

M E M O R A N D U M

TO: COUNCIL ON COURT PROCEDURES:

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

FROM: DOUGLAS A. HALDANE, Executive Director

RE: NEXT COUNCIL MEETING - SATURDAY, JUNE 9, 1984

The next meeting of the Council on Court Procedures will be held Saturday, June 9, 1984, commencing at 9:30 a.m., at:

NENDEL'S INN  
1550 N.W. Ninth Street  
Corvallis, Oregon

We would like to stay with the meeting schedule that was previously announced. In order to do that, we will need to have a quorum for each of the remaining meetings. Please complete the enclosed post card and return it to me as soon as possible so that we can make appropriate meeting arrangements. We would also like to publicize the meeting in *The Multnomah Lawyer*. THE DEADLINE FOR THAT PUBLICATION IS MAY 15.

DAH:gh  
Enc.

5/3/84

A G E N D A

COUNCIL ON COURT PROCEDURES

Meeting

9:30 a.m., Saturday, June 9, 1984

NENDEL'S INN  
1550 N.W. 9th Street  
Corvallis, Oregon

1. Public comments
2. Report of committee on Proposed Uniform Trial Court Rules
3. Consideration of previously submitted rule changes
4. New business

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COUNCIL ON COURT PROCEDURES

Minutes of Meeting Held June 9, 1984

Nendels Inn, Corvallis, Oregon

Present:           Joe D. Bailey                               James E. Redman  
                  William M. Dale, Jr.                   E. B. Sahlstrom  
                  Jeffrey P. Foote                       William F. Schroeder  
                  Robert H. Grant                        J. Michael Starr  
                  John F. Hunnicutt                    James W. Walton  
                  Roy Kilpatrick                     William W. Wells  
                  Sam Kyle                               William L. Jackson

Absent:           John H. Buttler                           Edward L. Perkins  
                  J. R. Campbell                         Wendell H. Tompkins  
                  John M. Copenhaver                    John H. Tyner, Jr.  
                  John J. Higgins                        Bill L. Williamson  
                  Douglas McKean

(Also present: Douglas A. Haldane, Executive Director)

The meeting was called to order at 9:40 a.m., June 9, 1984. Elmer Sahlstrom moved the adoption and approval of the minutes of the meeting of April 14, 1984. The minutes were approved unanimously.

Mr. Kilpatrick invited public comment on the Oregon Rules of Civil Procedure, proposed changes to those rules, or the proposed Uniform Trial Court Rules. There being no public comment, Mr. Kilpatrick asked Mr. Sahlstrom for a report of the committee appointed to review the proposed Uniform Trial Court Rules.

Mr. Sahlstrom reported that the subcommittee had reviewed the proposed Uniform Trial Court Rules and had found numerous areas within those rules which either conflicted with the Oregon Rules of Civil Procedure or impinged upon the statutory authority of the Council on Court Procedures. He explained that the jurisdictional dividing line between the Chief Justice's authority and the authority of the Council on Court Procedures was that between administrative rules and procedural rules. This is a distinction which is easy to make in clear cases but difficult of determination in many instances.

Mr. Sahlstrom referred specifically to the following proposed Uniform Trial Court Rules as being procedural in nature:

2.015	4.135	5.040	6.020	7.030
2.022	4.145		6.030	7.040
2.030			6.080	7.060
2.820				

He stated that it was not an all-inclusive list of the rules found to be procedural but offered them as examples. In many instances, the proposed Uniform Trial Court Rules were mixtures of administration and procedure and in at least one instance (UTCRC 5.050) appeared to move beyond the procedural into the substantive.

After discussion regarding the manner in which the Council should proceed, Mr. Haldane was directed to forward to the Chief Justice a letter which would point out the concerns expressed in Mr. Sahlstrom's report and request that procedural rules or changes in the Oregon Rules of Civil Procedure be submitted to the Council for its consideration.

Mr. Kilpatrick then asked for comment on any previously submitted amendments to the Oregon Rules of Civil Procedure. There being no comments, discussion and adoption of the proposed amendments was deferred to a future meeting.

Mr. Haldane reported a suggestion that ORCP 68 be amended to define more clearly appropriate costs to be awarded a prevailing party. The particular suggestion surrounded the reimbursement for depositions. The question was posed as to whether the party was entitled to be reimbursed for expenses of taking depositions when those depositions were used in a motion for summary judgment. There is also apparently some question as to the extent to which a deposition must be used at trial in order to recover costs of taking a deposition.

Mr. Haldane was directed to draft a proposed rule change which would define the costs more clearly. Mr. Starr was asked to assist in the drafting of this proposal.

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

Respectfully submitted,

Douglas A. Haldane  
Executive Director

DAH:gh

M E M O R A N D U M

TO: E. B. SAHLSTROM  
JOHN F. HUNNICUTT  
WILLIAM F. SCHROEDER  
SAM KYLE  
JAMES W. WALTON

FROM: DOUGLAS A. ~~WALTON~~ ~~ALDANE~~

RE: Proposed Uniform Trial Court Rules

DATE: April 20, 1984

At the April 14, 1984 meeting of the Council, you were appointed to a committee chaired by Mr. Sahlstrom to study the proposed Uniform Trial Court Rules to determine in what instances, if any, those rules conflict with the Oregon Rules of Civil Procedure or impinge upon the statutory authority of the Council.

A question has been raised regarding the authority of the Chief Justice to promulgate such rules. While the Council on Court Procedures is responsible for "rules governing pleading, practice and procedure . . . in all civil proceedings in all courts of the state" (ORS 1.735), the Chief Justice is to "exercise administrative authority and supervision over the courts of this state consistent with applicable provisions of law and the Oregon Rules of Civil Procedure. The Chief Justice, to facilitate exercise of that administrative authority and supervision, may: (a) Make rules and issue orders appropriate to that exercise." (ORS 1.002)

The dividing line between the authority of the Chief Justice and the Council appears to be that between administration and procedure. This, of course, is a difficult line to draw but may provide some general guideline to you in determining if the proposed rules stray from the administrative into the procedural.

In considering the proposed rules, it is probably not necessary to consider Chapter 3, which deals exclusively with criminal matters. Mr. Sahlstrom has suggested that each member of the committee become familiar with the entire set of rules but pay attention to certain chapters. I am arbitrarily suggesting that each of you take on the following assignments:

Memorandum  
April 20, 1984  
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Sahlstrom	Chapters 1 and 2
Kyle	Chapters 4 and 5
Walton	Chapters 6 and 7
Schroeder	Chapters 6 and 8
Hunnicutt	Chapters 8 and 9

In the meantime, I will attempt to comment on the entire set of rules.

I learned from the Chief Justice's office that the time for comment has been extended until July 1, and thus we will have an opportunity to comment to the full Council at its June meeting before reporting to the Chief Justice.

If you gentlemen will begin this task, I will attempt to schedule a committee meeting by conference call sometime in mid-May. I will coordinate the time for that call with each of you individually.

If you have any questions about our task, please give me a call at the Council office, 686-3900, or at my law office, 342-7015.

DAH:gh

cc: Roy Kilpatrick  
The Honorable Edwin J. Peterson

THE SUPREME COURT  
Edwin J. Peterson  
Chief Justice



Salem, Oregon 97310  
Telephone 378-6026

May 2, 1984

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

Re: Proposed Uniform Trial Court Rules

Dear Mr. Haldane:

Little did I know when I came up with the idea of drafting uniform trial court rules what a hornets' nest it would prove to be. In this letter I will not go into the perceived need for trial court rules other than to echo the comment made by Mr. Walton of the Council on Court Procedures (See page 3 of the minutes of April 16, 1984) that moving from court to court is a "nightmare."

Starting with that premise, I appointed a committee consisting of three circuit judges, three district judges, and one Court of Appeals Judge to come up with a preliminary draft. I gave them an early deadline, not because I perceive the need for haste in adopting the rules, but rather to give us something to work from. They met their deadline, and I forthwith distributed copies to just about every group in the judicial and legal community that might have some interest.


Horrors! In the last two or three weeks I have been inundated with mail from lawyers who tell me that I have no business in trying to improve the efficiency of the court beyond the current state of efficiency, that lawyers are best able to judge what is best for the courts, that more courtrooms and more judges is the only solution, and that I should stay out of the kitchen.

Mr. Douglas A. Haldane  
May 2, 1984  
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I hope that the initial negative reaction that many lawyers have voiced will subside and that lawyers will join with judges in constructively trying to achieve a set of uniform trial court rules which, to the fullest practicable extent, will obtain uniformity among the various counties, and be an improvement over the status quo.

As I told Mr. Kilpatrick, I will be happy to meet with your group at some time in the future. Meantime, I have extended the time for submitting suggestions until July 1, 1984, and intend to enlarge the committee to include practicing lawyers.

Sincerely,



Edwin J. Peterson  
Chief Justice

EJP:rm

Copy to Mr. Kilpatrick

P. S. Incidentally, I would also be happy to meet with the special committee chaired by Mr. Sahlstrom, if a mutually convenient time and place can be agreed upon.

E. J. P.



THE SUPREME COURT

Edwin J. Peterson  
Chief Justice



Salem, Oregon 97310  
Telephone 378-6026

May 2, 1984

The Honorable Don H. Sanders  
Douglas County Courthouse  
Roseburg, OR 97470

Re: Proposed Uniform Trial Court Rules

Dear Don:

I was interested to receive your letter of April 23, 1984. I agree with almost every statement that you make in the letter. I think that almost everyone would agree, in the abstract, that procedures should exist in order to achieve the end that you seek — resolution of the case before the trial date. Unfortunately, this has proved to be a devilishly difficult challenge, one which I have been concerned with for some time, one which finds its way into the first draft of the Proposed Uniform Trial Court Rules.

There may be some constitutional problems, particularly in criminal cases. The unstated premise in your letter, the premise which needs to be articulated more effectively, is that some system or procedure can be developed which will enable courts to isolate the cases which likely will not be tried from those cases which likely will be tried. You suggest an appearance on the day before trial. Perhaps that will work; perhaps it won't. Whatever the solution, we need to attack this problem much more aggressively, and in a more sophisticated way.

To be more specific, in one field, the DUI case, we know that almost all of the cases ultimately are resolved by guilty pleas. A very small percentage are tried. How can we separate those cases in which there will likely be a guilty plea from those cases in which there will not be a guilty plea? We have a pilot project now in effect in Washington County to see if we can obtain information to help us to answer that singular question.

The Honorable Don H. Sanders  
May 2, 1984  
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Perhaps the knowledge that we obtain from the Washington  
County experiment will help us elsewhere.

Thanks for sending me a copy of your letter to Mr. Haldane.  
I am sending him a copy of this letter.

Sincerely,

Edwin J. Peterson  
Chief Justice

EJP:rm