

COUNCIL ON COURT PROCEDURES

Minutes of Meeting of November 13, 1993

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

Present: J. Michael Alexander Bernard Jolles
Sid Brockley John H. McMillan
Patricia Crain Michael H. Marcus
William D. Cramer, Sr. Michael V. Phillips
Bruce C. Hamlin Stephen J.R. Shepard
John E. Hart Nancy S. Tauman
Nely L. Johnson Janice R. Wilson

Excused: Robert D. Durham
Susan P. Graber
Milo Pope
Charles A. Sams

Absent: John V. Kelly
Robert B. McConville

Kathryn S. Chase, liaison from the Oregon State Bar Practice & Procedure Committee, was present. Attorneys Douglas Wilkinson and Scott Elliott were present for a portion of the meeting. Also present were Maury Holland, Executive Director, and Gilma Henthorne, Executive Assistant.

Agenda Item 1. Chair John Hart called the meeting to order at 9:40 a.m.

Agenda Item 2. The previously distributed minutes of the October 9, 1993 meeting were approved with the following corrections: Dick Kropp's name should be deleted as he is no longer a Council member, and Judges Sid Brockley and Nely Johnson should be shown as excused.

Agenda Item 3: Everyone present introduced themselves, including the following new members: Judge Sid Brockley, Judge Michael H. Marcus, Judge Janice R. Wilson, Mr. J. Michael Alexander, Ms. Patricia Crain, Mr. Stephen J. R. Shepard, Ms. Nancy Tauman, and also Ms. Kathryn Chase, who is the OSB Committee on Practice & Procedure liaison person with the Council.

Agenda Items 4 and 5 were consolidated for discussion. John

Hart discussed some matters held over from the previous biennium. He mentioned that some fine-tuning might be needed with Rule 32 and asked Maury Holland to draft some clarifying language in consultation with Mike Phillips, and then to distribute the agreed upon language to the Council prior to the next meeting. He also mentioned that the committee that had begun some preliminary work regarding Rule 55 H and subpoenaing of hospital records needs to be reconstituted and gets its work underway. Mick Alexander, Sid Brockley and Mike Phillips agreed to serve on this committee, in addition to the following non-members who had expressed interest in this project or who it is thought could make a special contribution: Karen Creason, Larry Thorp and Larry Wobbrock. Holland said he would contact each of these non-members to reconfirm their continued interest in serving on this committee, and would then distribute to each committee member a packet of materials reflecting the preliminary work done and correspondence received during the last biennium.

John Hart noted that some review of the work done last year regarding Rule 69 is needed. Bruce Hamlin said that he would do that review and report back on any recommendations he might develop.

Agenda Items 6 and 7 were consolidated for discussion. John Hart opened a wide-ranging discussion about what the Council should do during the current biennium, and according to what order of priorities, by suggesting the desirability of having a subcommittee examine and review the Council's budget and funding. He expressed the hope that John McMillan, among others, would agree to serve on such a subcommittee. McMillan said he was willing to do so. In the ensuing discussion, various members identified other issues, distinct from funding though not entirely unrelated to it, that need to be addressed.

Nely Johnson suggested that ways should be found to establish and maintain contact with legislators well before the 1995 session, to make them aware that the Council exists, what its function is, and that it would welcome hearing about any concerns or suggestions, relating to the ORCP, that they or their constituents might have. There was general agreement that many, probably most legislators have very little knowledge or understanding of what the Council is or does, beyond their misperception that it is a Bar committee.

John McMillan asked whether, as a general matter, judges have any opinion about the Council, and specifically whether they value its work. Sid Brockley responded that, from his observation, Oregon's judges find the ORCP workable and efficient, and are pleased that the Council, rather than the legislature, has primary responsibility for the rules amendment

process. Brockley and others added that the collective and individual memories of the unsatisfactory results obtained when the legislature handled rules amendments were diminishing as that period recedes in time. This point was emphasized by Bill Cramer, who noted that the Council must take account of the fact that, as time goes on, fewer legislators and others can be counted upon to recall the severe shortcomings of rules amending by the legislature.

Nely Johnson stated that the question needs to be addressed whether the functions of the Council could not be as well performed by a Bar committee, such as the Committee on Practice and Procedure. She added that, if the conclusion is that these functions could not be performed by a Bar Committee, the reasons supporting such conclusion need to be articulated specifically. John McMillan suggested that the Council's ability to receive public testimony might be one significant thing that distinguishes it from a Bar committee. Maury Holland mentioned that, as much as many legislators seemed to want the Council to function and be funded as a Bar committee, many of them would be the first to object to having lawmaking authority exercised by an entity that is formally part of the Bar. He added that an important thing that distinguishes the Council from a Bar Committee, and might well give it greater legitimacy, is that its judicial members, as well as its public member, are appointed by the judiciary, not by the Bar.

Discussion then turned to how, apart from whatever could be done to improve communication with the legislature, the Council might be more "activist" in taking the initiative to contact judges and various Bar organizations, to elicit their thoughts and suggestions about what the Council should be doing to improve the ORCP. Several members noted that, as things then stood, the Council appears to have very little rules amending work to do this biennium, beyond attending to a few matters carried over from the previous biennium. Michael Marcus said he would be happy to open ongoing communications between the Council and the Multnomah County Motion Panel, on which he serves. There was general agreement with this suggestion.

Several other suggestions along these lines were made, such as that John Hart publish an article about the Council and its work, that a brochure be prepared summarizing the history and achievements of the Council, and that informational copies of meeting agendas might be distributed to members of the interim Judiciary Committees. While some support was expressed for each of these suggestions, several members cautioned against straining to do things that might foster the impression that the Council is trying to "drum up" business or is acting defensively by contrived efforts to justify its continued existence.

Discussion continued as to whether a single committee should address all the foregoing issues, including budget and funding, outreach and responding to the Appropriation Committee budget note. Sid Brockley stated that he would be opposed to having the Council, or any committee, spending a lot of time and effort trying to justify its continued existence, a thought with which some other members agreed. Nely Johnson mentioned that she was willing to sacrifice the time involved in serving on the Council in order to contribute to the rules amendment process, but was not personally very interested in devoting substantial effort to such philosophical issues as the relationships of the Council to the Bar and the legislature. Bernie Jolles expressed the opinion that the same committee that addresses budget, funding and outreach should also address how the Council should respond to the budget note, with which there was general agreement.

A consensus emerged that, at least for now, a single committee should take cognizance of all of these issues. John Hart asked Bruce Hamlin, John McMillan and Janice Wilson to constitute the membership of this committee, and they agreed. Maury Holland reminded these members, and the members generally, that they should feel free to call upon his office for any research or other supporting efforts they might wish to have done. Toward the conclusion of this general discussion, Bill Cramer emphasized the importance of the Council being clear that its purpose is not simply to add more and more rules, but rather to ensure that civil litigation is as fair and efficient as possible. Relatedly, Michael Marcus added that it would be extremely helpful if the Council could underline the point that workable and well drafted civil trial court rules will save a great deal of money, both for the state and for litigants.

At the conclusion of this discussion, John Hart asked the following individuals to establish contact with the following indicated organizations: Michael Marcus with the Multnomah County Motion Panel, Kathy Chase with the OSB Committee on Practice and Procedure, Bernie Jolles with the Professional Liability Fund, Mick Alexander with OTLA, Mike Phillips with the Lane County Motion Judge, and Maury Holland with OLI. John McMillan asked whether differences in procedural rules in different parts of the state do not pose a question of public policy that should be addressed. Phillips responded that these differences, which are significant, derive from differing judicial interpretations of the ORCP and other rules, and therefore are not within the power of the Council to deal with.

Agenda Item 8. John Hart stated that he did not think there is any need for the Council to meet in December, and asked whether there were any objections to having the next meeting at Bar Headquarters on Saturday, January 15, 1994. Hearing none he

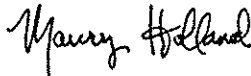
set the next meeting date accordingly.

Agenda Item 9. John Hart asked whether there was any old business to discuss. None was proposed.

Agenda Item 10. John Hart asked whether any member wished to raise any item of new business. Bruce Hamlin reminded the Council that the election of a Secretary-Treasurer had been deferred, and pointed out that this officer is called for in the 1977 by-laws. It was decided to defer this matter further until the Council is at full membership. Hart directed Maury Holland to distribute copies of the by-laws to the members prior to the January 15, 1994 meeting.

Agenda Item 11. The meeting was adjourned at 11:20 a.m.

Respectfully submitted,



Maurice J. Holland
Executive Director