

**NOTICE OF PUBLIC MEETING
COUNCIL ON COURT PROCEDURES**

Saturday, September 7, 2013, 9:30 a.m.

Jordan Ramis

Two Centerpointe Drive, 5th Floor Boardroom
Lake Oswego, OR 97035

AGENDA

- I. Call to Order (Mr. Cooper)
- II. Introductions (all)
 - A. Guests
 - B. Welcome of new members
 - C. Hand out current roster and note corrections
- III. Approval of December 1, 2012, Minutes (Mr. Cooper)
- IV. Council Rules of Procedure per ORS 1.730(2)(b) (Prof. Peterson)
 - A. Review
 - B. Council Timeline
 - C. Set Meeting Dates for Biennium
- V. Annual election of officers per ORS 1.730(2)(b) (Mr. Cooper)
 - A. Chair
 - B. Vice Chair
 - C. Treasurer
- VI. Reports Regarding Last Biennium (Chair)
 - A. Promulgated rules (Prof. Peterson)
 - B. 76th Legislative Assembly's ORCP amendments outside of Council amendments (Prof. Peterson)
 - 1. ORCP 1 E (HB 2833)
 - 2. ORCP 38 C (HB 2148)
 - 3. ORCP 44 E (HB 3022 - Not Enacted)
 - 4. ORCP 79 E (HB 2778 - Emergency)
- VII. Administrative Matters (Chair)
 - A. Funding (Prof. Peterson/Mr. Shields)
 - B. Council Commentary on Amendments (Prof. Peterson)
 - C. Suggestions Regarding Improvement to the Council from Survey (Prof. Peterson)
 - 1. Reduce the number of votes required to pass rules

2. Council is too sensitive in avoiding substantive issues
3. More time and resources should be devoted to soliciting feedback and proposals from the bench and bar
4. Civil procedure rules for entire state - Portland area should not drive all procedure
5. Predictability is extremely important to the fairness and efficacy of the ORCP - avoid making too many changes for the sake of "improvement"

VIII. Old Business (Chair)

IX. New Business (Chair)

- A. Potential amendments carried over from last biennium
 1. ORCP 7 (allowing mail service by non-attorneys)
 2. ORCP 10 (adding three days for e-mail service)
 3. ORCP 15 (whether, under Rule 15, all replies to counterclaims and cross-claims are governed by the time allowed in Rule 7 C(2), or only replies by new parties)
 4. Re-Examination of ORCP 27
 5. Re-Examination of ORCP 44
 6. ORCP 45 (whether there should be some kind of rule stating that the time for responding to or objecting to requests for admission should be measured after a party is represented by counsel or after they have indicated they are going to be representing themselves pro se)
 7. Re-Examination of ORCP 46 and 55
 8. Re-Examination of ORCP 54 A
 9. ORCP 54 E (making reciprocal)

- B. Potential amendments submitted since December, 2012, meeting
 1. ORCP 9 (recognize the prevalent use of internet based fax solutions and explicitly allow their use as a method of serving and being served)
 2. ORCP 43 and 55 (subpoenaing medical records from a party to a lawsuit rather than a non-party and how this relates to the timeline in a request for production)
 3. ORCP 47 E (deleting the word "retained" used twice in said subsection)

- C. Potential amendments received from Council Survey
 1. ORCP 1 (ORCP should specifically disallow SLR from requiring an affidavit - declarations only should be used) suggestion #44 on survey
 2. ORCP 7 (allow mail service to entities, not just those whose registered agents or offices are not within the county in which the action is pending) suggestion #20 on survey
 3. ORCP 9 (allow e-mail service of pleadings without special agreements)

- suggestion #35 on survey
4. ORCP 9 (allow service by e-mail to be automatic) suggestions #5, #21 on survey
 5. ORCP 9 (e-service and allowing attorneys to choose service via e-mail; adding fax confirmations to the certificate of service does not make sense - certifying that you faxed to the correct number should be enough) suggestion #4 on survey
 6. ORCP 9 D (requests for admissions should be required to be filed with the court) suggestion #26 on survey
 7. ORCP 13 (show cause motions in family law context should be considered "pleadings") suggestion #13 on survey
 8. ORCP 26 (require that petitioners in restraining order cases receive actual notice of any hearings) suggestion #25 on survey
 9. ORCP 36 (allow expert discovery; rules could limit the time and number of expert depositions; expert discovery in complex cases) suggestions #8, 17, 24, 31, 36, on survey
 10. ORCP 36 (rules for complex and construction defect litigation permitting limited expert discovery) suggestion #40 on survey
 11. ORCP 36 (name expert witnesses 60 days before trial; require a statement of opinion, resume, and list of cases in which they've testified within past 10 years) suggestion #22 on survey
 12. ORCP 36 (allow interrogatories; basic interrogatory provision mirroring the federal rules; limited interrogatory practice) suggestions #14, 32, 46 on survey
 13. ORCP 36 (discovery rules need teeth - parties and judges routinely disregard timelines and due dates) suggestion #6 on survey
 14. ORCP 36 (limits on discovery depending on value of case); suggestion #1 on survey
 15. ORCP 36 (mandatory disclosure of all relevant discovery to be used at trial, as in criminal cases) suggestion #7 on survey
 16. ORCP 36 (problem is that there is no bar to admissibility of documents unless an order compelling production of the same) suggestion #17 on survey
 17. ORCP 36 (rules to produce evidence earlier in the process) suggestion #46 on survey
 18. ORCP 36-46 (discovery rules very disorganized, going from the general to specific back to the general) suggestion #23 on survey
 19. ORCP 40 (depositions upon written questions only if stipulation or the court allows it) suggestion #2 on survey
 20. ORCP 43 (better rules for electronic discovery) suggestion #9 on survey
 21. ORCP 43 (discovery rules should more closely parallel federal rules; Oregon's "trial by ambush" leads to abuse; motions to compel are a

- waste of time) suggestion #17 on survey
22. ORCP 43 (eliminate requirement to produce documents to correspond to requests) suggestion #33 on survey
 23. ORCP 43 (more specific rules regarding electronic discovery, as with recent amendments to the FRCP) suggestion #16 on survey
 24. ORCP 44 (avoid "same body part" instead of discovery that relates to claims being made) suggestion #10 on survey
 25. ORCP 44 (broader discovery allowed regarding pre- and post-accident medical records) suggestion #19 on survey
 26. ORCP 45 (judges do not enforce requests for admission) suggestion #42 on survey
 27. ORCP 45 (rule should specify that requests for admissions and their responses are to be filed) suggestion #26 on survey
 28. ORCP 46 (sanctions for discovery abuses) suggestion #41 on survey
 29. ORCP 47 (trial judges should be given greater authority to resolve cases early on via summary judgment) suggestion #38 on survey
 30. ORCP 54 E (offers of judgment simplified textually and clarified; how to make an offer of judgment global (all fees and costs); is prejudgment interest included) suggestion #11 on survey
 31. ORCP 55 H (make clear whether a trial subpoena for medical records does or does not need to be served on the opposing attorney at least 14 days before it is served on the provider) suggestion #29 on survey
 32. ORCP 59 H (contains needless trap and is a problem) suggestion #12 on survey
 33. ORCP 62 (findings of fact - every judge seems to believe this rule does not apply) suggestion #23 on survey
 34. ORCP 64 (amend to provide that a motion for reconsideration shall be addressed as a motion for a new trial) suggestion #46 on survey
 35. ORCP 68 (abolish the American rule on attorney fees and impose a "loser pays" rule) suggestion #38 on survey
 36. ORCP 68 C (pleading and motion requirements for alleging a right to attorney fees should be contained in the pleading rules – e.g. ORCP 13-16 – or those rules should contain cross-references to ORCP 68 C(2)). suggestion #27 on survey
 37. ORCP 69 (require a party applying for a default order to provide a copy of the motion to the party being defaulted, even if that party has not appeared or given notice of the intent to appear) suggestion #46 on survey
 38. ORCP 69 B (whether the notice of default can be filed and served before the appearance period expires); suggestion #1 on survey
 39. ORCP 79-85 (prejudgment procedural remedies; Council did not fully adopt changes to statutes made in 1972 post Fuentes v. Shevin)

- suggestion #12 on survey ("comments about CCP or its work")
40. ORCP 80-85 (review and revision) suggestion #43 on survey
 41. UTCR 2.030 (make it mandatory for both lawyers to notify the court and the presiding judge if a trial court has not ruled within 30 days in every case) suggestion #25 on survey
 42. No Specific ORCP (system is slow and expensive for clients I represent; they are suited for people and companies with many resources; streamline processes for handling legal disputes) suggestion #7 on survey ("comments about CCP or its work")
 43. No Specific ORCP (rules on mediator qualification and appointment need to be fixed) suggestion #40 on survey
 44. No Specific ORCP (deal with foreclosure judgments for which no deficiency is sought to avoid the "money judgment" issue) suggestion #40 on survey
 45. No Specific ORCP (procedures to remove a wrongfully recorded lis pendens) suggestion #40 on survey
 46. No Specific ORCP (rules dealing with repetitive self-represented litigants) suggestion #40 on survey
 47. No Specific ORCP (better communication/invitation for changes to the ORCP, more communication about proposals) suggestion #39 on survey
 48. No Specific ORCP (make ORCP shorter and easier to understand) suggestion #36 on survey
 49. No Specific ORCP (ORCP should contain a scheduling rule akin to FRCP 16) suggestion #34 on survey
 50. No Specific ORCP (ORCP should clarify when a particular rule applies to a post-judgment show-cause motion) suggestion #32 on survey
 51. No Specific ORCP (ORS 107.095 should be amended - court may not issue orders under that provision without notice and opportunity for a hearing) suggestion #30 on survey
 52. No Specific ORCP (Please, for the love of God, convert everything to online case management) suggestion #28 on survey
 53. No Specific ORCP (make it easier to do telephonic testimony) suggestion #25 on survey
 54. No Specific ORCP (encourage more judge-run mediations) suggestion #25 on survey
 55. No Specific ORCP (school records as hearsay exceptions) suggestion #25 on survey
 56. No Specific ORCP (assign a judge from the beginning of a case as in federal court litigation and as Washington County does for family law cases) suggestion #15 on survey
 57. No Specific ORCP (having to prep a case fully and knowing it probably won't go is frustrating) suggestion #8 on survey ("comments about CCP or

its work")

58. No Specific ORCP (publish a website that does for rules what OregonLaws.org does for the statutes - provides properly formatted presentation) suggestion #18 on survey
59. No Specific ORCP (complete plain language overhaul like the federal rules) suggestion #18 on survey
60. No Specific ORCP (disallow SLR from requiring orders to show cause except post-judgment when a case is closed - a simple motion should be the preferred route) suggestion #44 on survey

D. Potential amendments suggested by Legislative Counsel

1. ORCP 4 (revise numbering; reword internal references)
2. ORCP 7 C (add a lead line, which involves changing numbering)
3. ORCP 7 D (reword internal references; substitute phrase in 7 D(4)(b))
4. ORCP 7 E (changes to conform to ORS 21.300(2))
5. ORCP 9 (replace e-mail with formal term "electronic mail")
6. ORCP 46 B (add lead lines, correct syntax, reword internal references, correct punctuation, consider rewriting section)
7. ORCP 54 D (add lead lines)
8. ORCP 54 E (add lead lines and reword internal references)
9. ORCP 55 D (add and amend lead lines)
10. ORCP 67 C (amend lead lines)
11. ORCP 73 C (amend lead lines)

E. Appointment of committees regarding any items listed in IX A, B, C, and D

X. Adjournment