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N O T I C E O F M E E T I N G

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The Oregon Council on Court Procedures will hold a public meeting on SATURDAY, APRIL 14, 1984, at 9:30 a.m., at the RED LION/JANTZEN BEACH (Burnside Room), 909 North Hayden Island Drive, Portland, Oregon.

The Council welcomes suggestions from the bench and bar regarding possible modifications to the Oregon Rules of Civil Procedure.

3/30/84

M E M O R A N D U M

TO: **COUNCIL ON COURT PROCEDURES:**

Joe D. Bailey
John H. Buttler
J. R. Campbell
John M. Copenhaver
William M. Dale
Jeffrey P. Foote
Robert H. Grant
John J. Higgins
John F. Hunnicutt
William L. Jackson
Roy Kilpatrick
Sam Kyle
Douglas McKean
Edward L. Perkins
James E. Redman
E. B. Sahlstrom
William F. Schroeder
J. Michael Starr
Wendell H. Tompkins
John J. Tyner
James W. Walton
William W. Wells
Bill L. Williamson

FROM: DOUGLAS A. HALDANE, Executive Director

R E M I N D E R

COUNCIL MEETING

Saturday, April 14, 1984, 9:30 a.m.

RED LION/JANTZEN BEACH (Burnside Room)

909 North Hayden Island Drive

Portland, Oregon

3/30/84

A G E N D A

COUNCIL ON COURT PROCEDURES

Meeting

9:30 a.m., Saturday, April 14, 1984

RED LION/JANTZEN BEACH (BURNSIDE ROOM)

909 North Hayden Island Drive

Portland, Oregon

1. Public comments
2. Proposed rule changes:
    - (a) ORCP 7 C.(2)
    - (b) ORCP 16 B.
    - (c) ORCP 21 E.
    - (d) ORCP 32 H.
    - (e) ORCP 47 C.
3. Proposed legislation (HB 2309 and HB 2370)
4. Proposed Uniform Trial Court Rules
5. Meeting schedule
6. New business

COUNCIL ON COURT PROCEDURES

Minutes of Meeting Held April 14, 1984

RED LION/JANTZEN BEACH (BURNSIDE ROOM)

909 North Hayden Island Drive

Portland, Oregon

Present:	Joe D. Bailey	James E. Redman
	John H. Buttler	E. B. Sahlstrom
	William M. Dale, Jr.	J. Michael Starr
	John F. Hunnicutt	Wendell H. Tompkins
	William L. Jackson	John H. Tyner, Jr.
	Roy Kilpatrick	James W. Walton
	Sam Kyle	William W. Wells
	Edward L. Perkins	Bill L. Williamson
Absent:	J. R. Campbell	John H. Higgins
	John M. Copenhaver	Douglas McKean
	Jeffrey P. Foote	William F. Schroeder
	Robert H. Grant	

(Also in attendance were: Bob Hasson, Diana Godwin, Bill Galbreath, Don McEwen, Frank Pozzi, Gary Ebert, Ray Conboy, Jim Spickerman, and Douglas Haldane, Executive Director)

The meeting was called to order at 9:30 a.m., April 14, 1984. Judge Hunnicutt moved the adoption and approval of the minutes of the meeting of October 15, 1984. The minutes were approved unanimously.

Mr. Kilpatrick explained to the members of the Council that he had just recently received the proposed Uniform Trial Court Rules which had been distributed to members of the Council. He stated that he invited the Chief Justice to appear at the Council meeting to discuss the proposed Uniform Trial Court Rules but that the Chief Justice was out of town and could not attend. He also announced the receipt of a letter from John Hutchins of the Oregon State Bar seeking the Council's comments on the proposed Uniform Trial Court Rules.

Since a number of members of the public had appeared to address the question of the Uniform Trial Court Rules, Mr. Kilpatrick then invited public comment.

Gary Ebert, of the Malheur County Bar, addressed two areas of concern. First was the concern regarding the source

of the Chief Justice's rulemaking authority. He stated the position that the types of rules proposed would be best taken up by the Council as many of them appear to be procedural as opposed to administrative.

Secondly, he expressed the concern of the Malheur County Bar that many of the rules appeared to be drafted for the administrative convenience of the courts but that they would increase costs to the litigants. Specific examples were the preparation of written jury instructions for the jury, the requirement that counsel write the trial judge when a matter has been under consideration for more than sixty days, and the requirement that counsel meet twenty-four hours in advance of trial to work out appropriate stipulations for trial.

Mr. Frank Pozzi next addressed the rules. He had submitted a letter outlining the concerns that he and the members of his firm had regarding the rules, a copy of which is attached to these minutes as Exhibit A. He stated that his office was opposed to the rules as proposed primarily because they appeared to be designed not for litigants or lawyers but for the sole convenience of the courts. Like Mr. Ebert, Mr. Pozzi was concerned about the additional costs that would be involved to litigants.

Mr. Galbreath, too, stated the position that the rules as proposed present unnecessary burdens for litigants.

Judge Tompkins stated that the rules do not appear to him to be designed for the administrative convenience of the courts because the enforcement of such rules present a nuisance for trial courts.

Judge Buttler stated his understanding that these proposed rules had come about because of conflicts in local rules from county to county. It was his understanding that the Chief Justice's intention was to make the trial court rules more uniform. He also stated the position that the concern of the Council ought solely to be any conflict that the proposed rules presented with the Oregon Rules of Civil Procedure.

Mr. McKeown stated the position that the rules should not be uniform from county to county. The variety of practice and diversity of the counties, as well as the volume of litigation are so different that attempts at uniformity are doomed to failure. He gave as an example the local rules in Multnomah County where the Rule 4 and two-week call systems appear to work well for that metropolitan area. When asked what the function of the Council concerning these rules might be, Mr. McKeown's

response was that the rules appear to be for docket control and administration and not rules of procedure. He stated the position that no more new rules are needed; the more rules you get, the more expensive it is for litigants. He objected to the proposal for arbitrary time limits stating that they caused great problems of docket control in the law office. He also stated that the rules should be studied closely prior to adoption.

Mr. Conboy stated his belief that the rules were being rushed through. He mentioned that initial dissemination of the rules asked that objections be raised by May 1. He suggested that if haste is to be made, it should be made slowly. He objected particularly to the rules on extensions of time granted by plaintiff's counsel to defense counsel and what he saw as direct conflicts with the Oregon Rules of Civil Procedure.

Mr. Walton stated that if you compare the rules with the currently existing local court rules, you will find that most of them exist in some county. He stressed the need for uniform rules, describing moves from court to court as a nightmare.

Mr. Spickerman stated the position that the attempt to make uniform the local court rules appears to be unworkable. His experience with the Judicial Administration Committee of the Bar had demonstrated that when attempting to arrive at some basic rules for counties, it was almost impossible to agree on what, in fact, was basic.

Judge Jackson suggested that the procedure for adoption of the Uniform Trial Court Rules should be slowed down with more opportunity for discussion.

Judge Dale moved the following resolution with Judge Buttler's second:

> "BE IT RESOLVED, that the Council on Court Procedures takes the position that the content of the proposed Uniform Trial Court Rules is not within the jurisdiction of the Council on Court Procedures except to the extent that the proposed rules impinge on the Oregon Rules of Civil Procedure or on the statutory authority of the Council."

The resolution was adopted unanimously.

Mr. Kilpatrick then appointed Mr. Sahlstrom to chair a committee to study the proposed rules to determine if there were, in fact, conflicts with the Oregon Rules of Civil Procedure. That committee is made up of Mr. Sahlstrom, Chairman, Judge Hunnicutt, Mr. Schroeder, Mr. Kyle, and Mr. Walton.

Judge Dale suggested that Mr. Kilpatrick write the Chief Justice a letter expressing the adoption of the foregoing resolution and expressing the sentiments of the people who had appeared to speak before the Council.

Mr. Pozzi raised the question of the Council acting on proposed changes to the ORCP without sufficient advance notice to the public. Mr. Kilpatrick assured Mr. Pozzi that no action would be taken on proposed rule changes at the April 14 meeting and that he would attempt to assure that there was adequate opportunity for public comment before rule changes were adopted.

Mr. Haldane then presented and described the proposed rule changes to Rules 7, 16, 21, 32, and 47.

There was a brief discussion concerning the proposed changes to Rule 21. Judge Dale commented that the amendments that had been made to Rule 21 by the legislature were designed to deal with the problem of completely frivolous lawsuits. Judge Buttler stated that once you go outside the pleadings on a motion, one may as well use the Rule 47 summary judgment procedure. Judge Hunnicutt commented that most litigants do not go to a Rule 47 procedure until after discovery has been completed and that this rule was designed to halt frivolous lawsuits prior to incurring expense of discovery. Judge Dale commented that, like many things, these changes the legislature had made to Rule 21 were directed toward curing a particular evil but that the use of the rule would carry over to everything else.

Regarding the proposed changes to Rule 47, Judge Wells expressed the sentiment that something should also be included to require a more timely filing of a motion for summary judgment. He suggested something similar to that in the proposed Uniform Trial Court Rules. Mr. Haldane was asked to draft a proposed rule change which would incorporate Judge Wells' suggestions.

Mr. Haldane then presented what was House Bill 2309 in the 1983 Legislative Session, a copy of which is attached to these minutes as Exhibit B. This proposed rule change was proposed by the Bar's committee on practice and procedure; was rejected by the Council; and was rejected by the legislature. The Bar's committee on practice and procedure was again proposing a rule change similar to that contained in House Bill 2309 and was seeking Council action on it. Since the Council and the Bar committee seemed to be at odds regarding the issues raised by this proposal, Judge Dale suggested that the Council invite the committee to appear before the Council to explain their position on this proposal.

Mr. Haldane then presented what was House Bill 2370 in the last legislative session regarding curbing the extent of voir dire examinations.

A discussion followed in which lengthy voir dire examinations and the delays caused thereby were uniformly condemned. The only objections to the proposals in House Bill 2370 were that perhaps they were too equivocal and that the court's authority should be made even clearer. Mr. Haldane was asked to draft a proposal along the lines suggested by the Council.

Judge Wells then moved, with Judge Tompkins' second, that the Council adjourn. The motion was adopted, and the meeting was adjourned at 11:30 a.m.

Respectfully submitted,

Douglas A. Haldane
Executive Director

DAH:gh

POZZI WILSON ATCHISON O'LEARY & CONBOY

FRANK POZZI
DONALD R. WILSON
DONALD ATCHISON
IAN O'LEARY
RAYMOND J. CONBOY
KEITH E. TICHENOR
JAN THOMAS BAISCH
JEFFREY S. MUTNICK
ROBERT K. UDZIELA
JOHN S. STONE
DAVID A. HYTOWITZ
DANIEL C. DZIUBA
RICHARD S. SPRINGER
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OF COUNSEL
WILLIAM L. DICKSON

PHILIP A. LEVIN
(1928-1967)

April 11, 1984

Honorable Edwin J. Peterson
Chief Justice
Supreme Court of the State of Oregon
Supreme Court Building
Salem, Oregon 97310

Re: Proposed Uniform Trial Court Rules
Draft of March 1, 1984

Dear Chief Justice Peterson:

You have invited comments from the Bar concerning the proposed Uniform Trial Court Rules, and this letter sets forth the views of members of our law office.

As an overall criticism, we note that many of the rules appear to embody the practice of counties with small populations, and do not take into account the special problems of trial firms in large metropolitan areas, particularly Portland. The "Rule 4" procedure used in Multnomah County for handling cases not at issue, and the "two week call" used in that county for determining whether cases are to be tried or reset are, in our opinion, much superior to the changes proposed by the Uniform Rules.

We note also that the proposed rules greatly increase paper work, often unnecessarily, at a time when the cost of litigation has become a subject of concern to lawyers and to the public. The rights of litigants are to be preferred over the convenience of judges who are, after all, public servants. We agree with the appellate court which struck down a set of burdensome local federal district court rules, condemning the "theory * * * that if two pages are good, four must be better, and 10 or 13 or 21 may prevent a trial altogether * * *." McCargo v. Hedrick, 545 F2d 393, 401 (CA 4, 1976).

Our criticisms of specific sections of the proposed rules follow:

EXHIBIT A to Minutes of Council Meeting
Held April 14, 1984

2.022 Time for Filing Memoranda and Affidavits in Summary Judgment.

Subparagraph (2) provides that a party opposing a motion for summary judgment must file his affidavits and memorandum "no later than 28 days from the date of filing of the motion for summary judgment." This is superior to the Oregon local federal district court rules, which permit only 10 days to respond to any motion. However, unlike the local federal rules, the 28 day period for response does not appear to be subject to extension. Because a summary judgment motion can be filed at almost any time prior to trial, the moving party has the advantage of unlimited time for gathering sworn testimony. The opposing party may find that his affiants are unavailable, or that depositions or other discovery has to be undertaken which cannot be accomplished within the 28 day period for response. Accordingly, the rule should make clear that the court may extend the time for response for good cause shown.

2.030 Motions and Summary and Preliminary Matters to be Determined on the Record Without Oral Argument.

A judge may have a different perception of a legal problem than the litigants, no matter how clearly counsel may present a matter by written argument. This is the reason why oral argument has always been considered significant in appeals. It is no less significant at the trial court level. Under the practice of the local federal district court rules, either litigant may endorse a request for oral argument on motion papers, which is then automatically granted. A similar rule would be appropriate in state court practice. Our experience is that under the local federal court practice parties normally submit less significant motions to the court for disposition without argument, and reserve oral argument for dispositive motions.

5.040 Presenting Judgments and Orders for Judicial Signature.

Part (2) of section 5.040, requiring that a judgment or order must be presented to the opposing party for approval as to form before being submitted to the court is, in our experience, impractical. Normally, the prevailing party prepares a judgment or order on motion and submits it to the court, at the same time mailing a copy of the proposed order to opposing counsel. If opposing counsel disagrees with the form of the judgment or order, he will make his objection known to counsel and the court either verbally or by formal motion. Many lawyers cannot bring themselves to sign any adverse judgment or order, even as to form. The proposed rule will result in the flotation of a large number of

unsigned judgments and orders. Furthermore, a party who obtains a verdict after trial is entitled to immediate judgment, in view of the fact that interest runs only from the date of judgment.

5.045 Designation of Court Reporter(s) on Orders and Judgments.

This proposed rule requires counsel preparing an order and judgment following a proceeding which was reported to discover and name the court reporters. This proposed rule is part of a more general problem presented by the necessity (although no longer jurisdictional) of serving notices of appeal on the court reporter who reported the proceedings. It is common, especially in Multnomah County, for court reporters to trade assignments, and sometimes for numerous reporters to report the trial of a case. The court and its attaches are better equipped than counsel for the litigants to determine the names and numbers of court reporters who may appear during the course of a lengthy proceeding. While it is desirable that the names of court reporters appear on judgments and orders, the court itself should have the responsibility for endorsing the names of reporters on proposed orders and judgments. Counsel for the litigants are normally concerned with the trial of a case, and cannot reasonably be expected to pay attention to who is sitting in the court reporter's chair.

6.020 Examining Prospective Jurors.

This proposed rule provides that parties "shall avoid repetition and seek only material information." We do not believe that this requirement should be embodied in the form of a rule, since the court already has some discretion over voir dire. Skilled trial lawyers may disagree on what constitutes undesirable "repetition" or what information is "material" to determining whether a prospective juror has prejudices which will preclude his hearing the case fairly.

6.075 Witness Lists Required; Time for Submission.

This proposed rule requires each party in a proceeding requiring testimony to prepare and submit to the judge prior to trial a list "containing the name, address and occupation of each witness" which need not, however, be served on opposing parties. Such a list, once prepared, would be subject to a motion to produce by the opposing party and, because material, could not be withheld by the court. Moreover, this rule would unduly restrict the trial of cases under the Oregon practice,

because, in some instances, parties decide to call witnesses they would not otherwise call as a result of unexpected turns taken during the trial. Moreover, counsel sometimes elect not to call witnesses they normally would call. Surely it is not asking too much to expect the trial judge to write down the name, address and occupation of a witness called to the stand.

6.080 Proposed Jury Instructions; Time for Submission.

Subparagraph (1) of this proposed rule requires instructions to be submitted "not later than the day prior to trial." It is the practice in this state to submit jury instructions on the day of trial. That practice should be retained. When one or both attorneys are required to try "out of town" cases, it would be impractical to comply with this rule. Either the instructions would have to be prepared far ahead of time and submitted to the vagaries of the mail, or the lawyers would have to spend an extra day in the city of trial to comply with the rule. Furthermore, many cases settle at the last moment, so that the preparation of instructions to comply with this rule would in many cases constitute unnecessary effort and unnecessary cost.

Subparagraph (4)(g) is also objectionable. This provides that beneath each requested instruction there "shall be a statement citing the volume and page of any statute, decision or other legal authority with the exact source of the citation, which supports the requested instruction and shows its applicability to the evidence in the case." Many instructions requested by counsel are necessarily adapted to the particular facts of the case being tried, and at least some instructions deal with novel situations which may not be governed exactly by any previous decision or statute. A judge normally can decide, without legal citations, whether an instruction appears to be in accordance with his theory of the applicable law or not. The word "shall" should be changed to "may."

6.110 Marking Exhibits.

The proposed paragraph requires that prior to commencement of the trial, the exhibits are to be marked and that a typed list is to be submitted to the court with a copy to the court reporter. This proposal is burdensome and unnecessary. At the present time, exhibits are marked during recesses, prior to the testimony of a witness. In some instances, documents which would not normally be submitted as exhibits may be marked and offered because of an unexpected turn of testimony, and other exhibits may be marked and offered for impeachment purposes. The proposed rule makes no provision for the use of impeachment exhibits.

7.030 Setting Trial Date in Civil Cases; Extensions of Time to File Responsive Pleading.

Subparagraph (1) provides that after a complaint is filed, the serving party shall file with the trial court administrator the return or acceptance of service, within seven days following service. This provision is probably directory rather than mandatory, but will be honored in the breach rather than the observance. Many process servers do not return proof of service to counsel within the time required by the rule; and in many instances a return of service is unnecessary, since defense counsel will call plaintiff's counsel, acknowledge service, and agree to appear.

Subparagraph (2) is particularly objectionable, particularly in view of Justice Peterson's recent article in the Oregon State Bar Bulletin regarding "Professionalism" among attorneys, with which the authors of this letter agree. This subparagraph prohibits counsel for the plaintiff from extending the time for filing a responsive pleading for more than 28 days beyond the time set for filing a responsive pleading. Moreover, what is much worse, if an extension of time is allowed, plaintiff's counsel must "immediately" file with the trial court a lengthy notice in the form of a pleading containing a large variety of information. No attorney can afford the luxury of granting an extension of time under such circumstances. If this rule goes into effect, it will be our practice to deny all applications for extension of time unless the defendant, without any assistance from us, prepares the necessary document. The enactment of a rule which harasses plaintiff's counsel for being decent to his adversary will spell the end of "professionalism" among lawyers in this State.

7.040 Postponement of Trial Date.

Subparagraphs (2) and (3) provide that a motion to postpone a trial date must be accompanied by an "affidavit" setting forth various items of information, and submitted "more than 28 days prior to the date set for trial." Motions for postponement based "solely upon the stipulation of the parties" are not permitted, and motions based upon the refusal of a witness "including an expert witness" are inadequate unless "the witness has been served properly with a subpoena."

This proposed rule contains a greater variety of distasteful proposals than any other. Why, one asks at the outset, is it necessary for a lawyer to file an affidavit?

Has the Oregon State Bar reached the point where unverified representations of an attorney, set forth in his motion, are no longer to be trusted?

The proposal to require a written motion to postpone a trial date is burdensome and impractical, especially in Multnomah County where a relatively small number of trial firms each handle many dozens or hundreds of cases. A busy trial lawyer cannot be expected to spend his time preparing and shuffling paper for cases set many weeks ahead. At present, especially in Multnomah County, but also elsewhere, conflicts in trial dates and other problems which preclude trial on an assigned date are handled informally by agreements between counsel and court personnel. Problem cases not handled in this informal way are usually caught at "two-week" call in Multnomah County. An attorney who cannot try the case files a simple praecipe setting forth his problems, and the trial judge then decides to reschedule the case or let the original trial date stand. This system is much superior to the proposed rule.

Furthermore, why cannot a setover be based "solely upon the stipulation of the parties"? A rule permitting parties to stipulate to a setover of a trial is not likely to be abused by most members of the trial bar who realize that neither side gets paid until a case is concluded.

The proposed rule requiring the deposition or "subpoena" of an expert witness (which appears to be aimed at medical witnesses) is unrealistic. Physicians, as busy professional men, will resent being subpoenaed for trial, whether the subpoena comes from a plaintiff's lawyer or a defense lawyer. The proposed rule is designed to force the deposition of physicians to be taken in virtually every case. However, since the majority of cases settle prior to trial, this practice would create an unconscionable expense for litigants. It is a commonplace that some witnesses project a good image on the screen or on paper but make a bad personal impression or vice versa. The proposed rule may favor the party who is lucky enough to have a "live" witness available and disfavor the litigant who is unlucky and must present his witness by written deposition or "videotape."

7.060 Civil Case Monitoring, Dismissing Cases for Want of Prosecution.

Both subparagraphs of this rule ignore the fact that a plaintiff cannot force an obstinate defendant to file an answer, rather than Rule 21, ORCP, motions, motions for summary judgment, and the like. This is particularly true in Multnomah County where motions often are not heard for a

month or more after they are filed. If a motion against a complaint is allowed, the plaintiff will then be required to file an amended complaint, which may be the subject of a new motion, ad infinitum.

In Multnomah County, the present method of handling cases which are not at issue is to conduct a "Rule 4" call periodically, at which counsel are expected to be present and verbally advise the judge why their cases are not at issue. The proposed rule substitutes a flood of paperwork for this simple practice, penalizing a plaintiff for delay which very often is the fault of the adverse party.

Subparagraph (2) of the proposed rule is even worse. This rule provides that a case must be dismissed if it is not at issue within a date fixed by order of the court. However, a plaintiff has no means of forcing a defendant to file an answer other than through a motion for default, and such a motion cannot be granted if the defendant has a Rule 21 motion pending. This proposed rule threatens plaintiff with dismissal of his case unless the defendant files an answer, which is hardly a terrifying threat to the defendant and which is something over which the plaintiff has no control.

If proposed Rule 7.060 is to be put into effect, subsection (2) should be changed to require the entry of a default against any defendant who has not filed an answer within the date fixed by order of the court, even where that defendant has Rule 21 motions or motions for summary judgment pending. Since it is the defendant, not the plaintiff, who has control over whether an answer is to be filed, sanctions, if any, should be imposed against the defendant, as the party who has the ability to put the case at issue. It is appropriate to default the plaintiff only where the plaintiff is under obligation to file an amended pleading by order of the court and has not done so.

7.070 Settlement of Civil Cases Scheduled for Trial, Hearing or Other Proceeding.

Subparagraph (1) provides that if a jury trial is settled, the parties must either appear to put the settlement on the record or submit an order of dismissal "at least one judicial day before the date set for trial." Because cases often settle on the day of trial or after the commencement of trial, this requirement should be omitted in favor of a general requirement that the parties immediately notify the court upon settlement of a case.

Subparagraph (2) provides that where the trial is before the court without a jury, the parties must either place the settlement on the record of submit an order of dismissal "on or before the time set for trial." This language should also be omitted in favor of the more general language described above.

9.070 Return or Destruction of Vouchers.

Judge Dickson of this office has suggested that the words "personal representative" precede the word "conservator" in subparagraph (1) of the proposed rule, that the words "guardianship or" be omitted and the words "or a conservatorship" be added following the words "decedent's estate" in subparagraph (2).

We appreciate the court's invitation to comment on the proposed rules, and hope that others will also express their views. Many features of the proposed rules should be revised, and we would prefer to see Multnomah County retain the system which has worked effectively here for many years.

Very truly yours,

Frank Pozzi

Donald R. Wilson

Donald Atchison

Dan O'Leary

Raymond J. Conboy

RJC:em

cc: Justices - Oregon Supreme Court

Justice J. R. Campbell
Justice Wallace Carson
Justice Robert E. Jones
Justice Berkeley Lent
Justice Hans A. Linde
Justice Betty Roberts

Judges - Oregon Court of Appeals

Chief Judge George M. Joseph
Honorable John H. Buttler
Honorable W. Michael Gillette
Honorable Jonathan U. Newman
Honorable William L. Richardson
Honorable Kurt C. Rossman
Honorable George Van Hoomissen
Honorable John C. Warden
Honorable Edward Warren
Honorable Thomas F. Young

Judges - Multnomah County Circuit Court

Honorable Charles S. Crookham, Presiding Judge
Honorable Philip T. Abraham
Honorable John C. Beatty, Jr.
Honorable William M. Dale, Jr.
Honorable Mercedes F. Deiz
Honorable James R. Ellis
Honorable Stephen B. Herrell
Honorable William E. Hurley
Honorable Lee Johnson
Honorable Robert P. Jones
Honorable Donald Londer
Honorable William S. McLennan
Honorable John J. Murchison
Honorable Kathleen Nachtigal
Honorable Clifford B. Olson
Honorable Robert W. Redding
Honorable William R. Riggs
Honorable Phillip J. Roth
Honorable Irving M. Steinbock
Honorable Richard L. Unis

cc: (continued)

Oregon State Bar - Board of Governors

Mr. Ronald E. Bailey
Mr. John R. Barker
Mr. William A. Barton
Mr. Edward L. Clark, Jr.
Mr. James W. Durham
Ms. M. Christie Helmer
Mr. John N. Hutchens
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Mr. Richard E. Gervais
Ms. Prudie Gilbert
Mr. Douglas A. Haldane
Ms. Pam Hulse
Mr. James L. Knoll
Mr. Michael D. Schrunk
Mr. Michael L. Williams

Mr. James H. Clarke
Mr. Burl Green
Mr. Garry L. Kahn
Mr. Kenneth E. Roberts

House Bill 2309

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Presession filed (at the request of Oregon State Bar)

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.

Requires opposing party in civil court proceedings to provide to other party upon request a written list of names and addresses of all persons known by opposing party to have knowledge of subject matter of litigation. Excludes from list contents of statements from such persons.

A BILL FOR AN ACT

Relating to production of documents in civil court proceedings; amending ORCP 43 A.

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

SECTION 2. ORCP 43 A. is amended to read:

A. Scope. Any party may serve on any other party a request: (1) to produce and permit the party making the request, or someone acting on behalf of the party making the request, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, and translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 36 B. and which are in the possession, custody, or control of the party upon whom the request is served; [*or*] (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 36 B.; **and (3) to produce a written list of the names and addresses of all persons known by the opposing party to have knowledge of relevant facts or observations concerning the subject matter of the litigation. Such written list shall not include contents or any statements from such persons absent the showing required under ORCP 36 B.(3).**

EXHIBIT B to Minutes of Council Meeting
Held April 14, 1984

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

C.(2) Time for response. If the summons is served by any manner other than publication, the defendant shall appear and defend within 30 days from the date of service. If the summons is served by publication pursuant to subsection D.~~(5)~~(6) of this rule, the defendant shall appear and defend within 30 days from a date stated in the summons. The date so stated in the summons shall be the date of the first publication.

FORM OF PLEADINGS

RULE 16

B. Concise and direct statement; paragraphs; separate statement of claims or defenses. Every pleading shall consist of plain and concise statements in ~~consecutively numbered paragraphs~~ paragraphs consecutively numbered in arabic numerals, the contents of which shall be limited as far as practicable to a statement of a single set of circumstances, and a paragraph may be referred to by number in all succeeding pleadings. Separate claims or defenses shall be separately stated and numbered.

DEFENSES AND OBJECTIONS;
HOW PRESENTED; BY PLEADING OR MOTION;
MOTION FOR JUDGMENT ON THE PLEADINGS

RULE 21

E. Motion to strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 10 days after the service of the pleading upon such party or upon the court's own initiative at any time, the court may order stricken: (1) any sham, frivolous, or irrelevant pleading or defense or any pleading containing more than one claim or defense not separately stated; (2) any insufficient defense or any sham, frivolous, irrelevant, or redundant matter inserted in a pleading. ~~If, on a motion under this section, the facts supporting the motion do not appear on the face of the pleading or defense and matters outside the pleading or defense, including affidavits and other evidence, are presented to the court, all parties shall be given a reasonable opportunity to present evidence and affidavits, and the court may determine the existence or nonexistence of the facts supporting such motion if such facts are not materially disputed or may defer such determination until further discovery or until the trial on the merits.~~

CLASS ACTIONS

RULE 32

H. Notice and demand required prior to commencement of action for damages.

H.(1) Thirty days or more prior to the commencement of an action for damages pursuant to the provisions of subsection (3) of section B. of this rule, the potential plaintiffs' class representative shall:

H.(1)(a) Notify the potential defendant of the particular alleged cause of action; and

H.(1)(b) Demand that such person correct or rectify the alleged wrong.

H.(2) Such notice shall be in writing and shall be sent by certified or registered mail, return receipt requested, to the place where the transaction occurred, such person's principal place of business within this state, or, ~~if neither will effect actual notice, the office of the Secretary of State~~ in the case of a corporation or limited partnership not authorized to transact business in this state, to the principal office or place of business of the corporation or limited partnership, and to any address the use of which the class representative knows, or on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice.

SUMMARY JUDGMENT

RULE 47

C. Motion and proceedings thereon. The motion shall be served at least ~~10~~ 20 days before the time fixed for the hearing. The adverse party, not less than five days prior to the day of the hearing, may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

M E M O R A N D U M

TO: COUNCIL ON COURT PROCEDURES

FROM: Douglas A. Haldane

RE: AMENDMENT TO ORCP 21 E.

In addition to the amendments to the ORCP submitted previously, the 1983 Legislature also amended ORCP 21 E. to specifically authorize submission of matters beyond the pleadings, including affidavits and other evidence, to support or oppose a motion to strike. It was apparently added because ORCP 21 E. provides for motions to strike "sham" or frivolous matter in a pleading. (The legislation was suggested by the Oregon Department of Justice.)

DAH:gh

Enclosure: Rule 21 E. (as modified by the legislature)

December 1, 1983

DEFENSES AND OBJECTIONS;
HOW PRESENTED; BY
PLEADING OR MOTION;
MOTION FOR JUDGMENT ON
THE PLEADINGS

RULE 21

E. Motion to strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 10 days after the service of the pleading upon such party or upon the court's own initiative at any time, the court may order stricken: (1) any sham, frivolous, or irrelevant pleading or defense or any pleading containing more than one claim or defense not separately stated; (2) any insufficient defense or any sham, frivolous, irrelevant, or redundant matter inserted in a pleading. If, on a motion under this section, the facts supporting the motion do not appear on the face of the pleading or defense and matters outside the pleading or defense, including affidavits and other evidence, are presented to the court, all parties shall be given a reasonable opportunity to present evidence and affidavits, and the court may determine the existence or nonexistence of the facts supporting such motion if such facts are not materially disputed or may defer such determination until further discovery or until trial on the merits.

PROBLEMS FOR 1983-85 BIENNIUM

ORCP 7 C.(2)	Clerical error in ORCP 7 C.(2). Reference in subparagraph 7 C.(2) should be to D.(6), not D.(5). (Letter from Edward Heid)
ORCP 7 C.(3)(c)	Attorney James M. Campbell has suggested a new form of summons.
ORCP 32 H.	Attorney Martha C. Evans requests that the Council consider modifying or eliminating ORCP 32 H., which requires notice of a class action suit to potential defendants. At a minimum, ORCP 32 H.(2) "ought to provide for notice fo foreign corporations pursuant to ORCP 7 B.(3)(b)."
ORCP 47 C.	Attorney Bruce Hamlin suggests that ORCP 47 C. "ought to be amended to require actual receipt of any opposing affidavits or memorandum prior to the day of hearing. The remedy of a continuance is unsatisfactory because the moving party has already prepared for the hearing, and possibly traveled some distance to argue the motion." Hamlin also feels that the problem of considering late-filed affidavits could be corrected by making the second sentence of ORCP 47 C. mandatory and not discretionary.
ORCP 57 C.	Modify to reduce time expended in selection of a jury and insure that voir dire examinations are limited to matters bearing upon qualifications of prospective jurors. (Don McEwen and James Walton)
ORCP 73	Problem regarding JUDGMENTS BY CONFESSION. (Barbara Heller, Trial Court Clerk, Columbia County Courthouse, St. Helens)
INTERPRETERS	(Letter from Justice Lent)
ORCP 22	Amendment which would prohibit a third party complaint against a party's insurance company or the joinder of a party's insurance company in all cases except those where the plaintiff's complaint seeks a declaration of insurance coverage (letter from James Tait of 10/7/83).
ARABIC NUMBERS RATHER THAN ROMAN NUMERALS	Suggestion by Williams Stiles that rules be amended to make it mandatory that Arabic numbers rather than Roman numerals be used in pleadings to denote separate paragraphs.

LAW OFFICES OF
GRANT, FERGUSON, CARTER, P.C.

ROBERT H. GRANT
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MEDFORD, OREGON 97501-2775
TELEPHONE (503) 773-8471

February 16, 1984

Mr. Douglas Haldane
Executive Director
Council on Court Procedures
University of Oregon School of Law
Eugene Oregon 97403

Dear Doug:

Enclosed find letter from Robert Cowling re proposed rule change.

Very truly yours,

GRANT, FERGUSON, CARTER, P.C.

By ROBERT H. GRANT

RHG:dg
Enc.

FEB 14 1984

OCCP File

COWLING & HEYSELL

ATTORNEYS AT LAW

Robert L. Cowling
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D'Anjou Building
328 South Central Avenue
Medford, OR 97501
(503) 779-8900

FEBRUARY 13, 1984

ROBERT H. GRANT
ATTORNEY AT LAW
201 W. MAIN
MEDFORD, OR 97501

RE: PROPOSED RULE CHANGE

ROBERT:

ORCP 9C DISCUSSES PROOF OF SERVICE FOR SERVICE OF PAPERS FILED WITH THE COURT SUBSEQUENT TO THE ORIGINAL COMPLAINT. AS I READ IT, PROOF OF SERVICE BY MAIL REQUIRES EITHER A CERTIFICATE OF AN ATTORNEY OR AN AFFIDAVIT FROM ANYONE OTHER THAN AN ATTORNEY.

A CERTIFICATE IS LESS CUMBERSOME THAN AN AFFIDAVIT. I SUGGEST THAT A CERTIFICATE FROM A SECRETARY SHOULD SUFFICE AND IN MOST CASES WOULD PROBABLY BE MORE TRUTHFUL.

ON A SIMILAR VEIN, WE COULD ELIMINATE THE APPARENT REQUIREMENT AND ACCEPTED PRACTICE WHEREBY ATTORNEYS CERTIFY BY SIGNING EACH DOCUMENT TO BE SERVED THAT SUCH DOCUMENT IS A "TRUE COPY", BY INCORPORATING IN THE CERTIFICATE OF MAILING A STATEMENT TO THE EFFECT THAT A "TRUE COPY" OF THE DOCUMENT WAS PLACED IN THE MAIL. I ENCLOSE A CERTIFICATE UTILIZING CALIFORNIA PRACTICE AS AN EXAMPLE.

ROBERT L. COWLING

RLC/K
ENCL.

STATE OF OREGON)
) ss.
COUNTY OF JACKSON)

I, THE UNDERSIGNED, AFTER BEING DULY SWORN, DEPOSE AND SAY:

I AM A CITIZEN OF THE UNITED STATES, EMPLOYED IN JACKSON COUNTY WHERE THE MAILING OCCURRED AND OVER THE AGE OF EIGHTEEN YEARS AND NOT A PARTY OT THE CAUSE. MY BUSINESS ADDRESS IS 328 S. CENTRAL, MEDFORD, OREGON. I SERVED THE ATTACHED _____ TOGETHER WITH AN UNSIGNED COPY OF THIS PROOF OF SERVICE BY MAIL BY PLACING A TRUE COPY OF SAME IN AN ENVELOPE TO:

ALBERT H. NEWTON, JR. ATTORNEY AT LAW 300 FOURTH ST. YREKA, CA 96097	DOUGLAS NEWLAN ATTORNEY AT LAW P. O. BOX 4417 REDDING, CA 96099	SIDNEY AINSWORTH ATTORNEY AT LAW 515 E. MAIN ASHLAND, OR 97520

THE ENVELOPE WAS SEALED AND DEPOSITED IN THE MAIL WITH POSTAGE FULLY PREPAID THEREON ON FEBRUARY 13, 1984.

_____
DEBBY FACUNDUS

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE: FEBRUARY 13, 1984

_____
NOTARY PUBLIC FOR OREGON
MY COMMISSION EXPIRES: 3/28/86

COWLING & HEYSELL
ATTORNEYS AT LAW
328 South Central Avenue
Medford, OR 97501

CERTIFICATE OF MAILING
(CCP §2015.5)

The undersigned, TINA SABOURIN, at Redding, California, certifies to be true, under penalty of perjury, that she is over 18 years of age; not a party to the within action; business address is P. O. Box 4417, 1824 Court Street, Redding California; that there is delivery service to U.S. Mail at each place addressed; that she executed this certificate and served a true copy of the foregoing document by placing same in an envelope, sealing, fully prepaying postage thereon, and depositing said envelope in U.S. Mail at Redding, California on the 30th day of December, 1983; said envelope was addressed as follows:

MICHAEL H. WELLS
Attorney at Law
P.O. Box 596
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LYLE C. VELURE
MICHAEL M. BRUCE
KARSTEN H. RASMUSSEN

TELEPHONE
(503) 342-7015

April 11, 1984

Douglas A. Haldane, Director
Oregon Council on Court Procedures
899 Pearl Street
Eugene, OR 97401

Dear Doug:

I've had an opportunity to review the uniform trial court rules which have been proposed. I do feel that uniform local court rules will be helpful to the bar but I find some of these rules objectionable.

Rule 4.145 regarding resignation of attorneys appears to be solely related to docketing efficiency. While it is important to efficiently handle the administration of justice, the delivery of justice may not always be synonymous with such efficiency. The portion of this rule regarding the denial of a motion for an attorney to resign if not filed more than thirty days prior to trial is a demonstration where there is a conflict between efficiency and the delivery of justice. If an attorney has lost the confidence of his client it seems unconscionable that he should be forced to go to trial with that client. Moreover, the client should not be forced to utilize the services of an attorney in whom he no longer has full faith and confidence. I feel that under such circumstances it would almost amount to a conflict of interest for the attorney to try to fully and adequately represent his client. Such a breakdown may occur at any time and I do not feel that we should give courts any leeway so far as forcing an attorney client relationship when one cannot truly exist.

I realize this is 1984 but it seems somewhat Orwellian for us to be putting identification numbers on everything. I have not been too pleased having to use a bar number on pleadings. I am abhored by the requirement found in Rule 5.010(8) requiring a social security number or taxpayer identification number on a party's first appearance. While this may be a minor inconvenience it certainly smacks of big brother and I do not think it should be allowed. Also, many times defense attorneys may not even have met their clients who have been referred by insurance companies when they have to appear and it may delay the filing of necessary papers if they have to seek out social security or taxpayer identification numbers.

This bar has fought for years to defeat any proposal to interject federal rules into our system. One of the things that we have consistently defeated was the disclosure of witnesses prior to trial. Rule 6.075 requires a disclosure of a witness list together with their occupation, address, etc., to the court prior to trial. I realize that it does not require disclosure to adverse counsel but I object to this intrusion. Moreover, I am bothered by the presentation of anything to a court without supplying it to adverse counsel prior to trial. There is no requirement in statute or rule which has been properly adopted for the pretrial disclosure or discovery of witness lists. I feel that these uniform rules go much farther than we have ever anticipated in this state in this regard and should not be adopted. It is obvious that once a trial court has a list it will probably be disclosed prior to voir dire. Such premature disclosure could have serious adverse affect in a case that relies on expert testimony.

Rule 6.080 requires the submission of jury instructions the day before trial. Many lawyers with active litigation practices do not practice solely in their local county. Most cases do not require complicated jury instructions and there is absolutely no reason why they cannot be presented on the morning of trial. In those few cases which are going to present complications in jury instructions this certainly should be something which is handled at the pretrial conference. If the court desires instructions prior to the commencement of the trial it can be ordered at that time. However, to broadly adopt a rule which requires such early submission of instructions is ridiculous in most cases.

Rule 6.100 requires parties to make arrangements for written instructions. Again, when one is trying a case out of his local area this is a difficult task to accomplish. Throughout the trial most good judges seem to be working on instructions as the trial progresses. They all have secretaries and I think that this is a function that the court can continue to perform. What, in effect, this rule is doing is making it tough on litigants to request written instructions. This rule favors the litigant who does possess sufficient funds to hire the needed secretarial assistance and penalizes the poor litigant. I feel that we should attempt to make the courts open to all for the delivery of justice. This is an obvious attempt to defeat requests for written instructions.

Again, Rule 6.110 is unnecessary in most civil proceedings. Great delay is not occasioned in the marking of exhibits during

trial. Requiring pretrial marking of exhibits is an interference with the preparation of one's case for trial that is totally unnecessary. Also, all exhibits may not be available the day before trial and may only be produced by a witness at trial.

Probably the most objectionable of all these proposed local rules is 7.040(c). This rule reads like it was written by someone who has never practiced law. Litigation is getting expensive and to require a party to go to the expense of unnecessarily subpoenaing expert witnesses before trial is absurd. It is expensive enough to get these people present in trial and to have experts served with a subpoena only increases the cost of litigation. It can only offend doctors and other professionals who are called as witnesses. This rule can only cause deterioration of the tenuous relationship between courts, lawyers and physicians. I strongly object to its adoption.

Rule 7.070 also merely serves to increase the cost of litigation. I know that some courts are following this rule at this time. However, most lawyers heavily engaged in litigation can merely inform the court by telephone of the settlement and it seems absurd to require an expensive conference call or to require the attorneys to appear. Also, there has been a recent advent of the concept of structured settlements in the compromise a personal injury litigation. These settlements take some period of time to finalize and one does not like to dismiss a lawsuit prior to all of the paperwork on the settlement being performed. I do not believe that it is fair to the litigants to require such a dismissal where a settlement has been reached but all of the terms and conditions including possibly the selection of the insurance company providing the annuity have not been worked out completely. Representation by an attorney should be sufficient.

Rule 9.050 requiring the attachment of medical reports and records to a petition for approval of personal injury settlement is a costly and unnecessary burden to both the litigants and to the court's clerical staff. Sometimes in these cases the medical reports are quite voluminous and I could see it creating a storage problem for the court. Moreover, if a qualified attorney represents by affidavit that the settlement is advantageous to his client that should be acceptable. This just seems to be an unnecessary burden and expense that can be avoided. I sincerely doubt that most judges will carefully go through a packet of medical records. If the judge doesn't trust the petitioning attorney there can be a requirement of additional support.

Thank you for the opportunity to review the rules.

Very truly yours,

LYLE C. VELURE

LCV/co

UNIFORM TRIAL COURT RULES

March 1, 1984

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CHAPTER 1 -- General Provisions

1.000 SCOPE OF THESE RULES

These rules supplement the Oregon Rules of Civil Procedure and other applicable statutes relating to procedure in Civil, Domestic Relations, Probate and Criminal proceedings. These rules shall be construed to be consistent with statutory provisions, and to promote the efficient use of judicial time and resources and the just determination of every proceeding and action.

1.001 APPLICATION OF THE RULES

These rules apply to all proceedings in the circuit or district courts except where they may be inconsistent with provisions of law applicable thereto or where a limited application is expressly provided by the rule.

1.002 CONFLICTING LOCAL RULES OF COURT NOT PERMITTED

No circuit or district court may make or enforce any local rule in conflict with these rules, except as provided in UTCR 1.004.

1.003 SUPPLEMENTARY LOCAL RULES PERMITTED; DISAPPROVAL FOR INCONSISTENCY

(1) Pursuant to ORS 3.220 or 46.280, a circuit or district court may make and enforce local rules, supplementary to these rules, for the purpose of giving full effect to these rules and for the prompt and orderly dispatch of the business of the court.

(2) During the statutory 30 day period following the delivery of the certified copy of a local rule to the office of the State Court Administrator, the Chief Justice or designee may disapprove the rule and the rule shall not become effective.

(3) If a rule is disapproved, notice of this action will be given to the presiding judge of the court submitting the rule.

1.004 TRANSITION TO THESE RULES

Upon their effective date, these rules apply fully to all actions and proceedings pending on or commenced after that date; all conflicting local rules, or portions thereof, are superseded except that, where justice requires, a judge may order that an action or proceeding pending before that date be governed by the prior practice of the court.

1.005 EFFECTIVE DATE OF THESE RULES

These rules become effective on _____ .

1.010 NUMBERING UNIFORM TRIAL COURT RULES

Uniform Trial Court Rules shall be numbered as follows:

(1) Trial court rule chapters and sections shall be numbered with Arabic numerals. Chapters shall be designated to the left of the decimal point. Sections shall be designated to the right of the decimal point. There shall be three decimal places to the right of the decimal point.

(2) When a section consists of more than one primary paragraph, each should be numbered with an Arabic number in parentheses.

(3) If a section contains only one primary paragraph, which includes secondary paragraphs, the primary paragraph should not be numbered, but the secondary paragraphs should be numbered with Arabic numbers in parentheses.

(4) If a section contains more than one primary paragraph, any one or more of which includes a secondary paragraph, the secondary paragraphs should be designated by lower case letters in parentheses.

(5) the use of paragraphs beyond primary and secondary paragraphs should be avoided.

1.020 CITATIONS TO COURT RULES

Trial court rules shall be cited by chapter and section number. Paragraph numbers may be included in the citation when appropriate. A Uniform Trial Court Rule shall be cited as UTCR.

1.030 FORMAT OF TRIAL COURT RULES

Trial court rules shall be printed on paper measuring 6 x 9 inches; printing shall be on both sides of each sheet of paper when practical; each sheet shall be three hole punched to fit a standard three ring binder.

1.040 SANCTIONS FOR FAILURE TO COMPLY WITH THESE RULES

Failure to comply with these rules may result in the court imposing appropriate sanctions, including, but not limited to, contempt of a party or dismissal of the proceeding.

1.045 EXCEPTION TO APPLICATION OF RULES

Exception to application of these rules may be made by a judge upon good cause shown to prevent extreme hardship or patent injustice in an individual case.

1.050 FORM OF CITATION FOR OREGON CASES

In all matters submitted to the circuit or district courts, Oregon cases shall be cited by reference to the Oregon Reports. An Oregon Supreme Court case shall be cited: Blank v. Blank, _____ Or _____ (date). An Oregon Court of Appeals case shall be cited: State v. Blank, _____ Or App _____ (date). All other case citations shall be by the appropriate West Reporter series and may include a parallel citation.

1.060 DEFINITIONS

(1) Party. The term "party" is used in these rules to designate both the litigant and the litigant's attorney. Within these rules, a direction to the parties is a direction to their attorneys, if the parties are represented, to perform the act for their clients.

(2) Trial Court Administrator. The term "trial court administrator" means the administrative officer of the records section of the court, and where appropriate means trial court clerk.

(3) Plaintiff and defendant. The terms plaintiff and defendant have the meaning assigned under ORCP 81A(8).

CHAPTER 2 -- Motions and Summary and Preliminary Matters in Civil Cases

2.010 CIVIL MOTIONS AND SUMMARY AND PRELIMINARY MATTERS TO BE FILED

All motions and summary and preliminary matters shall be filed with the trial court administrator.

2.015 WRITTEN STATEMENT OF POINTS AND AUTHORITIES REQUIRED TO ACCOMPANY MOTION; SETTING OUT PARTICULARS; ATTACHING COPY OF PLEADING

(1) Any motion not accompanied by a written statement of points and authorities may be denied for that reason. Points are concise statements of the arguments supporting the motion. Each point shall be followed by citation of authorities for that point. Court decisions shall be identified by name and complete citation as required by UTCR 1.050.

(2) In a motion containing more than one particular, the written statement of points and authorities supporting each particular shall be set out immediately following that particular.

(3) If a motion is directed against wording in a pleading, there shall be attached to the motion a marked copy of the pleading moved against with the parts of the pleading to be stricken in parentheses and the parts to be made more definite and certain underlined.

2.020 OPPOSING PARTY'S RESPONSE; REPLY BY MOVING PARTY; TIME FOR FILING RESPONSE AND REPLY -- EXCEPT FOR SUMMARY JUDGMENT

In matters other than motions for summary judgment:

(1) An opposing party may file a written memorandum of

authorities in response to the matters raised in any motion or summary or preliminary proceeding.

(2) The moving party may file a written reply to the opposing party's memorandum. The content of the reply memorandum shall be confined to matters raised in the opposing party's response.

(3) The time for filing opposing and reply memoranda for all matters other than motions for summary judgment is as follows:

(a) An opposing party's written response may be filed not later than 14 days from the date of filing of the motion or summary or preliminary matter.

(b) A reply memorandum may be filed not later than seven days following the filing of the opposing party's response.

2.022 TIME FOR FILING MEMORANDA AND AFFIDAVITS IN SUMMARY JUDGMENT

The time for filing memoranda and affidavits on motions for summary judgment is as follows:

(1) For the moving party, at the time of filing the motion.

(2) An opposing party's affidavits and memorandum may be filed no later than 28 days from the date of filing of the motion for summary judgment.

(3) A reply memorandum may be filed no later than seven days following the filing of the opposing party's memorandum.

(4) A motion for summary judgment must be timely filed so that the time limitations in this paragraph may be accomodated

without interference with a date set for trial. A motion not timely filed may be denied for that reason.

2.025 MOTIONS TO BE DETERMINED BY THE PRESIDING JUDGE OR DESIGNEE

The presiding judge or designee shall hear and determine all motions and summary and preliminary matters.

2.030 MOTIONS AND SUMMARY AND PRELIMINARY MATTERS TO BE DETERMINED ON THE RECORD WITHOUT ORAL ARGUMENT

Unless otherwise required by law or permitted by the presiding judge or designee, all motions and summary and preliminary matters not requiring the taking of testimony or other presentation of evidence will be determined on the record without oral argument.

2.035 PRESENTING EX PARTE ORDERS BY MAIL

An attorney may make application for an ex parte order by letter to the trial court administrator, enclosing the proposed order with a written request that it be submitted to the appropriate judge. Orders presented in this manner shall have the same effect as if the request had been made in open court. The trial court administrator shall endorse upon the written request the date that it was received and it shall be filed.

CHAPTER 3 -- Motions in Criminal Cases

3.010 TIME FOR FILING PRETRIAL MOTIONS IN CRIMINAL CASES

Motions for pretrial rulings on matters within ORS 135.037 shall

be filed in writing not less than 21 days prior to trial, unless a lesser time is permitted by the court.

3.020 AUTHORIZATION FOR EXTRAORDINARY EXPENDITURE OF PUBLIC FUNDS

(1) No expenditure of public funds will be made for any extraordinary expense, including psychiatric or investigative fees, unless expressly authorized by court order prior to incurrance.

(2) A motion requesting approval for an extraordinary expenditure of public funds must be accompanied by a supporting affidavit which sets out in detail the purpose of the requested expenditure, the name of the service provider or other recipient of the funds, the dollar amount, not to be exceeded without additional authorization, of the requested expenditure and the date or dates during which the service will be rendered, or events will occur, for which the expenditure is requested.

(3) If the motion for the authorization of the expenditure includes a request that a defendant held in custody be transported from the jail to a designated place, the motion shall be accompanied by a separate proposed court order directing the custodian of the facility to transport the defendant to and from the designated place at the appointed time.

(4) The motion, and supporting affidavit, may be made ex parte, without disclosure to the district attorney, and, upon request, will be sealed by the court.

CHAPTER 4 -- Decorum In Proceedings

4.010 PROCEEDINGS SHALL BE PUBLIC

The proceedings of the court shall be public except as otherwise provided by law. No one shall be permitted to disturb the order of the court.

4.020 FORMAL OPENING OF COURT

The court will be formally opened each morning upon which court business is transacted, and again after the noon recess.

4.030 ATTORNEYS SHALL MAKE THEMSELVES KNOWN TO COURT

Prior to the commencement of any matter, attorneys or parties appearing without attorneys shall state their names, law firm, if any, and case name and number.

4.040 PROPER APPAREL

(1) All persons attending the court shall be dressed with sufficient covering of the torso, shoulders, legs and feet so as not to be a distraction from proceedings or to detract from the dignity of the judicial power of the State of Oregon. Members of the public not dressed in accordance with this rule may be removed from the courtroom.

(2) In addition to paragraph (1), all male attorneys and court officials shall wear coats and ties. Female attorneys and court officials shall wear similarly appropriate attire.

(3) Judicial discretion may be exercised in extreme or unusual situations.

4.045 PROPER APPAREL FOR INCARCERATED DEFENDANTS AND WITNESSES APPEARING IN CRIMINAL PROCEEDINGS

(1) Incarcerated defendants and witnesses appearing for trial will be dressed in neat, clean civilian clothing. Males will wear trousers, shirt and shoes. Females will wear appropriate female attire.

(2) At all other court appearances, defendants and witnesses in custody will wear clean clothing.

4.050 MANNER OF ADDRESS

Parties, during trial, shall not exhibit familiarity with adult witnesses, jurors, or opposing parties. In jury argument, no jury member shall be addressed individually, or by name.

4.060 ADVICE TO CLIENTS AND WITNESSES OF COURTROOM FORMALITIES

Attorneys shall advise their clients and witnesses of the formalities of the court and require their cooperation. Unrepresented parties shall similarly advise their witnesses and require their cooperation.

4.070 PROPER POSITION OF PARTIES BEFORE COURT

Parties shall:

(1) Rise, from their position at counsel table and remain standing while addressing the court or the jury, except during voir dire;

(2) remain at the counsel table while examining witnesses, except when permitted by the court;

(3) remain seated behind the counsel table in examination of jurors during voir dire;

(4) not approach the bench except upon invitation; and,

(5) not have physical contact with, or place objects upon, the rail of the jury box.

4.075 DEFENDANT IN CRIMINAL TRIAL

During arraignment, plea, and sentence, the defendant shall stand unless otherwise permitted by the court.

4.080 PERSONS PERMITTED WITHIN BAR OF COURT

Except as otherwise ordered by the court, during the trial of any case, or the presentation of any matter to the court, no person, including members of litigants' families, shall be permitted within the bar of the courtoom proper, other than parties, court personnel, and witnesses called to the stand.

4.090 PROCEDURE FOR SWEARING WITNESSES

The swearing of witnesses shall be an impressive ceremony and not a mere formality. Except as otherwise provided, witnesses shall be sworn individually.

4.100 RECOGNITION OF WITNESS BY JUDGE

Judges shall refrain from extending recognition or greetings to any witness in the courtroom.

4.110 PROPER USE OF COURT CHAMBERS

Except when court business is to be conducted and all the parties are present, parties shall not congregate in the court's

chambers, or use the facilities or the court's entryway between the chambers and the bench, without the express permission of the court.

4.120 CONFERENCES IN CHAMBERS

Parties to court proceedings may attend any conferences concerning the case held in chambers.

4.130 EX PARTE CONTACTS

No party shall contact directly or indirectly any judge before whom any matter is or might be pending, except in the presence of or with the consent of opposing parties. This rule does not apply to the submission of mailed pleas, matters appropriate for consideration ex parte by the presiding judge or designee or matters set in the normal course wherein the opposing party, after notice, fails to appear.

4.135 COMMUNICATION WITH JURORS

(1) Except as necessary during trial and except as provided in subsection (2), parties, witnesses or court employes shall not have contact with any juror concerning any case which that juror was sworn to try.

(2) After a sufficient showing to the court and upon order of the court, a party may have contact with a juror in the presence of the court and opposing parties when:

(a) there is reasonable ground to believe that there has been a mistake in the announcing or recording of a verdict;

(b) there is reasonable ground to believe that a juror or the jury has been guilty of fraud or misconduct sufficient to justify setting aside or modifying the verdict or judgment.

4.140 DISCLOSURE OF RELATED MATTERS WHEN SEEKING COURT ORDER

When a party seeks to obtain an order from a judge, the party must inform that judge of any ruling, hearing, or application for a ruling or hearing before any other judge that concerns the subject of the order requested.

4.145 RESIGNATION OF ATTORNEYS

Resignation of an attorney is within the discretion of the Presiding Judge. A motion to resign shall contain the name, address and telephone number of the new attorney, if one is being substituted, and of the party represented and must be served upon that party and the opposing party's attorney, or, if no attorney has appeared, upon the opposing party, either in person or by certified or registered mail to the opposing party's last known address. A motion to resign filed less than 30 days prior to trial will not be allowed unless the supporting circumstances are of an unusual or exceptional nature and could not have been known prior to this time.

4.150 NO REACTION TO JURY VERDICT

After the jury returns a verdict, all persons present in the courtroom shall remain seated until the jury has left the room.

Persons shall refrain from visibly reacting to the verdict in a manner which disrupts the dignity of the courtroom.

4.160 EXPLANATION OF PROCEEDINGS TO JURORS

In jury cases, when the case is terminated without submission to the jury, the judge, in dismissing the jury, should briefly explain on the record, without discussing the facts, why a verdict was unnecessary.

CHAPTER 5 -- Standards for Pleadings and Other Written Documents

5.010 FORM AND STYLE OF DOCUMENTS

The form used for all documents, including pleadings and motions, except where a different procedure is specified by statute or rule, shall be as follows:

(1) Definitions

(a) The word "documents" as used in this rule means every paper filed in any type of proceeding.

(b) The words "printed documents" means those the content of which is wholly or partially printed.

(c) The words "with legal turn" refer to documents printed on both sides so that when the first side of the printed page is turned, the top of the second side will appear on the reverse side of the bottom of the first side.

(2) Size of Documents

All documents, except exhibits and wills, shall be prepared on letter size (8 1/2" x 11") paper with at least a one inch

top margin, except that smaller size paper may be used for bench warrants, commitments, uniform citations and complaints, and documents otherwise designated by the court.

(3) Documents To Be Printed or Typed

All documents shall be printed or typed except that blanks in preprinted forms may be completed in handwriting and notations by the court clerk or judge may be made in handwriting.

(4) Spacing, Paging and Numbered Lines

(a) All pleadings, motions, affidavits and requested instructions shall be double-spaced, prepared on one side only and on paper with numbered lines; formal matters such as proof of service may be on the back side with legal turn.

(b) All other documents may be single-spaced, and the lines thereof need not be numbered. Printed documents may be prepared on both sides with legal turn.

(5) Backing Sheets

Backing sheets, if used, shall be 8-1/2" x 11", no heavier than 16 substance and not folded over at the top.

(6) Signature

Every pleading or motion must be signed by the party or by an attorney admitted to practice in Oregon. The signature certifies that the document has been read, is supported by

fact, and not filed to harass or delay. The name of the party or attorney signing any pleading or motion shall be typed or printed immediately below the signature.

(7) Caption

Every pleading's caption shall include the name of court, title of case, and register number of case.

(8) SSAN or TIN Should Be Provided for Each Litigant

The first appearance filed by each litigant to a case as an identifier should include the Social Security Account Number of the litigant, if an individual, or the Taxpayer Identification Number, if an organization. Identifiers are to appear after the signature line, and are not part of the pleading. If the litigants include business partnerships and an identifier is provided, both the individual identifiers and the business identifier should be included.

(9) Attorney or Litigant Information

Every pleading shall include the pleader's name, address, telephone number, if any, and, if an attorney, the Bar number of the trial attorney assigned to try the case.

(10) Stating Causes Separately in Separate Paragraphs

In pleading, each separate claim for relief, counterclaim, defense or reply shall be stated separately, and shall be proceeded by a heading identifying the theory of law and whether it is a legal or equitable claim or defense.

(11) Distinct Paragraphs

Each paragraph in a pleading shall be limited to a distinct fact or set of facts; each paragraph in a motion shall be limited to a distinct ground or set of grounds. All paragraphs in a pleading or motion shall be numbered consecutively in Arabic numerals placed in the center of he page, beginning with the first paragraph of the document and continuing through the last. Subdivisions within a paragraph may be designated by lower case letters; enclosed in parentheses, placed at the left margin of each subdivision.

(12) Reference and Restatement of Paragraphs

Statements in a pleading or motion may be restated or referenced by reference to specific paragraph numbers in the same pleading or motion. Whenever exhibits are appended to the document, the exhibit number used for reference purposes within the document shall appear at the bottom of each page of the exhibit.

(13) Title of Document at Bottom of Each Page

The title of each pleading or motion shall appear at the bottom of each page after Page 1.

(14) Specific Captions

The caption of each pleading shall indicate the type of claim such as "personal injury," "breach of contract," "specific performance," "reformation of contract," etc. The

caption of each motion shall include the name of the motion as it is denominated in these rules, the Oregon Rules of Civil Procedure or other Oregon Revised Statutes. In addition, any motion requiring an evidentiary hearing shall include such a statement within the caption of the motion.

(15) In any order prepared for the court, the judge's signature portion of the order must appear on a page with at least two lines of the order's text.

5.020 CERTIFICATE OF SERVICE

When a summons or civil process is served by one other than a sheriff or deputy sheriff, the certificate of service must include the name, business telephone number and business address of the person who served the summons or process.

5.040 PRESENTING JUDGMENTS AND ORDERS FOR JUDICIAL SIGNATURE

(1) Judgments, orders and other court papers requiring the signature of a judge may be left with the trial court administrator together with any filing fees required.

(2) A judgment or order prepared after a hearing shall be presented by the prevailing party, or the party so ordered, to the court wherein the order was made, with signed approval as to form by the opposing party(s), within seven days after the date of the decision, or such other time as may be fixed by the court.

5.042 MATTERS UNDER ADVISEMENT FOR MORE THAN SIXTY DAYS

If any judge shall have under advisement for a period of more than sixty days the ruling upon any demurrer, motion, or any other matter, it shall be the duty of counsel for each interested party to call the matter to the court's attention, in writing.

5.045 DESIGNATION OF COURT REPORTER(S) ON ORDERS AND JUDGMENTS

The name of the court reporters who reported the proceeding, or, in the district court, the name of the individuals who prepared the log of the tape transcript, shall appear on all orders and judgments prepared for the court.

5.050 ATTORNEY FEES ON DEFAULT
(Under statute or written instrument)

(1) Subject to the discretion of the Court, attorney fees on default may be allowed in accordance with the following schedule:

CLAIM (Principal plus interest)	FEE
Under $100...100% of claim	
$ 100 to next figure.	$100
150	120
200	140
250	150
300	160
350	170
400	180
450	190
500	200
600	220
700	240
800	260
900	280
1,000	300

CLAIM (Principal plus interest)	FEE
$1,100	$315
1,200	330
1,300	345
1,400	360
1,500	375
1,600	390
1,700	405
1,800	420
1,900	435
2,000	450
2,100	460
2,200	470
2,300	480
2,400	490
2,500	500
3,000	550

(2) Attorney fees greater than those scheduled above may be

considered only if the attorney submits an affidavit containing information justifying a greater amount.

(3) The Court may award attorney fees less than those scheduled above as may be warranted by special circumstances, including (but not limited to) payment of all or a portion of the claim prior to entry of judgment.

(4) Where fees are based on a written instrument, the original or a true copy shall be submitted to the court with the requested judgment, unless a true copy is attached to, or set out in, the pleadings. This also applies to reciprocal fees claimed under ORS 20.096. If an original or copy is not available the court may require proof by affidavit or testimony.

(5) Where a complaint contains two or more causes of action for which fees are demanded, a single fee will be allowed, based on the total of the claims subject to fees.

5.060 ENTERING JUDGMENT ON THE FACE OF A NEGOTIABLE INSTRUMENT OR WRITTEN CONTRACT

In all cases where judgment is based upon a negotiable instrument or a written contract, the court shall enter notation of the judgment on the face of the instrument. Upon receiving a certified copy of the instrument, the original, noted instrument may be returned to the party.

CHAPTER 6 -- Trials

6.010 PRE-TRIAL PROCEDURE; FORMULATING ISSUES

In any proceeding the court may, in its discretion, direct the

parties to appear before the court for a conference to consider:

(1) The simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings;

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(4) The limitation of the number of expert witnesses;

(5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;

(6) A reference in whole or in part; or

(7) Such other matters as may aid in the disposition of the action.

6.020 EXAMINING PROSPECTIVE JURORS

In examining prospective jurors, parties shall avoid repetition and seek only material information.

6.030 PEREMPTORY CHALLENGES IN CIVIL CASES

In civil trials, peremptory challenges shall be taken in writing by secret ballot unless the parties stipulate to taking the challenges orally.

6.060 EXAMINATION OF WITNESSES; ARGUMENT BY COUNSEL--MOTIONS

(1) Examination of a witness by more than one attorney for each party or argument on questions of fact or law on objections or motions shall not be permitted, except for good cause shown.

(2) During the course of a trial no argument will be allowed on an objection or motion except when requested by the court.

6.070 TIME FOR SUBMISSION OF TRIAL MEMORANDA

Trial memoranda shall be filed with the trial court administrator and copies of trial memoranda shall be submitted concurrently to the court and to opposing parties prior to the commencement of trial.

6.075 WITNESS LISTS REQUIRED; TIME FOR SUBMISSION

Each party in a proceeding requiring testimony shall prepare a list containing the name, address, and occupation of each witness it expects to call in the proceeding. The list shall be submitted to the court prior to the commencement of the hearing or trial. The list of witnesses is an aid to the court in preparing the record of the case, and need not be served on opposing parties.

6.080 PROPOSED JURY INSTRUCTIONS; TIME FOR SUBMISSION

(1) All proposed jury instructions, except instructions upon questions of law developed by the evidence and which could not be reasonably anticipated (ORCP 59A), shall be submitted to the court and to opposing parties not later than the day prior to trial.

(2) The original and one copy of the proposed jury instructions shall be delivered to the court.

(3) Proposed jury instructions may include any Uniform Oregon Jury Instruction submitted by reference to its instruction number and title: such as "Instruction No. 70.04 - Lookout". If the uniform instruction contains blanks or alternative choices, the appropriate material to complete the instruction shall be supplied in the request.

(4) Proposed jury instructions, including referenced Uniform Oregon Jury Instructions, shall be prepared as follows:

(a) Instructions shall be typed or printed on letter size paper (8-1/2" x 11") with one inch margins and numbered double spaced lines.

(b) All requested uniform instructions shall be submitted only by the instruction's number and title and listed together on a separate page in the order of uniform instruction numbers.

(c) Instructions, other than uniform instructions, shall be set out fully and numbered consecutively beginning with the number "1" for the first requested instruction.

(d) Excepting requested uniform instuctions, not more than one proposed jury instruction shall appear on each sheet of paper.

(e) If any requested jury instruction requires two or more sheets of paper to be set out, each of these sheets shall be numbered at the lower left hand corner; the number shall contain the consecutively assigned requested jury instruction number provided in subparagraph (c) of this paragraph, followed by a hyphen, followed by the consecutive number for each sheet.

(f) The name of the attorney requesting the instruction shall appear typed on each page.

(g) Beneath each requested instruction shall be a statement citing the volume and page of any statute, decision, or other legal authority with the exact source of the citation, which supports the requested instruction and shows its applicability to the evidence in the case.

(5) If a party so requests before argument, the Court shall inform the parties of the substance of its proposed action upon the requested instructions.

6.090 WITHDRAWING PROPOSED INSTRUCTIONS

A proposed jury instruction may be withdrawn at any time prior to arguments.

6.100 RESPONSIBILITY FOR REDUCING APPROVED JURY INSTRUCTIONS TO WRITING

(1) Upon approval of the jury instructions by the court, a party requesting written jury instruction, as provided by ORCP 59B, shall have the responsibility of reducing the court's approved instructions to writing in a timely manner and with sufficient copies.

(2) The written instructions shall be made with sufficient copies to provide a set to each juror, a set for each opposing party, and the original and one additional set for the court.

(3) The written approved jury instructions shall be typed and copied on 8-1/2" x 11" sheets of paper. No identifying information relating to the parties or any other extraneous

material, including authorities, shall appear on the typed and copied instructions.

6.110 MARKING EXHIBITS

Before the commencement of the trial, parties shall have all exhibits marked and submit to the court a typed list of those exhibits with a copy to the court reporter. The exhibits shall be marked in the following manner:

(1) Plaintiff's exhibits shall be marked consecutively from 1 through 99.

(2) Defendant's exhibits shall be marked consecutively from 100 through 199.

(3) Upon request, the court shall assign additional blocks of numbers to either side.

(4) In cases involving multiple parties or large numbers of exhibits, the parties shall agree on the assignment of the numbers. If the parties cannot reach agreement, or if for any reason the numbering system cannot accomodate the parties, then the court may direct the parties to use any other numbering system not inconsistent with the intent of this section.

6.120 DISPOSITION OF EXHIBITS IN CIVIL PROCEEDINGS

(1) In civil proceedings, unless otherwise provided by law:

(a) At the conclusion of trial, parties may withdraw exhibits by stipulation.

(b) Exhibits not withdrawn will be retained by the court until the appeal period has elapsed or conclusion of the appeal.

(c) Following the expiration of the appeal time, a notice will be sent to the parties of record that, unless they withdraw their respective exhibits within 30 days, the exhibits will be disposed of by the court.

(d) Those exhibits which are not withdrawn by the parties will be disposed of in accordance with court policy.

(2) Nothing contained in this rule shall prevent parties to any matter before the court from seeking the release or return of exhibits prior to the times specified in this rule.

(3) Exhibits, once in the court's custody, shall not be removed from the trial court administrator's control except by stipulation or by order of the court.

See generally ORS 7.120, 46.750.

6.130 JUDGMENT FORM; SPECIAL AND GENERAL FINDINGS IN SEPARATE DOCUMENT

(1) In any proceeding, the judgment shall be in the form required by ORCP 70A, and any special or general findings or conclusions shall be included in a document separate from the judgment.

6.140 MOTIONS AFTER TRIAL

(1) Proceedings arising after trial shall be heard by the trial judge, unless otherwise ordered by the presiding judge or designee.

(2) In addition to serving a copy of any post-trial motion upon the opposing party or parties, the party filing a post-trial motion shall serve upon the trial judge who heard the case a true copy of the motion. Proof of service shall be endorsed on, or affixed to the original motion which shall be filed with the trial court administrator.

CHAPTER 7 -- Calendaring in Civil and Criminal Cases

7.010 SETTING TRIAL DATE IN CIRCUIT COURT CRIMINAL PROCEEDINGS

(1) In criminal proceedings in the circuit court, upon entry of a plea of not guilty, the court shall set a trial date.

(2) If, at the time of arraignment, the defendant is not prepared to enter a plea of guilty or no contest, a plea of not guilty will be entered. The entry of a plea of not guilty shall not prevent a defendant from moving against the accusatory instrument by motion or demurrer if the motion is filed within seven days from the date of plea.

7.020 SETTING TRIAL DATE IN DISTRICT COURT CRIMINAL PROCEEDINGS

(1) If the defendant declines to enter a plea at arraignment, a plea of not guilty will be entered.

(2) If a not guilty plea is entered, not later than 14 days following arraignment the court shall set a pretrial conference. The function of the pretrial conference is to provide an opportunity for the early resolution of the case, if appropriate.

(3) If a trial date has not been set prior to the pretrial conference, it will be set at that time, and the defendant's attorney and the deputy district attorney shall be prepared to inform the court of any trial conflicts.

(4) The defendant may appear through the defendant's attorney at the pretrial conference unless otherwise directed by the court. If the defendant does not appear personally, the defendant's attorney must inform the court that the attorney is in contact with the defendant and fully expects the defendant to appear for trial on the date set.

(5) The court, in its discretion, may permit the attorneys to appear in writing for the pretrial conference.

7.030 SETTING TRIAL DATE IN CIVIL CASES; EXTENSIONS OF TIME TO FILE RESPONSIVE PLEADING

(1) After a complaint is filed, the serving party shall file with the trial court administrator the return or acceptance of service, within seven days following service.

(2) No plaintiff may extend the time for filing a responsive pleading to a complaint more than 28 days beyond the time set under ORCP 15A or other statute setting time for filing a responsive pleading. If an extension of time for filing the responsive pleading is allowed by the plaintiff, the plaintiff immediately shall file with the trial court administrator a notice, in the form of a pleading, setting out the date of service of the summons, the date the responsive pleading was originally due to be filed, the number of days extended for filing, the date on which the

responsive pleading is now due, and a statement that if the responsive pleading is not filed on or before the new due date, an application for entry of a default judgment against the responsive party, pursuant to ORCP 69, will be filed with the trial court administrator. The plaintiff shall file immediately an application for default judgment if the responsive pleading is not filed on the date it is due.

(3) Except as provided in paragraph (2) of this section, all pleadings shall be filed within the time set by ORCP 15 or other applicable statute.

(4) When a responsive pleading raising an issue of fact is filed, or in multiple party cases, when all defendants have responded, the case will be deemed at issue and be set for trial by the court.

7.040 POSTPONEMENT OF TRIAL DATE

(1) Except as provided in this section or as may be required by UTCR 7.050, postponement of a trial date is discretionary with the court.

(2) A motion to postpone a trial date shall be accompanied by an affidavit setting forth the date scheduled for trial, the cause for the requested postponement, the dates of each prior postponement, and whether any parties to the proceeding object to the requested delay. If the motion is based on a conflicting trial date, the affidavit shall set forth the name of the court in which the conflict exists, the date of the conflict, the case number of the conflicting matter, and the date on which it was set for trial. Motions not accompanied by affidavit shall not be considered.

(3) A motion for postponement of a trial date shall be denied:

(a) Unless the motion is filed more than 28 days prior to the date set for trial; however, the presiding judge or designee may grant an exception to this requirement upon a showing in the affidavit that the cause for the postponement came to the knowledge of the party too late to be timely presented.

(b) When based solely upon the stipulation of the parties.

(c) When based on the refusal of a witness, including an expert witness, to appear on the date set for trial unless the witness has been served properly with a subpoena.*

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* Deposition of parties or witnesses who may have difficulty attending trial should be taken.

7.050 PRIORITY OF TRIAL OF CIVIL CASES SET ON CONFLICTING TRIAL DATES

In the event that trials are scheduled in more than one circuit or district court on the same date for the same attorney, priority in holding the trial on that date shall be determined as follows:

(1) Cases set for trial in the Circuit Courts of Morrow, Hood River, Sherman, Harney, Wallowa, Crook, Gilliam, Jefferson and Wheeler Counties shall have priority for trial on the date of conflict over cases set in any other circuit or district court. Among cases set for trial in two or more of these courts, the case first placed on the trial calendar shall have priority for trial on the date of conflict.

(2) Among cases set for trial in circuit or district Courts other than those courts named in paragraph 1, above, the case first placed on the trial calendar shall have priority for trial on the date of conflict.

(3) Among cases set for trial in circuit or district courts and placed on the trial calendar on the same date, the case with the earliest filing date shall have priority for trial on the date of conflict.

(4) In the event of conflict between a civil and a criminal case, the latter shall have preference if the defendant is in custody upon the charge in the accusatory instrument.

(5) In the event that a conflict arises which cannot be resolved under this section, the presiding judges of the courts affected shall refer the conflict to the Chief Justice for resolution.

7.060 CIVIL CASE MONITORING, DISMISSING CASES FOR WANT OF PROSECUTION

(1) Each month the trial court administrator shall prepare a list of all cases which are not at issue and which are over 147 days old, computed from the date of filing of the original complaint to the last day of the preceding month. Written notice shall be given to the parties that the case is dismissed for want of prosecution effective 28 days from the date of mailing of such notice unless within that period the case is at issue or good cause is shown to the court upon motion for an order, supported by affidavit, or by personal appearance as provided by the court, that the case should be continued as a pending case.

(2) No case continued as a pending case, under paragraph (1) of this section, shall be continued beyond the date fixed by order of the court unless that case is at issue within the time specified in the order; and, no motion for further continuance as a pending case shall be granted except for the purpose of securing a trial date.

7.070 SETTLEMENT OF CIVIL CASES SCHEDULED FOR TRIAL, HEARING OR OTHER PROCEEDING

(1) If a case scheduled to be tried before a jury is settled, the parties settling the case shall either appear to put the settlement on the record or submit an order of dismissal, judgment or decree to the court. This must be done at least one judicial day before the date set for trial. A conference call to put the settlement on the record will be sufficient compliance with this rule. It will be the responsibility of the parties involved to arrange and pay for any such call.

(2) In any trial, proceeding or hearing scheduled to be tried or heard by the court alone, if the matter is settled, the parties shall either appear to place the settlement on the record or submit an order of dismissal, judgment or decree to the court. This shall be done on or before the time set for the trial, proceeding or hearing. A conference call, provided under paragraph (1) of this section, is sufficient compliance with the rule.

(3) If the case does not settle as anticipated, the parties shall be prepared to try the case at the time scheduled.

CHAPTER 8 -- Domestic Relations Proceedings

8.020 PRESENTATION OF ADOPTION DECREES

Proposed adoption decrees may be presented to the court without the necessity of a personal appearance by the attorney for the adoptive parents.

8.030 ACTIONS FOR DISSOLUTION OF MARRIAGE, SEPARATE MAINTENANCE, AND ANNULMENT

(1) Except on Affidavit pursuant to ORS 107.095(4), uncontested actions for dissolution of marriage, separate maintenance, or annulment shall be heard at a time set by the court. No such uncontested action shall be heard unless the party shall have first filed with the trial court administrator the State Board of Health information sheet and all documents which make up the judgment roll except the proposed decree.

(2) Not less than five days prior to the hearing on the merits of any contested dissolution of marriage, separate maintenance, or annulment action:

(a) Each party shall file with the trial court administrator an original and one copy of an affidavit containing a listing of all marital and other assets, the claimed value for each asset, the proposed distribution of each asset sought by the party, and a statement that the listed assets are all of the assets known to the party. Upon receipt of the affidavits of both parties, the trial court administrator will distribute the copy of each party's affidavit to the other party.

(b) If applicable, each party shall file a Uniform Support Affidavit in the form specified in the Appendix of Forms to these Rules.

(c) The petitioner shall file the information required on the State Board of Health information form furnished by the trial court administrator. Following the entry of a decree in any such action, the trial court administrator shall remove from the file and maintain separately the aforesaid information sheet which shall serve as a basis for the compilation of statistics.

(3) Investigations permitted under the law in cases involving minor children shall not be used by either party to attempt to delay or change the date of a trial once set. The pendency of such an investigation shall not be grounds for a continuance, but the trial may be adjourned after the taking of testimony from time to time as the court may order, for further proceedings connected with such investigation.

(4) Petitioners shall, when providing service on respondents, attach to the petition a copy of the Notice to Parties of a Marriage Dissolution as required by ORS 107.092. Copies of the notice may be obtained from the trial court administrator.

(5) Petitioners who have been ordered to submit decrees in cases involving child or spousal support shall submit one original and one copy to the trial court administrator.

8.040 SUPPORT ORDERS

Every proposed order or decree which orders support of any person under ORS Chapters 107, 108, 109, 110 or 419, or which modifies

any pre-existing order or decree for support of any person under those chapters, shall set forth the due date of the first support payment to be made thereunder and shall order that such payments be made as provided by law.

See generally ORS 23.765, 23.767.

8.045 SUPPORT ORDER ABSTRACTS

A support order abstract, as set out in the Appendix of Forms to these rules, is required when the first order of support is made. Thereafter, support order abstracts are required only when there is a change in the addresses of the support obligee or obligor, the number of dependents, or the amount of support. Blank support order abstract forms may be obtained from the trial court administrator.

8.070 MOTIONS FOR POST-DECREE CHANGE OF CUSTODY

(1) A post-decree change of custody of minor children shall be initiated by an order to show cause based on a motion supported by an affidavit indicating the change of circumstances relied upon. Where support is to be an issue, a Uniform Support Affidavit, as set out in the Appendix of Forms to these rules, shall also be filed with the motion. A blank copy of said Uniform Support Affidavit shall be provided and served upon the opposing party.

(2) An order to show cause shall be filed with the trial court administrator immediately after being signed by a judge.

(3) The order to show cause shall be served by delivering a certified copy thereof, together with a certified copy of the motion, affidavit and Uniform Support Affidavit, if applicable, upon the opposing party or the opposing party's attorney as may be necessary to obtain jurisdiction.

(4) The order to show cause shall require the opposing party to file a written appearance by affidavit in answer to the motion and affidavit with responding Uniform Support Affidavit if the issue of support is to be contested, within the time prescribed by ORCP 7C.(2) for answering a summons.

(5) The order to show cause shall advise the opposing party that if such written appearance is not filed within the time prescribed under paragraph (4) of this section a default order shall be applied for by the moving party. Thereafter, the proceedings shall be conducted in the same manner and form as provided for in non-jury actions.

(6) There shall be no temporary custody hearings except upon affidavit showing abuse to the children as defined by ORS 107.705 or situations where the non-custodial parent has had physical custody for an extended period of time. Such temporary custody hearing will be limited to the allegations in the requesting party's affidavit controverted by affidavit of the opposing party. Upon motion supported by affidavit, the custody issue may be accelerated for trial.

CHAPTER 9 -- Probate Proceedings

9.010 MAILING PROBATE MOTIONS AND ORDERS TO THE COURT

Motions and orders not requiring a court appearance may be mailed

to the trial court administrator, with self-addressed stamped envelopes for responses.

9.020 APPROVAL OF BONDS

A request for approval of a surety bond in an amount less than the aggregate value of the property in the estate as disclosed by the petition must be supported by affidavit signed by the personal representative or his attorney. A personal surety must make his justification as for any other bond.

9.030 ADDRESSES AND TELEPHONE NUMBERS REQUIRED

The name, address, and telephone number of the attorney of record shall be typed or printed on the last page of every petition and order. The name, address, and telephone number of the guardian, conservator, or personal representative must appear in the lower left-hand corner of the last page of every order.

9.040 EVIDENCE REQUIRED TO SUPPORT A PETITION TO APPOINT A GUARDIAN OR CONSERVATOR

A petition to appoint a guardian or a conservator must be supported by an affidavit or sworn testimony establishing a prima facie case for the appointment.

9.050 SETTLEMENT OF PERSONAL INJURY CLAIMS

A petition for the settlement of a personal injury claim must be accompanied by complete medical reports showing the nature and extent of the injuries sustained and the prognosis.

9.060 VOUCHERS REQUIRED

(1) Vouchers for every disbursement shall be fastened to a title page and submitted concurrently with interim or final accounts, and shall be in chronological order and numbered to correspond with the numbered items in the account.

(2) Certificates from the depositories showing the current bank balances shall be attached to interim accountings.

(3) The requirement of vouchers may be waived by the court when the conservator is a financial institution or a department of the State.

9.070 RETURN OR DESTRUCTION OF VOUCHERS

(1) Vouchers submitted under UTCR 9.060 may, in the court's discretion, be returned to the conservator or the attorney of record after closing of the decedent's estate or conservatorship.

(2) Vouchers not returned under paragraph (1) of this section, will be destroyed one year after a guardianship or decedent's estate is closed.

9.080 RESTRICTED ACCOUNTS

Where funds are placed with a depository subject to withdrawal only upon order of the court, a writing signed by the depository showing the dollar amount of the funds held and that they are subject to withdrawal only upon further order shall be placed in the file. Prompt procurement of the writing is the responsibility of the attorney for the fiduciary.

9.090 FEES IN ESTATES, GUARDIANSHIPS AND CONSERVATORSHIPS

(1) Attorneys fees requested for decedent's estates, guardianships or conservatorships must be supported by an affidavit setting out justification for the entire amount requested.

(2) Personal Representative fees requested in excess of the statutory amounts under ORS 116.173(1) shall be supported by an affidavit setting out justification for the additional claimed amount.

9.100 APPOINTMENT OF GUARDIANS IN ADOPTIONS

Except in cases where one or more of the petitioners is the legal or natural guardian of the minor child, when a petition is filed for leave to adopt a minor child and the required consent thereto has been filed, the attorney for the petitioners shall prepare and submit to the court an order providing for the appointment of the petitioners, or some other suitable persons, as guardians of the person of the minor child pending further order of the court or entry of a decree.

9.110 PUBLIC NOTICE IN CHANGE OF NAME PROCEEDING

Public notice of the application for change of name must be given prior to the decree. This notice may be given either by posting in a public place or publishing in a newspaper of general circulation. At least ten judicial days must elapse after the notice has been posted or published before the decree is submitted to the court. Following the court's approval of the

decree, a similar public notice must also be given and upon return of proof of such notice, a certificate of change of name will be provided by the trial court administrator.

APPENDIX OF FORMS

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR COUNTY

In the Matter of the Marriage of:

Petitioner,

and,

Respondent.

UNIFORM SUPPORT AFFIDAVIT OF:
☐ PETITIONER ☐ RESPONDENT

Case No.

1. Your age ____. Your social security number: _____.
2. Your home address: _____.
   Name of employer and business address: _____.
   Length of your present employment: _____.
3. Your present or usual occupation: _____.
4. State of your health: ☐ Excellent ☐ Good ☐ Fair ☐ Poor
   List your health problems, if any: _____.
5. List the children born to or adopted by you and the opposing party during your relationship:

NAME	DATE OF BIRTH	PRESENT AGE	DOES CHILD LIVE WITH YOU?
			☐ YES ☐ NO
			☐ YES ☐ NO
			☐ YES ☐ NO
			☐ YES ☐ NO

Put an "X" by the name of each child receiving public assistance, food stamps, or CSD care.
Do you receive public assistance for any of the above named children? ☐ YES ☐ NO
If yes, how much? $_____.
Are any children listed above receiving care from Children's Services Division? ☐ YES ☐ NO

6. List all other persons living in your house or sharing living expenses with you:

NAME	RELATIONSHIP TO YOU	AGE	OCCUPATION

7. How many dependents, including yourself, do you now claim for withholding purposes? _____
   How many dependents, including yourself, did you claim last year? _____
   Total amount of state and/or federal income tax refund(s) received last year $_____
   Your gross paycheck amount: $_____
   List all paycheck deductions:
   Federal withholding: $_____
   State withholding: $_____
   Social Security: $_____
   Other deductions (specify) and the reason for each one:
   _____: $_____
   _____: $_____
   _____: $_____
   _____: $_____

   Your net (take-home) paycheck amount: $_____

   How often are you paid? ☐ each week ☐ every two weeks ☐ twice a month ☐ monthly
   ☐ other (specify) _____

ATTACH COPIES OF YOUR LAST TWO MONTHS' PAYROLL CHECK STUBS OR PAYROLL LEDGER(S) TO THIS AFFIDAVIT AND EACH COPY OF IT.

List all other income available to you and other members of your household who contribute to household expenses:

SOURCE	MONTHLY AMOUNT
_____	$_____
_____	$_____
_____	$_____

8. Are you expecting to receive any money or income other than what you have listed above in the next six months? ☐ YES ☐ NO

SOURCE	EXPECTED DATE OF RECEIPT	AMOUNT
_____	_____	$_____
_____	_____	$_____
_____	_____	$_____

9. Your estimate of the opposing party's:
   Monthly gross income . . . . . $_____
   Monthly take-home income . . . . . $_____
   Other income, including anyone's income which contributes to household expenses, including any public assistance and/or food stamps . . . . . $_____

10. Is the opposing party expecting to receive any money or income, other than what you have listed above in the next six months? ☐ YES ☐ NO

SOURCE	EXPECTED DATE OF RECEIPT	AMOUNT
_____	_____	$_____
_____	_____	$_____
_____	_____	$_____

11. All cash and deposit accounts (including bank savings, checking, credit union, certificates of deposit):

NAME OF INSTITUTION	TYPE OF ACCOUNT	OWNED BY	CURRENT BALANCE
_____	_____	_____	$_____
_____	_____	_____	$_____
_____	_____	_____	$_____
_____	_____	_____	$_____

12. YOUR MONTHLY EXPENSES: List the expenses that your are actualy incurring. If you believe those amounts are less than your actual needs, you may show that in Paragraph 13. DO NOT list items withheld from your paycheck or supplied without charge by your employer.

A. RESIDENCE:	Rent or mortgage payment	$_____
	Second mortgage payment	$_____
	Property taxes if not included in mortgage payment ($_____annually)	$_____
	Sewer, paving, or other liens	$_____
	SUBTOTAL	$_____
B. UTILITIES:	Heat (oil/gas/wood/electricity)	$_____
	Water	$_____
	Electricity.	$_____
	Telephone	$_____
	Garbage	$_____
	Television cable	$_____
	SUBTOTAL	$_____

C. HOUSEHOLD EXPENSES:

Groceries: (cash spent plus food stamps)	$_____
Other household items	$_____
School food costs	$_____
Other meals eaten out of home	$_____
Alcoholic beverages and tobacco	$_____
Medicine and pharmaceuticals	$_____
Babysitting and child care expenses	$_____
Children's clothing and shoes	$_____
Other clothing and shoes	$_____
Children's allowance(s)	$_____
Grooming needs	$_____
SUBTOTAL	$_____

D. TRANSPORTATION:

Car payments	$_____
Gas and oil	$_____
Bus fare	$_____
Parking costs	$_____
SUBTOTAL	$_____

E. INSURANCE (indicate how often premiums are paid and when next one is due:

INSURANCE	HOW OFTEN PAID	NEXT DUE	
Life	_____	_____	$_____
Medical and Dental	_____	_____	$_____
Disability	_____	_____	$_____
Car	_____	_____	$_____
Residence	_____	_____	$_____
SUBTOTAL			$_____

F. MISCELLANEOUS:

School (books, tuition, & activities).	$_____
Church and other charitable donations	$_____
Gifts	$_____
Vacation(s)	$_____
Union and professional dues (how often paid _____; when is next one due _____)	$_____
Attorney fees for this case	$_____
Hobbies, recreation, & entertainment	$_____
Uninsured medical and dental expense(s)	$_____
Child support and/or spousal support paid under court order. Are you current?_____. Month last paid _____.	$_____
SUBTOTAL	$_____

G. OTHER EXPENSES: Specify purpose:

_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____
SUBTOTAL	$_____

H. OTHER DEBTS NOT LISTED ABOVE (including credit cards, other charge accounts, promissory notes, consumer purchase agreements, and any other debts):

CREDITOR	AMOUNT OWED	PAID PER MONTH	MONTH LAST PAYMENT MADE
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

GRAND TOTAL OF YOUR MONTHLY LIVING EXPENSES $_____

OF THE ABOVE GRAND TOTAL, WHAT PORTION (IF ANY) DO YOU CLAIM AS EXPENSES OF THE CHILDREN:

$_____

13. STATE ANY OTHER FACTORS which bear on the amount of support, attorney fees, or debt payments which you should be required to pay for the opposing party or which the opposing party should be required to pay for your support. In addition, if the amounts shown in paragraph 12 are less than your reasonable requirements, you may attach an exhibit showing the amounts you believe are reasonably necessary for your support:

14. IF YOU ARE ORDERED to pay support for the opposing party and/or children, or to pay debts, the total monthly amount should be $_____.

STATE OF)
) ss.
County of)

I, _____, being first duly sworn, under the penalty of perjury, say I am a party in the above entitled suit; I submit the foregoing information as material evidence on the issues of support, attorney fees, and costs and debt payments; I have answered the foregoing questions to the best of my ability and knowledge, and my answers and the facts I have stated are true to the best of my belief.

_____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 19_____.

_____
Notary Public for Oregon
My Commission Expires:_____

1 8/5 12 75
SUPT ORDER ABSTRACT

IN THE CIRCUIT COURT OF THE STATE OF OREGON
For ..... County

PETITIONER: .....
ADDRESS: .....
..... ZIP CODE .....
SS# ..... BIRTHDATE ..... SEX .....

RESPONDENT: .....
ADDRESS: .....
..... ZIP CODE .....
SS# ..... BIRTHDATE ..... SEX .....

THIS IS: ☐ A NEW ORDER (Enter A thru C)
☐ A MODIFICATION (Enter A thru E)

THIS ORDER:

A. CASE NO. .....
B. DATE OF ORDER: .....
C. TYPE OF PROCEEDINGS: .....

ORIGINAL ORDER:

D. COUNTY: .....
E. CASE NO. .....

DATE, PLACE of Marriage:

DATE/PLACE when Separated:

OBLIGOR Person to make payments):

OBLIGOR'S EMPLOYERS' Name, Address:

PAYMENT $ ..... FREQUENCY ..... FIRST DUE DATE ..... ARREARAGE AMOUNT $ .....

BENEFICIARY'S (First names only)	BIRTH DATE	RELATIONSHIP	SOCIAL SECURITY NO.	AMOUNT	OBLIGATION LIMIT

SPECIAL DISTRIBUTION REQUIRED:

PROCEEDINGS DISPOSITION:

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR COUNTY

In the Matter of the Marriage of: Petitioner, and, Respondent.	ORDER TO SHOW CAUSE RE: TEMPORARY SUPPORT, PAYMENT OF DEBTS, AND ATTORNEY FEES Case No.

TO THE ABOVE NAMED / / PETITIONER / / RESPONDENT

YOU ARE ORDERED, within ten (10) days of receipt of these papers, to file with the clerk of this court your sworn Uniform Support Affidavit, in the form provided, and furnish a true copy to your spouse's attorney. You must file this document in order to show why the court should not enter orders, while this suit is pending, that:

1. Require you to pay the sum of $ per month, per child, child support and $, per month, support for your spouse.

2. Require you to pay the sum of $ as a contribution toward your spouse's attorney fees and court costs.

3. Require, as a further portion of your support obligation, you pay and hold your spouse harmless from the following debts:

CREDITOR	MONTHLY AMOUNT

IT IS FURTHER ORDERED that if you, without good cause, fail to file and provide a copy of your sworn Uniform Support Affidavit as required above, this court will enter an order granting your spouse the relief set forth above or other appropriate relief. An Affidavit not completely filled out may not be considered by the court.

IT IS FURTHER ORDERED that, when the matter is ready for decision by the court, the moving party will file a written notice with the clerk of this court with a copy to you or your attorney, if you are represented. The notice shall state what documents have been filed with the court.

DATED this _____ day of _____, 19_____.

_____
CIRCUIT JUDGE

IT IS SO MOVED:

_____
Attorney for: ☐ Petitioner ☐ Respondent
Address:
Telephone: Bar #:

ORDER TO SHOW CAUSE - 1(end)