

TIMOTHY P. ALEXANDER
Judge



Washington County Courthouse
Hillsboro, Oregon 97124
(503) 648-8772

CIRCUIT COURT OF OREGON
TWENTIETH JUDICIAL DISTRICT

July 12, 1994

Maury Holland
Council on Court Procedures
University of Oregon, School of Law
Eugene, OR 97403-1221

Re: ORCP 68 C(4)(c)(ii)

Dear Mr. Holland:

The proposed amendment to ORCP 68 was discussed at the monthly meeting of the Circuit and District judges on July 6, 1994.

The response was unanimous opposition for the simple reason that it would create another contested proceeding with many of the elements of a trial. The current system of affidavits, with hearing on request and a summary decision by the trial judge, is working very well and does not need to be modified.

Very truly yours,

Timothy P. Alexander
Presiding Judge

TPA/sjd



CIRCUIT COURT OF OREGON

FOURTH JUDICIAL DISTRICT

MULTNOMAH COUNTY COURTHOUSE

1021 S.W. 4TH AVENUE

PORTLAND, OREGON 97204

LEE JOHNSON
JUDGE
DEPARTMENT NO. 10

COURTROOM 528
(503) 248-3165

June 20, 1994

MEMORANDUM

TO: Presiding Judge Donald Londer 

FROM: Judge Lee Johnson


I question the wisdom of the Council on Court Procedures requiring findings of fact and conclusions of law in awards of attorney fees. Such findings would be mere useless and bureaucratic paperwork for the attorneys and judges.

The amount of attorney fees is a discretionary decision. The judge is required by law to consider a number of factors, but the weight attached to each factor is discretionary as is the final result. What purpose is served by requiring findings.

Are there attorneys who really want us to make findings? Most appeals of attorney fee awards are that the trial judge awarded less than requested. Do lawyers really want judges to articulate such things as the judge believes the lawyer is incompetent, or that the hours expended were excessive, or the hourly rate is excessive considering the lawyer's ability. I would suggest that we let sleeping dogs lie.

cc: Honorable Stephen Gallagher
Honorable Michael Marcus
Honorable Nely Johnson

MEMORANDUM

TO: Judge West 

RE: Proposed rule change ORCP 68

FROM: Judge Leggert

DATE: June 8, 1994

My only comment is the change creates more work for the judges, which I now have a personal interest in limiting. However, I suggest if the change is enacted the judge ask the party awarded the fees to prepare the required order. Those attorneys will have a strong interest in preparing a complete and accurate order. Therefore, the workload increase would not be substantial for the court.

BURT, SWANSON, LATHEN, ALEXANDER, McCANN & SMITH, P.C.

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April 27, 1994

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~~Nancy Tauman
Attorney at Law
P.O. Box 667
Oregon City OR 97045~~

Re: Council on Court Procedures

Dear Steve and Nancy:

At the last meeting the Council on Court Procedures discussed the issue of findings of fact concerning awards of attorney's fees under ORCP 68. Particularly, we discussed the provisions of ORCP 68(C)(4)(c)ii. That rule reads as follows:

"The court shall deny or award in whole or in part the amount sought as attorney's fees or costs and disbursements. No findings of fact or conclusions of law shall be necessary."

We engaged in quite a bit of discussion concerning the need to address awards of attorney's fees, particularly in areas of social importance, such as civil rights cases. In addition, I think that one could argue that almost any statute allowing for attorney's fees represents a public policy encouraging attorneys to undertake cases for clients who would not otherwise be in a position to retain their services. There were also comments by a number of judges on the council indicating that they routinely do make findings in attorney fee cases when objections are filed.

It would seem that an amendment to the rule could take a number of forms, including the following:

1. **"The court shall make findings of fact and conclusions of law with regard to the award of attorney's fees."**
2. **"The trial court may make findings of fact and conclusions of law on awards of attorney's fees."**
3. **"The trial court shall make findings of fact and conclusions of law on awards of attorney's fees if requested by any interested party."**

TO: Steve Shepard & Nancy Tauman
RE: Council on Court Procedures
DATE: April 27, 1994
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4. "The trial court shall make findings of fact and conclusions of law on the issue of attorney's fees when requested by all interested parties."

5. "The trial court is encouraged to make findings of fact and conclusions of law on the issue of attorney's fees when requested by any interested party to the action, and when the decision involves an issue that is not only important to the parties, but also important to the general policy supporting the award of attorney's fees."

These are obviously only some of my suggestions on possible changes to Rule 68(C). However, I think that the threshold question would be whether the Council feels that any change to the rule is appropriate. Therefore, I would propose that a motion be presented to the council with essentially the following language:

"Should the Council on Court Procedures consider amendments to ORCP Rule 68(C)(4)(c)ii regarding findings of fact and conclusions of law relating to an award of attorney's fees."

If this motion is passed, then we should discuss an appropriate form for any amendment. If the motion fails, then the rule should obviously retain its current form. I do feel that the question of whether any change is necessary is always the first one that should be addressed.

I would appreciate your thoughts on this issue not only at the next meeting, but beforehand if appropriate.

Sincerely,

BURT, SWANSON, LATHEN, ALEXANDER, McCANN, & SMITH, P.C.

J. Michael Alexander

JMA/jb

CC: Maury Holland, University of Oregon ✓
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