

**MINUTES OF MEETING
COUNCIL ON COURT PROCEDURES**

Saturday, September 13, 2008, 9:30 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. Jerry B. Hodson
Hon. Lauren S. Holland*
Hon. Rodger J. Isaacson
Hon. Rives Kistler*
Alexander D. Libmann
Hon. Eve L. Miller
Leslie W. O'Leary
David F. Rees

Shelley D. Russell
John L. Svoboda
Mark R. Weaver
Hon. Locke A. Williams*

Members Absent:

Hon. Mary Mertens James
Hon. David Schuman

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 (pending approval)	ORCP to be Reexamined Next Biennium
ORCP 1 ORCP 7D(3)(b) ORCP 18A ORCP 54A ORCP 55 ORCP 59B ORCP 69A&B	ORCP 7 ORCP 7D(4) 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 1 ORCP 7D(3)(b) ORCP 54A ORCP 55 ORCP 59B ORCP 69A&B

I. Call to order (Mr. Corson)

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

II. Introduction of Guests

There were no guests present that required introduction.

III. Approval of June 7, 2008, Minutes

Mr. Corson called for a motion to approve the June 7, 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: Timely Notification of ORCP Changes (Prof. Peterson)

Prof. Peterson reported that he has not had further contact with Thomson West regarding publishing a supplement to the Oregon Rules of Civil Procedure which contains the Council's promulgations. He stated that, when the Council has promulgated its rules and the legislature has ended, he will forward the amended rules to Thomson West to try to facilitate getting a pocket part or some other supplement made in a timely fashion.

Mr. Nebel stated that the Bar will do everything it can to help get the word out, but that it is, unfortunately, not able to publish a pocket part. He informed the Council that the Bar included a notice in the current Bar Bulletin which stated that the Council will soon publish rules for comment. The Bar will also publish a notice in the next Bar Bulletin which states that the rules have been published and are available for comment.

Mr. Nebel also stated that the Professional Liability Fund also publishes legislative highlights after the legislature has ended, and that the ORCP amendments will be included in this publication. He stated that there is a possibility of the Bar sending an e-mail to all bar members about the published rules and a later e-mail indicating when the rules will go into effect.

B. Update: Key Performance Measures (Prof. Peterson)

Mr. Corson suggested that the Council vote to adopt the latest draft Key Performance Measures (KPM) (Appendix A), and also suggested creating a committee consisting of the chair, vice-chair, treasurer, and Executive Director to implement and deal with any issues arising from the KPM. Prof. Peterson explained that he and Mr. Nebel worked on the KPM with John Borden, the

Council's liaison at the Legislative Fiscal Office. Prof. Peterson explained that KPM number 5 refers to the a set of Self-Assessment Criteria (Appendix B) used by all agencies in the State of Oregon. He stated that Mr. Borden would prefer that the Council use the same criteria, even though some clearly do not apply to the Council. He stated that Mr. Borden agrees that the Council may choose a percentage of these Self-Assessment Criteria as its target, with the explanation that some are not applicable to the Council.

Dr. Enbom asked whether the two separate pages (KPM and Self-Assessment Criteria) will be included together so that it is clear to which criteria KPM 5 refers. Prof. Peterson stated that the Self-Assessment Criteria will be included, along with the surveys referred to in the other KPM. Dr. Enbom asked how the KPM will be distributed and what feedback the Council expects. Prof. Peterson stated that it serves two purposes: 1) to show interested parties what the Council is supposed to be doing; and 2) to be a part of the budget request prepared by Legislative Counsel for the legislature's review. Dr. Enbom asked whether the Council should publish the KPM along with the published rules in order to receive feedback from the public. Prof. Peterson stated that the survey will be made public for feedback. Mr. Corson emphasized that this is a separate process from publication of rule amendments.

A motion was made to adopt the 2009-2011 KPMs. The motion was seconded and passed without objection or abstention.

C. Council Agency Budget (Prof. Peterson)

Prof. Peterson stated that he has spoken to our contact at the Legislative Fiscal Office and that she states that, if we want a policy option package (i.e., an increase in budget larger than inflation), we will need to make a request. He stated that he feels that the Council should receive a policy option package because: 1) the Council travel budget remains at its historical level and does not reflect price increases in gas and lodging; and 2) the Law School will end up paying for part of what the Council is doing and that is inappropriate. He asked for authorization from the Council members to work with the officers and ask for a \$5,000 to \$10,000 increase in the budget for next biennium.

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

Ms. Nilsson discussed the Website/Inquiries Report (Appendix C) and stated that the Council website continues to receive a large number of visitors from throughout Oregon and beyond. She also indicated that, at last check, the search engine feature of the site was working and searching all documents contained on the site. She stated that the website now contains a mechanism for sending comments on published rules.

Prof. Peterson stated that the Council received two inquires, one regarding discovery procedures in a family law case, and one regarding constitutional law. The family law inquirer was sent the Council's standard reply, and he subsequently contacted Mr. Corson via facsimile in an attempt to obtain a different answer. Mr. Corson sent a reply indicating that he was unable to give legal advice. Prof. Peterson created a new standard reply regarding constitutional law inquiries and sent it to the second inquirer.

V. Old Business

A. Committee Matters

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

Mr. Corson explained that there are two versions of ORCP to consider: the "long version" (Appendix D) and the "short version" (Appendix E). Mr. Cooper explained that the short version was created first but that some Council members were concerned that it might not be comprehensive enough or alternatively might be too comprehensive. Mr. Cooper therefore drafted the long version, which contains every word used in the ORCP which refers to any document, paper, or thing exchanged between lawyers or between lawyers and the court. He stated that he is mildly in favor of the short version because shorter is usually better. He also explained that this is an enabling rule which does not change the ability to do anything unless and until the Chief Justice promulgates Uniform Trial Court Rules (UTCR) that implement it.

Mr. Buckle stated that he did not find a definition of "document" in the ORCP but did find one in UTCR 2.010 which states that document means every paper filed in any type of proceeding. He asked whether all 38 items are things that are filed with the court. Mr. Cooper stated that not every item is something that is filed (e.g., ORCP 43 requests and responses thereto), and many are outside of the UTCR definition of document. He stated that he does not like the idea of creating an undefined term (document) in the short version, but that the long version is somewhat cumbersome.

Judge Isaacson asked whether the Council could vote to publish both versions and wait to get feedback before making a final vote on one version in December. Mr. Corson stated that the Council can indeed vote to publish both.

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

Prof. Peterson stated that the only feedback the committee received to its draft (Appendix F) was regarding manager-managed limited liability corporations. He stated that the feedback was that a lawyer should be able to serve any member of the corporation, not just the manager. Prof. Peterson indicated that the Council's proposal is more conservative on the theory that, if an LLC has a manager, the members may not be too involved in day-to-day operations. Judge Miller stated that she thought it is better practice to have the rule state that the manager should be served because a party can always apply to a judge for substituted service on a member if the manager is unable to be located. Mr. Corson stated that he agrees that the procedure for substituted service is already outlined in the Rule and that procedure can be followed if a manager is not able to be located. Mr. Weaver stated that while most LLCs have fewer members than shareholder corporations do, there are a few LLCs that have members who have almost no interest and serving them probably would not give adequate notice. He stated that the corporate service statutes are set up in this way and that the LLC section is intended to mirror that.

Mr. Corson asked whether any language needs to be modified. Judge Herndon suggested publishing in the current format and waiting for feedback from those bar members who are more experienced in business law.

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

Mr. Libmann stated that he informed attorney Danny Lang that the Council had considered his proposal and that, after discussion, was not going to take an active position on it at this time. This matter is now closed unless it raised again next biennium.

4. ORCP 54E (Mr. Buckle)

Mr. Buckle stated that the proposed draft (Appendix G) states that when one serves an Offer to Allow Judgment on another party and 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. This helps to protect the integrity of the judge. He stated that it also provides a procedure for filing the offer once there has been an adjudication if the result is not as favorable as the offer.

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

Judge Harris presented the committee's draft changes (Appendix H). He discussed the history of ORCP 59B and stated that the present version of the rule was adopted in September of 2002. The idea was that the "feasability" clause was only to be invoked in extreme or unusual circumstances. After the amendment, a process was undertaken to educate judges about various methods of getting written instructions to a jury. In 2002, one third of Oregon judges were using written instructions; today it is closer to two thirds. A Center for Jury Studies survey (Appendix I) shows that Oregon ranks the lowest of any state west of the Mississippi in giving written instructions to jurors.

Judge Harris stated that judges he surveyed had two objections to requiring the use of written jury instructions: 1) it is a time issue in short criminal cases; and 2) there can be a problem with access to technology and resources. He stated that, if there are strong objections, he does not want to force the issue and suggested perhaps limiting the requirement to civil jury trials. As for the resource issue, Judge Harris has an appointment with the Chief Justice to determine how resources can be assessed to make certain that adequate resources exist in every jurisdiction.

Judge Holland stated that she does not feel that restricting the requirement to civil jury trials is appropriate, as it may send the message that judges have discretion in criminal trials but not civil trials. She also feels that the restriction is not adequate to address the concerns of judges. Judge Holland suggested using the education process to advance the goal of written jury instructions in 100% of trials.

Dr. Enbom asked whether there is any information about appeals that have occurred based on a jury's misunderstanding of the rules when they did not receive written instructions. Judge Harris stated that he does not have such information. He stated that if the jury has the instructions in writing it is more likely to follow the rules. He stated that one third of judges do not put the instructions in writing, even if it is feasible, and that they rely on the "feasible" language to continue recording jury instructions in any case. While Judge Harris does not want to upset judges, he is committed to moving the system forward.

Mr. Cooper stated that upgrading technology would depend on the Legislature allocating adequate funds. He stated that he is uncomfortable making a rule in the hope that the funds will come through. He stated

that, if the rule is changed and judges continue to record instructions anyway, this could be a basis for many more appeals in the future. Judge Miller stated that more and more technological issues will be arising in the future with the advent of e-filing. She stated that the jury instruction situation is no different from any other situation where a judge decides not to follow a rule.

Mr. Hansen stated that four of the circuit judges in Deschutes County, where adequate technology does exist, are not asking for written jury instructions from attorneys and do not force the issue despite the fact that they believe that written instructions are superior. He stated that the quality of jury instructions received from attorneys is always a source of frustration for judges. Judge Herndon suggested adding the language “not feasible due to lack of technology.” He indicated that he believes the decision as to whether or not to adopt this rule should not be based on technology, as jury instructions are not particularly “high tech” and require nothing more than a computer with a word processing program and a printer.

Mr. Buckle asked how an ORCP applies to criminal trials. Prof. Peterson stated that some of the ORCP apply to criminal trials by statute. Mr. Buckle asked whether judges usually wait to send the jury into deliberations until the written instructions are ready. Mr. Hansen stated that the delay usually occurs when the written instructions from attorneys are less than adequate and need to be reworked. Mr. Buckle asked whether it is possible to send the jury out before they have physically received written instructions. Judge Herndon stated that he always manages to get the instructions done before deliberations begin.

Mr. Libmann inquired as to whether all courthouses have a minimum standard of technology. Judge Herndon stated that every judge has a computer and printer and photocopier available, as well as the Uniform Jury Instructions on a CD or on a server. Judge Harris stated that the technology does exist, yet some judges still have not adopted the standard of written instructions.

Ms. Russell stated that she had a conversation with one judge who was vehemently opposed to the change because he did not want to lose his judicial discretion. She stated that she is not sure that is an adequate reason not to make the change. She stated that in federal court, jury instructions are required as a pre-trial matter. Judge Herndon stated that this works well in long, complex cases but not necessarily in short, simple ones. Ms. Russell stated that simple cases usually have simple

instructions and asked whether the written instructions could be required for any jury trial over one day in length. Judge Isaacson stated that there is sometimes no way of knowing how long a trial will run.

Judge Miller emphasized that this matter is also a training issue for attorneys and that judges need to push the matter more with attorneys. She stated that if they are able to get their visual presentations for the jury prepared before trial, they should be able to get their jury instructions prepared as well.

Prof. Peterson observed that the rule as written states that “the court shall reduce or require a party to reduce the charge to writing,” and that it is the attorney’s job to provide jury instructions. He asked whether the attorney has the right to have the jury instructed if he/she provides flawed instructions and the judge does not have time to fix them. Ms. O’Leary stated that she is appalled that written jury instructions are not required as a matter of law, as it is an access to justice issue. She stated that, in her opinion, preparing jury instructions is the most important part of a case and she takes it very seriously. She stated that lawyers have the technology required and that the judges should make the lawyers do the work. Mr. Corson stated that in his opinion it boils down to the fact that there is a rule that requires judges to do something and some judges are flouting that rule for whatever reasons, good or bad. He stated that, if the Council makes this change, it will increase the number of cases in which written instructions are given and will improve access to justice.

Mr. Hansen stated that newer judges are beginning to follow older judges’ examples of not using written instructions and that this is also a problem.

B. Non-Committee Matters

1. ORCP 69A & B: Notice Required on Intent to Take Default (Prof. Peterson)

Prof. Peterson stated that the only substantive proposed change to this rule (Appendix J) is that the notice must look like a pleading, be served on the opposing side, and be filed with the court. He indicated that the other changes are cosmetic or to correct references to other rules. Mr. Corson wondered whether naming a specific Uniform Trial Court Rule number is wise and asked whether there is a risk that the UTCR numbers will be changed in the future. Mr. Cooper stated that the UTCR numbers have not been changed since they were instituted and did not foresee such a thing happening, particularly with this particular rule which is a seminal

rule talking about basic document issues. Prof. Peterson stated that it would be more helpful to practitioners to send them to the specific rule. Mr. Corson also asked whether “Uniform Trial Court Rules” should be used rather than “UTCRC.” He offered a friendly amendment to modify the draft to do this.

Ms. David stated that UTCRC rules in general have many different formats and requirements and that what she and Prof. Peterson wanted to project in this rule change was a very specific application that would take the reader directly to the rule that states that a pleading format is required. She stated that she also believes that UTCRC 2.010 is one of the more basic rules and not likely to be renumbered in the future, but stated that if it does change, the Council will merely make an amendment to reflect that change.

Mr. Hansen asked about the utility of having the notice filed with the court. He raised a concern that if the court were to see the notice in the file they might accidentally sign it. Ms. David stated that the advantage to filing the notice is that when the notice is given in letter format, it is not entered into the Oregon Judicial Information Network. Judge Herndon stated that he sees the amendment as an important step to let judges know that proper notice was given. Prof. Peterson stated that the document is merely a notice, not an order or a judgment, and that there is nothing for a judge to sign. He stated that it is important to get the information into OJIN. Mr. Hansen stated that he is concerned that lawyers may believe that an order needs to be submitted as well. Mr. Cooper stated that if an attorney is moving for an order of default, the party being moved against is not yet in default and is entitled to service of that motion.

Mr. Buckle asked whether an application for an order is a motion. Mr. Hansen stated that many lawyers believe it is. Mr. Cooper stated that the goal of the change is to have the court be able to verify that notice was really given to avoid the other attorney having to file a motion to set aside unnecessarily. Mr. Buckle stated that he does believe that having the notice be a formal pleading will be helpful, but he asked whether the word “motion” should be used rather than “application,” as an application for an order really is a motion for an order. Ms. David stated that ORCP 69A just talks about a 10 day notice, not motions. She stated that in the next biennium the Council will re-examine issues regarding motions and affidavits. Mr. Buckle stated that an application for an order is, by definition, a motion. Judge Isaacson stated that Rule 69B(1) uses the term application. Mr. Cooper stated that the Council may want to examine that next biennium to clean up the language. Prof. Peterson

pointed out that the rule is not referring to an application, but a *notice* of the application. Mr. Hansen stated that “notice of intent to apply for default” might be better language and may help lawyers realize that they do not have to prepare a motion as well. Mr. Corson made the friendly amendment to change the language to “of the intent to apply.” Prof. Peterson and Ms. David had no problem with this amendment.

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

Prof. Peterson stated that these proposed changes (Appendix K) are a housekeeping measure resulting from the changes to ORCP 7. He indicated that there is a reference to Rule 7 that needs to be changed to be consistent with the change made in Rule 7. He stated that he and Ms. Nilsson searched the ORCP to find any references in other rules that would need to be changed as a result of Council amendments and found no others.

VI. Action Items: Votes on Whether to Publish (Mr. Corson)

A. ORCP 1

A motion was made to publish both versions of changes to ORCP 1. The motion was seconded and it passed a voice vote of 17 members with no votes in opposition or abstentions.

B. ORCP 7D(3)(b)

A motion was made to publish the changes to ORCP 7D(3)(b). The motion was seconded and it passed a voice vote of 18 members with no votes in opposition or abstentions.

C. ORCP 54E

A motion was made to publish the changes to ORCP 54E. The motion was seconded and it passed a voice vote of 18 members with no votes in opposition or abstentions.

D. ORCP 55D

A motion was made to publish the changes to ORCP 55D. The motion was seconded and it passed a voice vote of 18 members with no votes in opposition or abstentions.

E. ORCP 59B

A motion was made to publish the changes to ORCP 59B. The motion was seconded and it passed a voice vote of 18 members with no votes in opposition or abstentions.

F. ORCP 69A & B

A motion was made to publish the changes to ORCP 69A and B, with Mr. Corson's friendly amendments. The motion was seconded and it passed a voice vote of 18 members with no votes in opposition or abstentions.

VII. New Business

A. Oregon State Bar Legislative Proposal: ORS 12.020 (Mr. Nebel)

Mr. Nebel distributed a Legislative Proposal (Appendix L) to amend ORS 12.020 to deem an action commenced when a complaint is filed for the purposes of complying with the statute of limitations. The Procedures and Practice Committee wanted to inform the Council of this proposal. Mr. Cooper noted that if this proposal is accepted, it would allow the Council next biennium to reopen the issue of the possibility of modifying ORCP 7 to adopt federal style service and notice rules, as ORS 12.020 was a stumbling block for that process this biennium. Prof. Peterson also noted that, if this proposal is accepted, the Council would also need to make a minor amendment to ORCP 3, which refers to the statute of limitations separately.

B. Contact with Legislators (Mr. Corson)

Mr. Corson stated that he feels that this is an important time to update legislators on the Council's work. He referred to the updated legislator list which Ms. Nilsson provided (Appendix M) and asked that Council members contact their assigned legislators. He asked Ms. David if she would be willing to draft a proposed e-mail; however, Ms. David had lost her telephone connection. Mr. Buckle agreed to ask Ms. David to draft a letter and stated that he would be willing to work with her.

C. Uniform Interstate Discovery and Deposition Act (Mr. Corson)

Mr. Corson stated that a Lane County Circuit Court judge who will chair a committee regarding the Act asked him to serve on the committee. He will do so, and will keep the Council apprised of any developments. Judge Holland stated that she was also asked to serve on the committee and will talk with Mr. Corson

about it.

VIII. Next Meeting Date/Location

The Council agreed that meetings in October and November are not necessary; therefore, the next meeting will be held on Saturday, December 13, 2008, at 9:30 a.m. at the Oregon State Bar, at which time Council members will vote to publish amendments to the ORCP.

IX. Adjournment

Mr. Corson adjourned the meeting at 11:12 a.m.

Respectfully submitted,

Mark A. Peterson
Executive Director

2009 - 2011 KEY PERFORMANCE MEASURES

(Draft 4, 9/8/08)

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	Percentage of surveyed judges, civil plaintiff attorneys, and civil defense attorneys who believe that the Oregon Rules of Civil Procedure promote the just, speedy, and inexpensive determination of civil court actions.		
2	Percentage of Council promulgated amendments that became law without amendment, repeal, or supplement by the Legislative Assembly		
3	Percentage of surveyed judges, civil plaintiff attorneys, and civil defense attorneys who rate their satisfaction with the Council's availability of information, including its website, as "good" or "excellent."		
4	Percentage of surveyed judges, civil plaintiff attorneys, and civil defense attorneys who rate their overall satisfaction with the Council's work as "good" or "excellent."		
5	Percentage of total boards and commissions best practices met by the Council		

Self-Assessment Criteria

Best Practices Criteria	Yes	No
<ol style="list-style-type: none"> 1. Executive Director's performance expectations are current. 2. Executive Director receives annual performance feedback. 3. The agency's mission and high-level goals are current and applicable. 4. The board reviews the <i>Annual Performance Progress Report</i>. 5. The board is appropriately involved in review of agency's key communications. 6. The board is appropriately involved in policy-making activities. 7. The agency's policy option packages are aligned with their mission and goals. 8. The board reviews all proposed budgets (likely occurs every other year). 9. The board periodically reviews key financial information and audit findings. 10. The board is appropriately accounting for resources. 11. The agency adheres to accounting rules and other relevant financial controls. 12. Board members act in accordance with their roles as public representatives. 13. The board coordinates with others where responsibilities and interests overlap. 14. The board members identify and attend appropriate training sessions. 15. The board reviews its management practices to ensure best practices are utilized. 16. Others 		
Totals		
Percentage of Total		

**Council on Court Procedures
Website/Inquiries Update
Reporting Period: 5/25/08 - 8/24/08**

I. New Additions

A. Amendments Published for Comment

There is now a new web page entitled “Current Biennium: Amendments Published for Comment.” This page will include all amendments that the Council publishes, plus a link to a form that people can fill out to comment on the changes.

II. Updates

A. Site Search Engine

I am pleased to report that the site search engine appears to be fully functional and searching all web pages contained on the site. In case of any future errors or problems with the search engine, Mark and I have included the following disclaimer at the top of the search results page:

“The Council on Court Procedures provides access to the information and material on this site as a service to the public. The Council regularly updates and adds information to this website. However, because we do not know how you are using the information found on this website, we do not make any warranties (express or implied) about the information on the Council website for your particular use. Paper copies of Council history material are available at various libraries throughout the state (see Resources page for more information).

The results of any internet search depend on, among other things, the search engine and search terms used. You should not expect a search on any search engine (including the search engine on this site), to provide you with an exhaustive list of the sources of information on the search topic.”

III. Website Statistics

A. Visitors

From May 25 to August 24, the site received a total of 493 visits and 1441 page views from 390 unique visitors. Visitors averaged 2.92 page views per visit. 75% of the total visits were from new visitors. 50% of the visits were direct, 15% came from referring sites, and 35% came from search engines.

B. Geographical Information

Most visitors (390) to the website came from various cities throughout Oregon, including:

Albany	Gladstone	Portland
Beaverton	Grants Pass	Redmond
Bend	Hood River	Sherwood
Coos Bay	Keizer	Spray
Corvallis	Lake Oswego	St. Benedict
Dallas	Lincoln City	St. Paul
Dufur	Medford	Troutdale
Dundee	Mt. Angel	Tualatin
Eugene		West Linn

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

C. Keywords from Search Engines

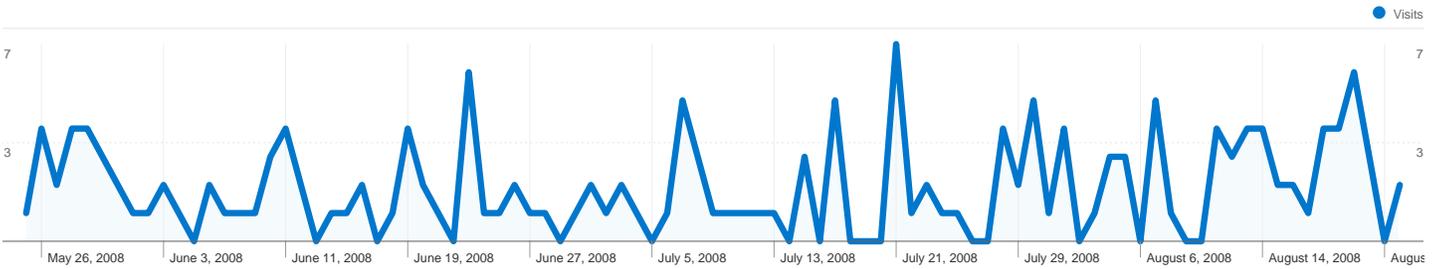
Google Analytics keeps track of keywords (search phrases) that get entered into Google which bring up the Council's website. This makes for interesting reading and helps tell us what content we can emphasize in order to help visitors to find our site. Please see the attached Google Analytics report (page 3) for details.

D. Inquiries

The Council received two inquiries via e-mail during this reporting period. The first was from someone requesting assistance in understanding ORCP 43B(2) regarding production of documents. The Council sent its form response indicating that it is not a law firm and is unable to give legal advice. The second was from someone stating his opinion on the legality of homosexual marriage. A new form response was created for the second inquiry to indicate that statutory and constitutional changes are outside the scope of the Council's work. The Council received one telephone inquiry from an attorney questioning a judge's ruling on Rule 21E(1) to the effect that the Court cannot look outside the pleadings. The caller suggested that, in certain instances, going outside of the pleadings is appropriate and necessary. The caller was advised that the Council will make a determination next biennium as to whether Rule 21E requires amendment.

Respectfully submitted,

Shari Nilsson
Council Administrative Assistant



Search sent 172 total visits via 97 keywords

Site Usage

Visits 172 % of Site Total: 34.89%	Pages/Visit 2.48 Site Avg: 2.92 (-15.07%)	Avg. Time on Site 00:01:45 Site Avg: 00:01:49 (-3.99%)	% New Visits 65.70% Site Avg: 74.44% (-11.75%)	Bounce Rate 56.40% Site Avg: 43.00% (31.15%)
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Keyword	Visits	Pages/Visit	Avg. Time on Site	% New Visits	Bounce Rate
oregon council on court procedures	29	3.86	00:03:04	41.38%	24.14%
council on court procedures	13	2.85	00:02:37	61.54%	30.77%
court procedure	11	1.36	00:00:15	90.91%	90.91%
court procedures	7	1.14	00:01:21	100.00%	85.71%
council on court procedures oregon	4	5.25	00:02:47	50.00%	0.00%
civil court procedure	3	1.00	00:00:00	100.00%	100.00%
council on court procedures	3	2.33	00:13:35	0.00%	0.00%
lewis and clark law school	3	1.00	00:00:00	0.00%	100.00%
oregon council on court procedure	3	3.67	00:03:24	66.67%	33.33%
oregon rules of civil procedure	3	2.00	00:22:44	66.67%	0.00%
oregon rules of civil procedure history	3	9.67	00:00:55	33.33%	33.33%
"council on court procedures" lewis clark oregon	2	1.50	00:00:23	0.00%	50.00%
4dcd819cada73fa3642aa9a35b8fd3b0	2	3.00	00:00:24	0.00%	0.00%
ccp 12/14/02	2	1.00	00:00:00	50.00%	100.00%
civil court procedures	2	1.00	00:00:00	100.00%	100.00%
how court procedure works	2	1.00	00:00:00	100.00%	100.00%
lewis and clark college	2	2.00	00:00:16	0.00%	50.00%
orcp 15	2	1.00	00:00:00	50.00%	100.00%
"council on court procedures"	1	1.00	00:00:00	100.00%	100.00%
"council on court procedures" & "oregon"	1	7.00	00:02:18	100.00%	0.00%
"council on court procedures" oregon	1	2.00	00:00:10	0.00%	0.00%

"hon. daniel i. harris"	1	5.00	00:02:12	100.00%	0.00%
"oregon rules of civil procedure"	1	2.00	00:00:02	100.00%	0.00%
"oregon rules of civil procedure, small claims, circuit court"	1	1.00	00:00:00	100.00%	100.00%
+robert circuit court judge robert i. holland	1	2.00	00:00:52	100.00%	0.00%
brook cooper portland attorney	1	1.00	00:00:00	100.00%	100.00%
circuit court judge robert herndon oregon	1	1.00	00:00:00	100.00%	100.00%
civil procedures in oregon	1	1.00	00:00:00	100.00%	100.00%
co council in court	1	1.00	00:00:00	100.00%	100.00%
company members@ and staff @2008	1	1.00	00:00:00	0.00%	100.00%
council on court procedures oregon	1	5.00	00:00:48	0.00%	0.00%
council court procedures lewis clark oregon	1	3.00	00:00:53	0.00%	0.00%
council for court procedures	1	2.00	00:00:05	100.00%	0.00%
court procedure order	1	1.00	00:00:00	100.00%	100.00%
coury pricedures	1	1.00	00:00:00	100.00%	100.00%
daniel i. harris, circuit court judge	1	1.00	00:00:00	100.00%	100.00%
david rees atty	1	1.00	00:00:00	100.00%	100.00%
director of multnomah county victims assistance	1	1.00	00:00:00	100.00%	100.00%
dr john enbom corvallis	1	1.00	00:00:00	100.00%	100.00%
eugene buckle - attorney	1	1.00	00:00:00	100.00%	100.00%
eugene buckle attorney portland oregon	1	1.00	00:00:00	100.00%	100.00%
fitzgibbon	1	1.00	00:00:00	0.00%	100.00%
how procedures work in court	1	1.00	00:00:00	100.00%	100.00%
how to write court procedures	1	2.00	00:01:21	100.00%	0.00%
john l svoboda	1	1.00	00:00:00	100.00%	100.00%
judge eve miller	1	1.00	00:00:00	100.00%	100.00%
kirsten david attorney	1	1.00	00:00:00	100.00%	100.00%
klamath falls, or circuit court judges	1	1.00	00:00:00	100.00%	100.00%
kristan davis oregon judge	1	6.00	00:06:53	100.00%	0.00%
law school lewis and clark oregon	1	3.00	00:01:13	0.00%	0.00%
lewis & clark	1	1.00	00:00:00	0.00%	100.00%
lewis and clark lawschool	1	3.00	00:00:41	100.00%	0.00%
lewis and clark legal clinic	1	4.00	00:00:19	0.00%	0.00%
mark weaver attorney	1	1.00	00:00:00	0.00%	100.00%
material order procedures	1	1.00	00:00:00	100.00%	100.00%
on court	1	1.00	00:00:00	100.00%	100.00%

or council on court procedures	1	4.00	00:00:45	100.00%	0.00%
orcp	1	2.00	00:00:16	100.00%	0.00%
orcp 10	1	1.00	00:00:00	100.00%	100.00%
orcp 55	1	2.00	00:00:56	100.00%	0.00%
orcp 62	1	1.00	00:00:00	100.00%	100.00%
orcp 64	1	1.00	00:00:00	100.00%	100.00%
orcp 70 a	1	1.00	00:00:00	100.00%	100.00%
orcp 70(a)	1	1.00	00:00:00	0.00%	100.00%
orcp 70a	1	1.00	00:00:00	100.00%	100.00%
orcp 71	1	1.00	00:00:00	100.00%	100.00%
orcp 72	1	2.00	00:00:06	100.00%	0.00%
oregon ccp	1	1.00	00:00:00	0.00%	100.00%
oregon circuit court filing procedure	1	1.00	00:00:00	100.00%	100.00%
oregon civil procedures	1	3.00	00:01:02	100.00%	0.00%
oregon council on court	1	13.00	00:01:27	0.00%	0.00%
oregon court procedure	1	1.00	00:00:00	100.00%	100.00%
oregon court rules amendments	1	6.00	00:01:18	0.00%	0.00%
oregon court rules and procedures	1	1.00	00:00:00	100.00%	100.00%
oregon district court procedures	1	3.00	00:00:32	100.00%	0.00%
oregon rules civil procedure	1	4.00	00:03:02	100.00%	0.00%
oregon rules of appellate procedure	1	1.00	00:00:00	0.00%	100.00%
oregon rules of civil procedure comments	1	7.00	00:02:31	100.00%	0.00%
oregon rules of civil procedure small claims	1	1.00	00:00:00	100.00%	100.00%
oregon rules of civil procedures	1	1.00	00:00:00	100.00%	100.00%
oregon rules of court procedure	1	1.00	00:00:00	100.00%	100.00%
oregon rules of evidence	1	1.00	00:00:00	100.00%	100.00%
oregon rules of procedure	1	1.00	00:00:00	100.00%	100.00%
oregon state civil court procedures	1	1.00	00:00:00	100.00%	100.00%
portland, or+judge jerry b. hodson	1	1.00	00:00:00	100.00%	100.00%
procedure of minutes	1	1.00	00:00:00	100.00%	100.00%
procedures agendas	1	1.00	00:00:00	100.00%	100.00%
professor bogdanski	1	4.00	00:00:38	0.00%	0.00%
robert herndon attorney at law	1	1.00	00:00:00	100.00%	100.00%
site:*.edu law firms oregon	1	1.00	00:00:00	100.00%	100.00%
small claims rules of evidence oregon	1	1.00	00:00:00	0.00%	100.00%
up dates oncourt cases	1	1.00	00:00:00	100.00%	100.00%

what is council in court	1	1.00	00:00:00	100.00%	100.00%
which court tries a public body	1	1.00	00:00:00	100.00%	100.00%
council on oregon rules of civil procedure	0	0.00	00:00:00	0.00%	0.00%
oregon council for court	0	0.00	00:00:00	0.00%	0.00%
oregon council on court portland	0	0.00	00:00:00	0.00%	0.00%
					1 - 97 of 97

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
11 cases 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
15 the time of or filed after their effective date, except to the extent that in the opinion of the court
16 their application in a particular action pending when the rules take effect would not be feasible
17 or 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
21 under ORS 1.006, 1.735, 2.130, and 305.425, unless otherwise defined or limited. These rules do
22 not preclude a court in which they apply from regulating pleading, practice, and procedure in
23 any 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
26 by 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 finding**
13 **of fact, objections, orders of reference, reports of referees, statements of attorney fees and**
14 **costs and disbursements, preliminary injunctions, permanent injunctions, provisional**
15 **process, or writs of attachment which are exchanged, served, entered, or filed during the**
16 **course of civil litigation shall be construed to include electronic images or other digital**
17 **information in addition to printed versions of such items, as may be permitted by rules of**
18 **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)] **(iv), part (A),**
21 as ORCP 7 D(3)(a)[(i)]**(iv)(A).**

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6 **F Electronic Filing. Any reference in these rules to any document, except a summons,**
7 **which is exchanged, served, entered or filed during the course of civil litigation shall be**
8 **construed to include electronic images or other digital information in addition to printed**
9 **versions of such items, as may be permitted by rules of the court in which the action is**
10 **pending.**

11 [F] **G Citation.** These rules may be referred to as ORCP and may be cited, for example,
12 by citation of Rule 7, section D, subsection (3), paragraph (a), subparagraph [(i)] **(iv), part (A),**
13 as 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*] including, but not limited to,**
13 **professional corporations and cooperatives.** Upon a domestic or foreign corporation [*or*
14 *limited partnership*]:

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

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

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

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

26 **(C)** by mailing **in the manner specified in paragraph (2)(d) of this section** a copy of

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

8 **(D) upon the Secretary of State in the manner provided in ORS 60.121 or ORS**
9 **60.731.**

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

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

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

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

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

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

1 based occurred, to the principal office or place of business of the limited liability company,
2 and in any case to any address the use of which the plaintiff knows or has reason to believe
3 is most likely to result in actual notice; or

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

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

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

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

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

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

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

24 (D) upon the Secretary of State in the manner provided in ORS 70.040 or ORS
25 70.045.

26 D(3)(e) General partnerships and limited liability partnerships. Upon any general

1 partnership[s] **or limited liability partnership** by personal service upon a partner or any agent
2 authorized by appointment or law to receive service of summons for the partnership **or limited**
3 **liability partnership**.

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

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

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

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

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

19 * * * * *

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) and 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*] **at trial and may be filed with the court**
19 **only after the case has been adjudicated on the merits[;]** and **only** if the party asserting the
20 claim fails to obtain a **judgment** more favorable **than the offer to allow judgment[,]**. **In such a**
21 **case,** the party asserting the claim shall not recover costs, prevailing party fees, disbursements,
22 or attorney fees incurred after the date of the offer, but the party against whom the claim was
23 asserted shall recover of the party asserting the claim costs and disbursements, not including
24 prevailing party fees, from the time of the service of the offer.

25 * * * * *

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 * * * * *

State Rankings of Judge & Attorney Survey Results



All Jurors Received a Copy of Jury Instructions

Percent of respondents who reported that all jurors received a written copy of the final jury instructions.

State	Sample Size	% of Respondents
Arizona	161	80.7
Indiana	274	77.4
Hawaii	69	72.5
Wyoming	47	70.2
Washington	165	68.5
Colorado	176	67.0
Oklahoma	173	64.2
Iowa	168	61.9
Idaho	68	58.8
Kansas	111	58.6
Vermont	57	57.9
Texas	574	57.0
Alaska	225	55.6
Utah	406	53.7
Kentucky	211	53.6
Nebraska	150	52.0
California	446	49.3
Minnesota	345	46.7
Ohio	255	46.3
Montana	66	45.5
New Mexico	97	45.4
Nevada	140	44.3
Missouri	348	43.4
Tennessee	181	38.7
Florida	405	38.3
New Hampshire	45	35.6
South Dakota	213	34.7
Delaware	41	34.1
North Dakota	154	29.9
Oregon	393	29.5
Virginia	226	28.8
Maine	65	27.7
Mississippi	126	27.0
DC	107	21.5
Rhode Island	62	19.4
Connecticut	170	17.6
North Carolina	245	17.6
Michigan	799	16.8
Illinois	781	15.1
Maryland	347	14.7
Georgia	382	14.1
New Jersey	168	13.7
Massachusetts	197	9.6
West Virginia	90	8.9
Arkansas	45	6.7
South Carolina	83	6.0
Wisconsin	179	5.6
Alabama	57	5.3
New York	450	5.3
Pennsylvania	748	5.1
Louisiana	159	0.6

n/a = Not Applicable

National Center for State Courts, 2007

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 been
18 submitted; and

19 B(1)(g) Summons was personally served within the State of Oregon upon the party, or an
20 agent, officer, director, or partner of a party, against whom judgment is sought pursuant to Rule 7
21 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).

22 **B(2) By the court.** In cases other than those cases described in subsection (1) of this
23 section, the party seeking judgment must apply to the court for judgment by default. The party
24 seeking judgment must submit the affidavit or declaration required by subsection (1)(d) of this
25 section if, to the best knowledge and belief of the party seeking judgment, the party against
26 whom judgment is sought is not incapacitated as defined in ORS 125.005, a minor, a protected

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

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

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

OREGON STATE BAR
Legislative Proposal
Part I – Legislative Summary

RE: Amending ORS 12.020 re: date upon which an action is commenced for purposes of the statutes of limitations; corresponding changes to UTCR 7.020.

Submitted by: Oregon State Bar Procedure & Practice Committee

Legislative Contact(s): Susan Grabe

Phone: 503-431-6380

E-mail: sgrabe@osbar.org

1. Does this amend current law or program? Yes.

This proposal would amend ORS 12.020(1) to deem an action commenced when the complaint is filed, for purposes of complying with the applicable statute of limitations.

This amendment would remove the second requirement of ORS 12.020(2), which requires that a complaint be served within 60 days of the filing of the complaint in order to meet the statute of limitations.

As amended, Oregon’s statute would now conform with Federal Rule of Civil Procedure 3.

A second issue related to UTCR 7.020 is set forth below, although those changes must be addressed through the Uniform Trial Court Rules Committee process.

2. PROBLEMS PRESENTED:

Part I – Changes to ORS 12.020.

Oregon Rule of Civil Procedure (ORCP) 3 provides the date upon which an action is commenced for the purposes of trial court calendaring, procedural deadlines, and case management.

ORS 12.020 sets forth the date upon which an action is deemed commenced solely for purposes of complying with the applicable statutes of limitations.

ORS 12.020 as currently written is confusing because of its overlap with ORCP 3. ORCP 3 states that an action is commenced by filing a complaint with the clerk of the court except for purposes of the statutes of limitations. In order to determine how to meet the deadline for the applicable statute of limitations, members of the public or attorneys must refer to ORS 12.020.

ORS 12.020 states that in order for an action to be “commenced” within the applicable statute of limitations, the complaint must be properly served upon all defendants within 60 days after filing the complaint with the court.

A frequent problem arises when a number of defendants are named in a suit, and service cannot be accomplished upon all the defendants within the 60 day time period allowed by ORS 12.020(2). Also, many persons who read ORCP 3 incorrectly interpret the rule to mean that the filing of a complaint in itself tolls the statute of limitations. The rule as written leads to unnecessary malpractice claims when the provisions are incorrectly interpreted and requires unnecessary and costly court interventions when a defendant is difficult to serve.

Part II – Changes to the Uniform Trial Court Rules.

A corresponding problem is the time period currently allowed to complete and file proof of service with the court, to avoid dismissal for want of prosecution. As with the 60 day deadline in ORS 12.020, the UTCR 7.020 timeline is unrealistically short. This leads to increased expenses and costly court interventions when a defendant is difficult to serve, and the 60 day deadline is not met.

Each of the deadlines set out in UTCR 7.020 should be extended for an additional 30 days in view of the difficulties of locating and serving defendants and the proposed change to ORS 12.020.

Under UTCR 7.020(2), a plaintiff has 63 days after filing a complaint to serve the defendant(s) and file proof of service the court. After that date has passed, the court sends notice to plaintiff advising that the case will be dismissed in 28 days for want of prosecution, unless the plaintiff files documents proving service has been completed.

UTCR 7.020(3) applies if a plaintiff has filed proof of service within 63 days. Section (3) applies in situations in which the defendant has not filed a response to the complaint. If the plaintiff does not file a motion for an order of default with the court within 91 days after service, the case will be dismissed for want of prosecution.

UTCR 7.020(4) sets forth the date upon which a case is deemed at issue.

UTCR 7.020(5) sets forth the date by which trial must be set and completed.

3. SOLUTIONS:

Part I – Statutory Change.

Amend ORS 12.020 to adopt the approach taken by Rule 3 of the Federal Rules of Civil Procedure, which states: “A civil action is commenced by filing a complaint with the court.”

Part II – Uniform Trial Court Rule Changes.

UTCR 7.020 should be revised to reflect that if the statute is amended, the time periods for dismissal for want of prosecution should be extended to take into account the possibility that service of the summons and complaint may be accomplished later than ORS 12.020 in its present form.

Suggested changes to UTCR 7.020

- (1) UTCR 7.020(2). Extend the time limitation for filing documents completing service with the court from 63 days to 93 days. This requires corresponding extensions by 30 days to the other dates set forth in Subsections (3), (4) and (5), see below.
- (2) UTCR 7.020(3). Extend the second date for filing documents completing service from 91 to 121 days.
- (3) UTCR 7.020(4) should be amended to extend the date upon which the case is deemed at issue from 91 to 121 days.
- (4) UTCR 7.020(5) should be amended to extend the date by which a trial date must be set. This date should be 1 year from the date that of service of the complaint, and not the date of filing, so as not to prejudice the parties when service is not accomplished until a significant time after filing.

4. **PUBLIC POLICY IMPLICATION** of this proposed legislative change:

Promotes a policy of allowing a litigant an appropriate amount of time for service upon a defendant evading service and protects that litigant's right to adjudication of a dispute.

5. Could the problem be addressed through a **NON-LEGISLATIVE SOLUTION**, such as administrative rule or education? No.

6. **COULD ANOTHER SECTION OR GROUP MORE APPROPRIATELY INTRODUCE THE BILL?** If so, have you suggested it to the section or group?

The bar is in the process of coordinating a change with the UTCR Committee that will connect with the proposed change to ORS 12.020.

7. **IDENTIFY THE GROUP OR CONSTITUENCIES THAT WOULD BE MOST IMPACTED** or interested in this change. Who would support it and who would oppose it?

The proposed change is non controversial to the bar's knowledge. The Procedure and Practice Committee is comprised of attorneys for both plaintiffs and defendants as well as a trial court judge. This group unanimously approved the proposal.

8. **Has this been introduced in a prior session?** No.

OREGON STATE BAR
Legislative Proposal
Part II – Legislative Language

ORS 12.020 WHEN ACTION DEEMED BEGUN.

A civil action is commenced by filing a complaint with the court.

~~(1) Except as provided in subsection (2) of this section, for the purpose of determining whether an action has been commenced within the time limited, an action shall be deemed commenced as to each defendant, when the complaint is filed, and the summons served on the defendant, or on a codefendant who is a joint contractor, or otherwise united in interest with the defendant.~~

~~(2) If the first publication of summons or other service of summons in an action occurs before the expiration of 60 days after the date on which the complaint in the action was filed, the action against each person of whom the court by such service has acquired jurisdiction shall be deemed to have been commenced upon the date on which the complaint in the action was filed.~~
{Amended by 1973 c.731 §1}

UTCRC 7.020 SETTING TRIAL DATE IN CIVIL CASES

(1) After service is made, the serving party must forthwith file the return or acceptance of service with the trial court administrator.

(2) If no return or acceptance of service has been filed by the ~~63rd~~ 93rd day after the filing of the complaint, written notice shall be given to the plaintiff that the case will be dismissed for want of prosecution 28 days from the date of mailing of the notice unless proof of service is filed within the time period, good cause to continue the case is shown to the court on motion supported by affidavit or the defendant has appeared.

(3) If proof of service has been filed and any defendant has not appeared by the ~~91st~~ 121st day from the filing of the complaint, the case shall be deemed not at issue and written notice shall be given to the plaintiff that the case will be dismissed against each nonappearing defendant for want of prosecution 28 days from the date of mailing of the notice unless one of the following occurs:

(a) An order of default has been filed and entry of judgment has been applied for.

(b) Good cause to continue the case is shown to the court on motion supported by affidavit.

(c) The defendant has appeared.

(4) If all defendants have made an appearance, the case will be deemed at issue 91 days after the ~~filing of the complaint~~ service or when the pleadings are complete, whichever is earlier.

(5) The trial date must be no later than one year from date of ~~filing~~ of service for civil cases or six months from the date of the filing of a third-party complaint under ORCP 22 C, whichever is later, unless good cause is shown to the presiding judge or designee.

(6) Parties have 14 days after the case is at issue or deemed at issue to:

(a) Agree among themselves and with the presiding judge or designee on a trial date within the time limit set forth above.

(b) Have a conference with the presiding judge or designee and set a trial date.

(7) If the parties do neither (a) nor (b) of (6) above, the calendar clerk will set the case for trial on a date that is convenient to the court.

Matrix of Council Members Contacting Legislators
Revised 9/11/08

District	Legislator	COCP Member	Remarks
HD 1	Wayne Krieger (R)	Don Corson	House Judiciary
HD 3	Ron Maurer (R)	Kristen David	
HD 4	Dennis Richardson (R)	Mark Weaver	Attorney
HD 5	Peter Buckley (D)	Mark Weaver (H)	
HD 6	Sal Esquivel (R)	Mark Weaver	
HD 7	Bruce Hanna (R)	Don Corson	R Leader; W&M
HD 8	Paul Holvey (D)	Don Corson (H/W)	
HD 9	Arnie Roblan (D)	Eugene Buckle	
HD 10	Jean Cowan (D)	Dr. John Enbom	
HD 11	Phil Barnhart (D)	Hon. Lauren Holland (H)	Non-practicing OSB member
HD 12	Terry Beyer (D)	John Svoboda (H)	
HD 13	Nancy Nathanson (D)	John Svoboda (W)	W&M
HD 14	Chris Edwards (D)	Don Corson	
HD 15	Andy Olson (R)	Hon. Mary Mertens James	
HD 16	Sara Gelsler (D)	Dr. John Enbom (H/W)	
HD 17	Sherrie Sprenger (R)	Eugene Buckle	Appointed to fill Rep. Girod's seat in January (rep.sherriesprenger@state.or.us)
HD 18	Vic Gilliam (R)	Dr. John Enbom	
HD 19	Kevin Cameron (R)	Hon. Mary Mertens James (W)	W&M Pub Safety Sub, H Judiciary
HD 20	Vicki Berger (R)	Don Corson	
HD 21	Brian Clem (D)	Hon. Mary Mertens James (H)	
HD 22	Betty Komp (D)	Hon. Mary Mertens James	H. Judiciary
HD 23	Brian Boquist (R)	Hon. Locke Williams (H)	Running for Senate
HD 24	Donna Nelson (R)	Kristen David	
HD 25	Kim Thatcher (R)	Hon. Mary Mertens James	
HD 26	Jerry Krummel (R)	N/A	Not running
HD 27	Tobias Read (D)	Dr. John Enbom	
HD 28	Jeff Barker (D)	Don Corson	W&M Pub Safety Sub; H Judiciary
HD 29	Chuck Riley (D)	Eugene Buckle	
HD 30	David Edwards (D)	Don Corson	W&M
HD 31	Brad Witt (D)	Eugene Buckle	
HD 32	Deborah Boone (D)	Kristen David	
HD 33	Mitch Greenlick (D)	Leslie O'Leary (W)	
HD 34	Chris Harker (D)	Hon. Jerry Hodson (H)	Replaced Bonamici when she was appointed to senate (rep.chrisharker@state.or.us)
HD 35	Larry Galizio (D)	Alexander Libmann (H/W)	W&M
HD 36	Mary Nolan (D)	Leslie O'Leary	W&M Co-Chair
HD 37	Scott Bruun (R)	Hon. Eve Miller (H)	
HD 38	Greg Macpherson (D)	Hon. Eve Miller	Running for AG
HD 39	Wayne Scott (R)	Hon. Robert Herndon	Not running
HD 40	Dave Hunt (D)	Kristen David (H)	Majority Leader
HD 41	Carolyn Tomei (D)	Brian Campf (H/W)	
HD 42	Jules Kopel-Bailey (D)	Dr. John Enbom	Replacing Diane Rosenbaum (unopposed) (campaign@julesfororegon.com)
HD 43	Chip Shields (D)	Don Corson	H Jud; W&M; Pub Safety Sub Chair
HD 44	Tina Koteck (D)	Shelley Russell (H)	
HD 45	Michael Dembrow	Eugene Buckle	Replacing Jackie Dingfelder (unopposed) (michael@michaeldembrow.com)
HD 46	Ben Cannon (D)	David Rees (H)	
HD 47	Jefferson Smith (D)	Don Corson	Replacing Jeff Merkley (unopposed) (jefferson@jeffersonsmith.com)
HD 48	Mike Schaufler (D)	Eugene Buckle	
HD 49	Karen Minnis (R)	n/a	Not running
HD 50	John Lim (R)	Eugene Buckle	
HD 51	Linda Flores (R)	Kristen David	H Judiciary
HD 52	Patti Smith (R)	Dr. John Enbom	W&M
HD 53	Gene Whisnant (R)	Martin Hansen	H Judiciary
HD 54	Chuck Burley (R)	Martin Hansen (H/W)	
HD 55	George Gilman (R)	Leslie O'Leary	
HD 56	Bill Garrard (R)	Hon. Rodger Isaacson (H/W)	
HD 57	Greg Smith (R)	Leslie O'Leary	
HD 58	Bob Jenson (R)	Leslie O'Leary	W&M
HD 59	John Huffman (R)	Leslie O'Leary	
HD 60	Cliff Bentz (R)	Leslie O'Leary	Appointed to fill Rep. Butler's seat in January (unopposed) (rep.cliffbentz.state.or.us)

New contact

Departing contact to whom updates may continue to be warranted

**Matrix of Council Members Contacting Legislators
Revised 9/11/08**

District	Legislator	COCP Member	Remarks
SD 1*	Jeff Kruse (R)	Eugene Buckle	
SD 2*	Jason Atkinson (R)	Kristen David	
SD 3	Alan Bates (D)	Mark Weaver (H/W)	W&M
SD 4	Floyd Prozanski (D)	Hon. Lauren Holland	S Judiciary Chair
SD 5*	Joanne Verger (D)	Don Corson	W&M
SD 6	Bill Morrisette (D)	John Svoboda (H)	
SD 7	Vicki Walker (D)	John Svoboda (W)	S Judiciary; running for Sec/State
SD 8	Frank Morse (R)	Hon. Locke Williams (W)	W&M
SD 9*	Fred Girod (R)	Eugene Buckle	Appointed to fill Sen. Beyer's seat in January (sen.fredgirod@state.or.us)
SD 10	Jackie Winters (R)	Hon. Mary Mertens James (H)	W&M; Pub Sa fety Sub
SD 11	Peter Courtney (D)	Hon. Mary Mertens James (W)	Senate President
SD 12*	Gary George (R)	Hon. Locke Williams (H)	
SD 13	Larry George (R)	Dr. John Enbom	
SD 14*	Mark Hass (D)	David Rees	
SD 15	Bruce Starr (R)	Leslie O'Leary	
SD 16	Betsy Johnson (D)	Martin Hansen	Legally trained; W&M
SD 17	Suzanne Bonamici (D)	Hon. Jerry Hodson (H)	Replaced Sen. Avakian (sen.suzannebonamici@state.or.us)
SD 18*	Ginny Burdick (D)	David Rees (W)	S Judi ciary; W &M P ub Sa fety Sub
SD 19	Richard Devlin (D)	Hon. Eve Miller (H)	Sen Majority Leader; W&M
SD 20	Kurt Schrader (D)	Kristen David (H)	Co-Chair W&M
SD 21*	Kate Brown (D)	Brian Campf (H/W)	Running for Sec/State
SD 22*	Margaret Carter (D)	Shelley Russell (H)	W&M
SD 23*	Avel Gordly (D)	David Rees (H)	W&M; not running
SD 24	Rod Monroe (D)	Leslie O'Leary	W&M
SD 25*	Laurie Monnes Anderson (D)	Mark Peterson	
SD 26	Rick Metsger (D)	Kristen David	Running for Sec/State
SD 27*	Ben Westlund (D)	Martin Hansen (H/W)	Running for Treasurer
SD 28*	Doug Whitsett (R)	Hon. Rodger Isaacson (H/W)	S Judiciary
SD 29*	Dave Nelson (R)	Dr. John Enbom	Legally trained; W&M
SD 30*	Ted Ferrioli (R)	Brooks Cooper	Minority Leader

* Indicates election in 2008

New contact

Departing contact to whom updates may continue to be warranted