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OREGON SUPREME COURT
June 30, 2000

~~Mr. J. Michael Alexander
Burt Swanson Lathen, et al
388 State Street, Suite 1000
Salem, OR 97301~~

Re: ORS 1.735(2) (the "exact language" requirement)

Dear Mick:

I wish to bring to your attention an item of Council business that is not listed in your letter of June 13, 2000, but probably merits some discussion at a future Council meeting.

Judge Daniel Harris and I have developed the enclosed amendment to ORS 1.735(2) to alleviate the problems that presently surround the "exact language" requirement in ORS 1.735(2). Judge Harris and I are in agreement regarding this proposed amendment. The amendment, if adopted by the legislature, would permit the Council to amend a proposal at its final meeting and require a notification of the changed wording to members of the Bar, within 60 days, and to the legislature when the Council submits its final rule amendments.

Because this proposal concerns an amendment to a statute, not a rule of civil procedure, the promulgation rules and deadlines that govern rules of civil procedure do not apply. Instead, legislative approval will depend on advocacy for the amendment by Council leaders and representatives. It is obvious to me that the Council should reach a strong consensus view with respect to any statutory amendment that the Council might propose on this subject.

Yours truly,

ROBERT D. DURHAM
Associate Justice

RDD:lk
Enclosure
cc: ~~Professor Maury Holland~~
Hon. Daniel Harris

1.735. Rules of procedure; limitation on scope and substance; submission of rules to members of bar and Legislative Assembly.

(1) The Council on Court Procedures shall promulgate rules governing pleading, practice and procedure, including rules governing form and service of summons and process and personal and in rem jurisdiction, in all civil proceedings in all courts of the state which shall not abridge, enlarge, or modify the substantive rights of any litigant. The rules authorized by this section do not include rules of evidence and rules of appellate procedure. The rules thus adopted and any amendments which may be adopted from time to time, together with a list of statutory sections superseded thereby, shall be submitted to the Legislative Assembly at the beginning of each regular session and shall go into effect on January 1 following the close of that session unless the Legislative Assembly shall provide an earlier effective date. The Legislative Assembly may, by statute, amend, repeal or supplement any of the rules.

(2) A promulgation, amendment or repeal of a rule by the council is invalid and does not become effective unless the council does the following:

(a) The council shall publish or distribute the exact language of the proposed promulgation, modification or repeal to all members of the bar at least 30 days before the meeting at which the council plans to take final action on the promulgation,

modification or repeal, and

(b) If the council modifies a proposed promulgation, modification, or repeal of a rule at the meeting described in subsection (2) (a) of this section, the council shall publish or distribute a notification of the modification to all members of the bar within 60 days after the meeting and to the Legislative Assembly when the council submits the proposed promulgation, amendment or repeal of a rule to the Legislative Assembly pursuant to subsection (1) of this section.

REQUEST FOR PREPARATION OF A BILL

AMENDING ORS 1.735(2)

The Council on Court Procedures supports enactment of a Bill amending ORS 1.735(2) in the following manner:

1.735 Rules of procedure; limitation on scope and substance; submission of rules to members of bar and Legislative Assembly. (1) The Council on Court Procedures shall promulgate rules governing pleading, practice and procedure, including rules governing form and service of summons and process and personal and in rem jurisdiction, in all civil proceedings in all courts of the state which shall not abridge, enlarge, or modify the substantive rights of any litigant. The rules authorized by this section do not include rules of evidence and rules of appellate procedure. The rules thus adopted and any amendments which may be adopted from time to time, together with a list of statutory sections superseded thereby, shall be submitted to the Legislative Assembly at the beginning of each regular session and shall go into effect on January 1 following the close of that session unless the Legislative Assembly shall provide an earlier effective date. The Legislative Assembly may, by statute, amend, repeal or supplement any of the rules.

(2) A promulgation, amendment or repeal of a rule by the council is invalid and does not become effective unless the *[exact language of the proposed promulgation, modification or repeal is*

published or distributed to all members of the bar at least 30 days before the meeting at which final action is taken on the promulgation, modification or repeal] council does the following:

(a) The council shall publish or distribute the exact language of the proposed promulgation, modification or repeal to all members of the bar at least 30 days before the meeting at which the council plans to take final action on the promulgation, modification or repeal, and

(b) If the council modifies a proposed promulgation, modification, or repeal of a rule at the meeting described in subsection 2(a) of this section, the council shall publish or distribute a notification of the modification to all members of the bar within 60 days after the meeting and to the Legislative Assembly when the council submits the proposed promulgation, amendment or repeal of a rule to the Legislative Assembly pursuant to subsection (1) of this section.



UNIVERSITY OF OREGON

FAX TRANSMISSION FORM FROM FAX # (541) 346-1564

DATE: Jan. 26, 2001

TO: Andrea Chatrelle (Apologies if this is misspelled) } 503-986-1009
Bill Taylor }
Dave Heynderickx } 503-373-1043

FAX #: 503-986-1009/503-373-1043

FROM: Maury Holland

RE: "Request for Preparation of a Bill Amending ORS 1.735(2)"

NUMBER OF PAGES (including this page): 3

This transmission is confidential and intended only for the use of the individual to whom it is addressed. If you have received this transmission in error, please call us immediately and mail it to the above address. Thank you.

If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited.

MESSAGE: Andrea, Bill and Dave: Mic Alexander apparently failed to enclose this request for preparation of a bill with his letter of Jan. 8 transmitting the current ORCP amendments. The request is attached hereto. The rationale for this request is stated in Mic's Jan. 8 transmittal letter. If anyone of you has any question about this request, I can be reached at (541) 346-3834.

Maury

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(2) A promulgation, amendment or repeal of a rule by the council is invalid and does not become effective unless the [exact language of the proposed promulgation, modification or repeal is

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