



# UNIVERSITY OF OREGON

## NOTICE OF CANCELLATION OF APRIL 11 MEETING OF COUNCIL ON COURT PROCEDURES

The Council's Executive Director, Fredric R. Merrill, passed away on Wednesday, April 8, 1992. Out of respect for him, the meeting of the Council on Court Procedures originally scheduled to be held Saturday, April 11, 1992, at 9:30 a.m., at the University of Oregon School of Law (in Room 121), has been **CANCELLED**. The meeting will be rescheduled (date to be announced later).

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4-8-92

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April 7, 1992

TO: MEMBERS, COUNCIL ON COURT PROCEDURES

FROM: Henry Kantor, Chair

I have learned from Gilma Henthorne that Fred Merrill's condition is fast deteriorating. In the event of Fred's passing in the next few days, John Hart and I have decided that the April 11 meeting should be cancelled out of respect for Fred. Under these circumstances, John and I have decided to effectively cancel the meeting but to request that Maury Holland and Gilma appear at the time and place of the scheduled meeting for the purpose of receiving any public comment that may be necessary. The items on the recently-circulated agenda will be deferred to the next meeting.

If you have any questions, please call me at 226-3232.

**COUNCIL ON COURT PROCEDURES**

**Saturday, April 11, 1992 Meeting  
9:30 a.m.**

**University of Oregon School of Law  
Room 121  
Eugene, Oregon**

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**A G E N D A**

1. Approval of minutes of meeting held March 14, 1992
2. Subpoenas without trial or deposition and hospital records  
(Executive Director's memorandum; Karen Creason)
3. Class actions (Janice Stewart)
4. Oaths for deposition by telephone (Bruce Hamlin and Mike  
Phillips)
5. Oregon Dispute Resolution Commission (Henry Kantor)
6. **NEW BUSINESS**

# # # # #

March 12, 1992

TO: MEMBERS, COUNCIL ON COURT PROCEDURES  
FROM: Fred Merrill, Executive Director  
RE: Agenda Item No. 5 - March 14, 1992 meeting

I have consulted with Karen Creason and Larry Thorp regarding amendments to ORCP 55 H to solve the problem of the relationship between hospital records and a subpoena duces tecum without a deposition, hearing, or trial. We suggested the following changes to ORCP 55 H would solve the problem and would be consistent with the Council's intent in making the amendments last biennium.

DELETED LANGUAGE IS BRACKETED; NEW LANGUAGE IS UNDERLINED AND IN BOLDFACE.

SUBPOENA  
RULE 55

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H. Hospital records.

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H.(2) **Mode of compliance.** Hospital records may be obtained by subpoena duces tecum as provided in this section; if disclosure of such records is restricted by law, the requirements of such law must be met.

H.(2)(a) Except as provided in subsection (4) of this section, when a subpoena duces tecum is served upon a custodian of hospital records in an action in which the hospital is not a party, and the subpoena requires the production of all or part of the records of the hospital relating to the care or treatment of a patient at the hospital, it is sufficient compliance therewith if a custodian delivers by mail or otherwise a true and correct copy of all the records described in the subpoena within five days after receipt thereof. Delivery shall be accompanied by the affidavit described in subsection (3) of this section. The copy may be photographic or microphotographic reproduction.

H.(2)(b) The copy of the records shall be separately enclosed in a sealed envelope or wrapper on which the title and number of the action, name of the witness, and the date of the subpoena are clearly inscribed. The sealed envelope or wrapper shall be enclosed in an outer envelope or wrapper and sealed. The outer envelope or wrapper shall be addressed as follows: (i)

if the subpoena directs attendance in court, to the clerk of the court, or to the judge thereof if there is no clerk; (ii) if the subpoena directs attendance at a deposition or other hearing, to the officer administering the oath for the deposition, at the place designated in the subpoena for the taking of the deposition or at the officer's place of business; (iii) in other cases involving a hearing, to the officer or body conducting the hearing at the official place of business[; (iv) if no hearing is scheduled, to the attorney or party issuing the subpoena]. If the subpoena directs delivery of the records in accordance with this subparagraph, then a copy of the subpoena shall be served on the injured party not less than 14 days prior to service of the subpoena on the hospital.

← NOTE  
BRACKET

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H.(4) Limitation of use of subpoena to produce hospital records without command for appearance: [P]personal attendance of custodian of records may be required.

H.(4)(a) Hospital records may not be subject to a subpoena commanding production of such records other than in connection with a deposition, hearing, or trial.

H.(4)[(a)](b) The personal attendance of a custodian of hospital records and the production of original hospital records is required if the subpoena duces tecum contains the following statement:

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The personal attendance of a custodian of hospital records and the production of original records is required by this subpoena. The procedure authorized pursuant to Oregon Rule of Civil Procedure 55 H.(2) shall not be deemed sufficient compliance with this subpoena.

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H.(4)[(b)](c) If more than one subpoena duces tecum is served on a custodian of hospital records and personal attendance is required under each pursuant to paragraph (a) of this subsection, the custodian shall be deemed to be the witness of the party serving the first such subpoena.

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FRM:gh