

# SUPREME COURT



# COURT of APPEALS

LOREN D. HICKS  
State Court Administrator

Supreme Court Building  
Salem, Oregon 97310

Telephone Area Code — 503

Case Records 378-6005  
Legal Counsel 378-6022  
Administrator 378-6046

September 21, 1977

## MEMORANDUM

TO: Members Council on Court Procedures

FROM: Loren Hicks  
State Court Administrator

With the assistance of the staff of the Oregon State Bar I have arranged for a time and place for an organizational meeting of the Council on Court Procedures. A copy of Chapter 890, 1977 Laws, creating the Council is attached, along with the Council's budget for the biennium.

Membership is as follows:

### ATTORNEYS:

Darst B. Atherly, 4-yr term  
E. Richard Bodyfelt, 2-yr term  
Sidney A. Brockley, 2-yr term  
James O. Garrett, 4-yr term  
Wendell E. Gronso 2-yr term  
Garr M. King, 4-yr term  
Laird C. Kirkpatrick 4-yr term  
Donald W. McEwen, 2-yr term  
James B. O'Hanlon, 2-yr term  
Charles P.A. Paulson, 4-yr term  
Gene C. Rose, 4-yr term  
Roger B. Todd, 2-yr term

### JUDGES:

Berkeley Lent, 4-yr term  
Lee Johnson, 4-yr term  
John M. Copenhaver, 2-yr term  
William M. Dale, Jr. 4-yr term  
Alan F. Davis, 2-yr term  
Val D. Sloper, 4-yr term  
Wendell H. Tompkins 2-yr term  
William W. Wells, 4-yr term  
Anthony L. Casciato, 4-yr term  
L. A. Cushing, 2-yr term

The lay member has not yet been appointed.

A note or telephone call to my office (378-6046) as to whether or not you expect to be present at the meeting will be helpful.

Time and place of this meeting is:

City Center Motel  
250 1st, Seaside

Thursday afternoon - 3:30 p.m.  
September 29, 1977

Thank you.

Sv

Attachments: (2)

OREGON LEGISLATIVE ASSEMBLY-1977 Regular Session

**Enrolled**  
**House Bill 2316**

By order of the Speaker

CHAPTER ..... 890 .....

AN ACT

Relating to Council on Court Procedures; appropriating money; and declaring an emergency.

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

**SECTION 1.** The Legislative Assembly finds that:

(1) Oregon laws relating to civil procedure designed for the benefit of litigants which meet the needs of the court system and the bar are necessary to assure prompt and efficient administration of justice in the courts of the state.

(2) No coordinated system of continuing review of the Oregon laws relating to civil procedure now exists.

(3) Development of a system of continuing review of the Oregon laws relating to civil procedure requires the creation of a Council on Court Procedures.

(4) A Council on Court Procedures will be able to review the Oregon laws relating to civil procedure and coordinate and study proposals concerning the Oregon laws relating to civil procedure advanced by all interested persons.

**SECTION 2.** (1) There is created a Council on Court Procedures consisting of:

(a) One judge of the Supreme Court, chosen by the Supreme Court;

(b) One judge of the Court of Appeals, chosen by the Court of Appeals;

(c) Six judges of the circuit court, chosen by the Executive Committee of the Circuit Judges Association;

(d) Two judges of the district court, chosen by the Executive Committee of the District Judges Association;

(e) Twelve members of the Oregon State Bar, at least two of whom shall be from each of the four congressional districts of the state, appointed by the Board of Governors of the Oregon State Bar. The Board of Governors, in making the appointments referred to in this section, shall include but not be limited to appointments from members of the bar active in civil trial practice, to the end that the lawyer members of the council shall be broadly representative of the trial bar. The Board of Governors shall include at least one person who by profession is involved in legal teaching or research; and

(f) One public member, chosen by the Supreme Court.

(2) (a) A quorum of the council shall be constituted by a majority of the members of the council. An affirmative vote of a majority of the council shall be required to promulgate rules pursuant to section 3 of this Act.

(b) The council shall adopt rules of procedure and shall choose, from among its membership, annually, a chairman to preside over the meetings of the council.

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27.00 =  
27.5

Legislative Fiscal Office  
June 21, 1977  
*cc*  
*advised*

Revised Budget -- Council on Civil Procedures  
(assumes 21 months of operation)

466

Personal Services

Attorney 21 months @ \$1,250

\$ 26,250

Secretary 21 months @ \$ 400

18 / 8,400 6

SUB-TOTAL

70 120  
\$ (34,650) 108

OPE @ 16%

5,544 12

TOTAL Personal Services

\$ 40,194

1.75 FTE

3622  
2816

Services and Supplies

Rent

\$ 2,400 ✓

Office Supplies

2,100

Communications

2,100 ✓

Duplicating

2,100

Postage

2,100

SUB-TOTAL

\$ (10,800) ✓

Travel and Expenses

80% attendance

13,230

TOTAL Services and Supplies

\$ 24,030

GRAND TOTAL

\$ 64,224  
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COUNCIL ON COURT PROCEDURES -

Minutes of Meeting of November 12, 1977

Multnomah County Courthouse, Portland, Oregon

Present:	Darst Atherly	Laird Kirkpatrick
	E. Richard Bodyfelt	Berkeley Lent
	Sid Brockley	Donald W. McEwen
	Anthony L. Casciato	James B. O'Hanlon
	John M. Copenhaver	Gene C. Pose
	William M. Dale	Val D. Sloper
	Alan F. Davis	Wendell H. Tompkins
	Wendell E. Gronso	William W. Wells
Absent:	L. A. Cushing	Garr M. King
	James O. Garrett	Charles P. A. Paulson
	Lee Johnson	Roger B. Todd

Chairman Don McEwen called the meeting to order at 9:35 a.m. in the chambers of Judge Dale at the Multnomah County Courthouse, Portland, Oregon. James O'Hanlon reported on behalf of the committee appointed to interview potential staff directors. Mr. O'Hanlon indicated that the executive director position had been advertised in the Oregon State Bar Bulletin and that 15 persons had applied for position. He stated that it was the unanimous recommendation of the committee that the position be offered to Fredric Merrill, a professor of law at the University of Oregon Law School. He moved that the position be offered to Mr. Merrill from January, 1978 through June, 1979 for the full budgeted amount of \$26,250. The motion was seconded and adopted by the Council.

It was noted that the Supreme Court has not yet appointed the lay member to the Council. The Council urged the Supreme Court to make the appointment as soon as possible.

The Council agreed to establish a regular meeting date on the first Saturday of each month, and agreed that the meetings will be held in Portland at the Multnomah County Courthouse. The next meeting will be December 3, 1977.

The Council decided to hold the required public hearings in the four Congressional districts at the beginning of next year. The following schedule was adopted: public hearing for the 1st Congressional district at 9:30 a.m. on January 21, 1978 in the County Commissioner's Board Room of the Multnomah County Courthouse. Public hearing for the 2nd Congressional district at 9:30 a.m. on February 4, 1978 at the Umatilla County Courthouse in Pendleton. Public hearing for the 3rd Congressional district at 9:30 a.m. on February 18, 1978 in the Lloyd Center Auditorium in Portland. Public hearing for the 4th Congressional district at 9:30 a.m. on March 4, 1978 at Harris Hall, Lane County Courthouse in Eugene. The Chairman indicated that he would arrange to have the meeting schedule published in the Oregon State Bar Bulletin and to have notice provided to the newspapers.

The Council next discussed the order in which the work of the Council should proceed. It was agreed that at the meeting on December 3 the Council would focus on the issues of whether law and equity should be merged and on whether the code pleading system should be changed to notice pleading. Several members of the Council indicated that a decision on these basic issues at the outset would be helpful in guiding the remaining work of the Council. Fred Merrill, if he has time available, will be asked to prepare a background paper on these issues for the members of the Council by the December 3 meeting.

Judge Davis expressed dissatisfaction with the way the third party practice and summary judgment procedures are working. He suggested the Council reexamine them. Judge Dale suggested that the Council should begin its work by asking Fred Merrill to prepare a list of all the current statutes pertaining to procedure and practice.

The meeting was adjourned at 11:40 a.m.

Respectfully submitted,

Laird Kirkpatrick  
Secretary pro tem

LK:jlb

## COUNCIL ON COURT PROCEDURES

### RULES OF PROCEDURE

The following are suggested Rules of Procedure to be adopted pursuant to Section 2(1)(b), House Bill 2316. The rules do not cover Council membership, terms, notices, public meeting requirements, voting, or expense reimbursement to the extent that these subjects are directly covered in the statute.

#### I. MEETINGS

Meetings of the Council shall be held regularly at such time and place fixed by the Council or the Executive Committee. Special meetings of the Council may be called at any time by the Chairman or the Executive Committee. Notice of special meetings of the Council stating the time, place and purpose of such meeting shall be given personally by telephone or by mail to each Council member not less than twenty-four hours prior to the holding of the meeting. Notice of the meetings may be waived in writing by any Council member at any time. Attendance of any Council member at any meeting shall constitute a waiver of notice of such meeting except where a Council member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called.

All meetings shall be conducted in accordance with parliamentary procedure.

#### II. OFFICERS, EXECUTIVE COMMITTEE, SUBCOMMITTEES

A. Officers. The Council shall choose the following officers from among its membership: a Chairman, Vice Chairman, and Treasurer. These officers shall be elected for a period of two years at the first meeting of the Council following the adjournment of a regular session of the legislature. The powers and duties of the officers shall be as follows:

1. Chairman. The Chairman shall preside at meetings of the Council, shall set the time and place for meetings of the Council, shall direct the activities of the Executive Director, may issue public statements relating to the Council, and shall have such other powers and perform such other duties as may be assigned to the Chairman by the Council.

2. Vice Chairman. The Vice Chairman shall preside at meetings of the Council in the absence of the Chairman and shall have such other powers and perform such other duties as may be assigned to the Vice Chairman by the Council.

3. Treasurer. The Treasurer shall preside at all meetings of the Council in the absence of the Chairman and Vice Chairman and shall have general responsibility for reporting to the Council on disbursement of funds and preparation of a budget for the Council and shall have such other powers and perform such other duties as may be assigned to the Treasurer by the Council.

B. Executive Committee. The above officers shall constitute an Executive Committee of the Council. The Executive Committee shall have the authority to employ or contract with staff and may authorize disbursement of funds of the Council or may delegate authority to disburse funds to the Executive Director and perform such other duties as may be assigned to them by the Council. The Executive Committee shall set the agenda for each Council meeting prior to such meeting and provide reasonable notice to Council members of such agenda.

C. Subcommittees. The Executive Committee may appoint such subcommittees from Council membership as it shall deem necessary to carry out the

business and purposes of the Council. Such subcommittee shall report to and recommend action to the Council.

III. EXECUTIVE DIRECTOR, STAFF, ADMINISTRATIVE OFFICE, CONTROL OF FUNDS

A. Executive Director. The Council shall select and appoint an Executive Director on such terms and conditions as the Council shall specify.

Under direction of the President, Treasurer and Executive Committee, the Executive Director shall be responsible for the employment and supervision of other Council staff, maintenance of records of the Council, presentation and submission of minutes of the meetings of the Council, provision of required notice of meetings of the Council, preparation and disbursement of Council agenda and receipt and preparation of suggestions for modification of rules of pleading, practice and procedure, and shall have such other powers and perform such other duties as may be assigned to the Executive Director by the Council or the Executive Committee.

B. Staff. The Council shall employ or contract with, under terms and conditions specified by the council or the Executive Committee, such other staff members as may be required to carry out the purposes of the Council.

C. Control and Disbursement of Funds. Funds of the Council shall be retained by the State Court Administrator's office and shall be paid out only by the State Court Administrator as directed by the Council, the Executive Committee, or the Executive Director as authorized by the Executive Committee.

D. Administrative Office. Council shall designate a location for an administrative office for the Council. All Council records shall be kept



in such office under the supervision of the Executive Director.

#### IV. PREPARATION AND SUBMISSION OF RULES OF PLEADING, PRACTICE AND PROCEDURE

The Council shall consider and propose such rules of pleading, practice and procedure as it deems appropriate at its meetings. Two weeks prior to the regularly scheduled meeting in October, or any meeting in October specified by the Council or the Executive Committee, of a year prior to a regular session of the legislature, the Executive Director shall prepare and cause to be published to all members of the Bar and to the public a notice of such meeting which shall include the time and place of such meeting and a description of the substance of the rules and amendments which have been proposed, and notice that copies of any specific rules and amendments proposed may be secured upon request from the Administrative Office of the Council. At such meeting, the Council shall receive any comments from the members of the Bar and the public relating to proposed amendments and rules of procedure.

Thereafter, the Executive Director shall distribute to the members of the Council a draft of the tentative final action to be taken to amend or adopt rules of pleading, practice and procedure as directed by the Council, together with a list of statutory sections superseded thereby, and appropriate explanatory comments, in such form as the Council shall direct, and the Council shall take final action to modify, repeal or adopt rules of pleading, practice and procedure and direct submission of such amendments and rules and any list of statutory sections affected thereby, together with explanatory comment, to the legislature before the beginning of the regular session of the legislature.