

COUNCIL ON COURT PROCEDURES
ANNOTATED AGENDA & MEETING PACKET

Saturday, February 7, 2026, 9:30 a.m.

Zoom Platform: See Footer for Contact Information

- I. Call to Order (Mr. Goehler)
- II. Approval of January 10, 2025, Minutes (Mr. Goehler) **(ATTACHMENT A)**
- III. Administrative Matters (Mr. Goehler)
 - A. Staff Comments (Judge Peterson)
- IV. Old Business (Mr. Goehler)
 - A. Committee Reports
 - 1. Declaration of Expert Opinion/Rule 47 E (Mr. Joh)
 - 2. Joinder/Rule 24 (Judge Oden-Orr) **(ATTACHMENT B)**
 - 3. Judgments/Rule 67 (Mr. Kekel)
 - 4. Out-of-State Depositions/Rule 38 C (Ms. Wilson) **(ATTACHMENT C)**
 - 5. Post-Judgment Subpoenas/Rule 55 (Mr. Whitman) **(ATTACHMENT E)**
 - 6. Service/Rules 7, 9 & 10 (Judge Raschio) **(ATTACHMENT D)**
 - 7. Third Party Practice/Rule 22 (Ms. Dahab)
- V. New Business (Mr. Goehler)
- VI. Adjournment (Mr. Goehler)

Attachments not included with initial meeting packet will be added to the website as soon as they are available. If it is very close to the meeting date, late materials may be e-mailed to ensure their receipt.

Teleconference/Videoconference Information

From your PC/laptop, for a videoconference:

- Click on this link:
 - <https://us06web.zoom.us/j/82377203749?pwd=NrzKPpbkaJvbos2b8xcEqAF0BkarQa.1>
 - Meeting ID: 823 7720 3749
 - Passcode: 193329
 - Dial-in audio option: 1-253-215-8782

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Shari's cell phone number: 315-454-1280
Mark's cell phone number: 503-544-7022

DRAFT MINUTES OF MEETING
COUNCIL ON COURT PROCEDURES
 Saturday, January 10, 2026, 9:30 a.m.
 Zoom Meeting Platform

ATTENDANCE

Members Present:

Hon. Benjamin M. Bloom
 Nadia Dahab
 Hon. Andrew Erwin
 Barry J. Goehler
 Hon. Jonathan R. Hill
 Ryan Jennings
 YoungWoo Joh
 Lara Johnson
 Derek Larwick
 Hon. Thomas A. McHill
 Hon. Michelle McIver
 Hon. Melvin Oden-Orr
 Michael Shin
 Hon. Scott Shorr
 Hon. Todd Van Rysselberghe
 Bryce Whitman Passadore
 Alicia Wilson

Members Absent:

Hon. Christopher L. Garrett
 Melissa Hopkins
 Eric Kekel
 Julian Marrs
 Hon. Robert Raschio
 Tom Spooner

Guests:

John Adams, Oregon Tax Court
 Rachel Trickett, Oregon Judicial Dept.

Council Staff:

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

ORCP/Topics Discussed this Meeting	ORCP/Topics Discussed & Not Acted On this Biennium			ORCP Amendments Promulgated this Biennium	ORCP/Topics to be Reexamined Next Biennium
• ORCP 7 • ORCP 9 • ORCP 10 • ORCP 22 • ORCP 24 • ORCP 38 • ORCP 43 • ORCP 45 • ORCP 47	• ORCP 60 • Abusive Litigants in Probate Proceedings • Arbitration • Clarity • Civil Motion Practice • Contempt • Default Orders/Judgments • Depositions • Disclosures • Discovery • Ex Parte	• Federalization • Guardians Ad Litem • “How To” Guides • Offers of Judgment • Pleadings • Receiverships • Remote Appearance • Security Bonds • Self-Represented Litigants • Subpoenas • Summary Judgment	• Timelines • Trial Practice • Uniform Collaborative Law Act • UTCR		

I. Call to Order

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

II. Approval of December 13, 2025, Minutes

Mr. Goehler called the Council's attention to the draft minutes from the December 13, 2025, meeting (Appendix A) and asked whether there were any suggestions for corrections. Judge Shorr stated that he would like to correct a sentence in the first full paragraph on page 11. He noted that the sentence currently reads, "He pointed out that the rule says that an expert is required to create the fact issue," but that it would more correctly read, "He pointed out that the rule says, 'if' an expert is required to create the fact issue, the party must present an ORCP 47 E affidavit."

Mr. Goehler asked for a motion to approve the minutes with Judge Shorr's correction. Judge Bloom made such a motion, Judge Shorr seconded, and the motion was approved by voice vote.

III. Administrative Matters

A. Staff Comments

This topic was carried over to the February agenda.

IV. Old Business

A. Committee Reports

1. Declaration of Expert Opinion/Rule 47 E

Mr. Joh reported that the committee had not yet met, but that he would schedule a committee meeting before the next Council meeting in February. Ms. Dahab, Judge Erwin, and Judge Oden-Orr joined the committee.

Mr. Goehler suggested that it might be a good idea for the committee to discuss when the expert materials are to be produced. He noted that he and Mr. Spooner have some experience on how it works at trial. Many times it is by agreement of the parties and, sometimes, it is handled by a motion in limine. Mr. Goehler stated that he has always thought of it as a trial management issue, or perhaps a rule of evidence issue as far as what is allowed for cross-examination, but not so much as a discovery issue. He wondered how other Council members see this issue and what they feel is the authority for disclosure of the expert's file before the expert testifies. Is it rooted in civil procedure, evidence, or trial practice?

Mr. Joh stated that he recalled this discussion from a previous meeting. His thought is that this situation is a bit of a malpractice trap for newer attorneys and for lawyers that come from outside of the state. In his experience, the practice has been inconsistent. It depends on the judge and the county, and the practice is not enumerated anywhere. There is no rule and no case law, at least with any level of clarity, to guide the practice. Mr. Joh stated that the e-mail chain with Judge Dahlin (Appendix B) has a subject line of "ORCP 47 E"; however, the issue goes beyond that portion of Rule 47. He does believe that some of the discussion that the committee will have about Rule 47 E is likely to overlap or be affected by any thoughts about the expert file. In his experience, with respect to the mechanism for producing an expert file, he has understood it to be a function of the rules of evidence, where there is a rule that provides for showing what the expert relied on. His understanding of the rule of evidence is that the last point at which the expert file can be protected is basically right after the expert goes on the stand and direct examination occurs. After that, the lawyer must turn over whatever the expert relied on for the other side to be able to do a cross-examination. Mr. Joh stated that he does not understand there to be any rules of discovery that require that. Personally, he would be interested in exploring a rule along those lines. He understands that this would come up against what he understands is the historical reticence by Oregon practitioners, as well as the Council itself, to make changes to the lack of expert discovery in Oregon.

Judge Peterson agreed with Mr. Joh that practitioners from other states may not be aware that Oregon is unique with regard to expert discovery. He stated that he believes that some part of this issue is procedural, and that it might be helpful to include in the rule a requirement for a motion or some sort of procedure to lay out what the practice is going to be for the timing of the production of the expert file.

Mr. Goehler stated that it is a good point to keep in mind that Rule 47 E does not exist on its own but, rather, within the context of Oregon's limitations on expert discovery. He agreed that it would be good for the committee to talk about expert discovery as well as the expert affidavit rule.

2. Joinder/Rule 24

Mr. Goehler reminded the Council that the committee had provided a draft amendment to Rule 24 for the Council's review (Appendix C). The Council was to decide whether any changes were needed or whether the draft could be placed on the agenda for the September publication meeting.

Judge Peterson noted that he has unintentionally developed some expertise in forcible entry and detainer (FED) practice, although this was not his intention when he went to law school. The suggestion for changes to the joinder rule

came from a former Council member, Judge Susie Norby. She opined that the rule does not read very well. Judge Peterson observed that the rule has not been amended since it was promulgated. Section B of the rule has a carve-out for FED practice, but the terminology is not very precise. House Bill 2001 (2023) made a change to the FED statutes that made very clear what constitutes “non payment” in the landlord/tenant context to include rent, late charges, fees, and charges described in the lease or the Oregon Residential Landlord and Tenant Act. However, Rule 24 only mentions “rental due.” If a plaintiff chooses to ask for additional relief other than simply for possession of the premises, that would make the case a regular civil action. The plaintiff would therefore not be entitled to use the summary procedures that are provided in an FED action: the short summons, with its command that the defendant appear at a first appearance within 8 days, and go to trial within 15 days.

Judge Peterson reminded the Council that he did send the draft amendment to about 15 firms or practitioners that he knows have expertise in this area, both on the plaintiffs’ side and the defense side. He only received two responses. One said that the draft amendment looked fine. The other asked whether it might cause any preclusion problem. Since he did not receive any comments back from the remaining practitioners, he assumes that they did not perceive any problems with the draft. Mr. Goehler pointed out that the rule is about permissive joinder, so he did not believe that issue preclusion would be a problem.

Judge Hill made a motion to place the draft amendment to Rule 24 on the September publication agenda. Judge Oden-Orr seconded the motion, which was passed by voice vote. Judge Peterson asked that all Council members take an extra look at the draft between now and September. If anyone notices something wrong with the draft between now and September, they are absolutely entitled to bring it up again.

3. Judgments/Rule 67

Judge Peterson reported that the committee had not met since the last Council meeting.

4. Out-of-State Depositions/Rule 38 C

Ms. Wilson reported that the committee, consisting of herself and Judge McHill, had met in December. She stated that, looking at ORCP 38 C, it is clear that Oregon has adopted a rule that is intended to encompass the Uniform Depositions and Discovery Act (UDDA), which most other states have adopted, as a more streamlined foreign deposition process. From her and Judge McHill’s experience, the UDDA process does not occur that often. It is a process where one uses a subpoena in the form of the foreign jurisdiction, then also completes a subpoena that would comply with Oregon law. Ms. Wilson noted that the

UTCR (Rule 5.130) contains two processes for foreign depositions. One is the more streamlined process that tracks ORCP 38 C, and the second is for jurisdictions that have not adopted the UDDA, where a commission or letters rogatory from the other jurisdiction may be required.

Ms. Wilson stated that the committee's conclusion is that, if there is an issue, it is a UTCR issue. However, she stated that it seems to make sense that there is a more streamlined process if the other state has adopted the UDDA, as that is the purpose of the agreement of the different jurisdictions. The committee did not see a reason to make a change to the ORCP.

Judge Peterson wondered exactly how many states have adopted the UDDA. Ms. Wilson stated that she thought that it may be 48 states but that she could not find the exact number. Judge Peterson noted that it might be helpful for Council history to have the exact number and to know which states are outliers. Before making any decisions, he suggested deferring the matter to the next Council meeting, as Mr. Kekel was not present today and it was his partner who brought the matter to the Council's attention. He wanted to ensure that all relevant input had been presented to the Council. Judge Peterson also agreed that is not unreasonable to have consequences for the jurisdictions that do not adopt the UDDA, if that is what the intent of the Act is.

Ms. Wilson stated that the committee could check in with the UTCR Committee on those two different procedures, but she noted that there is case law recognizing that the process in ORCP 38 C is based on the UDDA. Mr. Goehler asked Ms. Wilson to prepare a memo summarizing the committee's actions and enumerating the jurisdictions where the UDDA has not been adopted. Ms. Wilson agreed to do so.

5. Post-Judgment Subpoenas/Rule 55

Mr. Passadore reported that the committee had not met since the last Council meeting but stated that he would schedule a committee meeting before the February Council meeting.

6. Service/Rules 7, 9, & 10

Judge Peterson reported that the committee had not met since the last Council meeting. He noted that the committee intends to continue to discuss the 3-day extension in Rule 10 B. The committee's preliminary thought is that it is a good idea to keep the 3-day extension in the rule. The committee will also continue to discuss whether clarity might need to be added regarding email service, because some attorneys have varying understandings as to whether such service is effective and, if so, when it is effective. Judge Peterson explained that the committee intends to discuss the Rule 7 summons form and whether it can be

made more readable for the laypeople who are most often the recipients of summons forms. Finally, Judge Peterson remarked that, at the last Council meeting, he had suggested requiring Rule 43 and Rule 45 requests to be filed. There is currently a carve-out in Rule 9 exempting them from filing; however, now that everything is electronic, the requests could be filed with the court to perhaps help avoid contentions of practitioners that they did not receive a request for production of documents or a request for admissions. He stated that he believes that is the final issue on the committee's agenda.

Mr. Goehler stated that he thought that the trending view among committee members was toward leaving the service rules alone, but he agreed that it will be helpful for the committee to discuss the issues further to ensure that the Council is confident that the rules are keeping up with the times and how practices like e-service are currently happening.

7. Third Party Practice/Rule 22

Ms. Dahab reported that the committee is still considering changes to Rule 22 regarding the consent requirement of all parties for the addition of third-party defendants after the 90-day period runs. She stated that the committee is still working to determine the original intent of the rule, the legislative history as changes were considered and rejected over the course of history, what happens in other jurisdictions, and, specifically, the evolution of other laws affecting third-party practice, like comparative fault, that have changed the development of the law since Rule 22 was initially adopted. Ms. Dahab stated that the committee's goal is to have a memo and a summary of potential options for either modifications or no modifications to Rule 22. She stated that she does not expect the committee to reach any consensus on the question. However, members will talk through potential options and put them in writing for the Council's consideration.

Mr. Goehler summarized that the options would be to leave the rule alone, to not require consent of all parties, or to tinker with the timing of the rule. Ms. Dahab stated that the committee has discussed all three of these options, as well as a potential fourth option, which is to add some sort of newer, "should-have-known" discovery-type wording into the rule. She reemphasized that the committee has been researching other jurisdictions and comparing them to existing Oregon law to the extent that it provides any clarity on the question, and that this will be included in the memo to the Council as well.

V. New Business

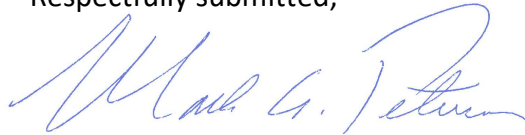
No new business was raised.

VI. Adjournment

Judge Peterson reminded the Council that there are just five Council meetings left before the September promulgation meeting. While that seems like a lot of time, it does go fast. He noted that making no change to a rule is absolutely an appropriate result, if the Council can document why it made no change. Research into the origins of the rule, comparison to federal practice, and comparisons to other jurisdictions are all helpful for a committee's consideration. He opined that Oregon's procedures are better than those of most jurisdictions, and stated that the Council's legislative history is helpful to litigants. To the extent that committees can provide, in the next few months, either a draft amendment or a report explaining why no change will be made, that will be very helpful. Ms. Nilsson reminded the Council that the February meeting will be held on the first, rather than the second, Saturday: February 7, 2026.

Mr. Goehler adjourned the meeting at 10:03 a.m.

Respectfully submitted,



Hon. Mark A. Peterson
Executive Director

1 JOINDER OF CLAIMS

2 RULE 24

3 **A Permissive joinder.** A plaintiff may join in a complaint, either as independent or as
4 alternate claims, as many claims, legal or equitable, as the plaintiff has against an opposing
5 party.

6 **B Forcible entry and detainer [*and rental due.*] actions.** If a plaintiff joins a claim of
7 forcible entry and detainer [*and a claim for rental due are joined*] with any other claim for legal
8 or equitable relief, the defendant [*shall*] will have the same time to appear as is provided by
9 rule or statute in civil actions [*for the recovery of rental due.*] and the action will not be
10 governed by the provisions of ORS 105.100 et seq.

11 **C Separate statement.** The claims joined must be separately stated and must not require
12 different places of trial.

MEMORANDUM

TO: Council on Court Procedures

FROM: Alicia Wilson

DATE: 01/12/2026

RE: ORCP 38C Committee Update

Included in the 2025-2027 Biennium Rule Proposals is the suggestion clarifying and/or altering ORCP 38C regarding foreign deposition subpoenas. (See attached Exhibit 1).

ORCP 38C pertains to the issuance of any discovery subpoenas in Oregon regarding a foreign State case including deposition subpoenas.

ORCP and UTCR History

Previously the ORCPs and UTCRs required the party to a foreign case to register in Oregon Courts a “writ, mandate, commission, letter rogatory or order executed by the appropriate authority in the foreign jurisdiction with a circuit court of this state.” (See attached Exhibit 2 – 2010 Versions of ORCP 38 C and UTCR 5.140)

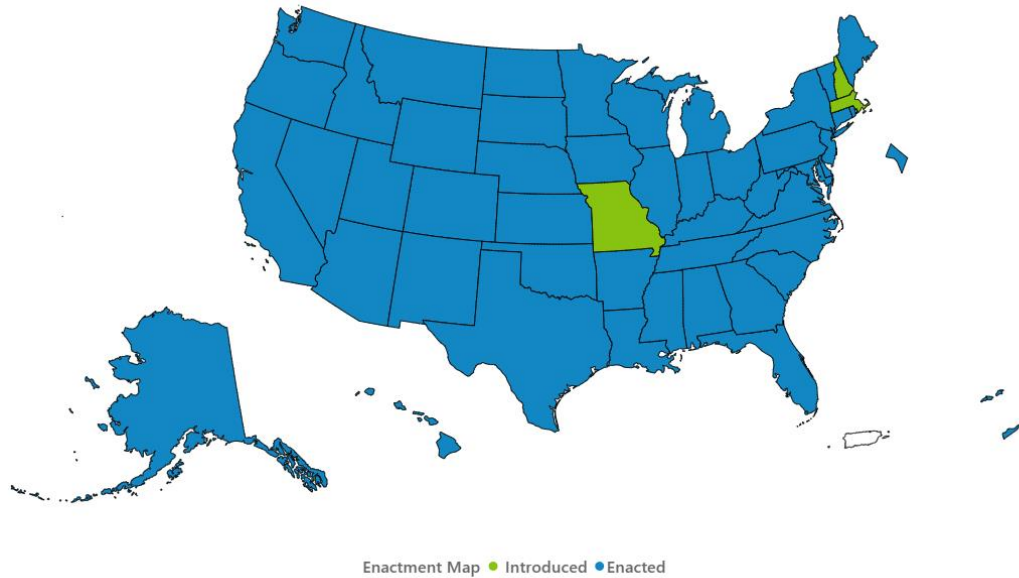
Uniform Interstate Depositions and Discovery Act

The Uniform Law Commission has put forth legislation for the streamlined issuance of foreign subpoenas which has been enacted in 49 of 53 jurisdictions (made up of U.S. States and including District of Columbia, Virgin Islands and Puerto Rico). Jurisdictions enacting the Act are in the below map in blue and include all U.S. States except for Missouri, Maine and Massachusetts – although all three States have introduced bills in the 2026 legislative session. If those pass this year, the only jurisdiction that has not passed the UIDDA would be Puerto Rico.

ORCP 38C as currently drafted is an enactment of the Uniform Interstate Depositions and Discovery Act. (See and compare language and comment for the Uniform Interstate Depositions and Discovery Act attached as Exhibit 3).

The purpose of the Uniform Act as set forth in its commentary is to set forth a procedure that can be easily and efficiently followed, has a minimum of judicial oversight and intervention and that is cost-effective for the litigants. (See Exhibit 3, Page 4).

Map	Bill List	Summary	Enactment History
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See Interactive Map here: <https://www.uniformlaws.org/committees/community-home?communitykey=181202a2-172d-46a1-8dcc-cdb495621d35#LegBillTrackingAnchor>

Committee Discussion

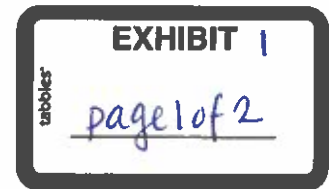
The issue that was brought to the Council was a situation where the practitioner had to use the more lengthy process of getting a commission, rogatory or order from the foreign jurisdiction as laid out in current UTCR 5.140(2) instead of the more streamlined UIDDA process found in ORCP 38C and UTCR 5.140(1). That occurred because the foreign jurisdiction (Missouri) had not adopted the UIDDA and the trial concluded that ORCP 38C was the process for other jurisdictions who have also enacted the UIDDA.

The committee did not see a reason to change ORCP 38C and concluded the current two avenues as set forth in the UTCRs are appropriate as reflecting the two ways that foreign discovery subpoenas can be issued in Oregon. Given the overwhelming number of jurisdictions that have adopted the UIDDA and potential future adoptions, this issue does not appear to be a frequent appearance in Oregon courts or an issue of concern.

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

From: "Kevin T. Sasse" <KSasse@dunncarney.com>
 To: "Eric A. Kekel" <EKekel@dunncarney.com>
 Cc:
 Bcc:
 Date: Wed, 2 Jul 2025 22:38:37 +0000
 Subject: Court Rules Suggestion



Hi Eric,

As discussed, ORCP 38 C governs deposition subpoenas in Oregon for matters pending in other jurisdictions. The relevant UTCR is UTCR 5.140.

We were local counsel for a Meritas affiliate in Missouri, who wanted to take some depositions in Oregon. We had no issues with the first subpoena under the streamlined, expedited process in UTCR 5.140(1). However, on the second subpoena, the court indicated that we had to follow the more involved process set forth in UTCR 5.140(2).

UTCR 5.140(1) provides that "[t]o obtain discovery in the State of Oregon for a proceeding pending in another state pursuant to Oregon Rule of Civil Procedure (ORCP) 38 C, a party must submit to the court all of the following: (a) The foreign subpoena. (b) An original and two copies of a fully completed subpoena that [complies with the ORCPs]. (c) A petition and request for issuance of a subpoena pursuant to ORCP 38 C . . . stating that (i) The foreign subpoena was issued by a court of record of a state as 'state' is defined in ORCP 38 C(1)(b); (ii) The fully completed subpoena complies with the requirements of the ORCP, including ORCP 55; and (iii) The fully completed subpoena contains the names, addresses, email addresses, and telephone numbers of all attorneys of record and self-represented parties in the foreign proceeding."

State is defined in ORCP 38 C(1)(b) to mean "a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States". Missouri seems to qualify.

ORCP 38 C(6) provides, "In applying and construing this section, consideration shall be given to the need to promote the uniformity of the law with respect to its subject matter among states that enact it." It does not say that it only applies if the other state extends reciprocal privileges. *Compare* Va. Code Ann. § 8.01-412.14 (extending privilege only to those jurisdictions that have extended similar privileges), *with* ORCP 38 C(6) (no such language).

The court took the position that ORCP 38 C and UTCR 5.140(1) only apply to states that have enacted the Uniform Interstate Depositions and Discovery Act. Apparently, there are only two states and two other jurisdictions that have not enacted the act. (see UIDDA map).

The court's position appears to have been based on UTCR 5.140(2), which provides in part, "[t]o obtain discovery in the state of Oregon for a proceeding pending in a foreign jurisdiction not subject to ORCP 38 C, a party must file a writ, mandate, commission, letter rogatory, or order executed by the appropriate authority in the foreign jurisdiction with a circuit court of this state."

On its face, UTCR 5.140(2) is confusing. What foreign jurisdiction would be *subject to* a rule of our state? Moreover, while we all know you should read a rule in its entirety, if you read UTCR 5.140(1), there is nothing to definitively suggest that it only applies if the foreign jurisdiction is subject to UIDDA. In my view, it's a completely fair reading to say that UTCR 5.140 governs the process set out in ORCP 38 C, which, unlike Virginia's statute, does not expressly carve out jurisdictions that don't extend reciprocal privileges.

It's only when you compare UTCR 5.140(1) ("proceeding pending in another state pursuant to [ORCP 38 C]") and UTCR 5.140(2) "proceeding pending in a foreign jurisdiction not subject to ORCP 38 C") that you might come to the conclusion that UTCR 5.140(1) is referring to states that have similarly enacted the UIDDA. However, it's not an obvious, or at least a clear, reading.

I'm frankly not sure the UTCRs get to restrict the process set forth in ORCP 38 C, but arguably they are not in conflict (in which case, the ORCPs would presumably govern as quasi-legislative authority). Nonetheless, I think this needs some clarity.

Thanks!

Kevin T. Sasse

ksasse@dunnarney.com

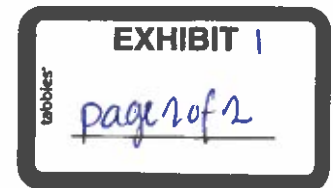
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Court Rules Suggestion.eml
20K

COCP Meeting Packet
October 11, 2025
Attachment D-2

COCP Meeting Packet
February 2026
Attachment C-4

5.140 INTERSTATE DEPOSITION INSTRUMENTS—REGISTERING A FOREIGN COMMISSION IN OREGON

- (1) To obtain discovery in the State of Oregon for an action pending in another jurisdiction, a party shall register a writ, mandate, commission, letter rogatory, or order executed by the appropriate authority in the foreign jurisdiction with a circuit court of this state. The party in the foreign action or an active member in good standing of the Oregon State Bar shall present in person at *ex parte* the original document or a certified copy from the foreign jurisdiction, a petition, and an order to register the document. (See Form 5.140.1 in the UTCR Appendix of Forms.) If approved by the court, upon payment of the appropriate filing fee the matter will be assigned a circuit court case number and appropriate process may be issued by the Oregon attorney.

UTCR 8/1/10

5.4

- (2) In the event that a foreign jurisdiction has no procedure to issue a writ, mandate, commission, letter rogatory, or order to authorize a deposition to be taken in Oregon pursuant to ORCP 38 C, at *ex parte* the party shall present a petition to compel the witnesses to appear and testify. The petition shall be supported by an affidavit that contains all of the following:
- (a) The name of the foreign jurisdiction in which the litigation is pending.
 - (b) The name of the court in which the litigation is pending.
 - (c) The caption or other relevant title of the litigation.
 - (d) The case number assigned by the foreign jurisdiction to the litigation.
 - (e) The date of filing of the litigation in the foreign jurisdiction.
 - (f) A statement that the foreign jurisdiction has no process to issue a writ, mandate, commission, letter rogatory, or order to compel a witness to appear and give testimony if the witness is located outside its jurisdictional boundary.
 - (g) A statement that the affiant seeks authorization from the court to proceed upon notice or agreement to take the testimony of witnesses in this state as provided by ORCP 38C (1).
 - (h) The identity of witnesses in this state to be compelled upon notice or agreement to appear and testify.

depositions taken within the United States under these rules.

C Foreign depositions and subpoenas.

[C(1) Whenever any mandate, writ, or commission is issued out of any court of record in any other state, territory, district, or foreign jurisdiction, or whenever upon notice or agreement it is required to take the testimony of a witness or witnesses in this state, witnesses may be compelled to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in this state.

C(2) This section shall be so interpreted and construed as to effectuate its general purposes to make uniform the laws of those states which have similar rules or statutes.]

C(1) Definitions. For the purpose of this rule:

C(1)(a) “Foreign subpoena” means a subpoena issued under authority of a court of record of any state other than Oregon.

C(1)(b) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

C(2) Issuance of subpoena.

C(2)(a) To request issuance of a subpoena under this rule, a party or attorney shall submit a foreign subpoena to a clerk of court in the county in which discovery is sought to be conducted in this state.

C(2)(b) When a party or attorney submits a foreign subpoena to a clerk of court in this state, the clerk, in accordance with that court’s procedure and requirements, shall assign a case number and promptly issue a subpoena for service upon the person to whom the foreign subpoena is directed. If a party to an out-of-state proceeding retains an attorney licensed to practice in this state, that attorney may assist the clerk in drafting the subpoena.

UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT**Prefatory Note****1. History of Uniform Acts**

The National Conference of Commissioners on Uniform State Laws has twice promulgated acts dealing with interstate discovery procedures.

In 1920, the Uniform Foreign Depositions Act was adopted by NCCUSL. The pertinent section of that act provides:

Whenever any mandate, writ or commission is issued from any court of record in any foreign jurisdiction, or whenever upon notice or agreement it is required to take the testimony of a witness in this state, the witness may be compelled to appear and testify in the same manner and by the same process as employed for taking testimony in matters pending in the courts of this state.

The UFDA was originally adopted in 13 states. The states and territories which currently have the act include Florida, Georgia, Louisiana, Maryland, Nevada, New Hampshire, Ohio, Oklahoma, South Dakota, Tennessee, Virginia, Wyoming, and the Virgin Islands.

In 1962, the Uniform Interstate and International Procedure Act was adopted by NCCUSL. The act was designed to supercede any previous interstate jurisdiction acts, including the UFDA, and was more extensive than the UFDA, having provisions on personal jurisdiction, service methods, deposition methods, and other topics. Section 3.02(a) of the act provides:

[A court][The ____ court] of this state may order a person who is domiciled or is found within this state to give his testimony or statement or to produce documents or other things for use in a proceeding in a tribunal outside this state. The order may be made upon the application of any interested person or in response to a letter rogatory and may prescribe the practice and procedure, which may be wholly or in part the practice and procedure of the tribunal outside this state, for taking the testimony or statement or producing the documents or other things. To the extent that the order does not prescribe otherwise, the practice and procedure shall be in accordance with that of the court of this state issuing the order. The order may direct that the testimony or statement be given, or document or other thing produced, before a person appointed by the court. The person appointed shall have power to administer any necessary oath.

The UIIPA was originally adopted by 6 states. The states, districts, and territories which currently have the act include Arkansas, District of Columbia, Louisiana, Massachusetts, Pennsylvania, and the Virgin Islands.

In 1977 the National Conference of Commissioners on Uniform State Laws withdrew the UIIPA from recommendation “due to its being obsolete.” Until now, no other uniform act for interstate depositions has been proposed.

2. Common issues

While every state has a rule governing foreign depositions, those rules are hardly uniform. These differences are extensively detailed in *Interstate Deposition Statutes: Survey and Analysis*, 11 U. Balt. L. Rev 1, 1981. Some of the more important differences among the various states are the following:

a. In what kind of proceeding may depositions be taken?

Many states restrict depositions to those that will be used in the “courts” or “judicial proceedings” of the other state. Some states allow depositions for any “proceeding.” The UFDA and UIIPA take a similar approach.

b. Who may seek depositions?

A few states limit discovery to only the parties in the action or proceeding. Other states simply use the term “party” without any further qualifier, which may be interpreted broadly to include any interested party. Still other states expressly allow any person who would have the power to take a deposition in the trial state to take a deposition in the discovery state. The UIIPA allows any “interested party” to seek discovery. The UFDA does not state who may seek discovery.

c. What matters can be covered in a subpoena?

The UFDA expressly applies only to the “testimony” of witnesses. The UIIPA expressly applies to “testimony or documents or other things.” Several states follow the UIIPA approach, while others seem to limit production to documents but not physical things, and still others are silent on the subject, although some of those states recognize that the power to produce documents is implicit. Rule 45 of the FRCP is more explicit, and provides that a subpoena may be issued to a witness “to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises...”

d. What is the procedure for obtaining a deposition subpoena?

Under the UFDA, a party must file the same notice of deposition that would be used in the trial state and then serve the witness with a subpoena under the law of the trial state. If a motion to compel is necessary, it must be filed in the discovery state (the deponent’s home court). Other states require that a notice of deposition be shown to a clerk or judge in the discovery state, after which a subpoena will automatically issue. Still other states require a letter

rogatory requesting the trial state to issue a subpoena. Under the UIIPA, either an application or letter rogatory is required. About 20 states require an attorney in the discovery state to file a miscellaneous action to establish jurisdiction over the witness so that the witness can then be subpoenaed.

e. What is the procedure for serving a deposition subpoena?

The UFDA provides that the witness “may be compelled to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in this state.” The UIIPA provides that methods of service includes service “in the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction.” State rules usually follow the procedure of the UFDA and UIIPA.

f. Which jurisdiction has power to enforce or quash a subpoena?

Most states give the discovery state power to issue, refuse to issue, or quash a subpoena.

g. Where can the deponent be deposed?

Some states limit the place where a deposition can be taken to the discovery state, and some limit it to the deponent’s home county. The UFDA and UIIPA are silent on this issue.

h. What witness fees are required?

A few states require the payment of witness fees. While most states are silent on the issue, it is probably assumed that the witness fee rules generally existing in the discovery state apply. These usually include fees and mileage, and are usually required to be paid at the time the witness testifies.

i. Which jurisdiction’s discovery procedure applies?

A significant issue is whether the trial state’s or discovery state’s discovery procedure controls, and on what issues. The general Restatement rule is that the forum state’s (the discovery state’s) procedure applies. The UIIPA, as well as many states, provides that the discovery state can use the procedure of either the trial or discovery state, with a presumption for the procedure of the discovery state. Some states reverse this presumption, while others are unclear, and still others are silent on the issue.

Another significant issue is whether the trial state’s or discovery state’s courts can issue protective orders. Both states have interests: the trial state’s courts have an interest in protecting witnesses and litigants from improper practices, and the discovery state’s courts have an obvious interest in protecting its residents from unreasonable and overly burdensome discovery requests. Most states expressly or implicitly allow the discovery state’s courts to issue protective orders.

j. Which jurisdiction's evidence law applies?

Evidentiary disputes usually center on relevance and privilege issues. Most states indicate that the discovery state should rule on all relevance issues. Other states indicate that relevance issues should be resolved before a subpoena issues, which would necessarily mean that such issues be decided by the trial state. If the discovery state makes such determinations, it is unclear which state's evidence law should apply (if there is a difference).

Perhaps the most difficult issues are whether the trial state or discovery state should determine issues of privilege, and which state's privilege law will apply. Here both jurisdictions have important interests: the trial state has an interest in obtaining all information relevant to the lawsuit consistent with its laws, while the discovery state has an interest in protecting its residents from intrusive foreign laws. The Restatement (Second) Conflict of Laws provides that the state which has the "most significant relationship" to the communication at issue applies its laws. The issue is further compounded by the general rule that once the privilege is waived, it is generally waived. If the deponent does not object at the deposition and testifies about privileged communications, the privilege will usually be waived.

3. This act

A uniform act needs to set forth a procedure that can be easily and efficiently followed, that has a minimum of judicial oversight and intervention, that is cost-effective for the litigants, and is fair to the deponents. And it should be patterned after Rule 45 of the FRCP, which appears to be universally admired by civil litigators for its simplicity and efficiency.

The Drafting Committee believes that the proposed uniform act meets these requirements, should be supported by the various constituencies that have an interest in how interstate discovery is conducted in state courts, and should be adopted by most of the states. The act is simple and efficient: it establishes a simple clerical procedure under which a trial state subpoena can be used to issue a discovery state subpoena. The act has minimal judicial oversight: it eliminates the need for obtaining a commission, letters rogatory, filing a miscellaneous action, or other preliminary steps before obtaining a subpoena in the discovery state. The act is cost effective: it eliminates the need to obtain local counsel in the discovery state to obtain an enforceable subpoena. And the act is fair to deponents: it provides that motions brought to enforce, quash, or modify a subpoena, or for protective orders, shall be brought in the discovery state and will be governed by the discovery state's laws.

UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Interstate Depositions and Discovery Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Foreign jurisdiction” means a state other than this state.

(2) “Foreign subpoena” means a subpoena issued under authority of a court of record of a foreign jurisdiction.

(3) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(4) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, [a federally recognized Indian tribe], or any territory or insular possession subject to the jurisdiction of the United States.

(5) “Subpoena” means a document, however denominated, issued under authority of a court of record requiring a person to:

(A) attend and give testimony at a deposition;

(B) produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or

(C) permit inspection of premises under the control of the person.

6
Comment

This Act is limited to discovery in state courts, the District of Columbia, Puerto Rico, the United States Virgin Islands, and the territories of the United States. The committee decided not to extend this Act to include foreign countries including the Canadian provinces. The committee felt that international litigation is sufficiently different and is governed by different principles, so that discovery issues in that arena should be governed by a separate act.

The term “Subpoena” includes a subpoena duces tecum. The description of a subpoena in the Act is based on the language of Rule 45 of the FRCP.

The term “Subpoena” does not include a subpoena for the inspection of a person (subsection (3)(C) is limited to inspection of premises). Medical examinations in a personal injury case, for example, are separately controlled by state discovery rules (the corresponding federal rule is Rule 35 of the FRCP). Since the plaintiff is already subject to the jurisdiction of the trial state, a subpoena is never necessary.

SECTION 3. ISSUANCE OF SUBPOENA.

(a) To request issuance of a subpoena under this section, a party must submit a foreign subpoena to a clerk of court in the [county, district, circuit, or parish] in which discovery is sought to be conducted in this state. A request for the issuance of a subpoena under this act does not constitute an appearance in the courts of this state.

(b) When a party submits a foreign subpoena to a clerk of court in this state, the clerk, in accordance with that court’s procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

(c) A subpoena under subsection (b) must:

(A) incorporate the terms used in the foreign subpoena; and

(B) contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

7
Comment

The term “Court of Record” was chosen to exclude non-court of record proceedings from the ambit of the Act. The committee concluded that extending the Act to such proceedings as arbitrations would be a significant expansion that might generate resistance to the Act. A “Court of Record” includes anyone who is authorized to issue a subpoena under the laws of that state, which usually includes an attorney of record for a party in the proceeding.

The term “Presented” to a clerk of court includes delivering to or filing. Presenting a subpoena to the clerk of court in the discovery state, so that a subpoena is then issued in the name of the discovery state, is the necessary act that invokes the jurisdiction of the discovery state, which in turn makes the newly issued subpoena both enforceable and challengeable in the discovery state.

The committee envisions the standard procedure under this section will become as follows, using as an example a case filed in Kansas (the trial state) where the witness to be deposed lives in Florida (the discovery state): A lawyer of record for a party in the action pending in Kansas will issue a subpoena in Kansas (the same way lawyers in Kansas routinely issue subpoenas in pending actions). That lawyer will then check with the clerk’s office, in the Florida county or district in which the witness to be deposed lives, to obtain a copy of its subpoena form (the clerk’s office will usually have a Web page explaining its forms and procedures). The lawyer will then prepare a Florida subpoena so that it has the same terms as the Kansas subpoena. The lawyer will then hire a process server (or local counsel) in Florida, who will take the completed and executed Kansas subpoena and the completed but not yet executed Florida subpoena to the clerk’s office in Florida. In addition, the lawyer might prepare a short transmittal letter to accompany the Kansas subpoena, advising the clerk that the Florida subpoena is being sought pursuant to Florida statute ____ (citing the appropriate statute or rule and quoting Sec. 3). The clerk of court, upon being given the Kansas subpoena, will then issue the identical Florida subpoena (“issue” includes signing, stamping, and assigning a case or docket number). The process server (or other agent of the party) will pay any necessary filing fees, and then serve the Florida subpoena on the deponent in accordance with Florida law (which includes any applicable local rules).

The advantages of this process are readily apparent. The act of the clerk of court is ministerial, yet is sufficient to invoke the jurisdiction of the discovery state over the deponent. The only documents that need to be presented to the clerk of court in the discovery state are the subpoena issued in the trial state and the draft subpoena of the discovery state. There is no need to hire local counsel to have the subpoena issued in the discovery state, and there is no need to present the matter to a judge in the discovery state before the subpoena can be issued. In effect, the clerk of court in the discovery state simply reissues the subpoena of the trial state, and the new subpoena is then served on the deponent in accordance with the laws of the discovery state. The process is simple and efficient, costs are kept to a minimum, and local counsel and judicial participation are unnecessary to have the subpoena issued and served in the discovery state.

This Act will not change or repeal the law in those states that still require a commission or letters rogatory to take a deposition in a foreign jurisdiction. The Act does, however, repeal the law in those discovery states that still require a commission or letter rogatory from a trial state before a deposition can be taken in those states. It is the hope of the Conference that this Act will encourage states that still require the use of commissions or letters rogatory to repeal those laws.

The Act requires that, when the subpoena is served, it contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record and of any party not represented by counsel. The committee believes that this requirement imposes no significant burden on the lawyer issuing the subpoena, given that the lawyer already has the obligation to send a notice of deposition to every counsel of record and any unrepresented parties. The benefits in the discovery state, by contrast, are significant. This requirement makes it easy for the deponent (or, as will frequently be the case, the deponent's lawyer) to learn the names of and contact the other lawyers in the case. This requirement can easily be met, since the subpoena will contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record and of any party not represented by counsel (which is the same information that will ordinarily be contained on a notice of deposition and proof of service).

SECTION 4. SERVICE OF SUBPOENA. A subpoena issued by a clerk of court under Section 3 must be served in compliance with [cite applicable rules or statutes of this state for service of subpoena].

SECTION 5. DEPOSITION, PRODUCTION, AND INSPECTION. [Cite rules or statutes of this state applicable to compliance with subpoenas to attend and give testimony, produce designated books, documents, records, electronically stored information, or tangible things, or permit inspection of premises] apply to subpoenas issued under Section 3.

Comment

The Act requires that the discovery permitted by this section must comply with the laws of the discovery state. The discovery state has a significant interest in these cases in protecting its residents who become non-party witnesses in an action pending in a foreign jurisdiction from any unreasonable or unduly burdensome discovery request. Therefore, the committee believes that the discovery procedure must be the same as it would be if the case had originally been filed in the discovery state.

The committee believes that the fee, if any, for issuing a subpoena should be sufficient to cover only the actual transaction costs, or should be the same as the fee for local deposition subpoenas.

SECTION 6. APPLICATION TO COURT. An application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court under Section 3 must comply with the rules or statutes of this state and be submitted to the court in the [county, district, circuit, or parish] in which discovery is to be conducted.

Comment

The act requires that any application to the court for a protective order, or to enforce, quash, or modify a subpoena, or for any other dispute relating to discovery under this Act, must comply with the law of the discovery state. Those laws include the discovery state's procedural, evidentiary, and conflict of laws rules. Again, the discovery state has a significant interest in protecting its residents who become non-party witnesses in an action pending in a foreign jurisdiction from any unreasonable or unduly burdensome discovery requests, and this is easily accomplished by requiring that any discovery motions must be decided under the laws of the discovery state. This protects the deponent by requiring that all applications to the court that directly affect the deponent must be made in the discovery state.

The term "modify" a subpoena means to alter the terms of a subpoena, such as the date, time, or location of a deposition.

Evidentiary issues that may arise, such as objections based on grounds such as relevance or privilege, are best decided in the discovery state under the laws of the discovery state (including its conflict of laws principles).

Nothing in this act limits any party from applying for appropriate relief in the trial state. Applications to the court that affect only the parties to the action can be made in the trial state. For example, any party can apply for an order in the trial state to bar the deposition of the out-of-state deponent on grounds of relevance, and that motion would be made and ruled on before the deposition subpoena is ever presented to the clerk of court in the discovery state.

If a party makes or responds to an application to enforce, quash, or modify a subpoena in the discovery state, the lawyer making or responding to the application must comply with the discovery state's rules governing lawyers appearing in its courts. This act does not change existing state rules governing out-of-state lawyers appearing in its courts. (See Model Rule 5.5 and state rules governing the unauthorized practice of law.)

SECTION 7. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it

SECTION 8. APPLICATION TO PENDING ACTIONS. This [act] applies to requests for discovery in cases pending on [the effective date of this [act]].

SECTION 9. EFFECTIVE DATE. This [act] takes effect ____.

SUMMONS

RULE 7

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C(3) Notice to party served.

C(3)(a) In general. All summonses, other than a summons referred to in paragraph C(3)(b) or C(3)(c) of this rule, *[shall]* **must** contain a notice printed in type size equal to at least *[8-point type]* **12-point type** that may be substantially in the following form:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must “appear” in this case or the *[other side]* **plaintiff** will win automatically. To *[“appear”]* **appear** you must file with the court a legal document called a “motion” or “answer.” *[The “motion” or “answer” must be given]* **You must give your motion or answer** to the court clerk or administrator **of the court that appears at the top of this summons** within 30 days along with the required filing fee. *[It]* **Your motion or answer** must be in proper form and *[have]* **include** *[proof of service]* **“proof of service”** on the plaintiff's attorney or, if the plaintiff does not have an attorney, *[proof of service]* **proof of service** on the plaintiff. **Proof of service is a signed statement describing when and how the document was served as required in Oregon Rule of Civil Procedure 7 D.**

If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may contact the Oregon State **Bar**: *[Bar’s Lawyer Referral Service online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636.]*

www.oregonstatebar.org

(503) 684-3763 in Portland metropolitan area

(800) 452-7636 statewide

If you would like more information that may be helpful in understanding this case, you
may also contact:

www.oregonlawhelp.org

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TO: Council on Court Procedures

FR: Hon. Mark Peterson

DT: 2/4/2026

RE: POST-JUDGMENT DISCOVERY TOOLS FOR USE IN ENFORCEMENT/COLLECTION

The Rule 36/55/post-judgment committee met on February 2, 2026, with only three members: Johnson, Marrs, and Peterson.

In response to the Council's biennial survey was a suggestion to clarify the use of discovery tools and subpoenas directed to nonparties who might hold assets or have information to assist in locating assets in the collection/enforcement of judgments. Although the use of a subpoena to require a nonparty to appear for a deposition after a judgment has been entered is not typically challenged, the respondent noted that, sometimes a challenge is made using the existing verbiage in Rule 36 and Rule 55 as authority. Rule 36 (the general discovery rule) contains the phrase "relevant to the claim or defense..." in subsection B(1), defining the scope of discovery and it is argued that post-judgment matters are not a "claim or defense." Similarly, Rule 55 (subpoenas) uses the phrase "action is pending" five times in sections A and B and it can be argued that, once a general judgment has been entered, the action is no longer "pending." Section C(1) of Rule 36 also uses the phrase "action is pending."

The issue is whether an amendment to Rule 36, Rule 55, or elsewhere would facilitate more efficient and inexpensive enforcement of judgments, or whether any change would be beneficial.

Clearly a judgment debtor is subject to post-judgment enforcement/collection tools. A system that did not provide such tools would render judgments as suggestions and compliance would be voluntary. Writs of garnishment and attachment, among other tools, exist to secure compliance with a judgment that may be less than voluntary.

What of nonparties who may hold assets or have information leading to assets of the judgment debtor? As the survey respondent points out, ORS 18.268(1) provides that witnesses (as well as judgment debtors) may be summoned to appear for judgment debtor examinations. Likewise, writs of garnishment are directed to nonparties who may hold assets belonging to the judgment debtor. ORS 18.602. Subpoenaing nonparties in post-judgment proceedings and requiring responses to writs are authorized by law.

Substituting a different phrase for either "claim or defense" or "action is pending," that would avoid the argument that collection of a claim is not a "claim or defense," or that, after a

judgment is entered, an action is no longer “pending” did not present ready alternatives. Further, those phrases, especially “claim or defense” have been time-tested and are generally understood terms. This is not to suggest that an action is not pending once a judgment has been entered or that collection of a judgment does not relate to a claim or defense, but the arguments have been made.

The committee thought that inserting language from FRCP 69(a)(2), specifically authorizing discovery from “any person,” as the respondent suggested, into the ORCP might be a more direct solution. It was suggested that Rule 37 provides a procedure to obtain discovery pre-litigation and during an appeal and the FRCP 69(a)(2) language could be inserted as a new section C (and redesignate existing sections C and D). After the meeting one committee member thought the FRCP 69(a)(2) language could also be inserted as a new subsection B(4) in Rule 36. Rule 36 has the advantage that it is where one finds the general scope of discovery. Rule 37 would seem to require a petition to be filed to authorize the discovery and, as nonparties are being required to respond, it would be a check against possible harassment or abuse of nonparties through the use of subpoenas and discovery tools

Please see the drafts of Rule 36 and Rule 37 showing how the FRCP 69(a)(2) language would appear.

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1 **B(2)(b) Procedure for disclosure.** The obligation to disclose under this subsection shall be
2 performed as soon as practicable following the filing of the complaint and the request to
3 disclose. The court may supervise the exercise of disclosure to the extent necessary to ensure
4 that it proceeds properly and expeditiously. However, the court may limit the extent of
5 disclosure under this subsection as provided in section C of this rule.

6 **B(2)(c) Admissibility; applications for insurance.** Information concerning the insurance
7 agreement or policy is not by reason of disclosure admissible in evidence at trial. For purposes
8 of this subsection, an application for insurance shall not be treated as part of an insurance
9 agreement or policy.

10 **B(2)(d) Definition.** As used in this subsection, "disclose" means to afford the adverse
11 party an opportunity to inspect or copy the insurance agreement or policy.

12 **B(3) Trial preparation materials.**

13 **B(3)(a) Materials subject to a showing of substantial need.** Subject to the provisions of
14 Rule 44, a party may obtain discovery of documents and tangible things otherwise discoverable
15 under subsection B(1) of this rule and prepared in anticipation of litigation or for trial by or for
16 another party or by or for that other party's representative (including an attorney, consultant,
17 surety, indemnitor, insurer, or agent) only on a showing that the party seeking discovery has
18 substantial need of the materials in the preparation of such party's case and is unable without
19 undue hardship to obtain the substantial equivalent of the materials by other means. In
20 ordering discovery of such materials when the required showing has been made, the court
21 shall protect against disclosure of the mental impressions, conclusions, opinions, or legal
22 theories of an attorney or other representative of a party concerning the litigation.

23 **B(3)(b) Prior statements.** A party may obtain, without the required showing, a statement
24 concerning the action or its subject matter previously made by that party. On request, a person
25 who is not a party may obtain, without the required showing, a statement concerning the
26 action or its subject matter previously made by that person. If the request is refused, the

1 person or party requesting the statement may move for a court order. The provisions of Rule
2 46 A(4) apply to the award of expenses incurred in relation to the motion. For purposes of this
3 subsection, a statement previously made is either: a written statement signed or otherwise
4 adopted or approved by the person making it; or a stenographic, mechanical, electrical, or
5 other recording, or a transcription that is a substantially verbatim recital of an oral statement
6 by the person making it and contemporaneously recorded.

7 **B(4) Discovery in aid of a judgment. In aid of a judgment or execution, the judgment**
8 **creditor or a successor in interest whose interest appears of record may obtain discovery**
9 **from any person—including the judgment debtor—as provided in these rules.**

10 **C Court order limiting extent of disclosure.**

11 **C(1) Relief available; grounds for limitation.** On motion by a party or by the person from
12 whom discovery is sought, and for good cause shown, the court in which the action is pending
13 may make any order that justice requires to protect a party or person from annoyance,
14 embarrassment, oppression, or undue burden or expense, including one or more of the
15 following: that the discovery not be had; that the discovery may be had only on specified terms
16 and conditions, including a designation of the time or place; that the discovery may be had
17 only by a method of discovery other than that selected by the party seeking discovery; that
18 certain matters not be inquired into, or that the scope of the discovery be limited to certain
19 matters; that discovery be conducted with no one present except persons designated by the
20 court; that a deposition after being sealed be opened only by order of the court; that a trade
21 secret or other confidential research, development, or commercial information not be
22 disclosed or be disclosed only in a designated way; that the parties simultaneously file specified
23 documents or information enclosed in sealed envelopes to be opened as directed by the court;
24 or that to prevent hardship the party requesting discovery pay to the other party reasonable
25 expenses incurred in attending the deposition or otherwise responding to the request for
26 discovery.

1 C(2) **Denial of motion.** If the motion for a protective order is denied in whole or in part,
2 the court may, on such terms and conditions as are just, order that any party or person provide
3 or permit discovery. The provisions of Rule 46 A(4) apply to the award of expenses incurred in
4 relation to the motion.
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1 **PERPETUATION OF TESTIMONY OR EVIDENCE**

2 **BEFORE ACTION OR PENDING APPEAL**

3 **RULE 37**

4 **A Before action.**

5 A(1) **Petition.** A person who desires to perpetuate testimony or to obtain discovery to
6 perpetuate evidence under Rule 43 or Rule 44 regarding any matter that may be cognizable in
7 any court of this state may file a petition in the circuit court in the county of such person's
8 residence or the residence of any expected adverse party. The petition shall be entitled in the
9 name of the petitioner and shall show: (a) that the petitioner, or the petitioner's personal
10 representatives, heirs, beneficiaries, successors, or assigns are likely to be a party to an action
11 cognizable in a court of this state and are presently unable to bring such an action or defend it,
12 or that the petitioner has an interest in real property or some easement or franchise therein,
13 about which a controversy may arise, which would be the subject of such action; (b) the
14 subject matter of the expected action and petitioner's interest therein and a copy, attached to
15 the petition, of any written instrument the validity or construction of which may be called into
16 question or which is connected with the subject matter of the expected action; (c) the facts
17 which petitioner desires to establish by the proposed testimony or other discovery and
18 petitioner's reasons for desiring to perpetuate; (d) the names or a description of the persons
19 petitioner expects will be adverse parties and their addresses so far as one is known; and, (e)
20 the names and addresses of the parties to be examined or from whom discovery is sought and
21 the substance of the testimony or other discovery which petitioner expects to elicit and obtain
22 from each. The petition shall name persons to be examined and ask for an order authorizing
23 the petitioner to take their depositions for the purpose of perpetuating their testimony, or
24 shall name persons in the petition from whom discovery is sought and shall ask for an order
25 allowing discovery under Rule 43 or Rule 44 from such persons for the purpose of preserving
26 evidence.

1 A(2) **Notice and service.** The petitioner shall thereafter serve a notice upon each person
2 named in the petition as an expected adverse party, together with a copy of the petition,
3 stating that the petitioner will apply to the court at a time and place named therein, for the
4 order described in the petition. The notice shall be served either within or without the state in
5 the manner provided for service of summons in Rule 7, but if such service cannot with due
6 diligence be made upon any expected adverse party named in the petition, the court may
7 make such order as is just for service by publication or otherwise, and shall appoint, for
8 persons not served with summons in the manner provided in Rule 7, an attorney who shall
9 represent them and whose services shall be paid for by petitioner in an amount fixed by the
10 court, and, in case they are not otherwise represented, shall cross examine the deponent.
11 Testimony and evidence perpetuated under this rule shall be admissible against expected
12 adverse parties not served with notice only in accordance with the applicable rules of evidence.
13 If any expected adverse party is a minor or incompetent, the provisions of Rule 27 apply.

14 A(3) **Order and examination.** If the court is satisfied that the perpetuation of the
15 testimony or other discovery to perpetuate evidence may prevent a failure or delay of justice,
16 it shall make an order designating or describing the persons whose depositions may be taken
17 and specifying the subject matter of the examination and whether the depositions shall be
18 taken upon oral examination or written questions; or shall make an order designating or
19 describing the persons from whom discovery may be sought under Rule 43 specifying the
20 objects of such discovery; or shall make an order for a physical or mental examination as
21 provided in Rule 44. Discovery may then be had in accordance with these rules. For the
22 purpose of applying these rules to discovery before action, each reference therein to the court
23 in which the action is pending shall be deemed to refer to the court in which the petition for
24 such discovery was filed.

25 B **Pending appeal.** If an appeal has been taken from a judgment of a court to which these
26 rules apply or before the taking of an appeal if the time therefor has not expired, the court in

1 | which the judgment was rendered may allow the taking of the depositions of witnesses to
2 | perpetuate their testimony or may allow discovery under Rule 43 or Rule 44 for use in the
3 | event of further proceedings in such court. In such case the party who desires to perpetuate
4 | the testimony or obtain the discovery may make a motion in the court therefor upon the same
5 | notice and service thereof as if the action was pending in the circuit court. The motion shall
6 | show: (1) the names and addresses of the persons to be examined or from whom other
7 | discovery is sought and the substance of the testimony or other discovery which the party
8 | expects to elicit from each; and (2) the reasons for perpetuating their testimony or seeking
9 | such other discovery. If the court finds that the perpetuation of the testimony or other
10 | discovery is proper to avoid a failure or delay of justice, it may make an order as provided in
11 | subsection (3) of section A of this rule and thereupon discovery may be had and used in the
12 | same manner and under the same conditions as are prescribed in these rules for discovery in
13 | actions pending in the circuit court.

14 | **C After entry of judgment. In aid of a judgment or execution, the judgment creditor or**
15 | **a successor in interest whose interest appears of record may obtain discovery from any**
16 | **person—including the judgment debtor—as provided in these rules.**

17 | **[C Perpetuation by action.] D Perpetuation by action.** This rule does not limit the power
18 | of a court to entertain an action to perpetuate testimony.

19 | **[D Filing of depositions.] E Filing of depositions.** Depositions taken under this rule [*shall*]
20 | **must** be filed with the court in which the petition is filed or the motion is made.