

COUNCIL ON COURT PROCEDURES

Saturday, October 9, 1993 Meeting  
9:30 a.m.

Eugene Hilton Hotel  
Thornton Wilder Room (Main Floor)  
66 East Sixth Avenue  
Eugene, Oregon

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A G E N D A

1. Call to order (Henry Kantor in the Chair)
2. Introduction and welcome to new Council members (Henry Kantor in the Chair)
3. Approval of February 27, 1993 minutes (copy attached)
4. Election of 1993-95 Council officers (Henry Kantor in the Chair)
5. Special Open Discussion: Lessons of the 1993 Legislative Session and the Council's future (new Chairperson in the Chair)
6. Brief review of 1993 Legislative Session (Maury Holland)
7. Council matters held over from 1991-93 biennium (new Chairperson; Maury Holland)
8. Summary of recent correspondence (Maury Holland)
9. Discussion of 1993-95 biennial agenda and priorities (new Chairperson)
10. Old business
11. New business
12. Adjournment

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COUNCIL ON COURT PROCEDURES

Minutes of Meeting of February 27, 1993  
9:30 a. m.

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

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Present:	Richard L. Barron	David R. Kenagy
	Richard Bemis	Ronald L. Marceau
	Susan P. Graber	Michael V. Phillips
	Bruce C. Hamlin	Janice M. Stewart
	John E. Hart	Elizabeth Welch
	Bernard Jolles	
	Henry Kantor	
Excused:	Susan G. Bischoff	Richard T. Kropp
	William D. Cramer, Sr.	Winfred K. F. Liepe
	Robert D. Durham	Robert B. McConville
	Lafayette G. Harter	Charles A. Sams
	Nely Johnson	William C. Snouffer
	John V. Kelly	

Also present were Maury Holland, Executive Director, and Bob Oleson, Oregon State Bar Public Affairs Director, for a portion of the meeting.

Chair Henry Kantor called the meeting to order at 9:37 a.m.

**Agenda Item No. 1: Approval of minutes of meeting held December 12, 1992.** The Chair asked whether there were any comments, corrections or additions to the minutes of the Dec. 12, 1992 meeting as previously circulated, and hearing none, declared without objection that they would stand approved.

**Agenda Item No. 2: Old business.** The Chair asked whether anyone had any item of old business to raise. Maury Holland stated that some typographical errors had been discovered on p. 14 of "Amendments to Oregon Rules of Civil Procedure Promulgated by Council on Court Procedures: December 12, 1992." He distributed to the Chair and all members present a corrected page 14, and said that copies thereof would be forwarded to excused members. He also stated that these corrections had been agreed upon with the Legislative Counsel.

**Agenda Item No. 3: Consideration of Pending Bills.** The Chair asked Maury Holland to summarize what he knew about each of the currently pending bills pertinent to the ORCP and the work of the Council attached to his Feb. 18 '93 memo. (A copy of this memo with attachments is attached to the file copy of these minutes.)

Holland responded that SB 215, while broadly similar to the corresponding amendment of R. 39 C. (7) promulgated by the Council at its 12/12/92 meeting, was different in that the former would disallow telephonic depositions pursuant to informal agreement and would require either a court order or written stipulation entered of record. He stated that SB 253 differed from the corresponding amendment of the summons warning promulgated by the Council in that the language proposed by the bill would highlight the means of obtaining an attorney if a person served did not already have one.

Several Council members expressed concerns about both of these bills. The Chair reported that he had received from Susan Evans Grabe, OSB Law Improvement Coordinator, word that Counsel to the Senate Judiciary Committee has agreed that no hearings would be scheduled on either of these bills; an agreement was further evidenced by a letter from Grabe to William E. Taylor, Jr., counsel to the Senate Judiciary Committee, a copy of which was provided by the Chair for the Council's files.

Maury Holland proceeded to SB 340, which he reported would in substance adopt the new sections of R. 36 regarding modification of protective orders considered but not promulgated by the Council, though with some important differences in detail. Several members expressed criticisms of the amending language of this bill having to do with some apparent drafting flaws and also some policy concerns. The issue then arose as to what, if any, action the Council should take in light of the similar proposal before it at its Dec. 12, 1993 having been tabled. There was general agreement that Henry Kantor, as Chair, should notify the

Chair of the Senate Judiciary Committee by letter of what had taken place in the Council concerning the proposed discovery-sharing amendment, which he stated he would do. As of the date of this meeting, no committee hearing had been scheduled on this bill. It was noted that since the deadline for scheduling committee hearings had not yet arrived in the current session, the fact that no hearing had yet been scheduled on this bill did not provide assurance that none would be, possibly on very short notice. The Chair asked Maury Holland to notify all excused Council members of what was decided upon regarding SB 340.

An extended discussion then followed concerning HB 2360, in which Bob Oleson participated on behalf of the OSB. Mr. Oleson reported that Rep. Mannix, sponsor of this bill, has long felt that the Council as currently empowered represents an excessive delegation of legislative authority and that he is serious about reducing the Council's role to that of an advisory body. Mr. Oleson said that he was not aware that Rep. Mannix had been prompted to introduce this bill at this particular time by any recent events in the Council's history, or by any specific thing it has done or failed to do. He further stated that he expects that this bill will probably enjoy quite substantial support from various interest groups that for one reason or another have become unhappy with the Council, although he was unable to identify what these groups might turn out to be. He reported that the OSB was prepared officially to oppose this bill and to work with the Council in that regard, provided the Council also decides to oppose it.

The Chair asked for an expression of opinion whether the Council should take any official position regarding this bill, and if so, what position. Bruce Hamlin moved, seconded by Ron Marceau, a resolution that the Council oppose this bill officially and as effectively as possible, which was adopted by unanimous voice vote. There followed discussion of factors and considerations that might be identified and articulated as being both the most valid and the most persuasive reasons why the Council should retain its current limited law-making role. There was general agreement that the ORCP have constituted, and continue to constitute, a remarkably good set of procedural rules and that the work of the Council over the years of its existence is one reason this is so. Among the advantages offered by the Council and its method of operation, it was noted, is the opportunity they afford to give serious consideration to proposed amendments in a manner that is both quite intensive and yet takes place over the considerable span of time represented by a biennial cycle. Both Council members and those who appear before it to advocate or oppose rules amendments take the Council's decision-making processes more seriously than either would be likely to do were the Council merely an

advisory body. This seriousness of preparation and deliberation must certainly help result in a better quality work product in the form of those rules amendment as finally promulgated. Similarly the Council might be thought to offer a forum in which "pro-plaintiff" and "pro-defendant" views gain more balanced consideration than would be the case if the judiciary committees of the legislature were to become the primary fora for procedural reform. Additionally, several members pointed out that the Council accomplishes a tremendous amount of hard work and expends great amounts of time which, if it did not exist or existed in a merely advisory capacity, almost certainly would either fall to the members of the judiciary committees during a hectic legislative session or would not get done at all.

Discussion then turned to how effective opposition to this bill would be organized. It was agreed that the Council, and especially the Chair and Executive Director, would coordinate matters closely with Bob Oleson, keeping him currently informed on all steps and plans being contemplated. It was noted that HB 2360 is scheduled for hearing on Wednesday, March 17, at 1:00 p.m., before the House Judiciary Subcommittee on Civil Law and Judicial Administration in Rm. 357 of the State Capitol. In addition to the Chair and Executive Director, who will be present at this hearing and prepared to testify as needed, there was discussion of what other individuals might be available to testify most effectively in opposition. There was general agreement that individuals who had been prominently involved in creating the Council in its present form might be more persuasive witnesses in opposition than those currently involved with it, and the names of several such individuals were mentioned. Maury Holland was asked to look into the legislative history surrounding the creation of the Council, with particular reference to a substantial research memo done at the time that concerned primarily separation-of-powers considerations. Holland was asked to coordinate this research with Bruce Hamlin, who was Fred Merrill's research assistant during the time the Council was being created and structured in its present form. The Chair also directed Holland to ensure that absent Council members are fully informed about the decision to oppose HB 2360 and the plans for expressing this opposition, and that their comments and suggestions are solicited.

Maury Holland then reported that, on behalf of the Council, John Hart wrote a letter addressed to all legislators expressing its opposition to HB 2497 that would amend R. 56 and 59 G to reduce the number of civil jurors from 12 to 6. This letter was introduced into the record of the hearing on this bill by the Civil Law and Judicial Administration Subcommittee of the House Judiciary Committee on Feb. 9, 1993 by prior

arrangement with Stephen C. Thompson, who testified in person at this hearing in opposition to the bill. Several members noted that this reflected an official position of the Council in opposition to reduction in the size of civil juries, and not merely an "unofficial consensus position," as characterized in Holland's Feb. 18 covering memo.

Finally, there was general agreement that there is no need for the Council to comment in any form on HB 2562, which would impose insurance requirements on certain persons serving summonses.

There followed some discussion about how the Ways & Means hearing on HB 5045 to appropriate Council funding for the 1993-95 biennium and scheduled for March 5, would be covered. The Chair stated that he now expects to be at another hearing at the time the Council's budget hearing is scheduled, and hoped that John Hart, as Vice Chair, will be able to attend along with Maury Holland. The Chair urged Holland to confirm arrangements with Hart as soon as possible.

**Agenda Item No. 4: New business.** The Chair called for any items of new business. Maury Holland then distributed sets of copies of other pending bills that deal in one way or another with civil practice, some of which would amend the ORCP, but would not, in contrast to the bills discussed under item no. 3 above, modify or otherwise affect any of the rules amendments promulgated Dec. 12, 1992. Included in this set were SB 307, SB 308, 372; HB 2504, 2637, 2665, 2709, 2779, 2781, and 2855. The Chair urgently requested that all members examine these bills as promptly as possible, and notify him which, if any, of them in their opinion should be responded to by a letter to the pertinent judiciary committee chair pointing out that the procedural changes in question had not been proposed to the Council and requesting that legislative action be deferred until the Council is given opportunity to consider them during the course of the 1993-95 biennium.

Maury Holland expressed concern that a very large number of Council members would be leaving the Council because of expiration of their terms. He asked whether there was some acceptable way in which those members who are completing their terms, but are eligible for reappointment to additional terms, might be informed of such eligibility and asked whether they would accept reappointment so that reappointment could be recommended to the Board of Governors or other appointing authority. Holland made it clear, however, that he did not think it appropriate for him as Executive Director to recommend either initial appointments or reappointments to the Council, and would strictly refrain

from doing this despite occasional requests that he do so. The Chair suggested that Holland notify each members whose term is expiring of that fact, along with whether he or she is eligible for reappointment. Holland said that, in addition to that, he would follow past practice and, during the summer, notify each of the appointing authorities by letter of any vacant positions which they are respectively authorized to fill. He added that he would like to be further advised on whether such letters should mention the possibility of reappointment where pertinent.

David Kenagy responded to an inquiry from the Chair to the effect that there was as yet nothing new to report from the committee appointed to study possible amendments to R. 55, particularly concerning subpoenaing of hospital records.

There being no further new business, the meeting was adjourned at 12:05 p.m.

Respectfully submitted,

Maurice J. Holland  
Executive Director