

**MINUTES OF MEETING  
COUNCIL ON COURT PROCEDURES**

Saturday, October 10, 2009, 9:30 a.m.  
Oregon State Bar Center  
16037 SW Upper Boones Ferry Rd  
Tigard, OR 97224

**ATTENDANCE**

**Members Present:**

John R. Bachofner  
Michael Brian\*  
Eugene H. Buckle  
Brian S. Campf  
Don Corson  
Kristen David  
Martin E. Hansen  
Hon. Robert D. Herndon  
Hon. Lauren S. Holland\*  
Hon. Rives Kistler  
Maureen Leonard  
Kathryn M. Pratt  
Mark R. Weaver\*  
Hon. Locke A. Williams  
Hon. Charles M. Zennache\*

**Members Absent:**

Arwen Bird  
Brooks F. Cooper  
Hon. Jerry B. Hodson  
Hon. Mary Mertens James  
Hon. Eve L. Miller  
Leslie W. O'Leary  
Hon. David F. Rees

**Guests:**

David Nebel, Oregon State Bar

**Council Staff:**

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

\*Appeared by teleconference

| ORCP/Topics Discussed this Meeting  | ORCP/Topics Discussed & Not Acted Upon this Biennium   | ORCP Amendments Promulgated this Biennium | ORCP/Topics to be Reexamined Next Biennium |
|---|--|---|--|
| <ul style="list-style-type: none"><li>• ORCP 1E</li><li>• ORCP 7D(3)(a)(iv)</li><li>• ORCP 7D(4)</li><li>• ORCP 13B</li><li>• ORCP 14</li><li>• ORCP 18A</li><li>• ORCP 21</li><li>• ORCP 38</li><li>• ORCP 43A</li><li>• ORCP 47</li><li>• ORCP 55</li><li>• ORCP 68</li><li>• ORCP 68C(4)(a)</li><li>• ORCP 69</li><li>• ORCP 69A</li><li>• ORCP 69A(2)</li><li>• Federalizing ORCP</li><li>• Moving venue from ORS to ORCP</li><li>• Include contract in complaint</li></ul> | <ul style="list-style-type: none"><li>• ORCP 1E</li><li>• ORCP 7D(3)(a)(iv)</li><li>• ORCP 18A</li><li>• ORCP 47</li><li>• ORCP 55</li><li>• ORCP 68</li><li>• ORCP 68C(4)(a)</li><li>• Federalizing ORCP</li><li>• Moving venue to ORCP</li></ul> |   |  |

I. Call to Order (Mr. Buckle)

Mr. Buckle called the meeting to order at 9:35 a.m.

II. Introduction of New Members (Mr. Buckle)

The Council welcomed new member Michael Brian, who appeared by telephone from Medford.

III. Approval of September 12, 2009, minutes (Mr. Buckle)

Mr. Buckle called for a motion to approve the September 12, 2009, minutes (Appendix A) which had been previously circulated to the members. The motion was made and seconded and the minutes were approved with no amendments or corrections.

IV. Annual election of officers per ORS 1.730(2)(b) (Mr. Buckle)

A. Treasurer

As the public member, Arwen Bird, was unable to attend this meeting, the election of the treasurer was postponed until the November 21, 2009, meeting.

V. Administrative Matters (Mr. Buckle)

A. Website Report (Ms. Nilsson)

Ms. Nilsson briefly reviewed the Website Report (Appendix B) and noted that the Council's website continues to be visited regularly. She observed that since 67% of the visitors during the period were new visitors, it is evident that word is spreading about the website.

VI. Old Business (Mr. Buckle)

A. Committee Updates/Reports

1. Discovery Committee (Mr. Cooper)

Mr. Cooper was not present at the meeting and was, therefore, unable to report on the committee's progress. Mr. Bachofner stated that some of the committee members had a telephone meeting, but that no plaintiff's attorney was present during that meeting. He stated that the committee plans to e-mail the Oregon Trial Lawyers Association and Oregon Association of Defense Counsel and ask members to comment on the suggestions before the Council. The committee will then meet again and report back to the Council.

2. Uniform Interstate Depositions and Discovery Act Committee (Mr. Corson)

Mr. Corson reported that the Oregon Law Commission workgroup already had a proposed draft prepared and that Ms. Nilsson had put this draft into the Council's legislative format for the committee's review. The committee will meet and report back at the next Council meeting. Mr. Buckle asked whether there was any reason not to adopt the third Uniform Interstate Depositions and Discovery Act since Oregon had adopted the first, but not the second. Mr. Corson stated that the Act will make everything more uniform and streamlined and that there is no reason not to incorporate it into the ORCP's current Rule 38.

3. Rule 54 Issues Committee (Judge Rees)

Judge Rees was not present at the meeting and was unable to report. Mr. Bachofner stated that the committee has not yet met due to scheduling difficulties, but is attempting to schedule a meeting date in the next few weeks.

4. Electronic Discovery & Filing Committee (Ms. David)

Ms. David stated that the committee had a telephone conference and discussed ESI (Electronically Stored Information) and discussed how ESI is different from the documents and tangible items specifically referred to in ORCP 43A. She stated that Ms. Pratt did a good job of bringing the committee up to speed on what has occurred in other jurisdictions and in the federal courts. The committee will meet again in the upcoming months and report to the Council at a later time.

5. Service and Filing Committee (Mr. Cooper)

Mr. Cooper and other members of said committee were not present and were unable to report, so no report was given.

6. Counterclaims in Domestic Relations Motions Committee (Judge Miller)

Judge Miller was not present at the meeting and was unable to report. Judge Zennaché reported that the committee has not yet been able to meet.

7. Default Judgment Committee (Ms. David)

Ms. David reported that the committee had a teleconference where she and Prof. Peterson updated the committee on what had been done last biennium and where the rule may need to be reorganized. The committee also spoke about extrinsic vs. intrinsic fraud. Committee members were given research assignments and plan to meet again and report within a few

months.

B. Legislative Contacts (Ms. David and Ms. Nilsson)

Ms. David stated that she and Ms. Nilsson wanted to prepare the legislative contact list before having Council members send e-mails to legislators, so that the e-mails could all be sent around the same time. Some Council members and staff volunteered to contact legislators with whom they are acquainted. The Council agreed that Ms. Nilsson will randomly assign Council members to the remaining legislators, attempting to keep the number of contacts per Council member as equal as possible. Ms. David will prepare a draft letter that members can modify and send to their legislators. Ms. David explained that last biennium the process was to send e-mails to legislators after each Council meeting, telling them what the Council is working on, inviting them to Council meetings, and welcoming them to ask any questions they may have.

VII. New Business (Mr. Buckle)

A. Suggested Amendments to ORCP (carried over from the September 12, 2009, meeting)

1. Time

- Fast-tracking cases for the elderly/very sick
- Review time periods specified in ORCP and make most or all time periods evenly divisible by 7, i.e. multiples of one week
- ORCP 14: require at least 24 hour notice before ex parte motion presented

Prof. Peterson stated that the idea of standardizing the time periods in the ORCP came from Council members at a meeting last biennium. Ms. Pratt stated that, if the Council were to make changes to the time periods, the UTCR would also need to be amended to reflect this. She wondered about coordination with the UTCR, since the UTCR are amended in August of every year and the Council's amendments are made every other year. Mr. Buckle stated that the Council would coordinate with the UTCR committee.

Ms. Pratt noted that it took several years on the federal level to amend the time periods, and that it is a major renovation of the rules that could take a good deal of time. She stated that, when electronic filing was made mandatory in the federal rules, many of the old counting rules no longer made sense; this was the motivation behind the time changes. Mr. Bachofner stated that it would entail a lot of work and would cause problems for the ordinary practitioner if the time periods were changed just for the sake of changing them. Ms. Pratt stated that on December 1 she will have a chart available with the federal time changes. She stated that her thought is that it would make more sense to implement these

changes as Oregon moves nearer to e-filing.

Mr. Buckle asked Ms. Pratt if she would contact the UTCR committee to inquire about coordinating with them if the Council were to decide to make time period changes. Judge Herndon suggested talking to the E-Filing Task Force as well to see what their plans are in this regard.

Judge Williams asked whether litigants have had problems with a county not agreeing to set a proceeding quickly in the case of an elderly or very sick litigant who may not otherwise see their day in court. Mr. Corson stated that he has heard from other practitioners who have had this problem. Mr. Bachofner stated that a related issue is injured plaintiffs who are not yet medically stationary at the time of trial. He stated that some counties are good about abating cases in these instances, but that others will not hold the case in abatement, even if both parties stipulate.

On the third issue, Prof. Peterson stated that providing for a 24 hour notice prior to presenting an *ex parte* motion may not require an ORCP change, since UTCR 5.100 requires notice to be given before presenting an order. Ms. Pratt stated that there are also supplementary local rules regarding notice in most counties.

Mr. Buckle suggested keeping time issues on the agenda, having Ms. Pratt report on her contacts with the UTCR Committee and E-Filing Task Force, and deciding at a later meeting whether to form a committee.

## 2. Declaration Instead of Notarizing

- ORCP 1E: allows declarations in place of notarized signatures

Prof. Peterson stated that this issue had previously come up three biennia ago from an attorney who wanted to be able to utilize declarations on marriage documents. He pointed out that Rule 1E provides that a declaration may be used in lieu of an affidavit for anything in the ORCP. He asked whether the Council has the authority to replace affidavits in other parts of the law and whether that would be procedural or substantive. Ms. David stated that she does not believe the Council can make this change for laws outside of the ORCP. The Council concurred and agreed not to form a committee.

3. Subpoenas

- ORCP 55: procedures relating to subpoenas are confusing

Mr. Buckle stated that the subpoena procedure, which can be confusing, could be streamlined. He stated, however, that there does not seem to be a specific problem at this time and suggested tabling the issue until next biennium. The Council agreed.

4. Service

- ORCP 7D(4): question of why serving insurance carriers was moved to ORCP 69A(2)
- ORCP 7D(3)(a)(iv): correct the ORS reference [see HB 2284 - passed]
- Service via post office box

Prof. Peterson noted that the legislature has already fixed the incorrect statutory reference in ORCP 7D(3)(a)(iv), as suggested by a survey respondent.

Prof. Peterson stated that he and Ms. Nilsson had found some Council history on the issue of why only a reference to ORCP 69 is included in ORCP 7, while provisions for serving a party's insurance carrier were moved to ORCP 69A(2). He stated that the language on serving an insurance company was previously located in ORCP 7, but that it apparently was believed that the language being in ORCP 7 made it sound like it was related to personal jurisdiction, so in 1988 it was moved to ORCP 69A(2) to make clear that service on an insurance carrier is not required to obtain personal jurisdiction over a defendant in a motor vehicle accident case and that such service only becomes applicable if one is asking for a default. Mr. Bachofner stated that a reference to ORCP 69 could be included in ORCP 7 to help alleviate any confusion. Mr. Buckle suggested adding this item to the ORCP 69 committee's task list.

Prof. Peterson suggested adding the issue of serving post office boxes to the service and filing committee's task list.

5. Summary Judgment

- ORCP 47: liberalize granting of summary judgments

Mr. Buckle stated that it is likely not feasible to amend the ORCP to require judges to grant more summary judgments. The Council agreed not to consider this issue.

## 6. Attorney Fees

- ORCP 68: attorney fees in certain actions such as probate and supplemental requests

Prof. Peterson stated that Mr. Cooper had brought this issue to the attention of the Council last biennium. He stated that in specialized actions, such as probate cases, ORCP 68 does not seem to work very well. He recalled hearing about probate legislation being passed in the most recent legislative session that may take care of the issue. Judge Holland stated that it appears that ORCP 68 now does apply to such cases. She stated that the statutes are silent about attorney fees in some areas such as small estates, but that the new legislation will hopefully resolve some of those issues.

Prof. Peterson stated that another issue may occur when an attorney files a statement for attorney fees and cost bill after the entry of a judgment, and then spends more time collecting the judgment than he or she did obtaining it. He stated that the UTRC have a provision (Form 5.080, paragraph 5) to ask a judge for the amount of money one reasonably anticipates that one will spend attempting to collect the judgment. He stated that he knows of no presiding judge in Multnomah County who has granted this request, and that Judge Miller told him that they usually do not grant it in Clackamas County either. Prof. Peterson pointed out that, per ORCP 68C(4)(a), once a judgment is entered, a statement needs to be filed within 14 days. He wondered what happens if, much later in the course of collecting the judgment, more fees and costs are incurred. Judge Herndon stated that a supplemental judgment can be sought. Prof. Peterson replied that the rule does not say that. Ms. Pratt stated that it does not, but perhaps it should. Judge Zennaché noted that he has granted a request for anticipated costs for collection of fees when someone made a very good case for it.

Judge Herndon stated that he has never seen a judge deny a request for a supplemental judgment because he or she had no authority to do so. Mr. Buckle suggested leaving the rule the way it is. The Council agreed.

Mr. Bachofner raised another attorney fee issue that he had experienced recently. He stated that his understanding is that there needs to be a contractual or statutory provision that substantively allows an award of fees. He stated that there is an old case, *Vancouver Furniture [v Industrial Indemnity, 74 Or App 642 (1985)]*, which may have occurred prior to the inception of the ORCP, that states that, under ORS 743.114, there is a procedural right to attorney fees, not a substantive right. He noted that this is creating a problem with out-of-state claims based on contract or an out-of-state insurance policy. He stated that cases are being filed in Oregon precisely so that attorney fees can be sought as a procedural

matter. Justice Kistler asked whether it is a choice of law issue. Mr. Bachofner stated that the case he recently experienced was a Washington accident where the plaintiff filed his case in Oregon because ORS 743.114 might provide a right to attorney fees.

Ms. Pratt asked whether the Council would be making a change just to get around an existing case that is presenting some problems. Mr. Bachofner stated that he envisioned some kind of clarification as to whether entitlement to attorney fees is a substantive right provided for by either statute or by contract. Judge Zennaché stated that he has never interpreted ORCP 68 as creating an independent right for attorney fees. Justice Kistler stated that a more recent case, *Mattiza [v Foster*, 311 Or 1 (1990)], made it a more substantive entitlement, but that it is more of an issue for litigation. Mr. Buckle stated that if Mr. Bachofner sees the issue arise again he should bring it back to the Council for further review.

## 7. Federalizing the ORCP

- Pre-trial disclosures
- Making the ORCP more like the FRCP
- Adding expert discovery (*see HB 3397, sections 21 & 22 and SB 680 sections, 21 & 22; see also ORCP 47E*)
- Adding interrogatories

Mr. Buckle suggested forming a committee to take a serious look and to consider the pros and cons of the issue. Justice Kistler stated that the legislature has considered and reconsidered this issue several times since the inception of the ORCP.

Mr. Corson stated that he thinks that looking at specific issues (rather than looking at rewriting all the rules to “federalize” them) could be useful. He personally feels that interrogatories are a waste of time and that expert discovery is extraordinarily expensive and washes a lot of legitimate cases and attorneys out of the system. Mr. Bachofner stated that in certain types of cases it would make sense to have expert discovery, such as large commercial cases, and suggested some type of procedure where it could be allowed by discretion of a judge. Prof. Peterson stated that the survey specifically mentioned construction cases as being cases where expert discovery would be helpful. Mr. Hansen stated his experience in commercial cases is that, if attorneys are serious about the case, they will voluntarily exchange expert reports. Mr. Corson stated that the historical argument for expert discovery has been that it will encourage settlement, but that 90% of cases in Oregon settle anyway. Ms. Pratt stated that a change of this type is inconsistent with the legislative mandate that the majority of cases be resolved within one year.

After a thorough discussion, the Council decided not to form a committee

on this issue.

8. Form/Fact Pleadings

- ORCP 18A: allow Optional Form Pleadings for Personal Injury (and Other) Complaints
- ORCP 18A: enforce fact pleading

Prof. Peterson stated that attorney Danny Lang had again brought the issue of allowing form pleadings to the Council, and that a Council survey respondent had suggested enforcing fact pleading, so there are obviously two very different schools of thought on this subject. Mr. Corson mentioned that the Council had formed a committee and discussed this issue last biennium and Judge Holland, who was on that committee, confirmed that the committee looked carefully at forms that Mr. Lang had proposed. The committee decided that it would be such an overhaul of the ORCP system that it was not worth pursuing. No committee was formed.

9. Venue

- Moving venue from ORS Chapter 14 to ORCP 11

Prof. Peterson stated that it was odd that venue was not included in the ORCP but was left in the statutes when the ORCP were created. He stated that there is not a problem that needs to be fixed but that it might be good to put everything in one place. Mr. Buckle asked whether there was any indication of the legislature's intent in leaving venue in the statutes. Mr. Bachofner stated that while seeking a change of venue is a procedural issue, the propriety of a change of venue is a substantive issue which is outside of the Council's purview. Mr. Hansen stated that putting the substance and procedure in two different places may not be a good idea. No committee was formed.

10. Appearance Filed but no Answer

- ORCP 13B: how to handle a situation where there has been an "appearance" but no answer

Prof. Peterson stated that this issue arose from the Council survey. He observed that, in general, if someone files an entry of appearance and will not file an answer, a party can move for default judgment; however, a family law statute, ORS 107.055, allows response to a petition for dissolution of marriage by filing an appearance which does not admit or deny any of the allegations in the petition.

Ms. David stated that she has been frustrated in dealing with several PLF cases in the last few years where an attorney filed a Rule 21 motion and

paid a first appearance fee, but the court did not record the Rule 21 motion as an answer or a true appearance and sent default and dismissal documents. She stated that, in one case, the plaintiff and defendant showed up to argue the Rule 21 motion only to find that the clerk had dismissed the case. She stated that part of the problem may be an OJIN entry issue and that it is a county-by-county issue and not necessarily something that the Council can deal with. Ms. Pratt stated that the Council may want to look at the default rule to the extent that it is unclear in the ORCP that a Rule 21 motion qualifies as an appearance for the purposes of default. Ms. David suggested adding this issue to the ORCP 69 committee's task list.

Mr. Corson stated that part of the genesis of the suggestion is when the plaintiff's side files a complaint and cannot get the defendant to file an answer. He noted that ORCP 69 states "plead or otherwise defend," so the fact that the defendant has filed an appearance may qualify for the "otherwise defend" language and not allow a default. Mr. Hansen stated that a notice of appearance only gives one the right to 10 day notice under ORCP 69A, and that a Rule 21 motion is treated as an appearance because it is a defense while a summary judgment motion is not. Ms. David stated ORCP 21F and G require filing ORCP 21 issues before filing an answer, so procedurally attorneys are attempting to get the Rule 21 issues dealt with before filing the answer. Ms. Pratt stated that, in two of her PLF cases, the court has ruled that a Rule 21 motion is not technically an answer and has allowed the default.

The ORCP 69 committee will discuss this issue and report back at a later meeting.

B. Suggested Amendments to ORCP (received since September 12, 2009, meeting)

1. Require incorporating the underlying agreement in the complaint in actions filed on consumer debt (Prof. Peterson)

Prof. Peterson stated that Senator Suzanne Bonamici had made a suggestion to the Council to require that debt collection companies who purchase debts attach to the complaint a copy of the original contract on which the claim is based. Judge Zennaché asked how much this occurs outside of small claims cases, since the ORCP do not apply to small claims. Judge Herndon stated that he has seen many cases in which the plaintiff asks for attorney fees and when the judge asks for the contract on which he or she is relying for attorney fees, the plaintiff cannot produce it. Mr. Bachofner stated that the issue should be looked at more broadly to include any time a case is based on a contract. He noted that case law states that the substantive basis for the contract claim needs to be either pleaded or a copy must be attached to the pleading. He observed that, in many insurance cases and consumer cases, the insurance policy or contract

being relied upon is not attached by the plaintiff. Justice Kistler raised the issue of transferred mortgages which have been bought so many times that cases are being dismissed because the company seeking default on the mortgage has no idea where the underlying mortgage contract is. He stated that adopting such a rule could have broader ramifications beyond small claims. The Council agreed to form a committee consisting of the following:

Committee

Mr. Brian  
Mr. Hansen  
Judge Herndon  
Judge Williams

VIII. Continue Scheduling of Future Meeting Dates/Locations (Mr. Buckle)

Meeting dates were set for the remainder of the biennium. The meeting schedule will be as follows:

- November 21, 2009, 9:30 AM, Oregon State Bar
- December 12, 2009, 9:30 AM, Oregon State Bar
- January 9, 2010, 9:30 AM, Corvallis (location to be determined)
- February 6, 2010, 9:30 AM, Oregon State Bar
- March 13, 2010, 9:30 AM, Oregon State Bar
- April 10, 2010, 9:30 AM, Francis Hansen & Martin LLP, Bend
- May 8, 2010, 9:30 AM, Oregon State Bar
- September 11, 2010, 9:30 AM, Oregon State Bar
- December 11, 2010, 9:30 AM, Oregon State Bar

IX. Adjournment

Mr. Buckle adjourned the meeting at 11:15 a.m.

Respectfully submitted,

Mark A. Peterson  
Executive Director

**DRAFT MINUTES OF MEETING  
COUNCIL ON COURT PROCEDURES**

Saturday, September 12, 2009, 9:30 a.m.  
Oregon State Bar Center  
16037 SW Upper Boones Ferry Rd  
Tigard, OR 97224

**ATTENDANCE**

**Members Present:**

John R. Bachofner  
Eugene H. Buckle  
Brian S. Campf  
Brooks F. Cooper  
Don Corson  
Kristen David  
Hon. Jerry B. Hodson  
Hon. Lauren S. Holland\*  
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Leslie W. O'Leary  
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Hon. David F. Rees  
Mark R. Weaver\*  
Hon. Charles M. Zennaché

**Members Absent:**

Michael Brian  
Martin E. Hansen  
Hon. Robert D. Herndon  
Hon. Locke A. Williams

**Guests:**

David Nebel, Oregon State Bar  
John Borden, Legislative Fiscal Office

**Council Staff:**

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

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| ORCP Discussed this Meeting  | ORCP Discussed & Not Acted Upon this Biennium  | ORCP Amendments Promulgated this Biennium | ORCP to be Reexamined Next Biennium |
|--|--|---|-------------------------------------|
| ORCP 7<br>ORCP 7E<br>ORCP 9C&D<br>ORCP 9F<br>ORCP 36B/43A<br>ORCP 36B(2)<br>ORCP 38B&C<br>ORCP 39<br>ORCP 43 | ORCP 43B(2)(a)<br>ORCP 46<br>ORCP 46A(2)<br>ORCP 54A<br>ORCP 54A(1)<br>ORCP 54E<br>ORCP 54E(2)<br>ORCP 69B(1)<br>ORCP 71<br>ORCP 71B(1)(c) |   |                                     |

I. Call to Order (Mr. Corson)

Mr. Corson called the meeting to order at 9:33 a.m.

II. Introductions (all)

A. Guests

Mr. Corson welcomed John Borden of the Legislative Fiscal Office and David Nebel of the Oregon State Bar.

B. Welcome of new members

All members and staff introduced themselves. Mr. Corson welcomed new Council members John Bachofner, Maureen Leonard, Kathryn Pratt, and Judge Charles Zennaché. Judge David Rees, formerly an attorney member of the Council, has been appointed to a new term as a judge member of the Council. New member Michael Brian will be introduced at the next meeting.

C. Hand out current roster and note corrections

A draft member roster was distributed and Prof. Peterson requested that errors or updates be noted and returned to Ms. Nilsson for correction.

III. Approval of December 13, 2008, Minutes (Mr. Corson)

Mr. Corson called for a motion to approve the December 13, 2008, minutes (Appendix A) 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. Council Rules of Procedure per ORS 1.730(2)(b) (Mr. Corson)

A. Review

Mr. Corson noted that the Council's Rules of Procedure had not been reviewed or updated in quite some time. He stated that the proposed amendments (Appendix B) which had been distributed to the members for review were not radical revisions, just an update.

B. Vote on proposed amendments

Mr. Corson called for a motion to approve the suggested changes to the Rules of Procedure. The motion was made and seconded and the motion passed unanimously to amend the Rules of Procedure as specified in Appendix B.

### C. Council Timeline

Mr. Corson stated that a timeline of the Council's biennial activities had been distributed to the members for their information. (Appendix C)

## V. Annual election of officers per ORS 1.730(2)(b) (Mr. Corson)

### A. Chair

Mr. Corson asked the members for nominations for chair. Mr. Buckle was nominated by Mr. Cooper. A motion was made to elect Mr. Buckle as chair. The motion was seconded and was passed in a voice vote with 17 members in favor and no votes in opposition or abstentions.

### B. Vice-Chair

Former Chair Corson turned the meeting over to newly-elected Chair Buckle. After commending Mr. Corson for his years of service as chair, Mr. Buckle then asked the members for nominations for vice-chair. Mr. Cooper was nominated by Ms. David. A motion was made to elect Mr. Cooper as vice-chair. The motion was seconded and was passed in a voice vote with 17 members in favor and no votes in opposition or abstentions.

### C. Treasurer

Mr. Buckle noted that, by tradition, the public member is usually elected as treasurer. He suggested that, since a public member had not yet been appointed, the election of treasurer be deferred. The membership agreed and the election will be carried over until the next meeting after which a public member has been appointed.

## VI. Reports Regarding Last Biennium (Mr. Buckle)

### A. Promulgated rules (Prof. Peterson)

Prof. Peterson reported that last biennium the Council made amendments to ORCP 1, 7, 54, 59, and 69, and that the Legislature had not amended, modified, or repealed any of those amendments. Those amendments will therefore go into effect on January 1, 2010.

### B. 75<sup>th</sup> Legislative Assembly's ORCP amendments outside of Council amendments (Prof. Peterson)

Prof. Peterson explained that the Legislature retains the authority to enact its own Oregon Rules of Civil Procedure or to amend existing rules and that it had made a few of its own amendments this biennium. Those changes included:

- HB 2284: cleaning up the statutory citations in many statutes (one change to ORCP 7D(3)(a)(iv)).
- HB 2585: eliminating ORCP 32K which had made class actions not available for unlawful trade practices act.
  - The Legislature's House Judiciary Committee had previously asked the Council whether it believed the change was substantive or procedural; the Council's Legislative Advisory Committee offered the opinion that the change was substantive. Since the Council does not have the authority to make substantive changes, the Legislature did so, effective by emergency clause June 25, 2009.
- HB 2394: sponsored by Oregon State Sheriff's Association, amending ORCP 55D(1) and (2) regarding service on witnesses under 14 years of age; and requiring service on a law enforcement agency's subpoena coordinator 10 days before the party can expect an officer or sheriff to appear and give testimony.

Prof. Peterson reported on several bills relating to the ORCP this biennium which did not pass:

- SB 266: changing ORS 12.020 regarding commencement of actions (would have therefore affected ORCP 3). There was one public hearing on the bill but the bill did not make it out of judiciary committee.
- HB 2814: requiring clerks to accept fax filings and e-mail attachment filings and would have affected ORCP 9E. The bill did not make it out of committee.
- HB 2480: abolishing contributory negligence, which would have amended ORCP 19B. The bill did not make it out of committee.
- SB 361: changing ORCP 32 relating to class actions to require that class action members only be citizens of Oregon. The bill did not make it out of committee.
- HB 3397 and SB 680: making changes to health care claims; changing the practice completely regarding discovery of expert witnesses; and requiring a pre-filing sign-off by a medical review panel. The bill did not make it out of committee.

Mr. Buckle asked if there was any sense of why the changes that were passed by the Legislature were not brought before the Council. Prof. Peterson stated that one change was a statutory revision to correct errors and that the Council will try to be better about catching those in the future. He stated that the Rule 32 bill was a substantive change and not something that the Council would have entertained as part of its statutory charter. He stated that the Sheriff's Association was only in touch with the Council toward the end of last biennium regarding a change to ORCP 7, and that hopefully they will come to the Council first for any requested changes in the future.

Mr. Buckle emphasized the collegiality of the Council and that, despite affiliations and professional biases that members may have, everyone attempts to step back and be objective about what is best for the system of justice and the smooth operation of our courts. He re-emphasized that the Council is only allowed to make procedural changes to the ORCP and not substantive changes.

## VII. Administrative Matters (Mr. Buckle)

### A. Funding (Prof. Peterson/Mr. Nebel)

Mr. Nebel stated that he works in the Public Affairs department of the Oregon State Bar and that he is the Bar's liaison to the Council. Included in his duties is trying to keep an eye on the Council's budget. Historically, the Council had its own budget which was administered through the Judicial Department. The Council's budget is now within the Office of Legislative Counsel and it is through this office that any funding flows. For this biennium, the Council asked for an appropriation of the same amount that it received last biennium, roughly \$52,000. It received an expenditure limitation authorizing the Council to spend money it receives from the state up to \$52,000, but not actually appropriating any funds. The Council's funding would be generated from increased court fees approved in HB 2287. The Legislature will meet in February, 2010, and hopefully pass a bill appropriating the \$52,000 the Council has authority to spend. The funds are also contingent on whether the two tax measures the Legislature passed are referred to the ballot and repealed. The Council's funding future is somewhat unclear at this point.

Mr. Buckle pointed out that the bulk of the Council's budget is used to pay Council staff and that the staff puts in a large number of hours to keep the Council organized and running. He stated that he is committed to finding funding for the Council. He mentioned that Council member travel is also included in the budget, but asked that regular attorney members might consider not turning in an expense report for travel and funding that themselves if they are financially able. Prof. Peterson stated that the Oregon State Bar also provides \$4,000 per year to the Council, and that those funds have been traditionally used for member travel expenses. Mr. Nebel stated that these funds are not in danger of being eliminated. Judge Miller asked whether, after the \$4,000 is exhausted, the Council asks that any remaining travel expenses to be paid by the State. Prof. Peterson stated that the Council had done this last biennium and that the request is still pending. He stated that there is about \$500 in Council funds from the Bar remaining for 2009, which will likely not be enough to pay all travel expenses through the end of the calendar year.

Mr. Bachofner asked whether members are able to donate any travel expenses received back to the Council if extra funds are needed. Mr. Cooper stated that there is currently no way for Council members to give money to the Council. He stated that it is important to show the Legislature that the travel funding is needed. Prof. Peterson stated that people should submit the forms and let the staff know if they do not absolutely need reimbursement so that the staff can put the form at the “bottom of the pile” for payment. He emphasized the importance of paying travel expenses for the public member and our judge members. Ms. Pratt asked whether the Council is able to provide educational programs to raise funds. Prof. Peterson stated that, by statute, the Council may accept donations but he does not believe it may charge for CLEs.

Ms. David stated that when she and Prof. Peterson testified before the Legislature to talk about funding, they emphasized how many volunteer hours Council members had put in and how many miles members had traveled because they feel it is such an important function. She stated that when Council members communicate with legislators throughout the year it would be good to emphasize that the Council travels to different districts throughout the state and puts in a great deal of time. Mr. Bachofner stated that a good way to frame the number of hours would be to include the billable hours equivalent.

B. Website Report (Ms. Nilsson)

Ms. Nilsson stated that the website report (Appendix D) was very brief and consisted mostly of informational attachments. She explained that the Council’s website has Google Analytics set up so that we can view and analyze how many visitors the site has, where they come from, how much time they spend on each page, etc. The website received more than 1,000 unique visitors from December through August, with more than 4,000 unique page views. Visitors looked mostly at the agendas and minutes page, the Council promulgations page, and the legislative history of individual rules. Mr. Bachofner asked whether there was a link to the Council’s page on the OSB website. Ms. Nilsson replied that there is and that it is also on the MBA’s website and various others. Ms. David stated that, if Council members know of any other pages which should include a link to the Council’s, to let Ms. Nilsson know. Mr. Buckle stated that the website has only been active a few years and that the Council’s legislative history is now online from its inception, and that the site is very active and dynamic. He stated that the word needs to get out to the Bar that it is a valuable resource. Ms. Nilsson stated that the latest addition to the website is a document showing the Council’s promulgated amendments and the legislative amendments to the ORCP and, since the *Oregon Rules of Court* book has not been published until March (and the rules become effective in January), this is a valuable resource for attorneys. Prof. Peterson stated that he has worked with West/Thomson to try to get something

published in a more timely fashion than *Oregon Rules of Court* and is willing to continue to work with them on this.

#### VIII. Old Business (Mr. Buckle)

No old business remained from last biennium.

#### IX. New Business (Mr. Buckle)

Mr. Buckle stated that suggestions for changes to the ORCP come from various sources, including Council members, the Council survey (that was sent out last biennium to five Bar sections and all circuit court judges), and the website. Prof. Peterson stated that the ideas included in the agenda were not screened prior to being placed there. He pointed out that the original agenda order was according to the source of the suggestion. Mr. Buckle stated that the New Business portion of the agenda had been re-ordered by the Executive Committee to better categorize the suggested amendments for discussion and potential formation of committees. The reorganization is reflected below. Mr. Buckle stated that he did not anticipate getting through all 39 suggestions at this meeting. He stated that a committee will not be formed for every suggestion but that all suggestions will be discussed by the Council. The goal for committee composition is at least one plaintiff's attorney, one defense attorney, and one judge.

Mr. Cooper asked if documentation on suggestions could be provided to members. Ms. Nilsson stated that if a suggestion came from the survey, it was brief and would likely not have any documentation attached, but that for suggestions that came with documentation, this documentation was included in the member meeting packets and will be included in the minutes.

##### A. Discovery

- ORCP 36B(2): disclosure of documents affecting coverage
- ORCP 36B/43A: limit number of discovery requests (like federal)
- ORCP 39: limit number of depositions and the number of hours per deposition
- ORCP 43B(2)(a): clarify how to match documents produced to the corresponding request
- ORCP 46: make discovery sanctions mandatory, not discretionary
- ORCP 46A(2): eliminate requirement to set out at the beginning of a motion to compel the items that a party seeks to discover - complaint: the current language requires the party producing documents to retype of all of the ORCP 43 RPD request

After a brief review of the above suggestions, a committee was formed as follows:

Committee

Mr. Bachofner  
Mr. Cooper\*  
Judge Miller  
Ms. O'Leary  
Mr. Weaver

\*Committee contact person (chair to be selected later by committee members)

The committee will report on any progress at the next meeting. Mr. Buckle stated that the committees will be ongoing and that a final report does not have to be submitted immediately. Prof. Peterson emphasized that the Council staff is available as a resource for committees for such items as rules from other jurisdictions, legislative history of the ORCP, etc.

B. Uniform Interstate Depositions & Discovery Act

- ORCP 38B&C: Uniform Interstate Depositions & Discovery Act  
(Appendix E)

Mr. Corson stated that he and Judge Holland participated in the Oregon Law Commission's work group on this issue, and that the work group has sent the Council its draft and suggestions with the idea that the Council will take a final look. He stated that this is the third Uniform Act, that Oregon's ORCP 38 reflects the first Uniform Act, and that Oregon never adopted the second. Ms. Pratt stated that the UTCR were amended in 2008 to include some of the updated forms under the act, and she wondered how the Council would interface with the UTCR Committee. Mr. Corson stated that the Council would keep the UTCR Committee informed of the Council's work. A committee was formed consisting of the following:

Committee

Mr. Corson\*  
Mr. Hansen  
Judge Holland

\*Committee contact person (chair to be selected later by committee members)

C. **Offers of Judgment and Other Rule 54 Issues**

- ORCP 54A: confidentiality agreement at settlement
- ORCP 54E: make offer of judgment mutual, i.e. allow plaintiff to make offer on plaintiff's claim (Appendix F)
- ORCP 54E(2): liberalize 3 day period for offers of judgment (Appendix G)
- ORCP 54A(1): explicitly allow dismissal of fewer than all claims/parties - not just "an action"

After a brief review of the above suggestions, a committee was formed as follows:

**Committee**

Mr. Bachofner  
Justice Kistler  
Ms. Leonard  
Judge Rees\*

\*Committee contact person (chair to be selected later by committee members)

D. **Electronic Discovery & Filing**

- the OSB Procedure & Practice Committee has asked the Council to amend the ORCP to address the issue of electronically stored information (Appendix H)
- ORCP 43: make Oregon's electronic discovery like federal, California, Washington
- ORCP 9: to allow electronic filing (*see* HB 2814, section 1, Appendix I)

Ms. Pratt stated that the federal courts in Oregon have not been having a great deal of electronic discovery issues so she is not certain how much need there is to make sweeping changes to the ORCP. However, there have been a few sanctions in Oregon for failure to produce electronic discovery so there is a move afoot to better define electronic discovery in the ORCP. She stated that about 24 state jurisdictions have added electronic discovery definitions or rules similar to the FRCP in their state rules.

Mr. Cooper stated that the Chief Justice has an E-Filing Task Force and is promulgating rules at the UTCR level, and that the Council should be sure to talk to the Task Force before promulgating any rules to make sure it is not duplicating their work.

Committee

Mr. Campf  
Ms. David\*  
Judge Hodson  
Ms. Pratt  
Judge Zennaché

\*Committee contact person (chair to be selected later by committee members)

**E. Service & Filing**

- ORCP 7E: allow self-represented parties to effect service of summons by mail under ORCP 7D(2)(d)(I) to the same extent that attorneys have this authority (Appendix J)
- ORCP 9F: eliminate the 3 day service period for facsimile service; faxes confirmed received after 5:00 p.m. treated as hand delivered the next business day (Appendix K)
- ORCP 9C & D: address the potential conflict between ORCP 9C & D and Council's 2008 amendment of ORCP 54E (Appendix L)
- ORCP 7: clarify rules for personal service and require a court order for service by mail

After a brief review of the above suggestions, a committee was formed as follows:

Committee

Mr. Cooper\*  
Judge James  
Judge Miller  
Prof. Peterson (liaison)

\*Committee contact person (chair to be selected later by committee members)

**F. Counterclaims in Domestic Relations Motions**

- Allow counterclaims to be authorized in responses to domestic relations motions (Appendix M)

Judge Zennaché stated that in some counties, judges are not allowing counterclaims in divorce cases allowing relief beyond what is sought by the petitioner. Judge James stated that this issue comes up in a show cause order on a modification. Judge Miller stated that domestic relations practice is unique in that one may file a generic motion and order to show cause and the affidavit gives the

particulars as to the relief requested. She said that, to the extent the subject is changing (e.g., from parenting time to support), if it was not pleaded it should not be allowed. Judge James stated that some counties are allowing it and some are not, and there is a question as to whether the ORCP allow such changes in the relief sought to be allowed without filing a completely separate document. She stated that the issue is more about the economy of a court's time because, if a judge states that a party should have filed the issue as its own, a separate hearing will have to be held. Mr. Cooper observed that the suggestion submitted states a desire to change the UTCR; he questioned whether it is actually an ORCP issue. Judge James stated that the committee can look into this and refer to the UTCR if appropriate.

A committee was formed consisting of:

Committee

Judge James  
Judge Miller\*  
Ms. Pratt  
Judge Zennaché

\*Committee contact person (chair to be selected later by committee members)

**G. Default Judgment**

- ORCP 69B(1): whether clerks enter default judgments; reorganize (Appendix N)
- ORCP 71B(1)(c): allow intrinsic as well as extrinsic fraud as basis for relief from judgment (Appendix O)
- ORCP 71: make the standard for setting aside defaults mandatory, not discretionary

Prof. Peterson stated that the Council staff surveyed the circuit court clerks throughout the state regarding whether they enter default judgments and got a better than 50% response rate. The result was that some of the clerks who responded are entering defaults (one FED court and one small claims court). He stated that ORCP 69B(1) is a cumbersome section which needs reorganization, but also that the default judgment process could be clarified. Judge Miller asked whether there would be a problem if the authority granted to clerks was removed, and wonders about the 50% that did not respond. Ms. Pratt stated that some clerks are still entering default judgments and when an attorney wants to move to set aside the default, he or she cannot be sure whether it was entered by the clerk or judge and may not know whether to go to presiding court or to handle it in a

different way. Mr. Corson suggested that the committee survey the 50% that did not respond.

Judge Zennaché stated that he had just read the original rules, which did not have that distinction. Ms. Pratt stated that a motion to set aside a default in federal court is significantly cheaper than in state court due to arguing the difference between extrinsic and intrinsic fraud.

Committee

Ms. David\*  
Ms. Leonard  
Prof. Peterson (liaison)  
Ms. Pratt  
Judge Zennaché

\*Committee contact person (chair to be selected later by committee members)

H. Time

- Fast-tracking cases for the elderly/very sick
- Review time periods specified in ORCP and make most or all time periods divisible by 7, i.e. weeks
- ORCP 14: require at least 24 hours before ex parte motion presented

Discussion of this category was deferred to the October 10, 2009, meeting.

I. Declaration in Place of Notarizing

- ORCP 1E: allow declarations in place of notarized signatures

Discussion of this category was deferred to the October 10, 2009, meeting.

J. Subpoenas

- ORCP 55: procedures relating to subpoenas are confusing

Discussion of this category was deferred to the October 10, 2009, meeting.

**K. Service**

- ORCP 7D(4): question of why serving insurance carriers was moved to ORCP 69A(2)
- ORCP 7D(3)(a)(iv): correct the ORS reference [see HB 2284 - passed]
- Service via post office box

Discussion of this category was deferred to the October 10, 2009, meeting.

**L. Summary Judgment**

- ORCP 47: liberalize granting of summary judgments

Discussion of this category was deferred to the October 10, 2009, meeting.

**M. Attorney Fees**

- ORCP 68: attorney fees in certain actions such as probate & supplemental requests

Discussion of this category was deferred to the October 10, 2009, meeting.

**N. Federalizing ORCP**

- Pre-trial disclosures
- Making the ORCP more like the FRCP
- Adding expert discovery (*see* HB 3397, sections 21 & 22 and SB 680 sections, 21 & 22; *see also* ORCP 47E)
- Adding interrogatories

Discussion of this category was deferred to the October 10, 2009, meeting.

**O. Form/Fact Pleadings**

- ORCP 18A: allow Optional Form Pleadings for Personal Injury (and Other) Complaints
- ORCP 18A: enforce fact pleading

Discussion of this category was deferred to the October 10, 2009, meeting.

P. **Venue**

- Moving venue from ORS Chapter 14 to ORCP 11

Discussion of this category was deferred to the October 10, 2009, meeting.

Q. **Appearance but No Answer**

- ORCP 13B: how to handle a situation where there has been an "appearance" but no answer

Discussion of this category was deferred to the October 10, 2009, meeting.

R. Appointment of committees regarding any items listed in IX A-Q

S. Survey of Oregon attorneys from the Institute for the Advancement of the American Legal System at the University of Denver

Ms. Nilsson explained that the Institute had previously sent a draft of this survey to the Council to give to members for review and suggestions, and that the survey is now live at the following web address for attorneys to take:

[http://gssw.qualtrics.com/SE?SID=SV\\_4JIEpLZciMRCsLO&SVID=Prod](http://gssw.qualtrics.com/SE?SID=SV_4JIEpLZciMRCsLO&SVID=Prod)

T. Legislative Contacts (Ms. David)

Ms. David raised the issue of contacting legislators, which was not included on the agenda. She stated that last biennium each Council member contacted two or three legislators by e-mail with updates regarding Council actions. Since someone from the Council will be appearing before the Legislature again in February, it would be a good idea to continue with these updates. Since there are new Council members and new legislators, new contact persons need to be assigned. Ms. Nilsson will create a new matrix of legislators for the next meeting. Ms. David will prepare and distribute a sample e-mail to send to legislators.

X. Schedule Future Meeting Dates/Locations (Mr. Buckle)

A. Hand out calendar with potential schedule

Ms. Nilsson handed out a calendar for the biennium. After discussion, the Council chose dates for meetings through May of 2010. It was noted that the Council is required to strive to hold meetings in every congressional district. The next meeting will be held at 9:30 a.m. at the Oregon State Bar Center on October 10, 2009. Future meeting locations, as well as dates for the remainder of the

biennium, will be discussed at the October meeting when a full complement of members is present.

XI. Adjournment

Mr. Buckle adjourned the meeting at 11:30 a.m.

Respectfully submitted,

Mark A. Peterson  
Executive Director

**Council on Court Procedures  
Website/Inquiries Update  
Reporting Period: 9/1/09 - 10/8/09**

I. Website Statistics

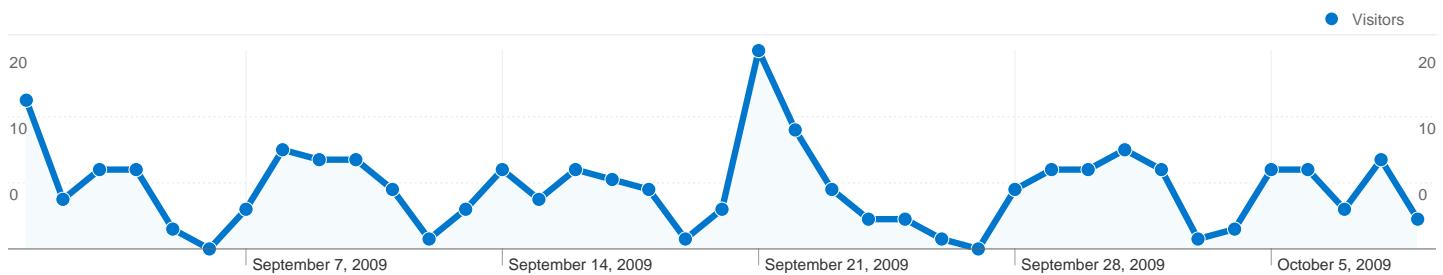
A. Google Analytics

Attached are analytical reports detailing website visitors, geographical information, page views, keywords from search engines, and traffic sources. We had 201 unique visitors from throughout the state, and 696 page views in this period. The average number of pages viewed was 2.65 and the average time spent on the site was 1.22 minutes. 67.3% of the visits came from new visitors. Some of the key words that visitors used in their search engine searches include: "council on court procedures"; "Oregon council on court procedures"; and "how to write a court order in Oregon circuit court."

The analytical reports appear to show that the website is continuing to be used as a resource throughout the state, and that people who are looking for information on the Council are able to find it through search engines and referring sites. Keeping the website up to date and continuing to add archived material will make it an even more valuable resource in the future.

Respectfully submitted,

Shari Nilsson  
Council Administrative Assistant



201 people visited this site

263 Visits

201 Absolute Unique Visitors

696 Pageviews

2.65 Average Pageviews

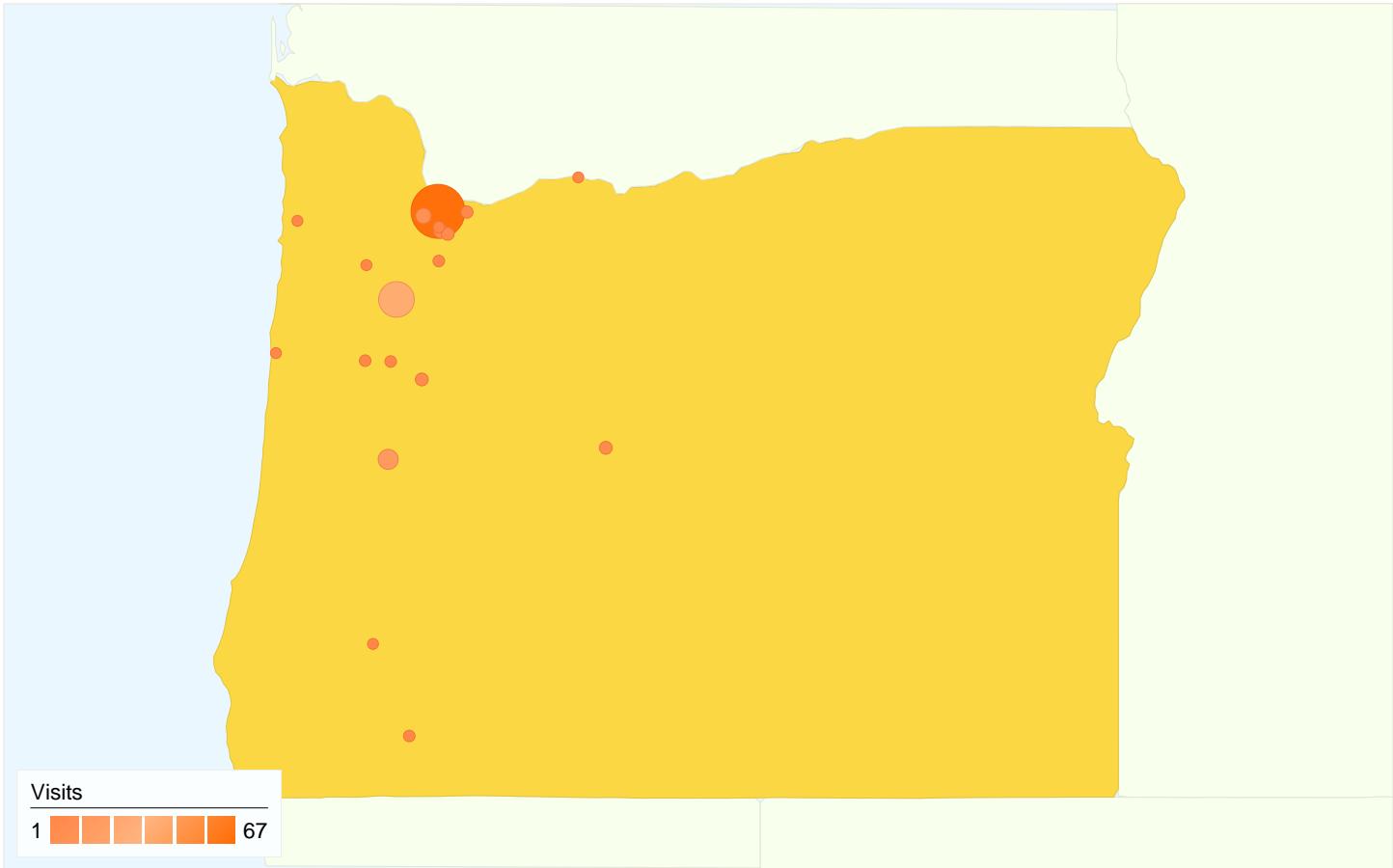
00:01:22 Time on Site

44.87% Bounce Rate

67.30% New Visits

## Technical Profile

| Browser           | Visits | % visits | Connection Speed | Visits | % visits |
|-------------------|--------|----------|------------------|--------|----------|
| Internet Explorer | 174    | 66.16%   | Unknown          | 66     | 25.10%   |
| Firefox           | 58     | 22.05%   | T1               | 62     | 23.57%   |
| (not set)         | 13     | 4.94%    | Cable            | 60     | 22.81%   |
| Safari            | 8      | 3.04%    | DSL              | 55     | 20.91%   |
| Chrome            | 6      | 2.28%    | OC3              | 13     | 4.94%    |



This state sent 165 visits via 19 cities

| Site Usage   |   |  |  |   |             |
|--|---|--|--|---|-------------|
| Visits<br><b>165</b><br>% of Site Total:<br>62.74% | Pages/Visit<br><b>2.91</b><br>Site Avg:<br>2.65 (9.93%) | Avg. Time on Site<br><b>00:01:56</b><br>Site Avg:<br>00:01:22 (40.90%) | % New Visits<br><b>69.09%</b><br>Site Avg:<br>67.30% (2.66%) | Bounce Rate<br><b>36.97%</b><br>Site Avg:<br>44.87% (-17.60%) |             |
| City   | Visits  | Pages/Visit  | Avg. Time on Site  | % New Visits  | Bounce Rate |
| Portland   | <b>67</b>   | 2.66   | 00:02:04   | 53.73%  | 41.79%      |
| Keizer   | <b>39</b>   | 3.33   | 00:01:17   | 71.79%  | 17.95%      |
| Eugene   | <b>15</b>   | 2.80   | 00:02:28   | 93.33%  | 33.33%      |
| Beaverton  | <b>8</b>  | 3.75   | 00:04:23   | 100.00%   | 50.00%      |
| Marylhurst   | <b>6</b>  | 7.00   | 00:07:08   | 0.00%   | 33.33%      |
| Bend   | <b>4</b>  | 1.75   | 00:00:09   | 75.00%  | 50.00%      |
| Lebanon  | <b>4</b>  | 1.50   | 00:00:58   | 100.00%   | 75.00%      |
| Gladstone  | <b>4</b>  | 1.50   | 00:00:05   | 75.00%  | 50.00%      |
| Gresham  | <b>3</b>  | 1.67   | 00:00:08   | 100.00%   | 66.67%      |

Council on Court Procedures

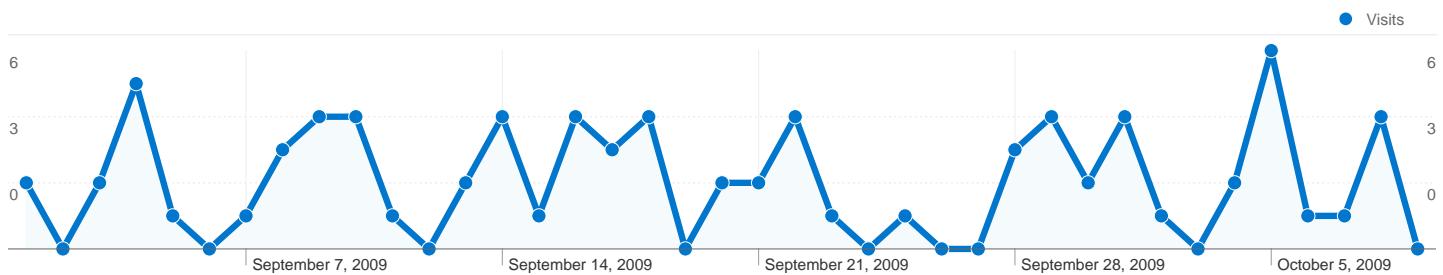
October 10, 2009, Meeting

Appendix B-3

Google Analytics

|               |          |      |          |         |         |
|---------------|----------|------|----------|---------|---------|
| Canby         | <b>2</b> | 1.50 | 00:00:48 | 100.00% | 50.00%  |
| Corvallis     | <b>2</b> | 2.50 | 00:00:13 | 100.00% | 50.00%  |
| Albany        | <b>2</b> | 4.50 | 00:00:34 | 100.00% | 0.00%   |
| Lake Oswego   | <b>2</b> | 1.50 | 00:01:46 | 100.00% | 50.00%  |
| Central Point | <b>2</b> | 1.50 | 00:00:41 | 100.00% | 50.00%  |
| Canyonville   | <b>1</b> | 2.00 | 00:00:13 | 100.00% | 0.00%   |
| Tillamook     | <b>1</b> | 3.00 | 00:00:50 | 100.00% | 0.00%   |
| Hood River    | <b>1</b> | 1.00 | 00:00:00 | 100.00% | 100.00% |
| Newport       | <b>1</b> | 1.00 | 00:00:00 | 100.00% | 100.00% |
| Mcminnville   | <b>1</b> | 4.00 | 00:01:38 | 100.00% | 0.00%   |

1 - 19 of 19



Search sent 79 total visits via 32 keywords

**Site Usage**

|  |  |  |  |   |
|--|--|--|--|---|
| <b>Visits</b><br><b>79</b><br>% of Site Total:<br>30.04% | <b>Pages/Visit</b><br><b>2.86</b><br>Site Avg:<br>2.65 (8.10%) | <b>Avg. Time on Site</b><br><b>00:01:28</b><br>Site Avg:<br>00:01:22 (6.99%) | <b>% New Visits</b><br><b>65.82%</b><br>Site Avg:<br>67.30% (-2.20%) | <b>Bounce Rate</b><br><b>44.30%</b><br>Site Avg:<br>44.87% (-1.26%) |
|--|--|--|--|---|

| Keyword   | Visits | Pages/Visit | Avg. Time on Site | % New Visits | Bounce Rate |
|---|--------|-------------|-------------------|--------------|-------------|
| council on court procedures                             | 18     | 4.67        | 00:03:36          | 38.89%       | 22.22%      |
| oregon council on court procedures                      | 17     | 3.41        | 00:01:24          | 70.59%       | 5.88%       |
| council on court procedures oregon                      | 5      | 1.80        | 00:00:16          | 20.00%       | 20.00%      |
| court procedures  | 4      | 1.00        | 00:00:00          | 100.00%      | 100.00%     |
| oregon council of court                                 | 4      | 4.00        | 00:02:55          | 25.00%       | 50.00%      |
| court procedure   | 3      | 1.00        | 00:00:00          | 100.00%      | 100.00%     |
| orcp 67   | 2      | 2.50        | 00:01:49          | 100.00%      | 50.00%      |
| oregon "council on court procedures"                    | 2      | 6.00        | 00:00:43          | 100.00%      | 0.00%       |
| brooks cooper, attorney                                 | 1      | 1.00        | 00:00:00          | 100.00%      | 100.00%     |
| changes in court procedures                             | 1      | 1.00        | 00:00:00          | 100.00%      | 100.00%     |
| civil court counsel procedure                           | 1      | 1.00        | 00:00:00          | 100.00%      | 100.00%     |
| council on court proceduress                            | 1      | 2.00        | 00:00:18          | 0.00%        | 0.00%       |
| council on court procedure                              | 1      | 4.00        | 00:00:24          | 0.00%        | 0.00%       |
| council on court procedures portland                    | 1      | 1.00        | 00:00:00          | 100.00%      | 100.00%     |
| councils in court law                                   | 1      | 1.00        | 00:00:00          | 100.00%      | 100.00%     |
| court procedures rules                                  | 1      | 1.00        | 00:00:00          | 100.00%      | 100.00%     |
| court procidures  | 1      | 1.00        | 00:00:00          | 100.00%      | 100.00%     |
| current court procedure                                 | 1      | 1.00        | 00:00:00          | 100.00%      | 100.00%     |
| don h. marmaduke oregon                                 | 1      | 1.00        | 00:00:00          | 100.00%      | 100.00%     |
| find how to write a court order in oregon circuit court | 1      | 2.00        | 00:01:20          | 100.00%      | 0.00%       |
| how does the court procedure work                       | 1      | 1.00        | 00:00:00          | 100.00%      | 100.00%     |

Council on Court Procedures

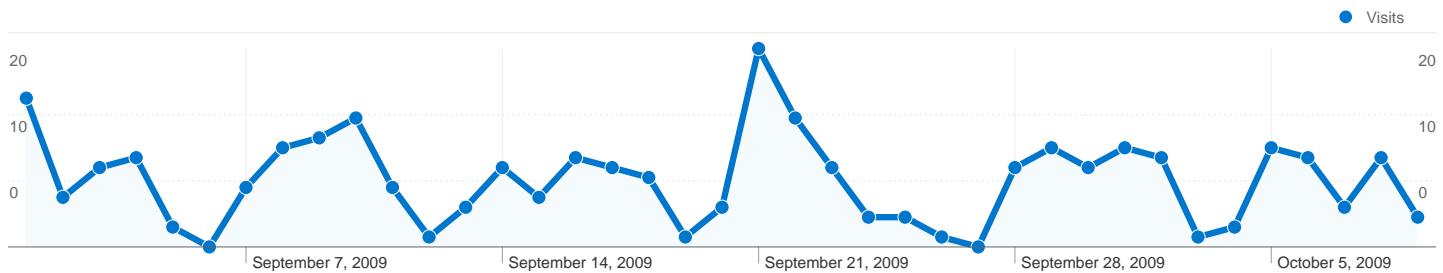
October 10, 2009, Meeting

Appendix B-5

Google Analytics

|   |   |      |          |         |         |
|---|---|------|----------|---------|---------|
| kristen s. david attorney                       | 1 | 1.00 | 00:00:00 | 100.00% | 100.00% |
| orcps   | 1 | 1.00 | 00:00:00 | 100.00% | 100.00% |
| oregon council on court procedure staff comment | 1 | 4.00 | 00:05:27 | 100.00% | 0.00%   |
| oregon court council procedures                 | 1 | 4.00 | 00:01:52 | 100.00% | 0.00%   |
| oregon practice procedure                       | 1 | 1.00 | 00:00:00 | 0.00%   | 100.00% |
| oregon rules of civil procedure 7               | 1 | 1.00 | 00:00:00 | 100.00% | 100.00% |
| pdf how to make agenda and minutes              | 1 | 1.00 | 00:00:00 | 100.00% | 100.00% |
| rules of the court, ccp                         | 1 | 1.00 | 00:00:00 | 100.00% | 100.00% |
| shelly russell atty                             | 1 | 1.00 | 00:00:00 | 100.00% | 100.00% |
| shelly russell atty or                          | 1 | 1.00 | 00:00:00 | 0.00%   | 100.00% |
| what is council in court                        | 1 | 1.00 | 00:00:00 | 100.00% | 100.00% |

1 - 32 of 32



All traffic sources sent 263 visits via 13 sources and mediums

**Site Usage**

| Visits<br>263<br>% of Site Total:<br>100.00% | Pages/Visit<br>2.65<br>Site Avg:<br>2.65 (0.00%) | Avg. Time on Site<br>00:01:22<br>Site Avg:<br>00:01:22 (0.00%) | % New Visits<br>67.30%<br>Site Avg:<br>67.30% (0.00%) | Bounce Rate<br>44.87%<br>Site Avg:<br>44.87% (0.00%) |             |
|--|--|--|---|--|-------------|
| Source/Medium                                | Visits   | Pages/Visit  | Avg. Time on Site                                     | % New Visits   | Bounce Rate |
| (direct) / (none)                            | 109  | 3.11   | 00:01:20  | 77.98%   | 43.12%      |
| google / organic                             | 71   | 3.01   | 00:01:36  | 61.97%   | 40.85%      |
| courts.oregon.gov / referral                 | 31   | 2.00   | 00:01:37  | 90.32%   | 38.71%      |
| thebesthosting.org / referral                | 19   | 1.58   | 00:00:00  | 0.00%  | 42.11%      |
| counciloncourtprocedures.org / referral      | 7  | 2.14   | 00:04:33  | 57.14%   | 42.86%      |
| clackamas-bar.org / referral                 | 6  | 1.50   | 00:02:40  | 0.00%  | 50.00%      |
| osbar.org / referral                         | 5  | 1.40   | 00:00:10  | 100.00%  | 80.00%      |
| yahoo / organic                              | 5  | 1.00   | 00:00:00  | 100.00%  | 100.00%     |
| bing / organic                               | 3  | 2.33   | 00:00:40  | 100.00%  | 33.33%      |
| 74.125.47.132 / referral                     | 2  | 1.50   | 00:00:28  | 0.00%  | 50.00%      |
| google.com / referral                        | 2  | 1.00   | 00:00:00  | 100.00%  | 100.00%     |
| lawlib.lclark.edu / referral                 | 2  | 1.00   | 00:00:00  | 50.00%   | 100.00%     |
| ojd.state.or.us / referral                   | 1  | 1.00   | 00:00:00  | 0.00%  | 100.00%     |

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