Ch. 31.
13. Injunctions. Ch. 32.

Memorandum to Council Members
Page 2
January 15, 1979

All of the above could be converted to general rules and logically would follow the rules which we have completed. I think the areas relating to judgments, enforcement of judgments, provisional remedies, and costs and disbursements should be considered first. The budget for the next biennium contains \$5,000.00 for contract drafting. I have received the attached proposal from Frank R. Lacy. I think Lacy knows more about remedies than anyone in the state and would do a good job. I could then begin costs and disbursements, including the pleading and proving attorneys fees problems.

B. OTHER PROCEDURAL AREAS IN ORS

The following are other areas of procedure in ORS which probably would not fit in the general Oregon Rules of Civil Procedure. At some point, these should be examined to determine if they are consistent with the rules or need some amendment as ORS sections.

1. Fees. Ch. 21.
2. Special proceedings. In Ch. 33 and scattered throughout ORS.
3. Writs. Ch. 34.
4. Eminent domain. Ch. 35.
5. Small claims procedure in Ch. 46.55.
6. Lien foreclosures. Ch. 88.
7. Real property actions. Ch. 105.
8. Dissolution. Ch. 107.
9. Filiation and adoptions. Ch. 109.

Note, Chapter 19, including appellate procedure, is beyond Council rule-making power; Chapter 24, the Uniform Enforcement of Judgments Act, probably should not be changed unless the Uniform Act is changed.

C. OTHER NON-PROCEDURAL AREAS IN ORS

The following probably would not be directly subject to Council rule-making power, but the Council may wish to review them and recommend legislation.

1. Venue.
2. Statutes of limitations; uniform limitations.
3. Jury selection procedure.
4. Disqualification of judges.

D. SPECIFIC ITEMS

The following are more specific areas which the Council decided to defer until this biennium or which have been suggested to the Council. They are not listed in order of priority but some of these should be done.

1. Minor court rules.
2. Interrogatories.
3. Intervention.
4. Statutes relating to service on state officials.
5. Process.
6. Class actions.
7. Order of trial in third party cases.

8. Order of trial for mixed law-equity cases.
9. Pretrial conferences.
10. Procedure in contribution claims. (See 1978 OSB recommendations).
11. Local court rules.
12. Tax foreclosure; service of notice.
13. Stockholder derivative suits; procedure.
14. Immunity from service of summons or process.
15. Pleading and proving attorneys fees.
16. Service of copy of judgment on opposing parties.
17. Account stated; ORS 16.470.
18. Prejudgment interest from the date of an occurrence.
19. Notice requirements of public agency statute.
20. Raise interest rate on judgments to 8%.

E. PUBLIC MEETINGS

Under ORS 1.740, the Council is required to hold one public hearing "during the period between legislative sessions" in each congressional district. We can decide how to schedule these hearings next fall.



VICTOR ATIYEH
GOVERNOR

OFFICE OF THE GOVERNOR
STATE CAPITOL
SALEM, OREGON 97310

January 22, 1979

Fredric R. Merrill
Professor of Law
University of Oregon
School of Law
Eugene, Oregon 97403

Re: Legal memorandum concerning
constitutionality of H.B. 2316

Dear Fred:

Enclosed are the documents in the veto files concerning the possible veto of H.B. 2316 on constitutional grounds. I could find no other bills dealing with matters of civil court procedure, either in the 1977 or the 1975 session.

Thanks again for the copy of the Oregon Rules of Civil Procedure.

Sincerely,


Jim Russell

JR:nw

REVISED SCHEDULE FOR JOINT HOUSE AND SENATE HEARINGS

As most of you are aware, the Committee switched the meeting date from Tuesday to Thursday to secure a larger room. The following is the revised schedule. All meetings are at 1:00 p.m. in Hearing Room A, First Floor of the Senate wing in the Capitol.

Thursday, February 15, 1979

Harriet Krause
Dick Bodyfelt

Thursday, February 22, 1979

Judge Buttler
Jim Garrett
Laird Kirkpatrick

Thursday, March 1, 1979

Judge Casciato
Darst Atherly

Thursday, March 8, 1979

Carl Burnham
Mike King
Charles Paulson
Judge Tompkins

Thursday, March 15, 1979

Judge Dale
Judge Sloper
Sid Brockley

Thursday, March 22, 1979

James O'Hanlon
Don McEwen

Anyone else who wishes to attend is, of course, welcome. The presentation by Council members at the first meeting was extremely effective. If you have a conflict at the scheduled time, please let me know.

Our budget was approved by the full Ways and Means Committee on Friday, February 9th, and has been sent to the House and Senate floor.

FRED MERRILL