

COUNCIL ON COURT PROCEDURES

Saturday, January 13, 1990, Meeting  
9:30 a.m.

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

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A G E N D A

1. Approval of minutes of October 14, 1989 and December 9, 1989
2. Introduction of new members
3. Election of officers
4. Report of ORCP 7 D(4) subcommittee (Mike Starr)
5. Report of judgments subcommittee (Judge Mattison)
6. Report of ORCP 55 H subcommittee (Larry Thorp)
7. Letter from Robert Fraser (Executive Director)
8. Letter from John Salisbury (Executive Director)
9. Uniform Trial Court Rules (Executive Director)
10. Pending Federal Rules Amendments (Henry Kantor)
11. Law in the 90s Conference - Oregon State Bar - Council representative (Chairer)
12. NEW BUSINESS

# # # # #

COUNCIL ON COURT PROCEDURES

Minutes of Meeting of January 13, 1990  
Oregon State Bar Center  
5200 SW Meadows Road  
Lake Oswego, Oregon

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

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

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

**Agenda Item No. 1: Approval of minutes of meetings of October 14, 1989 and December 9, 1989.** The minutes of the meetings held October 14, 1989 and December 9, 1989 were unanimously approved.

**Agenda Item No. 2: Introduction of new members.** Chairer Ron Marceau introduced to the Council new members Richard Bemis and John Hart, who had been appointed by the Oregon state Bar on December 15, 1989 and new member Judge Elizabeth Welch, who had been appointed by the District Court Judges association to replace Judge Lipscomb.

**Agenda Item No. 3: Election of officers.** Judge Graber nominated Ron Marceau, Henry Kantor, and Lafayette Harter to serve as Chairer, Vice-Chairer, and Treasurer, respectively, and they all were unanimously elected by the Council.

**Agenda Item No. 4: Report of ORCP 7 D(4) subcommittee (Mike Starr).** Mike Starr reported for the subcommittee. He stated the subcommittee had met via telephone conference and had discussed the "reasonable diligence" and "due diligence" language. He said the subcommittee suggested the addition of language to ORCP 7 D relating to the standard for attempt of

service under ORCP 7 D(3). This language would apply not only to motor vehicle service under ORCP 7 D(4) but also service by court under ORCP 7 D(6). The subcommittee submitted two versions of the language as follows:

ORCP 7 D(7). Defendant who cannot be served. A defendant cannot be served with summons by any method specified in subsection 7 D(3) of this rule if the return of service shows that the plaintiff attempted service of summons by all of the methods specified in subsection 7 D(3) and was unable to successfully complete service.

\* \* \*

ORCP 7 D(7). Defendant who cannot be served. A defendant cannot be served with summons by any method specified in subsection 7 D(3) of this rule if the return of service shows that the plaintiff made a good faith effort to serve summons by all of the methods specified in subsection 7 D(3) and was unable to successfully complete service.

Judge Graber pointed out that the reference to the return of service in both alternatives was unnecessary and somewhat misleading. For both automobile service under 7 D(4) and court ordered service under 7 D(6), the rules require an affidavit showing that the defendant cannot be served. A motion was made by Judge Liepe, seconded by Henry Kantor, to adopt the first alternative but without the language "the return of service shows that" from the first alternative suggested by the subcommittee. The motion passed with 16 in favor and one opposed.

**Agenda Item No. 5: Report of judgments subcommittee.** Judge Liepe spoke on behalf of the subcommittee and said they have several alternative drafts of ORCP 68 under consideration and will try to report by the next meeting. Chairer Marceau stated the OSB Procedure & Practice Committee is interested in receiving a copy of the proposal when it is finished.

**Agenda item No. 6: Report of ORCP 55 H subcommittee.** Judge Graber reported on behalf of the subcommittee. She stated that they had conferred by telephone and had a tentative proposal to amend 55 H but that it was not ready for distribution. She stated that the subcommittee should have a formal report at the next meeting of the Council.

**Agenda Item No. 7: Letter from Robert Fraser.** A copy of

the Executive Director's memorandum dated January 2, 1990 relating to Mr. Fraser's letter was distributed at the meeting and is attached to these minutes as Exhibit No. 1.) It was pointed out that a written stipulated judgment did not require affirmation of the party in open court and the judgment resulting from acceptance of an offer under 55 E was properly a stipulated judgment. After an extended discussion, the Council decided to take no action.

**Agenda Item No. 8: Letter from John Salisbury.** A copy of a memorandum from the Executive Director dated January 9, 1990 relating to Mr. Salisbury's question was distributed at the meeting, and a copy is attached to these minutes as Exhibit No. 2. The Council discussed whether the rule should be changed so that, unless the court ordered otherwise, there would always be a five-day notice requirement before submission of judgments by attorneys, or whether the present rule should be amended to clearly require five days notice only if the court orders such notice prior to submission. Henry Kantor moved, with a second by Judge Liepe, to revise the beginning of ORCP 70 C as follows: "Attorneys shall submit proposed forms of judgment unless ordered by the court or stipulated. The proposed forms of judgment shall be served ..."

The Chair then took a straw vote whether the rule should be changed to always require five days notice or the rule requiring five days notice only upon court order simply be clarified. Seven members favored clarification, six favored change and three abstained. The Chair suggested deferring action until the next meeting and asked John Hart to present a proposal to amend ORCP 70 C at that meeting.

**Agenda Item No. 9: Uniform Trial Court Rules (Executive Director).** The Executive Director stated that Judge McConville had supplied him with all of the proposals being considered by the Uniform Trial Court Rules Committee. He stated that he would have a report as soon as possible. It should be noted that Judge Barron is now the only liaison person from the Council with the UTCR Committee, as Judge McConville has completed his term on that committee. Judge Barron explained the procedure used by the UTCR Committee in promulgating its rules.

**Agenda Item No. 10: Pending Federal Rules Amendments (Henry Kantor).** Henry Kantor suggested that some very significant amendments to the federal rules are pending and that the subcommittee or the Council or Council staff should review these amendments. The Executive Director stated that he would review the proposed amendments to the Federal Rules and would prepare a summary of the proposed changes.

**Agenda Item No. 11: Law in the 90s Conference.** A letter addressed to the Executive Director of the Council dated December 18, 1989 from Robert S. Ball, with the Future of the Legal Profession Committee of the Oregon State Bar, was distributed at the Council meeting. The letter (with a four-page memorandum) pertains to the "Law in the 90's Conference" to be held at Rippling River Resort, Welches, Oregon, April 27-29, 1990, and the purpose of the letter is to extend an invitation to a representative from the Council to attend the Conference. The Conference will deal with several subjects, all pertaining to the future of the legal profession. Chairer Ron Marceau stated that he would like to attend the Conference, and Henry Kantor volunteered to be the alternate. Chairer Marceau asked the Council members to give some thought as to whether or not there are any points the Council wants to make for discussion at the Conference (for example, bringing matters to the Council for consideration before presentment to the legislature).

**NEW BUSINESS.** A letter January 4, 1990 from Judge Donald Ashmanskas, Chair of the Oregon Revised Statutes Revision Committee, was distributed to the Council members and is attached to these minutes as Exhibit No. 4. The ORS Revision Committee was established by the 1989 Oregon Legislative Assembly to study factors influencing the publication of the Oregon Revised Statutes, among which would be the recodification of ORS. It was the Executive Director's suggestion that the Council should take some position on the placement of the ORCP (including the numbering system) in the revised publication of the ORS. The Council decided that the Executive Director should make appropriate inquiry to see what, if any, impact there would be on the ORCP in the recodification.

Chairer Ron Marceau stated that the OSB Procedure & Practice Committee had published an article concerning interrogatories and discovery of experts in The Bar Bulletin, and asked the Council members how they wanted to respond and/or comment. Mike Starr, also a member of the OSB Procedure & Practice Committee, stated the purpose of the article was to solicit comments from the Bar and public and recommended that the Council wait and see what responses are received. It was decided that the Council would remain in a wait-and-see position.

The meeting adjourned at 11:16 a.m.

Respectfully submitted,

Fredric R. Merrill  
Executive Director

FRM:gh

January 2, 1990

M E M O R A N D U M

TO: MEMBERS, COUNCIL ON COURT PROCEDURES  
FROM: Fred Merrill, Executive Director  
RE: ORCP 54 E (letter from Robert Fraser dated  
November 9, 1989)

As requested at the last meeting, this memorandum relates to the question raised by Bob Fraser about ORCP 54 E. A copy of his letter is attached.

ISSUE

The question presented is whether an accepted offer of compromise could have negative results for the defendant in the form of collateral estoppel or an evidentiary admission in related cases. He suggests a situation where there are five claimants (presumably from the same accident) and an offer is made to all five, but accepted by only one.

COLLATERAL ESTOPPEL

Assuming the five claimants were parties to the same case, there would be no collateral estoppel. Even though one accepted the offer of compromise, the only way a separate judgment could be entered would be at the direction of the court under ORCP 67 B. An ORCP 67 B judgment does not have collateral estoppel effect in the same case. Godat v. Waldrop, 78 Or App 374, 380 (1986); Office Serv. Corp. of America v. CAS Systems, Inc., 63 Or App 842, 844-845 (1983). See Merrill, The Oregon Rules of Civil Procedure in the Courts, pp. 138-139.

If, however, the five claimants filed separate actions, there is at least an arguable case of collateral estoppel. Oregon, in contrast to most jurisdictions in the United States, appears to give collateral estoppel effect to issues which are not actually litigated./1/ Again, assuming five claimants from

/1/ Restatement of Judgments, 2nd, Sec. 27 requires that a matter be litigated for collateral estoppel. Comment (e) says, "In the case of a judgment entered by confession, consent, or default, none of the issues is actually litigated." Many of the Oregon cases to the contrary involve claim preclusion, where a non-litigated judgment does have res judicata effect, e.g. Gwynn v. Wilhelm, 226 Or 606, 609 (1961). The Oregon cases that do in fact hold that a consent judgment creates collateral estoppel do not discuss the issue and appear to rely on claim preclusion authority, e.g. Garner v. Garner, 182 Or 549, 558-559 (1948).

EXHIBIT NO. 1 TO MINUTES OF  
COUNCIL MEETING OF 1/13/90

the same accident, the identical issue of negligence would be involved in all cases. Since Oregon has abandoned the requirement of mutuality of estoppel, State Farm v. Century Homes 275 Or 97, 103 (1976), and Bahler v. Fletcher 257 Or 1 (1970), the four claimants who were not parties to the first case could assert collateral estoppel against the defendant.

Nonetheless, I do not feel that collateral estoppel would be a problem. Whatever the state of the general rule governing the application of collateral estoppel to consent situations, surely where a non-party to the first case sought collateral estoppel based upon a consent judgment, it would be denied. Both of the cases cited in the previous paragraph condition the abandonment of the mutuality rule upon a requirement that there be a clear showing that the party to be bound had a full, fair, and complete opportunity to litigate the matter in the first case. That would not be present with a consent judgment.

The bottom line is that, while there is at least an arguable collateral estoppel problem if multiple claimants from the same incident bring separate actions, it is a weak argument in a situation not involving mutuality. Also, the ORCP do not generally cover the areas of claim and issue preclusion, leaving res judicata to development by case law. For these reasons, I would suggest no action.

#### ADMISSION

There does not appear to be any evidentiary problem. It is true that the judgment and the endorsed offer would be admissible under the public records and admissions provisions of the hearsay rule [ORE 803 (8) and 801(4)(b)], but ORE 408 (1)(a) would prevent use of these documents. To encourage settlement of cases, ORE 408 prohibits subsequent use in evidence of both compromises and offers to compromise. This applies to settlements and offers to compromise involving third persons. Kirkpatrick, Oregon Evidence, pp 123-125 (1982).

In any case, the Council has no authority to make rules of evidence, ORS 1.735, and cannot promulgate a rule governing admissibility of the offer or the ORCP 55 E judgment in another case. (Note, however, the existing language in ORCP 55 E relating to rejected offers.)

#### STIPULATED JUDGMENT

Mr. Fraser's inquiry does reveal another problem. As he points out, ORCP 55 E refers to the judgment entered after the offer is accepted as a stipulated judgment. This language differs from FR 68 (attached) and seems to have been specially drafted when the federal rule was enacted as ORS 17.055, rep.

1979. The language was incorporated into the rule from ORS 17.055.

The problem is that reference to stipulated judgment in ORCP 55 E seems to require compliance with ORCP 67 F relating to stipulated judgment. The elaborate procedure for stipulated judgments in ORCP 67, including consent in open court, is not appropriate for an ORCP 55 H judgment. I suggest the following change:

If the party asserting the claim accepts the offer, the party asserting the claim or such party's attorney shall endorse such acceptance thereon, and file the same with the clerk before trial, and within three days from the time it was served upon such party asserting the claim; and thereupon [judgment shall be given accordingly, as a stipulated judgment] the clerk shall enter judgment.

Enclosures: Bob Fraser's letter  
Federal Rule 68



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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."

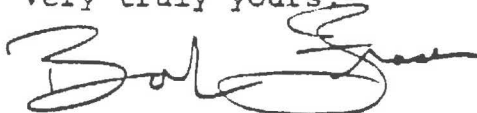
I am not attempting to be a draftsman.

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

January 9, 1990

MEMORANDUM

TO: Members, COUNCIL ON COURT PROCEDURES

FROM: Fred Merrill

RE: Letter from John P. Salisbury dated November 30, 1989  
(copy attached)

Mr. Salisbury points out that the second sentence of ORCP 70 C is ambiguous. It is not clear whether the reference to court order is to an order to submit a proposed judgment form or to an order to serve the form upon parties five days before submission. The legislative history of the rule indicates that the original intent was to refer to the requirement of service five days before submission.

The rule promulgated by the Council was changed by the legislature when it was submitted in 1981. (Or. Laws 1981, ch. 898, sec. 9). The following shows the original language in brackets and the amended language underlined:

Attorneys shall submit proposed forms of judgment at the direction of the court rendering the judgment. [Unless otherwise] When so ordered by the court, [any] 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.

Rule 70 C was in the second half of the ORCP promulgated by the Council in 1980. These rules were reviewed by a joint subcommittee of the House and Senate Judiciary Committees. The subcommittee members read the second sentence of 70 C as requiring a five-day period of delay when an attorney prepared the form of judgment, unless the court affirmatively acted to avoid the delay. They thought this was unwise. They directed that language be used which made the normal situation one where there was no built-in delay, with prior service only required upon special order. See Memorandum to the Council on Court Procedures from Fred Merrill, Feb. 5, 1981.

The language which Mr. Salisbury suggests would eliminate the ambiguity, but is directly contrary to the legislative intent in the present language. Language that would eliminate the ambiguity and be consistent with original legislative intent would be as follows:

[When so] If the court directs that an attorney submit the proposed form of judgment, the court may direct that the proposed form of judgment [shall] be served five days prior to the submission of the judgment in accordance with Rule 9 B.

Perhaps a simpler approach would be to eliminate the second sentence of Rule 70 C entirely. The court could always condition the order allowing one party to prepare the judgment upon a requirement that the form be served on other parties.

The Council needs to decide the importance of prior service of the form of judgment. Should it be the general practice or only in unusual situations? Having the opponent examine the form of judgment before signing by the judge surely would avoid problems, but it involves at least a five-day delay.

Perhaps the question is whether the correct form of judgment is the responsibility of the judge or part of the adversarial process. In federal court, the proper form of judgment is very much the responsibility of the judge. FR 58 says: "Attorneys shall not submit forms of judgment except upon direction of the court, and these directions shall not be given as a matter of course." In Oregon, the submission of the form of judgment by the prevailing party is usually a matter of course and some judges will sign whatever is submitted. The Salisbury language seems more consistent with the Oregon practice.

Enc.

# BOGLE & GATES

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JOHN P. SALISBURY

71009-03823

November 30, 1989

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

RE: ORCP 70C

Dear Professor Merrill:

Enclosed are three letters from Sean Donahue and me to Judge Lee Johnson concerning ORCP 70C. As you and I discussed by telephone on November 28, 1989, there is an ambiguity in ORCP 70C. It is unclear whether the phrase "when so ordered by the court" refers to the previous sentence which speaks of the attorney submitting proposed forms of judgment at the direction of the court, or whether that phrase refers to an order to serve the proposed form of judgment five days prior to the submission of the judgment. In our conversation, we agreed that the intent of the rule was to provide the adverse party an opportunity to object to the form of judgment in case the attorney preparing the judgment had not accurately stated the court's decision. I request that the Counsel on Court Procedures promulgate an amendment to ORCP 70C which would amend the rule to read:

Attorneys shall submit proposed forms for judgment at the direction of the court rendering the judgment. When submission of proposed forms for judgment is directed by the court, the proposed form of judgment shall be served five days prior to the submission of judgment in accordance with

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Mr. Fredric R. Merrill  
November 30, 1989  
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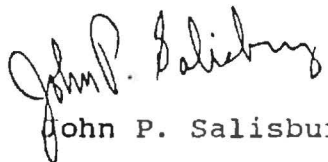
Rule 9B. The proposed form of judgment shall  
be filed and proof of service made in  
accordance with Rule 9C.

For your information, Rule 70C was modified by the 1981 Oregon  
legislature (Chapter 898 § 9) to change the language "Unless  
otherwise" ordered by the court to "When so ordered." I do not  
know the purpose of the 1981 amendment.

Thank you for your consideration.

Very truly yours,

BOGLE & GATES



John P. Salisbury

JPS:kay  
Enclosures  
11\cor\402

# BOGLE & GATES

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71009-03823

November 28, 1989

HAND-DELIVERED

The Honorable Lee Johnson  
Circuit Court Judge  
528 Multnomah County Courthouse  
1021 S.W. Fourth Avenue  
Portland, OR 97204

RE: Dutton v. Anderson, et al  
Multnomah County Circuit Court No. A8902-00710  
and  
LeadSource, Inc. v. Dutton, et al  
Multnomah County Circuit Court No. A8906-03135

Dear Judge Johnson:

As you know, this office represents defendants Nucontacts, Inc. and LeadSource, Inc.

I am writing to you in reply to Sean Donahue's letter to you of November 27, 1989. I submit that Mr. Donahue's interpretation of ORCP 70C is incorrect. His position is that the Court must specifically order an attorney to serve a proposed form of judgment five days prior to the submission of the judgment and, if the Court does not do so, there is no duty to serve opposing counsel prior to submission of the Judgment. This interpretation is unsupported. The rule states that "[w]hen so ordered by the court," the proposed judgment shall be served on the opposing party. The antecedent to which "so" refers is the preceding sentence in the rule, which states that attorneys shall submit proposed judgments at the discretion of the court. Consequently,

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The Honorable Lee Johnson  
November 28, 1989  
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if the court directs an attorney to prepare a proposed judgment, the attorney shall serve it on opposing counsel five days before submitting it to the court. Mr. Donahue's interpretation suggests that the Court, if it ordered service of the judgment, would then be without discretion to lengthen or shorten the required five-day period. There is no conceivable purpose for such an absolute restriction on the Court's discretion. Furthermore, such an interpretation does not further the obvious purpose of the rule which is to give opposing parties an opportunity to review and object to the proposed form of judgment.

I also spoke with Professor Fredric Merrill, Executive Director of the Counsel on Court Procedures, concerning ORCP 70C who agreed with defendants' interpretation of the rule. The Oregon State Bar Civil Litigation Manual, § 35.3, and the Oregon State Bar Pleading and Practice CLE, § 42.3 also support defendants' interpretation of the rule.

In any event, defendants Nucontacts, Inc. and LeadSource, Inc. intend to file on or before Wednesday, November 29, 1989, objections to the form of judgment submitted. Because such objections will need to be heard and determined, defendant Nucontacts, Inc. and LeadSource, Inc. renew their request that this Court not sign any judgment which is submitted to it prior to Wednesday, November 29, 1989.

Defendants Nucontacts, Inc. and LeadSource, Inc. also will be filing objections and proposed different findings with the Court on or before Friday, December 1, 1989, pursuant to ORCP 62B. This rule states, in relevant part:

Upon (1) the determination of any objections to proposed special findings and of any requests for other, different or additional special findings, or (2) the expiration of the time for filing such objections and requests if none is filed, or (3) the expiration of the time at which such objections or requests are deemed denied, the court shall order the appropriate order or judgment.

The rule clearly and specifically states that only "upon" the determination of objections, the expiration of the time for filing objections or the expiration of the time at which such objections or requests are deemed denied, shall the Court enter a judgment. It would be contrary to ORCP 62B to have the Court enter judgment before the issues concerning the findings and conclusions have been

BOGLE & GATES

EX 2-5


The Honorable Lee Johnson  
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determined. Logically a judgment should only be based upon determinations of fact and law and only when such determinations have finally been made should judgment be entered.

Finally, defendants Nucontacts, Inc. and LeadSource, Inc. intend to serve and file an undertaking pursuant to ORS 19.038, ORS 19.040 and ORS 19.050. Pursuant to ORCP 72A, this Court has the discretion to stay all proceedings to enforce a judgment. Given that defendants Nucontacts, Inc. and LeadSource, Inc. will be filing a notice of appeal and an undertaking, it is appropriate to stay enforcement for a reasonable period of time until the notice of appeal and undertaking have been filed and served.

Very truly yours,

BOGLE & GATES

  
John P. Salisbury

JPS:kay  
cc: Sean Donahue, Esq.  
bcc: Katy Mpurphy  
Rex Armstrong  
Tom Guilbert

11-COR-393

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BOGLE & GATES

EX 2-6



# BOGLE & GATES

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71009-03823

November 22, 1989

The Honorable Lee Johnson  
Circuit Court Judge  
528 Multnomah County Courthouse  
1021 S.W. Fourth Avenue  
Portland, OR 97204

RE: Dutton v. Anderson, et al  
Multnomah County Circuit Court No. A8902-00710  
and  
LeadSource, Inc. v. Dutton, et al  
Multnomah County Circuit Court No. A8906-03135

Dear Judge Johnson:

As you know, this office represents Defendants Nucontacts, Inc. and LeadSource, Inc. On November 21, 1989, E. Sean Donahue of the attorneys for Plaintiffs Matthew Dutton and Harris Anderson served a proposed "Judgment and Decree of Judicial Foreclosure" on this form by hand-delivery and apparently sent the document to you for signature. This action was in violation of ORCP 70C, which clearly requires the proposed form of judgment to be served five days prior to the submission of judgment to the court. Of course, because the time period set forth in ORCP 70C is less than seven days, intermediate Saturdays, Sundays and holidays are excluded in the computation. ORCP 10. It follows that the proposed judgment cannot be properly submitted to the court until Wednesday, November 29, 1989, at the earliest. Counsel for Dutton and Anderson has attempted to circumvent the obvious purpose of ORCP 70C, which is to allow the adverse party an opportunity to object to the proposed form of judgment. Defendants Nucontacts and LeadSource request that this court not sign any judgment which is submitted to it prior to Wednesday, November 29, 1989.

EX 2-7

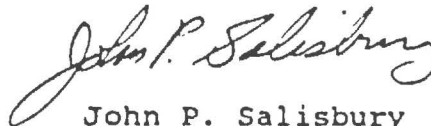
The Honorable Lee Johnson  
November 22, 1989  
Page 2

On November 21, 1989, E. Sean Donahue also apparently sent the court proposed Findings of Fact and Conclusions. Nucontacts and LeadSource, pursuant to ORCP 62B, have ten days or until Friday, December 1, 1989, to object to the proposed findings. I anticipate that LeadSource and Nucontacts will be filing objections to the proposed findings. Because ORCP 62C states that any judgment filed prior to the expiration of the periods set forth in ORCP 62C (which relates to determination of objections to findings) shall be deemed not entered until the expiration of such periods, LeadSource and Nucontacts request that no judgment be entered until all determinations as to objections to findings have been made.

Finally, upon entry of any judgment in this case, LeadSource and Nucontacts intend to stay all proceedings pursuant to ORS Chapter 19. Our clients request a stay for reasonable time of all actions to enforce any judgment entered to enable our clients to exercise their rights pursuant to ORCP Chapter 19.

Very truly yours,

BOGLE & GATES



John P. Salisbury

JPS:kay  
cc: E. Sean Donahue, Esq.  
11\cor\386

bcc: Kathleen Murphy  
Rex Armstrong  
Thomas Guilbert

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BOGLE & GATES

EX 2-8

RAGEN, TREMAINE, KRIEGER,

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November 27, 1989

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D. CHARLES MAURITZ  
JOHN F. MCGRORY, JR.  
WILLIAM R. MILLER, JR.  
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ROBERT D. NEWELL  
PHILLIP C. QUERIN  
RONALD K. RAGEN  
MICHAEL H. SCHMEER, P.C.  
MILTON R. STEWART  
H. STEWART TREMAINE, P.C.  
JOSEPH M. VANLEUVEN  
TIMOTHY R. VOLPERT

AMY R. ALPERN  
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MYLES A. CONWAY  
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SUSAN G. HOWE  
JAY S. MULL  
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O. MICHAEL RINKE  
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OF COUNSEL

WALTER H. EVANS III  
ELIZABETH C. MADSEN  
WATSON D. ROBERTSON

BY HAND-DELIVERY

The Honorable Lee Johnson  
Circuit Court Judge  
528 Multnomah County Courthouse  
1021 SW Fourth Avenue  
Portland, OR 97204

Re: Dutton v. Anderson - Court No. A8902-00710  
Leadsorce v. Dutton - Court No. A8906-03135  
Our File No. 21194-002

Dear Judge Johnson:

I have received Mr. John Salisbury's letter of November 22, 1989. In this letter Mr. Salisbury accuses me of violating ORCP 70C arising from failure to serve a proposed copy of the Judgment.

ORCP 70C provides:

"Attorneys shall submit proposed forms of judgment at the direction of the court rendering the judgment. When so ordered by the court, the proposed form of judgment shall be served five days prior to the submission of judgment in accordance with Rule 9B. The proposed form of judgment shall be filed and the proof of service made in accordance with Rule 9C." (Emphasis added)

As this court may recall, I was ordered to prepare the proposed form of judgment. This court did not order me to serve the judgment on opposing counsel five days prior to its submission. There has been, therefore, no violation of ORCP 70C.

Mr. Salisbury's letter also requests that no judgment be entered until objections to proposed findings of fact have been

EX 2-9

**RAGEN, TREMAINE, KRIEGER, SCHMEER & NEILL**

The Honorable Lee Johnson  
November 27, 1989  
Page 2

made. I see no reason to delay entry of judgment. Defendants are protected as they set forth in their letter by ORCP 62C.

Finally, Mr. Salisbury's letter requests a stay of all actions to enforce judgment. No authority is proposed for this unique relief other than Mr. Salisbury's advice to the court that defendants intend to appeal. Given this state of affairs, entry of judgment without delay is proper so that defendants can pursue any appeal they wish to take forthwith.

Very truly yours,

RAGEN, TREMAINE, KRIEGER  
SCHMEER & NEILL

Sean Donahue

SD/lh

cc: Mr. John Salisbury (by hand-delivery)  
Mr. Burt Robbins  
Mr. Harris Anderson  
Mr. Matt Dutton

EX 2-10

Chair:  
Judge Donald Ashmanskas

Vice-Chair:  
Sen. Dick Sprinjer

Staff:  
Kathleen Beaufait,  
Chief Deputy Leg. Counsel



Members:  
Sen. Peter Brockman  
Rep. Kelly Clark  
Thomas Clifford  
Rep. Jim Edmunson  
A. Carl Myers  
Robert Neuberger  
Sharon Stevens

## OREGON REVISED STATUTES REVISION COMMITTEE

S-101 State Capitol  
Salem, OR 97310-0630  
(503) 378-8148

January 4, 1990

Fredric R. Merrill  
Executive Director  
Council on Court Procedures  
University of Oregon  
School of Law  
11th and Kincaid Streets  
Eugene, Oregon 97403

Dear Fred:

The Oregon Revised Statutes Revision Committee was established by the 1989 Oregon Legislative Assembly to study factors influencing the publication of Oregon Revised Statutes (ORS). House Bill 2020, enclosed, provides information on the scope of the committee's duties.

The committee has tentatively scheduled meetings for January 12 and February 16, 1990, at 10:00 a.m., in Hearing Room A of the State Capitol to hear from interested persons who wish to comment on the need for ORS revision.

If you or your representative wish to appear at one of the committee's meetings, tentatively scheduled or at a later date, please contact the committee office indicating your date preference and the time required for your presentation. If you wish to offer written material, please supply the committee office with your materials for distribution to committee members.

We very much want your contribution to our deliberations and look forward to hearing from you.

Sincerely,

HON. DONALD C. ASHMANSKAS  
Committee Chair

DCA:jmc  
Encl: HB 2020  
cc: Kathleen Beaufait

EXHIBIT NO. 3 TO MINUTES OF COUNCIL  
MEETING OF 1/13/90

EX 3-1

CHAPTER 952

AN ACT

HB 2020

Relating to ORS revision; and declaring an emergency.

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

**SECTION 1.** There is established an Oregon Revised Statutes Revision Committee consisting of nine members, four of whom shall be appointed by the Speaker of the House of Representatives and the President of the Senate. The committee shall serve until the adjournment sine die of the regular session of the Sixty-sixth Legislative Assembly. The committee shall include two members of the Legislative Counsel Committee, two members of the Joint Interim Committee on Judiciary, the Legislative Counsel and four members of the Oregon State Bar who shall be appointed in consultation with the Oregon State Bar. Members shall serve at the pleasure of the appointing authority. If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective for the unexpired term.

**SECTION 2.** (1) The Oregon Revised Statutes Revision Committee shall study the recodification of Oregon statute laws and make recommendations to the Legislative Assembly, regarding:

- (a) The process through which recodification should be undertaken;
- (b) The format for a revised publication;
- (c) The method for updating a revision;
- (d) The establishment of an Oregon Revised Statutes Revision Commission;
- (e) Estimated costs of revision and how the costs should be paid; and
- (f) Such other matters relevant to recodification that the Legislative Assembly requires to make a decision on recodification of Oregon Revised Statutes.

(2) The committee shall report to the Legislative Counsel Committee and the Sixty-fifth Legislative Assembly on or before December 15, 1990.

**SECTION 3.** The Legislative Counsel Committee shall provide staff services to the Oregon Revised Statutes Revision Committee as required by the committee and as are consistent with legislative priorities.

**SECTION 4.** A legislator member of the committee is entitled to compensation and expenses as provided in ORS 171.072 payable from funds appropriated to the Legislative Assembly.

**SECTION 5.** (1) The Oregon Revised Statutes Revision Committee shall select one of its members as chairperson and another as vice-chairperson, for such terms and with duties and powers necessary for the performance of the functions of such offices as the committee determines.

(2) A majority of the members of the committee constitutes a quorum for the transaction of business.

**SECTION 6.** The Oregon Revised Statutes Revision Committee shall meet at a place, day and hour determined by the committee. The committee also shall meet at other times and places specified

by the call of the chairperson or of a majority of its members.

**SECTION 7.** This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect July 1, 1989.

Approved by the Governor August 2, 1989

Filed in the office of Secretary of State August 3, 1989