

**NOTICE OF MEETING
PUBLIC MEETING
COUNCIL ON COURT PROCEDURES**

Saturday, October 13, 2007

9:30 a.m.

Oregon State Bar Center
5200 SW Meadows Road
Lake Oswego, OR 97035

AGENDA

- I. Call to order (Mr. Corson)
- II. Introductions (all)
 - A. Hand out updated roster and note corrections
- III. Approval of December 9, 2006, and September 15, 2007, minutes
- IV. Elections of officers:
 - Chair
 - Vice Chair
 - Treasurer
- V. Report: Council on Court Procedures Website (Mr. Cooper)
- VI. Old business (Mr. Corson)
 - A. ORCP 63 and 64 and ORS Chapter 138 (Prof. Peterson)
 - B. Possible amendments for which committees were formed
 - 1. E Filing (Mr. Cooper)
 - 2. Duty to save costs of service protocol - along lines of federal rule regarding service (Mr. Cooper)
 - 3. Clarify peremptory challenges for third parties, see ORCP 59D(2) (Mr. Hansen)
 - 4. Revise and update affirmative defenses listed in ORCP19 (add exhaustion of remedies and modify *res judicata*) (Ms. David)
 - 5. Probate court matters (Mr. Cooper)
 - a. Amend Rule 21 to make it explicit that it is not available as a basis for motions challenging the sufficiency of objections to annual or

- final accountings in probate and trust proceedings.
 - b. Amend ORCP 55 to make it explicit that the court visitor appointed in guardianship and conservatorship actions may access the respondent's otherwise private health information.
 - c. Overhaul ORCP 27 to make it clear that guardians ad litem either can or cannot settle the case in which they were appointed.
 - d. Consider whether ORCP 27 should establish different procedures for appointment of guardians ad litem for adults as opposed to minors.
 - e. Consider whether ORCP 27 should require notice of the motion to appoint guardian ad litem in a similar fashion to the notice required for a petition seeking appointment of a guardian or conservator.
 - f. Consider revising ORCP 44 to clarify whether it can be used as a tool for a compelled medical examination in a guardianship or conservatorship proceeding.
 - 6. Jury improvement (Judge Harris)
- C. Possible amendments held over until October meeting
 - 1. Clarify standard for rebuttal evidence (Mr. Corson)
 - 2. Amend ORCP 18 to remove the current requirement that the initial complaint state the amount of damages sought (or the amount of non economic damages); perhaps a separate filing stating the amount of damages; or serving of the amount of damages on all other parties without filing (Mr. Corson)
 - 3. Amend ORCP 54E to:
 - a. make clear that the offer is not to be filed unless and until it is accepted or after trial and entry of judgment
 - b. Amend the rule to require that the offer, if accepted, be paid within 30 days from the date of acceptance
 - c. State how to determine whether the ORCP54E offer is better than the judgment. See, *Delcastillo v Norris*, 197 Or App 134 (2005) (Mr. Corson)
 - 4. Jury instructions where all given instructions are correct but an additional instruction, neither requested or refused, should have been given. ORCP59H(1). See, *State v. Toth*, 213 Or App 505(2007). Possibly add after "giving"... the phrase "or not giving" (Mr. Corson)
 - 5. Adopt federal style notice pleading (Mr. Corson)
- D. Revisit possible amendments that did not gather sufficient interest at the September 15, 2007, meeting to warrant further investigation
 - 1. E-Discovery (Professor Peterson)

2. Limit number of cumulative experts on a given issue (Mr. Corson)
3. No duty to respond to ORCP 43 request for production until answer is filed (Mr. Corson)
4. Limits on lengths of depositions, example FRCP 30d(2) limiting depositions to one day of seven hours (Mr. Corson)
5. Amend ORCP 16 to allow optional form pleadings for personal injury complaints (Professor Peterson)

E. New Matters

VII. Appointment of additional committee members and/or new committees re: any items listed in VI (Mr. Corson)

VIII. Schedule future meeting locations

IX. Adjournment