COUNCIL ON COURT PROCEDURES

Saturday, October 15, 1988 Meeting
9:30 a.m.

Oregon State Bar Offices
5200 SW Meadow Road
Lake Oswego, Oregon

A G E N D A

1. Approval of minutes of meeting held September 17, 1988

2. Report on method and timing of publishing amendments (Ray Conboy)

3. ORCP 69 B (Oregon State Bar Procedure and Practice Committee suggested amendment)

4. ORCP 44 C (questions received relating to chart notes) (report by Executive Director)

5. ORCP 4 K (suggested staff comment as directed - to be submitted by Executive Director)

6. Review of ORCP 21-64 (Merrill memo of September 9, 1988)

7. NEW BUSINESS

# # # # #

COUNCIL ON COURT PROCEDURES

Minutes of Meeting of October 15, 1988

Oregon State Bar Offices
5200 SW Meadows Road
Lake Oswego, Oregon

Present:	John H. Buttler	Winfrid Liepe
	Raymond J. Conboy	R. B. McConville
	L. G. Harter	R. L. Marceau
	Lee Johnson	Martha Rodman
	Henry Kantor	Laurence Thorp
	John V. Kelly	Elizabeth Yeats
Absent:	Richard L. Barron	Steven H. Pratt
	Robert E. Jones	James E. Redman
	Paul J. Lipscomb	R. William Riggs
	Jack L. Mattison	Wm. F. Schroeder
	Richard P. Noble	J. Michael Starr

Kathryn Augustson and Emerson Fisher, representing the OSB Procedure and Practice Committee, and Bob Oleson of the Oregon State Bar were also present.

(Also present were Fredric R. Merrill, Executive Director, and Gilma J. Henthorne, Management Assistant.)

The meeting was called to order by Chairer Raymond J. Conboy at 9:30 a.m.

The minutes of the meeting held September 17, 1988 were unanimously approved.

Agenda Item No. 1: Report on method and timing of publishing amendments (Ray Conboy). Mr. Conboy stated that he had written Chief Justice Peterson on September 28, 1988, requesting that any amendments to rules promulgated by the Council in December be published in the Advance Sheets before the legislature meets in January. Mr. Conboy said that no response had been received as yet.

Agenda Item No. 3: ORCP 69 B (Oregon State Bar Procedure and Practice Committee suggested amendment). Kathryn Augustson explained that, after she and Mr. Fisher had drafted the amendment to 69 A, it was presented to the entire Procedure and

Practice Committee for discussion and a vote. She stated the Committee voted unanimously in favor of the requirement that ten days notice be given prior to taking a default and that the consensus of Committee was that there was no need for another notice.

After a lengthy discussion, Ron Marceau made a motion that the Council adopt the proposed amendment to ORCP 69 A, deleting the parenthetical expression, "or, if appearing by representative, such party's representative" and changing "clerk of the court" to "clerk or the court" near the end of the last sentence. The motion was seconded by Judge Liepe. Judge Johnson moved to amend the motion to also accept the proposed committee change for ORCP 69 B but withdrew the motion. After further discussion, the motion passed with 7 in favor and 5 opposed.

Ron Marceau then made a motion to adopt the Bar's proposal to amend 69 B. The motion was seconded by Judge Johnson. Judge Liepe moved to amend the motion to retain the last sentence of ORCP 69 B but change "has appeared in the action" to "has filed an appearance". The motion to amend failed for want of a second. After a lengthy discussion, the motion passed with 11 in favor and 1 opposed.

A copy of 69 A and B, with amendments, is attached to these minutes as Exhibit 1.

Agenda Item No. 4: ORCP 44 C (questions relating to chart notes) (report by Executive Director). The Executive Director reported that he had received several inquiries regarding the interpretation of the amendment to ORCP 44 C with the addition of "<u>or existing notations</u>" in the prior biennium. He stated that, because the amendment used "or" instead of "and", it has been construed in some cases to mean that the defendant may have either the report or the notations, but not both. Larry Thorp moved to amend the provision to change "or" to "and". The motion was seconded by Henry Kantor. The motion passed unanimously. The proposed revision to ORCP 44 is attached to these minutes as Exhibit No. 2.

Agenda Item No. 5: ORCP 4 K (staff comment). The Executive Director distributed a staff comment to ORCP 4 K. After discussion, it was suggested that it should read as follows:

STAFF COMMENT 1988

Despite the provision in ORCP 4K that provides personal jurisdiction over a defendant in an action to determine a question of status, in many such cases the Oregon courts lack subject matter jurisdiction to consider the action until the plaintiff has resided in Oregon for six months.

ORS 107.075. **See** Pirouskar and Pirouskar, 51 Or. App. 519, 521, 626 P.2d 380 (1981).

Agenda Item No. 6: Review of ORCP 21-64 (Merrill memo of September 9, 1988). The Council briefly discussed ORCP 21-64 and decided to take no action at this time.

NEW BUSINESS:

Copies of an October 12, 1988 letter from Larry Thorp regarding possible amendments to ORCP 44 E and 55 H were distributed at the meeting. (The letter is attached to these minutes as Exhibit 3). The Executive Director was asked to submit a memorandum relating to state and federal legislation restricting access to hospital records and to place the matter on the agenda for the next meeting.

The Executive Director stated that he had received a letter from Hal Linden, State Court Administrator, containing proposed amendments to ORCP 69 and 70 prepared by an internal Judicial Department "Judgment Committee". (Copies were distributed to Council members at the meeting). The Executive Director was asked to determine the nature of the "Judgment Committee" and whether they intended to submit the proposed amendments to the Council for action, or whether they intended to propose the amendments to the legislature. The matter will be set on the agenda for the next meeting.

The next meeting of the Council will be held at 9:30 a.m. on Saturday, November 12, 1988, at the State Bar offices in Lake Oswego, Oregon.

The meeting adjourned at 11:33 a.m.

Respectfully submitted,

Fredric R. Merrill
Executive Director

FRM:gh

MEMORANDUM

October 14, 1988

TO: **MEMBERS, COUNCIL ON COURT PROCEDURES**

FROM: Fred Merrill, Executive Director

1. It appears likely that there will be a substantial debate over the Practice and Procedure Committee proposal to amend ORCP 69 A and B relating to notice. Some background on the history of notice and default judgments in Oregon may be helpful.

Prior to ORCP 69, the Oregon statutes did not contain any requirement of notice, either prior to application for a default or a default judgment. ORS 18.080, rep. 1979, did not mention notice at all. There may have been some custom of giving notice before application for default, but that would be hard to determine on a statewide basis. The staff comment to the last amendment to Rule 69 cites DR. 7-106(C)(C5), which states that it is unethical to violate an established custom, as one basis for a statement that there is an ethical duty to provide notice of default.

There is nothing in the current Code of Professional Responsibility, and there was nothing in the prior canons of ethics which explicitly refers to notice of intent to take default. There is one case, Ainsworth v Dunham, 235 Or. 225, 230-231 (1963), where the Supreme Court suggested there was such a duty. The statement, however, is dicta. The question came up on appeal of a motion to vacate a judgment taken against a defendant for failure to appear at trial. The court directed that the motion be granted because the defense attorney never received notice of the trial date. The court also said that the plaintiff's attorney was wrong in stating during oral argument that he was not required to call the defense attorney and tell him that, because of failure to appear at trial, there would be an application for default. The court cited a section of The Code of Trial Conduct of the American College of Trial Lawyers which required notice. That code was not, and never has been, adopted by the court as the standard for professional conduct by Oregon attorneys.

ORCP 69 is taken primarily from Federal Rule 55. When originally drafted, ORCP 69 B had language identical to the federal rule, which requires three days notice prior to application for default judgment when defendant has appeared. In the drafting process the Council lengthened the notice time to

ten days. The 1981 Legislature then added a requirement of notice not only when a defendant appeared but also when plaintiff knew that a defendant was represented by counsel. This created some problems of equal protection which, combined with the Denkers case, explained the rule meant just what it said and led to reconsideration and amendment of the notice provision in 1986. The present requirement is only notice of intent to take judgment when a defendant has appeared and then only when it is necessary to have a hearing before judgment.

The reason for the notice requirement before judgment is that, despite default, a defendant still has the right to question the legal sufficiency of the plaintiff's claim and to appear at the default hearing and cross-examine witnesses. Rajneesh Found. Int'l v. McGreer, 303 Or. 139, 142 (1908). Without notice, it would be difficult to exercise those rights. Since the defendant has appeared, the giving of notice is not particularly difficult.

The usual fast and sloppy survey of other states showed that the majority had the federal rule or required only notice of intent to take judgment for persons who appeared. I could find only two states where the rules required notice prior to default. They were Florida and Washington, and the rules are attached.

I could not find any state that provided for notice of default for someone who has indicated an intent to appear. New York does have a provision that allows a nonappearing party to make a demand for notice of application for judgment. A copy is attached. That makes some sense because the nonappearing defendant has the same rights at the default judgment hearing as the defendant.

2. Last month I forgot to submit a suggested comment for Rule 4 K:

STAFF COMMENT 1988

The Council directed its staff to prepare this comment. It is intended to warn attorneys that, despite the provision in ORCP 4 K that provides personal jurisdiction over a defendant in an action to determine a question of status, in many such cases the Oregon courts lack subject matter jurisdiction to consider the action until the plaintiff has resided in Oregon for six months. ORS 107.075. **See** Pirouskar and Pirouskar, 51 Or. App. 519, 521, 626 P.2d 380 (1981).

Enclosures

RULE 1.500 DEFAULTS AND FINAL JUDGMENTS THEREON

(a) By the Clerk. When a party against whom affirmative relief is sought has failed to file or serve any paper in the action, the party seeking relief may have the clerk enter a default against the party failing to serve or file such paper.

(b) By the Court. When a party against whom affirmative relief is sought has failed to plead or otherwise defend as provided by these rules or any applicable statute or any order of court, the court may enter a default against such party; provided that if such party has filed or served any paper in the action, he shall be served with notice of the application for default.

(c) Right to Plead. A party may plead or otherwise defend at any time before default is entered. If a party in default files any paper after the default is entered, the clerk shall notify the party of the entry of the default. The clerk shall make an entry on the progress docket showing the notification.

(d) Setting Aside Default. The court may set aside a default and if a final judgment consequent thereon has been entered, the court may set it aside in accordance with Rule 1.540(b).

(e) Final Judgment. Final judgments after default may be entered by the court at any time but no judgment may be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator or other representative who has appeared in it or unless the court has made an order under Rule 1.210(b) providing that no representative is necessary for the infant or incompetent. If it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter to enable the court to enter judgment or to effectuate it, the court may receive affidavits, make references or conduct hearings as it deems necessary and shall accord a right of trial by jury to the parties when required by the Constitution or any statute.

Amended June 19, 1968, effective Oct. 1, 1968 (211 So.2d 206); July 26, 1972, effective Jan. 1, 1973 (265 So.2d 21); Nov. 29, 1972 (269 So.2d 359); Sept. 13, 1984, effective Jan. 1, 1985 (458 So.2d 245).

Court Commentary

1984 Amendment. Subdivision (c) is amended to change the method by which the clerk handles papers filed after a default is entered. Instead of returning the papers to the party in default, the clerk will now be required to file them and merely notify the party that a default has been entered. The party can then take whatever action the party believes is appropriate.

This is to enable the court to judge the effect, if any, of the filing of any paper upon the default and the propriety of entering final judgment without notice to the party against whom the default was entered.

RULE 1.510 SUMMARY JUDGMENT

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, cross-claim or third party claim or to obtain a declaratory judgment may move for a summary judgment in his favor upon all or any part thereof with or without supporting affidavits at any time after the expiration of twenty days from the commencement of the action or after service of a motion for summary judgment by the adverse party.

(b) For Defending Party. A party against whom a claim, counterclaim, cross-claim or third party claim is asserted or a declaratory judgment is sought may move for a summary judgment in his favor as to all or any part thereof at any time with or without supporting affidavits.

(c) Motion and Proceedings Thereon. The motion shall state with particularity the grounds upon which it is based and the substantial matters of law to be argued and shall be served at least twenty days before the time fixed for the hearing. The adverse party may serve opposing affidavits prior to the day of hearing. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories 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.

(d) Case Not Fully Adjudicated on Motion. On motion under this rule if judgment is not rendered upon the whole case or for all the relief asked and a trial or the taking of testimony and a final hearing is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall ascertain, if practicable, what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy including the extent to which the amount of damages or other relief is not in controversy and directing such further proceedings in the action as are just. On the trial or final hearing of the action the facts so specified shall be deemed established and the trial or final hearing shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony. Supporting and opposing affidavits shall be made on

personal kno
would be ad
affirmatively
to the matte
copies of all
an affidavit
therewith. T
supplemented
interrogatorie

(f) When
pears from t
motion that h
affidavit facts
court may re
may order a
obtained or d
be had or m

(g) Affidav
to the satisfa
of the affidav
presented in
delay, the co
employing th
amount of the
of the affida
reasonable att
or attorney n
Amended Dec.
626).

1976 Amendm
require a mova
and legal autho
summary judgm
prise and bring
formity with th
respect to motio

Upon motio
taken to view
any property,
versy between
is necessary to
the motion sha
the expenses o
them in takin
taxed as costs

RULE 1.530
AND RE

(a) Jury an
may be grante
all or a part
rehearing of m

er severing the action as to them.
proceed to trial of an action reach-
en the court orders a dismissal for
the defendant may make applica-
ear after the default and the clerk,
ite proof, shall enter judgment for
one in which the clerk can enter
apply to the court for judgment.

t. The court, with or without a
nt or take an account or proof, or
n a reference is directed, the court
returned to it for further action or,
ribed by law, that judgment be en-
ance with the report without any
n a matrimonial action, no finding
cessary to the entry of a judgment
all not exceed in amount or differ
the complaint or stated in the no-
is b) of rule 305.

hin one year. If the plaintiff fails
ntry of judgment within one year
hall not enter judgment but shall
doned, without costs, upon its own
sufficient cause is shown why the
ssed. A motion by the defendant
t constitute an appearance in the

ourt. An application to the court
de, except where otherwise pre-
motion at any trial term in which
special term in which a motion in
y reference shall be had in the
iable, unless the court orders oth-

ion for judgment by default, the
vice of the summons and the com-
e served pursuant to subdivision
a) of rule 316, and proof by affi-
facts constituting the claim, the
Where a verified complaint has
e affidavit of the facts constitut-
ue; in such case, an affidavit as

to the default shall be made by the party or his attorney. When jurisdiction is based on an attachment of property, the affidavit must state that an order of attachment granted in the action has been levied on the property of the defendant, describe the property and state its value.

(f) Notice. 1. Notice is not required when the judgment may be entered by the clerk. Except as otherwise provided with respect to specific actions, if application must be made to the court, any defendant who has appeared is entitled to at least five days' notice of the time and place of the motion, and if more than one year has elapsed since the default any defendant who has not appeared is entitled to the same notice unless the court orders otherwise. The court may also dispense with the requirement of notice when a defendant who has appeared has failed to proceed to trial of an action reached and called for trial.

2. Where an application for judgment must be made to the court, the defendant who has failed to appear may serve on the plaintiff at any time before the motion for judgment is heard a written demand for notice of any reference or assessment by a jury which may be granted on the motion. Such a demand does not constitute an appearance in the action. Thereupon at least five days' notice of the time and place of the reference or assessment by a jury shall be given to the defendant by service on the person whose name is subscribed to the demand, in the manner prescribed for service of papers generally.

(g) Judgment for excess where counterclaim interposed. In an action upon a contract where the complaint demands judgment for a sum of money only, if the answer does not deny the plaintiff's claim but sets up a counterclaim demanding an amount less than the plaintiff's claim, the plaintiff upon filing with the clerk an admission of the counterclaim may take judgment for the excess as upon a default.

(h) Default judgment for failure to comply with stipulation of settlement. 1. Where, after commencement of an action, a stipulation of settlement is made, providing, in the event of failure to comply with the stipulation, for entry without further notice of a judgment in a specified amount with interest, if any, from a date certain, the clerk shall enter judgment on the stipulation and an affidavit as to the failure to comply with the terms thereof, together with a complaint or a concise statement of the facts on which the claim was based.

2. Where, after commencement of an action, a stipulation of settlement is made, providing, in the event of failure to comply

25. —MONETARY RELIEF

Court may allow interest even though no demand has been made therefor in complaint. Gardner v Mid-Continent Grain Co. (1948, Mo) 168 F2d 819.

When monetary award is determined by court, later increase in amount found due and awarded is permitted under subd (c). Dickinson v Burnham (1952, NY) 197 F2d 973, cert den 344 US 875, 97 L Ed 678, 73 S Ct 169.

Under subd (c), plaintiff is not bound by itemization of damages in pleading on ad damnum demand. Brawner v Pearl Assur. Co. (1958 Cal) 267 F2d 45.

Fact that award of damages exceeds amount requested in prayer for relief does not constitute error. Southwestern Invest. Co. v Cactus Motor Co. (1966, NM) 355 F2d 674.

Though in counterclaim for injunctive relief monetary relief is not also specifically sought, court may grant latter relief. Columbia Nastri & Carta Carbone v Columbia Ribbon & Carbon Mfg. Co. (1966, NY) 367 F2d 308.

Where evidence establishes that party is entitled to recover attorney's fees under agreement, it is not error to award such fees even though they were not included in the party's ad damnum clause of his complaint. Stroud v B-W Acceptance Corp. (1967, Colo) 372 F2d 185.

In litigated case, prayer does not limit amount of recoverable damages. Brown v Burr-Brown Research Corp. (1967, Tex) 378 F2d 822, reh den.

26. —DEFAULT JUDGMENT

Under subd (c), default judgment cannot change nature of cause of action. National Discount Corp. v O'Mell (1952, Mich) 194 F2d 452.

Propriety of verdict is tested by evidence, not the ad damnum clause. Smith v Brady (1968, W Va) 390 F2d 176.

Interlocutory orders should, with exception of truly collateral orders, be subject to controls of subd (b) of this rule. Allegheny Airlines, Inc. v LeMay (1971, Ind) 448 F2d 1341, cert den 404 US 1001, 30 L Ed 2d 553, 92 S Ct 565.

For additional cases construing the Federal rules, see USCS Federal Rules of Civil Procedure.

RULE 55

DEFAULT AND JUDGMENT

(a) Entry of Default.

(1) *Motion.* When a party against whom a judgment for affirmative relief is sought has failed to appear, plead, or otherwise defend as provided by these rules and that fact is made to appear by motion and affidavit, a motion for default may be made.

(2) *Pleading after Default.* Any party may respond to any pleading or otherwise defend at any time before a motion for default and supporting affidavit is filed, whether the party previously had appeared or not. If the party had appeared before the motion is filed, he may respond to the pleading or otherwise defend at any time before the hearing on the motion. If the party had not appeared before the motion is filed he may not respond to the pleading nor otherwise defend without leave of court. Any appearances for any purpose in the action shall be for all purposes under this Rule 55.

(3) *Notice.* Any party who has appeared in the action for any purpose, shall be served with a written notice of motion for default and the supporting affidavit at least 5 days before the hearing on the motion. Any party who has not appeared before the motion for default and supporting affidavit are filed, is not entitled to a notice of the motion, except as provided in Rule 55(f)(2)(A).

(4) *Venue.* A motion for default shall include a statement of the basis for venue in the action. A default shall not be entered if it clearly appears to the court from the papers on file that the action was brought in an improper county.

(b) Entry of Default Judgment. As limited in Rule 54(c), judgment after default may be entered as follows, if proof of service is on file as required by paragraph (b)(4):

(1) *When Amount Certain.* When the claim against a party, whose default has been entered under subdivision (a), is for a sum certain or for a sum which can by computation be made certain, the court upon motion and affidavit of the amount due shall enter judgment for that amount and costs against the party in default, if

he is not an infant or incompetent person. No judgment by default shall be entered against an infant or incompetent person unless represented by a general guardian or guardian ad litem. Findings of fact and conclusions of law are not necessary under this paragraph even though reasonable attorney fees are requested and allowed.

(2) *When Amount Uncertain.* If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings as are deemed necessary or, when required by statute, shall have such matters resolved by a jury. Findings of fact and conclusions of law are required under this paragraph.

(3) *When Service by Publication or Mail.* In an action where the service of the summons was by publication, or by mail under Rule 4(d)(4) the plaintiff, upon the expiration of the time for answering, may, upon proof of service by publication, apply for judgment. The court must thereupon require proof of the demand mentioned in the complaint, and must require the plaintiff or his agent to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use on account of such demand, and may render judgment for the amount which he is entitled to recover, or for such other relief as he may be entitled to.

(4) *Costs and Proof of Service.* Costs shall not be awarded and default judgment shall not be rendered unless proof of service is on file with the court.

(c) Setting Aside Default.

(1) *Generally.* For good cause shown and upon such terms as the court deems just, the court may set aside an entry of default, and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

(2) *When Venue Is Improper.* A default judgment entered in a county of improper venue is valid but will on motion be vacated for irregularity pursuant to Rule 60(b)(1). A party who procures the entry of the judgment shall, in the vacation proceedings, be required to pay to the party seeking vacation the costs and reasonable attorney fees incurred by the party in seeking vacation if the party procuring the judgment could have determined the county of proper venue with reasonable diligence. This subdivision does not apply if either (a) the parties stipulate in writing to venue after commencement of the action, or (b) the defendant has appeared, has been given written notice of the motion for an order of default, and does not object to venue before the entry of the default order.

(d) Plaintiffs, Counterclaimants, Cross-Claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(e) Judgment Against State. [Reserved.]

(f) How Made After Elapse of Year.

(1) *Notice.* When more than one year has elapsed after service of summons with no appearance being made, the court shall not sign an order of default or enter a judgment until a notice of the time and place of the application for the order or judgment is served on the party in default, not less than 10 days prior to the entry. Proof by affidavit of the service of the notice shall be filed before entry of the judgment.

(2) *Service.* Service of notice of the time and place on the application for the order of default or default judgment shall be made as follows:

(A) by service upon the attorney of record;

(B) if there is not attorney of record, then by service upon the defendant by

STARR & VINSON, P.C.
ATTORNEYS AT LAW
WILLAMETTE SAVINGS PLAZA — BROADWAY & OAK
96 E. BROADWAY, SUITE 8
EUGENE, OREGON 97401-3193

DAVID A. VINSON
J. MICHAEL STARR

TELEPHONE
(503) 484-7060

September 19, 1988

Raymond J. Conboy
Attorney at Law
1100 SW 6th Ave., Suite 910
Portland, Oregon 97204

Re: Council on Court Procedures

Dear Ray:

Unless I can resolve a conflict, I will be unable to attend the October 15 meeting. There are a couple of rules that I would like to express my views on that will be coming up at that meeting.

Regarding the change to ORCP 44, the motion failed to add the words "clinical psychologist." I think it would be even worse if the rule were amended to put the term "examiners" in the place of "physician." That would open it up for the court in its discretion to allow an examination by self-labeled examiners from any field that provides some sort of quasi-medical service. I think Rule 44 ought to be left where it is.

Regarding Rule 69, I am in favor of the Procedure & Practice Committees rule amending 69A. I would not mess around with the term "apply" and substitute "move" as favored by Judge McConville, because 69B sets forth several types of judgments that can be entered by either "the court or the clerk upon written application of the party seeking judgment." Because clerk's enter judgments upon application, we need to retain the word "apply" and not replace it with "move" or "motion."

I do not favor the amendment of the Procedure & Practice Committee to Rule 69B(2) which deletes the notice requirement in cases where you have to have a damage hearing. I have had several cases over the years where I went and obtained judgment through a damage hearing and then sued an insurance company directly on the policy to collect the judgment in cases where the company denied coverage prior to judgment. I think in those situations it is important that plaintiff's attorney does give notice of the damage hearing so that the defendant does have the right to appear at the damage hearing and cross-examine. I have had this situation where the defendant does appear and cross-examine. When the plaintiff then attains a judgment, the insurance company is not able to launch a collateral attack in the subsequent action against it based upon the judgment obtained was excessive in amount. I would prefer that in these situations the defendant does appear and cross-examine which gives the judgment entered by the court a flavor of being reasonable. Therefore, I think it is a good rule to require in those situations that you give notice of the damage hearing to the defendant.

Thank you for making my views known to the committee on these two rules and I will see you at the November meeting.

Yours very truly,

STARR & VINSON, PC

J. Michael Starr

JMS/lj

cc. Fred Merrill, Executive Director

FLINN, BROWN & ROSETA

ATTORNEYS AT LAW

William E. Flinn
Larry A. Brown
Richard A. Roseta
Michael H. Long
Philip R. McConville
John F. Kilcullen
Charles D. Carlson
Timothy F. Brewer

210 Northbank Building
44 Club Road
Eugene, OR 97401
Telephone (503) 686-1883

September 28, 1988

Mr. Fredric R. Merrill
Executive Director
Counsel on Court Procedure
University of Oregon, School of Law
Eugene, Oregon 97403

Dear Fred:

It is my understanding that the Counsel has under consideration several changes to ORCP 69. I would like to urge that the Counsel provide for a ten day written notification procedure to counsel for the adverse party, against whom the default is to be taken.

I am aware of several situations over the past year or so where plaintiff's attorneys have been informed as to the retention of an attorney and have elected to take a default without prior written notification to that attorney. The result is considerable expense to the Professional Liability Fund, with result in surcharges to the attorney, and the lack of a guarantee that a court is going to overturn a default, on the basis of excusable neglect. I see no compelling public policy reason to allow someone to take a default against another, who has given notice of representation by another attorney, without ten day written notification to that attorney.

Thank you for your consideration.

Sincerely yours,

FLINN, BROWN & ROSETA

Richard A. Roseta

RAR:rs

LUVAAS, COBB, RICHARDS & FRASER, P. C.
ATTORNEYS AT LAW
777 HIGH STREET
EUGENE, OREGON 97401-2787

MAILING ADDRESS
P.O. BOX 10747
EUGENE, OREGON 97440-2747
(503) 484-9292
TELEFAX ONLY: (503) 343-1206

JOHN L. LUVAAS
RALPH F. COBB
JOE B. RICHARDS
ROBERT H. FRASER
DOUGLAS L. McCOOL
VARNER JAY JOHNS III
LOUIS L. KURTZ

ROBERT L. SHAW
RONALD A. WALRO
JOEL S. DEVORE
DONALD E. JOHNSON
RODNEY B. CARTER
LEIF A. PALMER

BETTY J. ENGLE
LEGAL ASSISTANT

September 28, 1988

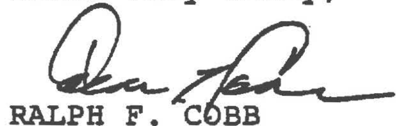
Fred Merrill Executive Director
Council on Court Procedures
c/o University of Oregon Law School
Eugene, OR 97403

Dear Mr. Merrill:

I have received from Martha Rodman a proposed amendment to ORCP 69, which I understand will be addressed by the Council on Court Procedures at its October 15, 1988 meeting.

From a practical standpoint the proposed amendment has a great deal of merit. Accordingly, I would like to urge its adoption by the Council, if at all possible.

Yours very truly,



RALPH F. COBB

RFC:mb

FROHNMAYER, DEATHERAGE, deSCHWEINITZ, PRATT & JAMIESON, P.C.

ATTORNEYS AT LAW
COOLEY THEATRE BUILDING
39 SOUTH CENTRAL - P.O. BOX 4280
MEDFORD, OREGON 97501
TELEPHONE
A/C 503 779-2333

OTTO J. FROHNMAYER
WILLIAM V. DEATHERAGE
ALLAN B. deSCHWEINITZ
STEVEN H. PRATT
STEPHEN G. JAMIESON
GARRISON F. TURNER

ROBERT S. HAMILTON
LARRY B. WORKMAN
CHRISTOPHER A. LEDWIDGE

ASHLAND OFFICE
GARRISON F. TURNER
108 N. SECOND STREET
P.O. BOX 1298
ASHLAND, OREGON 97520
TELEPHONE A/C 503 482-1483

October 7, 1988

Mr. Fredric Merrill
Executive Director
Council on Court Procedures
University of Oregon
School of Law
Eugene, Oregon 97403

RE: October 15, 1988 Meeting

Dear Fred:

I will be unable to attend the October 15 meeting. For what it is worth, I would ask you to pass along comments I have on two of the agenda items for that meeting.

First, I would strongly support an amendment to ORCP 69B requiring that notice be given prior to application for an order of default if the moving party is aware that the party in default is represented by an attorney. If equal process considerations require that notice be given to a party in default who is unrepresented by counsel, then I would support an amendment similar to that suggested by the Oregon State Bar Procedure and Practice Committee. I have previously stated the reasons why I favor this amendment, and since my reasons are neither unique nor novel, I will not restate them in this letter. I do think it is an important amendment and one that really needs to be adopted. I also think it is important to keep the notice requirement for the damage hearing where the claim involves unliquidated damages. This seems to be the majority rule. See, ANNOTATION: "Defaulting Defendant's Right To Notice And Hearing As To Determination Of An Amount Of Damages," 15 ALR 3rd 586 (1967).

Second, while I supported adding the words "Clinical Psychologist" to ORCP 44, I would not support substituting the word "Examiners" in the place of the word "Physician". Since the motion to add "Clinical Psychologist" to the rule was defeated, I think ORCP 44 should be left as it is.

Very truly yours,

Steven H. Pratt

SHP:bsn

cc: Raymond J. Conboy

R. WILLIAM LINDEN, JR.
State Court Administrator

(503) 378-6046

JUDICIAL DEPARTMENT
Supreme Court Building
Salem, Oregon 97310

October 11, 1988

Fredric R. Merrill
Executive Director
Council on Court Procedures
University of Oregon
School of Law
Eugene, OR 97403-1221

Re: Proposed Civil Judgment Bill--Oregon Judicial Department Judgment Committee

Dear Fred:

I am enclosing a copy of a civil judgment bill drafted by an internal Judicial Department "Judgment Committee" and just recently submitted to Legislative Counsel. The Judgment Committee, staffed by Karen Hightower, Assistant Legal Counsel, is comprised of three judges, two trial court administrators, and a number of Judicial Department personnel.

This proposed bill is intended to address a number of problems the courts have been experiencing in the civil judgment area.

I would greatly appreciate any comments or suggestions the Council might have.

Sincerely,

R. William Linden, Jr.
State Court Administrator

RWL:KH:dc/E1D88137.F

Enclosure

cc: Linda Zuckerman
Karen Hightower

DRAFT: 9/29/88

Drafter purpose:

1. Eliminate judgment "summary" as separate document.
2. Include "summary" information in judgment.
3. Specify information and form of "summary" information.
4. Address issue of presentation of attorney fees and costs.
5. Address issue of judgment docket, register and execution docket info.
6. Related clean-up.

New language is in bold and underlined.
Language proposed to be deleted is in brackets "[...]".

Measure Summary-

A BILL FOR AN ACT

Relating to courts; amending ORS 7.010, 7.020, 7.040, 7.050, 18.320, 18.410, 29.137 and ORCP 68 and 70; repealing ORS 7.050.

BE IT ENACTED by the People of the State Of Oregon:

SECTION ____. ORCP 70 is amended to read:

RULE 70. FORM AND ENTRY OF JUDGMENT

A. Form. Every judgment shall be in writing plainly ~~[labeled]~~ titled as a judgment and set forth in a separate document. A default or stipulated judgment may have appended or subjoined thereto such affidavits, certificates, motions, stipulations, and exhibits as may be necessary or proper in support of the entry thereof.

A(1) Content. No particular form of words is required, but every judgment shall:

A(a)(a) Specify clearly the party or parties in whose favor it is given and against whom it is given and the relief granted or other determination of the action.

A(1)(b) Be signed by the court or judge rendering such judgment or, in the case of judgment entered pursuant to Rule 69B(1), by the clerk.

A(1)(c) If the judgment provides for the payment of money, ~~[contain-a-summary-of-the-type described]~~ comply with the requirements in subsection ~~[section-70]~~A(2) of this rule. If the judgment does not comply with the requirements in subsection A(2) of this rule, it shall not be docketed in the judgment docket as provided under ORS 18.320.

A(2) ~~[Summary.--When]~~ Money judgments; requirements. As required under [section] subsection [70]A(1)(c) of this rule, a judgment for the payment of money must ~~[shall]~~ comply with the requirements of this part, listed below, and must comply with subsection A(3) of this rule relating to the form of presentation of the requirements. The ~~[These]~~ requirements ~~[relating-to-a summary]~~ of this part are not jurisdictional for purposes of appellate review. ~~[and-are subject-to-the]~~ The requirements ~~[, under section-70A(3)-of-this-rule.]~~ ~~[A-summary shall-include]~~ of a money judgment include all of the following:

A(2)(a) The names of the judgment creditor and the creditor's attorney.

A(2)(b) The name of the judgment debtor.

A(2)(c) The amount of the judgment.

A(2)(d) The interest owed to the date of the judgment, either as a specific amount or as accrual information, including the rate or rates of interest, the balance or balances upon which interest accrues, the date or dates from which interest at each rate on each balance runs, and whether interest is simple or compounded and, if compounded, at what intervals.

~~[A(2)(e)-Any-specific-amounts-awarded-in-the judgment-that-are-taxable-as-costs-or-attorney fees.]~~

A(2)~~[(f)]~~(e) Post-judgment interest accrual information, including the rate or rates of interest, the balance or balances upon which interest accrues, the date or dates from which interest at each rate on each balance runs, and whether interest is simple or compounded and , if compounded, at what intervals.

A(2)~~[(g)]~~<u>(f)</u> For judgments that accrue on a periodic basis, any accrued arrearages, required further payments per period and accrual dates.

<u>A(2)(g) If the judgment awards costs and disbursements or attorney fees, that they are awarded and any specific amounts awarded. This paragraph does not require inclusion of specific amounts where such will be determined later under Rule 68C.</u>

~~[A(3) Submitting and Certifying Summary. The following apply to the summary described under section 70A(2) of this rule:]~~

~~[A(3)(a) The summary shall be served on the opposing parties who are not in default or on their attorneys of record as required under ORCP 9.]~~

~~[A(3)(b) The attorney for the party in whose favor the judgment is rendered or the party directed to prepare the judgment shall certify on the summary that the information in the summary accurately reflects the judgment.]~~

<u>A(3) Money judgments; form. To comply with the requirements of subsection (2), the requirements in that section must be presented in a manner that complies with all of the following:</u>

<u>A(3)(a) The requirements must be presented in a separate, discrete section immediately above the judge's signature if the judgment contains more provisions than just the requirements of subsection A(2) of this rule.</u>

<u>A(3)(b) The separate section must be clearly labeled at its beginning as a money judgment.</u>

<u>A(3)(c) The separate section must contain no other provisions except what is specifically required by this rule for judgments for the payment of money.</u>

<u>A(3)(d) The requirements under subsection A(2) must be presented in the same order as set forth in that section.</u>

B. Entry of judgments.

B.(1) Filing; entry; notice. All judgments shall be filed and notation of the filing shall be entered in the register by the clerk. The clerk ~~[shall]~~, on the date judgment is entered, shall mail a notice of the date of entry of the judgment in the register and whether the judgment was docketed in the judgment docket. The clerk shall mail the notice to the attorneys of record, if any, of each party who is not in default for failure to appear. If a party who is not in default for failure to appear does not have an attorney of record, such notice shall be mailed to the party. The clerk also shall make a note in the ~~[judgment docket]~~ register of the mailing. In the entry of all judgments, except a judgment by default under Rule 69 B.(1), the clerk shall be subject to the direction of the court. Entry of judgment in the register and docketing of the judgment in the judgment docket shall not be delayed for taxation of costs, disbursements, and attorney fees under Rule 68.

B. (2) Judgment effective upon entry. Notwithstanding ORS 3.070 or any other rule or statute, for purposes of these rules, a judgment is effective only when entered in the register as provided in this rule.

B.(3) Time for entry. The clerk shall enter the judgment in the register within 24 hours, excluding Saturdays and legal holidays, of the time the judgment is filed. When the clerk is unable to or omits to enter judgment within the time prescribed in this subsection, it may be entered any time thereafter.

C. Submission of forms of judgment. Attorneys shall submit proposed forms for judgment at the direction of the court rendering the judgment. The proposed form must comply with subsection A of this rule. When so ordered by the court, the proposed form of judgment shall be served five days prior to the submission of judgment in accordance with Rule 9B. The proposed form of judgment shall be filed and proof of service made in accordance with Rule 9C.

D. "Clerk" defined. Reference to "clerk" in this rule shall include the clerk of court or any person performing the duties of that office.

SECTION ______. ORCP 68C(4) and (5) are amended to read:

~~[C(4) Award of Attorney fees and Costs and Disbursements; Entry and Enforcement of Judgment. Attorney fees and costs and disbursements shall be entered as part of the judgment as follows:]~~

~~[C(4)(a) Entry by Clerk. Attorney fees and costs and disbursements (whether a cost or disbursement has been paid or not) shall be entered as part of a judgment if the party claiming them:]~~

~~[C(4)(a)(i) Serves, in accordance with Rule 9B, a verified and detailed statement of the amount of attorney fees and costs and disbursements upon all parties who are not in default for failure to appear, not later than 10 days after the entry of the judgment; ;]~~

~~[C(4)(a)(ii) Files the original statement and proof of service, if any, in accordance with Rule 9C, with the court. For any default judgment where attorney fees are included in the statement referred to in subparagraph (i) of this paragraph, such attorney fees shall not be entered as part of the judgment unless approved by the court before such entry.]~~

~~[C(4)(b) Objections. A party may object to the allowance of attorney fees and costs and disbursements or any part thereof as part of a judgment by filing and serving written objections to such statement, signed in accordance with Rule 17, not later than 15 days after the service of the statement of the amount of such items upon such party under paragraph (a) of this subsection. Objections shall be specific and may be founded in law or in fact and shall be deemed controverted without further pleading.]~~ ~~[Statements and objections may be amended in accordance with Rule 23.]~~

~~[C(4)(c) Review by the Court; Hearing. Upon service and filing of timely objections, the court, without a jury, shall hear and determine all issues of law or fact raised by~~

~~the-statement-and-objections.--Parties-shall be-given-a-reasonable-opportunity-to-present evidence-and-affidavits-relevant-to-any factual-issues.}--~~

~~{C(4)(d)-Entry-by-Court.--After-the-hearing the-court-shall-make-a-statement-of-the attorney-fees-and-costs-and-disbursements allowed-which-shall-be-entered-as-part-of-the judgment.--No-other-findings-of-fact-or conclusions-of-law-shall-be-necessary.}--~~

C(4) PROCEDURE FOR CLAIMING ATTORNEY FEES AND COSTS AND DISBURSEMENTS. The procedure for claiming attorney fees and costs and disbursement shall be as follows:

C(4)(a) FILING AND SERVING CLAIM FOR ATTORNEY FEES AND COSTS AND DISBURSEMENTS. A party claiming attorney fees or costs and disbursements shall, not later than 14 days after entry of judgment:

C(4)(a)(i) File with the court a verified and detailed statement of the amount of attorney fees and costs and disbursements, together with proof of service, if any, in accordance with Rule 9C; and

C(4)(a)(ii) Serve, in accordance with Rule 9B, a copy of the statement on all parties who are not in default for failure to appear.

C(4)(b) OBJECTIONS. A party may object to a statement claiming attorney fees and costs and disbursements or any part thereof by written objections to the statement. The objections shall be signed in accordance with Rule 17 and served and filed within 14 days after service of the statement on the party under paragraph (a)(ii) of this subsection. The objections shall be specific and may be founded in law or in fact and shall be deemed controverted without further pleading.

C(4)(c) AMENDMENT OF STATEMENTS AND OBJECTIONS. Statements and objections may be amended in accordance with Rule 23.

C(4)(d) ENTRY BY THE CLERK. If no objection to a statement of attorney fees or costs and disbursements is timely filed, the clerk shall docket in the judgment docket the amount claimed in the statement. For any default judgment where attorney fees are included in the statement, the attorney fees shall not be entered

as part of the judgment unless approved by the court before entry.

C(4)(e)(i) HEARING ON OBJECTIONS. If objections to a statement of attorney fees or costs and disbursements is filed, the court, without a jury, shall hear and determine all issues of law or fact raised by the statement and objections. Parties shall be given a reasonable opportunity to present evidence and affidavits relevant to any factual issue.

C(4)(e)(ii) MEMORIALIZING THE DETERMINATION OF THE COURT. The court shall deny or allow in whole or in part the statement of attorney fees and costs and disbursements. If no judgment has been entered disposing of the cause to which the statement of attorney fees or costs and disbursements relates, the court's determination may be included in the judgment. If a judgment on the cause has been entered before the court has determined the claim for attorney fees or costs and disbursement, the determination of the court shall be set forth in an order separate from the judgment. No other findings of fact or conclusions of law shall be necessary.

C(4)(f) ENTRY AND EFFECT OF AWARD OF ATTORNEY FEES AND COSTS AND DISBURSEMENTS. The order shall be filed and entered, and notice thereof shall be given to the parties, in the same manner as provided in Rule 70B(1), excluding the last sentence thereof. An order awarding attorney fees or costs and disbursements becomes a part of the judgment on the cause to which the attorney fees or costs and disbursements relate.

C(5) ENFORCEMENT. Attorney fees and costs and disbursements entered ~~[as part of a judgment]~~ pursuant to this section may be enforced as part of ~~[that]~~ the judgment on the cause to which the award of attorney fees and costs and disbursements relates on entry thereof and not before. ~~[Upon service and filing of objections to the entry of attorney fees and costs and disbursements as part of a judgment, pursuant to paragraph (4)(b) of this section, enforcement of that portion of the judgment shall be stayed until the entry of a statement of attorney fees and costs and disbursements by the court pursuant to paragraph (4)(d) of this section.]~~

SECTION ____. ORS 7.010 is amended to read:

7.010. Amend section to delete reference to execution docket.

SECTION ____. ORS 7.020 is amended to read:

7.020. The register is a record wherein the clerk or court administrator shall enter, by its title, every action, suit or proceeding commenced in, or transferred or appealed to the court, according to the date of its commencement, transfer or appeal. Thereafter, [~~until the entry of judgment in the register,~~] the clerk or court administrator shall note therein[~~, according to~~] all the following:

(1) The date of any [~~thereof, the~~] filing [~~or return~~] of any paper or process[~~, or~~].

(2) The date of making, filing and entry of any order, [~~rule~~] judgment, ruling or other direction in or concerning such action, suit or proceeding.

(3) Any other information required by statute, court order or rule.

SECTION ______. ORS 7.040 is amended to read:

7.040. (1) The judgment docket is a record wherein the clerk or court administrator shall docket judgments for the payment of money and such other judgments and decrees [~~are docketed~~] as specifically provided by statute. The judgment docket shall contain the following:

(a) For other than judgments for the payment of money, the judgment docket shall contain the information specifically required by the statute requiring the information to be docketed or by court order or rule.

(b) For judgments for the payment of money, the judgment docket shall contain the following information:
(A) Judgment debtor[~~;~~].
(B) Judgment creditor[~~;~~].
(C) Amount of judgment[~~;~~].
(D) Date of entry in register[~~;~~].
(E) When docketed[~~;~~].
(F) Date of appeal[~~;~~].
(G) Decision on appeal[~~;~~].
(H) Any execution or garnishment issued by the court and the return on any execution or garnishment.
(I) Satisfaction, when entered[~~;~~].
(J) Other such information as may be deemed necessary by court order or court rule.

(2) The judgment docket shall be maintained only during the duration of an enforceable

judgment or until such time as a full satisfaction of judgment is entered.

~~[(3) Not-less-than-90-days-prior-to-the destruction-of-the-original-judgment-docket, the-clerk-or-court-administrator-shall notify-the-State-Archivist-of-the-pending destruction-of-such-docket.--The-State Archivist-may-inspect-the-judgment-docket-and may-retain-such-records-for-the-state archives.]~~

(3) Notwithstanding paragraph (1)(b) of this section, a clerk is not liable for failure to docket a judgment or to enter specific information on the judgment docket where any of the following occur:

(a) The judgment for the payment of money is required to but does not comply with ORCP 70A(2) and (3).

(b) The clerk is unable to ascertain the specific information from the separate section under ORCP 70A(2) and (3).

SECTION ______. ORS 7.050 is repealed:

SECTION _____. ORS 18.320 is amended to read:

18.320. (1) Immediately after the entry in the register of judgment for the payment of money in any action the clerk shall docket the judgment in the judgment docket, noting thereon the day, hour and minute of such docketing. The clerk shall rely on the existence of a separate section within the judgment for those judgments subject to ORCP 70A(2) and (3) in determining whether the judgment is a judgment for the payment of money and shall only docket therefrom. If the separate section does not exist, or does not comply with ORCP 70A(2) and (3), the clerk shall not docket the judgment in the judgment docket unless otherwise instructed by the court.

(2) With respect to any judgment docketed in a circuit court judgment docket, the following apply:

(a) At any time thereafter, so long as the original judgment remains in force under ORS 18.360, and is unsatisfied in whole or part, the judgment creditor, or the agent of the judgment creditor, may have recorded a certified copy of the judgment or a lien record abstract

in the County Clerk Lien Record for any other county in this state.

(b) Upon receipt, the county clerk shall record a certified copy of the judgment or a lien record abstract in the County Clerk Lien Record maintained under ORS 205.130, noting thereon the day, hour and minute of such recording.

(c) A certified copy or a lien record abstract of any judgment renewed pursuant to ORS 18.360 may likewise be recorded in the County Clerk Lien Record in another county.

(d) A certified copy of the judgment, or a certified copy of any renewed judgment under ORS 18.360, or lien record abstract of either, shall be recorded in any county other than in the county where a judgment is originally docketed in order for that judgment to be a lien upon the real property of the judgment debt or in that county.

SECTION ______. ORS 18.410 is amended to read:

18.410. (1) This section establishes a procedure to obtain a satisfaction for a judgment for the payment of money when any person, against whom exists a judgment for the payment of money or who is interested in any property upon which any such judgment is a lien, is unable to obtain a satisfaction from a judgment creditor for any reason. The following apply to a procedure under this section:

(a) The procedure and all filings, entries and other actions relating to the procedure are to be considered as a continuation of the original action in which the judgment was entered.

(b) No appearance fee shall be charged for proceeding under this section.

(2) A person described in subsection (1) of this section may request the court which gave the judgment to determine whether the judgment has been paid in full or to determine the amount necessary to satisfy the judgment at a specific time in the future. To make such request, the person must do all of the following:

(a) File a motion with the court accompanied by an affidavit setting forth all the following, to the extent known to the person:

(A) The date of entry and principal amount of the judgment.

(B) The rate of interest and the date the rate of interest began.

(C) The date or dates and amounts of any payments on the judgment.

(D) Any amount the person believes is remaining to be paid on the judgment.

(E) Supporting mathematical calculations.

(F) Any other information necessary or helpful to the court in making its determination.

(b) Serve the motion and supporting affidavit on the judgment creditor and, if the person making the request is not the judgment debtor, on the judgment debtor. If the motion is filed within one year of the date of entry of the judgment to which the motion for satisfaction relates, service shall be made as provided in ORCP 9. If the motion is filed more than one year after the date of entry of the judgment to which the motion for satisfaction relates, service shall be made as provided in ORCP 7.

(c) File proof of service with the court.

(3) Any party served under paragraph (2)(b) of this section shall have 14 days or such additional time as may be allowed by the court within which to serve and file a responding affidavit with the court setting forth those parts of the original affidavit with which the person disagrees and any supporting information or mathematical calculations necessary to support the contentions of the objecting party.

(4) Not less than 7 days after notice of hearing given to the person filing the motion and to the parties served with the motion, the court shall hear and determine the issues between the parties in a summary fashion without a jury. All the following apply to the court proceeding:

(a) The court shall give the parties a reasonable opportunity to present evidence relevant to any factual issues in dispute as shown by the affidavits.

(b) If the court, based on the record and sufficient evidence, is satisfied that the person making the request is entitled to relief, the court shall issue an order stating all the following:

(A) That the judgment has been satisfied in full or, if the judgment has not been satisfied in full, the specific amount that will satisfy the judgment on a date or within a period of time specified in the order.

(B) The party or parties to whom the money is owed.

(5) ~~[, may pay the amount due on such judgment to the clerk of the court in which the judgment was rendered and]~~ If the order provides that the judgment has been satisfied or if money is paid to the clerk in the amount and within the time specified in the order, the clerk shall thereupon satisfy the judgment upon the records of the court.

(6) If such judgment has been entered in the records or docketed in the judgment docket in any other county than the county in which it was rendered, then a certified copy of the satisfaction may be used for any of the following purposes:

(a) Entry ~~[Entered]~~ in the register of the circuit court for such other county and the clerk of that court shall thereupon satisfy the judgment upon the records of that court.

(b) Recording ~~[A satisfaction may also be recorded]~~ in the County Clerk Lien Record in any county in which a certified copy of the judgment or lien record abstract was recorded.

(7) ~~[Unless the clerk of the court in which the judgment was rendered sooner turns over the money paid to the clerk on the judgment to the person determined by such court to be entitled thereto,]~~ The clerk shall ~~[turn the money over to the appropriate fiscal officer, who shall give the clerk duplicate receipts therefor. One of the receipts shall be filed with the papers in the case which such judgment was rendered, and the other shall be retained by the clerk. The fiscal officer~~

1 ~~shall~~} ,at any time, pay the money over to the person
2 who shall be determined to be entitled thereto by the
3 order of the court in which the judgment was {~~rendered~~}
4 given.
5
6 Section __________. ORS 29.137 is amended to read:
7
8 Amend ORS 29.137(1)(b) to change "register of actions" to
9 "judgment docket" same in (2).
10
11
12
13 BAS:klb/E3K88001.F
14 9/29/88