

DRAFT MINUTES OF MEETING
COUNCIL ON COURT PROCEDURES
 Saturday, May 9, 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
 Melissa Hopkins
 Ryan Jennings
 Lara Johnson
 Derek Larwick
 Julian Marrs
 Hon. Thomas A. McHill
 Hon. Michelle McIver
 Hon. Melvin Oden-Orr
 Hon. Robert Raschio
 Michael Shin
 Hon. Scott Shorr
 Tom Spooner
 Hon. Todd Van Rysselberghe

Members Absent:

Hon. Christopher L. Garrett
 YoungWoo Joh
 Eric Kekel
 Bryce Whitman Passadore
 Alicia Wilson

Guests:

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 22 • ORCP 36 • ORCP 37 • ORCP 55	• 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 March 14, 2026, Minutes

Mr. Goehler called the Council's attention to the draft minutes from the April 11, 2026, meeting (Appendix A) and asked whether there were any suggestions for corrections. Hearing none, he asked for a motion to approve the minutes. Judge Raschio made such a motion, Ms. Dahab seconded, and the motion was approved by voice vote.

III. Administrative Matters

A. Staff Comments

This topic was carried over to the June agenda.

B. September Council Meeting

Judge Peterson explained that Rosh Hashanah falls on the currently scheduled date of the September Council meeting, September 12, 2026. In terms of rescheduling, September 5 is during Labor Day weekend, and staff is not available on September 12. That leaves two options: moving the meeting to an earlier date of August 29 or moving it to the last weekend of the month, on September 26. Both dates would allow the Council to meet its statutory deadline for publishing its draft amendments to the bench and bar 30 days prior to the promulgation meeting.

After some discussion, the Council decided to tentatively set the meeting for September 26, 2026, barring any strong objections by Council members who were not present at today's meeting. Mr. Goehler also mentioned that, while the Council traditionally does not meet during the months of July and August during even-numbered years, it is possible to schedule a meeting during those months if work still needs to be done prior to the publication meeting.

C. Council Website

Judge Peterson reported that, since the Council is a state agency, it is required to make its materials compliant with the Americans with Disabilities Act (ADA). Ms. Nilsson explained that there was a deadline for making websites accessible by the end of April, 2026; however, that deadline had been extended to April, 2027. She stated that she had reached out to a web developer that she has worked with at Campaign for Equal Justice to get a quote for making the Council's website ADA compliant. It would cost over \$15,000 to make every PDF document on the site accessible. The developer's recommendation is to make the site itself and the most regularly accessed documents accessible, to train staff on how to make future PDFs accessible, and to include a

disclaimer on the site to let people know that they can reach out to the Council for accessible versions of any documents that they require. The quote for this is approximately \$1,600.

Judge Hill recommended moving forward with the less extensive quote for now and asking the Legislature during the next session for a one-time expenditure to make the site fully compliant, as this is an important goal. Since it is an unanticipated expense, he thought that the Legislature might be willing to allocate funds for it. The Council agreed that this is a good idea. Judge Hill made a motion to move forward with the \$1,600 proposal and to make a request for additional funding next biennium. Judge Raschio seconded the motion, which was approved unanimously by voice vote.

IV. Old Business

A. Committee Reports

1. Declaration of Expert Opinion/Rule 47 E

Mr. Goehler explained that Mr. Joh was not present at the meeting and that he had asked that discussion on Rule 47 be deferred until the June meeting.

2. Post-Judgment Subpoenas/Rule 55

Judge Peterson stated that the full committee was not able to meet but that he, Mr. Larwick, and Mr. Marrs did have a meeting and discussed changes to Rule 36 (Appendix B). He reminded the Council that the proposed changes were in response to a concern raised in the biennial survey that some judgment debtors have used language in Rule 36 and in Rule 55 to argue that discovery is not available post-judgment. He explained that the committee had borrowed language from the federal rule, FRCP 69(a)(2), and inserted it into Rule 36. At the committee meeting there was a suggestion that the last sentence of the new subsection was too long or was confusing. The sentence was therefore broken in two. The language has also been modified to state the general rule first, that discovery is available from the judgment debtor or others. The exception is then stated second.

Judge Peterson noted that, at the last Council meeting, Judge Shorr had raised the question of whether post-judgment discovery should be allowed if the judgment has been secured with an adequate undertaking, and the Council's sense was that it should not be. After the committee meeting, staff tweaked the second sentence a little bit to indicate that, if the court has stayed enforcement of a judgment as a result of a satisfactory undertaking or for any other reason, authority to issue a subpoena or to obtain discovery is available only pursuant to a court order. At the last Council meeting, it was also raised that, with joint and several liability, any one judgment debtor's undertaking should secure the

judgment adequately. However, if it is apportioned liability, a minor judgment debtor having an adequate undertaking does not protect the judgment creditor. The new language states that, if some part of the judgment is not secure, the judgment creditor can pursue post-judgment discovery. It would also permit, if a creditor has a good faith belief that the undertaking is no longer adequate for any number of reasons, to ask the court for an order permitting discovery. There is not a bar to obtaining post-judgment discovery but, rather, a constraint if there is an undertaking.

Mr. Goehler wondered whether the language “for a satisfactory undertaking” was necessary when the “for any other reason” language is already included in the last sentence. He stated that it seems redundant. He wondered whether the language could be simplified. Judge Peterson thanked him for the suggestion and noted that this is why putting drafts before the entire Council is helpful.

Judge Peterson observed that the general consensus of the Council seemed to be that the change to Rule 36 meant that Rule 55 did not need to be changed. The committee tended to agree with that assessment; however, Judge Peterson stated that he likes to see a draft of a potential change before making a final decision about it. He stated that the problem with Rule 55 seems to be the phrase “where an action is pending.” Pending is a troublesome word because some people think that an action is no longer pending once a judgment has been entered. The Council’s thought was that an action is still pending because there are judgment creditor remedies and the case remains subject to collection. The draft before the Council (Appendix B) changes the word “pending” to “was commenced,” which would eliminate this issue. He asked the Council whether this would be a worthwhile change to help prevent the occasional situation where a judgment debtor makes post-judgment discovery more difficult and more expensive.

Mr. Spooner pointed out that this language might cause some downstream problems. He stated that it does not happen frequently but, from time to time, there is a change of venue in a case. This could cause confusion with practitioners and self-represented litigants as to where a subpoena should be issued. Judge Peterson stated that he had considered this while preparing the latest draft, but that he thought that the venue statute would take care of it. However, he appreciates that confusion could arise where an action was commenced in one court but is now properly in a different court. Mr. Goehler agreed. Judge Peterson stated that the previous draft used the words, “where the action is pending or where there is a judgment,” but he felt that language was awkward.

Judge Peterson stated that the real question is whether a change actually needs to be made to Rule 55 if a specific change mentioning subpoenas is made to Rule 36. Mr. Goehler opined that the word “pending” in Rule 55 would not

trump Rule 36 if Rule 36 specifically provides for post-judgment subpoenas or discovery in general. Judge Hill suggested carrying over the topic to next month to allow the Council to deliberate further. Judge Peterson stated that he would bring the drafts back to the committee for further consideration and bring any new drafts back to the Council in June. He noted that he has no particular interest in changing Rule 55 yet again this biennium, and he thinks that the consensus seems to be that a change to Rule 36 will be sufficient. Mr. Goehler summarized that, at the June meeting, the Council will look at a final draft of Rule 36 and get input from the committee on whether Rule 55 needs to be amended.

3. Service/Rules 7, 9, & 10

Judge Raschio referred the Council to Appendix C, new drafts of Rule 7 and Rule 9, as well as drafts of the summons forms with the proposed new language. He noted that the committee did not meet but, rather, voted by email to approve the the new drafts by Council staff.

Judge Peterson reminded the Council that he had previously proposed a change to Rule 9 that the committee decided was not a good idea; however, during that process, a few issues with the rule were noted and those are the changes in the draft before the Council now. One change is to the language in the last sentence of section B to more clearly state that service of a notice to bring a party into contempt must be by personal service on the party. Other changes are to the lead line in section D and to the language in that section to clarify what documents are not to be filed with the court. The remaining changes are grammatical and are not intended to affect the operation of the rule. Judge Peterson asked whether anyone noticed any unintended consequences or issues from these changes. Mr. Goehler recommended including the draft on the June agenda to give the Council more time to review it before approving it for the publication agenda. He wondered whether the phrase “are not to be filed” in section D could be better worded, as that language is a bit different from what is used in other rules.

Judge Peterson noted that, just prior to today’s Council meeting, the person who had recommended changes to the summons language in Rule 7 had emailed him with further suggestions, some of which might help with the conciseness of the language. Ms. Nilsson shared those suggestions with the Council. Judge Peterson noted that one suggestion was to use bullet points to help emphasize the steps to be taken. However, he pointed out that there is no other ORCP that includes bullet points and stated that he was reluctant to introduce that formatting here.

Judge Hill asked whether Judge Peterson was suggesting that the committee meet again to consider these new suggestions. Judge Raschio noted that it has been hard to assemble all committee members for a meeting, but that he understands the importance of getting the rule and the format correct. Judge Peterson suggested that Council staff could provide committee members with a new draft for review and that a poll could be held by email as to whether the changes are acceptable or whether the committee needs to meet again. Judge Raschio agreed with this suggestion.

Mr. Goehler suggested that it would be helpful for the committee and for the Council as a whole to see a side-by-side comparison between the current and next versions where it is easy to see the differences between the two. Ms. Nilsson stated that she can provide this.

4. Third Party Practice/Rule 22

Ms. Dahab referred the Council to the latest material from the Rule 22 committee (Appendix D). She noted that the material included the historical summary previously circulated to the Council as well as a slightly revised summary of options for changes, or no changes, to Rule 22. A change was made to option number two, consent with judicial override. She noted that the committee made this change based on feedback from the last Council meeting about the difficulty with “notwithstanding clauses,” so the goal was to more clearly rewrite the language to eliminate potential confusion down the road. The new language reads:

If a party objects to such service, the court may nonetheless grant leave upon an express finding that: (a) the basis for the third-party claim could not have been discovered through reasonable diligence within the 90-day period; (b) the motion was filed promptly after the basis for the claim was or should have been discovered; and (c) granting leave will not prejudice any appearing party or unreasonably delay the trial.

Ms. Dahab stated that the other options provided have not changed, and that the committee has still not reached consensus on any particular recommendation about what to do, if anything, with Rule 22. Part of the committee would vote to leave it as is and part of the committee would vote to change it, with no particular consensus on the nature of the change. She noted that the committee would like broader Council discussion on the issue, but she was not sure of the best method to get this input. Mr. Goehler suggested asking for comments first and then taking an informal poll on the threshold issue of whether there is a majority of Council members wanting to make a change.

Judge Bloom pointed out that this part of Rule 22 is unique within the ORCP. There is no other rule that gives one party veto power over whether any motion can be allowed. He opined that the workaround to this veto power is a nonsensical process under Rule 53, where the defendant who wants to file a third-party complaint is forced to file a separate action against the person who, in effect, becomes the third-party defendant, and then files a motion to consolidate those actions. He pointed out that the only issue to be decided in the hearing on the motion for consolidation is what would be considered in allowing a third-party complaint if the “90-day rule” did not exist. His suggestion would be to get rid of that extra step and leave the issue to the discretion of the court after hearing the arguments of both parties. He opined that this will get to the correct result and make the rule substantially the same as similar rules in every other jurisdiction in the country.

Judge Bloom stated that he respects the well-presented arguments and the hard work by all of the members of the committee, and noted that everyone's involvement has been critical. He acknowledged that this is and has been a contentious issue on the Council. He stated that he had opinions as a litigator, but that he now has opinions as a judge managing these dockets and these issues. Judges want to get the issues resolved, but not at the cost of having the plaintiff's action be continued because of a late filing. He noted that these are issues that the court can consider, and that he is very much against including reasons to limit the court's discretion, as that would cause more litigation and more work on the appellate level. Judge Bloom reiterated that his solution would be leaving it to the discretion of the court, because that is already being done with the motion to consolidate as a workaround, which is a more time consuming and intensive procedure.

Judge Peterson thanked the committee for doing what committees should do, which is really digging in, going through the history, and then presenting a range of proposals. He stated that he was not sure that any of the proposals for a change would get a majority or a supermajority vote, but suggested that it might be a good idea to try to coalesce around a particular proposal. He stated that the Council has heard from the plaintiffs' attorneys that they do not want their cases hijacked, and from the defense attorneys that they have concerns about discovering the real culprit only after the 90 days has passed. He opined that the only suggestion that might be a bad one is the federal one of starting the time from when the answer is filed, because Oregon has a practice rooted in professionalism of letting parties file their answers late. If the time to implead a new party is tied to when the answer is filed, that professionalism is gone because it has a negative consequence for the client.

Mr. Shin echoed Judge Bloom's comments, and added that the committee did a good job of looking at the history of the rule and figuring out why the existing language was adopted and whether it should remain. His opinion is that the “90-

day rule” is largely a historical artifact, and that the landscape has changed since the circumstances and discussions at the time the language was added to the rule. The current rule really just does not fit with, in particular, comparative negligence law, among other potential issues. He stated that the committee had some really good discussions, and the main concern from plaintiffs’ attorneys seemed to be the timing issue where, very late in the game, someone is trying to bring in a third party close to trial in a way that is going to prejudice a plaintiff, either by gaming the system or just by circumstance. He agreed that, of course, the plaintiff should be able to bring the case the way they want to; however, he emphasized the importance of all necessary parties being included. He pointed out that this issue arises in other contexts, such as an ORCP 23 A motion for leave to amend a complaint, and it is left to the discretion of the judge to figure out whether it is too late and how it should be handled. Looking at the federal rule, or any other jurisdiction besides Oregon, problems are not arising. He stated that he did a pretty extensive case law search to see what other jurisdictions do, and did not find issues arising.

Ms. Hopkins stated that, as a plaintiffs’ attorney, her experience is that defendants control the bulk of discovery, so there are no surprises to defendants. She does not understand that argument. Her vote would be for no change. She pointed out that Oregon is unique in many ways when it comes to state court trials and, just because other states do things differently than Oregon, that is not necessarily a reason to change.

Ms. Johnson noted that the Council had reconsidered Rule 22 after comparative fault was adopted and after joint and several liability was addressed, so there has been a great deal of continuity about the rule for many, many years. She stated that plaintiffs rely on defendants to provide discovery. Oftentimes, key information is solely within the hands of a defendant. She opined that allowing an extension for discovery to determine whether the defendant knew or should have known of the existence of a third party, separate from the existing consolidation route, is problematic. She presented an example of a medical malpractice case where the only party that really knows what the defendant knew or should have known would be the defendant. She wondered how it would be determined what other medical providers the defendant knew about that could have contributed to an injury or a death. She stated that, for example, very extensive, expensive, and time-consuming discovery may be required in shared hospital computer systems to determine whether the defendant knew or should have known about the existence of a third party, if that is an element that would overcome a plaintiff’s opposition to adding the new party. Ms. Johnson opined that a change to Rule 22 would reduce the number of claims that can be brought, because expense is a factor that plaintiffs use when determining the risks and benefits of bringing a claim. She expressed strong concerns about any change that extends the discovery requirement, because it would increase discovery and the burden on the courts and make

litigation more expensive. She stated that she is in favor of no change because there is an existing workaround: consolidation. If the defendant can demonstrate that consolidation works for the economy of the courts and judicial efficiency, but without prejudice to the parties and without an unreasonable delay of trial, consolidation will be granted. That is the case law in Oregon.

Mr. Spooner stated that he wanted to give some input based on his former practice on the defense side in the construction world. He stated that there is an inherent tension in the type of proposal before the Council because of the relationship between the defense attorney and the defendant. He noted that the ORCP reads as though the defense attorney and the defendant are working in unison, when in reality there is always a back-and-forth between defense counsel and the defendant behind the scenes. A number of times he has had the experience of having to continually prod his defendant client to provide him with the information he required to prepare the defense. The client either had it and did not want to provide it, or was being ignorant or lazy about communicating it. It is the defendant that controls the information, and they are sometimes not getting it to the attorney in a timely manner. He opined that this should not be rewarded and allowed to negatively impact the plaintiff's side of the case.

Judge Hill stated that he was not sure how the Council could move forward if the committee did not have a consensus, and he was also not hearing much consensus from the Council. Mr. Goehler stated that Ms. Nilsson had proposed to him in the chat that she conduct a Zoom poll to check in on the Council's thoughts on whether to proceed with this issue. Judge Raschio asked whether the Council might be willing to set over this issue until the next biennium, because it seems like there has not been enough progress made to craft any meaningful draft, if that is the direction the Council decides to go in. He stated that the committee had worked very hard and that there is a lot of information to absorb, and that he would like to have time to think things through. Judge Peterson suggested taking the Zoom poll now to see how the Council is feeling about the matter overall, but also suggested that the committee try to narrow the proposals for change to just one or two solutions for the Council to consider. Ms. Dahab stated that the committee would be happy to reconvene before the June meeting to do that if the Council would like them to.

Ms. Nilsson conducted a Zoom poll. With 18 members voting, 10 were in favor of the committee continuing to work on the issue and 8 were opposed. The committee agreed to meet again and report back at the June Council meeting.

B. Rule 37

Judge Peterson reminded the Council that the cleanup of Rule 37 (Appendix E) only occurred because the post-judgment discovery committee had previously considered inserting language into Rule 37. The main impetus for change was internal citations that are inconsistent with Council drafting standards and also inconsistent within their sections (letters in one section and numbers in the next). There was one sentence that was also one of the longest in the entire ORCP that is now broken into several sentences for ease of comprehension. Lead lines have also been added and, unlike in statutes, lead lines are part of the rule. There is no intent to change the substance of the rule, just to clean it up.

Mr. Goehler stated that one part of subsection A(2) of the existing rule was difficult for him to read due to internal sub-clauses, despite the staff's attempt to clean it up:

The court must appoint an attorney to represent persons not served in the manner provided in Rule 7 and, if the unserved person is not otherwise represented, to cross examine the deponent. The services of any appointed attorney must be paid for by the petitioner in an amount fixed by the court.

He suggested the following language:

For persons not served with summons in the manner provided in Rule 7, the court will appoint an attorney to represent them and cross examine the deponent. The services of such attorney must be paid for by petitioner in an amount fixed by the court.

Judge Peterson agreed that language like this would make the rule more understandable. Mr. Goehler asked Council staff to make another draft and provide it to the Council prior to the June meeting.

C. Address Confidentiality Program and Service

Mr. Goehler noted that Ms. Wilson was not present at the meeting and that she was going to do some research on the issue. He stated that, since it is so late in the biennium, the Council will obviously not have a final resolution by December, but that it is good to think about the issue. He stated that he had spoken to a colleague who had encountered this issue in Washington who had to do a motion to seal to get the personal information out of the public record. While there is a process, it is not a very efficient one, so it would be nice to have something cleaner.

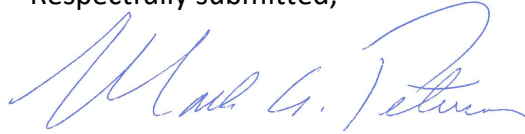
V. New Business

No new business was raised.

VI. Adjournment

Mr. Goehler adjourned the meeting at 10:52 a.m.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Mark A. Peterson", is written over the typed name.

Hon. Mark A. Peterson
Executive Director