

**MINUTES OF MEETING
COUNCIL ON COURT PROCEDURES**

Saturday, June 7, 2008, 9:00 a.m.

Oregon State Bar Center
16037 SW Upper Boones Ferry Rd
Tigard, OR 97224

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. Daniel L. Harris*
Hon. Robert D. Herndon*
Hon. Lauren S. Holland*
Hon. Rodger J. Isaacson
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

Members Absent:

Hon. Jerry B. Hodson
Hon. Mary Mertens James
Alexander D. Libmann
Hon. Locke A. Williams

Guests:

David Nebel, Oregon State Bar

Council Staff:

Mark A. Peterson, Executive Director

*Appeared by teleconference

ORCP Discussed this Meeting	ORCP Discussed & Not Acted Upon this Biennium	ORCP Amendments Moved to Publication Docket this Biennium (pending approval)	ORCP to be Reexamined Next Biennium
ORCP 1 ORCP 7D(3)(b) ORCP 7D(4) ORCP 18A ORCP 54A ORCP 55 ORCP 59B ORCP 69A&B	ORCP 7 ORCP 7D(4)(a) ORCP 7F(2)(a) ORCP 9 ORCP 9F ORCP 18B ORCP 19B ORCP 21A ORCP 25 ORCP 27 ORCP 38B ORCP 38C ORCP 43B ORCP 44A ORCP 44B ORCP 47C ORCP 51 ORCP 54 ORCP 54A ORCP 55H ORCP 57 ORCP 57D(2)-(4) ORCP 58B(5) ORCP 59H ORCP 61 ORCP 67C ORCP 68	ORCP 7D(3)(b) ORCP 54E ORCP 55 ORCP 69A&B	ORCP 7D(4) ORCP 54A ORCP 68 ORCP 69A&B

I. Call to order (Mr. Corson)

Mr. Corson called the meeting to order at approximately 9:30 a.m.

II. Introduction of Guests

There were no guests present that required introduction.

III. Approval of May 3, 2008, Minutes

Mr. Corson suggested a change to the draft May 3, 2008, minutes which had been previously circulated to the members. On page 8, Item B1, he suggested changing the sentence “He asked that Ms. O’Leary and Mr. Campf provide a written report addressing the substantive vs. procedural issue” to “He asked that Ms. O’Leary and Mr. Campf provide a written report addressing the research they have done.”

Mr. Corson then asked whether any other members had suggested changes to these minutes. In the absence of further suggestions, he then called for a motion to approve the May 3, 2008, minutes with his suggested amendment. The motion was made and seconded and the amended minutes were approved by the membership.

IV. Administrative Matters

A. Update: Performance Measures (Prof. Peterson)

Prof. Peterson discussed the Key Performance Measures (KPMs) (Appendix A) that he and Mr. Nebel drafted after their discussion with the Legislative Fiscal Office (LFO). That draft was previously circulated to the officers and was made available to Council members at the meeting. Prof. Peterson also distributed Mr. Nebel’s revised version of the Council survey (Appendix B).

Mr. Nebel was asked to explain briefly how KPMs are developed. He talked about how KPMs for different agencies may not apply to the Council due to the specialized nature of the Council’s work. Judge Miller asked whether the Council can tailor Key Performance Measures (KPMs) to its work. Mr. Nebel stated that the process is for KPMs to be proposed by an agency and then confirmed by the Ways and Means Committee. If the agency feels that its KPMs need updating, changes can be proposed every two years. Theoretically, the legislature could impose its own KPMs if it feels an agency’s are not adequate. He stated that the Council is a line item under the Legislative Counsel, not a separate agency, so we are in new territory. Judge Miller observed that some KPMs seem to apply, but others do not because we are not a separate agency.

Prof. Peterson stated that he and Mr. Nebel developed the draft KPMs after discussion with the LFO, and that the Council now needs to decide whether they

are adequate to measure the Council's work. The Legislative Counsel had asked for the Council to provide its own KPMs.

Mr. Rees asked whether how quickly the Council responds to inquiries should be a KPM. Ms. David stated that the problem with this is that the Council meets actively during part of the biennium but does not have meetings for the other part of the biennium. She stated that, if someone made an inquiry during the Council's downtime, they might construe waiting until meetings begin again for an answer as an undue length of time for response. Mr. Weaver stated that he is confident that, if the Council receives an inquiry from a legislator, for example, the chair would take action regardless of when the inquiry was received, including having a special meeting if necessary.

Dr. Enbom wondered whether, since the first three KPMs are just tracking our actions, they could be put into one statement that very accurately states what the Council is doing. Mr. Corson replied that the Council needs to track this information for internal purposes, but he does not believe they are good criteria for judging the Council's work. Mr. Buckle asked about the purpose of KPMs and stated that, if they are to be used for justifying funding, the Council should get input from those who would approve its funding. Mr. Nebel stated that the next step is to show the draft KPMs to Dawn Farr and John Borden at LFO to obtain their input. Judge Miller observed that the Oregon Judicial Department's criteria seem to be more quantitative than qualitative.

Mr. Corson asked about the process for adopting KPMs and whether the Council votes on them, or the LFO tells the Council which measures to adopt. Prof. Peterson stated that he and Mr. Nebel will go back to the LFO and present the KPMs that the Council has deliberated over and feels are adequate. Prof. Peterson stated that the LFO's philosophy is to have an agency know its mission statement, be able to measure the degree to which it is fulfilling that mission statement, and show it is doing its job.

Judge Miller stated that she would be comfortable in allowing Prof. Peterson and Mr. Nebel to make changes based on the Council's discussion, and take the revised KPMs to the LFO. Ms. O'Leary stated that, rather than measuring the number of number of changes made by the Council, a better measure would be the number of meetings the Council has held, which would reflect the degree of deliberation on issues. She feels that it is a more accurate way of showing production, as opposed to merely looking at how many ideas the Council has considered. Mr. Cooper suggested also tracking the number of committees that were established, and how many person hours were spent on these committees.

Prof. Peterson stated that these numbers are outputs, as opposed to outcomes. He said that the first three KPMs were included for the Council's consideration because they inevitably would be looked at in some way by the Ways and Means

Committee. He stated that the “amount of work” measure does need to be in the budget proposal, but that it is not necessarily a good performance measure of what the Council has done.

Mr. Corson asked that Council members send additional thoughts to Prof. Peterson and Mr. Nebel, who will incorporate them into the draft and submit the KPMs to the LFO for input. Mr. Buckle asked about a due date. Mr. Corson stated that the goal was to have the draft submitted to the LFO by the end of June. Mr. Nebel stated that KPMs need to be submitted to the Ways and Means Committee in January. He said that June 30 is a date to aim for but is not a hard and fast deadline. He pointed out that, the sooner the KPMs were approved by the LFO, the sooner the Council could start tracking and measuring over the next six months so that it has adequate data to submit to Ways and Means.

Judge Miller asked whether Prof. Peterson and/or Mr. Nebel will sit down with Ways and Means and discuss the KPMs. Mr. Nebel stated that they will meet with staff from Ways and Means, rather than the entire Committee, as the Council is a line item in the Legislative Council’s budget and the process is not as formal as if the Council were a separate agency.

B. Update: Timely Notification of ORCP Changes (Prof. Peterson)

Prof. Peterson stated that he has continued his correspondence with Thomson West, that they now understand what the Council is asking for, and will consider it. Prof. Peterson asked whether it would be a good idea, given that the Council does not know Thomson West’s timeline, to also ask Legislative Counsel about publishing a supplement devoted to the Oregon Rules of Civil Procedure, as they do for other specialty areas. Mr. Corson agreed that this is a good idea and Mr. Peterson agreed to ask Legislative Counsel.

C. Report: Website/Inquiries (Ms. Nilsson)

Ms. Nilsson was absent and therefore could not give an oral report. Prof. Peterson referred the Council to the written Website/Inquiries Update (Appendix C). Ms. David stated that is it amazing how far the website has come in six months. She stated that both the number of hits and the hits coming from small towns throughout Oregon indicates that the process is working and that the resource is being used. Prof. Peterson stated that Ms. Nilsson is still having issues with getting the search engine to search all the minutes but that she is working on the matter.

V. Old Business

A. Committee Reports

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

Judge Holland stated that Mr. Libmann is working on a report to submit to the Council in September.

2. ORCP 59B: Jury Improvement (Judge Harris)

Judge Harris presented the two latest draft revisions from his committee (Appendix D). He reported that, since the last Council meeting, he has received a great deal of feedback from judges. He stated that he has heard from six judges who want to preserve the right to record the instructions by tape recording rather than in writing. He received about a dozen comments from judges who liked the idea of doing away with the tape recording option. Judge Harris has drafted two options, one which leaves in the option and one which removes it. He also incorporated some language suggestions made by Prof. Peterson and from Judge Marilyn Litzenberger in Multnomah County. He stated that he is still communicating with judges and hopes within thirty days to come up with a third alternative to satisfy the most people, then discuss with his committee and finalize a proposal for the Council.

Judge Schuman asked why some judges still tape record instructions even when written instructions are feasible. Judge Harris stated that some judges have used this practice exclusively for a number of years and that they prefer to continue to do so. They state that it would cause a lot of retraining of staff to start putting instructions in writing. He stated that some other judges simply feel that they do not want to have judicial discretion removed, even if they do routinely use written instructions.

Judge Harris stated that he does not want to cause trouble with his fellow judges and wants to give them a full opportunity to communicate their concerns and an opportunity to perhaps come up with alternate language that works better than the present language. He will commit to meeting with his committee and e-mailing a final proposal to the Council in the next thirty days.

Mr. Corson asked that the committee make a recommendation and have a proposal to the Council prior to the September meeting. Mr. Buckle

asked to be refreshed about the fundamental reason to require jury instructions in writing. He asked whether justice is better served by requiring them in writing. Judge Miller stated that the thought is that, if jury instructions are in writing, there will be a better level of comprehension by jurors, and the jurors will have the ability to quickly refer to different sections rather than to have to wind through a tape recording.

Mr. Hansen volunteered to join the committee to have the opportunity to talk to those judges who do not want written instructions required. He stated that, as a practical matter, jurors do not listen to tape recordings. He recalled a case after which a juror stated that another juror wanted to listen to the taped instructions, but that the other jurors did not want to. The majority overruled the one juror. This juror stated that if the jury had been given written instructions, the outcome may have been different, but they did not have that option. Mr. Hansen feels that written instructions result in better deliberations.

Judge Isaacson stated that he believes that Marion County allows videotaped instructions. Judge Harris stated that he is not certain, but that he knows that Judge James is in favor of the change and puts her jury instructions in writing. He stated that discussion about this issue is going on in many states, and that many have adopted a rule that requires jury instructions to be in writing. He anticipates some opposition but wants everyone to get a chance to weigh in. He feels that the goal is to get jurors to make decisions based on the rule of law, and written instructions improve this overall process in the end.

Mr. Corson reiterated that the committee will send a proposal to the Council for review within the next thirty days.

3. ORCP 1: E-Filing (Mr. Cooper)

Mr. Cooper stated that he took the Council's suggestion from the last meeting and went through the rules and identified by name every document that is served, filed, entered, or exchanged during the course of civil litigation (with the exception of the summons). He has included those in his draft revisions of ORCP 1 (Appendix E). He has also included language to specify that this includes only documents that may be permitted by rules of the court in which the action is pending, so that no court is forced to accept an electronic copy of something until the court is ready. He stated that the Chief Judge has slated e-filing to begin for a subset of filers in the Supreme Court in July of 2008. The next two roll-

outs will be for the Court of Appeals, and then for four test trial court counties in June of 2009. He stated that it will be at least two to three years before every county court in the state is fully ready for e-filing, so it is important to make clear that it is the UTCR that controls whether courts are required to accept an electronic filing.

Mr. Corson stated that he is not certain how to be sure that no documents in the list are missed. Mr. Cooper asked that Council members also take a look at the ORCP to be sure that nothing was missed. Mr. Corson suggested that someone post the proposal on the Oregon Trial Lawyers Association and Oregon Association of Defense Counsel listserves and ask whether anyone notices any type of document that is missing. Mr. Corson stated that making revisions between now and September is not a problem. Mr. Cooper stated that the additional revision to ORCP 1 drafted by Prof. Peterson (Appendix F) should also be incorporated into his rule changes. Prof. Peterson explained that the change is necessary because the portion of ORCP 1 that outlines how to cite the ORCP does not include any levels lower than subparagraphs. He stated that at least two ORCP contain sections that go beyond that level. The two drafts will be merged.

4. ORCP 7D(3)(b): LLCs (Prof. Peterson)

Mr. Weaver reported that the committee had met and that Prof. Peterson had drafted the latest proposed rule changes (Appendix G). Prof. Peterson explained that the committee had made changes in order to more clearly delineate various business entities, give specific information about who may be served for each business entity, and include information about which Oregon Revised Statutes apply in order to serve an entity through the Secretary of State.

Prof. Peterson stated that the sections were re-ordered to address persons first, then business entities, governments, and vessel owners. The committee felt that limited partnerships and corporations did not belong in the same section, so that was changed. There are new sections for limited liability companies and general partnerships.

Mr. Weaver stated that what seemed like an easy amendment had turned out to require a good deal of research and speaking to business law attorneys. Mr. Corson stated that it is important to submit the proposal to as many business attorneys as possible before the September meeting to ensure that nothing is missed. Judge Miller suggested submitting it to a Bar publication. Mr. Weaver stated that most of the changes merely track

what is already in Oregon statutes and the only new entity added was limited liability companies. He believes that the only question that the business community might have is the question of whether to serve managers or members. Mr. Weaver stated that the business lawyers the committee spoke with came up with a list of who to serve, but he agreed that it would be a good idea to run the proposal past more attorneys. The Council will put the proposal for review to various business law organizations before the September meeting. Mr. Corson asked that any Council members who have an idea of where to submit the proposal for review let Prof. Peterson know. Mr. Cooper suggested making a PDF of this proposal and putting it in a discreet place on the website so that Council members can refer attorneys to it and avoid having the problem of not being able to submit PDF files to listserves and other locations.

Prof. Peterson stated that there are two other business entities that the committee did not address: cooperatives and professional corporations (PCs). He stated that the committee believes that both entities would fit under corporations and that they could be added to the corporation section if the Council feels that it is a good idea. Mr. Weaver noted that there is a question about PCs and whether it is permissible to serve a shareholder. Ms. David stated that she believes that adding the subset of cooperatives and PCs is not necessary. Mr. Weaver stated that several business attorneys he spoke with stated that they understood that PCs are treated the same way as corporations and that there is no need to add a subset. Mr. Corson stated that the change would not outline service methods for PCs and cooperatives, but rather list them as forms of corporations. Ms. David stated her concern that, in listing these two specific types of corporations, the Council might leave out others. Prof. Peterson stated that the committee did not find any more subsets of corporations or other business entities provided for in the Oregon Revised Statutes. Mr. Weaver stated that this problem is avoided by using the language, "including but not limited to."

Prof. Peterson raised a question about the rule's language: "or, if the limited liability company is not authorized to transact business in this state at the time of the transaction, event, or occurrence upon which the action is based occurred, to the principal office or place of business of the limited liability company, and in any case to any address the use of which the plaintiff knows or has reason to believe is most likely to result in actual notice..." That language is cumbersome and the issue seems to be: does the business entity, or has the business entity ever had, a registered agent in Oregon regardless of when the transaction, event, or occurrence may have occurred.

Mr. Cooper stated that the presence or absence of a registered agent in Oregon is not the same as being authorized to transact business in Oregon. He stated that making the presence or absence of a registered agent the trigger for service at the corporation's principal place of business is a larger change than the verbiage would seem to indicate. His belief is that the reason for this language is that, if a company does not have a registered agent in Oregon, notice of service on them cannot be presumed and service must be made at their headquarters. He stated that service is indeed triggered by the act that occurred in Oregon. If we make the change without understanding why the language is there, we may create unintended consequences. Mr. Corson asked whether any committee member would be interested in looking into the issue. Prof. Peterson stated that he can look for legislative history. He stated that it seems odd that if someone gets a registered agent in Oregon subsequent to committing a bad act, the registered agent cannot be served. Judge Miller stated that she believes that serving a registered agent in this case would satisfy jurisdiction. Mr. Cooper stated that in Oregon, the action is not commenced until it has been filed and served, so there is often a substantive effect to service beyond mere proper notice to the defendant, including statute of limitation issues. Judge Miller stated that it appears that if you serve the registered agent who is in Oregon now but was not at the time of the act, it would probably qualify under the relation back doctrine to toll the statute. Mr. Corson stated that if the committee wishes to look at that language, it is welcome to. Otherwise, the Council will present the existing proposal to business law organizations for their comment, with the addition of the language "including, but not limited to, cooperatives and professional corporations" in the section on corporations. The committee will take any comments into consideration and present a final proposal to the Council well in advance of the September meeting.

B. Non-Committee Matters

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

Mr. Campf submitted a summary report of his and Ms. O'Leary's research on this issue (Appendix H). No further action is required on this topic.

2. ORCP 69: Notice Required on Intent to Take Default (Prof. Peterson)

Ms. David raised this issue at the May meeting. Prof. Peterson drafted a proposal based on Ms. David's suggestions (Appendix I). He summarized the main change as stating that a Notice of Intent to Take Default needs to

be a written notice in the form prescribed by UTCR 2.010, and that the Application for an Order for Default must be filed and served upon the other party.

Judge Herndon raised a concern about the effect of e-filing on the notice. Mr. Cooper stated that e-filing of a Notice of Intent would be covered by the changes proposed for ORCP 1, as it uses the general word “notice.” Prof. Peterson stated that striking the word “written” on page 1, line 10 would also be effective, because if the notice is in the form prescribed by the UTCR it can be either electronic or written. Ms. David agreed that removing “written” would work.

Mr. Corson pointed out that the word “written” also appears on page 1, line 8. Mr. Cooper asked whether changing this language to “or has served notice of intent” would suffice. Judge Miller stated that the word “serve” sounds like a pleading as opposed to a letter, and that she feels that a letter is sufficient to trigger ORCP 69. Ms. David suggested the word “deliver” rather than “serve.” Judge Miller stated that, in this instance, “written” makes it more clear. It was observed that, given the proposed changes to ORCP 1, the word “written” does not necessarily preclude something from being served by e-mail if it will be permitted in a specific county.

Prof. Peterson outlined other changes to ORCP 69. Page 1, lines 18-20 were changed to modernize the reference to ORCP 7. Page 1, line 26 was modernized to make it consistent with Rule 7 service by mail provisions. On page 2, line 3, “default judgment” was changed to “judgment by default.” As the language regarding an affidavit or declaration as to competency is currently repeated in two different sections, it was moved from those sections and made a single section B(5). Page 2, line 17 currently references ORCP 69B(3), which is an incorrect reference that was missed previously. That was changed to the correct reference of 69B(4). Page 2, line 21, was changed to reflect Rule 7 changes that are currently under consideration.

Prof. Peterson pointed out the addition of the words “if any” on page 3, line 13. He stated that the current rule indicates that judgment shall be entered for the amount due as shown by the affidavit or declaration and may include costs, disbursements, and attorney fees, but stated that, in some cases, amounts are determined by prima facie hearing and that this is not reflected. After discussion among Council members, it was decided that the language “or other competent evidence” or “as determined by the court” would be better than “if any.”

Judge Miller stated that, as changed, rule 69 does not seem to make clear that only one affidavit or declaration is necessary, not separate affidavits for competency and non-military. Ms. David suggested changing the rule to make subparts of what items need to be included in a what can be a single affidavit.

Mr. Corson stated that, under Rule 69B(1), a clerk may enter a judgment by default and that clerks do not do hearings. Mr. Cooper stated that he would be in favor of dropping 69B(1) entirely, as it states that a judge “shall” enter a judgment. He stated that this seems to indicate that if all criteria are met, a lawyer can go to a judge’s office and demand that a judge sign a judgment. Judge Miller expressed concern over the possibility of a clerk entering a judgment without a judge having seen it. Judge Isaacson stated that he believes that some small claims clerks might have been given the authority to enter judgments without them having been signed by a judge.

Mr. Corson suggested limiting our action this biennium to the original issue, and that the other issues raised by the Council need further review. Judge Miller and Ms. David volunteered to be on a committee, and the issue will be raised on next biennium’s agenda. Council members agreed that no action will be taken this biennium beyond the changes outlined on page 1, and page 2 (line 3, line 17, and line 21).

VI. New Business

A. ORCP 55: Revisions arising from ORCP 7D revisions (Prof. Peterson)

Prof. Peterson stated that the proposed changes to ORCP 55 (Appendix J) were made to reflect changes to Rule 7 which are under consideration. These are not substantive changes, but merely changes for consistency.

B. Correspondence from Danny Lang (Mr. Corson)

Attorney Danny Lang sent an e-mail to Mr. Corson (Appendix K) that raised three separate issues. Mr. Corson responded via e-mail and stated that he would discuss the issues with the Council.

The first issue involves amending a statute on what constitutes commencement of an action. Mr. Corson responded by e-mail that he believes this may be a substantive issue under Oregon law and not something that the Council can change. Mr. Cooper stated that it is outside the scope of the ORCP and he does not feel that the Council can make any change. Prof. Peterson stated that he

believes that the issue has been considered by the Council in the past and that there is a research piece in the Council's records that says it is a substantive issue. Justice Kistler stated that he remembers a discussion a few years ago regarding the possibility of a statutory procedural issue that is not specifically in the scope of the ORCP being modified by the Council. However, he stated that the Council determined that it is a better practice to let the legislature change its own statutes. Mr. Cooper stated that he recalled this discussion and that his recollection was that the Council determined that, if it identifies such an issue, it can draft a report and the chair can go to the correct legislative committee and point out the problem. Mr. Corson stated that Mr. Lang said he would also take this issue to the Bar. He stated that he will confirm that the Council feels that this is the appropriate route and ask Mr. Lang to let us know the outcome of that action.

Mr. Lang's second issue was a proposal for enhancing sustainability in the courts. Mr. Corson replied that this is more of a policy issue, not a rule change that the Council can make. Prof. Peterson stated that Mr. Lang also raised this issue in March (as applicable to telephonic hearings) and that the Council told him that this should be raised with the UTCR Committee.

Mr. Corson stated that Mr. Lang's third issue may be within scope of Council's responsibility. He proposes modifying ORCP 7D(4) to allow service upon any automobile liability insurance company that provided insurance coverage to a defendant. Mr. Cooper stated that he does not agree with this proposal. He said that, despite the fact that defendants in the vast majority of motor vehicle collisions are insured, at the end of the day it is not the insurance company that is getting sued, it is the defendant, whose assets are on the line if the insurance company fails to inform him or her of service of the lawsuit, or if the lawsuit is in excess of the policy limits.

The Council agreed that this is an issue within its scope and to place this item on the agenda for next biennium. Prof. Peterson stated that this kind of language used to be in ORCP 7 but was moved to ORCP 69 for reasons that are not clear. He stated that there is probably some history in the Council's records. Mr. Corson asked that, if he has time, Prof. Peterson look up any Council history and provide it for next biennium. Prof. Peterson agreed.

VII. Next Meeting Date/Location

The next Council meeting will be held at the Oregon State Bar on September 13, 2008.

VIII. Adjournment

Mr. Corson adjourned the meeting at 11:25 a.m.

Respectfully submitted,

Mark A. Peterson
Executive Director

2009 - 2011 KEY PERFORMANCE MEASURES

Name of Agency: Council on Court Procedures

Mission: To monitor and amend the rules of civil procedure for use in the trial courts to promote the just, speedy, and inexpensive determination of every civil action.

2009-2011 KPM #	KPMs for 2009-2011	Changes to 2007-2009	Target 2009
1	Number of suggested changes received and considered by the Council		
2	Number of suggested changes proposed and considered by the Council		
3	Number of amendments promulgated by the Council		
4	Percentage of promulgated amendments that became law without amendment, repeal, or supplement by the Legislative Assembly		
5	Number of non-substantive amendments considered but not promulgated by the Council, but adopted by the Legislative Assembly (does not include reviser bills)		
6	Percentage of trial judge Council survey respondents who rate the Oregon Rules of Civil Procedure as serving the court "very well" or "well"		
7	Number of appellate court decisions which articulated ambiguous, outmoded, or otherwise inadequate rules of procedure in the court's determination		
8	Percentage of Council survey respondents who rate the Council's website as "excellent" or "good"		
9	Percentage of Council survey respondents who rate the quality of the Council's work as "excellent" or "good"		
10	Percentage of total best practices met by the Council		

The Council on Court Procedures (COCP) is responsible to conduct an ongoing review of the Oregon Rules of Civil Procedure (ORCP) to assure prompt and efficient administration of justice in Oregon courts. The COCP drafts amendments to the ORCP which go into effect unless amended by the legislature. The purpose of this survey is to find out from the users of the ORCP how well the COCP is doing its job.

1. How well do the Oregon Rules of Civil Procedure serve you and your clients (if you are an attorney) or serve the court (if you are a judge)?
Very well Well Fair Poor Don't know

2. Please rate your familiarity with the composition and work of the COCP:
Very familiar Somewhat familiar Vaguely familiar Unfamiliar
(If you answered unfamiliar, please skip to question 9.)

3. Have you visited the COCP website?
Yes No

4. If you have visited the COCP website, please rate its usefulness:
Excellent Good Fair Poor Don't know

5. The legislature once had exclusive authority to enact and amend Oregon's civil procedure rules. That authority is now shared between the legislature and the COCP. Who do think should have this authority?
Continue shared authority Favor COCP Favor Legislature Don't know

6. Have you ever made a proposal to the COCP?
Yes No

7. If you are very or somewhat familiar with the work of the COCP, how would you rate the quality of its work:
Excellent Good Fair Poor Don't know

8. If you are very or somewhat familiar with the work of the COCP, how would you rate the COCP's responsiveness to the needs of litigants, lawyers and judges:
Excellent Good Fair Poor Don't know

9. The following best describes my practice:
_____ Trial judge
_____ Appellate judge
_____ Defense lawyer
_____ Plaintiffs' lawyer
_____ Probate
Other: Please specify: _____

**Council on Court Procedures
Website/Inquiries Update
Reporting Period: 4/25/08 - 5/25/08**

I. New Additions

A. History of Council Amendments

I am very pleased to report that the histories of Council amendments for each rule amended from 1982 to present are complete. These histories are located on the following page: <http://www.lclark.edu/~ccp/LegislativeHistoryofRules.htm>. A copy of that page, which outlines each rule, is attached as page 3.

II. Updates

A. Site Search Engine

Despite my best efforts to solve the problem, the site's search engine continues to not find agendas and minutes from the 2001-2003 biennium and the 2003-2005 biennium. I am working with file structure, sitemaps, and PDF formatting to try to get it to work. This is a problem that will need to be solved before we can proceed with the lengthy project of posting legislative history from all biennia in the Council's history. I will keep you updated on my progress.

III. Website Statistics

A. Visitors

From April 25 to May 25, the site received a total of 162 visits from 137 unique visitors. 78% of the total visits were from new visitors. 47% of the visits were direct, 10% came from referring sites, and 43% came from search engines.

B. Geographical Information

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

Albany	Florence	Marylhurst
Beaverton	Fossil	Newberg
Bend	Gervais	Portland
Corvallis	Harrisburg	Roseburg
Dundee	Keizer	Tangent
Eugene	Madras	Tualatin
		Warrenton

The site also had visitors from Washington, Idaho, and California, among other states.

C. Keywords from Search Engines

Google Analytics keeps track of keywords (search phrases) that get entered into Google which bring up the Council's website. This makes for interesting reading and helps tell us what content we can emphasize in order to help visitors to find our site. Please see the attached Google Analytics report (page 5) for details.

Respectfully submitted,

Shari Nilsson
Council Administrative Assistant


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Legislative History of Specific Rules

The following documents contain the rule changes promulgated by the Council on Court Procedures for each rule that the Council has amended since its inception (1982) to the present.

ORCP 1	Scope; Construction; Application; Rule; Citation
ORCP 4	Jurisdiction (Personal)
ORCP 7	Summons
ORCP 8	Process
ORCP 9	Service and Filing of Pleadings and Other Papers
ORCP 10	Time
ORCP 15	Time for Filing Pleadings or Motions
ORCP 16	Form of Pleadings
ORCP 17	Signing of Pleadings, Motions, and Other Papers; Sanctions
ORCP 18	Claims for Relief
ORCP 21	Defenses and Objections; How Presented; By Pleading or Motion; Motion for Judgment on the Pleadings
ORCP 22	Counterclaims, Cross-Claims, and Third Party Claims
ORCP 27	Minor or Incapacitated Persons
ORCP 32	Class Actions
ORCP 34	Substitution of Parties
ORCP 38	Persons Who May Administer Oaths for Depositions; Foreign Depositions
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ORCP 83	Provisional Process



Search sent 69 total visits via 41 keywords

Site Usage

Visits	Pages/Visit	Avg. Time on Site	% New Visits	Bounce Rate	
69 % of Site Total: 42.59%	2.54 Site Avg: 3.05 (-16.83%)	00:01:43 Site Avg: 00:01:47 (-3.88%)	68.12% Site Avg: 77.78% (-12.42%)	59.42% Site Avg: 40.12% (48.09%)	
Keyword	Visits	Pages/Visit	Avg. Time on Site	% New Visits	Bounce Rate
court procedure	15	1.00	00:00:00	100.00%	100.00%
council on court procedures	6	3.33	00:01:08	50.00%	16.67%
oregon council on court procedures	6	5.50	00:05:22	66.67%	16.67%
4dcd819cada73fa3642aa9a35b8fd3b0	2	2.00	00:00:08	0.00%	0.00%
court procedures	2	1.00	00:00:00	100.00%	100.00%
northwestern school of law of lewis & clark college council on court procedures	2	9.50	00:03:01	50.00%	0.00%
oregon masters teaching	2	2.50	00:05:26	0.00%	0.00%
oregon rules of civil procedure	2	1.50	00:03:04	50.00%	0.00%
"council on court procedures" oregon	1	22.00	00:24:40	100.00%	0.00%
+orcp 43	1	1.00	00:00:00	100.00%	100.00%
civil court procedure	1	2.00	00:01:47	100.00%	0.00%
civil court procedures in oregon	1	2.00	00:15:30	100.00%	0.00%
council of court	1	1.00	00:00:00	100.00%	100.00%
council on court procedure oregon	1	4.00	00:00:39	0.00%	0.00%
court procedures and rules	1	1.00	00:00:00	100.00%	100.00%
court procedures for officers	1	1.00	00:00:00	100.00%	100.00%
court procedures for oregon	1	1.00	00:00:00	100.00%	100.00%
court procededures	1	2.00	00:00:27	100.00%	0.00%
courtroom procedures	1	1.00	00:00:00	100.00%	100.00%
courts procedures	1	1.00	00:00:00	100.00%	100.00%
david rees atty	1	1.00	00:00:00	100.00%	100.00%

dealing with court cases procedure	1	1.00	00:00:00	100.00%	100.00%
how are oregon state judges chosen	1	3.00	00:01:02	0.00%	0.00%
how court procedures work	1	1.00	00:00:00	100.00%	100.00%
how to civil court procedure	1	1.00	00:00:00	100.00%	100.00%
jerry hodson attorney	1	1.00	00:00:00	100.00%	100.00%
judge david schuman in oregon	1	1.00	00:00:00	100.00%	100.00%
lewis & clark college	1	1.00	00:00:00	0.00%	100.00%
lewis and clark college	1	4.00	00:00:17	0.00%	0.00%
lewis and clark college portland or	1	1.00	00:00:00	0.00%	100.00%
lewis and clark university	1	2.00	00:00:50	0.00%	0.00%
locke williams judge oregon	1	1.00	00:00:00	100.00%	100.00%
mark weaver attorney medford	1	1.00	00:00:00	100.00%	100.00%
navigator graduate school	1	1.00	00:00:00	0.00%	100.00%
orcp 15a	1	1.00	00:00:00	0.00%	100.00%
oregon circuit court civil procedures	1	1.00	00:00:00	100.00%	100.00%
oregon council on civil procedure	1	2.00	00:00:08	0.00%	0.00%
other lender info	1	1.00	00:00:00	0.00%	100.00%
shari nillson council on court procedures oregon	1	8.00	00:11:00	0.00%	0.00%
shelley russell attorney	1	1.00	00:00:00	100.00%	100.00%
oregon uniform court rules	0	0.00	00:00:00	0.00%	0.00%
					1 - 41 of 41

1 **ORCP 59**

2 * * * * *

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

14 * * * * *

1 **ORCP 59**

2 * * * * *

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11 *instructions or recording to the clerk immediately upon conclusion of its deliberations.]* The
12 clerk shall file **a copy of** the written instructions or recording **given to the jury** in the court file
13 of the case.

14 * * * * *

1 **ORCP 1**

2 **SCOPE; CONSTRUCTION; APPLICATION; RULE; CITATION**

3 **A Scope.** These rules govern procedure and practice in all circuit courts of this state, except
4 in the small claims department of circuit courts, for all civil actions and special proceedings
5 whether cognizable as cases at law, in equity, or of statutory origin except where a different
6 procedure is specified by statute or rule. These rules shall also govern practice and procedure in
7 all civil actions and special proceedings, whether cognizable as cases at law, in equity, or of
8 statutory origin, for the small claims department of circuit courts and for all other courts of this
9 state to the extent they are made applicable to such courts by rule or statute. Reference in these
10 rules to actions shall include all civil actions and special proceedings whether cognizable as cases
11 at law, in equity or of statutory origin.

12 **B Construction.** These rules shall be construed to secure the just, speedy, and inexpensive
13 determination of every action.

14 **C Application.** These rules, and amendments thereto, shall apply to all actions pending at the
15 time of or filed after their effective date, except to the extent that in the opinion of the court their
16 application in a particular action pending when the rules take effect would not be feasible or
17 would work injustice, in which event the former procedure applies.

18 **D “Rule” defined and local rules.** References to “these rules” shall include Oregon Rules of
19 Civil Procedure numbered 1 through 85. General references to “rule” or “rules” shall mean only
20 rule or rules of pleading, practice and procedure established by ORS 1.745, or promulgated under
21 ORS 1.006, 1.735, 2.130 and 305.425, unless otherwise defined or limited. These rules do not
22 preclude a court in which they apply from regulating pleading, practice and procedure in any
23 manner not inconsistent with these rules.

24 **E Use of declaration under penalty of perjury in lieu of affidavit; “declaration” defined.**
25 A declaration under penalty of perjury may be used in lieu of any affidavit required or allowed by
26 these rules. A declaration under penalty of perjury may be made without notice to adverse

1 parties, must be signed by the declarant and must include the following sentence in prominent
2 letters immediately above the signature of the declarant: “I hereby declare that the above
3 statement is true to the best of my knowledge and belief, and that I understand it is made for use
4 as evidence in court and is subject to penalty for perjury.” As used in these rules, “declaration”
5 means a declaration under penalty of perjury.

6 **F Electronic Filing. Any reference in these rules to proofs of service, pleadings,**
7 **complaints, answers, third-party complaints, motions, memoranda, responses, replies,**
8 **orders, affidavits, declarations, responsive pleadings, amended pleadings, judgments,**
9 **limited judgments, general judgments, supplemental judgments, notices, requests for**
10 **production of documents or things or permission to enter upon land or other property,**
11 **subpoenas, commissions, letters rogatory, mandates, writs, requests for admissions,**
12 **proposed instructions to juries, special findings of fact, conclusions of law, proposed**
13 **finding of fact, objections, orders of reference, reports of referees, statements of attorney**
14 **fees and costs and disbursements, preliminary injunctions, permanent injunctions,**
15 **provisional process or writs of attachment which are exchanged, served, entered or filed**
16 **during the course of civil litigation shall be construed to include electronic images or other**
17 **digital information in addition to printed versions of such items, as may be permitted by**
18 **rules of the court in which the action is pending.**

19 [F] **G Citation.** These rules may be referred to as ORCP and may be cited, for example,
20 by citation of Rule 7, section D, subsection (3), paragraph (a), subparagraph (i), as ORCP 7
21 D(3)(a)(i).

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1 parties, must be signed by the declarant and must include the following sentence in prominent
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3 statement is true to the best of my knowledge and belief, and that I understand it is made for use
4 as evidence in court and is subject to penalty for perjury.” As used in these rules, “declaration”
5 means a declaration under penalty of perjury.

6 **F Citation.** These rules may be referred to as ORCP and may be cited, for example, by
7 citation of Rule 7, section D, subsection (3), paragraph (a), subparagraph [(i)] (iv), **part (A)**, as
8 ORCP 7 D(3)(a)[(i)]**(iv)(A)**.

1 for the tenant, provided that:

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

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

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

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

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

18 **D(3)(b)(ii) Alternatives.** If a registered agent, officer, **or** director[, *general partner, or*
19 *managing agent*] cannot be found in the county where the action is filed, the summons **and the**
20 **complaint** may be served:

21 **(A)** by substituted service upon such registered agent, officer, **or** director[, *general*
22 *partner, or managing agent*]; [*or*]

23 **(B)** by personal service on any clerk or agent of the corporation [*or limited partnership*]
24 who may be found in the county where the action is filed; [*or*]

25 **(C)** by mailing **in the manner specified in paragraph (2)(d) of this section** a copy of
26 the summons and complaint to the office of the registered agent or to the last registered office of

1 the corporation [*or limited partnership*], if any, as shown by the records on file in the office of
2 the Secretary of State or, if the corporation [*or limited partnership*] is not authorized to transact
3 business in this state at the time of the transaction, event, or occurrence upon which the action is
4 based occurred, to the principal office or place of business of the corporation [*or limited*
5 *partnership*], and in any case to any address the use of which the plaintiff knows or[, *on the basis*
6 *of reasonable inquiry,*] has reason to believe is most likely to result in actual notice[.]; or

7 (D) upon the Secretary of State in the manner provided in ORS 60.121 or ORS
8 60.731.

9 D(3)(c) Limited Liability Companies. Upon a limited liability company:

10 D(3)(c)(i) Primary service method. By personal service or office service upon a
11 registered agent, manager, or (for a member-managed limited liability company) member
12 of a limited liability company; or by personal service upon any clerk on duty in the office of
13 a registered agent.

14 D(3)(c)(ii) Alternatives. If a registered agent, manager, or (for a member-managed
15 limited liability company) member of a limited liability company cannot be found in the
16 county where the action is filed, the summons and the complaint may be served:

17 (A) by substituted service upon such registered agent, manager, or (for a member-
18 managed limited liability company) member of a limited liability company;

19 (B) by personal service on any clerk or agent of the limited liability company who
20 may be found in the county where the action is filed;

21 (C) by mailing in the manner specified in paragraph (2)(d) of this section a copy of
22 the summons and complaint to the office of the registered agent or to the last registered
23 office of the limited liability company, as shown by the records on file in the office of the
24 Secretary of State or, if the limited liability company is not authorized to transact business
25 in this state at the time of the transaction, event, or occurrence upon which the action is
26 based occurred, to the principal office or place of business of the limited liability company,

1 and in any case to any address the use of which the plaintiff knows or has reason to believe
2 is most likely to result in actual notice; or

3 (D) upon the Secretary of State in the manner provided in ORS 63.121.

4 D(3)(d) Limited Partnerships. Upon a domestic or foreign limited partnership:

5 D(3)(d)(i) Primary service method. By personal service or office service upon a
6 registered agent or a general partner of a limited partnership; or by personal service upon
7 any clerk on duty in the office of a registered agent.

8 D(3)(d)(ii) Alternatives. If a registered agent or a general partner of a limited
9 partnership cannot be found in the county where the action is filed, the summons and the
10 complaint may be served:

11 (A) by substituted service upon such registered agent or general partner of a limited
12 partnership;

13 (B) by personal service on any clerk or agent of the limited partnership who may be
14 found in the county where the action is filed;

15 (C) by mailing in the manner specified in paragraph (2)(d) of this section a copy of
16 the summons and complaint to the office of the registered agent or to the last registered
17 office of the limited partnership, as shown by the records on file in the office of the
18 Secretary of State or, if the limited partnership is not authorized to transact business in this
19 state at the time of the transaction, event, or occurrence upon which the action is based
20 occurred, to the principal office or place of business of the limited partnership, and in any
21 case to any address the use of which the plaintiff knows or has reason to believe is most
22 likely to result in actual notice; or

23 (D) upon the Secretary of State in the manner provided in ORS 70.040 or ORS
24 70.045.

25 D(3)(e) General partnerships and limited liability partnerships. Upon any general
26 partnership[s] or limited liability partnership by personal service upon a partner or any agent

1 authorized by appointment or law to receive service of summons for the partnership **or limited**
2 **liability partnership.**

3 **D(3)(f) Other unincorporated association subject to suit under a common name.**

4 Upon any other unincorporated association subject to suit under a common name by personal
5 service upon an officer, managing agent, or agent authorized by appointment or law to receive
6 service of summons for the unincorporated association.

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

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

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

18 * * * * *

SETTLEMENT AGREEMENT SUNSHINE LAWS

Contributed by Brian Campf, 4/27/08

The following describes how some states address secrecy in settlements. It is meant to be illustrative and a summary, and is not an exhaustive review or a comprehensive discussion of the governing rules and statutes of every state. The material is quoted from “Statutes and Court Rules Related to Court Secrecy, April 2007” -- <http://www.atlanet.org/pressroom/facts/secrecy/antiseccrecyprovisions2007.doc> -- as prepared by the American Association for Justice except where noted (*).

Of the states listed below, most have statutes or rules specifically addressing the confidentiality of settlement agreements that involve the government (Arkansas, Colorado, Iowa, Kansas, Montana, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, and Texas). California carves out a niche for elder abuse cases, while Florida, New Jersey, and Texas add broader limitations on confidentiality.

Arkansas

Ark. Code Ann. §25-18-401—403. State Government, Public Records, Settlement Agreements, Disclosure. Summary: Prohibits state officials from sealing government documents, entering into secret settlements, or seeking court orders to deny public access to settlement agreements. Voids agreements that restrict disclosures of environmental hazards. §402 makes exception for information protected from disclosure under state FOIA. §403 imposes \$500 fine for violations.

California

Cal. Civ. Code §2017.310. Violation of the Elder Abuse and Dependent Adult Civil Protection Act. Confidential settlement agreements; recognition or enforcement by court; sealing or redacting defendant's name; enforcement of nondisclosure provisions. Summary: Expressly limited to elder abuse cases. “Notwithstanding any other provision of law, it is the policy of the State of California that confidential settlement agreements are disfavored in any civil action the factual foundation for which establishes a cause of action for a violation of the Elder Abuse and Dependent Adult Civil Protection Act.”

***Note:** Section (e) provides, “Nothing in this section may be deemed to prohibit the entry or enforcement of that part of a confidentiality agreement, settlement agreement, or stipulated agreement between the parties that requires the nondisclosure of the amount of any money paid in a settlement of a claim.

Colorado

Colorado Statutes §24-19-105. Settlement Agreements—Public Inspection—Filing With the Department of Personnel. Summary: Requires government units which settle employment disputes with employees to make information about the settlements public.

Florida

Fla. Stat. §69.081. Sunshine in Litigation; Concealment of Public Hazards Prohibited. Summary: Court orders and settlement agreements may not conceal information about a “public hazard,” which is defined as “an instrumentality, including but not limited to any device, instrument, person, procedure, product, or a condition of a device, instrument, person, procedure or product, that has caused and is likely to cause injury.” Procedure: Good cause required.

Iowa

Iowa Code §22.13. State Sovereignty and Management. Restraints on Government. Examination of Public Records. Open Records. Settlements— Governmental Bodies. Summary: Applies to settlement of claims against government. Requires written summary of the terms of settlement to be filed with the governmental body against which the claim is made, and maintained as a public record.

Kansas

Kansas Statutes, Article 2, §45-217 (f) (1) [(g) (1)] Records Open To Public, Definitions. Summary: Defines what is a “public record” for purposes of the Kansas Open Records Act. Applies to settlement

agreements relating to investments in the public employees retirement fund: “Public record’ means any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency including, but not limited to, an agreement in settlement of litigation involving the Kansas public employees retirement system and the investment of moneys of the fund.”

Montana

Mont. Code §2-9-303. Government Structure And Administration. Liability Exposure And Insurance Coverage. Claims And Actions. Compromise Or Settlement Of Claim Against State. Summary: Requires that all terms, conditions, and details of any governmental portion of a compromise or settlement agreement are public records available for public inspection unless a right of individual privacy clearly exceeds the merits of public disclosure.

New Jersey

District of New Jersey, Order re L. Civ. R. 5.3. Protective Orders And Public Access Under CM/ECF [Case Management/Electronic case Filing]. Summary: Establishes comprehensive procedures for electronic filing, including motions to seal. Provides that parties are not to submit proposed settlement agreements for approval by a Judge or Magistrate Judge unless required to do so by statute or other law or for the purpose of retaining jurisdiction, but that “[a]ny settlement agreement filed with the Court or incorporated into an order shall, absent an appropriate showing under federal law, be deemed a public record and available for public review.”

North Carolina

N.C.G.S.A. §132-1.3. Settlements Made By or On Behalf of Public Agencies, Public Officials, or Public Employees; Public Records. Summary: “Public records” includes all settlement documents in any suit, administrative proceeding or arbitration instituted against any agency of North Carolina government or its subdivisions. No settlement may be entered into if it provides that it is confidential, except in an action for medical malpractice against a hospital facility. Exception where the judge or other officer or board concludes that (1) the presumption of openness is overcome by an overriding interest and (2) that such overriding interest cannot be protected by any measure short of sealing the settlement. Procedure: Court must determine that the presumption of openness is overcome by an overriding interest that cannot be protected in another way, as shown by findings of fact adequate for a reviewing court to determine whether the action was proper.

Oklahoma

51 Okl. St. Ann. §158. Governmental Tort Claims Act. Settlement or defense of claim—Effect of liability insurance. States that “[j]udgments, orders, and settlements of claims [against the state] shall be open public records unless sealed by the court for good cause shown.”

Oregon

Or. Rev. Stat. §17.095 [formerly §30.402]. Prohibition of confidential settlements and compromises; exception. Summary: Prohibits governmental agencies from entering into a settlement if the settlement requires that the terms or conditions of the settlement be confidential.

***Note:** Exceptions to disclosure are if federal law requires confidentiality; or a court may order that the terms or conditions of a settlement or compromise that reveal the identity of a person be confidential if the person whose identity is revealed is a victim of sexual abuse or is under 18 years of age, and the court determines, by written findings, that the specific privacy interests of the person outweigh the public's interest in the terms or conditions.

Rhode Island

Rhode Island Gen. L. §38-2-14. Information Relating To Settlement of Legal Claims. Summary: Settlement agreements of any legal claims against a governmental entity are deemed public records.

South Carolina

S. C. R. Civ. Proc. Rule 41.1. Sealing Documents and Settlement Agreements. Summary: Court records are presumed open with exceptions. Proposed settlement agreements submitted for the court's approval are not

to be conditioned on being filed under seal. No sealing of settlement agreements which involve public body or institution. Rule does not apply to private settlement agreements. Procedure: Burden is on the proponent of sealing. Court must consider: the public or professional significance of the lawsuit; the perceived harm to the parties from disclosure; why alternatives other than sealing the documents are not available; and why the public interest, including, but not limited to, public health and safety, is best served by sealing.

Texas

Texas Government Code §552.022. Categories of Public Information; Examples.

“(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law: . . . (18) a settlement agreement to which a governmental body is a party.

“(b) A court in this state may not order a governmental body or an officer for public information to withhold from public inspection any category of public information described by Subsection (a) or to not produce the category of public information for inspection or duplication, unless the category of information is expressly made confidential under other law.”

Texas

Texas. Rules of Civ. Pro. Rule 76a. Sealing Court Records. Summary: Recognizes strong presumption of openness of court records. Court records are defined to include settlement agreements [**Note:** “settlement agreements not filed of record, excluding all reference to any monetary consideration”] and discovery not filed with the court concerning matters that have a probable adverse effect upon the general public health or safety, administration of public office, or operation of government. Procedure: Hearing required, open to the public, held in open court. Proponent of sealing must show specific, serious and substantial interest which clearly outweighs the presumption of openness and any probable adverse effect that sealing will have upon the general public health or safety; and that no less restrictive means than sealing records will adequately and effectively protect the interest asserted.

1 **or express** mail[,] **with** return receipt requested[, *or express mail*]; or that the identity of the
2 defendant's insurance carrier is unknown to the plaintiff.

3 **B Entry of [default] judgment by default.**

4 **B(1) By the court or the clerk.** The court or the clerk upon written application of the
5 party seeking judgment shall enter judgment when:

6 B(1)(a) The action arises upon contract;

7 B(1)(b) The claim of a party seeking judgment is for the recovery of a sum certain or for a
8 sum which can by computation be made certain;

9 B(1)(c) The party against whom judgment is sought has been defaulted for failure to
10 appear;

11 *[B(1)(d) The party seeking judgment submits an affidavit or a declaration stating that, to*
12 *the best knowledge and belief of the party seeking judgment, the party against whom judgment is*
13 *sought is not incapacitated as defined in ORS 125.005, a minor, a protected person as defined in*
14 *ORS 125.005, or a respondent as defined in ORS 125.005;]*

15 *[B(1)(e) The party seeking judgment submits an affidavit or a declaration of the amount*
16 *due;]*

17 *[B(1)(f) An affidavit or a declaration pursuant to subsection B[(3)] (4) of this rule has*
18 *been submitted; and]*

19 B(1)[(g)]**(d)** Summons was personally served within the State of Oregon upon the party,
20 or an agent, officer, director, or partner of a party, against whom judgment is sought pursuant to
21 Rule 7 D(3)(a)(i), 7 D(3)(b)(i), **7 D(3)(c)(i), 7 D(3)(d)(i)**, 7 D(3)(e), or 7 D(3)(f)[.]; **and**

22 B(1)(e) The party seeking judgment submits an affidavit or a declaration of the amount
23 due;

24 **B(2) By the court.** In cases other than those cases described in subsection (1) of this
25 section, the party seeking judgment must apply to the court for judgment by default. [*The party*
26 *seeking judgment must submit the affidavit or declaration required by subsection (1)(d) of this*

1 | *section if, to the best knowledge and belief of the party seeking judgment, the party against whom*
2 | *judgment is sought is not incapacitated as defined in ORS 125.005, a minor, a protected person*
3 | *as defined in ORS 125.005, or a respondent as defined in ORS 125.005. If the party seeking*
4 | *judgment cannot submit an affidavit or a declaration under this subsection, a default judgment*
5 | *may be entered against the other party only if a guardian ad litem has been appointed or the*
6 | *party is represented by another person as described in Rule 27.] If, in order to enable the court to*
7 | *enter judgment or to carry it into effect, it is necessary to take an account or to determine the*
8 | *amount of damages or to establish the truth of any averment by evidence or to make an*
9 | *investigation of any other matter, the court may conduct such hearing, or make an order of*
10 | *reference, or order that issues be tried by a jury, as it deems necessary and proper. The court may*
11 | *determine the truth of any matter upon affidavits or declarations.*

12 | **B(3) Amount of judgment.** The judgment entered shall be for the amount due as shown
13 | by the affidavit or declaration, **if any**, and may include costs and disbursements and attorney fees
14 | entered pursuant to Rule 68.

15 | **B(4) Non-military affidavit or declaration required.** No judgment by default shall be
16 | entered until the filing of an affidavit or a declaration on behalf of the plaintiff, showing that the
17 | defendant is or is not a person in the military service, or stating that plaintiff is unable to
18 | determine whether or not the defendant is in the military service as required by Section 201(b)(1)
19 | of the Servicemembers Civil Relief Act, 50 App. U.S.C.A. § 521, as amended, except upon order
20 | of the court in accordance with that Act.

21 | **B(5) Affidavit or declaration of competency required. The party seeking judgment**
22 | **must submit the affidavit or declaration required by this subsection if, to the best**
23 | **knowledge and belief of the party seeking judgment, the party against whom judgment is**
24 | **sought is not incapacitated as defined in ORS 125.005, a minor, a protected person as**
25 | **defined in ORS 125.005, or a respondent as defined in ORS 125.005. If the party seeking**
26 | **judgment cannot submit an affidavit or a declaration under this subsection, a default**

1 **judgment may be entered against the other party only by the court and only if a guardian**
2 **ad litem has been appointed or the party is represented by another person as described in**
3 **Rule 27.**

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Subject: Fwd: PROPOSALS FOR AMENDMENTS TO ORCP 7 & ORS 12.020
From: "Don Corson" <dcorson@corsonjohnsonlaw.com>
Date: Fri, 06 Jun 2008 14:19:06 -0700
To: <mpeterso@lclark.edu>, "Shari Nilsson" <nilsson@lclark.edu>
CC: "Ebuckle@cvk-law.com" <ebuckle@cvk-law.com>

forwarding...

Subject: PROPOSALS FOR AMENDMENTS TO ORCP 7 & ORS 12.020
From: "DANNY LANG" <attorneylang@paccomm.net>
Date: Fri, 6 Jun 2008 14:21:26 -0700
To: <dcorson@corsonjohnsonlaw.com>
CC: <mweaver@brophymills.com>

Please submit each of the following *Proposed* Amendments to the Council on Court Procedures. Notwithstanding submission for consideration by the Committee on Court Procedures... these Amendments may be submitted to the House of Delegates on September 13, 2008 as Agenda Items for the purpose of calling attention to the need for reform as a matter of Policy as well as Procedures.

Please feel free to contact me as to the position of the Council on Court Procedures.

Respectfully submitted,

DANNY LANG, attorneylang@paccomm.net; Ph: 541-459-9898; Fx: 541-459-1230

DANNY LANG
LAW OFFICE OF DANNY LANG
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PROPOSALS FOR AMENDMENTS TO ORCP 7 & ORS 12.020.eml Content-Type: message/rfc822

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ORCP 7.1B.wpd	Content-Type: application/octet-stream Content-Encoding: base64
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SUSTAINABILITY.1A.wpd	Content-Type: application/octet-stream Content-Encoding: base64
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PROPOSAL TO AMEND ORS 12.020(1) - ACTION DEEMED COMMENCED UPON FILING OF COMPLAINT

The February 2006 [*Issue No. 97*] of the Professional Liability Fund publication "***IN BRIEF***" recites that "*filing and service mistakes form a large percentage of the claims handled each year by the Professional Liability Fund*". Service traps generally arise from the requirement in ORS 12.020(1) & ORS 12.020(2) that, in Oregon, for an action to be deemed commenced on the date the Complaint is filed the Summons and Complaint *must be served within 60 days of filing the Complaint*. The present requirement for service of the Complaint has reportedly been the cause of the *documented large percentage of claims handled each year by the PLF Fund*, which could be avoided through a *proposed* revision to ORS 12.020 whereby an action would be deemed commenced [for Statute of Limitations purposes] upon the filing of the Complaint.

Members of the House of Delegates recommend and encourage the Board of Governors, OSB Legislative Council, and all appropriate OSB Committees to implement policies and procedures intended to provide that an action is deemed commenced upon the filing of the Complaint [rather than upon service of the Complaint].

Respectfully submitted,

DANNY LANG, OSB #79007
HOD Delegate - 2008-2011

PROPOSAL TO “ENHANCE SUSTAINABILITY”

Whereas, public policy issues relating to *dependence upon foreign oil, carbon emissions,* and *sustainability*, have become a matter of public concern; and,

Whereas, energy conservation and *sustainability* have recognized benefits to Society; *NOW*, now therefore be it;

Resolved, That, the Members of the House of Delegates recommend that the Board of Governors implement policies and procedures intended to *enhance sustainability* by:

- Expanding the use of *video conferencing technology* to reduce motor vehicle travel for routine Court appearances; and,
- Expand optional *telephonic appearances* by attorneys beyond the current limited availability to attorneys with offices more than 25 miles from Court.

Respectfully submitted,

DANNY LANG, OSB #79007
HOD Delegate - 2008-2011

**PROPOSAL TO AMEND ORCP 7D(4) -
SERVICE UPON AUTOMOBILE LIABILITY INSURANCE COMPANY**

The Professional Liability Fund often encounter unnecessary issues regarding “service of process”. Moreover, the present time constraints found in ORCP 7 “Summons” make it difficult to determine whether or not the method of service upon a Defendant may be subject to a subsequent successful challenge and moreover the additional time needed to file and obtain an ORCP 7D(6) “Court order for service by publication” ... consumes additional time for the preparation, submission, and ruling upon such Motion followed by additional time required to effectuate actual publication, such that litigants are subjected to both uncertainties as to adequacies of service of process and/or additional costs for publication of Summons, which may otherwise be avoided if ORCP 7D(4) was revised so as to provide for service upon the *automobile liability insurance company that afforded coverage on the date of the subject motor vehicle accident under the Oregon Financial Responsibility Laws for the defendant(s) upon whom service is to be effectuated.*

ORCP 7D(4): Particular actions involving motor vehicles. D(4)(a) Actions arising out of use of roads, highways, streets, or premises open to the public; service by mail. D(4)(a)(i) In any action arising out of any accident, collision, or other event giving rise to liability in which a motor vehicle may be involved while being operated upon the roads, highways, streets, or premises open to the public as defined by law, of this state, if the Plaintiff makes at least one attempt to serve a Defendant who operated such motor vehicle, or caused it to be operated on the defendant’s behalf, by a method authorized by subsection (3) of this section except service by mail pursuant to subparagraph (3)(a)(i) of this section and, as shown by its return, did not effect service, the plaintiff may then serve that defendant by mailings made in accordance with paragraph (2)(d) of this section addressed to that defendant at:

- (A) any residence address provided by that Defendant at the scene of the accident;
- (B) the current residence address, if any, of that defendant shown in the driver records of the Department of Transportation;
- (C) any other address of that defendant known to the plaintiff at the time of making the mailings required by (A) and (B) that reasonably might result in actual notice to that Defendant; and,
- (D) Service upon the designated Corporate Agent for service of process upon an automobile liability insurance company that afforded coverage on the date of the subject motor vehicle accident under the Oregon Financial Responsibility Laws for the defendant(s) upon whom service is to be effectuated.***

Respectfully Submitted,

DANNY LANG, OSB #79007
HOD Delegate - 2008-2011

Subject: Re: PROPOSALS FOR AMENDMENTS TO ORCP 7 & ORS 12.020
From: "Don Corson" <dcorson@corsonjohnsonlaw.com>
Date: Fri, 06 Jun 2008 14:33:30 -0700
To: "DANNY LANG" <attorneylang@paccomm.net>
CC: <mweaver@brophymills.com>, <mpeterso@lclark.edu>

Danny,

Thanks for these proposals. As you have requested, I have forwarded them to the Council, by emailing them to the Council's Executive Director.

A few thoughts:

1. Regarding ORS 12.020(1), I haven't researched it, but my recollection is that the Council has considered this before, and was of the view that under Oregon law commencement of an action is a substantive matter, and therefore beyond the scope of the Council's statutory mandate. I don't presume to speak for the Council on this point, but my guess is that this would be an appropriate matter to ask the Bar to pursue in the next Legislative session.
2. Regarding ORCP 7D(4), this should, in my opinion, be within the Council's area of authority. Have you done any research on any constitutional issues that may be presented by this proposal? As I said, I've forwarded your proposal. I think it is only fair to note that the Council is well into its rule-making for this biennium, and so I don't know how far this proposal may go in the current cycle. Having said that, as a personal matter, I agree that service in routine motor vehicle cases should be made as simple and efficient as possible.
3. I am personally strongly in favor of enhancing sustainability. May I respectfully suggest that if you want any specific rules changed to encourage that goal, it would be good to identify those rules so that those proposals could be considered in more detail.

Regards,
Don

||| "DANNY LANG" <attorneylang@paccomm.net> 6/6/2008 2:21:26 PM >>> |||

Please submit each of the following Proposed Amendments to the Council on Court Procedures. Notwithstanding submission for consideration by the Committee on Court Procedures. these Amendments may be submitted to the House of Delegates on September 13, 2008 as Agenda Items for the purpose of calling attention to the need for reform as a matter of Policy as well as Procedures.

Please feel free to contact me as to the position of the Council on Court Procedures.

Respectfully submitted,

DANNY LANG, attorneylang@paccomm.net; Ph: 541-459-9898; Fx: 541-459-1230

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