

COUNCIL ON COURT PROCEDURES
Minutes of Meeting of December 10, 1994
Oregon State Bar Center
5200 Southwest Meadows Road
Lake Oswego, Oregon

Present: J. Michael Alexander Nely L. Johnson
 Marianne Bottini John V. Kelly
 Sid Brockley Rudy R. Lachenmeier
 Patricia Crain Michael H. Marcus
 Stephen L. Gallagher, Jr. John H. McMillan
 William A. Gaylord Michael V. Phillips
 Bruce C. Hamlin Milo Pope
 John E. Hart Charles A. Sams

Excused: Jack A. Billings
 William D. Cramer, Sr.
 Mary J. Deits
 Susan P. Graber
 Nancy S. Tauman

Absent: Bernard Jolles
 Stephen J.R. Shepard

The following guests were in attendance: Bob Oleson, Director of Public Affairs, Oregon State Bar; Kathy Chase, liaison from Oregon State Bar Procedure & Practice Committee; the Hon. Charles S. Crookham; James Murch, representing the Oregon Bankers' Association. Also present were Maury Holland, Executive Director, and Gilma Henthorne, Executive Assistant.

Agenda Item 1: Call to order. The Chair, John Hart, called the meeting to order at 9:45 a.m.

Agenda Item 2: Approval of September 10, 1994 minutes. These minutes were, without objection or suggested amendment, approved as previously distributed.

Agenda Item 3: Tentatively adopted amendments to the Oregon Rules of Civil Procedure (ORCP) proposed for approval and promulgation (as attached to agenda of this meeting) (Mr. Hart). Mr. Hart reminded the members that the Council's statutory authority currently requires a minimum of fifteen affirmative votes for promulgation of tentatively adopted amendments. He asked the members how they would like to proceed with discussion and consideration of the amendments now proposed for approval and promulgation. Mr. Hamlin, seconded by Mr. Gaylord, moved approval for promulgation of each of the following amendments as listed in item 3 of the agenda of this meeting: 3(a), (b), (d), (e), (f), (g) and (i), but excluding from the scope of this

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motion the amendments respectively shown as items 3(c) and (h). This motion carried unanimously by vote of 16 in favor, none opposed, and no abstentions.

Mr. Hart then asked whether members had had an opportunity to read and consider the suggestion of Mr. Lawrence D. Gorin in his letter to Maury Holland dated December 5, 1994 (Attachment B to these minutes) that former section 69 C be transferred to Rule 58 as section 58 E rather than 58 B. Mr. Gorin has offered this suggestion in the interest of avoiding unnecessary recodification of the existing sections of Rule 58. Mr. Gaylord, seconded by Judge Gallagher, moved that existing section 69 C be transferred to Rule 58 as new section 58 E. This motion carried unanimously by vote of 16 in favor, none opposed, and no abstentions.

Judge Marcus, seconded by Mr. Gaylord, then moved approval and promulgation of the proposed amendment to Rule 68 shown as item 3(h) on the agenda of this meeting. Mr. Phillips stated that he believed that this item was improperly included on this agenda as a tentatively adopted amendment because it had not been tentatively adopted by affirmative votes of at least a majority (i.e., twelve) Council members, as required by ORS 1.730(2)(a). Mr. Hamlin expressed his agreement with this position. Mr. Hart called for a vote on this motion. The motion failed by vote of 8 in favor, 8 opposed, and no abstentions.

Mr. Hart, seconded by Mr. Hamlin, then moved approval and promulgation of the tentatively adopted amendment to Rule 22 shown as item 3(c) on the agenda of this meeting. This motion failed by vote of 7 in favor, 8 opposed, and 1 abstention. Mr. Gaylord stated that his negative vote was based on his opposition on the merits of this proposed amendment.

Mr. Hart then asked whether there were any suggested changes in the draft of Staff Comments as prepared by Maury Holland and attached to the agenda of this meeting. He reminded members that the Council's past practice has been for the Executive Director to incorporate suggested changes from members as to which there seemed to be an informal consensus, rather than voting formally to adopt or reject Staff Comments. Referring to the draft comments to the amendment of subsection 55 H(2), Mr. Alexander suggested that the final sentence of the first full paragraph on p. 24 be revised to state: "[t]hat there are no records responsive to the subpoena" instead of: "[t]hat production will not be forthcoming." There was a clear consensus of the members in favor of this change.

Judge Marcus stated that he thought that the draft comments to the amendment to subsection 32 F(2) risk saying too much, by obliquely inviting speculation about what the Council

might have intended with regard to matters it deliberately decided not to address, such as so-called "mixed" class actions. He therefore suggested that the Staff Comment should consist only of the first and third sentences of the draft as it appears on p. 20. There was a clear consensus of the members in favor of this change.

Mr. Hart concluded this topic by telling members that, if any additional suggested changes should occur to any of them, they could be forwarded to Maury Holland.

Agenda Item No. 6 (Items 4 and 5 were omitted on the agenda): New matters (Mr. Hart). Mr. Hart noted that some newly proposed suggestions involving possible ORCP amendments had recently been received from Justice Ed Peterson and Mr. Pat Rothwell. He stated that, while no formal action could be taken on these suggestions until the 1995-97 biennium, he wished to sound out the members about having one Council meeting during the coming spring, to begin consideration of these suggestions and also perhaps get an update on what is going on in the legislative session regarding the future of the Council, as well as any action the Legislative Assembly might be considering that would have an impact on the ORCP. There was general agreement that a meeting of the Council in the spring might be worthwhile, with a preference being expressed for April.

Maury Holland mentioned that the terms of several Council members would expire in 1995. He read the names of those whose terms, according to information assembled by Gilma Henthorne, would expire in the summer of 1995. He stated that he wanted all members to understand that he does not lobby for or against either initial appointments or reappointments, which in the case of all non-judicial members apart from the public member, are decided upon by the OSB Board of Governors Appointments Committee. He stressed the importance of any member whose initial term is due to expire, and who desires to be reappointed to a second term, communicating their interest directly to the Board of Governors, who might otherwise assume a member has no interest in being reappointed. Mr. Phillips underlined the importance of communicating both an interest in reappointment and, where appropriate, any information which might assist the Appointments Committee in deciding whether to reappoint.

Mr. McMillan asked how funding of the Council's budget is handled in the legislative session, which department the Council comes under, and whether any 1995-97 is presently included in the Governor's budget. Maury Holland replied that the Council is handled as an independent agency that is not part of any of the three principal departments, although budget analysts of the Judicial Department put together the documentation of the

Council's budget request and do their best to see that its appropriation bill is successfully processed through the relevant committees. He added that getting through the appropriations process in the 1995 session will obviously require some critical expressions of support along the way, and that he will keep members, especially John Hart as Chair, posted on how things are progressing. He also added that he did not yet know whether the Council is or will be included in the Governor's budget, and was not certain when this information would be available.

Agenda Item No. 7: Old business (Mr. Hart). No item of old business was proposed.

Agenda Item No. 8: New business (Mr. Hart). Mr. Hart informed the members that, following adjournment of this meeting, he would meet with other members of the Executive Committee to consider recommended salary increases for the Executive Director and Executive Assistant.

Agenda Item No. 9: Adjournment. A motion to adjourn carried by unanimous consent at 11:09 a.m.

Respectfully submitted,

Maury Holland
Executive Director