



DISTRICT COURT OF THE STATE OF OREGON

for MULTNOMAH COUNTY
MULTNOMAH COUNTY COURTHOUSE
1021 SW FOURTH AVENUE
PORTLAND, OR 97204-1123
(503) 248-3972

HENRY KANTOR
JUDGE

DEPARTMENT 08

October 24, 1996

Professor Maurice J. Holland
Executive Director
Council on Court Procedures
1221 University of Oregon School of Law
Eugene, Oregon 97403-1221

Re: ORCP 68 Amendments

Dear Maury:

Thanks to you and the Council for another two years of labor on behalf of Oregon's trial lawyers and their clients! Of course, Oregon's judges benefit as well.

I read the proposed amendments to ORCP 68C(4)(c)(ii). I vote for Alternative A over either Alternative B or "No Change".

As a trial judge, I am not looking for more work, i.e. making findings in the future where no findings have been required in the past. However, it is clear to me that the Court of Appeals should not review attorney fees rulings without express findings on material fact issues. Also, I do not believe Alternative A imposes an unreasonable burden on trial judges.

Every lawyer likes to tinker with wording. My suggestion is to modify the second sentence of the paragraph as follows:

The court shall made material findings of fact and conclusions of law regarding an award or denial of attorney fees if requested with specificity in writing by a party at least two business days before the hearing.

My concern is that, without my suggested modification or the like, lawyers will come up with proposed findings during or after the hearing. This could cause delays in or continuances of the hearing to accommodate drafting problems. Allowing the party to

Prof. Maurice J. Holland
Page 2
October 24, 1996

wait until two days before the hearing to submit specific proposed findings will enable both parties to wait until both the application and objections have been filed to determine what issues exist.

Thanks for considering my views.

Very truly yours,

A handwritten signature in cursive script that reads "Henry Kantor".

Henry Kantor
District Court Judge

HK:am

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November 5, 1996

Maurice J. Holland
Executive Director
Council on Court Procedures
1221 University of Oregon
School of Law
Eugene, OR 97403-1221

Re: Proposed Amendments to ORCP

Dear Professor Holland:

I have reviewed the proposed amendments to ORCP in the 1996-21 Oregon Appellate Courts Advance Sheets.

I don't claim to be a grammarian, but I believe the proposed changes in Rule 7D(2)(b) do not promote clarity.

When we make substituted service, we cause to be delivered a true copy of the summons and a true copy of the complaint. We do not deliver "the complaint." Also, since that summons and complaint are two separate documents, "a true copy" seems to refer only to one. The result is that the rule appears to call for delivery of the complaint, which of course, is firmly affixed in the court file, along with a true copy of the summons.

You might consider changed the first sentence of Rule 7D(2)(b) to read:

"Substituted service may be made by delivering a true copy of the summons and a true copy of the complaint ****"

or

"Substituted service may be made by delivering (a) true (copy) copies of the summons and the complaint ****"

The first alternative removes all ambiguity; but, it is longer. In any event, you solicited comments. That is mine.

Very truly yours,

WILLIAMSON & WILLIAMSON



David Brian Williamson
University of Oregon Law School
Class of 1976

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November 7, 1996

Mr. Maurice J. Holland
Executive Director
Council on Court Procedures
1221 University of Oregon School of Law
Eugene, Oregon 97403-1221

Re: Proposed Alternative Amendments to ORCP 68C(4)(c)(ii)

Dear Mr. Holland:

I think Alternative B is much better and more clearly states the intent that under normal circumstances no findings or conclusions are required. However, the wording needs to be clarified, as I have no idea what "material findings of fact" are.

I suggest the following language:

"* * * the court shall make findings of material fact and conclusions of law if requested by any party."

Thank you for your work on this thankless task. As chair of the UTCR Committee, I certainly appreciate the difficulty of your mission.

Very truly yours,

STEWART SOKOL & GRAY, LLC


Susan G. Whitney

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1 STATE OF OREGON

2 PROPOSED CHANGES IN ORCP

3
4 A PROPOSAL FOR AMENDMENT TO Oregon Rules of Civil
5 Procedure concerning the following provisions, ORCP Rule 68C(2)

6 WHEREAS, the economic advantages derived from and the
7 cost-effectiveness of employing paralegals is widely known
8 throughout the legal and business community.

9 WHEREAS, the recognition by the U.S. Supreme Court
10 [Missouri v. Jenkins, 491 U.S. 274, 109 S. Ct. 2463 (1989)] and
11 American Bar Association [1991 Model Guidelines for the Utilization
12 of Legal Assistance Services and its 1993 resolution] that
13 paralegal fees should be awardable on an hourly basis.

14 THEREFORE, THE FOLLOWING CHANGES TO ARE PROPOSED:

15 SECTION 68C(2)(e) TO BE ADDED TO THE OREGON RULES OF
16 CIVIL PROCEDURE RULE 68C(2), AS A NEW SECTION TO READ AS
17 FOLLOWS:

18 In any action or decision in which attorneys' fees are to
19 be determined or awarded by the court, the court shall consider,
20 among other things, the time and labor of any paralegal who
21 contribute or perform nonclerical, legally substantive tasks that,
22 in the absence of the paralegal, would be performed by the
23 attorney. The award of such fees shall be based on the nature, the
24 extent, and the value of such services, the time spent on such
25 services, and the cost of comparable services. The award of such
26 fees shall be based on the same merits and in the same manner as
27 with attorney services and shall be based on the hourly rate
28 charged to the consumer of the legal service.

29 AS USED IN THE SECTION, "PARALEGAL" MEANS "A person, qualified
through education, training or work experience, to perform
substantive legal work that requires knowledge of legal concepts
and is customarily, but not exclusively, performed by a lawyer.
This person may be retained or employed by a lawyer, law office,
governmental agency or other entity or may be authorized by
administrative, statutory or court authority to perform this work."
The terms "paralegal" and "legal assistant" are interchangeable and
used synonymously.

30 RESPECTFULLY SUBMITTED BY:

31 The Oregon Paralegal Association
32 Research & Development Committee
33 Mike E. Campbell, Committee Chair
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