

COUNCIL ON COURT PROCEDURES

Saturday, February 10, 1990, Meeting
9:30 a.m.

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

A G E N D A

1. Approval of the minutes of January 13, 1990
2. Report of the judgments subcommittee (Judge Mattison)
3. Report of ORCP 55 H subcommittee (Larry Thorp)
4. Report relating to amendment of ORCP 70 C (John Hart)
5. Report relating to federal rule amendments (Executive Director)
6. ORS revision report (Executive Director)
7. NEW BUSINESS

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PUBLIC NOTICE

Copies sent to: The Oregonian; Associated Press, 40 State Capitol Building, Salem, Oregon; United Press International, 40 State Capitol Building, Salem, Oregon; Oregon State Bar.

COUNCIL ON COURT PROCEDURES

Minutes of Meeting of February 10, 1990

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

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

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

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

The Chairer asked members of the public in attendance to present any statements they wished to make. None was received.

Agenda Item No. 1: Approval of minutes of January 13, 1990. The minutes of the meeting held January 13, 1990 were unanimously approved.

Agenda Item No. 3 (out of order): Report of ORCP 55 H subcommittee (Larry Thorp). Larry Thorp distributed copies of a letter from himself to Judge Graber and Henry Kantor at the meeting. The subcommittee's proposed amendment to 55 H(1) is set forth below:

H. Hospital Records

H.(1) Hospital. As used in this section, unless the context requires otherwise, "hospital" means a [hospital] health care facility defined in ORS

442.014(13)(a) through (d) and licensed under ORS 441.015 through [441.087] 441.097, [441.515 through 441.595, 441.815, 441.820, 441.990, and 442.340 through 442.450] and community health programs established under ORS 430.610 through 430.700.

As stated in his letter, the language, as revised, includes within the definition of "hospital" all of the following: traditional hospitals which treat the mentally or physically ill; rehabilitation centers; college infirmaries; chiropractic facilities; facilities for the treatment of alcoholism or drug abuse; and, any other facilities which the Health Division determines are classified as "hospitals". Also included are hospital-associated ambulatory surgery centers, which are surgery centers operated by hospitals but independently from the hospital campus; long-term care facilities, including both skilled nursing facilities and intermediate care nursing facilities; free-standing ambulatory surgery centers, such as those operated by many physician groups; and, county mental health clinics. Mr. Thorp stated that all of the above facilities are currently within the scope of ORCP 55 H, with the exception of county mental health clinics. The proposed amendment eliminates a number of facilities which previously were included within the definition of hospitals, including at least the following: free-standing birthing centers; health maintenance organizations; and, hospital facility authorities. Mr. Thorp stated that he did not think the language covers a medical clinic unless it had an associated surgery center.

After a short discussion, a motion was made by Judge Johnson, seconded by Judge Mattison, to adopt the above proposed amendment, and it passed unanimously.

Agenda Item No. 2: Report of judgments subcommittee (Judge Mattison). Judge Mattison reported that the subcommittee was considering two alternatives: one alternative would always treat the award of attorneys fees and costs and disbursements as a separate judgment; the other alternative would always require that the award of attorney fees and costs and disbursements be included in the principal judgment. The first alternative would be the most consistent with the present statutes governing appeal, which require a separate notice of appeal for an award of attorney fees and costs and disbursements. The second alternative would treat the attorneys fees and costs and disbursements as another claim in the case, with no final judgment until those matters were settled, unless a partial judgment was ordered under ORCP 67 B.

Judge Mattison also reported that the subcommittee was considering a recommendation that would extend the time for appeal from the principal judgment until 30 days after entry of

the supplemental attorney fees and costs and disbursements judgment.

There was an extended discussion of these alternatives. Some Council members favored a system where the later award of attorney fees was somehow included in the principal judgment after entry of the principal judgment. It was also suggested that, if an appeal were taken from the principal judgment before entry of the award for attorney fees and costs and disbursements, errors relating to the attorney fees and costs and disbursements be raisable in that appeal.

Judge Mattison stated that the subcommittee would consider the suggestions made and report at the next meeting.

Agenda Item No. 4: Report relating to amendment of ORCP 70 C (John Hart). John Hart was unable to be present at the meeting but had arranged to have copies of his proposal to amend ORCP 70 C available for distribution at the meeting. His letter with attached proposal is attached as Exhibit No. 1.

After extended discussion, Bernard Jolles moved, with a second by William Schroeder, that ORCP 70 C be amended to read "Attorneys shall not submit forms except upon direction of the court."

Judge Liepe moved to table the motion. Larry Thorp seconded the motion. The motion failed with 6 in favor and 8 opposed.

A vote was taken on the motion with 5 in favor and 9 opposed.

Judge Johnson, with a second by Bernard Jolles, moved that ORCP 70 C be amended to read: "Attorneys shall submit and serve proposed forms of judgment at the direction of the court rendering judgment. The proposed form must comply with section A of this rule."

The motion passed with 10 in favor and 4 opposed.

Agenda Item No. 5: Report relating to federal rule amendments (Executive Director). Copies of the Executive Director's memorandum dated February 9, 1990 relating to amendments to the Federal Rules of Civil Procedure were distributed at the meeting. The executive director suggested that Council members consider whether any of the proposed changes would be appropriate for the ORCP. The matter will be set on the agenda for the March meeting.

Agenda Item No. 6: ORS revision report (Executive Director). The executive director stated that he had discussed

the matter with Judge Ashmanskas and no action was required from the Council at this time. The ORS revision committee is considering the overall format of the ORCP at the present time, rather than any particular sections.

New Business: Judge Barron reported on the proposed changes in the Uniform Trial Court Rules (UTCRC) which will be published in the Advance Sheets.

The next public meeting will be held at the University of Oregon School of Law (Room 129) in Eugene on Saturday, March 10, commencing at 9:30 a.m.

The meeting adjourned at 11:32 a.m.

Respectfully submitted,

Fredric R. Merrill
Executive Director

FRM:gh

**SCHWABE
WILLIAMSON
& WYATT**

ATTORNEYS AT LAW

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JOHN E. HART

February 6, 1990

Mr. Ronald L. Marceau
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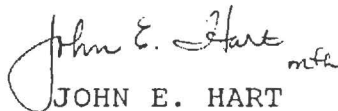
Re: Council on Court Procedures

Dear Ron:

In anticipation of our February 10 meeting, I offer the enclosed proposed language to amend ORCP 70C. I attempted to salvage the old language on several drafts and, ultimately, decided that we probably need to start anew to accomplish the purposes discussed at our prior meeting. I hope this is helpful to the council and look forward to seeing you on Saturday.

Best personal regards.

Yours very truly,


JOHN E. HART

JEH:mfh
Enclosure

P.S. Since this will be my second meeting, I was not altogether sure about whether I should circulate my draft to the entire council. Consequently, unless you advise to the contrary, I will simply bring 25 copies to our Saturday meeting.

EXHIBIT NO. 1 TO MINUTES OF COUNCIL
MEETING OF FEBRUARY 10, 1990

EX 1-1

ORCP 70

C. Preparation and Service of Proposed Forms of Judgment;
Submission of Judgment.

As soon as practicable, attorneys directed by the court to prepare a judgment or, in the absence of court direction, attorneys for the party in whose favor a judgment is rendered, shall prepare a proposed form of judgment and serve all parties as required under ORCP 9B. Unless otherwise agreed by all parties, this proposed form of judgment shall not be submitted to the court for five days following service; thereafter, the proposed form of judgment shall be filed with the court and proof of service made in accordance with ORCP 9C. All objections to a proposed form of judgment shall be expeditiously decided by the court in such a manner that only one form of judgment is entered in each action.