

**MINUTES OF MEETING
COUNCIL ON COURT PROCEDURES**

Saturday, March 8, 2008, 9:30 a.m.

Hood River County Library
502 State Street
Hood River, OR 97031

ATTENDANCE

Members Present:

Eugene H. Buckle
Brian S. Campf
Don Corson
Kristen S. David*
Hon. Daniel L. Harris*
Hon. Robert D. Herndon*
Hon. Jerry B. Hodson*
Hon. Lauren S. Holland*
Hon. Rives Kistler
Hon. Eve L. Miller*
Leslie W. O'Leary
David F. Rees
Shelley D. Russell*
Hon. David Schuman*
John L. Svoboda
Mark R. Weaver
Hon. Locke A. Williams*

Members Absent:

Brooks F. Cooper
Dr. John A. Enbom
Martin E. Hansen
Hon. Rodger J. Isaacson
Hon. Mary Mertens James
Alexander D. Libmann

Guests:

David Nebel, Oregon State Bar

Council Staff:

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

*Appeared by teleconference

ORCP Discussed this Meeting	ORCP Discussed & Not Acted Upon this Biennium	ORCP Amendments Moved to Publication Docket this Biennium
ORCP 1 ORCP 7D(3)(b) ORCP 7D(4)(a) ORCP 9 ORCP 9F ORCP 18A ORCP 27 ORCP 44A ORCP 54A ORCP 54E ORCP 57 ORCP 58 ORCP 59B ORCP 67C ORCP 68	ORCP 7 ORCP 7D(4)(a) ORCP 7F(2)(a) ORCP 9F ORCP 18B ORCP 19B ORCP 21A ORCP 25 ORCP 27 ORCP 38B ORCP 38C ORCP 43B ORCP 44B ORCP 47C	ORCP 51 ORCP 54 ORCP 55H ORCP 57D(2)-(4) ORCP 58 ORCP 58B(5) ORCP 59H ORCP 61
		ORCP 7D(3)(b) ORCP 59B

I. Call to order (Mr. Corson)

Mr. Corson called the meeting to order at 9:34 a.m.

II. Introduction of Guests

There were no guests present that required introduction.

III. Approval of February 9, 2008, Minutes

Mr. Corson called for a motion to approve the February 9, 2008, minutes which had been previously circulated to the members. The motion was made and seconded and the minutes were approved by the membership with no amendments or corrections.

IV. Administrative Matters

A. Update: Performance Measures (Mr. Corson)

Prof. Peterson stated that he, Mr. Corson, and Mr. Nebel had previously met with Rick Gardner at the Department of Administrative Services to discuss performance measures. During that meeting, Mr. Gardner stated that he believed the Council should not be subject to the same type of performance measures as other state agencies. Prof. Peterson stated that Mr. Gardner has recently suggested contacting Dawn Farr in the Legislative Fiscal Office (LFO). Prof. Peterson contacted John Borden in the LFO, the Council's contact person, in lieu of contacting Ms. Farr. During that conversation, Mr. Borden stated that he has been following the Council's progress this biennia and expressed satisfaction with the Council's website and minutes. He suggested a meeting between himself, Ms. Farr, and representatives from the Council to finalize whether performance measures will or will not be required of the Council and, if required, what they might look like. Prof. Peterson will set up this meeting and report on it.

B. Report: Website/Inquiries (Ms. David/Ms. Nilsson/Prof. Peterson)

Ms. Nilsson briefly reviewed the information contained in the Website/Inquiries Update (attached as Appendix A). She stated that the website continues to receive a steady stream of visitors from throughout the state. Judge Miller reported that Representative Phil Barnhart had replied to her latest Council update, stating that he has visited the Council's website and is impressed.

V. Old Business

A. Committee Reports

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

Mr. Libmann was absent. Judge Holland reported that the committee has met and that its next step is to make contact with the Oregon Trial Lawyers Association (OTLA) and the Oregon Association of Defense Counsel (OADC) to gather feedback regarding this issue. Mr. Weaver reported that he had spoken to Danny Lang, proponent of the issue, who indicated that he will continue to pursue the issue. Ms. O'Leary stated her concern that any form pleading must be detailed enough that it satisfies the specificity required by code pleading. She will solicit feedback from attorneys regarding this issue. Mr. Buckle inquired whether there seems to be a lot of support from attorneys. Judge Holland replied that the committee does not yet have a sense. She reiterated the apparent directive from the Legislature to ensure access to justice for *pro se* litigants, as with domestic relations form pleadings. Judge Holland also stated that there is a great difference between California's pleading requirements and Oregon's code pleadings. She does not know whether form pleadings will be viable outside of the domestic relations arena in Oregon. Judge Miller pointed out that there is no need to create new domestic relations forms, which are already in place for *pro se* litigants. Judge Holland agreed and stated that the committee is not looking into that issue.

2. ORCP 27 and 68: Probate Court Matters (Mr. Cooper)

Mr. Cooper was absent. Judge Holland reported that the committee currently has nothing new to report. The committee is working on revisions to ORCP 68 and how the language regarding attorney fees applies in probate matters. She stated that there is a CLE on probate on March 14, 2008, and that will address this specific issue. Judge Holland will be on the judges' panel at this CLE. Mr. Corson asked whether any amendments to ORCP 27 are likely to be proposed. Judge Holland said no.

Prof. Peterson asked for clarification of the issue being considered regarding ORCP 68. Judge Holland stated that it concerns the process for attorneys to object when there is no adversary and it is the court that is questioning the reasonableness of attorney fees. Another issue being considered is how the ORCP fit in with the specific statute regarding

attorney fees in probate cases.

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

Mr. Campf stated that the committee remains open and welcomes input.

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

Mr. Buckle presented the committee's recommended changes to ORCP 54E. The changes and committee history are attached as Appendix B. The first change amends the title of ORCP 54E to "Offer to Allow Judgment," to reflect the language used in the body of that section. The other changes are in regard to when an offer may be filed with the court or given to a judge (to avoid biasing the judge). If the offer is accepted, it will be filed with the court. If the offer is not accepted, it may not be filed with the court clerk or given to the judge unless or until the case has been adjudicated on the merits.

Council members discussed the proposed "unless and until" language in ORCP 54E(3) and whether the words "unless and" are necessary. There was also discussion about whether the language in lines 8-9 is necessary given that similar language is used in lines 18-20. Mr. Corson expressed concern about redundancy. Prof. Peterson stated that the equivalent UTCR regarding arbitration states just once that no disclosure of any offer of settlement made by any party shall be made to the arbitrator prior to the announcement of the award. Mr. Rees stated that the committee had accepted the risk of being stylistically awkward and redundant in order to make the rule more clear. After more extensive discussion among Council members regarding clarity, brevity, and redundancy, Mr. Rees agreed to redraft the proposed changes and provide them before the April meeting.

Council members also briefly discussed the three (3) day rule for filing the accepted offer and whether that rule should be amended to allow a greater time. This was not an issue looked into by the committee. The conclusion was to deal with the issue before the Council at the present time and to raise the three day portion of the rule at a later time.

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

Judge Harris reported on his committee's proposed revision of ORCP 59B (attached as Appendix C). The amendment would take away the option of recording jury instructions. Judge Harris reported that he solicited

feedback from the eight judges on the Council. Five of the eight judges agreed with the revision. One judge had reservations and two had not responded. Mr. Buckle and Ms. Russell contacted the OADC and OTLA, respectively, and received feedback that was nearly unanimously in support of the proposed amendment. Judge Harris asked that the Council approve this proposal so that he may take it to the Circuit Court Judge's Conference during the first week of May in order to get feedback from a larger pool of judges. He would then bring this information back to the Council for discussion during its May meeting.

Mr. Corson briefly reiterated Council procedure for amendment and noted that any proposals that are approved by the Council prior to September are merely proposals that will be presented at the September meeting. They are not final and published until voted on in September.

Judge Holland reported that she has reservations about the proposal. She stated that she personally always uses written instructions but that she had circulated the proposal to judges in Lane County and many were opposed to removing "safety valve" language and removing the discretion of trial judges to deviate from using written instructions. She questioned why an exception for good cause should be removed.

Mr. Buckle stated that he also had initial reservations about removing a judge's flexibility, and that he was surprised by so many OADC member responses strongly in favor. Ms. O'Leary recalled her experience as a jury member on a short trial and stated that, if the jury had not been provided with written instructions, the jury would have considered liability, which was not at issue in the trial. Mr. Rees asked what exigencies might exist which would require not using written instructions. Judge Holland could not think of any, but her concern is the Legislature (or, in this case, the Council) dictating procedure to trial judges and removing their discretion.

Judge Harris stated that the principal concern is the estimated 20% of trial judges who routinely use tape recorded instructions, even if written instructions are feasible. The proposed amendments are directed at this practice. Judge Herndon stated that in today's trials the instructions are much more complicated than in the past and that they need to be in writing. Prof. Peterson suggested minor language changes to make references to "the jury" consistent (rather than using "them," using "it," and using "the jury"). Judge Harris requested that Prof. Peterson revise the draft and send the suggested language changes to him via e-mail.

Judge Schuman stated that he sees no reason not to take the proposal to

the Judge's Conference. Mr. Corson asked for a motion to approve the proposal as submitted to take to the Conference. The motion was made and seconded and passed on a voice vote, with one member abstaining and no votes in opposition.

Judge Harris stated that the committee is still working on changes regarding alternative jurors. Mr. Corson asked whether changes to Rule 58 are still being considered, and Judge Harris stated no.

6. E-Filing (Mr. Cooper)

Mr. Cooper was absent. Judge Holland stated that the committee has not yet met. Mr. Svoboda stated that he was recently appointed to the Bar's Judicial Administration Committee and that the first meeting he attended was about the e-filing issue. He asked whether there is much for the Council's e-filing committee to do. Mr. Corson stated that minor changes to the ORCP will be necessary, mostly definitional. Mr. Svoboda suggested not beginning those changes until the committee knows what is happening with e-filing. Justice Kistler wondered whether Mr. Cooper is coordinating with the Chief Judge. Mr. Corson was not aware of this. Mr. Nebel reported that the Legislature has issued bonds for the first part of a gradual rollout of the e-court system, which will begin experimentally in four districts in the fall of 2009. Justice Kistler stated that there are hardware and standardization issues to be addressed. Mr. Corson will call Mr. Cooper to discuss progress.

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

Ms. O'Leary stated that the committee solicited opinions from the OADC, the OTLA, and the Oregon Medical Association regarding this issue and asked that responses be received by March 7, 2008. As of Saturday, March 10, 2008, one response was received and two others were on the way. The committee will meet again to discuss the responses. Ms. O'Leary emphasized that this will be a long process with a great deal of outside input required. The committee will report back after its next meeting.

B. Non-Committee Matters

1. ORCP 7D(4)(a): DMV Service Requirement (Prof. Peterson)

Prof. Peterson reminded the Council that this issue was raised by the

Judicial Administration Committee (JAC). He stated that the response from the Professional Liability Fund seems to indicate that this is not an issue of litigation for them. He noted the 1997 rule change and that the cases seemed to drop off after this point. Mr. Corson asked whether the item could be removed from the agenda, given that it does not appear to be a significant problem. Prof. Peterson agreed to send a letter to the JAC letting them know that the issue was considered and that no action was taken by the Council.

2. ORCP 54A: Confidentiality Agreement at Settlement (Ms. O'Leary)

Ms. O'Leary stated that she has not received any further information from the proponents of this change. She has asked Mr. Campf to assist her in doing research regarding how other states handle this matter. Mr. Corson asked when the Council could expect a report on the issue. Ms. O'Leary stated that she will provide information to the Council at the next meeting so that it can decide whether to form a committee and propose language changes.

3. ORCP 7D(3)(b): Alternative Service on Corporations (Prof. Peterson)

Prof. Peterson reviewed the additional changes that he and Mr. Rees made to the language of ORCP 7D(3)(b)(ii) regarding service upon out-of-state corporations (attached as Appendix D). (The previous proposed amendment was to clarify that mail service to a corporate defendant must comply with ORCP 7D(2)(d).) They now have removed the language "on basis of reasonable inquiry" at line 2 of p. 3 in order to eliminate an excessive due diligence burden on plaintiffs. Prof. Peterson stated that he had looked for cases relating to this issue but did not find any that touched upon this specific language, except *French v. Business Exchange Investments, Inc.*, 2005 WL 357281 (D. Or, 2005), which ruling would not be affected by the proposed amendment. Judge Miller stated that the burden should be on the corporation rather than the litigant. Mr. Weaver raised concerns about service on an out-of-state corporation that does not do business in Oregon and is, therefore, not required to register. He stated that if that corporation is sued in Oregon and the plaintiff mails a summons and complaint to an old corporate address, a default could be taken. He wondered about constitutional issues of due process as required by ORCP 7D(1). Mr. Corson stated that, if service is not made to the principal place of business, service is not made in any case. Mr. Rees restated that the motive for the change is to not place an undue burden on a plaintiff. Mr. Corson asked for a motion to accept the revised language. A motion was made and seconded, and the motion passed on a voice vote,

with one member abstaining and no votes in opposition.

VI. New Business

- A. Letter to Oregon Law Commission re: Uniform Interstate Depositions and Discovery Act

Mr. Corson reported that the letter to the OLC regarding the Uniform Interstate Depositions and Discovery Act had been written and sent. The letter is attached as Appendix E.

- B. UTCR 5.050

Prof. Peterson reported that he had received a letter from attorney Danny Lang. The letter was sent to both the Uniform Trial Court Rules Committee and the Council regarding changes to UTCR 5.050. Prof. Peterson will write to Mr. Lang, copied to the UTCR Committee, letting him know that this is not an issue with which the Council can be of assistance.

- C. Gold Star Award

Prof. Peterson reported that the Council was awarded a Department of Administrative Services (DAS) State Controller's Gold Star. The award is attached as Appendix F. The award is given to agencies that provide accurate and complete fiscal year end information in a timely manner. Prof. Peterson advised that Rebecca Loomis at the Judicial Department, who handled the Council's account, will be sent a copy of the award with the Council's thanks.

VII. Adjournment

The meeting was adjourned at 11:00 a.m.

Respectfully submitted,

Mark A. Peterson
Executive Director

**Council on Court Procedures
Website/Inquiries Update
Reporting Period: 1/25/08 - 2/25/08**

I. Website Statistics

A. Visitors

From January 25 to February 25, the site received a total of 107 visits from 83 unique visitors. 58.88% of the total visits were from new visitors. 28.04% of the visits were direct, 47.66% came from referring sites, and 24.30% came from search engines.

B. Geographical Information

Most visitors to the website came from various cities in Oregon:

- | | |
|--------------|-----------------|
| ▶ Baker City | ▶ Jacksonville |
| ▶ Beaverton | ▶ Keizer |
| ▶ Bend | ▶ Klamath Falls |
| ▶ Brookings | ▶ Lake Oswego |
| ▶ Corvallis | ▶ Lebanon |
| ▶ Eugene | ▶ Medford |
| ▶ Hermiston | ▶ Portland |
| ▶ Hillsboro | ▶ Tangent |
| ▶ Hood River | ▶ Tualatin |

The site also had visitors from Vancouver, Seattle, and Honolulu.

C. Referring Sites

Visitors arrived at the web page by clicking links from the following websites, among others:

- | | |
|------------------------------------|-------------------------------|
| ▶ Clackamas County Bar Association | ▶ Lane County Bar Association |
| ▶ Jackson County Bar Association | ▶ Oregon State Bar |

D. Keywords from Search Engines

Some of the keywords that visitors entered in search engines that found the Council's website included:

- | | |
|--------------------------------------|---|
| ▶ council on court procedures | ▶ "council on court procedures" minutes |
| ▶ Oregon council on court procedures | ▶ minutes procedures |
| ▶ court procedure | ▶ orcp council on court procedures |

II. E-mail and telephone inquiries

The Council received one e-mail inquiry from an attorney asking about the 1989-1991 biennium revision to ORCP 18B. As that biennium has not yet been added to the website, the attorney was referred to local law libraries which offer hard copies of Council history.

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

1 ORCP 54

2 **Dismissal of actions; *[compromise]* offer to allow judgment**

3 * * * * *

4 **E *[Compromise]* Offer to allow judgment; effect of acceptance or rejection.**

5 E(1) Except as provided in ORS 17.065 through 17.085, the party against whom a claim
6 is asserted may, at any time up to 10 days prior to trial, serve upon the party asserting the claim
7 an offer to allow judgment to be given against the party making the offer for the sum, or the
8 property, or to the effect therein specified. **The offer shall not be filed with the court clerk or**
9 **provided to any assigned judge, except as set forth in subsections E(2) & E(3) below.**

10 E(2) If the party asserting the claim accepts the offer, the party asserting the claim or
11 such party's attorney shall endorse such acceptance thereon, and file the same with the clerk
12 before trial, and within three days from the time it was served upon such party asserting the
13 claim; and thereupon judgment shall be given accordingly, as a stipulated judgment. If the offer
14 does not state that it includes costs and disbursements or attorney fees, the party asserting the
15 claim shall submit any claim for costs and disbursements or attorney fees to the court as
16 provided in Rule 68.

17 E(3) If the offer is not accepted and filed within the time prescribed, it shall be deemed
18 withdrawn, and shall not be given in evidence on the trial **and shall not be filed with the court**
19 **clerk or provided to any assigned judge unless and until after the case has been adjudicated**
20 **on the merits**[;] and [if] the party asserting the claim fails to obtain a **judgment** more favorable
21 **than the offer to allow** judgment[,]. **In such a case,** the party asserting the claim shall not
22 recover costs, prevailing party fees, disbursements, or attorney fees incurred after the date of the
23 offer, but the party against whom the claim was asserted shall recover of the party asserting the
24 claim costs and disbursements, not including prevailing party fees, from the time of the service
25 of the offer.

26 * * * * *

**Committee E-Mail History
ORCP 54E**

From: Eugene Buckle
Sent: Friday, December 07, 2007 2:57 PM
To: Committee
Subject: 54E committee minutes of 12/3 meeting

All

Attached is 1st draft of our proposed changes to date. Feel free to wordsmith.

At our 12/3/07 meeting, we discussed

1. Should the "title" of 54E be changed to "Offer to allow judgment"?
2. Should there be a prohibition in the rule against filing an unaccepted offer to allow judgment?
3. Should there be a requirement for payment of an accepted offer within 30 days?
4. Should an offer be structured in such a way as to compare "net" outcome under offer v. verdict?

We decided yes to 1. and 2., no to 3., and David and Leslie are going to explore 4. with their constituents.

We agreed to meet next time and continue to explore 54E issues.

Gene Buckle

From: David Rees
Sent: Friday, January 04, 2008 12:16 PM
To: Committee
Subject: RE: 54E committee minutes of 12/3 meeting

Fellow Committee Members,

I have re-read the Bell v. Morales case and spoken with some lawyers involved with that case. I am convinced that there is no real problem with issue number 4 set forth below that merits any changes to Rule 54E.

I have also attached a minor proposed edit to Gene's proposed language regarding 2. It is attached. I also recently noted that UTCR 13.130 specifically forbids disclosure of any offers of settlement to arbitrators in court-annexed arbitration, which further supports our clarification.

I may have to miss the Jan. 12 meeting, but hopefully we can wrap up our committee work before then.

Happy New Year to all,

David F. Rees

From: Eugene Buckle
Sent: Wednesday, January 09, 2008 10:53 AM
To: David Rees
Subject: RE: 54E committee minutes of 12/3 meeting

David

Do the4 rules reference arbitrator anywhere? Should your amendment not have arbitrator in there, as the ORCP apply to lawsuits filed, not arbitrations where a lawsuit is not filed (absent agreement)?

Gene Buckle

From: David Rees
Sent: Wednesday, January 09, 2008 12:28 PM
To: Eugene Buckle
Subject: RE: 54E committee minutes of 12/3 meeting

Gene,

I agree that we should take the reference to arbitrators out. The UTCRs refer to court-annexed arbitration, but the ORCP do not. I wanted to include the reference to make it abundantly clear that you don't send these to any decision maker in the case unless and until they are accepted. However, with the judge reference as well as UTCR 13.130, it should be very clear that offers of compromise should not be provided to arbitrators in court annexed arbitrations.

From: Eugene Buckle
To: Council on Court Procedures
Date: January 11, 2008

All

Here is 54E committee's proposed amendment to ORCP 54E.

Also attached is an e-mail string which will be our "legislative history" on the amendment (although I'm not real clear on how/where that legis hx will be kept).

54E [Compromise] Offer to allow judgment; effect of acceptance or rejection.

E(1) Except as provided in ORS 17.065 through 17.085, the party against whom a claim is asserted may, at any time up to 10 days prior to trial, serve upon the party asserting the claim, but shall not file with the court clerk or provide to any assigned judge, an offer to allow judgment to be given against the party making the offer for the sum, or the property, or to the effect therein specified.

E(2) If the party asserting the claim accepts the offer, the party asserting the claim or such party's attorney shall endorse such acceptance thereon, and file the same with the clerk before trial, and within three days from the time it was served upon such party asserting the claim; and thereupon judgment shall be given accordingly, as a stipulated judgment. If the offer does not state that it includes costs and disbursements or attorney fees, the party asserting the claim shall submit any claim for costs and disbursements or attorney fees to the court as provided in Rule 68.

E(3) If the offer is not accepted and filed within the time prescribed, it shall be deemed withdrawn, and shall not be given in evidence on the trial; and if the party asserting the claim fails to obtain a more favorable judgment, the party asserting the claim shall not recover costs, prevailing party fees, disbursements, or attorney fees incurred after the date of the offer, but the party against whom the claim was asserted shall recover of the party asserting the claim costs and disbursements, not including prevailing party fees, from the time of the service of the offer.

From: "Eugene Buckle"
To: "David Rees"
Sent: January 9, 2008

Thanks David. I agree with you that an unaccepted offer of compromise should not be provided to an arbitrator in a court-annexed arbitration. My thinking was just for consistency throughout the ORCP.

I think we include your comments as part of committee's legist hex on the amendments, so, although not in the rule, the thinking is clear for those who look.

Gene Buckle

From: Eugene Buckle
Sent: 01/28/08
To: Eugene Buckle; 'Jerry.B.HODSON'; 'David Rees'; 'loleary'
Subject: 54E committee meeting next week

Dear Committee

I just talked to David, who for the record was in his office when I first called him this morning, but just away from his desk momentarily. Had I chosen to call him 3rd instead of 1st, he would have joined our call (David—I've moved you to the bottom of the rotation for next time). David does agree, however, will all of the recommendations as noted below.

I'll send around the entire rule in "red lined" form for your review and presentation to the Council. Thanks to all.

Gene Buckle

From: Eugene Buckle
Sent: Friday, January 25, 2008 8:28 AM
To: Eugene Buckle; 'Jerry.B.HODSON'; 'David Rees'; 'loleary'
Subject: 54E committee meeting next week

Dear Committee

We need to meet next week, as I leave the following week for my 2 week vacation (I'm totally worn out by 2008 already). Thus I will miss the next COCP meeting, so we'll need a volunteer to present our report.

We have 3 issues to discuss, as my notes reflect from the Jan. COCP meeting:

1. Should rule reflect what is done with an accepted offer to allow judgment: at that point is it filed with the court clerk, does it have to be, etc.? Already in rule
2. Could the offer to allow judgment be filed initially, but in a sealed envelop, not to be opened by the trial judge: in that way, the "date of service" is objectively(?) determined, so there is no issue about by when the acceptance must be "accepted. No—too much of an administrative hassle, not a problem in practice
3. 54(E)(3) should be reworded to:

“..., the party asserting the claim shall not recover costs, disbursements, or attorney fees incurred after the

date of the offer, or prevailing party fees, about the party against whom the claim was asserted ...”

No—prevailing fees are only incurred after the date any offer is file (by definition), so no change needed

Can we telephone conference Monday or Wednesday at 8am, or Tuesday at noon?

Gene Buckle

From: Eugene Buckle
Sent: Tuesday, January 29, 2008 11:02 AM
To: Jerry.B.HODSON; Ioleary; David Rees
Subject: proposed amendment to ORCP 54E

Dear Committee

Attached is amendment (hopefully in presentable form). Pls review and offer any input. Pls rsvp just so , after I hear from you all, I can send it on for “publication” to the whole COCP with the agenda for the meeting next week. Thanks so much.

Gene Buckle

From "David Rees"

01/29/2008 01:44 PM

To "Eugene Buckle", <Jerry.B.HODSON>, <lolareary>

Subject RE: proposed amendment to ORCP 54E

Gene,

The amendment looks fine to me. The only nagging issue I can think of is the concern expressed at our last full council meeting that, with the new language prohibiting filing of the offer, we need to clarify that once the offer is not accepted, the case is adjudicated on the merits, the offeror can then file the offer of judgment to prove up the terms of the offer and date made to determine the fees and costs issue. I think it is probably pretty obvious, but to address this concern, I have proposed some new clarifying language to E(3).

David F. Rees

From Jerry B. Hodson
To Eugene Buckle", David Rees, <lolareary>
02/05/08

Hey guys: I didn't hear back from anyone. That tells me (a) that my revisions are bad and noone wants to tell me so, or (b) Gene is in Tahiti without a laptop and the rest of you are waiting for his guidance on how to tell me about (a)? :-) Jerry

Jerry B. Hodson

David, Gene & Leslie:

I liked David's suggestion in E(3). I started tinkering with it a bit, which led to a suggested change in E(1). I tried to make my changes in a different color but it didn't seem to work. My suggestions are below in the attachment entitled ORCP 54 Revisions. In the likely event my changes don't show up in red, here are my suggestions:

1. take the new language in subsection E(1) out of the clause and make it a new sentence at the end of E(1). I don't think this change is necessary but was trying to make it clear how the three subsections interrelate. It also seemed that we have a lot of commas and qualifying language in the intro to E(1) and I kind of run out of breath before I ever get to the magic words "an offer to allow judgment."

2. Insert the word "after" following the word "until" in E(3) and replace the word "is" with the words "has been." This is, again, unnecessary but is an attempt to make clear that the offer is filed after trial, not during trial.

Jerry

1 **ORCP 59**

2 * * * * *

3 **B Charging the jury.** In charging the jury, the court shall state to them all matters of law
4 necessary for their information in giving their verdict. Whenever the knowledge of the court is by
5 statute made evidence of a fact, the court shall declare such knowledge to the jury, who are
6 bound to accept it as conclusive. The court shall reduce, or require a party to reduce, the charge
7 to writing. *[However, if the preparation of written instructions is not feasible, the court may*
8 *record the instructions electronically during the charging of the jury.]* The jury shall take such
9 written instructions *[or recording]* with it while deliberating upon the verdict and then return the
10 written instructions *[or recording]* to the clerk immediately upon conclusion of its deliberations.
11 The clerk shall file the written instructions *[or recording]* in the court file of the case.

12 * * * * *

1 **SUMMONS**

2 **RULE 7**

3 * * * * *

4 **D(3) Particular defendants.** Service may be made upon specified defendants as follows:

5 **D(3)(a) Individuals.**

6 **D(3)(a)(i) Generally.** Upon an individual defendant, by personal delivery of a true copy
7 of the summons and the complaint to such defendant or other person authorized by appointment
8 or law to receive service of summons on behalf of such defendant, by substituted service or by
9 office service. Service may also be made upon an individual defendant to whom neither
10 subparagraph (ii) nor (iii) of this paragraph applies by mailing made in accordance with
11 paragraph (2)(d) of this section provided the defendant signs a receipt for the certified, registered
12 or express mailing, in which case service shall be complete on the date on which the defendant
13 signs a receipt for the mailing.

14 **D(3)(a)(ii) Minors.** Upon a minor under the age of 14 years, by service in the manner
15 specified in subparagraph (i) of this paragraph upon such minor, and also upon such minor’s
16 father, mother, conservator of the minor’s estate, or guardian, or, if there be none, then upon any
17 person having the care or control of the minor or with whom such minor resides, or in whose
18 service such minor is employed, or upon a guardian ad litem appointed pursuant to Rule 27 A(2).

19 **D(3)(a)(iii) Incapacitated persons.** Upon a person who is incapacitated or financially
20 incapable, as defined by ORS 125.005, by service in the manner specified in subparagraph (i) of
21 this paragraph upon such person, and also upon the conservator of such person’s estate or
22 guardian, or, if there be none, upon a guardian ad litem appointed pursuant to Rule 27 B(2).

23 **D(3)(a)(iv) Tenant of a mail agent.** Upon an individual defendant who is a “tenant” of a
24 “mail agent” within the meaning of ORS 646.221 by delivering a true copy of the summons and
25 the complaint to any person apparently in charge of the place where the mail agent receives mail
26 for the tenant, provided that:

1 (A) the plaintiff makes a diligent inquiry but cannot find the defendant; and

2 (B) the plaintiff, as soon as reasonably possible after delivery, causes a true copy of the
3 summons and the complaint to be mailed by first class mail to the defendant at the address at
4 which the mail agent receives mail for the defendant and to any other mailing address of the
5 defendant then known to the plaintiff, together with a statement of the date, time, and place at
6 which the plaintiff delivered the copy of the summons and the complaint.

7 Service shall be complete on the latest date resulting from the application of
8 subparagraph D(2)(d)(ii) of this rule to all mailings required by this subparagraph unless the
9 defendant signs a receipt for the mailing, in which case service is complete on the day the
10 defendant signs the receipt.

11 **D(3)(b) Corporations and limited partnerships.** Upon a domestic or foreign
12 corporation or limited partnership:

13 **D(3)(b)(i) Primary service method.** By personal service or office service upon a
14 registered agent, officer, director, general partner, or managing agent of the corporation or
15 limited partnership, or by personal service upon any clerk on duty in the office of a registered
16 agent.

17 **D(3)(b)(ii) Alternatives.** If a registered agent, officer, director, general partner, or
18 managing agent cannot be found in the county where the action is filed, the summons may be
19 served: by substituted service upon such registered agent, officer, director, general partner, or
20 managing agent; or by personal service on any clerk or agent of the corporation or limited
21 partnership who may be found in the county where the action is filed; or by mailing **in the**
22 **manner specified in paragraph (2)(d) of this section** a copy of the summons and complaint to
23 the office of the registered agent or to the last registered office of the corporation or limited
24 partnership, if any, as shown by the records on file in the office of the Secretary of State or, if
25 the corporation or limited partnership is not authorized to transact business in this state at the
26 time of the transaction, event, or occurrence upon which the action is based occurred, to the

1 principal office or place of business of the corporation or limited partnership, and in any case to
2 any address the use of which the plaintiff knows or[, *on the basis of reasonable inquiry,*] has
3 reason to believe is most likely to result in actual notice.

4 **D(3)(c) State.** Upon the state, by personal service upon the Attorney General or by
5 leaving a copy of the summons and complaint at the Attorney General’s office with a deputy,
6 assistant, or clerk.

7 **D(3)(d) Public bodies.** Upon any county, incorporated city, school district, or other
8 public corporation, commission, board or agency, by personal service or office service upon an
9 officer, director, managing agent, or attorney thereof.

10 **D(3)(e) General partnerships.** Upon any general partnerships by personal service upon
11 a partner or any agent authorized by appointment or law to receive service of summons for the
12 partnership.

13 **D(3)(f) Other unincorporated association subject to suit under a common name.**
14 Upon any other unincorporated association subject to suit under a common name by personal
15 service upon an officer, managing agent, or agent authorized by appointment or law to receive
16 service of summons for the unincorporated association.

17 **D(3)(g) Vessel owners and charterers.** Upon any foreign steamship owner or steamship
18 charterer by personal service upon a vessel master in such owner’s or charterer’s employment or
19 any agent authorized by such owner or charterer to provide services to a vessel calling at a port
20 in the State of Oregon, or a port in the State of Washington on that portion of the Columbia
21 River forming a common boundary with Oregon.

22 * * * * *

Council on Court Procedures

Established by the Oregon Legislature in 1977

Mark A. Peterson
Executive Director

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Executive Director (1982-1988)

Fredric R. Merrill
*Executive Director
(1977-1981; 1988-1992)*

March 6, 2008

Lane P. Shetterly
Oregon Law Commission Chair
Willamette University College of Law
245 Winter St. SE
Salem, OR 97301

Re: Uniform Interstate Depositions and Discovery Act

Dear Mr. Shetterly:

The Council on Court Procedures has reviewed the draft (7/27/07 - 8/3/07) Uniform Interstate Depositions and Discovery Act prepared by the National Conference of Commissioners on Uniform State Laws. As you know, Oregon's current procedure for issuing subpoenas to take the testimony of a witness in this state for use in a civil action pending in another jurisdiction is found in ORCP 38C.

The benefit of the proposed Uniform Act is efficiency and economy. Rather than obtaining a commission or letter rogatory, and filing a miscellaneous action in Oregon, issuance of an Oregon subpoena would be a clerical act. Oregon counsel might not be required; the Uniform Act drafters anticipate that a process server may present an out-of-state subpoena to the clerk and obtain an Oregon subpoena to serve on an Oregon resident (Comment to Section 3).

The drafters of the Uniform Act intend that discovery would comply with the laws of the discovery state, and recognize that the discovery state has a significant interest in protecting its residents who become non-party witnesses from any unreasonable or unduly burdensome request (Comment to Section 5). Here in Oregon, for example, ORCP 55F(2) limits where a non-party witness may be required to attend a deposition (the county wherein the person served resides, is employed, or transacts business in person). The Uniform Act has "blanks" in it which are intended to be filled by each State in order to have the Uniform Act procedures be consistent with the existing discovery procedures.

Lane Shetterly
March 6, 2008
Page 2

The Council has not sufficiently studied the draft Uniform Act at this point to be able to make recommendations about how best to fill in the "blanks" to make the Act consistent with existing Oregon discovery rules. If the Commission decides to consider the Uniform Act, we respectfully request that the Commission refer the issue to the Council or involve the Council in its consideration of the matter.

Sincerely,

DON CORSON
Chair

MARK A. PETERSON
Executive Director

MAP:scn



Oregon

Theodore R. Kulongoski, Governor

Department of Administrative Services

State Controller's Division

155 Cottage Street U50

Salem, OR 97301-3969

(503) 378-3156

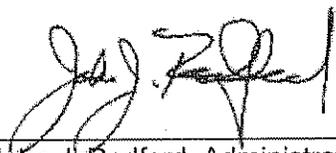
FAX (503) 378-3518

CAFR ★ Gold Star 2007

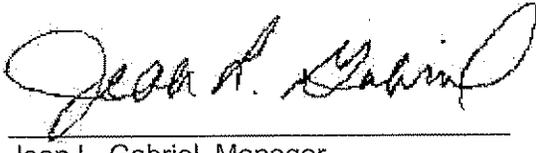
Date: January 28, 2008

To: Mark Peterson, Executive Director
Council on Court Procedures
310 SW Fourth Avenue
Portland, OR 97204

From:



John J. Radford, Administrator
State Controller's Division



Jean L. Gabriel, Manager
Statewide Accounting and Reporting Services

Subject: **FY 2007 GOLD STAR CERTIFICATE**

It is a great pleasure to inform you that your agency has earned the State Controller's Gold Star Certificate for fiscal year 2007. Congratulations to you and your fiscal staff for this outstanding work.

The State Controller's Gold Star Certificate is awarded to state agencies that provide accurate and complete fiscal year end information in a timely manner. Clearly, the Gold Star is a challenge to earn, and its achievement is due primarily to your agency's diligent efforts to maintain accurate and complete accounting records throughout the year.

We particularly want to commend your agency's lead CAFR accountant, Rebecca Loomis, who worked directly with us to ensure accurate and timely year end reporting. The Gold Star Certificate was presented to your agency's CAFR accountant earlier this month.

Your agency's participation in the Gold Star Certificate program is important to Oregon in meeting statewide fiscal performance goals and key to the timely preparation of Oregon's Comprehensive Annual Financial Report and the statewide Schedule of Expenditures of Federal Awards. Your agency's success in accounting and financial reporting is also critical to Oregon's success in receiving a favorable audit opinion on both statewide documents.

The State Controller's Gold Star Certificate is Oregon's equivalent to the internationally recognized GFOA Certificate of Achievement for Excellence in Financial Reporting. Through the collaborative team effort of state agencies and the State Controller's Division, Oregon has earned the GFOA Certificate every year since 1992. *Gold Star agencies* are key to making this possible! We appreciate your agency's commitment to teamwork and excellence in financial reporting.

We are very happy to recognize your agency with this award. The diligent efforts of your fiscal staff truly make a difference in maintaining the State's accountability and credibility in financial reporting.

cc: Rebecca Loomis