

MINUTES OF MEETING
COUNCIL ON COURT PROCEDURES
 Saturday, November 2, 2013, 9:30 a.m.
 Oregon State Bar
 16037 SW Upper Boones Ferry Rd.
 Tigard, Oregon

ATTENDANCE

Members Present:

Hon. Rex Armstrong
 Hon. Sheryl Bachart*
 John R. Bachofner
 Jay W. Beattie
 Michael Brian*
 Hon. R. Curtis Conover*
 Kristen S. David
 Hon. Roger J. DeHoog
 Hon. Timothy C. Gerking
 Hon. Jerry B. Hodson*
 Robert M. Keating
 Hon. Jack L. Landau
 Hon. Eve L. Miller
 Mark R. Weaver*
 Hon. Charles M. Zennaché

*Appeared by teleconference

Members Absent:

Hon. Paula M. Bechtold
 Arwen Bird
 Brian S. Campf
 Travis Eiva
 Jennifer L. Gates
 Maureen Leonard
 Shenoa L. Payne
 Deanna L. Wray

Guests:

Matt Shields, Oregon State Bar

Council Staff:

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

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 1 • ORCP 4 • ORCP 14 • ORCP 15 • ORCP 18 • ORCP 20 • ORCP 27 • ORCP 45 • ORCP 46 • ORCP 47 E • ORCP 54 E • ORCP 55 • ORCP 68 • ORCP 69 	<ul style="list-style-type: none"> • ORCP 26 • ORCP 40 • ORCP 59 • ORCP 62 • ORCP 64 		

I. Call to Order (Ms. David)

Ms. David called the meeting to order at 9:40 a.m.

II. Approval of October 5, 2013, Minutes (Ms. David)

Prof. Peterson noted a correction to the minutes (**Appendix A**). He asked that the language on page 3 regarding ORCP 68 be clarified. He suggested something along the lines of: "He noted that, in the post-judgment collection context, most judges say they will honor a statement of attorney fees filed and served more than 14 days after entry of judgment, but the rule as written would indicate that such a filing is too late."

Ms. David asked that the language on page 8 regarding ORCP 47 be changed from " she shared this information with the judges" to " she shared this information with the committee."

A motion to approve the minutes as amended was made and seconded, and this motion was carried by voice vote.

III. Administrative Matters (Ms. David)

A. Contacting Legislators

Ms. David pointed out that Prof. Peterson and Ms. Nilsson had created a matrix of legislator contacts (**Appendix B**) and assigned Council members who had not expressed a preference to legislators. Council members are responsible for contacting an average of between 3 and 4 legislators each. Judge Zennaché noted that Mr. Eiva had been assigned to contact Sen. Prozanski, whom the judge has known for many years. Ms. Nilsson stated that she would contact Mr. Eiva and ask him to correspond with Sen. Edwards rather than Sen. Prozanski.

Ms. David stated that Council members should feel free to share any feedback they receive with the Council and that, if legislators have any questions members cannot answer, those should be referred to Prof. Peterson and Ms. Nilsson.

B. Smart Phone/Tablet App for ORCP/ORCP in More Readable Format on Council Website (Ms. David)

Ms. David told the Council that she had received an advertisement for a smart phone/tablet app that included Oregon court rules, but lacked the Oregon Rules of Civil Procedure (ORCP). She also received information from a company that advertised that one could "create your own app." (**Appendix C**) Both advertisements appeared to be from out-of-state companies. She suggested that, if no apps could be found that contain the ORCP, we might consider contacting the first company and suggesting that they include the ORCP in their app, since this would be useful tool for attorneys.

Judge Miller stated that the Oregon Judicial Department (OJD) had loaded an app onto her iPad called ORS Rap 2012, which does include the ORCP. The app appears to be made by a company called NOMOS. She suggested getting in touch with someone at the OJD to learn more information about the app and whether it is available commercially.

Ms. David and Ms. Nilsson agreed to do further research on the issue and report back to the Council in November. She also suggested that Mr. Shields could be helpful regarding this issue.

IV. Old Business (Ms. David)

A. Committee Reports

1. Electronic Discovery (Ms. David)

Ms. David stated that the committee had met again and agreed that there does not seem to be the need to reach out to the bench and bar for further comment. She noted that the Council's prior rule change regarding e-discovery has been in effect for about a year and a half, and that the courts do not seem to be seeing a particular problem relating to it. Ms. David observed that there are still discovery issues that arise, but that they are generally similar to other discovery issues, and that there are mechanisms in the Uniform Trial Court Rules (UTC) which require the parties to confer when such issues arise. She suggested that the committee watch and wait, as it did last biennium, and report back to the Council in March.

2. General Discovery (Ms. Payne)

Mr. Beattie, who was acting as chair of the committee during the month of October, was not able to schedule a meeting. This was due in part to the large size of the committee. He will attempt to get a meeting scheduled and, in the interim, he will see if he can find a model rule somewhere and explore the possibility of the creation of a limited rule change regarding the disclosure of expert witnesses at some time prior to trial. He suggested that perhaps the rule could be placed into the ORCP 50 series relating to the trial of cases as opposed to the discovery series. He stated that he does not foresee comprehensive expert discovery happening in Oregon. Mr. Bachofner pointed out that the committee is charged with the issue of interrogatories as well.

3. ORCP 1 and Legislative Counsel Suggestions (Ms. David)

Ms. David reported that the committee had met and discussed ORCP 1 E. She stated that Prof. Peterson had received feedback from the Oregon Law Commission, and that the committee is ultimately looking at revising some language in ORCP 1 E to include a section about foreign declarations. She stated

that the committee is also looking at various suggestions from Legislative Counsel, but was a little concerned with the suggestion to renumber sections in ORCP 4 regarding jurisdiction. She noted that such a change could significantly impact attorneys' legal research, and this has the potential to make a practitioner's life miserable. Ms. David stated that the committee would like to speak to someone with Legislative Counsel to better understand the rationale behind their request. She suggested that other committees considering Legislative Counsel suggestions should also take the issue of legal research into consideration. Prof. Peterson observed that the change appears to be an attempt to make the rules more uniform, which is a noble goal, but noted that Judge Armstrong found other rules formatted in the same way as is ORCP 4 that Legislative Counsel did not suggest changing.

Prof. Peterson stated that, with regard to ORCP 1, the Oregon Law Commission did not assign the matter to a work group but, rather, sent the matter directly to Legislative Counsel. He also stated that Holly Rudolph of the Oregon Judicial Department has been working on standardizing court forms and had sent him an e-mail (**Appendix D**) asking whether affidavits should be eliminated from the ORCP, as they seem to be archaic. The committee had a discussion about the difference between sworn statements and unsworn statements. Prof. Peterson pointed out that there are cases where statutes require an affidavit, and he wondered whether the Council has the power to say that a declaration is good enough in those cases. Ms. David noted that, when it comes to making procedural versus substantive changes, sometimes the Council does not have enough information readily at hand because the Oregon Revised Statutes are voluminous. She cautioned that we need to tread carefully so as not to make an unwitting impact elsewhere.

4. ORCP 7/9/10 Regarding Service (Mr. Bachofner)

Mr. Bachofner stated that the committee has not yet met. Prof. Peterson observed that Holly Rudolph's e-mail (**Appendix D**) had also mentioned the possibility of removing affidavits from ORCP 7, and he asked the committee to take a look at that issue as well.

5. ORCP 13 (Judge Zennaché)

Judge Zennaché reported that he attended the family law conference and asked the executive committee if they would appoint two people to be part of the committee's work group on this issue. He will schedule a committee meeting in November so that the committee can decide which issues in their charge are procedural versus substantive and proceed from there. Judge Zennaché noted that he had also received an e-mail from a judge expressing concern about a proposal that is circulating to ban any supplemental local rule (SLR) that would

require an order to show cause rather than a prejudgment motion. He stated that he will forward that e-mail to the committee. Prof. Peterson asked that the committee address Holly Rudolph's concerns (**Appendix D**) about defaults in family law cases as well.

Ms. David stated that she is stepping down from this committee and that Mr. Beattie will take her place.

6. ORCP 15 (Mr. Beattie)

Mr. Beattie reported that the committee has not yet had a follow-up meeting, but noted that the committee does not feel much momentum to make a change to a rule based on what appears to be a mere lack of understanding of the rule. He stated that Judge DeHoog had suggested that a reference to the number of days specified in Rule 7 C (2) could be inserted in ORCP 15 A. He stated that he personally does not believe that this is a good idea because referencing another rule that could eventually be changed is not a good precedent. He noted that his vote would be to do nothing, and suggested that the committee have a follow up meeting and finalize its decision. Prof. Peterson asked that, if the committee decides to take no action, it should write a short report discussing the rule and why the Council believes that it is clear in its current form.

7. ORCP 27 (Mr. Weaver)

Mr. Weaver reported that the committee has not had an official meeting since the last Council meeting, but that committee members have been working hard. He stated that he, Prof. Peterson, and Mr. Eiva went through the entire ORS to try to cull out any statute that may be affected by a potential rule change of the sort that was published but not promulgated last biennium. The three members are working on merging all three lists, and the next meeting will analyze whether last biennium's draft amended rule would affect statutes in addition to those discussed at the December 1, 2012, meeting. Prof. Peterson expressed his appreciation that Mr. Eiva not only produced a list of statutes, but a thorough analysis as well.

8. ORCP 44 (Mr. Keating)

Mr. Keating reported that the committee has not yet met, but will do so in November.

9. ORCP 45 (Ms. Wray)

Ms. Wray was not able to attend the meeting. Ms. David reported that the committee has reached out to the listservs of the Oregon Trial Lawyers Association

and Oregon Association of Defense Counsel and is gathering responses. She stated that the committee will meet in November and report back next month.

10. ORCP 46 and 55 (Judge Gerking)

Judge Gerking reported that the committee had met and reviewed what had been accomplished last biennium. He stated that the Council had added ORCP 55 H(2)(b), which requires individuals or attorneys representing individuals whose medical records are sought by subpoena and who object to file a written objection within 14 days of the issuance of the subpoena. Because there was no enforcement mechanism for that specific discovery rule, it was then proposed that ORCP 46 be amended to provide under subsection A(2) that a motion to compel may be filed if a party fails to comply with the requirements of ORCP 55 H. Prior to the vote to promulgate, that language was amended to read "if a party objects or fails to comply." Judge Gerking noted that the fact that the amendment was not promulgated last biennium was based partly on an e-mail from attorney Don Corson, who was concerned that there should not be any changes to ORCP 46 because the issue is covered adequately in ORCP 55. He stated that Mr. Corson felt that, if the other party failed to respond, it would be a violation of ORCP 55 and could otherwise be addressed by the existing contempt provisions in ORCP 55. If there was an objection filed by an attorney or a party, that would not be a violation, so there would be no problem.

Judge Gerking stated that the committee talked about the fact that Mr. Corson's letter preceded the last-minute changes in the ORCP 46 language at the December, 2012, Council meeting, and that the proposal that was defeated was designed to cover situations where a lawyer files a good faith objection and the parties cannot agree; the way to solve this would be to file a motion to compel under ORCP 46. He observed that, if the new requirement under ORCP 55 H is ignored and no response is filed by the other party, there is no way to deal with it. One of the problems a change to ORCP 46 would address is when a lawyer does not file an objection, but contacts a health care provider directly and tells the provider not to produce the records. Judge Gerking stated that Mr. Eiva was on the fence about how to solve the issue, but that all committee members agreed that there needs to be some type of enforcement mechanism. He stated that the committee will meet again and, hopefully, have a proposal by December.

Prof. Peterson observed that there appear to be two kinds of disputes: disputes over objections and disputes over the thwarting of getting the records. Judge Gerking agreed and stated that a failure to respond is not a violation but, if an attorney calls a provider and directs the provider to not produce the records, the provider probably will not produce them. Mr. Bachofner suggested amending ORCP 55 to make it clear that, absent a formal objection received from the party or the person whose records are being subpoenaed, the provider is required to

produce them. Judge Miller asked whether there is there confusion on the part of health care providers if they are not receiving an objection from the person whose records are subpoenaed. Mr. Beattie pointed out that providers are sometimes reluctant to comply because of potential Health Insurance Portability and Accountability Act of 1996 (HIPAA) issues. Judge Gerking observed that the rule states that 14 days' notice is required, accompanied by an affidavit stating there has been no objection. Judge Miller asked why a rule change would be needed if that is the procedure in place: if there is no objection and no one contacts the provider, the attorney will get the records. Mr. Bachofner replied that there are some providers who will not necessarily provide records, even in that case. Mr. Keating agreed that a mechanism for compliance is still needed.

11. ORCP 47 E (Ms. David)

Ms. David reported that the committee had met. Through an oversight, Judge Miller was not included in the meeting, but she will be forwarded information about what the committee has already done and invited to future meetings. Ms. David reminded the Council that the committee was asked to look at the word "retained," which is used twice in ORCP 47 E. She stated that the committee had looked at the Council's legislative history – Ms. David had previously researched the issue for a case – and that the word appears to have had a very specific intent. The committee will report back with a formal memorandum at the December meeting.

12. ORCP 54 A (Ms. Leonard)

Ms. Leonard was not able to attend the meeting. Members of the committee reported that they had not yet met.

13. ORCP 54 E (Ms. David)

Ms. David reported that she will be stepping down from the committee. Mr. Bachofner will take her place, and Ms. Gates will step in as chair. Ms. David stated that the committee had met, but that not all members were available. She reminded the Council that the question before the committee is whether an offer of judgment should be allowed to be reciprocal. Prof. Peterson noted that Ms. Leonard had pointed out when this was raised last biennium that it could be unfair if a plaintiff files a lawsuit and then makes a prompt offer of judgment when the defense is still trying to figure out all of the aspects of the case, because there is a really short time frame for responding to an offer of judgment. He stated that this could be an unfair tactical advantage and that, if a claimant in a lawsuit were to be allowed to make an offer of judgment, it should probably be at a later point in the litigation to allow the defense side adequate time.

Mr. Bachofner wondered why a plaintiff would even want to make an offer, since there are appellate court decisions to the effect that a rule 54 E offer does not cut off the right to statutory attorney fees in small tort and similar cases. He observed that there would be no teeth unless the Council makes a substantive change to cut off fees. Ms. David stated that Ms. Gates was going to reach out to OTLA and see if anyone could give her examples of situations where an offer of judgment from a plaintiff could be beneficial.

Judge Miller noted that many expert witnesses require non-refundable deposits in advance, and it could be problematic for a defendant to get a settlement offer the day after such fees were paid, for example. Mr. Beattie expressed confusion about how the process would work: a plaintiff makes an offer, the defendant does not improve on it, and the plaintiff still wins and gets costs. Mr. Bachofner stated that, if the Council were willing to consider a change that would allow ORS 20.080 or 742.061 attorney fees to be cut off as a result of an offer to allow judgment, then there would be some give and take. He observed that, if there is an offer from the defendant and it allows a cutoff of fees, but there is later an offer from a plaintiff in an amount more than what the defendant offers but less than what the ultimate recovery is, it could reopen attorney fees. Ms. David expressed concern that such a change would be substantive. Mr. Bachofner stated that there is a substantive element to the rule as it exists and that, if the Council had been this timid about the substantive/procedural issue when the rule was originally drafted, the rule would not exist at all. He noted that, if the purpose behind the rule is to encourage settlement, we need to come up with the procedures that achieve that result.

Judge Miller stated that, from a judge's standpoint, if there is some impetus to address a settlement offer early on in the litigation and before costs mount, it might encourage people to be more realistic and would provide more motivation to get cases settled. Judge Armstrong agreed that it could have the effect of moving a dialogue forward, but that perhaps the only realistic way of doing that is if there is some consequence if the offer is not taken seriously. Mr. Beattie noted that there is an existing weak penalty, the enhanced prevailing party fee. Judge Miller stated that this is infrequently used and that, in most cases there has to be bad faith in order for a judge to impose an enhanced prevailing party fee. Mr. Beattie agreed that it is rare. Judge Miller stated that plaintiffs' attorneys, especially inexperienced ones, sometimes file a case and ask for relief before fully realizing what the case is about, and defense attorneys are missing the opportunity to settle if they do not try early on in the case to look at it from the plaintiffs' standpoint. Ms. David agreed that, overall, there is a necessity to educate and encourage attorneys to confer and discuss early on to see if there can be an early resolution.

Mr. Brian opined that providing plaintiffs an opportunity to make an offer of

judgment is a waste and accomplishes nothing. Prof. Peterson stated that the impetus comes from members of the California bar, where expert fees are recoverable, so such offers have teeth. He stated that it might have an impact in terms of ORS 20.075 in determining how much the award of fees should be because there would be concrete evidence of the other side rejecting the offer and being unreasonable. Judge Zennaché noted that a copy of letter offering the settlement terms would be adequate for that. Mr. Brian agreed. Mr. Bachofner observed that it is common for plaintiff's attorneys to become more reasonable closer to trial. If they wait until a week or two before the trial to suddenly start talking about settlement, by that time a lot of expense has been incurred on both sides. The question is how to make lawyers evaluate their cases, or their clients, more realistically early on. Judge Miller stated that, unfortunately, settlement conferences in Clackamas County are now scheduled a month before trial so, perhaps, it is a matter of changing the practice to hold such conferences earlier. She stated that the conferences are scheduled for an hour and a half. Judge Gerking stated that they have a similar rule in Klamath Falls, but they only allow 30 minutes.

Prof. Peterson noted that the Council had polled OTLA and OADC regarding this issue in previous biennia, and that the committee may not wish to do that again this time.

14. ORCP 68 (Mr. Weaver)

Mr. Weaver stated that the committee had met and was discussing two potential issues. The first issue is considering whether to make an amendment about whether or not an attorney fee judgment can be entered after a limited judgment is issued. He stated that an example would be where one defendant has been completely dismissed from a case with a limited judgment with a right to attorney fees, and the question is whether that defendant can request an attorney fee judgment and enforce it or whether it can go up on appeal with the limited judgment.

The second issue before the committee is a suggestion to remind practitioners – in earlier rules that address pleading requirements – of the ORCP 68 C(2) requirement to specify the basis of a claim for attorney fees when filing a pleading or motion. He wondered whether it is really a problem and whether judges are seeing a lot of attorneys plead fees without specifying the basis. Judge Gerking stated that he sees it often. Judge Miller stated that she does not see it as a big problem, but that it sometimes comes up in family law. Mr. Beattie wondered, if an attorney pleads a right and is not specific about the statute allowing attorney fees, whether a judge would allow amendment. Judge Miller stated that her clerk looks at the complaint and compares it to the request for judgment and sees if they match. If they do not, she tells them to amend the complaint and come back

or they are out of luck. Judge Zennaché agreed that if the attorney amends the complaint and then serves the amended complaint he might allow it. Judge Armstrong noted that the Court of Appeals has written a number of opinions that have grappled with the importance of identifying the source of the law or the facts that otherwise give rise to an award of fees. He observed that it probably could not do any harm to add such a reference, although it might seem a peculiarity, but it would clarify and help people. Judge Zennaché stated that his concern is starting a trend of cross referencing every rule with every other rule, because the rules are supposed to be read as a whole. He stated that the Council had addressed this issue the last time it made changes to ORCP 68, and decided not to start adding cross-references.

Mr. Bachofner noted that Rule 20 is for special pleading rules, and suggested that perhaps a subsection could be added there. Judge Zennaché stated that Rule 20 addresses special cases – things that are not otherwise addressed in the rules. Mr. Bachofner stated that he did not see a problem with adding a section K that states something like “claims for attorney fees must be specially plead.” Prof. Peterson reiterated that he believes that attorney fees are not special. He noted that the committee had discussed the possibility of amending ORCP 18 or even ORCP 14 because motions may state a claim for attorney fees. He also noted that ORCP 14 B references ORCP 17 A and basically states that, if you are going to file a motion, you need to be cognizant of ORCP 17 A which states that it needs to have a basis in law and fact. Prof. Peterson suggested that, If the Council does make a change to ORCP 68 with regard to timing issues, it might consider changing ORCP 68's title to add the word “pleading,” since the title now only includes allowance and taxation of attorney fees. Judge Miller stated that she would be in favor of this, especially in light of the way people use word searches to do legal research.

Judge Zennaché asked to join the committee.

15. ORCP 69 (Mr. Campf)

Mr. Campf was not able to attend the meeting. Ms. David stated that some committee members had been having discussions and looking at interplay of the notice requirements of ORCP 7 and ORCP 69 B and whether those two time frames could run concurrently. She stated that the committee was also looking at whether a motion for an order of default needs to be served yet again, but there was some concern for debt collection cases that it might be difficult enough to track down a person the first time for service, let alone have to serve them again with a motion for an order of default. She noted the need to balance the desire to give adequate notice with the potentially onerous burden on the practitioner. Judge Zennaché noted that foreclosure cases are served by publication and that the cost is already outrageous – to require them to serve again would be burdensome. Mr. Beattie observed that the Council may want to think about

service by publication in general since fewer and fewer newspapers are being published.

16. Early Assignment of Cases/Scheduling (Judge Gerking)

Judge Gerking stated that the committee has not yet met, but observed that he is not sure it needs to. He stated that, when he first raised the issue of having a rule addressing scheduling conferences, he was not mindful of the fact that it is addressed in the Uniform Trial Court Rules. Regarding early assignment, he feels that it should be left up to the individual judicial districts. Ms. David asked that the committee meet or otherwise communicate to confirm whether members wish to take the issue any further and report back next month. She stated that, if anyone on the Council has a particular question or concern about the committee disbanding, they should contact Judge Gerking.

B. Items to Bring to the Attention of the Debtor/Creditor Section (Prof. Peterson)

Prof. Peterson stated that he had called former students of his who are now members of the Executive Committee of the Debtor Creditor Section of the Oregon State Bar, and that they all were doing mainly bankruptcy law and had no opinion on the issues at hand. He stated that the Executive Committee is meeting on November 8 and that he would try to forward the information to them. He will also contact former students who are on the Executive Committee of the Consumer Law Section. Judge Zennaché observed that the provisional process rules are not very well organized or consistent and really could use a comprehensive effort to make them more user friendly.

Judge Miller asked whether Ms. David sees malpractice cases in this area. Ms. David stated that she does not, but that it may be a sub-speciality where the Professional Liability Fund (PLF) uses a specific firm for representation. Ms. David asked Prof. Peterson to reach out to the PLF and ask if the PLF sees a lot of problems in this area. She stated that this might be an education area that the PLF needs to tackle. Judge Zennaché observed that there are firms doing foreclosures for \$1,800, and that they cannot possibly do it right for that amount of money. He stated that he has been shocked at the number of errors he sees.

The Council agreed that a committee should be formed. Mr. Bachofner noted that he and his partner teach quite a bit on collection in Oregon and that he has dealt with provisional process. He volunteered to join the committee, as did Judge Zennaché and Judge Conover. Prof. Peterson will chair.

V. New Business (Ms. David)

A. Applicability of ORCP 69 to Show Cause Orders - Inquiry from Holly Rudolph (Prof. Peterson)

Prof. Peterson stated that he had received an e-mail from Holly Rudolph with the OJD (**Appendix D**) and that the Rule 69 committee should probably add this issue to its charge. He noted that he was dumbfounded that non-parties could be involved in asking for relief in a case, but Ms. Rudolph stated that it happens and he observed that clearly he has not done enough family law to be immersed in this. Judge Zennaché stated that he does not understand how it could happen. He stated that grandparents can intervene in a case and then become a party - an intervener - and seek relief, but people do not have the ability to just walk in the door and ask to modify someone's custody case. Ms. David suggested that the ORCP 69 committee add this to its agenda, but to wait until the ORCP 13 committee has some feedback. Judge Zennaché stated that the ORCP 13 committee will also add the issue to its charge. Prof. Peterson observed that, in some counties, a motion for show cause will require a party to go through ORCP 69 default procedures as if it were a complaint or petition but, in other courts, if the parties are already personally subject to jurisdiction of the court, the only requirement is to serve the motion. Judge Zennaché stated that the order to show cause tells a party to show up in 30 days and plead a case or else relief will be granted. Judge Miller observed that there is also a notice in the forms for self-represented litigants that states that a written response needs to be filed in so many days. Ms. David worried that, if forms being given to self-represented litigants use the term "defaulted," the litigants may search and find the language regarding default orders under ORCP 69 and not understand. Judge DeHoog stated that the forms use language more like "the following relief will be granted unless you take these steps."

Judge Miller observed that the Council discussed this issue last biennium in regard to counterclaims versus responses to motions. She noted that a number of counties would not treat as one process a pending motion to modify where the other party wants to counter with an opposing motion. Judge Miller stated that the UTCR committee raised concerns about making a rule where such claims could be joined and stated that they would take action in the UTCR to disallow any such practice. She stated that she would look for her notes from last biennium to share with the committee.

Prof. Peterson observed that it is good that Ms. Rudolph is communicating with the Council because it is helpful for us to be aware of her concerns as forms are drafted. Ms. David observed that Ms. Rudolph is involved with creating e-court forms and, as they progress, the Council wants to maintain a relationship so there is consistency among all systems. Judge Armstrong noted that part of the reason for the creation of e-court is to encourage consistency among systems.

B. Suggestions from Rep. Brent Barton regarding ORCP 44 (Prof. Peterson)

Prof. Peterson stated that he left a voice mail with Rep. Barton regarding his concerns (**Appendix E**) and he will follow up with him and report back at the next meeting.

VI. Adjournment

Ms. David adjourned the meeting at 11:23 a.m.

Respectfully submitted,

Mark A. Peterson
Executive Director

DRAFT MINUTES OF MEETING
COUNCIL ON COURT PROCEDURES
 Saturday, October 5, 2013, 9:30 a.m.
 Oregon State Bar

ATTENDANCE

Members Present:

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Guests:

Michael Fuller, OlsenDaines PC
 Matt Shields, Oregon State Bar

Council Staff:

Shari C. Nilsson, Administrative Assistant
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Members Absent:

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 Hon. Sheryl Bachart
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II. Call to Order (Ms. David)

Ms. David called the meeting to order at 9:38 a.m.

IV. Approval of September 7, 2013, Minutes (Ms. David) **(APPENDIX A)**

Ms. David asked whether any members had corrections to the draft September 7, 2013, minutes which had been previously circulated to the members. Hearing none, she called for a motion to approve the minutes. Such motion was made and seconded, and the minutes were approved by voice vote.

VI. Administrative Matters (Chair)

A. Outgoing Chair Letter **(APPENDIX B)**

Ms. David referred to the letter which Brooks Cooper, immediate past chair of the Council, shared with her at the end of September's Council meeting. She stated that it is informative and helpful, and recommended that all Council members read it. Ms. David noted that Mr. Cooper pointed out that it is always wise for the Council to remember that, when issues are brought before the Council, sometimes an actual rule change is not needed but, rather, that the bench and bar need to be educated regarding the existing rules.

B. Council Roster **(APPENDIX C)**

Ms. David stated that the current roster has been updated and that members should check again to make sure their information is correct. She noted that it is a handy resource when contacting committee members.

C. Council Timeline **(APPENDIX D)**

Ms. David stated that the timeline has been adjusted based on the Council's transition to having its meetings on the first Saturday of the month. She observed that it is a good outline of what the Council will be doing over the course of the biennium.

D. Contacting Legislators **(APPENDIX E)**

Ms. David noted that the Council is an arm of the Legislature, and that we like to stay in contact so they understand the value the Council brings. She stated that periodic e-mail updates help legislators understand that Council members are a resource for them if constituents have questions or complaints about court procedures. She urged Council members to reach out to legislators who represent their district or those with whom they have some sort of personal relationship. Ms. David pointed out that sometimes Council members will be assigned to contact legislators they know nothing about because no Council member has a personal contact with that legislator or resides in his or her district. She noted that, with 90 legislators, each Council member should contact two or three

legislators. Ms. David stated that a Council member will periodically prepare generic e-mails and circulate them to Council members, who will then personalize and send the e-mails to their assigned legislators.

VIII. Old Business (Chair)

A. Suggestion from Mark Weaver re: ORCP 68 (timing for entry of judgment for attorney fees - possible conflict with ORS 18.005) **(APPENDIX F)**

Prof. Peterson stated that this suggestion relates to the conundrum that arises in requesting attorney fees for one party that has been let out of the case early. He stated that the conflicting language stems from ORS 18.005(17), which defines a supplemental judgment as one that may be filed after a general judgment. Prof. Peterson stated that last biennium's Rule 68 Committee solved a lot of problems, but not the timing issues. He noted that most judges say they will honor it, but the rule does say that if the statement of attorney fees is filed and served more than 14 days after entry of judgment it is too late.

Ms. David stated that she would like to see any Rule 68 Committee also take on the charge of monitoring last biennium's amendment that is going into effect in January just in case something was missed. The Council agreed to form an ORCP 68 committee consisting of the following members:

Mark Weaver - chair
Judge Gerking
Judge Conover
Mike Brian
Mark Peterson

The following suggestion from the Oregon State Bar Survey was also added to this committee's charge:

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)). **(APPENDIX G, suggestion #27 on survey)**

B. Committee Reports

1. Electronic Discovery (Ms. David)

Ms. David reported that the committee held a telephone conference and that she has reviewed the historical materials of changes made over last several biennia. She stated that the committee is trying to determine whether or not it is worth reaching out to bench and bar again with a survey or email request to get feedback from judges about e-discovery problems (e.g., whether it is a big issue or a non issue, how it is going with practitioners, etc.). Ms. David stated that the

committee will meet again and discuss best way to get that information and to narrow and focus its goals.

2. General Discovery (Ms. Payne)

Ms. Payne stated that the committee had met by telephone and discussed the 10-15 suggestions on ways to change general discovery. She noted that many were inappropriate for further committee work and that the committee had narrowed its focus to two issues that need further attention: expert discovery and interrogatories. Ms. Payne stated that the committee is discussing whether, now that there is a complex case designation in Oregon, it might be appropriate to have expert discovery in those cases. She noted that she did not know the history of interrogatories and wondered whether the Council had generally decided that this is a non-issue or whether the committee should re-examine it.

Prof. Peterson stated that the Council begins anew every biennium, and that certain ideas continue to come back because there is support for them. He stated that the committee should probably look at interrogatories, although he understands that many in Oregon think that it is not a good idea. Prof. Peterson observed that the Council needs a supermajority to promulgate a rule, and this might be a case where one side wants a change and the other side does not, so it may not be likely to pass. Ms. David stated that she is not a fan of introducing interrogatories into the Oregon rules, but that different people in different practice areas might find it helpful. She pointed out that the expert discovery issue is complex and that we may need to expand the committee to a group larger than three people before continuing. Ms. Payne agreed. Prof. Peterson noted that sometimes a committee will put a question out to lawyers for feedback, but he cautioned the committee to be prudent until it decides until it might take action so as not to cause undue panic amongst the bar.

Ms. Payne stated that she will be unavailable for some of the month of October and asked whether someone else could chair the committee for that month. Ms. David nominated Mr. Beattie and stated that, if he was unavailable, she could act as chair for the purpose of setting a telephone conference.

New Members Added to General Discovery Committee:

Mr. Brian
Ms. David
Mr. Eiva
Ms. Gates
Judge Hodson
Mr. Keating
Ms. Wray

3. ORCP 1 and Legislative Counsel Suggestions (Ms. David)

Ms. David stated that the committee met by telephone and mainly focused on the suggested language to make a declaration acceptable in all instances where an affidavit was otherwise demanded. She stated that the committee was concerned by what it does not know, mainly how many statutes are out there that demand that an affidavit be used and to what extent they demand it. Ms. David stated that the committee thought that ORCP 1 E already gave permission to use a declaration anywhere a sworn statement is required in the ORCP but the question arose because a Supplemental Local Rule (SLR) demanded an affidavit and that a survey respondent felt that was not proper. She stated that Prof. Peterson will talk to the Oregon Law Commission and that the committee will report more at the next meeting.

Prof. Peterson stated that he followed up on the legislative change, and that the Uniform Unsworn Foreign Declaration Act has been promulgated by the Uniform Laws Commission. He noted that some jurisdictions apparently do not accept declarations given outside the United States, and that the reason for the Uniform Act is that, with enhanced security, it has become more difficult to get into a U.S. consular office to give a sworn statement. Prof. Peterson observed that, although the Uniform Act has been enacted into ORCP 1 E, it has been done poorly. He stated that our existing rule tells a practitioner what the declaration has to say, so we may consider adding a subsection to specify the new language for foreign declarations. He did state that the language in the bill will be cleaned up and the statutory reference will likely be ORS 194.800, but that he would prefer to remove the statutory reference and put the required language in, or take everything out and merely state that declarations are good in the state courts of Oregon regardless of whether they were made in the U.S. or not.

Mr. Shields stated that it might be worth bringing this to the attention of the Oregon Law Commission, since it was their bill. Prof. Peterson stated that he will do so.

4. ORCP 7/9/10 Regarding Service (Mr. Bachofner)

Mr. Bachofner was not available and no committee report was made.

5. ORCP 13 (Judge Zennaché)

Ms. David stated that Judge Zennaché apologized for not being at the meeting. She stated that he will be attending the upcoming Family Law Conference and will get feedback there, as well as inviting people from the family law listserv to participate in a telephone conference with the committee. The committee will report back next month.

New issues from the survey to add to committee's charge:

No Specific ORCP (ORS 107.095 should be amended - court may not issue orders under that provision without notice and opportunity for a hearing) (**APPENDIX G, suggestion #30 on survey**)

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) (**APPENDIX G, suggestion #44 on survey**)

No Specific ORCP (ORCP should clarify when a particular rule applies to a post-judgment show-cause motion) (**APPENDIX G, suggestion #32 on survey**)

6. ORCP 15 (Mr. Beattie)

Mr. Beattie was not available. Ms. Leonard stated that the committee had an e-mail exchange. She reminded the committee that the issue was regarding whether the 30 day response rule applies to new parties to the case as well as existing parties. She stated that Prof. Peterson had responded to the person who sent in the inquiry and explained that the Council had already considered that concern and that, whether you are a new or old party, you have 30 days to respond. Mr. Eiva asked what the confusion was. Ms. Leonard responded that the person who inquired believed that a ten day rule might apply, even though the party was new to the case. She stated that the committee wanted to discuss the matter a bit further before reporting to the Council.

7. ORCP 27 (Mr. Weaver)

Mr. Weaver was not available. Prof. Peterson reminded the Council that an amendment to ORCP 27 was published but not promulgated last biennium. He stated that the committee had a telephone meeting and that one of the questions it had was: if you are representing someone who needs a guardian ad litem (GAL) and there is money involved, shouldn't there be a conservatorship established? The committee is trying to determine whether the Council can make that clear in the rule or not. Prof. Peterson recalled that, last biennium, practitioners on both sides of the aisle were surprised that they could be in negotiations close to trial and be dealing with a GAL who might not have the authority to get a deal signed and sealed by the judge. He observed that it is worth doing a little more digging to find out whether, for others who have had that experience, it is accurate that they were surprised that GALs were cutting deals. He wondered whether the Council needs to somehow make it clear that, if there is money involved, a conservatorship needs to be established.

Mr. Eiva stated that he believes that it is a good idea to protect vulnerable people,

but his concern is whether we would be creating a rule that could also harm vulnerable people by creating rules that could later be questioned. He wondered whether we would also be creating a way to sabotage a case, or a way to upset a judgment later down the line, when maybe what we really need to be doing is educating the bar that GALs are not an appropriate way to settle cases.

Prof. Peterson stated that the Council did some work at the end of last biennium to make sure that concerns with cases with impending statutes of limitation were addressed, and that there is pretty good legislative history on that. He stated that some notice might be a good idea, but agreed that there are some potential pitfalls. Prof. Peterson stated that the committee will continue its work.

8. ORCP 44 (Mr. Keating)

Mr. Keating was not available and there was no committee report.

9. ORCP 45 (Ms. Wray)

Ms. Wray reported that the question before the committee is whether defendants should have a little more time to respond to requests for admission and whether, if a request for admission is served with the complaint, 30 days is enough time. She stated that the committee decided to put the question to the Oregon Trial Lawyers Association and Oregon Association of Defense Counsel listservs to see if it is a big problem or a solution in search of a problem. Prof. Peterson still plans to look into the history of the rule. He stated that the committee did talk about the fact that, if a request for admissions is served with a complaint, the defendant gets 45 days to respond to the Rule 45 request; therefore, a 15 day delay exists between default and when an answer is deemed admitted. He also observed that there is an escape valve in ORCP 45 D, which states that any matter admitted can be “unadmitted” at the discretion of the court, the standard being “when the presentation of the merits of the case will be subserved thereby.” Ms. David stated she has personally moved to enlarge the time on requests for admission five times this year alone on Professional Liability Fund (PLF) cases, and every time the judge has granted it. Ms. Wray stated that the committee has asked the PLF for feedback as well.

10. ORCP 46 and 55 (Judge Gerking)

Judge Gerking reported that Mr. Keating has been in trial and the committee was unable to meet.

New issue from survey to add to committee’s charge:

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) (**APPENDIX G, suggestion #29 on survey**)

11. ORCP 47 E (Ms. David)

Ms. David reported that she and Judge DeHoog were able to meet. She stated that she had been involved in a previous Court of Appeals case where she researched the Council history of ORCP 47 E, and she shared this information with the judge. She noted that the current issue is looking at the word “retained” being used twice and noted that, historically, the Council looked at this and commented on it. She stated that the committee is now looking at appellate cases and how the courts interpret it. She observed that there is good information in the Council meeting minutes as to its intent.

New issue from survey to add to committee’s charge:

ORCP 47 (trial judges should be given greater authority to resolve cases early on via summary judgment) (**APPENDIX G, suggestion #38 on survey**)

12. ORCP 54 A (Ms. Leonard)

Ms. Leonard reported that the committee had been unable to meet.

13. ORCP 54 E (Ms. David)

Ms. David reported that the committee had been unable to meet.

X. New Business (Chair)

A. Suggestions from Oregon State Bar Survey Not Reviewed at September 7, 2013, Meeting (Ms. David)

For the suggestions from the Oregon State Bar Survey carried over from the September 7, 2013, meeting, the Council grouped them together by subject matter and assigned committees on that basis. Some issues were also assigned to existing committees, and such instances are noted previously in the minutes. The following new committees were formed:

ORCP 69 committee

Members:

Kristen David

Judge DeHoog

Mark Peterson

Brian Campf - chair

Survey Item to Address:

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) (**APPENDIX G, suggestion #46 on survey**)

Early Assignment of Cases/Scheduling Committee

Members:

Judge Gerking - chair

Jennifer Gates

Deanna Wray

Survey Items to Address:

No Specific ORCP (ORCP should contain a scheduling rule akin to FRCP 16) (**APPENDIX G, suggestion #34 on survey**)

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) (**APPENDIX G, suggestion #15 on survey**)

Items to Bring to the Attention of the Debtor/Creditor Section

ORCP 79-85 (prejudgment procedural remedies; Council did not fully adopt changes to statutes made in 1972 post *Fuentes v. Shevin* [407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556 (1972)]) (**APPENDIX G, suggestion #12 on survey ["comments about CCP or its work"]**)

ORCP 80-85 (review and revision) (**APPENDIX G, suggestion #43 on survey**)

No Specific ORCP (deal with foreclosure judgments for which no deficiency is sought to avoid the "money judgment" issue) (**APPENDIX G, suggestion #40 on survey**)

No Specific ORCP (procedures to remove a wrongfully recorded lis pendens) (**APPENDIX G, suggestion #40 on survey**)

B. Upcoming Meeting in Eugene (Mr. Brian)

Mr. Brian suggested that the Council invite law students to attend its upcoming meeting in Eugene. He stated that it might be interesting and helpful for students to see the legislative process for the ORCP. Mr. Eiva stated that he would speak to Judge Zennaché about securing a location and talking to a civil procedure professor about inviting

students. Prof. Peterson stated that he would also look into inviting some Lewis and Clark students to a meeting in the Portland area.

XII. Adjournment

Ms. David adjourned the meeting at 11:25 a.m.

Respectfully submitted,

Mark A. Peterson
Executive Director

Oregon Senators

Senator	District	Areas Served	Party	Email	Committees	Council Member
Senator Mark Hass	14	Portions of Multnomah and Washington counties (includes part	D	Sen.MarkHass@state.or.us		Armstrong, Rex
Senator Elizabeth Steiner Hayward	17	Portions of Multnomah and	D	Sen.ElizabethSteinerHayward@state.or.us	Joint Ways and Means	Armstrong, Rex
Senator Rod Monroe	24	Portions of Clackamas and	D	Sen.RodMonroe@state.or.us	Joint Ways and Means	Bachofner, John
Senator Bruce Starr	15	Portion of Washington county	R	Sen.BruceStarr@state.or.us	Rules	Beattie, Jay
Senator Jeff Kruse	1	Curry and portions of Coos, Douglas, Jackson and Josephine counties (includes Roseburg, Gold Beach,	R	Sen.JeffKruse@state.or.us	Judiciary	Bechtold, Paula
Senator Arnie Roblan	5	Lincoln and portions of Coos, Douglas, Lane, Polk, Tillamook and Yamhill (includes Newport, Lincoln	D	Sen.ArnieRoblan@state.or.us	Judiciary	Bechtold, Paula
Senator Brian Boquist	12	Portions of Benton, Linn, Marion, Polk and Yamhill counties (includes	R	Sen.BrianBoquist@state.or.us	Joint Legislative Counsel	Brian, Mike
Senator Doug Whitsett	28	Crook, Klamath, Lake and portions of Deschutes and Jackson counties (includes Klamath Falls, Lakeview,	R	Sen.DougWhitsett@state.or.us	Joint Ways and Means	Brian, Mike
Senator Larry George	13	Portions of Clackamas, Marion, Washington and Yamhill (includes	R	Sen.LarryGeorge@state.or.us	General Government (vice chair)	Campf, Brian
Senator Betsy Close	8	Portions of Benton and Linn counties (includes Albany, Corvallis)	R	Sen.BetsyClose@state.or.us	Judiciary (vice chair)	Conover, Curtis
Senator Betsy Johnson	16	Clastop, Columbia and portions of Multnomah, Tillamook and Washington counties (includes	D	Sen.BetsyJohnson@state.or.us	Joint Ways and Means Co-Vice Chair	David, Kristen
Senator Alan Olsen	20	Portion of Clackamas county (includes Oregon City)	R	Sen.AlanOlsen@state.or.us		David, Kristen
Senator Chuck Thomsen	26	Hood River and portions of Clackamas and Multnomah counties	R	Sen.ChuckThomsen@state.or.us	Joint Ways and Means	David, Kristen
Senator Tim Knopp	27	Portion of Deschutes county	R	sen.timknopp@state.or.us		DeHoog, Roger
Senator Floyd Prozanski	4	Portions of Douglas and Lane counties	D	Sen.FloydProzanski@state.or.us	General Government, Judiciary (chair), Joint Legislative Counsel	Eiva, Travis
Senator Lee Beyer	6	Portions of Lane and Linn counties (includes part of Eugene)	D	Sen.LeeBeyer@state.or.us	Rules	Eiva, Travis
Senator Jackie Winters	10	Portions of Marion and Polk counties (includes area around	R	Sen.JackieWinters@state.or.us	Joint Ways and Means	Gates, Jennifer
Senator Herman Baertschiger Jr.	2	Portions of Jackson and Josephine counties (includes Grants Pass)	R	Sen.HermanBaertschiger@state.or.us	General Government	Gerking, Tim
Senator Bill Hansell	29	Morrow, Umatilla, Union and Wallowa counties (includes	R	Sen.BillHansell@state.or.us	Joint Ways and Means	Gerking, Tim
Senator Fred Girod	9	Portions of Clackamas, Linn and	R	Sen.FredGirod@state.or.us	Joint Ways and Means	Keating, Bob
Senator Ginny Burdick (Senate President Pro Tempore)	18	Portions of Multnomah and Washington counties (includes	D	Sen.GinnyBurdick@state.or.us	Rules, Joint Legislative Counsel	Landau, Jack
Senator Jackie Dingfelder	23	Portion of Multnomah county	D	Sen.JackieDingfelder@state.or.us	Judiciary	Landau, Jack
Senator Diane Rosenbaum (Senate Majority Leader)	21	Portions of Clackamas and Multnomah counties (includes part	D	Sen.DianeRosenbaum@state.or.us	Rules (chair)	Leonard, Maureen
Senator Richard Devlin	19	Portions of Clackamas, Multnomah	D	Sen.RichardDevlin@state.or.us	Joint Ways & Means Co-Chair	Miller, Eve
Senator Chip Shields	22	Portion of Multnomah county (North	D	Sen.ChipShields@state.or.us	General Government (chair)	Payne, Shenoa
Senator Laurie Monnes Anderson	25	Portion of Multnomah county	D	Sen.LaurieMonnesAnderson@state.or.us	General Government	Peterson, Mark
Senator Ted Ferrioli (Senate Republican Leader)	30	Baker, Gilliam, Grant, Harney, Jefferson, Malheur, Sherman, Wasco, Wheeler and portions of Clackamas, Deschutes, and Marion	R	Sen.TedFerrioli@state.or.us	Rules (vice chair), Joint Legislative Counsel	Peterson, Mark
Senator Alan Bates	3	Portion of Jackson county (includes	D	Sen.AlanBates@state.or.us	Joint Ways and Means	Weaver, Mark

Oregon Senators

Senator	District	Areas Served	Party	Email	Committees	Council Member
Senator Peter Courtney (Senate President)	11	Portion of Marion county (includes area around Salem)	D	Sen.PeterCourtney@state.or.us	Joint Legislative Counsel (Co-Chair)	Wray, Deanna
Senator Chris Edwards	7	Portion of Lane county (includes part	D	Sen.ChrisEdwards@state.or.us	Joint Ways and Means	Zennaché, Charlie

Oregon House of Representatives

Representative	District	Areas Served	Party	Email	Committees	Council Member
Representative Brian Clem	21	Portion of Marion county (includes Woodburn, part of Salem)	D	Rep.BrianClem@state.or.us		Armstrong, Rex
Representative Betty Komp	22	Portion of Marion county (includes part of Lincoln and portions of Lane, Polk, Tillamook, and Yamhill counties (includes portions of Clatsop, Columbia and Multnomah counties (includes Scappoose)	D	Rep.BettyKomp@state.or.us	Joint Ways and Means	Armstrong, Rex
Representative David Gomberg	10	Portions of Clatsop, Columbia and Multnomah counties (includes Scappoose)	D	Rep.DavidGomberg@state.or.us		Bachart, Sheryl
Representative Brad Witt	31	Baker, Harney, Malheur and portion of Grant county (includes Burns, Baker City)	R	Rep.CliffBentz@state.or.us	Joint Legislative Counsel	Bachart, Sheryl
Representative Cliff Bentz	60	Curry and portions of Coos and Douglas counties (includes Gold Beach, Coquille)	R	Rep.WayneKrieger@state.or.us	Judiciary (vice chair)	Bachofner, John
Representative Wayne Krieger	1	Portions of Linn and Marion counties (includes Sweet Home, Lebanon)	R	Rep.SherrieSprenger@state.or.us		Bachofner, John
Representative Sherrie Sprenger	17	Portions of Multnomah and Washington counties (includes Sauvie Island)	D	Rep.MitchGreenlick@state.or.us		Bachofner, John
Representative Mitch Greenlick	33	Portion of Washington county (includes Baker, Harney, Malheur and portion of Grant county (includes Burns, Baker City)	D	Rep.JoeGallegos@state.or.us		Beattie, Jay
Representative Joe Gallegos	30	Portion of Multnomah county	D	Rep.JessicaVegaPederson@state.or.us		Beattie, Jay
Representative Jessica Vega Pederson	47	Portions of Coos, Douglas, and Lane counties	D	Rep.CaddyMcKeown@state.or.us		Bechtold, Paula
Representative Caddy McKeown	9	Portions of Multnomah and Washington counties (includes Tigard)	D	Rep.TobiasRead@state.or.us	Joint Ways and Means	Bird, Arwen
Representative Tobias Read	27	Portions of Clatsop, Columbia, Tillamook and Washington counties (includes Banks)	D	Rep.DeborahBoone@state.or.us		Bird, Arwen
Representative Deborah Boone	32	Portion of Multnomah county	D	Rep.JenniferWilliamson@state.or.us	Judiciary, Joint Ways and Means	Bird, Arwen
Representative Jennifer Williamson	36	Portion of Multnomah county	D	Rep.TinaKotek@state.or.us	Joint Legislative Counsel (Co-Chair)	Bird, Arwen
Representative Tina Kotek (Speaker of the House)	44	Portions of Douglas, Jackson, and Josephine counties (includes Roseburg)	R	Rep.TimFreeman@state.or.us	Joint Ways and Means	Brian, Mike
Representative Tim Freeman	2	Portion of Klamath county (includes Klamath and Union counties (includes LaGrande, Morrow, Wallowa and portions of Umatilla and Union counties (includes LaGrande, Gilliam, Jefferson, Sherman, Wasco, Wheeler and portions of Clackamas, Deschutes, Grant and Marion counties (includes The Dalles,	R	Rep.GailWhitsett@state.or.us		Brian, Mike
Representative Gail Whitsett	56	Portion of Benton county (includes Corvallis)	D	Rep.SaraGelser@state.or.us		Campf, Brian
Representative Sara Gelser	16	Portions of Benton, Linn, Marion, Polk and Yamhill counties	R	Rep.JimThompson@state.or.us		Campf, Brian
Representative Jim Thompson	23	Portion of Multnomah county	D	Rep.GregMatthews@state.or.us		Campf, Brian
Representative Greg Matthews	50	Portion of Lane county	D	Rep.PaulHolvey@state.or.us	Rules	Conover, Curtis
Representative Paul Holvey	8	Portion of Lane county (includes Springfield)	D	Rep.JohnLively@state.or.us		Conover, Curtis
Representative John Lively	12	Portion of Josephine county (includes Grants and Union counties (includes LaGrande, Morrow, Wallowa and portions of Umatilla and Union counties (includes LaGrande, Gilliam, Jefferson, Sherman, Wasco, Wheeler and portions of Clackamas, Deschutes, Grant and Marion counties (includes The Dalles,	R	Rep.WallyHicks@state.or.us	Judiciary, Rules (vice chair)	David, Kristen
Representative Wally Hicks	3	Portion of Clackamas county (includes Oregon City, Canby)	R	Rep.BillKennemer@state.or.us	Rules	David, Kristen
Representative Bill Kennemer	39	Portions of Clackamas and Multnomah counties (includes Milwaukie)	D	Rep.CarolynTomei@state.or.us	Judiciary, Joint Ways and Means	David, Kristen
Representative Carolyn Tomei	41	Crook, Lake and portions of Deschutes, Jackson and Klamath counties (includes Morrow, Wallowa and portions of Umatilla and Union counties (includes LaGrande, Gilliam, Jefferson, Sherman, Wasco, Wheeler and portions of Clackamas, Deschutes, Grant and Marion counties (includes The Dalles,	R	Rep.MikeMcLane@state.or.us	Joint Ways and Means	DeHoog, Roger
Representative Mike McLane (House Republican Leader)	55	Portions of Lane and Linn counties	D	Rep.GregSmith@state.or.us	Joint Ways and Means	DeHoog, Roger
Representative Greg Smith	57	Gilliam, Jefferson, Sherman, Wasco, Wheeler and portions of Clackamas, Deschutes, Grant and Marion counties (includes The Dalles,	R	Rep.JohnHuffman@state.or.us	Joint Ways and Means	DeHoog, Roger
Representative John Huffman	59	Portion of Douglas and Lane counties	R	Rep.BruceHanna@state.or.us	Joint Ways and Means	Eiva, Travis
Representative Bruce Hanna	7	Portions of Lane and Linn counties	D	Rep.PhilBarnhart@state.or.us	Rules	Eiva, Travis
Representative Phil Barnhart	11	Portions of Clackamas, Multnomah and Washington Counties (includes Lake and Union counties (includes LaGrande, Morrow, Wallowa and portions of Umatilla and Union counties (includes LaGrande, Gilliam, Jefferson, Sherman, Wasco, Wheeler and portions of Clackamas, Deschutes, Grant and Marion counties (includes The Dalles,	D	Rep.ChrisGarrett@state.or.us	Judiciary (vice chair), Rules (chair), Joint Legislative Counsel	Gates, Jennifer
Representative Chris Garrett (House Speaker Pro Tempore)	38	Portion of Multnomah county	D	Rep.AliisaKenyGuyer@state.or.us		Gates, Jennifer
Representative Alissa Keny-Guyer	46	Portions of Jackson and Josephine counties (includes Medford)	R	Rep.DennisRichardson@state.or.us	Joint Legislative Counsel, Joint Ways and Means Vice Chair	Gerking, Tim
Representative Dennis Richardson	4	Portions of Umatilla and Union (includes Morrow, Wallowa and portions of Umatilla and Union counties (includes LaGrande, Gilliam, Jefferson, Sherman, Wasco, Wheeler and portions of Clackamas, Deschutes, Grant and Marion counties (includes The Dalles,	R	Rep.BobJenson@state.or.us	Rules, Joint Ways and Means	Gerking, Tim
Representative Bob Jenson	58	Portions of Polk and Yamhill counties (includes McMinnville)	R	Rep.JimWeidner@state.or.us		Hodson, Jerry
Representative Jim Weidner	24					

Oregon House of Representatives

Representative	District	Areas Served	Party	Email	Committees	Council Member
Representative Ben Unger	29	Portion of Washington county (includes	D	Rep.BenUnger@state.or.us		Hodson, Jerry
Representative Chris Harker	34	Portion of Washington county	D	Rep.ChrisHarker@state.or.us		Hodson, Jerry
Representative Mark Johnson	52	Hood River and portions of Clackamas and Multnomah counties (includes Sandy)	R	Rep.MarkJohnson@state.or.us		Hodson, Jerry
Representative Vic Gilliam	18	Portions of Clackamas and Marion counties (includes Mollala, Aurora)	R	Rep.VicGilliam@state.or.us		Keating, Bob
Representative Vicki Berger	20	Portion of Marion and Polk counties (includes Monmouth and Independence)	R	Rep.VickiBerger@state.or.us	Rules	Keating, Bob
Representative Kim Thatcher	25	Portion of Marion and Yamhill counties (includes Newberg, Kaiser)	R	Rep.KimThatcher@state.or.us		Keating, Bob
Representative John Davis	26	Portions of Clackamas and Washington counties (includes Sherwood, Wilsonville)	R	Rep.JohnDavis@state.or.us		Keating, Bob
Representative Andy Olson	15	Portions of Benton and Linn counties (includes Albany)	R	Rep.AndyOlson@state.or.us	Judiciary	Landau, Jack
Representative Lew Frederick	43	Portion of Multnomah county	D	Rep.LewFrederick@state.or.us	Joint Ways and Means	Landau, Jack
Representative Michael Dembrow	45	Portion of Multnomah county	D	Rep.MichaelDembrow@state.or.us	Rules	Landau, Jack
Representative Jeff Barker	28	Portion of Washington county (includes Beaverton)	D	Rep.JeffBarker@state.or.us	Judiciary (chair), Joint Ways and Means	Leonard, Maureen
Representative Jules Bailey	42	Portion of Multnomah county	D	Rep.JulesBailey@state.or.us		Leonard, Maureen
Representative Kevin Cameron	19	Portion of Marion county	R	Rep.KevinCameron@state.or.us	Judiciary	Miller, Eve
Representative Julie Parrish	37	Portions of Clackamas and Washington counties (includes West Linn)	R	Rep.JulieParrish@state.or.us		Miller, Eve
Representative Gene Whisnant	53	Portion of Deschutes county	R	Rep.GeneWhisnant@state.or.us		Miller, Eve
Representative Jason Conger	54	Portion of Deschutes county	R	Rep.JasonConger@state.or.us		Miller, Eve
Representative Brent Barton	40	Portion of Clackamas county	D	Rep.BrentBarton@state.or.us	Judiciary, Joint Legislative Counsel	Payne, Shenoa
Representative Shemia Fagan	51	Portions of Clackamas and Multnomah counties (includes Estacada)	D	Rep.ShemiaFagan@state.or.us		Payne, Shenoa
Representative Margaret Doherty	35	Portions of Multnomah and Washington	D	Rep.MargaretDoherty@state.or.us		Peterson, Mark
Representative Peter Buckley	5	Portion of Jackson county	D	Rep.PeterBuckley@state.or.us	Joint Ways and Means Co-Chair	Weaver, Mark
Representative Sal Esquivel	6	Portion of Jackson county	R	Rep.SalEsquivel@state.or.us		Weaver, Mark
Representative Jeff Reardon	48	Portions of Clackamas and Multnomah	D	Rep.JeffReardon@state.or.us		Wray, Deanna
Representative Chris Gorsek	49	Portion of Multnomah county (includes	D	Rep.ChrisGorsek@state.or.us		Wray, Deanna
Representative Nancy Nathanson	13	Portion of Lane county	D	Rep.NancyNathanson@state.or.us	Joint Ways and Means Vice Chair	Zennaché, Charlie
Representative Val Hoyle (House Majority Leader)	14	Portion of Lane county (includes Eugene)	D	Rep.ValHoyle@state.or.us	Rules (Vice-Chair)	Zennaché, Charlie



Shari Nilsson <nilsson@lclark.edu>

FW: Law Firm Mobile App

1 message

Kristen David <kristen@bowermandavid.com>

Thu, Oct 17, 2013 at 2:56 PM

To: Shari Nilsson <nilsson@lclark.edu>, "Mark Peterson (mpeterso@lclark.edu)" <mpeterso@lclark.edu>

Here is a company that focuses on making mobile apps for the legal industry. In following up to our discussion awhile back . . . maybe they would create one for COCP and we could give them a bunch of free advertising!!!

From: DK Global, Inc. [mailto:adrinkhouse@dkglobal.net]

Sent: Monday, October 07, 2013 8:08 AM

To: Kristen David

Subject: Law Firm Mobile App

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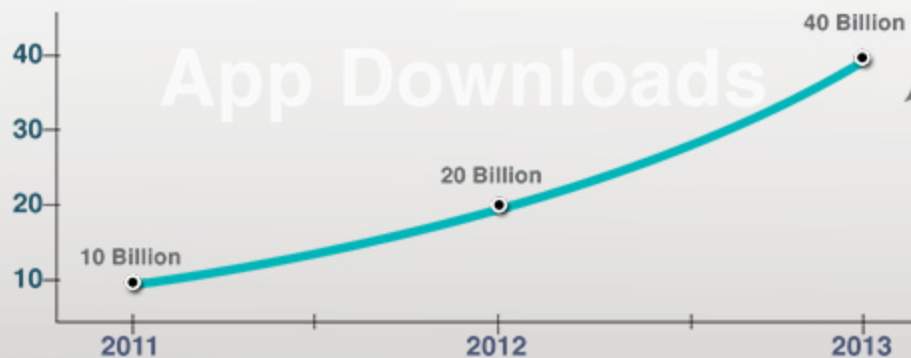


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DK Global | 420 Missouri Court | Redlands | CA | 92373



Shari Nilsson <nilsson@lclark.edu>

FW: Oregon Courts app now available for iPhone, iPad, and iPod Touch

1 message

Kristen David <kristen@bowermandavid.com>

Thu, Oct 17, 2013 at 2:55 PM

To: "Mark Peterson (mpeterso@lclark.edu)" <mpeterso@lclark.edu>, Shari Nilsson <nilsson@lclark.edu>

FYI – Let's add this to COCP Agenda – It has UTCRs and SLRs but not the ORCPs. L

From: Oregon Courts App [mailto:news@courtsapp.com]

Sent: Tuesday, October 01, 2013 9:59 PM

To: Kristen David

Subject: Oregon Courts app now available for iPhone, iPad, and iPod Touch

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If you no longer wish to receive e-mails about this app, respond to this e-mail with your request.

Good news. The Oregon Courts app is now available for iPhone, iPad, and iPod Touch. Download it in the App Store today.

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To download search the Apple App Store for Oregon Courts or click the following link from your Apple device.

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This app was designed, and e-mail sent by, KosInteractive LLC, P.O. Box 310782, Miami, Florida 33231. Neither the app nor e-mail are affiliated with, or endorsed by, any particular entity.



Shari Nilsson <nilsson@lclark.edu>

Question re: applicability of Rule 69

1 message

Holly.Rudolph@ojd.state.or.us <Holly.Rudolph@ojd.state.or.us>

Fri, Oct 11, 2013 at 2:40 PM

To: ccp@lclark.edu

Hello,

I've run into a difference of opinion and practice that implicates Rule 69 and would like the council's input.

The question is whether a formal Rule 69 default order is required in a Show Cause proceeding. Show Cause proceedings are postured as "come to court and show us why we shouldn't grant this relief, otherwise we will." Most courts do not require a default on Show Cause motions, but some do.

Rule 69 specifies that it applies to a "plaintiff, a third party plaintiff, or a party who has pleaded a counterclaim or cross-claim." A Motion for Order to Show Cause can be filed by any party (and in some cases, by non-parties).

This has created a split in the courts regarding whether a Show Cause proceeding with proof of service on file but no response requires the movant to then file for an order of default and entry of judgment.

Please advise whether the council intended for Rule 69 to apply to Show Cause proceedings.

Thank you!

Holly C. Rudolph, JD
Oregon eCourt Forms Coordinator
Oregon Judicial Branch
holly.rudolph@ojd.state.or.us
503-986-5400

"[If there be] no check on the public passions, [individual liberty] is in the greatest danger." ~ SCJ J. Iredell

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Shari Nilsson <nilsson@lclark.edu>

Re: ORCP 69 Defaults and Show Cause Orders

1 message

Holly.Rudolph@ojd.state.or.us <Holly.Rudolph@ojd.state.or.us>

Tue, Oct 15, 2013 at 7:26 AM

To: Mark Peterson <mpeterso@lclark.edu>

Cc: Shari Nilsson <nilsson@lclark.edu>

Hi Mark,

I'm inserting my responses in **red** below so I don't miss something. Thanks!

Holly C. Rudolph, JD
Oregon eCourt Forms Coordinator
Oregon Judicial Branch
holly.rudolph@ojd.state.or.us
503-986-5400

"[If there be] no check on the public passions, [individual liberty] is in the greatest danger." ~ SCJ J. Iredell

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▼ Mark Peterson ---10/11/2013 03:49:43 PM---Holly, Good to hear from you.

From: Mark Peterson <mpeterso@lclark.edu>
To: Holly.Rudolph@ojd.state.or.us, Shari Nilsson <nilsson@lclark.edu>,
Date: 10/11/2013 03:49 PM
Subject: ORCP 69 Defaults and Show Cause Orders

Holly,

Good to hear from you.

The short answer to your interesting inquiry is "I do not know". **Good! That means I didn't miss something.**

That said, can I answer your question with a question? **What lawyer wouldn't?**

The show cause procedures are commonly used in family law cases which was never a sizable part of my practice so I must plead some ignorance as to how they should be handled. Typically, I believe, a party in a case which may have been dormant for some time desires a change in the last order or judgment or feels a need to enforce the last order or judgment. Does this sound right? **Correct but not complete. Show Cause does happen in other contexts, but I believe it is most common in family law. It is used for modifications and enforcement actions, but is also the vehicle for pre-judgment temporary orders like status quo orders and immediate danger orders that set schedules and custody for the duration of the underlying case.**

**Council on Court Procedures
November 2, 2013, Minutes
Appendix D-2**

I assume that, if there are two parties, they were both subject to the personal jurisdiction of the particular court wherein the action or suit is pending. If the non-movant was defaulted earlier, Rule 9 A would require no further service unless new or additional claims are asserted. However, in any case, since the show cause proceeding may result in contempt of court, service of the motion for an order to show cause must be in a manner which would satisfy ORCP 7. So, how can the non-movant who was not previously in default now be in default? Possibly because the motion to show cause is the equivalent of a complaint or a petition and an answer or a response is expected. **I think that's exactly the question, and I understand that there is a significant split in the bar as to whether a modification is a "new" proceeding or a subsequent action in an existing proceeding. However, pre-judgment temporary orders are usually filed along with a Petition, but not always.**

Can you tell me how a non party to the action would be filing a show cause motion? I think I need to understand that to complete my thinking on the question. **This happens usually with temporary orders like status quo and immediate danger orders where the children are with a caretaker (grandparent, aunt, neighbor) when an underlying dom rel case like dissolution is filed. The statutes expressly refer to a "party" as distinct from a "parent", and "party" has been interpreted somewhat colloquially to mean whomever files the motion for TPOR or whatever they're seeking. The movant is not a party to the dissolution, but is entitled to press a motion to hold the children's schedules steady through the pendency of the case or to retain custody if both parents present an immediate danger to the children.**

In any case, the Council has just formed a Rule 69 committee to look at issues that were not answered in the recent revision of Rule 69. I am happy to dig through the Council legislative history to see if an answer to your question becomes apparent but I expect that clarification may have to await a further amendment of the rule. **That would be very helpful, thank you! I did some looking but never found any indication that Rule 69 was ever considered in light of or applied to show cause proceedings.**

My 2 cents worth? If Rule 69 does apply to show cause proceedings, then I really don't see what purpose show cause serves. The main benefit of doing certain designated actions via show cause seems to be the ability to resolve the issues quickly but placing the non-movant in the position of consenting by inaction. If a full default is required, then the action is positioned more as a standard motion and maybe show cause should be dispensed with as an antiquated concept that has been subsumed by other processes.

When we discussed this question, there were two answers given by a judge who does defaults on show cause. First, it keeps the record neat, but more importantly, she raised the issue of SCRA certification. The response to that was that parties in a show cause are usually there because time is a critical factor, and delaying relief to seek SCRA cert could put children or parties at risk. Most show cause proceedings are not major impacts on a party's rights, but in the case of a post-judgment modification, it could be.

I think in practical terms what I can tell you is that courts do it both ways and neither situation seems to be a significant problem, so either option is probably not going to upend the universe. I just need to know what forms to build for the intelligent forms project and how to draft the instructions.

The temp order statutes are at 107.097, 107.095, 107,138, 107.139, and 109.119. UTCR 8.050 requires that modification of dom rel judgments be initiated by motion for order to show cause.

**Thank you!
Holly**

Mark



Shari Nilsson <nilsson@lclark.edu>

Fwd: First E-Mail to Legislators

1 message

Mark Peterson <mpeterso@lclark.edu>

Fri, Oct 18, 2013 at 4:39 PM

To: Shari Nilsson <nilsson@lclark.edu>

----- Forwarded message -----

From: **Mark Peterson** <mpeterso@lclark.edu>

Date: Fri, Oct 18, 2013 at 4:39 PM

Subject: Re: First E-Mail to Legislators

To: Shenoa Payne <SPayne@hk-law.com>

Shenoa,

The suggestion just missed getting on the agenda which was disseminated earlier today. However, it will be raised as new business at the November meeting. It is more interesting when attorneys are in the legislature as they have rather more focused feedback.

Mark

On Fri, Oct 18, 2013 at 2:57 PM, Shenoa Payne <SPayne@hk-law.com> wrote:

Shari:

On another note, Brent Barton just called me and thanked me for the email. He requested that the committee take a look at ORCP 44. According to Brent, each county has varying rules as to whether an attorney is allowed to audio record a Rule 44 exam. For example, an audio recording is presumptively not allowed in Clackamas County and is presumptively allowed in Multnomah County (pursuant to the court's statement of consensus by the motion's panel). He would like to see a uniform rule of procedure. He also wants a formal change in calling it a Rule 44 exam on all pleadings rather than a "DME" or "IME."

I told him I would pass on his request to have the council consider his suggestion.

Shenoa

Shenoa L. Payne, Attorney

Practicing in employment discrimination, disability rights, fair housing and appellate law.