

COUNCIL ON COURT PROCEDURES

Saturday, December 9, 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 October 14, 1989
2. Council membership
3. Report on meeting with Judy Bauman (Ron Marceau)
4. Motor Vehicle Service Committee (report and recommendations) (report attached) *(attached to minutes)*
5. Judgments subcommittee (progress report)
6. Records subpoena subcommittee (progress report)
7. Meeting schedule (revised schedule attached)
8. Letter from Bob Fraser dated November 9, 1989 (ORCP 54 E) (attached)
9. New business

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COUNCIL ON COURT PROCEDURES

Minutes of Meeting of December 9, 1989

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

Present:	Susan Bischoff	Richard T. Kropp
	Lafayette Harter	Winfred K.F. Liepe
	Maurice Holland	Ronald Marceau
	Bernard Jolles	J. Michael Starr
	Lee Johnson	Larry Thorp
	Henry Kantor	
Absent:	Richard L. Barron	Jack L. Mattison
	Susan P. Graber	William F. Schroeder
	John V. Kelly	William C. Snouffer
	Paul J. Lipscomb	George A. Van Hoomissen
	Robert B. McConville	Elizabeth H. Yeats

Also present were: Fredric R. Merrill, Executive Director; John H. Buttler, former Council member and presently serving on Council subcommittee; Gilma J. Henthorne, Management Assistant.

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

Agenda Item No. 2: Council membership. The Chairer stated that it was his understanding that the Board of Bar Governors had appointed Richard Bemis and John Hart as members of the Council instead of Allen Reel and John Hitchcock. Bernard Jolles has been reappointed. It is anticipated that the District Judges Association soon will be appointing Judge Lipscomb's successor.

Agenda item No. 3: Report on meeting with Representative Judith Bauman (Ron Marceau). The Chairer stated that he had discussed with Judith Bauman the Council's role during the legislative sessions and the matter of a procedure to follow when other groups have matters to present to the legislature regarding the ORCP. He said that Ms. Bauman was interested in establishing a protocol that anyone seeking to amend the ORCP present the matter first to the Council. If the Council decided to take no action, the person or persons could submit their proposal to the legislature. The Chairer then opened the matter for discussion as to whether a written statement should be prepared for publication making the Council's position clear. The Chairer suggested that perhaps the Council could, when it makes its

submission to the legislature, also prepare a special report regarding the matters that had been presented to them and concerning which they had deliberated, but upon which they had taken no action.

At this point in the discussion, it was suggested that the Uniform Trial Court Rules Committee is currently working on materials (to be proposed in January) which would be of interest to the Council. The Executive Director was asked to review the UTCR to determine whether it might be appropriate to include some of rules in the ORCP and also to determine whether or not there were any overlaps or inconsistencies. The Executive Director stated that he would also contact the UTCR liaison members of the Council (Judges Barron and McConville) regarding the UTCR packet to be proposed in January.

Agenda Item No. 4: Motor Vehicle Service Committee (report and recommendations). The 11/29/89 report from the Motor Vehicle Subcommittee (Mike Starr, Chairer, Judge Buttler, and Judge Johnson) to the Council is attached as Exhibit No. 1, and Judge Johnson's 11/22/89 report to the Council (representing the minority's view) is attached as Exhibit No. 2.

After a discussion a vote was taken with 10 in favor of accepting the majority's recommendations and one opposed.

Chairer Marceau suggested that the following be inserted in the sixth line from the end of D(4)(c):

"... that the plaintiff not less than 14 days prior to the application for default caused a copy of the summons and complaint to be mailed to such insurance carrier by registered or certified mail ..."

The subcommittee indicated that they would accept the suggestion as a modification of their revision and this was unanimously accepted by the Council members present.

Judge Liepe suggested that the words "registered or certified mail or some other designation of mail that provides a receipt for the mail signed by the recipient" in the last sentence of ORCP 7 D(4)(c) be replaced by the words "registered or certified mail, return receipt requested" to be consistent with usage elsewhere in the ORCP. The subcommittee indicated that they would accept the suggestion as a modification of their revision, and this was unanimously accepted by the Council members present.

Larry Thorp moved that the words "as soon as reasonably possible after service upon the Motor Vehicle Division" be deleted from the second sentence of D(4)(a)(i) and that the language "and the action shall be deemed to have been commenced" be deleted from the last sentence of D(4)(a)(i). The motion was seconded by Judge Johnson. A vote was taken with 9 in favor and

2 abstentions.

Chairer Marceau suggested that "with summons" be deleted in two places in the eighth and ninth lines of D(4)(a)(i). No action was taken on the suggestion. A question was raised relating to the authority of the Council to require a payment of a \$12.50 fee to the Motor Vehicle Division in ORCP 7 D(4)(a)(ii) and to require motorists to file a change of address in ORCP 7 D(4)(b). The Executive Director stated that the legislature had enacted those portions of the rule, relating to setting a fee and duty to report, to avoid any problem presented by limitations upon Council rulemaking powers. The language suggested by the subcommittee in ORCP D(4)(a)(ii) simply provides how the existing fee is to be paid.

There was a discussion about using the words "with reasonable diligence" after "who cannot be served" in the eighth line of D(4)(a)(i). Lee Johnson made a motion to refer the issue back to the subcommittee to draft language which would require a standard of due diligence within this alternate form of service. The motion was seconded by Bernie Jolles. The motion passed with 10 in favor and one opposed.

The Council extended its appreciation to Judge Buttler for his work on the subcommittee and his willingness to continue to do so.

Agenda Item No. 5: Judgments subcommittee (progress report). The Executive Director reported on behalf of Judge Mattison, Chairer of the subcommittee, that the subcommittee is continuing to do further work and that the Executive Director is in the process of doing further drafting before the subcommittee's next meeting. The subcommittee consists of Judge Mattison, Chairer, Judge McConville, Susan Bischoff, and Larry Thorp.

Agenda Item No. 6: Records subpoena subcommittee (progress report). The subcommittee, consisting of Larry Thorp, Judge Graber, and Henry Kantor, had been appointed at the Council's October 14, 1989 meeting to review the appropriateness of the affidavit procedure to respond to a records subpoena for a variety of public and private entities other than hospitals. Larry Thorp stated the subcommittee had conferred on the telephone. He said that there was some problem with the existing language of the rule incorporating various health care entities by cross-reference. Before the subcommittee decides what to do, it wanted advice from the Council whether the application of the rule should be expanded and, if so, in what direction. After an extended discussion, it was suggested that the committee clean up the language and limit application to hospitals and similar health care facilities. The subcommittee was asked to specifically consider application to a mental health program as suggested by Peter Wells. The Chairer suggested that the subcommittee present a proposal in draft form revising the rule

for Council consideration at its next meeting.

The Executive Director was asked to check the evidence code and report what effect the ORCP 7 H procedure had in avoiding the necessity of calling the custodian of the records at trial to authenticate the records.

Agenda Item No. 7: Meeting schedule (revised schedule attached as Exhibit No. 3). The revised meeting schedule had been distributed to members of the Council previously, and no changes were made.

Agenda Item No. 8: Letter from Bob Fraser dated November 9, 1989 (ORCP 54 E) (copy attached as Exhibit No. 4). The Executive Director stated that he would prepare a responsive memorandum on the subject of Mr. Fraser's inquiry and present it to the Council at its next meeting.

NEW BUSINESS:

Maury Holland reported that he had conferred with the Chief Justice relating to the role of alternate jurors. The proposal presented is similar to that presented by judge Ashmanskas at the last meeting. The Council decided to delay any action on alternate jurors until judge Ashmanskas had a chance to prepare a statute covering criminal juries and return to the Council seeking action on civil juries, as he stated he would do at the last meeting.

Henry Kantor requested that the federal rule amendments be placed on the agenda for the Council's next meeting.

Copies of a letter from John Salisbury of Bogle & Gates relating to an ambiguity in ORCP 70 C were distributed to the members of the Council. Mr. Salisbury stated that it is unclear whether the phrase "when so ordered by the court" refers to ordering an attorney to submit a form of summons or setting a five day-limit for submission prior to judgment. The Executive Director stated that the exact language involved had been enacted by the legislature. He was asked to see if there was any available legislative history and report his findings at the next meeting.

The meeting adjourned at 12:06 p.m.

Respectfully submitted,

Fredric R. Merrill
Executive Director

FRM:gh

November 28, 1989

MEMORANDUM

FROM: Motor Vehicle Subcommittee (Mike Starr, Chairer, Judge
Buttler and Judge Johnson)

TO: Council on Court Procedures

RE: Redraft of ORCP 7 D(4)

Set out below is a revision of ORCP 7 D(4) recommended by a majority of the members of the subcommittee. The format is that of legislative amendment; the bracketed material is removed, and the underlined material is new.

One member of the subcommittee, Judge Johnson, recommends that ORCP 7 D(4) be repealed. He believes that the provision was originally enacted as a jurisdictional statute and not to provide a method of serving summons and that the method provided does not give reliable notice. Judge Johnson also recommends that, if the Council does not repeal ORCP 7 D(4), it be revised to apply only to resident defendants. His suggested revision to accomplish this is attached to this report.

The revised language separates the elements necessary for adequate service from the conditions necessary for a default judgment. Subparagraphs 7 D(4)(a)(i) and (ii) of the current rule are combined into one new provision, 7 D(4)(a)(i), which states that service in motor vehicles cases may be made by service upon the DMV and mailing to defendant's addresses. The provision differs from the existing rule by allowing the plaintiff to mail the summons to the DMV by registered or certified mail. The subcommittee consulted the Department of Justice attorney working with DMV and the DMV does not object to mail service to their head office. Allowing mailing to the DMV would save a substantial amount of money in costs to the plaintiffs.

Service is complete on the date of the first mailing to the defendant. With discovery of multiple addresses more than one mailing might be made. Presumably, this would satisfy the statute of limitations, although it should be remembered that the Council may not have power to modify the statute of limitations directly. Mailing must be by enhanced mail and to all addresses known.

The conditions for default appear in 7 D(4)(c). The revision makes it clear what must appear before default is possible when motor vehicle service is used. The plaintiff must submit an affidavit showing service upon the DMV and the required mailing to the defendant's addresses. The affidavit also must show either mailing to the defendant's insurance carrier or that the identity of such carrier is unknown and could not be determined from the DMV records. Mailing must again be by registered or certified mail. Note, the revision requires the plaintiff to make inquiry of the DMV. The DMV records reflecting liability insurance are open. Under ORS 805.220 all records of the DMV are public, except accident reports. Insurance information required for vehicle registration is open to the public. No insurance information is required by the DMV for licensing of drivers except certain drivers who have been convicted of DUI. For accident reports, ORS 802.220(5)(a)(B) provides that DMV shall disclose "the names of any companies insuring the owner or driver of a vehicle involved in an accident" to "any party involved in the accident or to their personal representative or any member of the family of a party involved in the accident". The only hook is the information is only available "Upon written request" and the DMV enforces that. The DMV furnishes the address as well as the name of the company. ORS 802.230 allows DMV to set a reasonable fee for furnishing the information.

The most important revision in the new rule is that the language makes service on the DMV a secondary alternative which is only available when service cannot be completed any other way. Under the existing rule, DMV is an alternative primary service method. It may be used even though the defendant could be served in some other way. In the new rule, ORCP 7 D(4)(a)(i) allows motor vehicle service only when service cannot be had by any other method specified in ORCP 7 D(3). In other words, the plaintiff must try to accomplish service by the appropriate method specified in D(3). For example, for an individual, the plaintiff must use personal, abode, or office service if possible. For a corporation, the plaintiff must serve corporate agents or a registered agent if that is possible. Only if that cannot be done will motor vehicle service be allowed. Since a requirement that registered agent service be used against any corporation, if that is possible, is already built into the new rule, the specific language in the present rule relating to foreign corporations is removed.

To secure a default under the new rule, the plaintiff must show that service could not be accomplished by any method specified in ORCP 7 D(3). The required attempt to complete service by some other method before use of motor vehicle service would presumably include checking known addresses of the defendant which is required by the present rule. The fact that

the letter caught up to the defendant does not in itself make default possible.

SUBCOMMITTEE REVISION
SUMMONS
RULE 7

D. Manner of service.

* * * *

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,] who cannot be served with summons by any method specified in subsection 7 D(3) of this rule, 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 or by mailing such summons and complaint with a fee of \$12.50 to the office of the Administrator of the Motor Vehicle Division by registered or certified mail, return receipt requested. The plaintiff, as soon as reasonably possible after service upon the Motor Vehicle Division, 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, and at the most recent address as shown by the Motor Vehicles Division's driver records, and at 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.] to the defendant. For purposes of computing any period of time prescribed or allowed by these rules, service under this paragraph shall be complete and the action shall be deemed to have been commenced upon [such] the date of the first mailing to the defendant.

D(4)(a)[(iii)] (11) The fee of \$12.50 paid by the plaintiff to the Administrator of the Motor Vehicles Division shall be taxed as part of the costs if plaintiff prevails in the action. The Administrator of the motor Vehicles Division shall keep a record of all such summonses which shall show the day of service.

D(4)(b) **Notification of change of address.** Every motorist or user of the roads, highways, and streets of this state who, while operating a motor vehicle upon the roads, highways, or streets of this state, is involved in any accident, collision, or liability, shall forthwith notify the Administrator of the Motor Vehicles Division of any change of such defendant's address within three years after such accident or collision.

D(4)(c) **Default.** No default shall be entered against any defendant served [by mail] under this subsection [who has not either received or rejected the registered or certified letter containing the copy of the summons and complaint, unless the plaintiff can show by affidavit that the defendant cannot be found residing at the address given by the defendant at the time of the accident or collision, or residing at the most recent address as shown by the Motor Vehicles Division's driver records, or residing at any other address actually known by the plaintiff to be defendant's residence address, if it appears from the affidavit that inquiry at such address or addresses was made within a reasonable time preceding the service of summons by mail, and that a copy of the summons and complaint was mailed by registered or certified mail, or some other designation of mail that provides a receipt for the mail signed by the recipient, to the defendant's insurance carrier or that the defendant's insurance carrier is unknown.] unless the plaintiff submits an affidavit showing: (1) that summons was served as provided in

subparagraph D(4)(a)(i) of this rule and all mailings to defendant required by subparagraph D(4)(a)(i) of this rule have been made; and (2) either, (a) if the identity of defendant's insurance carrier is known to the plaintiff or could be determined from any records of the Motor Vehicle Division accessible to plaintiff, that the plaintiff caused a copy of the summons and complaint to be mailed to such insurance carrier by registered or certified mail or some other designation of mail that provides a receipt for the mail signed by the recipient, or (b) that the defendant's insurance carrier is unknown; and (3) that service of summons could not be had by any method specified in subsection 7D(3) of this rule.

JOHNSON VERSION

(AS MODIFIED)

SUMMONS
RULE 7

D. Manner of service.

* * * *

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 is an individual domiciled in this state and 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 or by mailing such summons and complaint with a fee of \$12.50 to the office of the Administrator of the Motor Vehicles by registered or certified mail, return receipt requested. The plaintiff, as soon as reasonably possible after service upon the Motor Vehicle Division, 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, and at the most recent address as shown by the Motor Vehicles Division's driver records, and at 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.] to the defendant. For purposes of computing any period of time prescribed or allowed by these rules, service under this paragraph shall be complete upon [such] mailing to the defendant.

D(4)(a)[(iii)] (ii) The fee of \$12.50 paid by the plaintiff to the Administrator of the Motor Vehicles Division shall be taxed as part of the costs if plaintiff prevails in the action. The Administrator of the Motor Vehicles Division shall keep a record of all such summonses which shall show the day of service.

D(4)(b) Notification of change of address. Every individual domiciled in this state [motorist or user of the roads, highways, and streets of this state] who, while operating a motor vehicle upon the roads, highways, or streets of this state, is involved in any accident, collision, or liability, shall forthwith notify the Administrator of the Motor Vehicles Division of any change of such defendant's address within three years after such accident or collision.

D(4)(c) Default. No default shall be entered against any defendant served [by mail] under this subsection [who has not either received or rejected the registered or certified letter containing the copy of the summons and complaint, unless the plaintiff can show by affidavit that the defendant cannot be found residing at the address given by the defendant at the time of the accident or collision, or residing at the most recent address as shown by the Motor Vehicles Division's driver records, or residing at any other address actually known by the plaintiff to be defendant's residence address, it if appears from the affidavit that inquiry at such address or addresses was made within a reasonable time preceding the service of summons by

mail, and that a copy of the summons and complaint was mailed by registered or certified mail, or some other designation of mail that provides a receipt for the mail signed by the recipient, to the defedant's insurance carrier or that the defendant's insurance carrier is unknow.] unless the plaintiff submits an affidavit showing: (1) that summons was served as provided in subparagraph D(4)(a)(i) of this rule; [and] (2) [either, (a)] that if the identity of defendant's insurance carrier is known to the plaintiff or could be determined from any records of the Motor Vehicle Division accessible to plaintiff, that the plaintiff caused a copy of the summons and complaint to be mailed to such insurance carrier by registered or certified mail or some other designation of mail that provides a receipt for the mail signed by the recipient, [or (b) that the defendant's insurance carrier is unknown;] and [(3) either (a)] that either [the] defendant received or rejected the registered or certified letter containing the copy of summons and complaint, or (b) that [within a reasonable time preceding the service of summons the] plaintiff caused inquiry to be made at the address given by the defendant at the time of the accident or collision that is the subject of the action, and at the most recent address as shown by the Motor Vehicles Division's driver records, and at any other address of the defendant known to the plaintiff, which might result in actual notice to the defendant and that defendant could not be found. [residing at any of such addresses.]



CIRCUIT COURT OF OREGON
FOURTH JUDICIAL DISTRICT
MULTNOMAH COUNTY COURTHOUSE
1021 S.W. 4TH AVENUE
PORTLAND, OREGON 97204

LEE JOHNSON
JUDGE
DEPARTMENT NO. 10

November 22, 1989

COURTROOM 528
(503) 248-3165

MEMO: TO MEMBERS OF COUNCIL ON COURT PROCEDURES
FROM: LEE JOHNSON
SUBJ: MINORITY REPORT OF SUBCOMMITTEE ON RULE 7(D)(4)
PRESENT RULE 7(D)(4):

Under present Rule 7(D)(4) any defendant in a motor vehicle accident may be served by service on DMV. I share the subcommittee's concern that under some circumstances such service is probably constitutionally inadequate. For example, it is a fiction to require mailing to "the most recent address as shown by Motor Vehicles Division" if defendant is a non-resident or non-licensed.

SUBCOMMITTEE PROPOSAL:

The Subcommittee proposes to replace the whole baby. Under its proposal service on DMV only can be used after personal service and substituted service at defendant's abode or office has failed. It is under these circumstances that service on DMV takes on its fictional character. If primary method of service is personal service and that service fails, the Court supervised alternative service under Rule 7(D)(3) is more consistent with due process than the DMV fiction.

If the Council concludes that primary service has to be personal service then I would recommend repeal of Rule 7(D)(4).

AN ALTERNATIVE:

Neither the Subcommittee nor my proposal to repeal addresses what is a salutary purpose for Rule 7(D)(4) which is to provide a simple method of service which also established a time certain for tolling the Statute of Limitations. That objective can be attained without constitutional infirmity if Rule 7(D)(4) is limited to resident motorists.

EXHIBIT 2 to Minutes of Council Meeting Held 12/9/89

EX 2-1

Members of Council on Court Procedures
November 22, 1989
Page Two

My rationale is that every resident driver is required to maintain a current address with DMV. Failure to comply should not lead to a default judgment. However, the noncomplying citizen should not be able to complain that the Statute of Limitations started running before he got actual notice. Service would be accomplished by mailing to DMV, the address given at the accident, the address shown in DMV records and any other address known to plaintiff. However, before default occurred, plaintiff would have to satisfy the court that (1) he had made the required mailings; (2) mailed a copy to the insurance carrier; and (3) if no return received that he has made reasonable inquiry to ensure actual notice.

Sincerely,


Lee Johnson

LJ/jim

EX 2-2

COUNCIL ON COURT PROCEDURES

Meeting Schedule - 1989-91 Biennium

December 9, 1989	Oregon State Bar Center, Second Floor (Room 7), 5200 SW Meadows Road, Lake Oswego, Oregon
January 13, 1990	Oregon State Bar Center, Second Floor (Room 7), 5200 SW Meadows Road, Lake Oswego, Oregon
February 10, 1990	Oregon State Bar Center, Second Floor (Room 7), 5200 SW Meadows Road, Lake Oswego, Oregon (PUBLIC MEETING)
March 10, 1990	University of Oregon School of Law Room 129, 11th & Kincaid, Eugene, Oregon (PUBLIC MEETING)
April 21, 1990	The Embarcadero, 1000 SE Bay Boulevard, Newport, Oregon (PUBLIC MEETING)
May 12, 1990	Red Lion Coliseum, 1225 North Thunderbird Way, Portland, Oregon (PUBLIC MEETING)
June 9, 1990	The Riverhouse, 3075 North Highway 71, Bend, Oregon (PUBLIC MEETING)
September 8, 1990	Oregon State Bar Center, Second Floor (Room 7), 5200 SW Meadows Road, Lake Oswego, Oregon
October 13, 1990	Oregon State Bar Center, Second Floor (Room 7), 5200 SW Meadows Road, Lake Oswego, Oregon
November 17, 1990	Oregon State Bar Center, Second Floor (Room 7), 5200 SW Meadows Road, Lake Oswego, Oregon
December 15, 1990	Oregon State Bar Center, Second Floor (Room 7), 5200 SW Meadows Road, Lake Oswego, Oregon

NOTE: All meetings commence at 9:30 a.m.

LUVAAS, COBB, RICHARDS & FRASER, P. C.

JOHN L. LUVAAS
RALPH F. COBB
JOE B. RICHARDS
ROBERT H. FRASER
DOUGLAS L. MCCOOL
VARNER JAY JOHNS III
LOUIS L. KURTZ
ROBERT L. SHAW
RONALD A. WALRO

ATTORNEYS AT LAW
777 HIGH STREET
EUGENE, OREGON 97401-2787
MAILING ADDRESS
P.O. BOX 10747
EUGENE, OREGON 97440-2747
(503) 484-9292
TELEFAX ONLY: (503) 343-1206

SHELLEY P. SMITH
JOEL S. DEVORE
DONALD E. JOHNSON
RODNEY S. CARTER
JAMES W. KEMPER
JAMES N. WELTY
BETTY J. ENGLE
LEGAL ASSISTANT

November 9, 1989

• Professor Fred Merrill
University of Oregon
Executive Director
Counsel and Court Procedures
Eugene, OR 97403

• RE: ORCP 54E

Dear Professor Merrill:

If an offer is accepted under ORCP 54E, judgment will be given as "Stipulated Judgment." E starts out with the word "Compromise." I see a situation where a "Stipulated Judgment," occurring after the offer of compromise, could possibly be construed as collateral estoppel in related cases. What is the "stipulated Judgment?" Is it anything but a final judgment that could be executed upon? Does it lose its protection as a compromise? I would propose adding after the words "Stipulated Judgment" the following:

"A. Such judgment shall not be construed as invoking collateral estoppel or res judicata, nor given in evidence at trial in any other action."

Or, in the alternative:

"B. Such Stipulated Judgment shall be considered and treated as an offer of compromise under ORS 40.190."

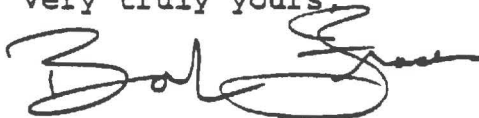
I am not attempting to be a draftsman.

Let me give you an example involving five members of one family. An offer is made in all five, only one of which is accepted, perhaps for tactical reasons above.

I would be obliged if you could take this up with the Council on Court Procedures.

Thanks.

Very truly yours,



ROBERT H. FRASER
RHF:vm

Exhibit 4 to Minutes of Council Meeting Held 12/9/89