

**MINUTES OF MEETING
COUNCIL ON COURT PROCEDURES**

Saturday, November 21, 2009, 9:30 a.m.

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

ATTENDANCE

Members Present:

Hon. Rex Armstrong
Arwen Bird
Michael Brian
Eugene H. Buckle
Brian S. Campf
Brooks F. Cooper
Kristen David
Martin E. Hansen*
Hon. Robert D. Herndon
Hon. Jerry B. Hodson
Hon. Lauren S. Holland*
Hon. Eve L. Miller
Leslie W. O'Leary
Kathryn M. Pratt*
Mark R. Weaver*
Hon. Locke A. Williams*
Hon. Charles M. Zennaché*

Members Absent:

John R. Bachofner
Don Corson
Hon. Mary Mertens James
Hon. Rives Kistler
Maureen Leonard
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"> • ORCP 7C(3) • ORCP 13 • ORCP 13B • ORCP 21 • ORCP 38 • ORCP 69 • ORCP 71 	<ul style="list-style-type: none"> • ORCP 1E • ORCP 7D(3)(a)(iv) • ORCP 18A • ORCP 47 • ORCP 55 • ORCP 68 • ORCP 68C(4)(a) • Federalizing ORCP • Moving venue to ORCP 		

I. Call to Order (Mr. Buckle)

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

II. Introduction of New Members

The Council welcomed its new Court of Appeals member, the Honorable Rex Armstrong; and its new public member, Arwen Bird.

III. Approval of October 10, 2009, minutes (Mr. Buckle)

Mr. Buckle called for a motion to approve the October 10, 2009, minutes (Appendix A) which had been previously circulated to the members. Mr. Cooper made the motion, it was 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

Mr. Buckle asked the members for nominations for treasurer. Ms. Bird was nominated. A motion was made to elect Ms. Bird as treasurer. The motion was seconded and was passed in a voice vote with 17 members in favor and no votes in opposition and no abstentions.

V. Administrative Matters (Mr. Buckle)

A. Website Report (Ms. Nilsson)

Ms. Nilsson briefly reviewed the Website Report (Appendix B). She noted that the number of visitors to the website remains consistent, and that almost 80% of the visits came from new visitors. She also stated that the website received a number of visits from other states, and that these visitors examined multiple pages and spent a good deal of time looking at the site. These facts seem to indicate that the website is a success and a valuable resource for both Oregonians and for people from out-of-state.

B. Meeting Dates (Ms. Nilsson)

Ms. Nilsson noted that the Council had inadvertently neglected to select a June, 2010, meeting date. After a brief discussion, the Council decided that the meeting will be held on June 5, 2010, at the Oregon State Bar.

VI. Old Business (Mr. Buckle)

A. Committee Updates/Reports

1. Discovery Committee (Mr. Cooper)

Mr. Cooper reported that the committee has met once via teleconference, but that not all committee members were able to participate. He stated that for the committee's next meeting he will have a draft of an e-mail to send to the Oregon Trial Lawyers Association and the Oregon Association of Defense Counsel regarding the proposals before the Council. The committee will report back to the Council at its December meeting.

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

Mr. Corson was not present at the meeting, so Judge Holland instead apprised the Council of the committee's progress. She stated that the committee has met and has drafted changes to ORCP 38 that reflect the Oregon Law Commission's (OLC) draft of the Uniform Interstate Depositions and Discovery Act (UIDDA), and had considered additional suggestions made by the OLC.

Judge Holland noted that the OLC recommended using the word "must" instead of the word "shall." The committee scanned the ORCP to see which word was typically used and found that "shall" is the predominant word used, but that newer amendments to the ORCP have tended to use "must." She stated that the committee pondered whether the Council should form a committee to address separately the issue of consistency in the ORCP. Mr. Buckle commented that the Council's general approach has been not to amend rules that do not need amending.

Judge Armstrong noted that there are opinions that state that the word "shall" can mean "may" rather than "must." Judge Miller stated that she thought "shall" means "must" but that perhaps the Council should look at the issue if there are cases where "shall" has been interpreted to mean "may." Judge Hodson suggested leaving the rules as they are and letting appellate courts settle any question. Mr. Hansen stated that the committee found it surprising that "must" has begun to be used in ORCP amendments and stated that, if the Council finds that there is a difference between the two words, it is something that needs to be made consistent. Ms. Pratt noted that there is a national movement toward using the word "must" instead of the word "shall," and that the federal rules have made this change. Prof. Peterson asked Ms. Nilsson to search the ORCP to find all instances of "shall" and "must" and send this to the Council's listserv. This issue will be addressed again at the next meeting.

Prof. Peterson stated that the OLC's version of the UIDDA appears to make obtaining a subpoena from out-of-state a ministerial act which would allow a non-

attorney to get an order requiring someone to appear for a deposition and the procedure would be handled by a court clerk. The deponent could be required to appear in a distant county and would need to hire a lawyer to quash the subpoena. He wondered whether the procedure should be limited to attorneys so that there is some control over the process. Mr. Hansen stated that the committee did not consider that aspect. Judge Holland stated that the committee will address that issue and report back to the Council at the next meeting.

3. Rule 54 Issues Committee (Judge Rees)

Judge Rees was not present at the meeting. Prof. Peterson reported that the committee had met by teleconference but that two members were unable to participate. The members who did participate talked through the issues but made no decisions. The committee will meet again and report in December.

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

Ms. David reported that the committee has met several times. She stated that, with regard to electronic discovery, the committee has been discussing the definition of electronically stored information (ESI). Ms. David stated that the committee is erring more on the side of minimal rule changes and giving the authority to the courts, because the definition of ESI is broad and can differ from case to case. She noted that Mr. Campf has drafted a rule change, and that the committee will present its recommendations and draft to the Council at a later date.

Ms. David noted that she is on the E-Filing Task Force and that they have drafted UTCR chapter 22 which deals with e-court issues and defines e-filing matters. She stated that it is important to maintain communication with the Oregon Judicial Department, Oregon State Bar, and Uniform Trial Court Rules Committee on these issues and to continue to monitor progress. She stated that the aforementioned organizations are aware that the Council is standing by and ready to take action when necessary.

5. Service and Filing Committee (Mr. Cooper)

Mr. Cooper reported that the committee has not yet met, but will do so before the December meeting and will report at that time.

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

Judge Miller stated that she spoke with Judge James at the Judicial Conference for a few minutes about this issue, but that the committee had not yet met. Judge Miller and Judge James would like to see the original proposal, as they could not recall specific details. Mr. Cooper stated that the problem had been identified in the survey and involved a husband who filed a motion to modify support and, in her responsive pleading, the wife asked the court to not do what the husband

wanted but, rather, to grant different relief (e.g. motion to increase support met with motion to change custody). Attorneys have received disparate treatment from the courts on whether those claims are dealt with or not. He stated that the request was to make a uniform rule for the courts to apply. Judge Miller stated that part of the problem is that a large percentage of family law litigants do not have attorneys, so courts are more likely to allow them to present new issues in a responsive pleading, while granting the opposing side more time to prepare, so that the matters can be dealt with efficiently.

Judge Miller stated that the committee will report in December or January and present a draft amendment at that time. She stated that ORCP 13 might be the appropriate rule to change. Judge Zennaché stated that he had asked one of his externs to look for instances in the ORCP and ORS authorizing a motion/order to show cause to be used to modify proceedings. He is waiting for those results.

Judge Williams stated that any rule change should also apply to motions for temporary orders. Judge Miller suggested affirmatively showing any proposed rule to various family law and domestic relations groups for comment. Council members agreed that this is a good idea.

7. Default Judgment Committee (Ms. David)

Ms. David stated that the committee is looking at three issues. The first is rewriting ORCP 69 for clarification on default judgments. She stated that there are counties where the process is not understood and that they have been working with court clerks on the issue. Ms. Pratt is working on a draft.

Ms. David stated that the second issue is ORCP 71 and extrinsic vs. intrinsic fraud. She stated that Ms. Pratt researched and found that 27 states and the federal rules have abolished this distinction. She noted that Judge Zennaché is also researching whether there is any reason to keep this distinction in the ORCP.

Ms. David stated that the third issue is an issue of an appearance vs. a pleading. She stated that this has been a problem with PLF cases, among others. She noted the following:

- a. ORCP 7C(3) states that, to appear, one must file a motion or answer;
- b. ORCP 13B addresses complaints, answers, cross-claims, and third party complaints;
- c. ORCP 21 provides that one must assert a defense to every claim in a responsive pleading, but that some defenses may be raised in a Rule 21 motion first; and
- d. ORCP 69 states that, if a defendant has filed an appearance, one cannot take default without 10 days' written notice.

Ms. David stated that the Oregon Judicial Information Network (OJIN) does not recognize a Rule 21 motion as an “appearance,” and that there have been instances of cases being dismissed because of this. She said that she has spoken with Judge Steven Maurer of Clackamas County to discuss whether this is a computer issue or an ORCP issue. Ms. David noted that summonses actually include language stating that the defendant gets can file an answer or a motion. She believes that the rules are clear that an ORCP 21 motion is an appearance, and one even pays an appearance fee when such a motion is filed. Ms. David stated that this could be an ORCP issue, an OJIN issue, an education issue, or a UTCR issue. She stated that, if it is an UTCR issue, the question would be whether ORCP 13 would need to be changed.

Mr. Brian asked whether there are judges in Oregon who will sign a default order or judgment after something has been filed by the defendant. Several judge members responded that they would not knowingly enter a default if a motion had been filed. Ms. David stated that there are counties that have taken the position that rule 21 motions are not answers, but that in other counties rule 21 motions are not recognized as being appearances due to OJIN.

Mr. Buckle asked who is responsible for making changes to OJIN. Judge Herndon stated that their clerks are so overworked due to staffing issues that it may be difficult to educate them on this issue. He also stated that OJIN is an old program with few programmers who are still available to change it. Judge Zennaché also emphasized that there is a lack of adequate funding in the court system and that overworked clerks can miss things. Mr. Cooper stated that, with the advent of e-filing, OJIN is being phased out and that there is a disincentive to make any changes to it.

Prof. Peterson spoke about ORS 107.055, which allows a respondent in a family law case to merely file an appearance, with no responsive pleading. Judge Miller stated that the practice was designed to put everything in the petition at issue, but that respondents can also file a pleading to put at issue what is set forth in the petition, or to request different relief, if they so choose. Ms. Pratt mentioned that this issue has come up in a few of her PLF cases: if one merely files an entry of appearance, does one waive all other affirmative defenses that have not been pleaded. She stated that it would be helpful to clarify the issue for that type of problem as well.

Ms. David stated that the committee will be meeting again and will report back to the Council at its next meeting.

8. Time Issues (Ms. Pratt)

Ms. Pratt reported that she spoke to a member of the E-Filing Task Force and was told that changes in time increments in the ORCP should not be a problem for the Task Force as long as changes are implemented before the e-filing system is

programmed. She noted that Bruce Miller of the UTCR Committee stated that changes to time increments in the ORCP could be a bigger problem for that Committee. Changes to the ORCP would require a fair number of changes to the UTCR and the UTCR Committee is currently short-staffed. The SLR (supplemental local rules) committees would also need to review any ORCP changes and make changes accordingly.

Ms. Pratt stated that making counting rules uniform could be a benefit to practitioners, and that there is a large national movement to do so. She noted that, with the current state budget crisis, this may not be the time to make such sweeping changes. Judge Armstrong suggested that, since the software is in production now, this may be the time to act. Ms. Pratt agreed that, in terms of software production, making the changes sooner rather than later is preferable.

Judge Holland pointed out that the goal of making time increments in multiples of seven may not work anyway, since mailing always adds three days and that there are judicial holidays to take into account. Ms. Pratt stated that the federal rules, which will be adopted on December 1, 2009, take a “days are days” approach, not counting weekends and skipping holidays. She also noted that some statutes may also include times, and that the statutes would need to be examined to see whether any times in the ORCP are tied to a statute. Judge Miller stated that many family law cases include times which are mandated in statutes. She stated the concern that time issues are complex and it would be difficult to attempt to simplify them.

Mr. Buckle asked whether trial judges have been seeing missed deadlines which result in sanctions. Judge Miller stated that it can be a problem in the area of summary judgment and that timelines are sometimes not being enforced by the courts. Ms. David noted that attorneys and self-represented parties have to read the rules in any case, so wondered if time changes are necessary. Ms. Pratt reiterated that making these changes would be a large undertaking. The Council agreed to discuss this matter again at its December meeting.

9. Incorporating Underlying Agreement in Complaint (Judge Herndon)

Judge Herndon stated that he has corresponded with Senator Suzanne Bonamici regarding this issue, and that he suggested to her that the issue may be substantive rather than procedural. The committee agreed that the issue Sen. Bonamici raised is a problem, but that it is a substantive issue. The committee suggested that the Council wait and see what consumer protection laws the Senate proposes and then determine if the ORCP will need to be changed as a result of those new laws.

Prof. Peterson asked why the committee felt that the change would be substantive rather than procedural. Mr. Hansen stated that it would single out a certain class that needs to provide a contract. Judge Armstrong noted that one can establish a contract through various mechanisms, not just through providing a copy. Mr. Cooper stated that such a change to the ORCP would eliminate for that class of

litigants any other way to establish a contract or prove a case. Prof. Peterson asked whether there is any existing case law that states that a party needs to incorporate an existing contract. Mr. Cooper and others stated that there is not.

Judge Herndon stated that it is likely premature to address making changes to the ORCP before the Legislature has had a chance to look more closely at the issue and to propose comprehensive consumer protection legislation. The Council agreed to keep the issue on the agenda and maintain contact with Sen. Bonamici regarding the Legislature's progress.

B. Communication with Legislators

Ms. David apprised the new members of the Council's procedure for communicating with legislators to keep them informed of the Council's work and progress during the biennium. She stated that she will prepare a draft e-mail to send to legislators before the next Council meeting. Mr. Nebel agreed to let Ms. Nilsson know which legislators are attorneys or have legal training so that she can include this information on the next legislator matrix. Ms. Nilsson agreed to update the matrix and send it to the listserve.

VII. New Business (Mr. Buckle)

A. New Proposals to the Council

1. Sustainability Review by COCP proposed by attorney Danny Lang (Prof. Peterson)

Mr. Buckle noted that the proposal (Appendix C) by Danny Lang to review the ORCP for areas where the rules could be modified to use less paper is an admirable ideal. Judge Miller stated, however, that his suggestion of eliminating the need to list points and authorities is not a good idea. Judge Zennaché pointed out that most points and authorities are short, and that including one or two sentences is not adding greatly to the waste of paper. Judges Herndon and Miller agreed that points and authorities are important, and Judge Herndon noted that it is never a bad idea to have judges think about the premise under which you are seeking relief. Ms. O'Leary stated that page limits on motions would likely have more effect.

Ms. Nilsson noted that with the impending move to e-filing, this will not be a issue in the near future. After thorough discussion, the Council agreed not to look further into this issue. Prof. Peterson will send a letter of response to Mr. Lang.

2. Courts Accepting Filings when not Accompanied by a Fee (Ms. Pratt)

Ms. Pratt raised this new issue. She wondered whether, under the ORCP, a court is required to accept a filing even if a filing or appearance fee does not accompany it. She stated that, in her experience, courts are not accepting motions without the

accompanying filing fee. Judge Zennaché noted that trial fees are also required, and that a court often will not hold the trial if the fee has not been paid. Judge Miller stated that sometimes notices are sent by the court in this case, but not always.

Judge Herndon noted that, as of October 1, 2009, these fees are mandated by statute, not by ORCP. Ms. Pratt asked whether, if the fees are statutory, courts are precluded from accepting a filing without the fee. Ms. David stated that Judge Maurer of Clackamas County made it clear to her that, while clerks used to be able to bill attorneys for fees, with budget and staff cuts, the clerks do not have time to do this any longer. She stated that the PLF and bar associations are attempting to educate lawyers about this issue, and that it is a statutory provision and that the courts cannot change it.

Ms. Pratt stated that some courts accept filings and notify the attorneys of the outstanding fee, but that some do not. Mr. Cooper stated that the presiding judge of each county is responsible for setting policy. Judge Herndon noted that one cannot tell a clerk how to handle the situation through an ORCP change. Judge Zennaché stated that the Council cannot craft a rule to save lawyers from malpractice because they did not read the statute. Judge Miller pointed out that the Chief Justice issued a directive that the courts will collect all fees unless they have been deferred and noted that, if a court is accepting filings without a fee or deferral, the court is not following that directive. Judge Armstrong stated that this is not a problem that the Council can address. Ms. Pratt agreed that it is likely an education issue.

VIII. Adjournment

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

Respectfully submitted,

Mark A. Peterson
Executive Director

DRAFT 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. Zennaché*

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"> • ORCP 1E • ORCP 7D(3)(a)(iv) • ORCP 7D(4) • ORCP 13B • ORCP 14 • ORCP 18A • ORCP 21 • ORCP 38 • ORCP 43A • ORCP 47 • ORCP 55 • ORCP 68 • ORCP 68C(4)(a) • ORCP 69 • ORCP 69A • ORCP 69A(2) • Federalizing ORCP • Moving venue from ORS to ORCP • Include contract in complaint 	<ul style="list-style-type: none"> • ORCP 1E • ORCP 7D(3)(a)(iv) • ORCP 18A • ORCP 47 • ORCP 55 • ORCP 68 • ORCP 68C(4)(a) • Federalizing ORCP • Moving venue to ORCP 		

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 UTCR 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

**Council on Court Procedures
Website/Inquiries Update
Reporting Period: 10/9/09 - 11/13/09**

I. Website Statistics

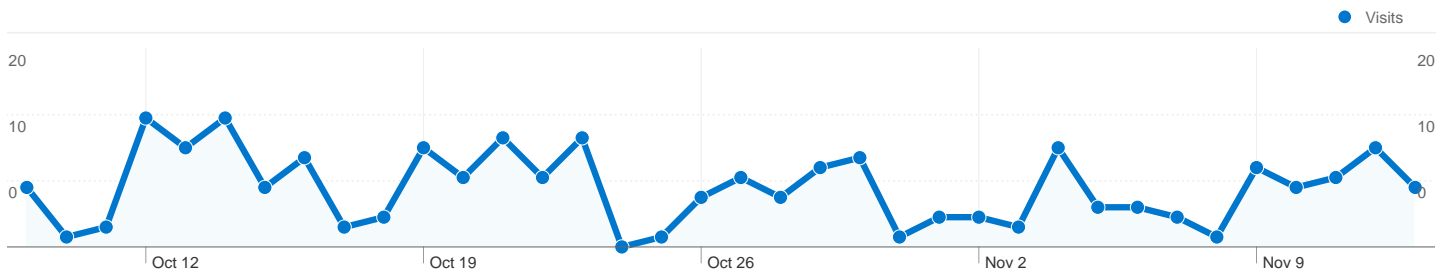
A. Google Analytics

Attached are analytical reports detailing website visitors, geographical information, pages visited, keywords from search engines, and traffic sources. We had 184 unique visitors from throughout the state, and 590 page views in this period. The average number of pages viewed was 2.76 and the average time spent on the site was 1 minute, 42 seconds. 79.91% of the visits came from new visitors. The most visited page was the index page, which makes sense because it is the page that visitors land on when they type in our web address. The top pages after that were: Council Membership; Resources; Legislative History of Rules; and Contact.

It is encouraging that the website continues to receive a high number of visitors, including new visitors, from throughout the state and indeed the country. Visitors from Washington, California, Utah and Ohio spent a while on the site and viewed several pages, which seems to indicate that other states are interested in the work of the Council and the ORCP.

Respectfully submitted,

Shari Nilsson
Council Administrative Assistant

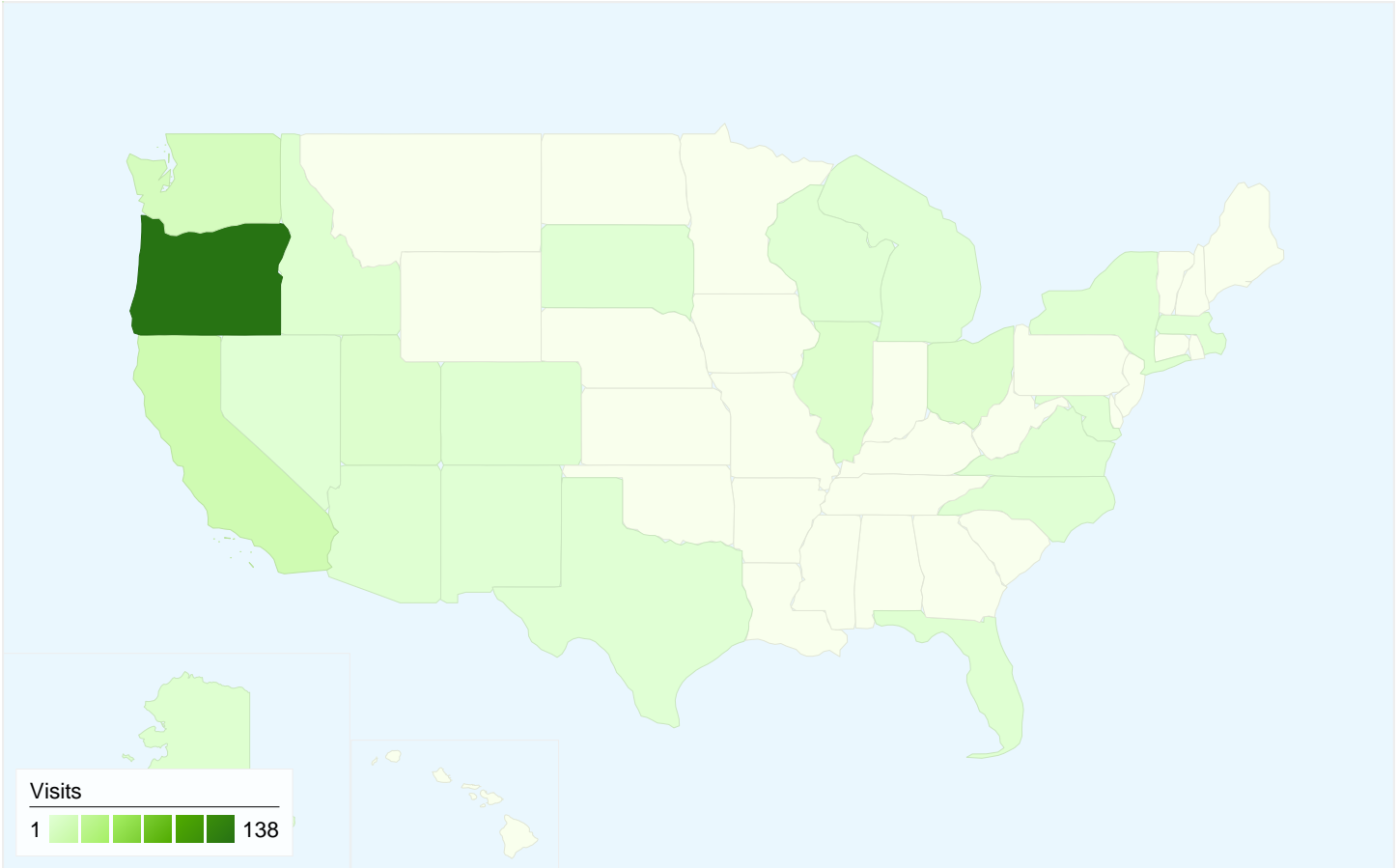


All traffic sources sent 214 visits via 15 sources and mediums

Site Usage

Visits	Pages/Visit	Avg. Time on Site	% New Visits	Bounce Rate	
214 % of Site Total: 100.00%	2.76 Site Avg: 2.76 (0.00%)	00:01:42 Site Avg: 00:01:42 (0.00%)	79.91% Site Avg: 79.44% (0.59%)	43.46% Site Avg: 43.46% (0.00%)	
Source/Medium	Visits	Pages/Visit	Avg. Time on Site	% New Visits	Bounce Rate
(direct) / (none)	121	3.31	00:02:06	80.99%	28.10%
google / organic	46	2.22	00:01:50	80.43%	60.87%
courts.oregon.gov / referral	18	1.61	00:00:24	100.00%	72.22%
counciloncourtprocedures.org / referral	5	2.00	00:00:03	20.00%	20.00%
cvk-law.com / referral	5	2.00	00:00:22	0.00%	40.00%
google.com / referral	5	1.00	00:00:00	100.00%	100.00%
yahoo / organic	4	1.00	00:00:00	100.00%	100.00%
lawlib.lclark.edu / referral	2	7.50	00:00:40	100.00%	50.00%
us.mg0.mail.yahoo.com / referral	2	3.00	00:06:41	0.00%	0.00%
aol / organic	1	1.00	00:00:00	100.00%	100.00%
bing / organic	1	1.00	00:00:00	100.00%	100.00%
lcccontenttraining.lc100.net / referral	1	1.00	00:00:00	100.00%	100.00%
ojd.state.or.us / referral	1	1.00	00:00:00	100.00%	100.00%
oregon.gov / referral	1	1.00	00:00:00	100.00%	100.00%
oregonlegalresearch.blogspot.com / referral	1	3.00	00:01:41	100.00%	0.00%

1 - 15 of 15



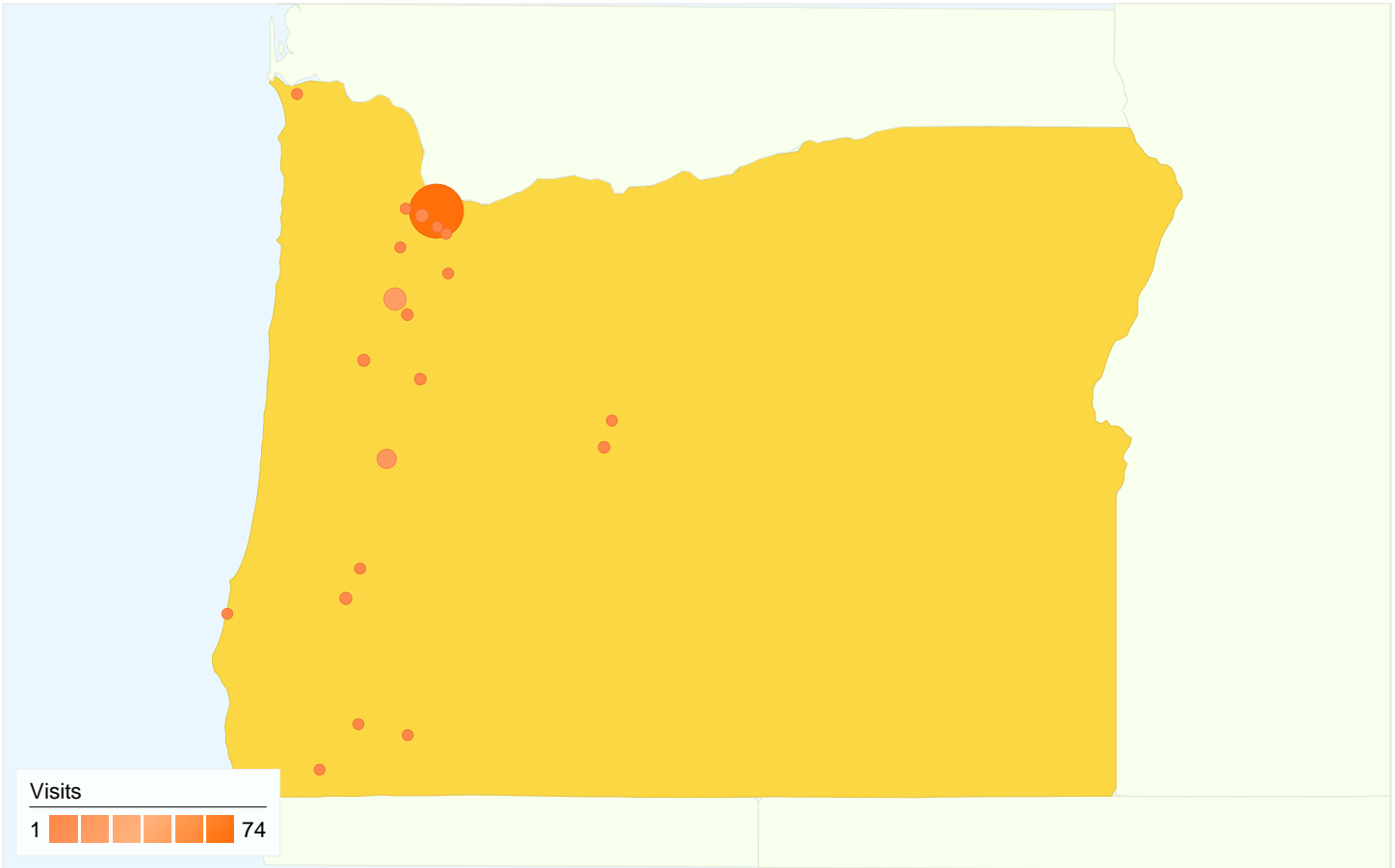
This country/territory sent 199 visits via 22 regions

Site Usage

Region	Visits	Pages/Visit	Avg. Time on Site	% New Visits	Bounce Rate
Visits 199 % of Site Total: 92.99%	Pages/Visit 2.83 Site Avg: 2.76 (2.44%)	Avg. Time on Site 00:01:49 Site Avg: 00:01:42 (6.67%)	% New Visits 78.39% Site Avg: 79.44% (-1.32%)	Bounce Rate 41.21% Site Avg: 43.46% (-5.18%)	
Oregon	138	2.88	00:01:52	73.91%	35.51%
California	15	2.33	00:01:52	86.67%	40.00%
Washington	10	2.80	00:00:59	90.00%	40.00%
Utah	4	4.00	00:09:58	50.00%	25.00%
Ohio	4	2.25	00:00:34	50.00%	50.00%
Illinois	4	3.25	00:00:32	100.00%	75.00%
Alaska	3	1.67	00:00:08	100.00%	66.67%
Idaho	3	8.67	00:02:03	100.00%	33.33%
Colorado	2	1.00	00:00:00	100.00%	100.00%

Arizona	2	1.00	00:00:00	100.00%	100.00%
Florida	2	1.00	00:00:00	100.00%	100.00%
New York	2	2.00	00:00:53	100.00%	50.00%
Virginia	1	1.00	00:00:00	100.00%	100.00%
North Carolina	1	1.00	00:00:00	100.00%	100.00%
New Mexico	1	1.00	00:00:00	100.00%	100.00%
Michigan	1	4.00	00:06:02	100.00%	0.00%
Wisconsin	1	9.00	00:05:08	100.00%	0.00%
Maryland	1	1.00	00:00:00	100.00%	100.00%
South Dakota	1	1.00	00:00:00	100.00%	100.00%
Massachusetts	1	1.00	00:00:00	100.00%	100.00%
Nevada	1	4.00	00:01:50	100.00%	0.00%
Texas	1	1.00	00:00:00	100.00%	100.00%

1 - 22 of 22



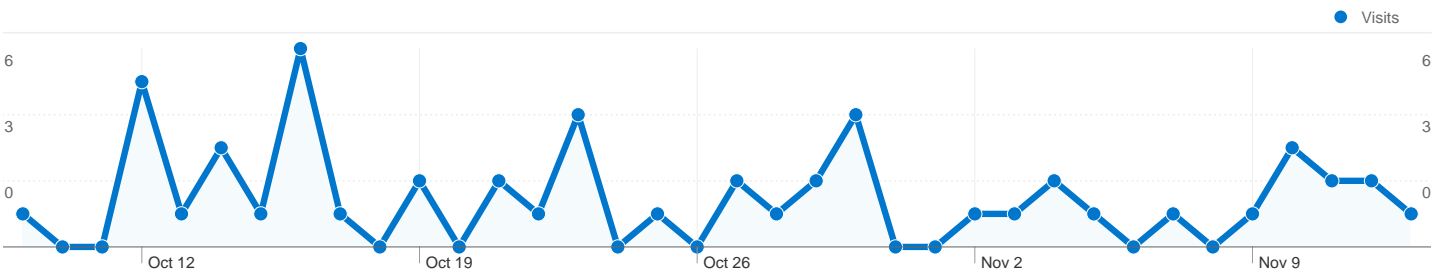
This state sent 138 visits via 21 cities

Site Usage

City	Visits	Pages/Visit	Avg. Time on Site	% New Visits	Bounce Rate
Portland	74	2.27	00:01:52	56.76%	40.54%
Keizer	20	4.25	00:00:52	90.00%	40.00%
Eugene	15	4.07	00:01:32	93.33%	20.00%
Beaverton	5	2.80	00:08:47	100.00%	20.00%
Roseburg	3	4.00	00:00:25	100.00%	0.00%
Corvallis	3	2.00	00:00:29	100.00%	33.33%
Bend	2	3.50	00:02:00	100.00%	0.00%
Lebanon	2	2.00	00:09:32	50.00%	0.00%
Salem	2	1.50	00:01:18	100.00%	50.00%

Sutherlin	1	2.00	00:00:43	100.00%	0.00%
Lake Oswego	1	1.00	00:00:00	100.00%	100.00%
Molalla	1	2.00	00:00:16	100.00%	0.00%
Bandon	1	2.00	00:00:10	100.00%	0.00%
Cave Junction	1	7.00	00:03:13	100.00%	0.00%
Washington County	1	1.00	00:00:00	100.00%	100.00%
Astoria	1	6.00	00:00:50	100.00%	0.00%
Newberg	1	1.00	00:00:00	100.00%	100.00%
Grants Pass	1	3.00	00:00:06	100.00%	0.00%
Central Point	1	1.00	00:00:00	100.00%	100.00%
Gladstone	1	1.00	00:00:00	100.00%	100.00%
Redmond	1	10.00	00:01:12	100.00%	0.00%

1 - 21 of 21



Search sent 52 total visits via 38 keywords

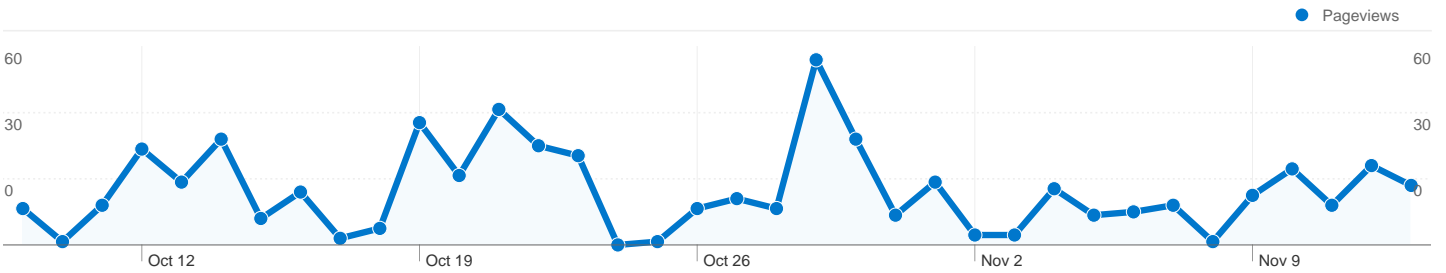
Site Usage

Visits 52 % of Site Total: 24.30%	Pages/Visit 2.08 Site Avg: 2.76 (-24.67%)	Avg. Time on Site 00:01:37 Site Avg: 00:01:42 (-4.91%)	% New Visits 82.69% Site Avg: 79.44% (4.10%)	Bounce Rate 65.38% Site Avg: 43.46% (50.45%)
---	---	--	--	--

Keyword	Visits	Pages/Visit	Avg. Time on Site	% New Visits	Bounce Rate
oregon council on court procedures	10	3.40	00:02:45	60.00%	20.00%
court procedures	5	1.60	00:01:23	100.00%	80.00%
oregon council on court procedure	3	5.00	00:13:10	66.67%	0.00%
agendas and minutes procedures	1	1.00	00:00:00	100.00%	100.00%
alex libmann attorney	1	1.00	00:00:00	100.00%	100.00%
brian campf attorney at law, portland, or	1	1.00	00:00:00	100.00%	100.00%
brooks f cooper attorney	1	1.00	00:00:00	0.00%	100.00%
council on court procedures	1	3.00	00:05:01	100.00%	0.00%
council on court procedure	1	1.00	00:00:00	0.00%	100.00%
court procedure for a civil case in oregon	1	1.00	00:00:00	100.00%	100.00%
format ordering materials	1	1.00	00:00:00	100.00%	100.00%
how are court officers chosen	1	1.00	00:00:00	100.00%	100.00%
how members of the supreme court are chosen	1	1.00	00:00:00	100.00%	100.00%
judge eve l miller	1	1.00	00:00:00	100.00%	100.00%
judge miller clackamas	1	1.00	00:00:00	100.00%	100.00%
kristin david oregon attorney	1	3.00	00:01:03	100.00%	0.00%
legislative history for orcp	1	2.00	00:00:23	0.00%	0.00%
mary mertens james	1	2.00	00:00:45	100.00%	0.00%
mary mertens james salem oregon	1	7.00	00:01:43	100.00%	0.00%
maureen leonard attorney oregon	1	1.00	00:00:00	100.00%	100.00%
officers members	1	1.00	00:00:00	100.00%	100.00%

orcp 15 a	1	1.00	00:00:00	0.00%	100.00%
orcp 22	1	1.00	00:00:00	100.00%	100.00%
orcp 4 7	1	1.00	00:00:00	100.00%	100.00%
orcp 64	1	1.00	00:00:00	100.00%	100.00%
orcp 69	1	1.00	00:00:00	100.00%	100.00%
orcp legislative history	1	1.00	00:00:00	100.00%	100.00%
order materials	1	1.00	00:00:00	100.00%	100.00%
oregon circuit court judges association	1	5.00	00:01:11	100.00%	0.00%
oregon court procedures	1	1.00	00:00:00	100.00%	100.00%
oregon law regarding civil procedure	1	1.00	00:00:00	100.00%	100.00%
oregon rules of civil procedure legislative history	1	1.00	00:00:00	100.00%	100.00%
procedures for rule making oregon	1	1.00	00:00:00	100.00%	100.00%
procedures site:edu	1	1.00	00:00:00	100.00%	100.00%
robert herndon attorney oregon	1	1.00	00:00:00	100.00%	100.00%
rule 21(a) legislative history	1	1.00	00:00:00	100.00%	100.00%
rule of legislative history	1	1.00	00:00:00	100.00%	100.00%
orcp legislative comment	0	0.00	00:00:00	0.00%	0.00%

1 - 38 of 38

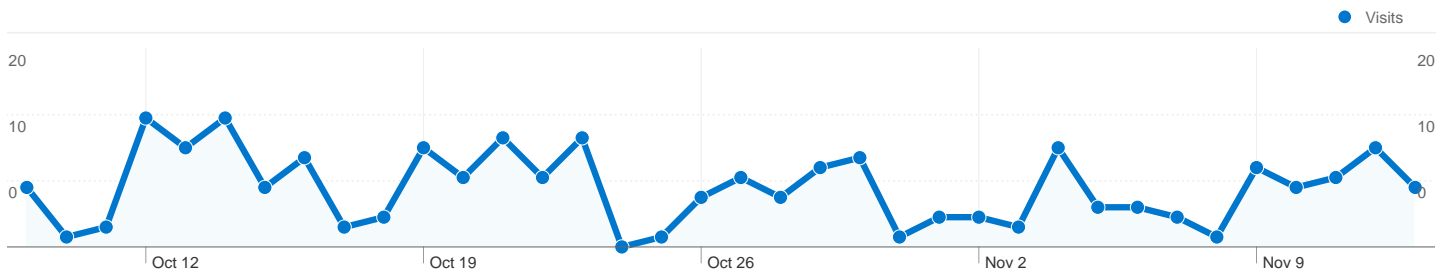


14 pages were viewed a total of 591 times

Content Performance

Page	Pageviews	Unique Pageviews	Avg. Time on Page	Bounce Rate	% Exit	\$ Index
/~ccp/index.htm	307	154	00:00:36	37.58%	34.20%	\$0.00
/~ccp/Council_Membership.htm	46	34	00:00:37	66.67%	43.48%	\$0.00
/~ccp/resources.htm	43	30	00:01:32	55.56%	41.86%	\$0.00
/~ccp/LegislativeHistoryofRules.htm	39	28	00:04:29	78.57%	58.97%	\$0.00
/~ccp/contact.htm	38	19	00:00:17	33.33%	21.05%	\$0.00
/~ccp/order.htm	28	16	00:00:37	36.36%	32.14%	\$0.00
/~ccp/minutes.htm	27	17	00:00:54	50.00%	48.15%	\$0.00
/~ccp/CurrentBienniumMeetings.htm	22	17	00:02:30	0.00%	36.36%	\$0.00
/~ccp/LegislativeHistory.htm	16	11	00:00:26	0.00%	0.00%	\$0.00
/~ccp/AmendmentsPublishedforComment.htm	8	8	00:00:10	100.00%	62.50%	\$0.00

1 - 10 of 14

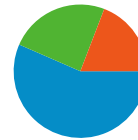


All traffic sources sent a total of 214 visits

 56.54% Direct Traffic

 19.16% Referring Sites

 24.30% Search Engines

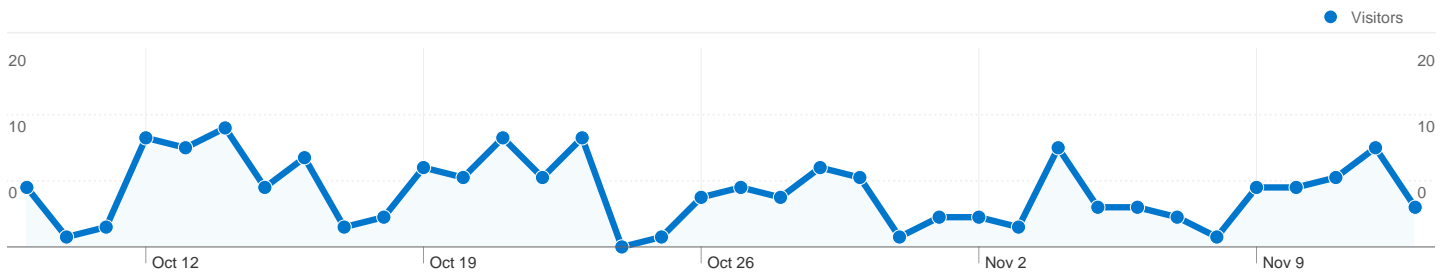


- Direct Traffic
121.00 (56.54%)
- Search Engines
52.00 (24.30%)
- Referring Sites
41.00 (19.16%)

Top Traffic Sources

Sources	Visits	% visits
(direct) ((none))	121	56.54%
google (organic)	46	21.50%
courts.oregon.gov (referral)	18	8.41%
counciloncourtprocedures.org	5	2.34%
cvk-law.com (referral)	5	2.34%

Keywords	Visits	% visits
oregon council on court	10	19.23%
court procedures	5	9.62%
oregon council on court	3	5.77%
agendas and minutes	1	1.92%
alex libmann attorney	1	1.92%



184 people visited this site

214 Visits

184 Absolute Unique Visitors

590 Pageviews

2.76 Average Pageviews

00:01:42 Time on Site

43.46% Bounce Rate

79.44% New Visits

Technical Profile

Browser	Visits	% visits	Connection Speed	Visits	% visits
Internet Explorer	159	74.30%	Unknown	65	30.37%
Firefox	38	17.76%	T1	58	27.10%
Safari	13	6.07%	Cable	43	20.09%
Chrome	2	0.93%	DSL	35	16.36%
Mozilla	1	0.47%	Dialup	12	5.61%

DANNY LANG,
OSB #79007 & CSB #78838

GLINDA SIFERS,
Litigation Manager

Law Offices of
DANNY LANG
Attorney at Law

140 S. STATE STREET
SUTHERLIN, OREGON 97479
TELEPHONE (541) 459-9886
FAX (541) 459-1230
attorneylang@paccomm.net
Taxpayer I.D. #1005536

October 16 2009

BRUCE MILLER
REPORTER
UTCR COMMITTEE
503-986-5500
1163 STATE STREET
SALEM, OR 97301-2563
FAX: 503-986-5503

MARK A. PETERSON
EXECUTIVE DIRECTOR
COUNCIL ON COURT PROCEDURES
503-768-6500
1018 BOARD OF TRADE BUILDING
310 SW FOURTH AVENUE
SALEM, OR 97204-2387
FAX: 503-768-6540

RE: PROPOSED SUSTAINABILITY REVIEW BY UTCR COMMITTEE & COUNCIL ON COURT PROCEDURES

Dear Reporter Miller and Executive Director Peterson:

On October 9, 2009, the OSB Leadership College conducted the 2009 "*Sustainability*" Program at the University of Oregon Law School. The Program Presenters, Guest Speakers, and our 2009 Fellows expressed both an awareness and concerns that some of our Court Procedures and Trial Rules are inadvertently detrimental to sustainability, especially via unnecessary generation of paper documents presently mandated by our Rules.

Accordingly, the purpose of this communication is to propose that your respective Bar Committees conduct a "*Sustainability Review*" of Oregon Rules of Civil Procedure; Oregon Rules of Appellate Procedure; and Uniform Trial Court Rules with a view to reducing presently required documentation and use of paper.

For example, why do the Rules for the format of Motions make the inclusion of Points & Authorities mandatory for all Motions?... including Motions for Postponement and Continuances, etc.? It is respectfully submitted that Oregon's Circuit Court Judges are sufficiently informed as to *Authorities* for granting or denying such routine Motions... without the need to require written submissions, *on pleading paper*, of boilerplate standard Points & Authorities... Points & Authorities that our Judges do not need to reply upon when deciding such routine Motions. .. Some of which are unopposed or upon Stipulation. Likewise, perhaps the requirement of "Supporting Affidavits" needs to be reconsidered in such routine matters submitted over the signature of a Member of the Oregon State Bar [i.e., "True Copy" Affidavits authenticating Exhibits attached to routine Motions really should not require such formal authentication by Affidavit when submitted as Attachments to Motions and matters bearing the signature of the Oregon State Bar Member].

In addition to supporting "*Sustainability*", the foregoing proposals will result in lower costs for legal representation of parties in Oregon Court proceedings, and in turn, improve *Access to Justice*, by reducing the cost burden upon low and moderate income Oregonians.

Respectfully submitted,



DANNY LANG
LCAB Chair & 2009-2011 HOD Elected Delegate

Council on Court Procedures
November 21, 2009. Meeting
Appendix C-1