

N O T I C E

TO: NEWS MEDIA
ORETON STATE BAR BULLETIN

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, January 16, 1982, at 9:30 a.m., in Judge Dale's Courtroom, Multnomah County Courthouse, Portland, Oregon.

At that time, the Council will discuss and hear suggestions regarding proposed Oregon rules of civil procedure.

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1-5-82

A G E N D A

COUNCIL ON COURT PROCEDURES

Meeting

9:30 a.m., Saturday, January 23, 1982

Judge Dale's Courtroom
Multnomah County Courthouse
Portland, Oregon

1. Report of Executive Director
2. Approval of minutes of meeting held November 14, 1981
3. Report of subcommittee on ORCP 44 E.
4. Report of subcommittee on ORCP 47
5. Van Landingham request for consideration of small claims procedures
6. Gronso request concerning ORCP 22
7. Proposed amendments to ORCP
8. Meeting schedule

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COUNCIL ON COURT PROCEDURES

Minutes of Meeting Held January 23, 1982

Judge Dale's Courtroom

Multnomah County Courthouse

Portland, Oregon

Present: John H. Buttler Roy Kilpatrick
 J.R. Campbell Donald W. McEwen
 John M. Copenhaver Frank H. Pozzi
 Robert H. Grant Wendell H. Tompkins
 Wendell E. Gronso James W. Walton
 John J. Higgins William W. Wells
 William L. Jackson

Absent: Austin W. Crowe, Jr. E.B. Sahlstrom
 William M. Dale, Jr. James C. Tait
 Harriet R. Krauss Lyle C. Velure
 Jon B. Lund Bill L. Williamson
 Edward L. Perkins
 Robert W. Redding

Also present: Mark A. Hasson and Charlene Choate
 of Business Men's Service Co.

The Council on Court Procedures convened at 9:30 a.m. on Saturday, January 23, 1982, in Judge Dale's Courtroom in the Multnomah County Courthouse, Portland, Oregon. The minutes of the meeting of November 14, 1981, were approved.

Mr. Haldane made a brief report regarding the Council budget. After two hearings before a subcommittee of the Joint Ways and Means Committee, the subcommittee will be recommending to the Joint Ways and Means Committee that the Council budget for the 1981-83 biennium be cut by 5%, or \$2,400.00. The budget reductions are in the following areas:

Postage	\$600.00
Duplicating services	300.00
Communications	300.00
Contract services	<u>1,200.00</u>
	\$2,400.00

No final budget reductions will be known until after the special session of the legislature, but the best guess is that cuts

will be made at the 5% level.

Mr. Haldane then brought to the attention of the Council a letter from Mr. Craig Bachman of the Oregon State Bar Committee on Uniform State Laws requesting Council reaction to the Uniform Certification of Questions of Law Act. Discussion followed which demonstrated the belief on the part of the members of the Council that certification of questions of law does not fall within the statutory charge to the Council and that no action or position should be taken on the question.

Mr. Haldane reported communications from a number of sources urging the Council to take up the question of procedures in small claims courts. After some discussion, Mr. Haldane was directed to look into the question further and determine if a real need existed for a revamping of small claims procedures.

Mr. McEwen suggested that he would subsequently appoint a subcommittee to study small claims procedures if it was deemed necessary.

No members of the subcommittee on ORCP 44 E. were present, but Mr. Haldane reported a communication from Mr. Sahlstrom indicating that the subcommittee was working on the problem. Mr. Walton indicated that he also was working on the proposal to amend ORCP 44 E.

Mr. Gronso raised the question of third party practice under ORCP 22. Some of his concerns had been expressed in a letter to Council members dated November 18, 1981. One concern expressed in that letter was that of the possibility of cross-claims being filed against defendants already in default and who would therefore not necessarily be served with a cross-claim. While he felt that third party practice is desirable and even needed in some cases, his concern was broader than the issue raised in his letter. He stated it was his belief that third party practice increases the costs and the time involved in lawsuits. Mr. Pozzi referred to a communication he had received from Mr. Bruce Spaulding complaining about the need for firms to withdraw when it appeared necessary to file a cross-claim against another client. Judge Wells referred to a communication he had received indicating that the Bar's Pleading and Practice Committee was looking into the question of third party practice and suggested a coordinated approach. Following a general discussion, Mr. Gronso moved, with Mr. Walton's second, to re-evaluate the desirability of third party practice, including cross-claims. The motion passed with only Messrs. Butler and McEwen voting no. Mr. McEwen appointed a subcommittee to be chaired by Judge Dale and composed of Messrs. Pozzi, Gronso, McEwen, and Crowe.

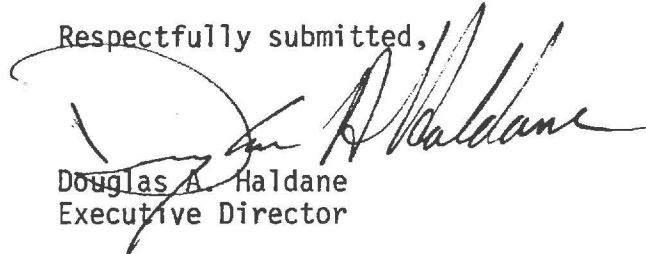
Mr. Haldane was directed to advertise to the bar the fact that the Council would be considering the question of third party practice in an attempt to gather information regarding experiences under the rule.

Mr. McEwen reported for the subcommittee on ORCP 47 and distributed a draft of a proposed amendment, a copy of which is attached to these minutes as Appendix A. Judge Tompkins suggested the "and/or" phrasing was awkward, and Mr. McEwen agreed to strike the "/or". Mr. Pozzi expressed some concern regarding the possibility of a lawyer filing an affidavit attesting to expert opinion which would raise a genuine issue of fact and then, for whatever reason, not being able to produce the expert at the time of trial. He thought the subcommittee proposal should be considered further before adoption. There appeared to be a consensus to carry the proposal to the next meeting of the Council.

Mr. Haldane distributed a proposed meeting schedule, a copy of which is attached to these minutes as Appendix B. The suggested date of October 2 in Eugene was changed to September 30, and the proposed schedule was adopted.

The meeting was adjourned at 10:54 a.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Douglas A. Haldane", is written over the typed name and title. The signature is fluid and cursive.

Douglas A. Haldane
Executive Director

DAH:gh

COUNCIL ON COURT PROCEDURES

PROPOSED AMENDMENT TO RULE 47

Whenever the adverse party, to establish the existence of a genuine issue of fact, would be required by affidavit to show facts and opinions of an expert witness who will or may be called to testify at the time of trial, the adverse party, or his attorney, may execute an affidavit in opposition to the motion for summary judgment. Any affidavit so executed shall state that the facts and ~~or~~ opinions necessary to create a genuine issue of fact are within the knowledge of an expert employed by the adverse party or his attorney to testify in the pending action, and that the facts and opinions set forth in the supporting affidavits can only be controverted by an affidavit of that expert. The affidavit in opposition need not disclose the identity of the expert. The filing of such an affidavit will be deemed sufficient to create a genuine issue of fact.

[To be added to subparagraph D., or to be a separate subdivision of the Rule to follow subdivision D.]

Appendix "A"
to Minutes of Council
Meeting of 1/23/82

COUNCIL ON COURT PROCEDURES

Proposed Meeting Schedule

The following is proposed as a meeting schedule for the Council on Court Procedures to complete its work for the 1981-83 biennium:

Regular Working Meetings

May 8	Portland
June 12	Portland
July 10	Portland

Public Meetings on Proposed Rules

September 11	Second Congressional District	- Bend
September 30	Fourth Congressional District	- Eugene
October 23	Fifth Congressional District	- Salem
November 6	Third Congressional District	- Portland
*November 20	First Congressional District	- Portland

This proposed meeting schedule is structured on the assumption that the Council at its January 23 meeting will determine the direction of its work for the biennium and appoint subcommittees to begin work on each topic.

The period January to May would be used for subcommittee meetings without the necessity of full Council meetings. The May, June, and July Council meetings would provide an opportunity for the Council to consider subcommittee reports, make referrals back to subcommittees, and finally approve proposals. We would then begin the public meeting schedule in September, hitting each of the congressional districts before the end of November. The schedule for public meetings is entirely flexible, though the October 2 meeting perhaps should be in Eugene as that is the last day of the Oregon State Bar Convention.

Completing the public meetings in November will allow the Council to meet in December if necessary for final amendment and promulgation of the rules in order that they may be presented to the legislature by the beginning of the session.

*The schedule previously submitted showed this date as November 21. The correct date is November 20.

DAH:gh
1-23-82

Appendix "B"
to Minutes of Council
Meeting of 1/23/82

M E M O R A N D U M

TO: Don McEwen, Chairman
Council on Court Procedures

FROM: Doug Haldane

SUBJECT: Council business for the biennium

DATE: 1-23-82

I am probably not alone in feeling a curious sense of indirection on the part of the Council right now. There is some work that needs to be done, and I am suggesting that at the January 23 meeting we do two things. First, it would help if the Council would make some definite decisions about areas of consideration for the biennium. Second, subcommittees could be formed to begin studying these problems. The proposed meeting schedule which I am distributing at the meeting is designed around using the period January to May for subcommittee work and to return to full Council meetings in May.

If it is agreeable with you, I will outline in my report the matters which have come to my attention that may be of concern to the Council during the biennium. The major items are listed as separate agenda items--the problems with ORCP 44 E., 47, and 22; and the Van Landingham request for consideration of small claims procedures. In addition to that, we have the responsibility for reviewing the work of the Juvenile Court Procedures Committee. I also continue to receive questions and complaints about what are apparently mistakes in the ORCP, and we should probably establish a subcommittee to deal with these "house cleaning" items.

Now that the budget problems appear to be behind us, I am anxious to get started on some of this, and I am sure that a majority of the Council would concur.

DAH:gh