

**MINUTES OF MEETING  
COUNCIL ON COURT PROCEDURES**

Saturday, December 8, 2007 - 9:30 a.m.

Oregon State Bar Center

5200 SW Meadows Road

Lake Oswego, Oregon

**ATTENDANCE**

Members Present:

Eugene H. Buckle  
 Brian S. Campf  
 Brooks F. Cooper  
 Don Corson  
 Kristen S. David  
 Dr. John A. Enbom  
 Martin E. Hansen  
 Hon. Lauren S. Holland\*  
 Hon. Mary Mertens James  
 Hon. Rives Kistler  
 Alexander D. Libmann  
 Hon. Eve L. Miller  
 Leslie W. O'Leary  
 David F. Rees  
 John L. Svoboda  
 Mark R. Weaver  
 Hon. Locke A. Williams

Members Absent:

Hon. Daniel L. Harris  
 Hon. Robert D. Herndon  
 Hon. Jerry B. Hodson  
 Hon. Rodger J. Isaacson  
 Shelley D. Russell  
 Hon. David Schuman

Guests:

David Nebel, Oregon State Bar

Council Staff:

Mark A. Peterson, Executive Director  
 Shari C. Nilsson, Administrative Assistant

\*Appeared by teleconference

ORCPs Discussed this Meeting	ORCP Amendments Considered and Not Acted Upon this Biennium
ORCP 1	ORCP 19B
ORCP 7	ORCP 38B
ORCP 7D(4)(a)	ORCP 38C
ORCP 18A	ORCP 43B
ORCP 18B	ORCP 58B(5)
ORCP 19B	
ORCP 21A	
ORCP 26**	
ORCP 27	
ORCP 38B	
ORCP 38C	
ORCP 43B	
ORCP 44	
ORCP 44A	
ORCP 44B	
ORCP 47C	
ORCP 54A	
ORCP 54E	
ORCP 55H	
ORCP 56**	
ORCP 57	
ORCP 57D(2)-(4)	
ORCP 58	
ORCP 58B(5)	
ORCP 59	
ORCP 59H	
ORCP 61	
**informational only	

I. Call to order (Mr. Corson)

Mr. Corson called the meeting to order at 9:37 a.m.

II. Introduction of Guests

No guests were present who required introduction.

III. Approval of November 10, 2007, minutes

Mr. Corson called for a motion to approve the amended November 10, 2007, minutes, which had been previously circulated to the members. The motion was made and seconded and the amended minutes were approved by the membership with no further amendments or corrections.

IV. Administrative Matters

A. Update: Council on Court Procedures Website (Ms. David)

Ms. David discussed the website update report which was distributed to members prior to the meeting. Topics reported on included visitors, referral sources, e-mail inquiries, purchasing domain names, and indexing amendments by rule as well as by year. The website update report is attached as Appendix A. In addition to those topics covered by Ms. David, Ms. Nilsson raised Mr. Nebel's ideas of adding forms to the website to allow interested parties to sign up for the Council's e-mail information distribution list (*not* the Council's private listserve) and to suggest ORCP amendments via e-mail.

B. Update: Performance Measures (Mr. Corson)

Mr. Corson reported on the meeting regarding performance measures that he, Prof. Peterson, and Mr. Nebel had scheduled with a representative from the Department of Administrative Services (DAS). That representative appeared to agree that the standard state agency performance measures are not easily applicable to the Council. The DAS representative will discuss this matter internally and report back to the Council.

Mr. Nebel stated that the performance measures are relevant in the legislative arena, particularly when the Council goes before the Ways and Means Committee and presents its agency information. Justice Kistler stated that performance measures are a way to determine whether the agency is living up to its expectations. Mr. Cooper indicated that it is information that supporters or detractors of the Council can use when the Council's budget is up for renewal. Judge Miller emphasized the importance of Council members having input in

establishing the performance measures, as those who are not Council members may not comprehend what the Council's "success" is. Prof. Peterson stated that, whether the Council is required to establish performance measures or not, the budget narrative and information gathered from the website will provide more quantifiable information for the legislature next biennium.

C. Action Item: Contact with Legislators (Mr. Corson)

Mr. Nebel presented a matrix of all legislators and asked that Council members review the list to make sure that their correct representatives and senators are listed. He also asked for volunteers to provide monthly updates on the Council's work to those legislators with no Council members residing in or having their offices in their districts. Several members volunteered. Mr. Corson, Ms. David, Ms. O'Leary, Mr. Buckle, and Dr. Enbom agreed to divide the remaining legislators after the meeting.

D. Update: Contract with Northwestern School of Law (Mr. Corson)

Mr. Corson reported that there is no final contract as of yet. The Law School made additional changes which will need to be run past the legislative counsel office. Mr. Corson is working on facilitating this. Prof. Peterson emphasized that the contract needs to be finalized in order for mileage and travel reimbursements to be paid.

E. Update: Future meeting dates/locations (Mr. Corson)

Mr. Corson reported that the January, 2008, meeting will be held at the University of Oregon Law School in Eugene. He will send out information regarding parking and restaurants in the area. Ms. Nilsson will also send information to members regarding the March, 2008, meeting in Hood River (location, map, restaurants). Mr. Hansen is coordinating the May, 2008, meeting in Bend. The Phoenix Inn will allow the Council to use its meeting room for free if members stay in the hotel. Mr. Hansen will make these arrangements and distribute a list of restaurants and attractions in the area. Prof. Peterson indicated that travel reimbursements come from the Oregon State Bar contribution to the Council budget, which is \$8,000 for the biennium. He will check the numbers to determine the degree to which the travel budget will be depleted by paying for travel and lodging for one out-of-Portland meeting.

V. Old Business

A. Committee Reports

1. ORCP 7: Duty to Save Costs of Service Protocol (Mr. Cooper)

Mr. Cooper reported that the committee has met. He reported that the committee came to the conclusion that the change cannot be made through the ORCPs because it is outside the scope of our jurisdiction. The statute of limitations is substantive, not procedural. If an action is commenced near the end of the statute of limitations, ORS 12.020 allows 60 days from the date of filing to obtain service of the summons and complaint and still meet the statute of limitations, even if it would otherwise have expired during the 60 days.

Mr. Corson inquired whether there is any value in passing along information on the issue to the Oregon Law Commission. Mr. Cooper agreed to draft a letter regarding this issue to send to the OLC. Mr. Rees stated that there is interest among the Oregon State Bar Procedure and Practice Committee members to look at ORCP 12.020 and have it mirror the federal system. Mr. Cooper will also send a copy of his letter to that committee.

The committee's report will be available at the January meeting.

2. ORCP 18A: Allow Optional Form Pleadings for Personal Injury (and Other) Complaints (Mr. Libmann)

Mr. Libmann indicated that the committee has met and discussed current access to the judicial system for pro se litigants. The committee will also arrange a December telephone conference with attorney Danny Lang, the proponent of the amendment.

Judge Holland inquired as to whether the small claims department limit was increasing to \$7,500 or \$10,000 in January of 2008. It is her understanding that it is \$7,500, but several other Council members believe it is \$10,000. Prof. Peterson will check and report back at January's meeting.

The committee will also submit its report for the January meeting.

3. ORCP 18B: Prayer for Damages (Ms. O'Leary)

Ms. O'Leary stated that the committee has met several times and done research on equivalent rules in other jurisdictions, as well as reaching out to the plaintiffs' and defendants' bars and the judiciary. She indicated that proponents of eliminating pleading a specific amount of damages in the initial pleading feel that pleading a specific amount can lead to bad publicity and that defendants can feel unduly harassed during depositions. She stated that proponents also feel that the jury should decide the amount of damages that should be awarded, and not rely on the amount listed in the pleading. The opponents of the change feel that the potential for bad publicity exists in only a small number of cases and that it is in the interest of both parties to know the amount requested right away.

Ms. O'Leary stated that Oregon is not a notice pleading state and that requiring the extra step of pleading the amount separately is another bureaucratic layer that could lead to unnecessary discovery. She stated that the committee's recommendation is that the change would do more harm than good.

Judge Miller stated that Robert Neuberger would like to address the Council on this matter in the future but that he was unavailable for December's meeting. Mr. Neuberger feels that the court can instruct the jury on non-economic damages to establish the maximum amount the jury can award, and the specific amount serves no other purpose. Mr. Neuberger is concerned that in small towns the publicity about the amount pleaded can be embarrassing for either party, and that the media is less likely to publicize the amount if it is filed later in a separate pleading. He feels that the status quo is being maintained for no particular purpose. Judge Miller pointed out that she is not supporting a rule change, but said that from a judge's standpoint, it is difficult to instruct the jury when the initial amount pleaded changes to a lower number.

Ms. O'Leary stated that this issue was last discussed in the 1990 legislative session and that not much has changed in terms of the arguments in favor and against. Ms. David stated that if the committee considers amending the rule a more in-depth review would be required, particularly in malpractice cases.

Dr. Enbom mentioned that the incentive to settle a case may be greater with the number being pleaded initially. Mr. Buckle stated that, per ORCP 67C, the prayer is a limit of what the jury can award and that plaintiffs want to have it as high as possible. Mr. Corson stated that he has had

judges deny changing the amount after the initial prayer was filed.

Mr. Rees suggested redrafting the rule to state clearly that one could plead “amount not to exceed \$ \_\_\_\_.” Mr. Libmann strongly suggested leaving the rule as it is, as it works well in 75% of the cases. Ms. O’Leary stated that she has a draft report and will submit it in advance of January’s meeting.

4. ORCP 19B: Affirmative Defenses (Ms. David)

There was no objection to the Council accepting the committee’s report, recommending making no amendment to ORCP 19B, which was presented initially at November’s meeting. The report is attached as Appendix B.

5. ORCP 21A, 27, 44A, 55H: Probate Court Matters (Mr. Cooper)

Mr. Cooper indicated that the committee has met and that the consensus is that only ORCP 27 should be further studied. The committee’s report will be distributed before the January, 2008, meeting.

6. ORCP 54A: Voluntary Dismissals (Mr. Campf)

Mr. Campf stated that the committee is still discussing the issue raised by Judge Roberts. Several Council members shared thoughts about this issue. These concerns included payment of expert witness fees; the current expense of trial preparation as compared to when the rule was originally passed; attorneys using the 5 day time period to their advantage; access to the court system; substantive change vs. procedural change; and arbitration dismissals. Mr. Corson suggested that any Council members with concerns about this issue bring them to the attention of the committee.

The committee’s report will be issued as soon as possible.

7. ORCP 54E: Offers of Settlement (Mr. Buckle)

Mr. Buckle stated that the committee has met and has some tentative minor changes to propose. They are still considering others. One of the proposals is to change the title of the rule from “compromise” to “offer to allow judgement.”

Mr. Corson asked that any Council members with concerns bring them to the attention of the committee. The committee’s report will be issued as

soon as possible.

8. ORCP 57, 58, 59, 61: Jury Improvement (Judge Harris)

Judge Harris was absent. Mr. Buckle indicated that the committee has a list of topics they are considering and that he would circulate this list to the Council. Mr. Corson asked that any Council members with concerns bring them to the attention of the committee.

9. ORCP 57D(2)-(4): Peremptory Challenges for Third Parties (Mr. Hansen)

Mr. Hansen stated that the committee will begin interviewing judges around the state and see whether there is a common formula used for issuing peremptory challenges. The committee's report will be issued as soon as possible.

10. ORCP 58B(5): Clarifying Standard for Rebuttal Evidence (Judge Miller)

The committee's report was distributed and there was no objection to the Council accepting the committee's report. The committee's recommendation is to not modify ORCP 58B(5). The report is attached as Appendix C.

11. E-Filing (Mr. Cooper)

The committee has met and its report will be distributed prior to the January, 2008, meeting. Mr. Nebel stated that the Chief Justice is working on moving courts into the electronic age and that there is a proposal to create "electronic courts" similar to the federal system. He stated that the legislature has an interim committee on court technology but that nothing about this issue is likely to be raised in the February legislative session other than bonding authority to undertake e-filing.

B. Requests for possible amendments from OSB Judicial Administration Committee (Prof. Peterson)

Prof. Peterson reported that Mike Bloom was unfortunately unable to recall specific details about these proposals from the Judicial Administration Committee.

1. ORCP 7D(4)(a): DMV service requirement

Council members discussed the issue briefly. Mr. Cooper stated that he

does not believe the rule is broken. Justice Kistler seconded this. Judge Miller raised the case of an attorney being sued for not having done enough to find other service addresses, such as addresses from utility bills. Prof. Peterson stated that ORCP 7D(4)(a)(1)(C) states that service must be attempted to any other address known to Plaintiff at the time of mailing to both the address given at the accident scene and the address in the DMV records. He pointed out that the rule does not say “should have known.”

Mr. Corson will attempt to contact Mr. Bloom again regarding the specifics.

2. ORCP 43B: Privilege log

After brief discussion, the Council decided not to consider the privilege log issue again this biennium.

3. ORCP 47C: Page limit or word count for summary judgment motions

Council members discussed the issue briefly. Mr. Cooper stated that federal courts have page limits on summary judgment motions and that he has seen cases in state court where long page counts appear to be used as a billing tool. Mr. Hansen stated that the federal court is a different environment and encourages summary judgment, as opposed to the state. He stated that he has not heard of a problem with long summary judgment motions and it is his understanding that being succinct is important to your chances of victory. Judge Miller sees lengthy motions as a significant problem in her court.

Mr. Corson will attempt to contact Mr. Bloom again regarding the specifics.

C. ORCP 44: Prohibit Ex Parte Conversation with Treating Physicians (Ms. O’Leary)

Ms. O’Leary stated that she did not have the opportunity to discuss this matter further with the proponent. She will do so before the next meeting and the Council will revisit it at that time.

D. ORCP 54A: Confidentiality Agreement at Settlement (Ms. O’Leary)

Ms. O’Leary stated that she did not have the opportunity to discuss this matter further with the proponent. She will do so before the next meeting and the Council will revisit it at that time.



E. ORCP 38B and C: Uniform Interstate Depositions and Discovery Act (Prof. Peterson)

Prof. Peterson contacted Doug Bray, the Multnomah County Circuit Court Administrator, about this issue but has yet to receive a response. Mr. Corson stated that, upon reading the proposed Act, he was concerned about the apparent ability to set a deposition to be held in any county in Oregon, irrespective of where the subpoenaed deponent resides, works, or is found. Mr. Cooper inquired as to whether uniform laws go through the Oregon Law Commission before they go to the legislature. Mr. Nebel indicated that this is the case. Mr. Cooper asked whether the Council should speak with the OLC and indicate that, when the issue comes up, the Council would like to have input. Mr. Corson will work with Prof. Peterson on a letter to send to the OLC regarding this issue.

VI. New Business

A. Council Procedure/Adopting a Committee's Report/Minority Reports

These issues were discussed at two separate points during the meeting. Mr. Corson first raised the issue of creating a record when no action is taken by the Council. His view is that a record is created by discussion at the meetings, which is subsequently reflected in the minutes. If a Council member objects to taking no action, they may make a motion and, if the motion is seconded, the Council will take a vote. Mr. Corson feels that a motion to take *no action* is not necessary.

Mr. Cooper inquired whether making a motion to accept a committee's report would be appropriate. Mr. Corson stated that, if we want to make a more formal record, that would be acceptable, but he does not feel it is necessary.

Mr. Svoboda later inquired whether minority reports should be included in the minutes if some Council members do not agree with a committee's report. Mr. Buckle stated that he feels that, if there is no objection, the committee's decision not to take action is accepted by the Council and becomes the Council's decision. Mr. Corson stated that if someone feels strongly that action is needed when a committee recommends no action, that person should make a motion. If the motion is seconded, a vote will be taken. If the motion is not seconded, the committee's recommendation is accepted.

It was agreed that, if there are no strong objections, the minutes should contain a statement such as "there was no objection to the Council accepting the committee's report."

B. Tracking Legislative History by Rule

Dr. Enbom inquired as to whether there is any type of simple matrix that allows for tracking legislative history by rule. Ms. David stated that this is a project that is in progress for the website; however, it will take a lot of time and effort. She stated that a law student from Lewis & Clark will hopefully be available to assist with the large volume of work.

C. Rules 26 and 56 (Informational Only)

Ms. David received an e-mail from Chris Kitchell, head of Oregon Association of Defense Counsel. Ms. Kitchell wanted to inform the Council that the Civil Rules Advisory Committee to the US Supreme Court is currently looking at Rule 26 (expert discovery) and Rule 56 (summary judgments).

D. Reviewing past minutes to give history to new committees

Judge Holland inquired whether there is a mechanism in place to provide new committees with a history of whether any committees had discussed the same issues in the past and to provide the new committee with the relevant minutes to reflect the past committees' conclusions and recommendations.

Mr. Corson wondered whether there is a way to use optical character recognition with past minutes (rather than a simple PDF document) to make the text searchable. Ms. Nilsson will look into this.

Ms. David asked whether she should send an inquiry to Oregon Association of Defense Counsel and Oregon Trial Lawyers Association members to ask whether anyone has researched specific rules in the past and whether they would be willing to provide their research to us. Mr. Corson stated that it might be a helpful tool, but cautioned that the thoroughness of any research would need to be checked.

VII. Adjournment

Mr. Corson adjourned the meeting at 11:49 a.m.

Respectfully submitted,

Mark A. Peterson  
Executive Director

Council on Court Procedures  
Website Update  
12/3/07

As you are no doubt aware, the Council on Court Procedures' website is up and running. This is a brief status update.

1. Website Statistics

We have signed up with Google Analytics to provide statistics on our website. Hidden code on our web pages captures information about our visitors and transmits it to a site that allows us to examine statistics in various graphical formats.

a. Visitors

As of December 2, 2007, the website had 70 total visits from 35 unique visitors (Council staff is excluded from these statistics so as not to skew the results.) *See* Appendix A. It is also apparent that visits occur mainly on weekdays, as opposed to weekends and holidays.

Of these visitors, approximately 55% were returning and 44% were new (App. B). Visitors came from 14 different cities, mostly in Oregon (App. C).

b. Referral sources

Visitors came to the website from 14 different sources. The majority were visits directly to the site's address; however, as you can see from the statistics contained in Appendix D, word is starting to spread and various websites and search engines are referring visitors to the site.

We have sent our website address and/or press release to many agencies and organizations, including:

Clackamas County Bar Association: link already placed & confirmed  
Jackson County Bar Association: emailed information - link coming soon  
Lane County Bar Association: link already placed & confirmed  
Lincoln County Bar Association: emailed information  
Marion County Bar Association: emailed information  
Multnomah County Bar Association: emailed information  
Oregon Council of County Law Libraries: emailed information  
Oregon Association of Defense Counsel: link already placed & confirmed  
State of Oregon Law Library: emailed information  
Washington County Bar Association: emailed information

Attached as Appendix E and F are two examples of publicity that the Council

website has received on other sites (the Oregon Legal Research Blog piece was contributed by the Washington County Law Library librarian). Please note that some websites, such as OADC, are set up with frames. In this case, when a visitor links to the Council on Court Procedures, our site opens within the OADC website, and we do not "see" that visitor even though they are viewing our information.

## 2. E-mail and telephone inquiries

Since the website went live there has been one e-mail inquiry about rule changes (this mail was circulated to the Council listserv). There has also been one telephone call inquiring about how a traffic infraction was handled by a particular judge, and whether traffic fines directly fund judges' salaries and therefore create a conflict of interest. The caller was referred to the Judicial Fitness Commission and the county court administrator.

## 3. Future Plans

### a. Content Improvement

As you can see from Appendix G, the site includes a list of the amendments proposed by the Council back to 1998. Clicking on the link to the particular year's proposed amendments will take the visitor to a document which lists all of those changes. The visitor can jump from the table of contents directly to the rule they wish to review. One of our goals is to index these proposed amendments by rule as well as by year, thus creating a useful legislative history research tool.

### b. Search Engine

Google offers a site-specific search engine which allows a particular site to be searched, as well as Google searches if desired. This tool is free (and advertisement-free) for non-profit and government agencies. Creation of a search engine for the Council site is in the works and will hopefully help visitors find what they are looking for.

### c. Domain Purchase

The Council will purchase and register for our use the website [counciloncourtprocedures.org](http://counciloncourtprocedures.org). Visitors to this site will be redirected automatically to the site that resides at Lewis and Clark. It is our hope that having the Council's name as a domain name will increase search engine hits. We are also considering registering [counciloncourtprocedures.com](http://counciloncourtprocedures.com) and [counciloncourtprocedures.net](http://counciloncourtprocedures.net), as they are common extensions.

d. Wikipedia Entry

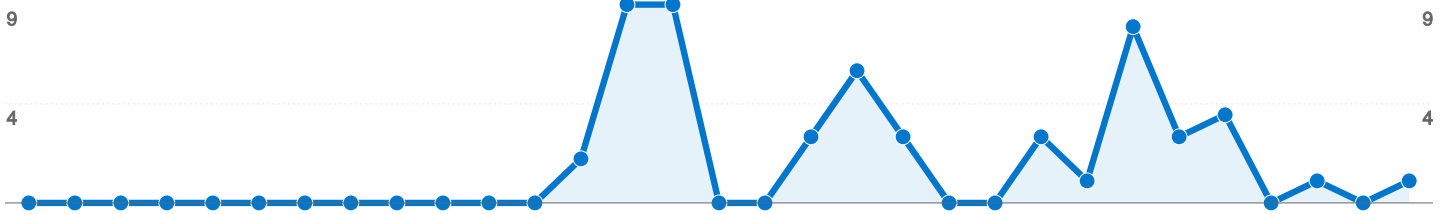
Wikipedia is a multilingual, web-based, free content encyclopedia project. Wikipedia's articles provide links to guide the user to related pages with additional information. Wikipedia is written collaboratively by volunteers from all around the world. It is an extremely popular site with a lot of traffic.

The Oregon Judicial Department has a Wikipedia entry which mentions the Council, but the Council does not have its own page. Wikipedia's policy is that persons affiliated with a particular agency may not create Wikipedia articles about that agency. However, we may suggest independent sources of information so that others may create an entry. When the Oregon State Bar publishes the Council's press release in its next issue, we plan to forward that information to Wikipedia so that they may create an entry for the Council.

5. Additional Links

We hope to have the Council on Court Procedures web link on all State Circuit Court Websites within the next few months. In addition, we are working with the various Legislative (and Judicial Departments) to get our link on those webpages as well. Some items (such as the Blue Book) will take longer to incorporate. This is an ongoing project. Updates will be provided.

If you have any questions about the website or any issues surrounding it, please do not hesitate to contact Kristen David or Shari Nilsson.




### 35 people visited this site

 **70** Visits

 **35** Absolute Unique Visitors

 **324** Pageviews

 **4.63** Average Pageviews

 **00:02:32** Time on Site

 **31.43%** Bounce Rate

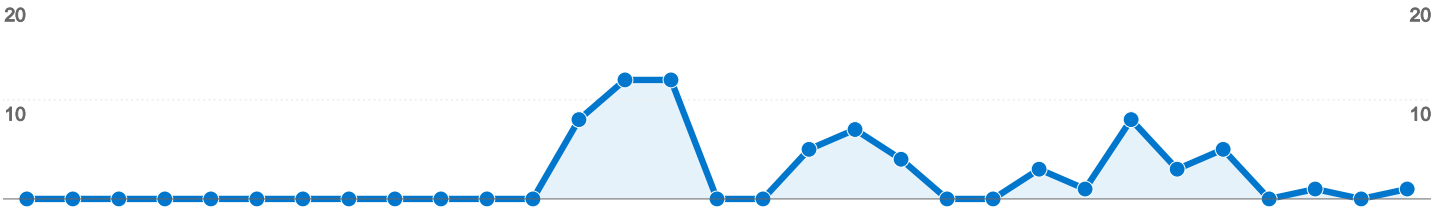
 **44.29%** New Visits

### Technical Profile

Browser	Visits	% visits	Connection Speed	Visits	% visits
Internet Explorer	56	80.00%	T1	26	37.14%
Firefox	14	20.00%	DSL	18	25.71%
			Unknown	16	22.86%
			Cable	7	10.00%
			OC3	2	2.86%

# New vs. Returning

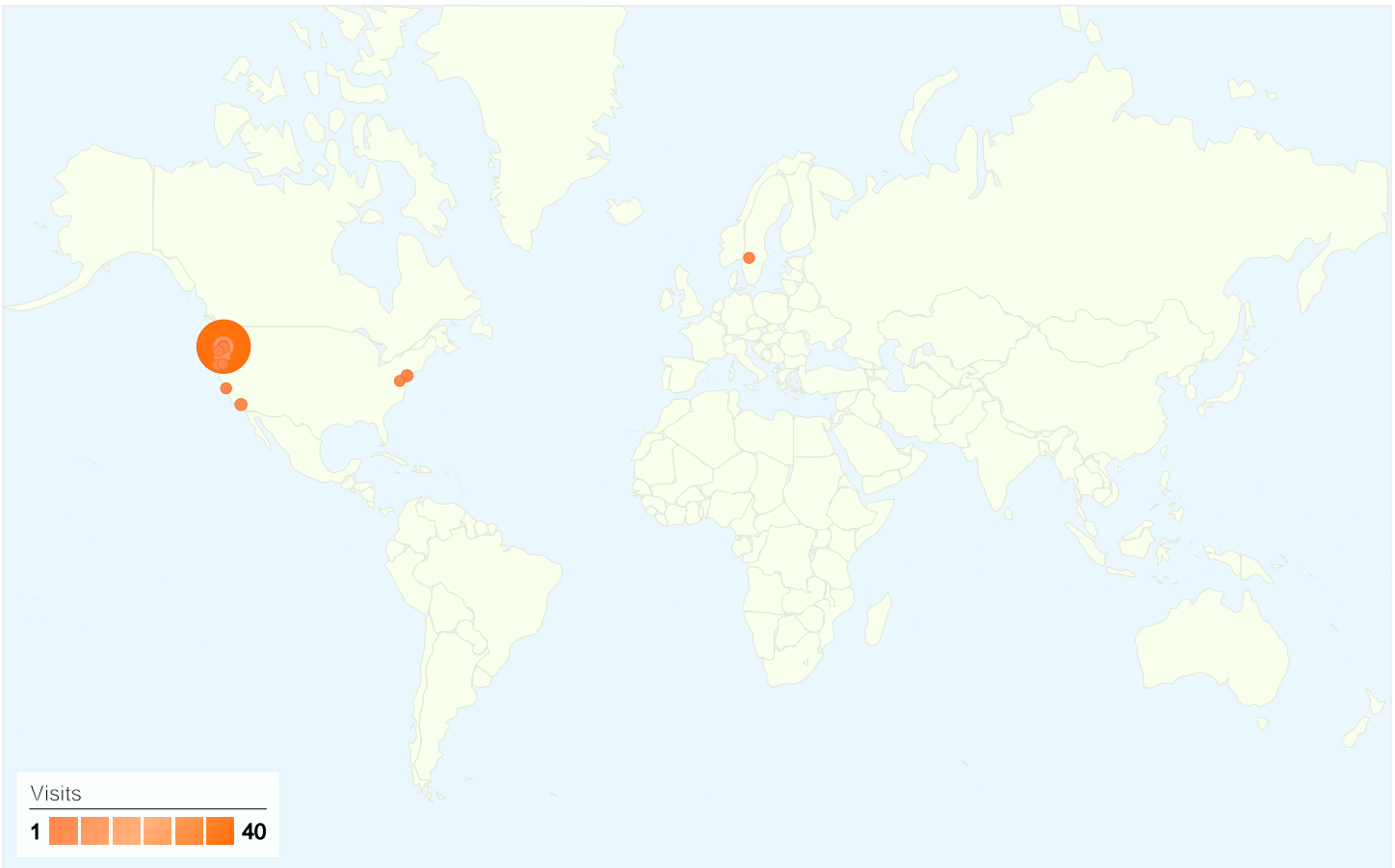
Nov 2, 2007 - Dec 2, 2007



## 70 visits from 2 visitor types

Site Usage

<b>Visits</b> <b>70</b> % of Site Total: 100.00%	<b>Pages/Visit</b> <b>4.63</b> Site Avg: 4.63 (0.00%)	<b>Avg. Time on Site</b> <b>00:02:32</b> Site Avg: 00:02:32 (0.00%)	<b>% New Visits</b> <b>44.29%</b> Site Avg: 44.29% (0.00%)	<b>Bounce Rate</b> <b>31.43%</b> Site Avg: 31.43% (0.00%)
Visitor Type	Visits	Visits	Visits	
<span style="color: blue;">■</span> Returning Visitor	39	55.71%		
<span style="color: green;">■</span> New Visitor	31	44.29%		



**70 visits came from 14 cities**

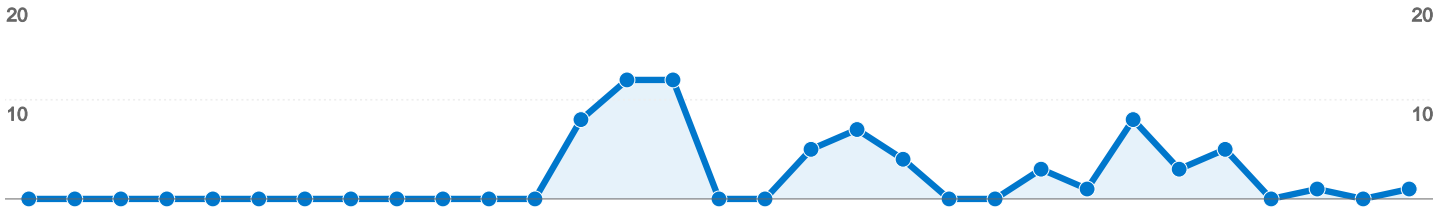
Site Usage

Visits <b>70</b> % of Site Total: 100.00%	Pages/Visit <b>4.63</b> Site Avg: 4.63 (0.00%)	Avg. Time on Site <b>00:02:32</b> Site Avg: 00:02:32 (0.00%)	% New Visits <b>44.29%</b> Site Avg: 44.29% (0.00%)	Bounce Rate <b>31.43%</b> Site Avg: 31.43% (0.00%)	
City	Visits	Pages/Visit	Avg. Time on Site	% New Visits	Bounce Rate
Portland	40	3.98	00:02:15	27.50%	37.50%
Beaverton	10	5.20	00:03:53	70.00%	20.00%
Eugene	7	3.29	00:01:30	14.29%	28.57%
Maywood	2	5.50	00:07:15	100.00%	0.00%
Philadelphia	2	15.00	00:05:35	100.00%	50.00%
Vancouver	1	9.00	00:02:09	100.00%	0.00%
Lake Oswego	1	5.00	00:01:53	100.00%	0.00%
Washington	1	5.00	00:00:48	100.00%	0.00%
Marylhurst	1	2.00	00:00:26	100.00%	0.00%
Mountain View	1	1.00	00:00:00	100.00%	100.00%



Karlstad	1	21.00	00:06:28	100.00%	0.00%
Newport	1	1.00	00:00:00	100.00%	100.00%
Brookings	1	2.00	00:00:14	100.00%	0.00%
Medford	1	3.00	00:00:09	0.00%	0.00%

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**70 visits came from 14 sources**

Site Usage

<b>Visits</b> <b>70</b> % of Site Total: 100.00%	<b>Pages/Visit</b> <b>4.63</b> Site Avg: 4.63 (0.00%)	<b>Avg. Time on Site</b> <b>00:02:32</b> Site Avg: 00:02:32 (0.00%)	<b>% New Visits</b> <b>44.29%</b> Site Avg: 44.29% (0.00%)	<b>Bounce Rate</b> <b>31.43%</b> Site Avg: 31.43% (0.00%)	
Source	Visits	Pages/Visit	Avg. Time on Site	% New Visits	Bounce Rate
(direct)	40	5.28	00:02:25	42.50%	27.50%
oregonlegalresearch.blogspot.com	8	2.38	00:04:05	62.50%	50.00%
clackamas-bar.org	6	3.50	00:02:05	16.67%	16.67%
oregontriallawyers.org	5	1.40	00:00:02	0.00%	60.00%
live	2	15.00	00:05:35	100.00%	50.00%
by136w.bay136.mail.live.com	1	4.00	00:07:32	100.00%	0.00%
google	1	1.00	00:00:00	100.00%	100.00%
google.com	1	4.00	00:00:21	0.00%	0.00%
lanecountybar.org	1	2.00	00:00:09	0.00%	0.00%
law.lclark.edu	1	11.00	00:02:40	0.00%	0.00%
mail.actionnet.net	1	1.00	00:00:00	100.00%	100.00%
mail.co.marion.or.us	1	2.00	00:00:26	100.00%	0.00%
msn	1	5.00	00:01:15	100.00%	0.00%
us.f389.mail.yahoo.com	1	6.00	00:11:17	100.00%	0.00%

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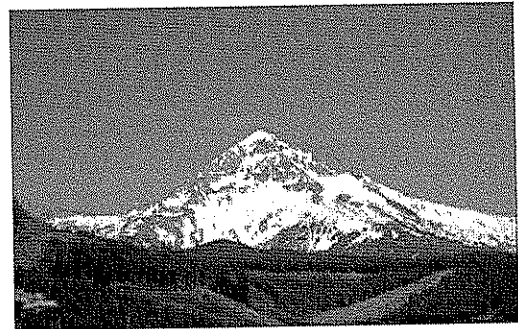
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The Oregon State Bar Litigation Section includes civil, criminal and specialty practice litigators within the Oregon State Bar. The Section is the largest within the Bar, and provides services to its members through periodic CLE presentations (including the annual Litigation Institute and Retreat at Skamania Lodge and the biennial practical skills CLE, Fundamentals of Oregon Civil Trial Procedure), as well as publication of the Litigation Journal three times a year. The Litigation Journal provides timely articles and case notes of interest to Oregon litigators. The Litigation Section is committed to professional education, development and collegiality. An annual highlight is presentation of the Owen M. Panner Professionalism Award at the Institute and Retreat. This award is given to a member of the bench or bar who exemplifies the highest professional standards and values. Membership in the Section is open to any Bar member with an interest in litigation. Annual dues are \$25.



If you'd like to join the Litigation Section, contact Sarah Hackbart at the Oregon State Bar, 503-620-0222 (or 800-452-8260), extension 385, or email her at [shackbart@osbar.org](mailto:shackbart@osbar.org).

### The Council on Court Procedures

Where do the Oregon Rules of Civil Procedure come from and how are they changed? If a particular rule is not effective or has been rendered obsolete by technology, or by practice, how may it be amended? The Council on Court Procedures was formed by the Legislature in 1977 to draft and to systematically update the Oregon Rules of Civil Procedure (ORCP). The enabling legislation is found at ORS 1.725 through ORS 1.760. Well-crafted, fair, and balanced procedural rules for the filing, prosecution, and defense of civil disputes ensure that all Oregonians have a forum in which to seek redress of private grievances fairly and equitably.

By statute the Council is composed of lawyers, judges, and at least one public member. The lawyers are further sub-divided into two equally numbered groups: one drawn from the ranks of the "plaintiffs' bar" who routinely represent those seeking redress; and one drawn from the "defense bar" who routinely defend cases. The judges are drawn from the trial courts, the Court of Appeals, and the Supreme Court. All members of the Council are volunteers who serve without compensation.

The Council meets once each month during the years between legislative sessions. Meetings are on Saturdays and usually begin at 9:30 a.m. Committees and task forces established by the Council meet at various times during the month, depending upon the work load and the schedules of individual members. The Council votes to publish proposed

amendments to the ORCP at the September meeting in even numbered years and votes to promulgate amendments to the ORCP at the December meeting in even numbered years. The Council's promulgated rules or amendments are submitted to the Legislature and take effect in January of the following, odd-numbered, year, unless the Legislature votes to amend, repeal, or supplement any promulgation.

The Council's meetings are open to the public. Meetings are held at various locations around the State. The next meeting is Saturday, November 10, 2007, at the Oregon State Bar offices. The Oregon State Bar provides meeting space at no cost to the Council. The Council also meets in other locations and for the most part receives in-kind contributions of the cost of meeting space.

[Click here](#) for more information.

## Fundamentals of Oregon Civil Trial Procedure

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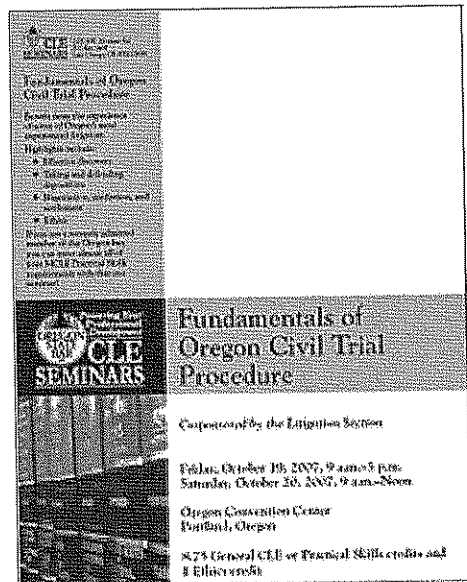
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## Request for Public Comment - UTCR

The UTCR Committee met on October 14, 2005, to discuss 15 proposals to amend the UTCR and to make preliminary recommendations to the Chief Justice of the Oregon Supreme Court. A description of the proposals and action taken by the committee is posted at:



NOV 26, 2007

## Oregon Council on Court Procedures

The [Oregon Council on Court Procedures](#) has a new website. Their much awaited [Minutes](#) are included.

From their [home page](#):

*"Welcome to the Oregon Council on Court Procedures. The Council was created by the Oregon Legislature in 1977 to work on court rules dealing with pleading, practice, and procedure. The Council is the Oregon public body that is most directly involved in creating, reviewing, and amending the Oregon Rules of Civil Procedure, which govern procedure and practice in all Oregon circuit courts (except for the small claims department).*

*Members of the Council are drawn from appellate and circuit court judges, practicing attorneys who represent both those who bring civil cases and those who defend them, and a public member. All Council members serve without pay. The work of the Council is supported by a professional staff, the Oregon State Bar, and by the Lewis & Clark Law School. All meetings of the Council are open to the public. ..."*

By Laura Orr at [10:55 AM](#) Tags: [Civil procedure](#), [Court Rules](#), [ORCP](#)

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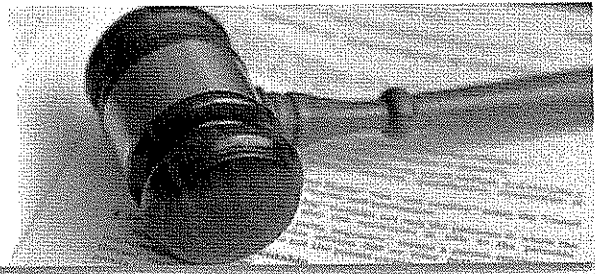
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## Oregon Rules of Civil Procedure

### Current Oregon Rules of Civil Procedure

#### 2006 Proposed Amendments\*

Rule 7	Summons
Rule 8	Process
Rule 9	Service and Filing of Pleadings and Other Papers
Rule 32	Class Actions
Rule 43	Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes
Rule 55	Subpoena
Rule 63	Judgment Notwithstanding the Verdict
Rule 64	New Trials
Rule 69	Default Orders and Judgments

\*The Legislature did not vote to amend, repeal, or supplement any of the Council's promulgated rules; therefore, the Council's amendments will take effect on January 1, 2008.

#### 2004 Proposed Amendments

Rule 9	Service and Filing of Pleadings and Other Papers
Rule 46	Failure to Make Discovery; Sanctions
Rule 54	Dismissal of Actions; Compromise
Rule 59	Instructions to Jury and Deliberation
Rule 67	Judgments
Rule 83	Provisional Process

#### 2002 Proposed Amendments

Rule 34	Substitution of Parties
Rule 43	Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes
Rule 47	Summary Judgment
Rule 44	Physical and Mental Examination of Persons; Reports of Examination
Rule 55	Subpoena
Rule 59	Instructions to Jury and Deliberation
Rule 62	Findings of Fact
Rule 68	Allowance and Taxation of Attorney Fees and Costs and Disbursements

#### 2000 Proposed Amendments



Rule 7	Summons
Rule 21	Defenses and Objections; How Presented; By Pleading or Motion; Motion for Judgment on the Pleadings
Rule 32	Class Actions
Rule 58	Trial Procedure

<b>1998 Proposed Amendments</b>	
Rule 7	Summons
Rule 39	Depositions Upon Oral Examination
Rule 55	Subpoena
Rule 68	Allowance and Taxation of Attorney Fees and Costs and Disbursements



Council on Court Procedure  
**Sub-Committee on ORCP 19B (Affirmative Defenses)**  
Kristen David (Chair), Hon. Jerry Hodson, Brian Campf.

- I. **Query:** Should ORCP 19B be revised and updated?
- II. **Conclusion:** It is the subcommittee's position that there is not a pressing need to change ORCP 19B at this time.
- III. **Discussion:** The subcommittee discussed a number of possible changes to ORCP 19B since the September 15, 2007 meeting. The subcommittee raised concern of the doctrine of variance which can restrict a party from presenting evidence (simply because a theory had not been pled as an affirmative defense) versus the ability of a party to present evidence under a general denial. (See, *State v. Olmstead*, 310 Or 455, 800 P2d 277 (1990) and *Marcoulier v. Umstead*, 105 Or App 260 (1991).) Specifically, the subcommittee discussed the following issues:
  - A. Unclean Hands: After review of recent case law on "unclean hands," it was determined that a party need not plead it as an affirmative defense since a Court could apply the doctrine on it's own as an equitable remedy. (*Osborne v. Nottley*, 206 Or App 201, 136 P3d 81 (5/31/06).)
  - B. Exhaustion of Remedies: The subcommittee discussed this doctrine and concluded that it required case by case evaluation and should not be required to be pled as an affirmative defense since often evidence may be submitted under a general denial theory.
  - C. Res Judicata/ Issue Preclusion: Discussion was held on the terminology with concern of the theories encompassed under the old verbage versus the more modern parlance. "Res judicata" (now generally termed "claim preclusion") applies to preclusion of an entire claim that has been litigated or could have been litigated. "Collateral estoppel" (now generally termed "issue preclusion") prevents relitigation of an issue decided in a previous case involving a different claim. Thus, while collateral estoppel can be considered part of the broader doctrine of res judicata, a change in the nomenclature in ORCP 19B to "preclusion" (referring to both claim and issue preclusion) could confuse those with other "estoppel" defenses. Since the Council should not be making substantive changes to the law, it was felt by the subcommittee that no changes should be made to the current listing under ORCP 19B for "estoppel" and "res judicata."
  - D. Additional Affirmative Defenses: The consensus was that the last phrase of ORCP 19B "and any other matter . . ." is sufficient to catch the more specific defenses (such as those referenced in Chapter 22 of the OSB Pleading and Practice Book), and therefore there is not a pressing need to add to the list.



To: Council on Court Procedures  
From: Rule 58.B(5) Subcommittee  
Re: Defining Rebuttal Evidence  
Date: November 1, 2007

On Nov. 1, 2007, our subcommittee met to discuss whether ORCP 58.B(5) needed to be amended to add a definition of rebuttal evidence.

Although the members of the subcommittee did not have experiences where they were denied an opportunity to put on rebuttal evidence or where the court allowed such evidence inappropriately, anecdotally, the committee heard that some judges were denying plaintiffs rebuttal. Specifically it was relayed that an attorney was told that he should have put evidence on in his case in chief and not waited for rebuttal.

The committee felt that educating bench and bar on the rules of evidence and Rule 58.B(5) would be the only way to cure any problems encountered.

A motion was made and passed unanimously to not amend Rule 58.B.