

COUNCIL ON COURT PROCEDURES

Saturday, March 10, 1990
9:30 a.m.

University of Oregon School of Law (Room 121)
1101 Kincaide
Eugene, Oregon

A G E N D A

1. Approval of minutes of meeting of February 10, 1990
2. Public meeting
3. Report of judgments subcommittee (Judge Mattison)
4. Amendments to Federal Rules (Executive Director)
5. UTCR Amendments (Judge Barron - these amendments will appear in Oregon Appellate Advance Sheets, No. 4, March 3, 1990 - comments are due before April 28, 1990 - see notice attached)
6. NEW BUSINESS

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COUNCIL ON COURT PROCEDURES

Minutes of Meeting of March 10, 1990

University of Oregon School of Law
1101 Kincade
Eugene, Oregon

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

(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 meeting of February 10, 1990. The minutes of the meeting held February 10, 1990 were unanimously approved.

Agenda Item No. 3: Report of judgments subcommittee. A copy of a March 8, 1990 memorandum from the judgments subcommittee relating to amendments to ORCP 68 was distributed at the meeting. After a lengthy discussion, it was decided that the following changes be made to the draft of the amendment to ORCP 68 C:

On page 3, C(4)(c). In the third line, change "clerk" to "court". Delete the last sentence.

On page 3, C(4)(d)(i). In the third line, add the word

"timely" after "filed".

On page 3, C(4)(d)(ii). Change the heading to read: "Judgment for attorney fees or costs and disbursements by the court."

On page 4, in the second line, change "awarding" to "concerning", and add "timely" after filed in the third line.

On page 5, delete the amendment to 70 A(1)(b).

On page 5, under 19.026(2). In the fourth line, change "awarding" to "concerning". In the fifth line, substitute the words "not later than" for "within." In the fourth line from the end, change it to read: "the principal judgment shall also be deemed to be a notice of appeal ..."

The Executive Director was asked to prepare a revised draft of ORCP 68 C and 19.026 showing the changes suggested by the Council for consideration at the next meeting.

It was pointed out that the language in ORCP 68 C(2) of the memorandum was incorrect in that it did not contain the amendments to that portion of the rule which were promulgated by the Council last biennium and which went into effect on January 1, 1990. The Executive Director stated that this would be corrected in the next draft.

Judge Liepe asked whether the procedure would apply to default cases, particularly in the collection area where the court is presented with all of the default papers, including the cost bill, and a judgment is signed and the cost amount entered immediately. The Executive Director stated that this was proper under the existing rule because the cost amount could be entered and enforcement was suspended if objections were filed. Under the version of the rule in the memorandum, this would not be possible because the costs and attorney fee judgment could not be entered for at least 14 days. Judge Liepe questioned whether there should be an exception for default cases, at least in collection matters. The Council discussed whether it would be possible to have a judgment signed which did not become effective until after 14 days had expired and no objection was entered. They also discussed whether a defaulting party should have a right to object to the cost bill. Judge Liepe was asked to draft language that would address his concern for consideration at the next meeting.

Council members pointed out that the language of ORCP 68 C(2) does not clearly indicate whether a claim for attorney fees in a motion need not be denied and is taken as automatically denied or the automatic denial applied also to claims in a

pleading. The Executive Director stated that the original intent of the Council was that, whether claimed in a pleading or motion, there be no required response to a pleading. The purpose of C(2) was to provide notice to the opponent in advance of trial, not frame the issues relating to costs and attorney fees. That is done by the cost bill and objection procedure. It was also pointed out that the section uses the words allege and assert in a rather inconsistent way. The Executive Director stated that he would submit some changes to 68 C(2) at the next meeting which addressed the concerns expressed.

Agenda Item No. 4: Amendments to Federal Rules (Executive Director). Copies of the Executive Director's memorandum dated February 9, 1990 had been distributed at the Council's February 10, 1990 meeting, and copies had been mailed to those members not in attendance at that meeting. A copy of that memorandum is attached to the original of these minutes as Exhibit No. 1. The Executive Director stated that the proposed amendments apply to federal practice and do not apply to Oregon and that some of the amendments are controversial. The proposed revision to FRCP 45 provides for subpoenas to compel non-parties to produce documents and things and to submit to inspection of premises. Larry Thorp suggested an amendment to the ORCP to allow a subpoena to be used as a discovery tool with respect to third parties without the necessity of scheduling a deposition. The Executive Director was asked to prepare a draft rule for consideration at the April 21, 1990 meeting.

Agenda item No. 5: UTCR amendments (Judge Barron). A copy of the notice from Bradd Swank regarding proposed changes to the UTCR is attached to these minutes as Exhibit No. 2. The proposed amendments to the UTCR were published in the Oregon Appellate Advance Sheets, No. 4, March 3, 1990, and comments are due before April 28, 1990. Judge Barron mentioned two significant changes: the elimination of the requirement to remain seated at the counsel table and the adoption of the Oregon Supreme Court's ethical rule relating to cameras in the courtroom. Judge Barron suggested that, if anyone had any comments to the proposed amendments, they be submitted before the deadline.

NEW BUSINESS

Bob Oleson of the Oregon State Bar had furnished the Council with a letter dated February 23, 1990 from attorney Michael Mills. Mr. Mills wondered about taxing of legal assistant and legal clerk research time as part of a cost bill or as part of an item of attorney fees. He favored using legal assistants and law clerks to a greater degree than in the past. He stated that there was a problem when attempting to get reimbursed for those costs because he said that nowhere is it clearly spelled out that these are costs to be considered by the trial court in awarding

attorney fees. It was pointed out by Council members there was an Oregon Court of Appeals case authorizing recovery of these amounts as part of attorney fees and that the attorney fee statement form appended to the UTCR contains the category of legal assistants and law clerks, and thus attorneys are encouraged to list charges for that category. The Executive Director was directed to communicate with Mr. Mills and refer him to the UTCR form.

A letter dated March 1, 1990 from John Salisbury of Bogle & Gates directed to the Council and various sections of the Oregon State Bar was distributed at the meeting. Mr. Salisbury, writing in his capacity as member of the Uniform State Laws Committee of the Oregon State Bar, enclosed with his letter a copy of the Uniform Foreign-Money Claims Act with commentary and prefatory notes and a copy of his report to the Committee. He stated in his letter that on February 21, 1990, the Committee met and approved the adoption of the Act subject to the review and approval of the Act by the Council and various sections of the Bar, and requested responses by May 16, 1990. A copy of Mr. Salisbury's letter and enclosures is attached to the original of these minutes as Composite Exhibit No. 3. Copies will be forwarded to those members not in attendance at this meeting.

The Executive Director was asked to respond to Mr. Salisbury's letter, informing him that the Council is taking a close look at the Act, and inquire concerning the strategy of the Committee with respect to the Act. The Executive Director stated that he would report back on this and possible changes to the ORCP that were being requested at the next meeting.

The next public meeting of the Council on Court Procedures will be held at 9:30 a.m. on Saturday, April 21, 1990, at the Embarcadero Resort in Newport.

The meeting adjourned at 11:33 a.m.

Respectfully submitted,

Fredric R. Merrill
Executive Director

FRM:gh

February 9, 1990

M E M O R A N D U M

TO: Members, COUNCIL ON COURT PROCEDURES
FROM: Fred Merrill
RE: Amendments to Federal Rules of Civil Procedure

The following is a brief summary of the proposed amendments to the Federal Rules of Civil Procedure published June 12, 1989, 127 FRD 237. It only covers those amendments which would have any relationship to the ORCP. For example, the proposed amendments contain a substantial revision of FRCP 4 governing service of process. Our provisions in this area are so different that the proposed federal amendment has no relevance to us.

My thanks to Ed Brunet of Lewis and Clark Law school for information about the hearings and the national reaction to the proposed change.

The proposed amendments published on June 12, 1989 are simply a preliminary draft of a subcommittee of the Judicial Conference Standing Committee on Rules of Practice and Procedure which have been circulated for comment. They have not been accepted by the committee or recommended by the Judicial Conference to the Supreme Court. They were subject to hearings in San Francisco and Chicago last month and, as noted below, at least some of them were subject to substantial criticism and are likely to change.

FRCP 5 - ORCP 9

The amendments would allow facsimile service of papers. That was already put into the ORCP by the last legislature. They would also require proof of service, which is already covered by ORCP 9 C. They would also add the following to the filing section: "The clerk shall not refuse to accept for filing any instrument presented for that purpose solely because the instrument is not presented in proper form as required by these rules or any local rules." This is directly contrary to ORCP 9 E which authorized clerks to refuse to accept papers which do not meet minimum requirements as to form. The comment to the federal rule suggests that passing upon the correctness of form of documents is not a proper role for clerks.

FRCP 14 - ORCP 22

The proposed amendment would add the following to FRCP

14(a) [ORCP 22 C(1)]: "A copy of all previous pleadings in the actions shall accompany the third party complaint or be provided promptly after service." The comment suggests this is more efficient than forcing the third party defendant to secure these papers from the clerk's office.

FRCP 15 - ORCP 23 C

The proposed amendment would change the relation back provision in FRCP 15(c) so that an amendment changing the party or the name of a party against whom the claim is asserted would relate back as long as the proper party had effective notice of the action within the time permitted for service of summons under FRCP 4. Under the federal system, the filing satisfies the limitations period, and FRCP 4 requires service within 120 days of filing. This change was intended to reverse the result in Schiavone v. Fortune, 106 S. Ct. 2379 (1986), where the Court correctly held the present rule (as does ORCP 23 C) requires an effective limitations period. The Schiavone rule is more consistent with Oregon practice which requires service within the limitations period.

FRCP 26 - ORCP 36

The amendments would add a new reference in the description of discovery methods [our 36 A] to discovery in another country provided by treaty or convention. It is attached as Exhibit A. They also would add a new subsection to 26(b) [our 36 B] that provides that a party claiming privilege or work product protection must provide certain information. This is attached as Exhibit B. Neither of these seem terribly important in Oregon litigation, but they might prove useful.

FRCP 28 - ORCP 36

FRCP 28(b) [our 38 B] would be amended to make effective use of the Hague convention on the Taking of Evidence Abroad in Civil or Commercial Matters and similar treaties. The amendment is attached as Exhibit C. The language in our rule is slightly different but there is enough similarity that we might benefit from the same change. The reference to "letter of request" rather than "letters rogatory" might be a good idea.

FRCP 30 - ORCP 39

A number of changes are contemplated in the federal oral deposition rule to accommodate nonstenographic depositions. We have already addressed the problem in our rule which seems to be working well.

FRCP 34 and 45 - ORCP 43 and 55

The amendments contemplate a substantial revision of FRCP 45 governing subpoenas. Some of the changes relating to issuance of subpoenas and out-of-district subpoenas would be inapplicable to Oregon practice, but the amendments would also establish use of a subpoena, without scheduling a deposition, to force production and inspection of material in the hands of a non-party witness. This would be similar to what the Council did with hospital records during the last biennium. As a general procedure, it might be useful and save expenses. It also would allow use of a subpoena to compel the inspection of premises in the possession of a nonparty. At the present time, under both the ORCP and the federal rule, this type of discovery requires initiation of a separate lawsuit. A full copy of the changes to FRCP 34 and 45 is attached with the commentary as Exhibit D.

FRCP 35 - ORCP 44

Congress amended the federal rule to include psychologists with physicians as persons who could conduct mental examinations. This is similar to the amendment to ORCP 44 by the Oregon legislature last year. The rule now would be amended to provide for mental examinations by "an examiner licenced or certified by the law of the place of the examination." The purpose is to extend the mental examination authority to any person licenced to provide health diagnostic services.

FRCP 41, 50 and 52 - ORCP 54, 60, 62 and 63

The amendments would change the motions for directed verdict and judgment NOV in a jury case into a motion for judgment as a matter of law, and the motion for dismissal in a non-jury case into a motion for judgment on partial findings. In the main, the motions would remain the same, but the court would be empowered to enter such judgment or findings at any time during the trial, as soon as it is apparent that either party is unable to carry a burden of proof. In other words, the court would not have to wait until a party rested to grant a judgment as a matter of law.

Whether or not this change is worth serious consideration, it came under so much fire at the public hearings that it is probably going to be changed if it goes forward at all. We should perhaps save our energy until we see more clearly what the Judicial Conference intends to do.

FRCP 56 - ORCP 47

One of the most extensive changes contemplated by the Proposed amendments is a wholesale revision of FRCP 56, the summary judgment rule. The amendment would among other things

(1) expand use of summary determination of facts in the context of the pretrial conference, (2) describe the procedures to be followed in making or responding to the motion in much greater detail, (3) allow summary establishment of the controlling law for the case, (4) clarify the standard for summary judgment and the relationship to directed verdict, and (5) clarify the burdens upon the party making and opposing the motion. This supposedly is primarily in response to Celotex Corp. v Catrett, 106 S. Ct. 2548 (1986). These changes are easily the most controversial in the rule and have attracted a great deal of adverse comment. Whether or not they would be desirable or fit Oregon practice, we should wait until we see what changes are made in response to the comment received.

Encs.

March 8, 1990

MEMORANDUM

TO: Members, COUNCIL ON COURT PROCEDURES

FROM: Judgments Subcommittee

RE: ORCP 68 C

The subcommittee recommends the following amendment to ORCP 68 C:

ORCP 68
ALLOWANCE AND TAXATION OF ATTORNEY
FEES AND COSTS AND DISBURSEMENTS

* * *

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 of 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 9C; 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) No objections filed - entry by the clerk. If no objection to a statement of attorney fees or costs and disbursement is timely filed, the clerk shall sign a supplemental judgment awarding the attorney fees and costs and disbursements claimed in the statement. Where the principal judgment is by default and attorney fees are included in the statement, the supplemental judgment shall not be entered unless the attorney fees are approved by the court before entry.

C(4)(d)(i) Objections filed - 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)(d)(ii) Judgment for attorney fees by the court. The court shall deny or allow in whole or in part the statement of attorney fees and costs and disbursements. The determination of the court shall be set forth in a separate supplemental

judgment. No other findings of fact or conclusions of law shall be necessary.

C(4)(e) Entry and effect of judgment for attorney fees and costs and disbursements. The supplemental judgment awarding attorney fees or costs and disbursements shall be filed and entered. Notice of the supplemental judgment shall be given to the parties in the same manner as provided in Rule 70 B(1), excluding the last sentence thereof.

C(4)(f) Form of supplemental judgments. Supplemental judgments awarding attorney fees or costs and disbursements shall not be subject to the requirements of ORCP 70 A(2) and (3).

C[(6)](5) Avoidance of multiple collection of attorney fees and costs and disbursements.

C[(6)](5)(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)](5)(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.

COMMENT

The approach in this draft allows the principal judgment to be entered without any delay relating to the cost bill. It is also the most consistent with ORS 20.220 (attached), which treats the attorney fees and costs and disbursements as a separate judgment for appeal and ORS 19.033(1), which allows a court to enter an attorney fee and costs and disbursements award after appeal. There would be no ambiguity about the separate existence and appealability of a judgment for attorney fees and costs and disbursements. On the other hand, there would be an increase in paper. Every judgment would require a separate supplemental judgment for attorney fees and costs and disbursements. We assume the attorney submitting the cost bill would always include a form of judgment for the clerk to sign and enter if no objections were filed.

Several conforming amendments to the ORCP would be

necessary. ORCP 70 A(2)(a)(vii) should be eliminated. That subparagraph reads as follows:

"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 where such will be determined later under Rule 68 C."

ORCP 70 A(1)(b) would be amended to read:

"Be signed by the court or judge rendering such judgment or, in the case of judgment entered pursuant to Rule 68 C(4)(d) or 69 B(1), by the clerk."

The subcommittee also suggests that the Council recommend that the legislature adopt the following amendment to ORS 19.026

19.026 Time for service and filing of notice of appeal. (1) Except as provided in subsections (2)[and (3)] through 4 of this section, the notice of appeal shall be served and filed within 30 days after the judgment appealed from is entered in the register.

(2) When a supplemental judgment awarding attorney fees or costs and disbursements is entered pursuant to ORCP 68 C(4)(f), notice of appeal of the judgment upon the principal claim in the case or the supplemental judgment awarding attorney fees or costs and disbursements shall be served and filed within 30 days after such supplemental judgment is entered in the register. If notice of appeal of the judgment upon the principal claim has been filed and served before entry of the supplemental judgment awarding attorney fees or costs and disbursements, the notice of appeal of the principal judgment shall also be a notice of appeal of the supplemental judgment and error in allowance or the amount of attorney fees or costs and disbursements may be assigned in such appeal.

[(2)] (3) Where any party has served and filed a motion for a new trial or a motion for judgment notwithstanding the verdict, the notice of appeal of any party shall be served and filed within 30 days after the earlier of the following dates:

(a) The date that the order disposing of the motion is entered in the register.

(b) The date on which the motion is deemed denied, as provided in ORCP 63 D or 64 F.

[(3)] (4) Any other party who has appeared in the action, suit or proceeding, desiring to appeal against the appellant or any other party to the action, suite or proceeding, may serve and file notice of appeal within 10 days after the expiration of the

time allowed by subsections (1) [and] through [(2)] (3) of this section. Any party not an appellant or respondent, but who becomes an adverse party to a cross appeal, may cross appeal against any party to the appeal by a written statement in the brief.

[(4)] (5) Except as otherwise ordered by the appellate court, when more than one notice of appeal is filed, the date on which the last such notice was filed shall be used in determining the time for preparation of the transcript, filing briefs and other steps in connection with the appeal.

Enclosure: ORS 20.220

cc: Judge Buttler (w/enc.)



JUDICIAL DEPARTMENT

Supreme Court Building
Salem, Oregon 97310

NOTICE

TO: All Parties on the Uniform Trial Court Rules (UTCR)
Notice List

FROM: Bradd A Swank *Bradd A Swank*
Management/Legal Analyst

RE: 1990 Proposed Changes to the UTCR Published for Public
Comment

The actions taken by the Uniform Trial Court Rules (UTCR) Committee to propose changes to the UTCR are to be published in the Oregon Appellate Advance Sheets, No. 4, March 3, 1990, for public comment. Any comment on these actions must be received by the UTCR Committee at or before its meeting on April 28, 1990. Comments may be mailed to the UTCR Reporter, Office of the State Court Administrator, Supreme Court Building, 1163 State Street, Salem, Oregon 97310. Comments may also be given at the public meeting of the UTCR Committee on April 28, 1990, at a location to be announced (probably in central Oregon). The Committee will review timely public comment on these actions before the Committee makes final recommendations to the Chief Justice on changes to the UTCR that will take effect August 1, 1990.

BAS:sh/E3S90009.F
2-22-90

EXHIBIT 2 TO MINUTES OF
COUNCIL MEETING HELD 3/10/90

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MICHAEL MILLS
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FRANK E. BOCCI, JR.

February 23, 1990

BOB OLESON
OREGON STATE BAR
P.O. Box 1689
Lake Oswego, OR 97035

Re: Legislative Issues

Dear Bob:

Has there been any discussion about a bill posed by the Bar that would allow the taxing of legal assistant and legal clerk research time as part of a cost bill or as part of an item of attorney's fees? I firmly believe that in these times of rising overhead costs we need to do everything that we can to lower the eventual cost of legal services for our clients or at least make them as affordable as possible.

I find that one way to do this is to use legal assistants and lawclerks to a greater degree in the past. They perform work that attorneys would otherwise have to perform and at a much lower cost. However, the problem comes when you try to get reimbursed for these, either under an ORCP petition for attorney's fees or as part of a cost bill because no where is it clearly spelled out that these are to be costs that are to be considered by the trial court in awarding attorney's fees.

I think that if it were clearly set out that they could be taxed as costs or part of attorney's fees petition that attorneys would tend to use lawclerk and legal assistants even more and would not be afraid to show them on their cost bill or petition for attorney's fees. Now if you have a lot of legal research time or time otherwise involved by clerks, and you know that you cannot recover that, it has a tendency to color your thinking about attorney's fees charged.

I don't know who to take this up with except you, but I would like to discuss this with the legislative committee or at least have it brought up to them for some further discussion in case I am missing something or some reason why there should be opposition on the part of the Bar in this kind of an approach.

Please advise.

Thank you.

Sincerely,

"Dictated but not read by author
in order to avoid delay."

Michael Mills
MM:ml



FYI - any feedback?

BOB OLESON

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