COUNCIL ON COURT PROCEDURES

Saturday, February 11, 1989, Meeting
9:30 a.m.

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

A G E N D A

1. Approval of minutes of meeting of January 6, 1989

2. Status report on submission to legislature (Executive Director)

3. Report of subcommittee relating to HB 2127

4. Discussion of agenda for next biennium

5. Future meeting schedule

6. NEW BUSINESS

* * * * *

P U B L I C N O T I C E

COUNCIL ON COURT PROCEDURES

Minutes of Meeting of February 11, 1989

Oregon State Bar Building

Lake Oswego Oregon

Present:	John H. Buttler	Jack L. Mattison
	Lee Johnson	J. Michael Starr
	Bernard Jolles	Laurence Thorp
	Henry Kantor	George Van Hoomissen
	R. L. Marceau	Elizabeth H. Yeats
	R. B. McConville	
Absent:	Richard L. Barron	Richard P. Noble
	L. G. Harter	Steven H. Pratt
	John V. Kelly	James E. Redman
	Winfrid Liepe	Martha Rodman
	Paul J. Lipscomb	Wm. F. Schroeder
	Douglas K. Newell	

Gene Buckle, representing the Oregon Association of Defense Counsel, J. P. Graff, representing the Oregon State Bar Procedure and Practice Committee, and Karen Hightower and R. William Linden Jr., representing the Judicial Department, were also present.

(Also present was Fredric R. Merrill, Executive Director.)

The meeting was called to order by Chairer Ronald Marceau at 9:30 a.m.

The Chairer introduced Justice Van Hoomissen, who is the new Supreme Court representative on the Council.

Agenda Item No 1. The minutes of the meeting of January 6, 1989 were unanimously approved.

Agenda Item No. 2. The Chairer reported that he had testified at a review of the rule changes submitted by the Council conducted by the Senate Judiciary Committee and that no objections were raised at that meeting. He also stated that the House Judiciary Committee had scheduled no formal review of the submission.

Agenda Item No. 3. Report of subcommittee relating to HB 2127. Letters to the Council relating to HB 2127 written by

Kirk R. Hall of the Oregon State Bar Professional Liability Fund and Timothy J. Vanagas of the Oregon Trial Lawyers Association were distributed and are attached to these minutes as Exhibits 1 and 2, respectively.

The Executive Director summarized the history of Council involvement with the 1987 summary of judgment requirement and HB 2127.

R. William Linden, the State Court Administrator, submitted a letter (attached to these minutes as Exhibit 3) and discussed the purpose behind HB 2127. He stated that the amendment of the summary of judgment provision was necessary because the present provision did not clearly indicate the form of the summary of judgment and there was no sanction for failure to comply with the requirement. He stated that other portions of the bill clarified the entry procedure for judgment, clarified the form of attorney fee and cost portions of judgments, and provided a procedure to compel satisfaction of judgment. Mr. Linden noted that the Judicial Department had accepted some suggestions of the Council's judgment subcommittee and other groups and proposed some amendments to the bill which were attached to Exhibit 3. He also stated that the Judicial Department would be willing to accept the Council's judgment subcommittee's recommendation to delete Section 2 of the bill relating to attorney fee and cost portions of judgments and submit the question of amendment of ORCP 68 to the Council for action during the next biennium.

Mr. Linden also stated that, when the Council adopted a position relating to the bill, he and the Judicial Department judgments committee would be willing to meet with Council representatives to try to work out an agreement relating to amendments to the legislature for presentation to the legislature. He also stated that the Judicial Department was willing to defer further action on the bill until this could be worked out. He, however, pointed out that the bill was scheduled for further hearing by the House Judiciary Committee on February 27, 1988.

J. P. Graff stated that the Bar Procedure and Practice Committee had not taken formal action relating to the bill but that he personally opposed it. Gene Buckles also stated that the Oregon Association of Defense Counsel had not taken formal action but that he personally opposed the bill.

Judge Mattison presented the Council's subcommittee report and stated that the subcommittee recommended reorganization of the form of Section 1 of the bill but supported the proposed elimination of the summary of judgment requirement in favor of a statutory form for money judgment and also did not recommend elimination of the sanction for non-docketing. The subcommittee also recommended deletion of Section 2 of the bill, an amendment

of ORS 23.030 (which had already been accepted by the Judicial Department) and a slight change in the time for challenging a compelled satisfaction of judgment.

The Council discussed HB 2127 at length. A number of questions were raised about the procedure for docketing and entry of judgments and the responsibilities and liabilities of clerks in this area. Judge Johnson suggested that the procedure for docketing judgments in ORS 7.040 be changed to eliminate the requirement that the amount of the judgment be docketed.

Most of the discussion related to the provision in Section 1 of the bill relating to the sanction of refusal to docket for judgments which did not contain the required form for money judgments. Larry Thorp moved, seconded by Michael Starr, that the Council recommend the last sentence of ORCP 70 A(1)(c) as set out in Section 1 of HB 2127 be eliminated. Bernard Jolles moved, seconded by Judge Buttler, that the motion be amended to state that the Council recommended that the last sentence of ORCP 70 A(1)(c) be eliminated and replaced with the following:

> "If the judgment does not comply with the requirements in subsection A(2) of this rule, it shall not be signed by the judge. If the judge signs the judgment, it shall be effective whether or not it complies with the requirements in subsection A(2) of this rule."

After further discussion, the motion passed by a vote of six in favor and four opposed, with one abstention.

To clarify the intent of the Council, Judge Johnson moved and Larry Thorp seconded that the Council go on record as opposing the sanction of refusal to docket for judgments that did not meet the required form for money judgment. That motion passed with nine in favor, one opposed, and one abstention.

Larry Thorp moved, seconded by Ron Marceau, that the Council Chairer appoint a five-person committee to review the entire area of rendition, entry, and docketing of judgments during the next biennium. The motion passed unanimously.

Judge Johnson, seconded by Larry Thorp, moved that the subcommittee recommendation that the Council recommend that Section 2 of HB 2127 be deleted and that the question of entry of attorney fee and costs as part of judgments be considered by the Council during the next biennium. The motion passed unanimously and the Executive Director was asked to prepare a report and submit a recommendation on the question to the Council as soon as possible.

The Council also unanimously agreed to support the subcommittee recommendation for the change in the form of Section

1 of HB 2127 and to extend the time for response to a motion seeking satisfaction of judgment from 14 to 28 days in proposed ORS 18.410 as set out in Section 7 of the bill.

Agenda Items 3 and 4 were deferred until the next meeting of the Council. Ron Marceau announced that the Council would meet on Saturday, March 4, 1989, at 9:30 a.m., in the State Bar Offices in Lake Oswego, Oregon. He stated that he and the Executive Director would try to meet with the Judicial Department staff regarding the Council recommendations for changes in HB 2127 before the next meeting.

The meeting adjourned at 12:10 p.m.

Respectfully submitted,

Fredric R. Merrill
Executive Director

FRM:gh

M E M O R A N D U M

January 13, 1989

TO: **COUNCIL JUDGMENT SUBCOMMITTEE:**

Jack Mattison
R.B. McConville
Martha Rodman

FROM: **Fred Merrill, Executive Director**

RE: **State Court Administrator's Committee's recommendations for modification of Rule 70**

Attached is a rough draft of HR 2127, which is the bill resulting from the proposal by the Supreme Court Administrator's Committee to change the summary of judgment requirements. As we discussed on the telephone, we have a meeting scheduled with that group at 4:00 p.m. on Thursday, January 19, 1989, in the basement conference room at the Supreme Court building in Salem.

The following are my comments on the parts of the bill that amend the ORCP. Although **SECTION** 7 of the bill deals with satisfaction of judgments, which was discussed by the Council last fall, it does not amend any ORCP and is not discussed.

SECTION 1.

70 A. Changing "labeled" as a judgment to "titled" as a judgment probably makes the requirement involved clearer.

70 A(1) through (3). This amendment eliminates the term "summary of judgment" and replaces it with a requirement that any judgment providing for the payment of money be set forth according to a set formula. If the judgment includes anything other than payment of money, this is set out first followed by a separate section, labeled as a money judgment, which must include certain information. If the judgement only involves money, the judgment must begin with the label "money judgement" and complying with the formula. Getting rid of the idea of a summary and replacing it with the underlying idea of a set form of judgment for money is probably a good idea. The concept of a summary was confusing. The procedure for preparation of the summary was unworkable.

Clarifying the amount of the money judgment is probably to everyone's benefit. The amendment does seem overly concerned with making the clerk's job simpler.

The main difficulty arises from the sanction for failure to

properly set out the words for a money judgement. The proposal states that failure to follow the money judgment formula would mean that the judgment would not be docketed in the judgment docket. It also provides that this does not affect the appealability of the judgment. Does this mean that a judgment which does not comply with the formula for money judgments would not be a judgment for purposes of enforcement by execution and res judicata effect? The answer is apparently no. The judgment is still entered. Does a judgment that can be enforced by execution, but which does not create a lien on property, make sense? Is not the execution a foreclosure of the judicial lien? Certainly for purposes of priority over other creditors, the lien is very important. Is this too stiff a sanction for a defect in form? Are there any results from failure to docket other than loss of lien?

70 B. The changes in this section must be read with amendment of ORS 7.020 which is set out in SECTION 4 of the bill. The purpose is to clarify the meaning of entry. Prior to 1985, entry meant entry in a "journal" which the clerks were required to keep pursuant to ORS 7.030 to record all proceedings of the court. Henson v. Henson, 61 Or App 210, 212-216 (1982). In 1985, the journal requirement was abolished and clerks were only required to keep a register under ORS 7.020. There is no clear statement requiring entry of the judgments in the register, but the statute says "until entry of judgment in the register" the date of filing or return of all papers and process shall be entered. With computerization, the recording practices of the clerks have changed and as shown by the Henson case, they did not keep separate journals. Some may not keep a separate register.

The amendments in this bill more clearly specify a duty to enter judgments in a register. The entry required notes the "filing" of the judgment. I think that differs from the previous requirement which was merely an entry of the judgment itself, that is, a notation of the existence of the judgment. As a practical matter, a clerk would usually only be aware of and enter the existence of a judgment when the judgment is filed.

The question is whether this could effect the existence of an enforceable judgment. The Council rejected filing, as opposed to entry of judgment, for the effective date of the judgment, because there were too many possible ambiguities with the existence and date of filing. Filing is giving to a court clerk for purpose of entering in the record. See ORCP 9. In one Oregon case, this involved giving a judgment to the judge's secretary who was also a deputy court clerk. The Council felt that entry was a more specific date because it involved an official act by the clerk making an entry in a court record. Filing may or may not be the time identified by a date stamp. Although, such stamp is required by Rule 9, there is no guarantee it is always present or accurate. In any case, entry is the key

date for appeal under ORS Chapter 19.

I do not think the amendment changes the situation. The amendment still relies upon entry as the key date. It is still the clerk's act. The only thing that worries me is whether the effectiveness of the entry is dependent on the effectiveness of the filing. Is there any way a clerk could have a judgment for purposes of entry that had not been filed? Is there any separate filing fee involved? If in fact a judgment was entered, but never filed, would the entry be ineffective if it was an entry of the filing as opposed to entry of the existence of the judgment?

SECTION 2

Section two amends the procedure for entry and enforcement of attorney fees and costs. This goes beyond the concern of the Council, which was primarily the inclusion of the costs and attorney fees in the summary. Under **SECTION 1**, costs and attorney fees are included in the money judgment statement, but only if they have been awarded at the time the statement is entered. See amendment to 70 A(2)(g). **SECTION 2** makes a substantial revision in the procedure for making costs and attorney fees part of the judgment.

Actually, the existing procedure in ORCP 68 C(4) does need some revision. It was taken from the old Deady code language which was originally drafted in 1855. The procedure provides for filing a cost bill and entry of the amount therein "as part of a judgment" upon the filing. If there are objections filed, enforcement of that part of the judgement is suspended and the court passes on the objections and directs entry of the proper judgment. Despite the language, the cases hold that, unless the costs and attorney fees are physically entered into the judgment document covering the main part of the judgement, there is a second and supplemental judgement for the costs and attorney fees. This second judgment has to be appealed separately. Appeal from the main judgment is not appeal from the costs and disbursements judgment and vice versa. After the ORCP were adopted, the legislature found it necessary to amend ORS 19.033 to provide that the trial court had jurisdiction to rule on cost bill questions and enter cost bill judgments while the main judgement was on appeal.

The correct procedure for memorializing the cost bill portion of the judgment has never been entirely clear. If the cost bill is filed before judgment is entered, the usual practice is to include the cost bill amount in the main judgment. If the cost bill is filed after the main judgment, some people leave a blank space in the main judgment document. Others submit a separate order stating that the costs and attorney fees are part of the main judgment. Others submit a separate judgment document covering the costs and attorney fees.

I think the suggested amendment does not deal adequately with the problem. The amendment:

1. Changes the time for filing cost bill and objections from 10 to 14 days.

2. Provides that, if no objection is filed, the clerk should enter the cost bill amount in the judgment docket. This does not answer how this amount becomes a judgment or part of a judgment. Is a separate judgment entered if the main judgment has already been entered? Is an order entered which becomes part of the main judgement, as provided below?

3, Provides that, where objections are filed, after the objections are disposed of: (a) if no judgment has been entered, the costs and attorney fees should be included in the main judgment; or (b) if the main judgment has been entered, the determination shall be set forth in "an order separate from the judgment". That leaves open the question of whether this subsequent order is itself a judgment and appealable and enforceable separately. ORCP 68 C(4)(f) then says that the order shall be filed and entered as if it is a judgment and becomes part of the judgment on the cause to which the amounts relate. Does this mean that a notice of appeal from the main judgment is also an appeal of the later cost judgment? That is not the present situation. What if the notice of appeal is filed before the cost and attorney fee order is entered? Can the cost order become part of an appeal filed before it was entered?

I like the idea that the costs and attorney fee portion of the judgment does not become enforceable or appealable until either the time for objections expires or timely objections are filed and determined. The rule should, however, clearly distinguish between situations where the costs and disbursements become final before or after the main judgment.

A cost and attorney fee claim could become final before entry of the main judgment where: (a) a cost bill has been filed 14 days before entry of the main judgment and no objection has been filed; and (b) a cost bill has been filed, objections have been filed, and the court has ruled on the objections--all before entry of the main judgment. In those two cases, the costs and attorney fees should be included in the money portion of the main judgment. A notice of appeal from that judgment would also appeal the costs and attorney fees award.

In all other cases the rule should specify that a separate "judgment" for costs and attorney fees should be entered. In other words, if the main judgment were entered less than 14 days after the cost bill were filed, or objections to the cost bill were filed but not disposed of prior to entry of the main

judgment, a separate document titled judgment would be required for the costs and attorney fees. This would be entered separately and the amount would not be included in the money statement of the main judgment. It would be a separate money judgment and require a separate compliance with the formula for money judgments. A separate notice of appeal would be required for this judgment. This latter procedure is awkward, but would avoid any ambiguity.

If the procedure is to be cleaned up, I have a couple of other suggestions:

(a) Why does the cost bill have to be verified? The objections do not have to be verified, nor does any other pleading or paper have to be verified.

(b) Why is the time limit on the cost bill and objections only satisfied by filing and serving the cost bill and objection? Most time limits subsequent to service of summons are satisfied by filing a document, not by serving it. It makes sense to have the time for objections begin with service of the cost bill, but why require service of the objections to satisfy the time limit? Why require the cost bill to be served within 14 days after entry of judgment as opposed to being filed within 14 days of entry?

FRM:gh

Enclosure: Draft of bill

cc: Karen Hightower
Ron Marceau

HB 2127

LC 1370
Rough Draft
11/10/88 (js/JV)

D R A F T

RECEIVED
NOV 17 1988

SUMMARY

Modifies certain requirements relating to judgments.

A BILL FOR AN ACT

Relating to courts; amending ORS 7.010, 7.020, 7.040, 18.320, 18.410, 24.125 and ORCP 68 C. and 70; and repealing ORS 7.050.

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

SECTION 1. ORCP 70 is amended to read:

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.(1)(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 69 B.(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** [*section 70*] **subsection 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 70*] **paragraph** A.(1)(c) of this rule, a judgment [*shall*]**for the**

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

payment of money must 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. [*These*] The requirements [*relating to a summary*] of this part are not jurisdictional for purposes of appellate review. [*and are subject to*] The requirements [*under section 70 A.(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)*] (f) For judgments that accrue on a periodic basis, any accrued arrearages, required further payments per period and accrual dates.

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 68 C.

[*A.(3) Submitting and certifying summary. The following apply to the summary described under section 70 A.(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.*]

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

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.

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

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.

A.(3)(d) The requirements under subsection A.(2) of this rule must be presented in the same order as set forth in that subsection.

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 section 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 9 B. The proposed form of judgment shall be filed and proof of service made in accordance with Rule 9 C.

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 2. ORCP 68 C. is amended to read:

C. Award of and entry of judgment for attorney fees and costs and disbursements.

C.(1) Application of this section to award of attorney fees. Notwithstanding Rule 1 A. and the procedure provided in any rule or statute permitting recovery of attorney fees in a particular case, this section governs the pleading, proof, and award of attorney fees in all cases, regardless of the source of the right to recovery of such fees, except where:

C.(1)(a) ORS 105.405 (2) or 107.105 (1)(i) provide the substantive right to such items; or

C.(1)(b) Such items are claimed as damages arising prior to the action; or

C.(1)(c) Such items are granted by order, rather than entered as part of a judgment.

C.(2) Asserting claim for attorney fees. A party seeking attorney fees shall assert the right to recover such fees by alleging the facts, statute, or rule which provides a basis for the award of such fees in a pleading filed by that party. A party shall not be required to allege a right to a specific amount of attorney fees; an allegation that a party is entitled to "reasonable attorney fees" is sufficient. If a party does not file a pleading and seeks judgment or dismissal by motion, a right to attorney fees shall be asserted by a demand for attorney fees in such motion, in substantially similar form to the allegations required by this subsection. Such allegation shall be taken as substantially denied and no responsive pleading shall be necessary. Attorney fees may be sought before the substantive right to recover such fees accrues. No attorney fees shall be awarded unless a right to recover such fee is asserted as provided in this subsection.

C.(3) Proof. The items of attorney fees and costs and disbursements shall be submitted in the manner provided by subsection (4) of this section, without proof being offered during the trial.

[*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 9 B., 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; and*]

[*C.(4)(a)(ii) Files the original statement and proof of service, if any, in accordance with Rule 9 C., 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 a 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 disbursements 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 9 C.; and

C.(4)(a)(ii) Serve, in accordance with Rule 9 B., 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 subparagraph (ii) of paragraph (a) 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 are 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 disbursements, 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 70 B.(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[. *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*] on the cause to which the award of attorney fees and costs and disbursements relates on entry thereof and not before.

C.(6) Avoidance of multiple collection of attorney fees and costs and disbursements.

C.(6)(a) Separate judgments for separate claims. Where separate final judgments are granted in one action for separate claims, pursuant to Rule 67 B., the court shall take such steps as necessary to avoid the multiple taxation of the same attorney fees and costs and disbursements in more than one such judgment.

C.(6)(b) Separate judgments for the same claim. When there are separate judgments entered for one claim (where separate actions are brought for the same claim against several parties who might have been joined as parties in the same action, or where pursuant to Rule 67 B. separate final judgments are entered against several parties for the same claim), attorney fees and costs and disbursements may be entered in each such judgment as provided in this rule, but satisfaction of one such judgment shall bar recovery of attorney fees or costs and disbursements included in all other judgments.

SECTION 3. ORS 7.010 is amended to read:

7.010. (1) The records of the circuit, district and county courts include a register, judgment docket[, *execution docket*] and jury register.

(2) The record of the Supreme Court and the Court of Appeals is a register.

(3) All references in this chapter to the clerk or court administrator relate to the office of the clerk or court administrator of the appropriate trial or appellate court.

SECTION 4. 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 [*thereof, the*] of any 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 of the court in or concerning such action, suit or proceeding.

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

SECTION 5. 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 (b) of subsection (1) 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 70 A.(2) and (3).

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

SECTION 6. 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 70 A.(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 70 A.(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 debtor in that county.

SECTION 7. 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 (b) of subsection (2) 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 seven 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 ren-

dered, 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 in which such judgment was rendered, and the other shall be retained by the clerk. The fiscal officer shall*] **The clerk shall,** at any time, pay the money over to the person who shall be determined to be entitled thereto by the order of the court in which the judgment was [*rendered*] **given.**

SECTION 8. ORS 24.125 is amended to read:

24.125. (1) At the time of the filing of the foreign judgment, the judgment creditor or the creditor's lawyer shall make and file with the clerk of the court an affidavit setting forth the names and last-known post-office addresses of the judgment debtor and the judgment creditor, together with a [*summary*] **separate statement containing the information** required to be **contained in a judgment** under ORCP 70 A.

(2) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post-office address of the judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the

clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

(3) No execution or other process for enforcement of a foreign judgment filed pursuant to ORS 24.105 to 24.125, 24.135 and 24.155 to 24.175, except a judgment, decree or order of a court of the United States, shall issue until five days after the date the judgment, **affidavit and separate statement** [*and summary*] required [*under ORCP 70 A.*] **in subsection (1) of this section** are filed.

SECTION 9. ORS 7.050 is repealed.

M E M O R A D U M

January 20, 1989

TO: MEMBERS, COUNCIL ON COURT PROCEDURES

FROM: Fred Merrill, Executive Director

RE: FEBRUARY 4, 1989 MEETING AND AGENDA FOR 1989-1991 BIENNIUM

Enclosed is a copy of the final submission with transmittal letter which was furnished to the legislature at the commencement of the legislative session. Also enclosed are the minutes of our meeting held January 6, 1989 and an agenda for our meeting on February 4, 1989.

I am also enclosing a copy of a draft of HB 2127, which is the bill that contains the State Court Administrator's requested amendments to ORCP 68 and 70. The Council subcommittee charged with consideration of this proposal is meeting with the State Court Administrator's committee this week and will submit a report at the February 4, 1989 meeting.

The following are matters which were either deferred from the last biennium or which have been suggested for consideration next biennium:

1. Taking the word "resident" (attorney) out of ORCP 7 B. This was inadvertently deferred because of the change in the Executive Director. When I went back to check the minutes for matters which had been put over, I found the minutes of November 7, 1987. At that meeting, the Council had tentatively voted to make this change. It got lost and was not included in our formal promulgation process. We should probably do it this biennium.

2. Liepe proposal relating to satisfaction of judgments. (attached to September 17, 1988 minutes). This may not be necessary if HB 2127 passes.

3. Review of problems in ORCP 21-24. Four problems presented by cases in the appellate courts were presented in my memorandum of September 9, 1988 (copy attached) and were deferred until the next biennium at the September 17, 1988 meeting.

4. Review of ORCP 7 D(4)(a). In the course of clarifying the form of supplementary mailing in the motor vehicle service rule, a number of other problems were suggested and put off until the next biennium. In December, Judge Buttler, Judge Johnson and Mike Starr were appointed as a special subcommittee to review the rule.

5. Elimination of inconsistency relating to serving summons on minors and incapacitated persons in ORCP 7 D and 27 B (Warren Deras letter of October 17, 1988).

6. Proposal by Pete Wells to include mental health clinics in hospital subpoena provisions (letter of December 27, 1988).

7. Relationship between unplead noneconomic damages and the amount of the judgment. I have received three more telephone contacts relating to the question of the relationship between a statement of the amount of noneconomic damages claimed and the amount recoverable. I believe the Council discussed a written inquiry relating to this from Bob Newell, but I am not sure whether the Council decided to do nothing or defer consideration.

8. FAX service. The increase in use of facsimile transmission of documents may raise some questions of the validity of service by such means. We should look at Rules 7 and 9 to determine if any changes will be required.

Encs.

M E M O R A N D U M

January 23, 1989

TO: **JUDGMENTS SUBCOMMITTEE:**

Jack Mattison
R. B. McConville
Martha Rodman

FROM: Fred Merrill, Executive Director

Gilma Henthorne is arranging a conference call for us on Thursday, January 26, 1989, at 4:30 p.m. Please have someone available to answer your telephone from 4:20 on.

Based on our meeting yesterday, I think we should suggest that the Council recommend some changes in the bill submitted. As a beginning point for discussion, I would suggest the following:

SECTION 1. We probably should concur in the recommendation to change the summary of judgment requirement. The need to do something about this summary of judgment mess outweighs the problem that this amendment has not been widely disseminated and discussed.

Their proposal should be reorganized as follows:

ELIMINATE A(1)(b) AND A(1)(c), PAGE 1. (CHECK THAT)

CHANGE THE MATERIAL ON PAGE 2 AND 3 AS FOLLOWS:

A.(2) **Money judgments**.

A.(2)(a) **Contents**. Money judgments shall include all of the following:

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

A.(2)(a)(ii) The name of the judgment debtor.

A.(2)(a)(iii) The amount of the Judgment.

A.(2)(a)(iv) 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)(a)(v) 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)(a)(vi) For judgments that accrue on a periodic basis, any accrued arrearages, required further payments per period and accrual dates.

A.(2)(a)(vii) If the judgment awards costs and disbursements or attorney fees, that they are awarded and any specific amounts awarded. This subparagraph does not require inclusion of specific amounts when such will be determined later under Rule 68 C.

A.(2)(b) **Form**. To comply with the requirements of paragraph A(2)(a) of this rule, the requirements in that paragraph must be presented in a manner that complies with all of the following:

A.(2)(b)(1) 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 paragraph A.(2)(a) of this rule.

A.(2)(b)(ii) The separate section must be clearly labeled at its beginning as a money judgment.

A.(2)(b)(iii) The separate section must contain no other provisions except what is specifically required by this rule for judgments for the payment of money.

A(2)(b)(iv) the requirements under paragraph A(2)(a) of this rule must be presented in the same order as set forth in that paragraph.

A.(2)(c) **Failure to set out money judgment correctly**. If the judgment does not comply with the requirements of this subsection, it shall not be docketed in the judgment docket as provided under ORS 18.320 unless the clerk is specifically ordered to docket the judgment by the court.

The most difficult question is the sanction they are proposing. You will note that I added the escape by court order

possibility to the rule in A(2)(c). They have it buried in ORS 18.230. Even with that, I am still bothered by a judgment that is effective and appealable but does not create a lien.

In addition to losing the priority that would come from the lien, at least for the period of time necessary to correct the form of the judgment, there seems to be a real question whether a valid writ of execution could be issued without docketing. As Martha Rodman pointed out at the meeting, ORS 23.030 says a writ of execution can issue "as long as the judgment remains a lien". The judgment would apparently support a writ of garnishment under ORCP 29 because there is no equivalent language referring to a lien.

It is not clear whether ORS 23.030 would in fact bar a writ of execution on a judgment that was never docketed. On one hand, the language seems to indicate not. If the judgment is not docketed, it is never a lien. The language was, however, put in the section in 1953 by the ORS revisor simply to indicate that the execution could only be issued when a judgment was effective under ORS 18.160, which provides for an effective period of ten years with renewal for another ten years. The revisor's notes say, "The phrase concerning the judgment remaining a lien has been inserted to make clear that the period during which an execution may be issued is limited according to 18.360." Under the original statute, which was thus "revised" without any legislative action, it had been held that all that was necessary for issuance of an execution was entry, not docketing of a judgment. **King v. French**, 2 Sawy 441, 14 Fed Cases 523 (1873), and **Catlin v. Hoffman**, 2 Sawy 441, 5 Fed Cases 307 (1974).

The language does raise the possibility that, not only would the attorney failing to comply with the money judgment requirement lose the lien, they might end up getting an improper execution issued. All in all, the sanction provision seems to me far too much for the clerk's benefit at the expense of malpractice exposure for the attorney. The requirement of the form of money judgment could stand alone without any particular sanction. None of the other requirements for judgments have any similar sanction. If some clerk does not want to accept a judgment that does not comply with the form, they could present the problem to the court. Despite what Judge Hargreaves said, I believe it is very much the judge's responsibility to see that this very important document is correct. Maybe we ought to amend ORCP 70 C by making the first sentence say, "The judge signing a judgment shall determine that the judgment is correct in form and content. Attorneys shall submit (etc.)"

SECTION 2. I personally believe that this should be deferred and the Council should look at the problem of inclusion of costs and attorney fees in judgments. As I stated in the earlier memorandum, there is a problem but their bill does not

really solve it. They seemed to admit that in the meeting. The proposal may read better, but it still leaves open when and how the cost judgment is part of the original judgment and when it is not. The possibility that it should always be separate merits detailed consideration. The language drafted would be a good beginning point. The change to Rule 68 is not necessary to carry out the amendment to Rule 70 relating to summary of judgment. We have struggled along with the present language since 1855 and can last two more years.

SECTION 7. As suggested by Martha Rodman, 14 days should be changed to 28 days in 18.410(3) and the words "summary fashion" should be eliminated from 18.410(4).

M E M O R A N D U M

January 27, 1989

TO: MEMBERS, COUNCIL ON COURT PROCEDURES

FROM: JUDGMENTS SUBCOMMITTEE:

Judge Mattison
Judge McConville
Martha Rodman

RE: HB 2127

After meeting with the Supreme Court Administrator's judgment committee and after consideration of their recommendations which are pending before the legislature as HB 2127, the subcomittee suggests that the Council recommend the following changes to the bill:

SECTION 1. Although one subcommittee member felt that the effect of prohibiting docketing of judgments had not been sufficiently considered by the bench and bar, the subcommittee recommends that the Council support the substance of SECTION 1 of the Bill. This section amends ORCP 70 to eliminate the idea of "summary of judgment" which was added during the last legislative session and to clarify the meaning of "entry" of judgment. The amendment would substitute a requirement of a statutory form for money judgments instead of referring to a summary. Any money judgement which did not comply with the statutory form would not be docketed in the judgment docket, but still would be entered in the register and be appealable.

The subcommittee feels that the language used in SECTION 1 of the bill to amend ORCP 70 A and eliminate the summary requirement is very awkward. It recommends that the language amending ORCP 70 A be changed to read as follows:

SECTION 1. ORCP 70 is amended to read:

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.(1)(a) Specify clearly the party or parties in whose favor

it is given and against whom it is given and the relief ranted 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 69 B.(1), by the clerk.

[A.(1)(c) If the judgment provides for the payment of money, contain a summary of the type described in section 70 of this rule.]

A.(2) [Summary.] Money judgments. [When required under section 70 A.(1)(c) of this rule a judgment shall comply with the requirements of this part. These requirements relating to a summary are not jurisdictional for purposes of appellate review and are subject to the requirements under section 70 A.(3) of this rule. A summary shall include all of the following:]

A.(2)(a) Contents. Money judgments shall include all of the following:

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

A.(2)(a)(ii) The name of the judgment debtor.

A.(2)(a)(iii) The amount of the judgment.

A.(2)(a)(iv) 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)(a)(v) 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)(a)(vi) For judgments that accrue on a periodic basis, any accrued arrearages, required further payments per period and accrual dates.

A.(2)(a)(vii) 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 68 C.

A.(2)(b) Form. To comply with the requirements of paragraph A.(2)(a) of this rule, the requirements in that paragraph must be presented in a manner that complies with all of the following:

A.(2)(b)(i) 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 paragraph A.(2)(a) of this rule.

A.(2)(b)(ii) The separate section must be clearly labeled at its beginning as a money judgment.

A.(2)(b)(iii) The separate section must contain no other provisions except what is specifically required by this rule for judgments for the payment of money.

A.(2)(b)(iv) The requirements under paragraph A.(2)(a) of this rule must be presented in the same order as set forth in that paragraph.

A.(2)(c) Failure to set out mony judgment correctly. If the judgment does not compy with the requirements of this subsection, it may be entered in the register but it shall not be docketed in the judgment docket as provided in ORS 16.320 unless the clerk is specifically ordered to docket the judgment by the court.

[A.(3) Submitting and certifying summary. The following apply to the summary described under section 70 A.(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.]

In addition to simplifying the language used in the bill, the subcommittee recommendation also adds control of the decision to docket by the court at the end of ORCP 70 A(2)(c). The bill would insert the same provision in ORS 18.320 (see SECTION 6). The subcommittee feels it also should be set out in the rule.

SECTION 2

This section would change the language of ORCP 68 C relating to entry of cost and disbursement and attorney fee awards as part of judgment. The subcommittee recommends that the Council

support elimination of this section from the Bill and submission of the suggested amendment to the Council for consideration during the next biennium. The subcommittee recognizes that there is a problem in this area. The suggested amendment does not, however, solve the problem and needs detailed examination by the bench and bar.

The following should be added as SECTION 2:

"ORS 23.030 is amended to read:

23.030 The party in whose favor a judgment is given, which requires the payment of money, the delivery of real or personal property, or either of them, may at any time after the entry thereof, and so long as the judgment remains [a lien] **in effect**, have a writ of execution issued for its enforcement. In the case of real property, upon issuance of the writ, the party requesting the writ shall have a certified copy of the writ or an abstract of the writ recorded in the County Clerk Lien Record of the county in which the real property is located."

This amendment is necessary to avoid any possibility that failure to docket a judgment would make it impossible to enforce it by writ of execution. The ORS revisor added the reference to remaining a lien 1953 without any legislative action. The intent stated was to make clear that an execution was only available as long as a judgment was effective under ORS 18.160. Despite the fact that early cases hold that a writ of execution could be issued based upon entry without docketing, the revisor's language raises a possible argument that a judgment not docketed is not enforcable by writ of execution.

SECTION 7

This section deals with procedure for compelling satisfaction of judgment. The subcommittee recommends that the Council support amendment of the proposed ORS 18.410 (3) to increase the time for response to a motion seeking satisfaction of judgment from "14" to "28" days. The subcommittee was also concerned about the use of the words "summary fashion" to describe the hearing in proposed ORS 18.410(4). It asks that the Council consider the possible meaning of this limitation and whether it could affect the party's ability to present their position to the court.

PRESENTATION OF SUGGESTIONS

The Court Administrator's committee stated that they no longer had control over the Bill and any modification was up to the Chief Justice and the Court Administrator. The subcommittee recommends that the Council chairer, members of the subcommittee, and the Executive Director meet with the Chief Justice and Court

Adminstrator. If possible, they should work out an agreement for modification of the Bill and presentation of amendments to ORCP 68 to the Council next biennium.

COUNCIL ON COURT PROCEDURES
University of Oregon School of Law
Eugene, OR 97403

December 21, 1988

William Taylor
Legislative Counsel
Interim Judiciary Committee
State Capitol Building
Salem, Oregon 97310

Dear Mr. Taylor:

I am the Executive Director of the Council on Court Procedures. As you probably know, the Council has rulemaking authority relating to rules of civil procedure. The Council has promulgated some amendments to the rules which will be submitted to the legislature for review as required by ORS 1.745. The Council is having one more meeting before the Legislative Session to consider two more possible amendments. I will furnish you with a copy of the material that is submitted to the Legislature.

One of the amendments promulgated by the Council is to Rule 71 and relates to the procedure to be followed when a Rule 71 motion to vacate a judgment is filed during the period that the case is on appeal. The Council worked with the Supreme Court and Court Administrator's Office to develop an acceptable procedure. One element of the procedure developed is the amendment of ORS 19.033 to provide that trial courts have jurisdiction to pass on motions to vacate during the pendency of appeal. The Council has recommended this as a bill for the legislature. The Council does not have power to promulgate rules relating to jurisdiction of the trial courts.

I contacted Bob Oleson at the State Bar relating to the possibility of pre-session filing for the suggested bill with the rest of the Bar bills. He said at this point he would suggest that the bill be sent to you. As I understand it, the best procedure would be to have legislative counsel prepare it as a Judiciary Committee bill for submission at an early meeting. I am sending the bill directly to you rather than to Bob to expedite the process. I am not sure it is in absolutely correct form, but I am sure that legislative counsel will see what is intended.

If I can provide any further information about this, please contact me.

Very truly yours,

Fredric R. Merrill
Executive Director, COUNCIL ON
COURT PROCEDURES

FRM:gh
Enc.

cc: Ron Marceau
Bob Oleson
Senator Tom Mason
Representative Dick Springer

RECOMMENDED STATUTORY AMENDMENT

A BILL FOR AN ACT

Relating to administrative procedures of state agencies; amending ORS 19.033

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

ORS 19.033 is amended to read as follows:

* * * *

(4) Notwithstanding the filing of a notice of appeal, the trial court shall have jurisdiction[,]:

(a) With leave of the appellate court, to enter an appealable judgment if the appellate court determines that:

[(a)] **(i)** At the time of the filing of the notice of appeal the trial court intended to enter an appealable judgment; and

[(b)] **(ii)** The judgment from which the appeal is taken is defective in form or was entered at a time when the trial court did not have jurisdiction of the cause under subsection (1) of this section, or the trial court had not yet entered an appealable judgment.

(b) To enter an order under ORCP 71.

* * * *

UMATILLA COUNTY BOARD OF COMMISSIONERS
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Deborah Warlick
PERSONNEL DIRECTOR

December 27, 1988

Council on Court Procedures
University of Oregon School of Law
Eugene, Oregon 97403

Re: Proposed Amendments to ORCP 44 and 55

Dear Council and Staff:

I see in the Oregon State Bar publication "For the Record", December, 1988, that amendments are being proposed for ORCP 44 and 55.

I suggest that it may also be appropriate, with either these amendments or with future amendments, to provide that the provisions of ORCP 55H also apply to mental health clinics.

The Umatilla County Mental Health Program has been the subject of approximately 43 subpoenas duces tecum in the past fourteen months. The language of the subpoenas usually require the personal appearance of the records custodian in Portland, 210 miles from the site of treatment. It is only through the good graces of the issuing attorney that we have usually been permitted to appear through delivery of records only. I submit that the submission of records without the personal appearance of the records custodian is appropriate for mental health programs organized under ORS 430.610 to 430.700.

Very truly yours,

Peter H. Wells

Hi Members, Council on Court Procedures

R. WILLIAM LINDEN, JR.
State Court Administrator

(503) 37
FAX (503) 37

JUDICIAL DEPARTMENT
Supreme Court Building
Salem, Oregon 97310

December 29, 1988

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

Dear Mr. Merrill:

Attached is a copy of the rough agenda for the Uniform Trial Court Rules Committee meeting on January 13, 1989. I am sending you this agenda because of your interest in court practices and because the UTCR Committee is trying to increase awareness of and participation in the trial court rules process. If you have matters of concern that you would like the Committee to consider either in this year's cycle or in the next cycle of court rule adoption and review, please consider yourself invited to contribute information or concerns or attend meetings.

The following will be the 1989 meeting dates for the Committee and a rough explanation of what will be considered at those meetings:

January 13	Meet to recommend changes to the UTCR for the Chief Justice for the next year. Meeting to be at the Eugene Hilton.
April 29	Meeting to review public comment on proposed changes. Meeting to be at Portland Marriott, if possible.
October 20/21	Meeting to review Supplemental Local Rules. Place to be announced. October 21 will probably be necessary to complete SLR review and may be used to start projects for following year.

Any suggestions or concerns can be mailed directly to me, and I will make sure they are forwarded to the Committee. I know the Committee looks forward to increasing public participation and to

an increasing working relationship with organizations, like yours, that take an interest in the day-to-day workings of courts that are controlled by court rules.

If you have any questions, feel free to call (378-6046).

Sincerely,

Bradd A Swank

Bradd A Swank
Management/Legal Analyst

BAS:sh/E3S88039.F

Attachment

cc: Honorable Edwin J. Peterson
Paul Connolly

R. WILLIAM LINDEN, JR.
State Court Administrator

(503) 37
FAX (503) 37

JUDICIAL DEPARTMENT
Supreme Court Building
Salem, Oregon 97310

December 29, 1988

MEMORANDUM

TO: Members of the UTCR Committee

FROM: Bradd A Swank BAS ak
Management/Legal Analyst

RE: January 13, 1988, UTCR Meeting and Other Miscellaneous Matters

The next UTCR Committee meeting will be on January 13, 1989, at 9:00 a.m. at the Downtown Hilton, Eugene, Oregon. You can find the Hilton in the center of the city next to the Hult Center. Its address is 66 E. 6th. If you need to make reservations when you receive this letter, the reservation number at the Hilton is 1-800-445-8667.

An agenda and other miscellaneous items of information are attached. This may not be the complete agenda because there still may be some items floating around out there. It does, however, represent what I have in my files at the moment.

In addition to the attached information, you will be receiving a copy of the minutes from the October meeting either before or at the next meeting and an indication of what the Chief Justice did with your recommendations. I will send you copies of any other materials I receive before the next meeting or bring them to the meeting.

If you have any questions or want to add to the agenda, please contact me at 378-6046 in Salem.

BAS:sh/E3S88040.F
Attachments
cc/att: Honorable Edwin J. Peterson
R. William Linden, Jr.
Kingsley Click

I. AGENDA ITEMS FOR 1-13-89

The Committee will discuss and may make recommendations to the Chief Justice concerning adoption of proposed Uniform Trial Court Rules in the following areas during the next UTCR cycle:

1. Supplementary Local Court Rules (SLR) for inclusion as UTCR:

   a. Clatsop District SLR 2.075, SEE ATTACHMENT A.

   b. Coos/Curry (15th Judicial District) SLR 5.065. It was suggested that this could be the basis for a presumptive UTCR that could be in effect unless there was an SLR. SEE ATTACHMENT B.

   c. Lane Circuit SLR 2.075. SEE ATTACHMENT C.

2. Treatment of traffic cases in UTCR and SLR. During the October review of SLR the Committee noted that a number of courts adopted SLR relating to their treatment of traffic cases. These SLR were intermixed along with other SLR in existing chapters. The UTCR does not apply to infractions, see UTCR 1.010(3), and the Committee thought it might confuse attorneys to find material relating to traffic infractions in the middle of a chapter that in the UTCR are unrelated to traffic offenses. The UTCR Committee suggested it might want to consider setting aside a particular chapter for traffic matters so that there would be uniformity about where they were placed. It would need to be a chapter that is not now used by the UTCR.

3. UTCR 6.020(3) and when attorneys should notify court of a settlement. UTCR 6.020(3) requires parties to a civil action to notify the court of a settlement before 5:00 p.m. of the last judicial day preceding a jury trial. Several SLR were disapproved because they moved this time up to 3:00 p.m. or 4:00 p.m. the day before in order to give clerks the time to notify jurors and do other paperwork. The Chief Justice suggested that the UTCR Committee review this rule to consider moving the time up so that clerks would have some time to do their work on the previous day, making matters a little more convenient for clerks and jurors.

4. UTCR 4.020, is it necessary after changes to ORS 135.055(3).

5. UTCR requirement under UTCR 1.050(2) for courts to adopt scheduling and notification SLR. This was item 2 from October meeting. Discussion of UTCR 1.050(2). What to do? The Committee wanted to work on a uniform rule that will apply unless local courts adopt an SLR.

6. 35-day rule for criminal cases under UTCR 7.010. This was item 3 from October meeting. Discussion of UTCR 7.010 and what to do. Committee study to see how it is affecting courts. The Committee would like to have the Trial Court Programs Division do a study. The Chair will decide on a subcommittee to follow this.

7. Creating UTCR and SLR awareness. This was item 4 from October meeting. Discussion of creating UTCR and SLR awareness? Should the Committee develop a pamphlet to let courts know more about the procedures?

8. Issues left over from October:

   a. URESA form compliance with UTCR. SEE ATTACHMENT D.

   b. Possible conflict between UTCR 7.010 and 4.010. August 30, 1988, letter from Chief Justice concerning possible conflict between UTCR 7.010 and 4.010. SEE ATTACHMENT E.

   c. Notice and deadlines under UTCR 5.030, 7.020(3) and 8.050(3). October 4, 1988, letter from Mark Thorburn concerning UTCR 5.030, 7.020(3) and 8.050(3). SEE ATTACHMENT F.

   d. UTCR notice and change of venue. October 5, 1988, memo on UTCR issues. SEE ATTACHMENT G.

   e. UTCR 5.020 and tendering of proposed motions. October 6, 1988, memo from Chief Justice on UTCR 5.020. SEE ATTACHMENT H.

9. Other suggestions:

   a. Proposed rule on trial settings and postponements from OTLA/OADC. SEE ATTACHMENT I and response letter from Chair Connolly, ATTACHMENT J.

   b. UTCR 9.090 (4), notice and cost required. SEE ATTACHMENT K, letter from Judge Lee Johnson explaining problem and ATTACHMENT L, letter from Walter Pendergrass.

   c. Proposed amendments to Uniform Support Affidavit. See ATTACHMENT M, letter from Debbie F. Craig proposing amendments and ATTACHMENT N, article on proposed amendments.

   d. Procedures for Use of Hazardous Substance. See ATTACHMENT O, letter from Paul Connolly and attached proposal.

e. Suggested problems with UTCR 13.170 and 13.190 relating to proof and exhibits in arbitration cases. See ATTACHMENT P, letter from Peter E. Baer.

10. Other suggestions, recommendations and comments received since mailing agenda.

WINDSOR CALKINS
WIN CALKINS

S M CALKINS
1872-1969
W W CALKINS
1860-1946

CALKINS & CALKINS
LAWYERS
1163 OLIVE STREET
EUGENE, OREGON 97401-3577
TELEPHONE (503) 345-0371

January 3, 1989

Honorable Winfrid K. Liepe
District Judge
Lane County Courthouse
Eugene, OR 97401

Re: ORCP 44 and 55 - Hospital Records

Dear Judge Liepe:

I am in receipt of the copy of the new proposal on changes of Rule 55 and Rule 44.

A question occurred to me in reading Section 55 H(2) in that there may be an undistributed middle category. The language assumes that there are only two categories, one where disclosure is restricted by law, and two, all other cases. It occurs to me that there may be another category in which the records are somehow restricted by law but also may be obtained by subpoena. Would it be better to consolidate these two sentences to read as follows:

> "Unless otherwise restricted by law, hospital records may be obtained by subpoena duces tecum as provided in this section."

} Better language

I had a question with respect to 55 H(2)(d). This new provision will provide more expense for litigants in that in every case certified mail, return receipt requested, will be required and proof of service of summons will be required. I question whether certified mail should be required in this instance. Also, shouldn't it be sufficient to have a normal certificate of attorney mailing? ~~No notary~~

One further point that might be considered is that I would guess that this discovery device will continue to be quite prevalent in injury cases.. This new procedure will require new proof of service filings in the trial court file. Would it be beneficial to the trial court files to provide that proof of service for hospital records does not have to be filed in the trial court file?

Very truly yours,

Win Calkins

Win:rr

OUR FILE NO.

HUGH B. COLLINS
ATTORNEY AT LAW
835 EAST MAIN STREET
BOX 1764
MEDFORD, OREGON 97501-0138

(503) 772-9034

January 21, 1989

Professor Fredric R. Merrill
University of Oregon
School of Law
Eugene, OR 97403

Re: An addition to ORCP

Dear Professor Merrill:

Enclosed is what started out as a proposed addition to UCTR, but which temporarily halted at the jurisdictional borderland separating the UCTR Committee and the Council on Court Procedures. Would you please submit it to the Council for consideration?

My suggestion is that the following portion of the first sentence of the enclosure be adopted as an addition to ORCP 21A:

> Whenever any defense enumerated in ORCP 21A is asserted in a responsive pleading the court may, and on motion of any party shall, enter an order that such defense be heard and determined as a motion.

The remainder of the enclosed suggestion seems suited to UCTR.

Sincerely,

Hugh B. Collins

Enc

cc:
Hon Allan H. Coon
Josephine County District Court
Josephine County Courthouse
Grants pass, OR 97526

HUGH B. COLLINS
ATTORNEY AT LAW
835 EAST MAIN STREET
BOX 1764
MEDFORD, OREGON 97501-0138
(503) 772-9034

OUR FILE NO.

January 6, 1989

Hon. Allan H. Coon
Josephine County District Court
Josephine County Courthouse
Grants Pass, OR 97526

Re: UCTR

Dear Judge Coon:

Enclosed is a proposed addition to UCTR, which I'd appreciate your proposing to the UCTR Committee for adoption.

The enclosure is designed to prevent surprises at trial resulting from the occasionally overlooked ORCP 21 defense in a pleading.

Sincerely,

HUGH B. COLLINS/drs

Enc.

bcc: (w/Enc.)
Hon Edwin J. Peterson
Chief Justice
Supreme Court Building
Salem, OR 97310

Whenever any defense enumerated in ORCP 21A is asserted in a responsive pleading the trial court may, and on motion of any party shall, enter an order that such defense be heard and determined as a motion in accordance with the procedure specified in UCTR 5.010 through UCTR 5.060 inclusive. The party asserting the defense must serve and file a supporting memorandum of law or a statement of points and authorities within 20 days from the date of such order; the adverse party has 20 days from the service of such supporting memorandum or statement within which to respond; and the proponent has 10 days from the date of service of said responding memorandum or statement within which to reply; the trial court may by order enlarge or reduce any said time.

State of Oregon
Josephine County Circuit and District Courts

January 19, 1989

Mr. Hugh B. Collins
Attorney at Law
835 E Main Street
Medford, OR 97501

RE: UTCR Committee

Dear Hugh:

I received your letter of January 6, 1989 along with your proposed addition to the Uniform Trial Court Rules. I presented your proposal to the UTCR Committee on January 13, 1989; however, no action was taken.

Since your proposal appeared to have merit, the Committee asked me to convey their reasoning to you and perhaps suggest your next step. The Committee felt that your issue would be more properly addressed in the ORCP rather than the UTCR. The Committee is very sensitive to avoid an improper intrusion into statutory procedures and it was felt that your request would constitute such an intrusion if it was incorporated in Uniform Trial Court Rules.

It was suggested that you refer your proposal to the Counsel on Court Procedures, specifically, you may direct your proposal to Professor Fred Merrill at his office at the University of Oregon School of Law. It's my understanding that their proposals had to be made to the present legislature by early January; therefore, any referrals to the Counsel on Court Procedures Committee will not be considered by this legislature. If that is a concern for you, the UTCR Committee felt you might wish to contact your legislative representative for consideration in this legislative session.

On a personal note, I apologize for what appears to be "buck passing" of your request. However, I do see the UTCR Committee's position and I wish you well in your efforts.

Very truly yours,

Allan H. Coon

Allan H. Coon
Presiding District Court Judge

AHC:mp

MARK W. HINNEN, TRIAL COURT ADMINISTRATOR
(503) 474-5181 • JOSEPHINE COUNTY COURTHOUSE • Grants Pass, OR 97526

HUGH B. COLLINS
ATTORNEY AT LAW
835 EAST MAIN STREET
BOX 1764
MEDFORD, OREGON 97501-0138
(503) 772-9034

OUR FILE NO.

January 23, 1989

Professor Fredric R. Merrill
University of Oregon School of Law
Eugene, OR 97403

Re: ORCP

Dear Professor Merrill:

Enclosed is a specimen of a suggested paragraph F to be added to ORCP 69.

Also enclosed is a suggested paragraph D.(4)(a)(iv) for addition to ORCP 7.

These are designed to make it easier on defending attorneys to appear for their clients in an orderly manner. At present, there's an increasing tendency among attorneys to withhold filing proof of service unless it becomes necessary to file it in order to obtain a default.

An increasing number of attorneys is resorting to DMV service in motor vehicle cases, without any attempt at personal or primary service and in many instances these attorneys don't bother to file proof of service unless it is needed to obtain a default.

When a defense assignment is received, among the first things an attorney should do is check the Clerk's file for the particulars of service of Summons. In those instances where the client to be defended is a responsible sort, proof of service is almost always to be found in the Clerk's file. Where the client is a flake, quite often proof of service is missing from the Clerk's file. Perhaps it is unfair to infer that there was any deliberate attempt to conceal the fact of service or to mislead the defending attorney. But it would certainly do no harm to put an end to the opportunity to conceal or mislead, alternatively to require the cooperation of plaintiff's attorneys in orderly and responsible court record keeping.

I was taught in law school that due process requires that service of summons upon a defendant be made in the manner that is most likely to give that defendant actual notice of the pending litigation.

It will be appreciated if you present these suggested amendments to the Council on Court Procedures.

Sincerely,

HUGH B. COLLINS/drs

Enc.

D.(4)(a)(iv) Summons shall not be served on the Administrator of the Motor Vehicles Division or at any office of the Administrator before there has been filed with the Clerk proof of unsuccessful bona fide attempts to make personal or primary service upon the defendant concerned.

F. An order of default against a party for failure to respond to a complaint, counterclaim or third party complaint, will not be granted prior to the expiration of 21 days from the date that proof of service thereof on that party was filed with the Clerk.

MARCEAU, KARNOPP, PETERSEN, NOTEBOOM & HUBEL
ATTORNEYS AT LAW
835 N.W. BOND STREET • BEND, OREGON 97701-2799
(503) 382-3011

LYMAN C. JOHNSON
1957 - 1986

TELECOPIER
(503) 388-5410

RONALD L. MARCEAU
DENNIS C. KARNOPP
JAMES E. PETERSEN
MES D. NOTEBOOM
ENNIS J. HUBEL*
MARTIN E. HANSEN*
HOWARD G. ARNETT**
THOMAS J. SAYEG***†
RONALD L. ROOME***
CHARLES M. BOTTORFF

*Also admitted in Washington
**Also admitted in Arizona
***Also Admitted in California
†LL.M. in Taxation

February 7, 1989

TO: MEMBERS OF COUNCIL ON COURT PROCEDURES

RE: BILL LINDEN GROUP JUDGMENTS BILL

Dear All:

We have just learned that the Bill Linden Judgments Bill (HB 2127) is on an extremely fast track at the legislature.

You have copies of this Bill (HB 2127) together with a report by the Council's subcommittee and an analysis by Fred Merrill in the materials that were sent to you over the last couple of weeks.

In addition to the Council both OTLA and the Bar's practice and procedure committee are much interested in this subject.

Important questions about this subject have been raised by the Council's subcommittee. In order for the Council to make an effective contribution it is necessary that the Council come up with a definitive position at the Council's meeting this Saturday (February 11, 1989). This will be the first order of business and I ask everyone to refine their thinking on the subject prior to the meeting. It is likely that Bill Linden or someone from his group will be present; as well as representatives from OTLA and the Bar's practice and procedure committee.

Again, because this legislation is on a very fast legislative track, the Council must also get on a fast track or risk being left at the station as the train pulls out.

Sincerely,

R. L. MARCEAU

RLM:dlh

cc: Fred Merrill

HUGH B. COLLINS
ATTORNEY AT LAW
835 EAST MAIN STREET
BOX 1764
MEDFORD, OREGON 97501-0138
(503) 772-9034

OUR FILE NO.

February 7, 1989

Fredric R. Merrill
c/o University of Oregon
School of Law
Eugene, OR 97403

Re: Proposed Amendment to ORCP 7D(4)(a)(ii)

Dear Professor Merrill:

Enclosed is a photocopy of the proposed amendment from which I have stricken a portion of a sentence. I suggest the following be substituted for the words I struck from that sentence:

> and to the defendant's insurance carrier at each address of defendant and at each address of said insurer reflected by any and all Motor Vehicles Division's records mentioned in ORS 802.220

The usual practice among attorneys is to inquire, by telephone or letter, at the Financial Responsibility Section of the Motor Vehicles Division to determine the address given by the defendant on the accident report and the identity of the insurance carrier for the defendant reflected by that report. This information is promptly and routinely furnished. Using this information, the attorney then proceeds to serve the defendant by any approved method except publication, which latter method for some unknown reason none seem to use.

At least two law firms in the Eugene area routinely use substitute service on Motor Vehicles Division without any attempt to use any other method, such as personal service.

Occasionally this creates a problem, and I'm working on one such problem at the moment, where the investigating police officer neglected to obtain insurance information and/or a correct address. The plaintiff's attorney then accomplishes service under present ORCP D(4) and files an affidavit that the defendant is not at the most recent address as shown by the Motor Vehicles Division's driver records and the attorney has no knowledge of the identity of any interested insurance carrier. After the expiration of 30 days from completion of service on MVD, an order of default is taken.

That's what happened in the case I mentioned; and the default came to the insurer's attention when the defendant reported to the insurer that he had received at his present current address a copy of Motion for Entry of Default and a copy of Order of Default.

I'm presently assembling the documentation to support a motion to vacate the Order of Default. This includes defendant's affidavit that a little over one week before the action was filed, he changed his address of record with MVD to his present street address and that for the past ten years he has carried his motor vehicle liability insurance with the present insurer. The documentation includes also a certified copy of the defendant's driving record which reflects his correct current address and a letter from Financial Responsibility Section to the effect that defendant promptly filed an accident report which reflected the identity of the insurer and the correct policy number. In addition, for what it may be worth I will provide a certified copy of Voter's Registration which shows the correct address and photocopies from the telephone directory and Polk's Directory, both of which reflect the correct address.

I have no knowledge how the plaintiff's attorney obtained the correct address so that he knew where to mail the copies of Motion for and Order of Default, and I'm too courteous to ask. However, it appears to me that a minor amount of what ORCP D.(6)(d) calls "reasonable diligence" would have located this particular defendant and identified his motor vehicle insurer; and this anecdote suggests gaps in ORCP D(4) that permit summons to be served in a manner that is not "reasonably calculated, under all the circumstances, to apprise the defendant of the existence and pendency of the action and to afford a reasonable opportunity to appear and defend." As seems to be required by ORCP 7D.(1).

Sincerely,

HUGH B. COLLINS/drs

Enc.

cc: (w/Enc.)
Steven H. Pratt
Box 1726
Medford, OR 97501

D. Manner of service.

* * * * *

D(2)d) **Service by mail.** Service by mail, when required or allowed by this rule, shall be mailed by mailing a true copy of the summons and a true copy of the complaint to the defendant by certified or registered mail, return receipt requested. For the purpose of computing any period of time prescribed or allowed by these rules, service by mail shall be complete three days after such mailing if the address to which it was mailed is within this state and seven days after mailing if the address to which it is mailed is outside this state.

* * * * *

D(4) **Particular actions involving motor vehicles.**

D(4)(a) **Actions arising out of use of roads, highways, and streets; service by mail.**

D(4)(a)(i) In any action arising out of any accident, collision, or liability in which a motor vehicle may be involved while being operated upon the roads, highways, and streets of this state, any defendant who operated such motor vehicle, or caused such motor vehicle to be operated on the defendant's behalf, except a defendant which is a foreign corporation maintaining a registered agent within this state, may be served with summons by personal service upon the Motor Vehicles Division and mailing *by registered or certified mail, return receipt requested,* a copy of the summons and complaint to the defendant and the defendant's insurance carrier if known.

D(4)(a)(ii) Summons may be served by leaving one copy of the summons and complaint with a fee of $12.50 in the hands of the Administrator of the Motor Vehicles Division or in the Administrator's office or at any office the Administrator authorizes to accept summons. The plaintiff, as soon as reasonably possible, shall cause to be mailed *by registered or certified mail, return receipt requested,* a true copy of the summons and complaint to the defendant at the address given by

the defendant at the time of the accident or collision that is the subject of the action, the most recent address as shown by the Motor Vehicles Division's driver records, and any other address of the defendant known to the plaintiff, which might result in actual notice and *to* the defendant's insurance carrier if known. For purposes of computing any period of time prescribed or allowed by these rules, service under this paragraph shall be complete upon such mailing.

COMMENT

The amendments to ORCP 7 D(4)(a)(i) and (ii) make clear that supplementary mailing to the defendant and his or her liability insurer must be by registered or certified mail, return receipt requested. It makes these provisions consistent with ORCP 7 D(4)(c).

PROFESSIONAL LIABILITY FUND
SUITE 201
5200 S.W. MEADOWS ROAD
P. O. BOX 1600
LAKE OSWEGO, OREGON 97035-0889

(503) 639-6911
OREGON WATS: 1-800-452-1639
DOCUMENT TRANSMISSION: (503) 684-7250

KIRK R. HALL
CHIEF EXECUTIVE OFFICER

February 9, 1989

To: Council on Court Procedures

From: Kirk R. Hall, C. E. O.

Re: House Bill 2127

I am writing to the Council on Court Procedures to express the opposition of the Professional Liability Fund to House Bill 2127 in its present form.

House Bill 2127 has the effect of shifting responsibility for maintenance of accurate judgment dockets from the various clerks' offices to attorneys and judges. In the process, it sets out unnecessarily particular requirements for the form of judgment which will invite attorney error.

Although most attorneys have liability coverage through the Professional Liability Fund, some attorneys do not. For example, some attorneys retire without obtaining extended reporting coverage or "tail coverage", and so have no coverage when a malpractice claim is brought after retirement. Errors in the form of judgment or docketing errors frequently do not show up for several years, and so it is very likely that many members of the public will have no means of recovery for claims asserted against attorneys without PLF coverage.

Over the past few years, the PLF has worked successfully with the courts, the Bar, and the Legislature to eliminate needless traps in such areas as statutes of limitations, appeals, and UCC filings. It would be a great error to approve House Bill 2127 in its present form, as we would be creating a new set of traps for attorneys which would cause an increase in claims and ultimate losses to innocent members of the public.

In addition, I would predict that the present House Bill

2127 would cause an increase in the work load of the courts. Attorneys would have to make repeated visits to the judge in order to obtain a final judgment which complied with all the particular requirements of House Bill 2127. In the event that an error occurred, there would be later motions and lawsuits brought before the court to try to correct the record and the judgment docket. While there might be some time savings for the clerks' offices, there would be at least a corresponding increase in work load for the courts and Oregon attorneys, which would bring additional costs to the taxpayers and members of the public who are involved in litigation.

It may be that improvements are needed in the present system of docketing of judgments. However, House Bill 2127 would create more problems than it solves. I would urge rejection of House Bill 2127 in its present form, and suggest that the issue be referred to the Council on Court Procedures for careful review during the next biennium.

KRH:mlg