

N O T I C E

TO: NEWS MEDIA
OREGON STATE BAR BULLETIN

October 28, 1981

FROM: COUNCIL ON COURT PROCEDURES
University of Oregon Law Center
Eugene, OR 97403

The next meeting of the COUNCIL ON COURT PROCEDURES will be held Saturday, November 14, 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, November 14, 1981

Judge Dale's Courtroom
Multnomah County Courthouse
Portland, Oregon

1. Approval of minutes of meeting held October 10, 1981
 2. Proposed amendments to:
 - (a) ORCP 7 D.(3)(d)
 - (b) ORCP 7 F.(2)(a)(i)
 - (c) ORCP 9 B.
 - (d) ORCP 21 A.
 - (e) ORCP 63 A.
 3. Consideration of possible amendments to:
 - (a) ORCP 44 A.
 - (b) ORCP 44 C.
 - (c) ORCP 44 E.
 - (d) ORCP 54 B.(2)
 4. Summary judgment - ORCP 47
 5. COUNCIL BUSINESS - 1981-83
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COUNCIL ON COURT PROCEDURES

Minutes of Meeting Held November 14, 1981

Judge Dale's Courtroom

Multnomah County Courthouse

Portland, Oregon

Present: Austin W. Crowe, Jr. Robert W. Redding
Wendell E. Gronso E.B. Sahlstrom
William L. Jackson Lyle C. Velure
Roy Kilpatrick James W. Walton
Harriet R. Krauss William W. Wells
Donald W. McEwen Bill L. Williamson
Edward L. Perkins

Absent: John H. Buttler Jon B. Lund
J.R. Campbell Frank H. Pozzi
John M. Copenhaver James C. Tait
William M. Dale, Jr. Wendell H. Tompkins
Robert H. Grant
John J. Higgins

Also Present: Steve Blackhurst, Pleading and Practice Committee
David R. Vandenberg, former Council member

The Council on Court Procedures convened at 9:33 a.m. on Saturday, November 14, 1981, in Judge Dale's Courtroom in the Multnomah County Courthouse, Portland, Oregon. Attending the meeting in addition to the Council members listed above were Dave Vandenberg and Steve Blackhurst.

The minutes of the meeting of October 10, 1981, were approved.

Referring to a list of problem areas which have been identified in the ORCP, Mr. McEwen called attention to a possible problem with the provisions of ORCP 21 A. raised by a letter to the Council from Justice Ralph Holman. The argument was that no authority existed for a trial judge to allow an amendment to a pleading when a motion to dismiss had been granted under that rule. Mr. Tait of the Council had studied the problem and reported that ORCP 23 D. dealt with the problem but suggested that, to cure any ambiguity, Rule 21 A. be amended to add the following language at the end of the rule:

"When a motion to dismiss has been allowed, judgment shall be entered in favor of the moving party unless the court has allowed leave to file an amended pleading under Rule 23 D."

Mr. Crowe moved, seconded by Judge Campbell, that the Tait proposal be adopted. The proposal passed unanimously.

The Council next took a look at ORCP 63 - Judgment Notwithstanding the Verdict. Some confusion had arisen as to whether a motion for a directed verdict need be made at the close of all the evidence rather than simply at the close of the plaintiff's case-in-chief. Mr. Sahlstrom moved, seconded by Mr. Kilpatrick, that the following proposal submitted by Mr. Haldane be adopted:

"A. Grounds. When a motion for a directed verdict, made at the close of all the evidence, which should have been granted has been refused and a verdict is rendered against the applicant, the court may, on motion, render a judgment notwithstanding the verdict, or set aside any judgment which may have been entered and render another judgment, as the case may require."

The proposed amendment was adopted unanimously.

The Council next gave attention to ORCP 44 E. regarding access to hospital records by a party against whom a claim is asserted for compensation. Mr. Tait had also taken a look at this problem and proposed an addition to ORCP 44 E. as follows:

"All records sought pursuant to this rule are presumed to be within the scope of discovery under Rule 36 B. Access to such records shall be allowed unless a motion for a protective order is filed pursuant to Rule 36 C. and a subpoena duces tecum pursuant to Rule 55 specifying the time and place for hearing on the motion for a protection order is served upon the custodian of records. Access to such records shall then be denied except by order of the court."

The discussion centered on what is viewed as an abuse by hospitals in following the procedure. It was pointed out that hospitals were releasing records prior to any claim being filed. There is apparently some difficulty in the use of the word "claim" as insurance adjusters and hospital officials consider "claim" as having its everyday meaning rather than the technical meaning used in the ORCP. After a lengthy discussion, Mr. Sahlstrom suggested the matter be referred to a subcommittee. Mr. Sahlstrom was appointed chair of the subcommittee made up of Messrs. Sahlstrom, Tait, Velure, and Crowe.

The Council then took another look at what is viewed as an abuse of the summary judgment process under ORCP 47. The problem is that of the use of a motion for summary judgment as a discovery device, primarily the

discovery of experts. The discussion involved proposals to provide sanctions for the misuse of a Rule 47 motion as well as the possibility of building in a procedure for attesting to the existence of a dispute concerning a material issue of fact. During the discussion, Mr. Gronso moved and Mr. Velure seconded a proposal to appoint a subcommittee to draft a rule to abolish the use of summary judgment in tort cases. That motion was tabled and the questions surrounding the amendment of Rule 47 were referred back to a subcommittee comprised of Messrs. McEwen, Crowe, and Higgins.

It was then suggested that one area of Council concern for the biennium should be the coordination of local court rules. It was suggested that Butterworths Publishing Company may be providing a compilation of local court rules that would serve the purpose. The Director was asked to check with Butterworths to see if such a publication was indeed in process.

The Council then addressed the question of the meeting schedule for the biennium. It was determined that the Council would not schedule any public meetings until after the product for the biennium had been produced.

The next meeting of the Council was scheduled for January 16, 1982, at 9:30 a.m. in Judge Dale's Courtroom, Multnomah County Courthouse, Portland, Oregon.

Respectfully submitted,

Douglas A. Haldane
Executive Director

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