

N O T I C E

TO: NEWS MEDIA  
OREGON STATE BAR BULLETIN

September 18, 1981

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 Saturday, October 10, 1981, at 9:30 a.m., in Judge Dale's Courtroom, Multnomah County Courthouse, Portland. At that time, the Council will decide which rules of Oregon pleading, practice, and procedure are to be considered by the Council during the 1981-83 biennium.

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A G E N D A

COUNCIL ON COURT PROCEDURES

Meeting

9:30 a.m., Saturday, October 10, 1981

Judge Dale's Courtroom

Multnomah County Courthouse

Portland, Oregon

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1. New Council members
2. Approval of minutes of meeting held August 8, 1981
3. Budget - 1981-83 biennium
4. Council business - 1981-83
  - (a) Problems in ORCP
  - (b) New areas of concern
  - (c) Subcommittee structure

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\*  
\* NOTE: Council Chairman Don McEwen has asked that each \*  
\* of the members of the Council consider possible areas \*  
\* of work for the Council during the next biennium and \*  
\* be prepared to make suggestions for Council action at \*  
\* the meeting. \*  
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\* \* \* \* \*

COUNCIL ON COURT PROCEDURES

Minutes of Meeting Held October 10, 1981

Judge Dale's Courtroom

Multnomah County Courthouse

Portland, Oregon

Present:           John H. Buttler                                 Donald W. McEwen  
                  J. R. Campbell                             Edward L. Perkins  
                  John N. Copenhaver                     Robert W. Redding  
                  Austin W. Crowe, Jr.                    E. B. Sahlstrom  
                  William M. Dale, Jr.                   James C. Tait  
                  Robert H. Grant                           Wendell H. Tompkins  
                  Wendell E. Gronso                     Lyle C. Velure  
                  John J. Higgins                           William W. Wells  
                  William L. Jackson                    Bill L. Williamson  
                  Harriet R. Krauss

Absent:           Roy Kilpatrick  
                  Jon E. Lund  
                  Frank H. Pozzi  
                  James W. Walton

The Council on Court Procedures convened at 9:30 a.m. on Saturday, October 10, 1981, in Judge Dale's Courtroom in the Multnomah County Courthouse, Portland, Oregon.

The minutes of the meeting of August 8, 1981, were approved. The Executive Director reported on the 1981-83 Biennium budget noting that the Council secretary's position had been reduced from a full-time to a half-time position.

The Chairman described a list of problems in the ORCP which perhaps need Council attention and asked the Executive Director to draft proposed rule changes to meet the problems. Jim Tait agreed to address the problems existing in Rules 21 A. and 44 A., C., and E.

The Council discussed problems presented by what is viewed as an abuse of the summary judgment proceeding. A subcommittee comprised of Don McEwen, John Higgins, and Austin Crowe was appointed to develop a response to this abuse.

The Chairman made reference to a document entitled COUNCIL ON COURT PROCEDURES 1981-83 BIENNIUM, a copy of which is attached to these minutes as Appendix A, prepared by Fred Merrill which outlines possible areas of Council

Minutes of Meeting - 10/10/81  
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action during the next biennium. The Executive Director was asked to send the memorandum to all Council members in order that definite areas of Council activity may be established for the biennium.

The next meeting is scheduled for Saturday, November 14, 1981, at 9:30 a.m. in Judge Dale's Courtroom in the Multnomah County Courthouse.

The meeting adjourned at 10:35 a.m.

Respectfully submitted,

Douglas A. Haldane  
Executive Director

DAH:gh

## COUNCIL ON COURT PROCEDURES

1981-83 Biennium

The Council on Court Procedures was not established as a temporary agency to draft the Oregon Rules of Civil Procedure and then disappear. The 1977 legislative history of the act establishing the Council and the language of ORS 1.725 clearly show that the Council was set up as a permanent body to engage in a "continuous review" of civil procedure. It was difficult for a biennial legislative assembly to systematically review a subject such as civil procedure which is technical and generally does not excite popular political interest. The pattern for the Council was suggested by the Federal Judicial Conference which continually monitors the federal procedural system.

The Council is now finishing its second biennium of operation. It has virtually completed a set of general rules of procedure called the Oregon Rules of Civil Procedure, or ORCP. ORCP 1-64 were submitted to the 1979 Legislative Assembly and went into effect on January 1, 1980. ORCP 65-85 are being submitted to the 1981 Legislative Assembly.

The fact that the ORCP have been drafted does not mean there is nothing left to do. The ORCP are the general trial procedures applicable in all cases and trial courts of record. There is a tremendous amount of civil procedural material which is not, and reasonably could not be, included in a general set of trial rules such as the ORCP. The ORCP only entirely replace six chapters of ORS 1-55, which historically comprised the general civil procedure code. The role of the Council is not limited to drafting and changing the ORCP. Under ORS 1.735, the Council is responsible for drafting or amending civil procedure in "all civil proceedings in all courts of the state." ORS 1.745 makes clear that all procedural rules in ORS are subject to modification by the Council. The general role of the Council as described in ORS 1.725 requires the Council to consider matters not directly within its rulemaking power, but which affect court operation.

In other words, there is still a very substantial amount of work for the Council to address. First, the legislature has already directed the Council to review new rules of juvenile procedure to be drafted by the Juvenile Services Commission. See ORS 417.490(h). Apparently, the Juvenile Services Commission plans to begin working on those rules in 1981. Secondly, there are rules of procedure of a more specialized nature. These areas, such as special proceedings in ORS Chapter 33 and writs in Chapter 34, should remain as ORS sections, but the procedures described are sorely in need of attention. Thirdly, there are areas which are probably outside the rulemaking power of the Council where study and recommended legislation by the

Appendix A

to Council Minutes of  
Meeting Held 10/10/81

Council would be very desirable; this would include areas such as statutes of limitations and venue. Finally, the difficulty involved with maintenance and revision of the ORCP should not be ignored. In order to draft the ORCP in a relatively short period of time and to preserve a unique Oregon practice, the Council incorporated substantial portions of existing ORS sections, particularly those which had been the subject of recent legislative enactment or which were sufficiently new that the exact form of operation was not clear. Some of these areas are quite complex and require a detailed analysis. An example of one such area which was reviewed during the last biennium was the class action procedure in Rule 32; other areas of a similar nature would be third party practice and summary judgments.

In addition to those specifically noted above, the following is a list of at least some other potential areas of study:

1. ENFORCEMENT OF JUDGMENTS. ORS Chapter 23.
2. ACTIONS IN PARTICULAR CASES. ORS Chapter 30.
3. EMINENT DOMAIN. ORS Chapter 35.
4. LIEN FORECLOSURES. ORS Chapter 88.
5. LANDLORD AND TENANT. ORS Chapter 91.
6. SUBDIVISIONS AND PARTITIONS. ORS Chapter 92.
7. FRAUDULENT CONVEYANCES. ORS Chapter 95.
8. PROPERTY RIGHTS. ORS Chapter 105.
9. DISSOLUTION. ORS Chapter 107.
10. CHILD CUSTODY. ORS Chapter 109.
11. INTERVENTION. ORCP 33.
12. DISCOVERY OF EXPERT WITNESSES. ORCP 36-46.
13. PRETRIAL CONFERENCES.
14. STOCKHOLDER DERIVATIVE SUITS PROCEDURE.
15. SUMMONS AND PROCEDURE IN TAX FORECLOSURES.
16. SEPARATE AND SIMPLER RULES FOR USE IN MINOR COURTS.
17. LOCAL COURT RULES - CONTENT, AVAILABILITY, AND PUBLICATION.
18. UNIFORM FORMS.
19. SMALL CLAIMS PROCEDURE IN JUSTICE AND DISTRICT COURTS.

20. FORUM NON CONVENIENS RULES.
21. IMMUNITY FROM SERVICE OF PROCESS.
22. DISQUALIFICATION OF JUDGES.
23. JURY SELECTION PROCEDURES.
24. RECORDS AND PROCEDURES OF COURT CLERK'S OFFICE IN RELATIONSHIP TO PROCEDURAL RULES.
25. DECLARATORY JUDGMENTS PROCEDURE.

Not all of these areas, of course, could be reviewed in the next biennium. The list is not in any order of priority; that would be decided at the beginning of the biennium. It is also not suggested that procedural changes would ultimately be necessary in every area. These are areas where systematic examination appears necessary because of complaints received by the Council, court opinions, or passage of time.

To perform this systematic examination, the Council needs reasonable staff support at a level which is at least equivalent to that provided during the last four years. The Council members contribute uncompensated time of incalculable value to make the Council work and cannot be expected to contribute further administrative, research, and drafting services.

The approach of having a permanent body (comprised mainly of trial lawyers and trial judges) which is primarily responsible for revision of the rules relating to operation of the courts in civil cases has worked well. The Council has enormously improved many aspects of Oregon civil procedure. Those improvements and other untouched areas of civil procedure require systematic attention or else many of the benefits achieved will be lost. Those benefits are in the form of reduced costs to litigants and taxpayers because the procedure system operates more efficiently and fairly. The dollar value of those benefits, while not readily measurable, must far outweigh the rather nominal cost to the state for the Council budget.



School of Law  
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503/686-3837

September 30, 1981

Mr. Donald W. McEwen  
McEWEN, NEWMAN, HANNA & GISVOLD  
Attorneys at Law  
Suite 1408  
Standard Plaza  
1100 S. W. Sixth  
Portland, Oregon 97204

Dear Don:

Enclosed is the material I put together covering some possible problems. I have picked up a couple more things:

1. Rule 15 A. is not clear relating to the time to respond to counterclaims and cross-claims. The 30 days only applies when a new party is added to respond to the counterclaim or cross-claim. In the ordinary case, the response time is 10 days.

2. We continued to get complaints about use of summary judgment as a discovery device. This is frequently done to smoke out an affidavit from an opponent's expert.

Very truly yours,

Fredric R. Merrill

FRM:gh

Encl.

cc: / Doug Haldane