

MINUTES OF MEETING
COUNCIL ON COURT PROCEDURES
 Saturday, October 11, 2025, 9:30 a.m.
 Zoom Meeting Platform

ATTENDANCE

Members Present:

Hon. Benjamin M. Bloom
 Barry J. Goehler
 Ryan Jennings
 Derek Larwick
 Julian Marrs
 Hon. Thomas A. McHill
 Hon. Michelle McIver
 Hon. Melvin Oden-Orr
 Michael Shin
 Hon. Scott Shorr
 Tom Spooner
 Hon. Todd Van Rysselberghe
 YoungWoo Joh
 Bryce Whitman

Members Absent:

Nadia Dahab
 Hon. Andrew Erwin
 Hon. Christopher L. Garrett
 Hon. Jonathan R. Hill
 Melissa Hopkins
 Lara Johnson
 Eric Kekel
 Hon. Robert Raschio
 Alicia Wilson

Guests:

Matt Shields, Oregon State Bar
 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 47 • ORCP 55 • ORCP 67 • ORCP 68 • ORCP 80 • ORCP 81 • ORCP 82	• 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 9:32 a.m.

II. Approval of September 13, 2025, Minutes

Mr. Goehler asked Ms. Nilsson about a comment attributed to Mr. Kekel on page 12 of the draft minutes (Appendix A) where he referred to a case he handled that involved navigation. Mr. Goehler remarked that he did not believe that Mr. Kekel handled such cases. As Mr. Kekel was not present at the meeting, Mr. Goehler could not ask him whether “navigation” was the word he had used. Ms. Nilsson stated that she would listen to the recording again to check whether that was the correct word. Mr. Goehler suggested that the approval of the minutes would be carried over to the November agenda.

III. Reports Regarding Last Biennium

A. Staff Comments

This topic was carried over to the November agenda.

IV. Administrative Matters

A. Discuss Meeting Format for Current Biennium

Mr. Goehler reminded the Council that the September meeting was a hybrid of in-person and the Zoom platform. He stated that his suggestion would be to have the default be fully Zoom meetings, with special meetings being scheduled as hybrid. This way, Council members will have plenty of advance notice if they wish to attend in person. Ms. Nilsson offered the caveat that it might be better to not have the publication and promulgation meetings be hybrid meetings, since the public may have an easier time attending Zoom meetings and Council members may also have a more difficult time traveling to an in-person meeting in the fall and winter due to potential inclement weather. Mr. Goehler agreed that it is sometimes easier to get a quorum on Zoom and that it might be easier for the public to attend in this way. He suggested that, if there is a particular issue that comes up that might benefit from in-person discussion, it would be a good time to schedule a hybrid meeting.

B. Results of Survey of Bench and Bar: Statistics

Judge Peterson stated that Council staff had neglected to include the portion of the survey of bench and bar that included the performance questions (Appendix B). He noted that it is worth taking a look at the responses. The Council was rated better in terms of promoting the just determination of civil actions, less well in terms of the speedy determination of civil actions, and somewhat less well in terms of the inexpensive determination of civil actions. These are things that the Council should be

concerned with. Another consideration, however, is that many of the survey respondents are not familiar with the Council and have never visited its website. Last biennium, the Council attempted to make the bench and bar more aware of the Council's existence and purpose. However, these survey results show that there is still work to be done in that area.

In terms of the website, Judge Peterson pointed out that, in the past, researching any Council history required a trip to one of five law libraries along the I-5 corridor. All of that history is now readily available on the website. Quite frankly, he thinks that the marks that the Council received regarding the website were less stellar than they should have been, as the website is a very useful tool.

Mr. Goehler observed that the sample size of the survey is very small compared to the number of practicing attorneys in Oregon. This small sample size could affect the action the Council takes with regard to any suggestions. However, there are indeed important things to consider in terms of those three statutorily mandated goals, and Council members should always have those in the back of their minds when considering any rule amendment. He wondered what an inexpensive system would be in comparison to. If it is an aspirational standard, that is one thing. However, compared to other jurisdictions, he opined that Oregon is doing pretty well.

V. Old Business

A. Committee Reports

1. Attorney Fees/Rule 68

Mr. Goehler stated that the committee had not yet held a meeting, but that committee members had been able to narrow the issues via email. He stated that Judge Shorr had identified some research for committee members to do regarding Rule 68 in general and whether it applies to statutory actions for fees. The committee will meet and will have a report for the Council at the November meeting.

2. Judgments

Judge Peterson noted that Mr. Kekel was unable to attend the meeting and had asked Judge Peterson to report on behalf of the committee. The committee did meet. The issue is the form of judgments when there are multiple parties or multiple claims, and if there is a way to change the rule so that general judgments would be clearer about whether they dispose of all claims as to all parties, as well as about which judge should be signing that general judgment. The committee drafted two versions of a potential amendment to Rule 67 B (Appendix C). The content is basically the same, but one is written in a more passive voice. This is a starting point for Council members to review and consider.

The vast array of experience within the Council will help ensure that any suggested amendment accomplishes the intended purpose and does not have unintended negative consequences.

Mr. Goehler asked whether the committee would like the Council to look through the drafts in detail now, or whether the committee is providing an advance look now and will do more work. Judge Peterson stated that the committee thought it would be good to get some initial reaction as to whether there are any problems with what has been formulated at this point so that the committee will have some direction for redrafting.

Judge Bloom stated that this issue had just arisen in his court. A party obtained a limited judgment and then the case was dismissed for failure to prosecute as to the other defendants. To him, it was a little unclear what would happen; probably setting aside the dismissal and entering a general judgment incorporating the limited judgment. He agreed that the rule could use some clarification. Having said that, he stated that he would like to look at the proposed language more carefully.

Mr. Joh stated that an alternative idea might be to require a notice to the court that there are other judgments in the case, rather than including it as part of the judgment itself. He pointed out that, as written, the amendment seems to require the judgment to recite the body of previous judgments in their entirety. That could perhaps be unwieldy if a limited judgment is very long. He stated that he was unsure if that was the intent or whether a summary was supposed to be sufficient. He also noted that the last sentence in proposed subsection B(2) of both versions states that a supplemental judgment must recite "only the date of entry of the general judgment and any judgment entered thereafter in the action." He suggested moving the word "only" to after "the date of," to make it clearer that it is not only the date of entry that needs to be recited in a supplemental judgment.

Judge Peterson stated that his intent in drafting was only to require indication that there was a previous limited judgment of dismissal or that some parties had settled out, plus the dates of any judgments, and certainly not reciting the terms of those judgments. However, this recitation might need to at least include which parties were affected by the previously entered judgment. On the other hand, if the date of a judgment was included, everyone would be able to go look at that document.

Mr. Goehler noted that he has seen captions handled differently in different courts when obtaining a limited judgment. Sometimes the caption changes, and sometimes it does not. The current caption is helpful in knowing who the current parties are, but some courts require a special motion to amend the caption, even after a party has been dismissed. He wondered what the Council's experience has

been with that issue and whether it should be addressed in the rule. Judge Peterson stated that he has had cases where the plaintiff has changed midstream. His preference is to keep all named parties in the caption, but to indicate that they have been replaced or substituted, although he is not sure that is correct. It may also be unwieldy if suddenly-named parties are omitted from the case caption. Mr. Spooner stated that his experience as an attorney is that any change to the caption itself has to be done by amended pleading and leave of the court. Judge Bloom agreed.

Mr. Goehler asked Judge Peterson whether the committee has enough input to continue with its work. Judge Peterson stated that the comments have been helpful. He also noted that, if any other Council member would like to join the committee, they can let Ms. Nilsson know.

3. Service/Rules 9 & 10

Judge Raschio was not present at the meeting, so Judge Peterson reported in his absence. He stated that the committee had met and talked about the history of the rules and the suggestions made in the survey. One suggestion is to make service by email absolutely effective, without permission, as is the case with e-filing. Another suggestion is to eliminate the 3-day extension for service by email and electronic service as unnecessary and complicating. The committee was not necessarily sure that either of those suggestions were good ideas. The committee has set another meeting and will invite two of the people who made suggestions to the Council for those changes to present their cases and answer questions from committee members.

Mr. Goehler stated that he thought that the 3-day rule in particular is something that will get some robust discussion, and that he looks forward to the committee's take on it at the next meeting.

4. Third Party Practice/Rule 22

Ms. Dahab was not present at the meeting, so Judge Bloom reported in her absence. He stated that the committee had not yet met. However, Judge Bloom had taken a look at the rule's history to attempt to determine why the language requiring the leave of all parties and an order of the court to add a third party had been made part of Rule 22 C. (A third-party plaintiff may only add a third-party defendant as a matter of right if done within 90 days of being served with the plaintiff's summons and complaint.) He stated that it appears that the reasons may have been to help the court manage litigation and to help plaintiffs manage their cases. He also pointed out that there are workarounds for a defendant who wants to file a third-party complaint if they are unable to do it in a timely manner. He stated that the committee is going to meet and look further at the issue.

Mr. Goehler agreed that, while requiring consent from all parties seems burdensome, there are some workarounds, like filing a whole new action and trying to do a joinder. Judge Bloom stated that one could file a separate action and move to consolidate it. He pointed out that it does become cumbersome when a party files a last-minute third-party complaint, with the court schedule getting pushed out and attorneys who have difficulty making things fit into their schedules. Mr. Goehler stated that he looks forward to what the committee comes up with.

B. Suggestions for Amendments to the ORCP

1. ORCP 38 C

Mr. Goehler noted that a suggestion for improvement to ORCP 38 C was brought to the Council by Mr. Kekel's law partner, Kevin Sasse. At the September Council meeting, it was suggested that Mr. Kekel should ask Mr. Sasse to appear before the Council to more comprehensively explain his suggestion. As neither Mr. Kekel nor Mr. Sasse were present at the meeting, Mr. Goehler suggested that this item be carried over to the November meeting.

2. Suggestions for Amendments Remaining from the Council Survey

Mr. Goehler reviewed the remaining suggestions from the Council survey that were carried over from the September meeting (Appendix D) to determine whether the Council wished to form committees to explore the issues.

a. Ex Parte

Mr. Goehler noted that ex parte submissions and appearances are not addressed in the ORCP and that the Council has no authority to make changes with regard to ex parte. The Council agreed and declined to form a committee on this issue.

b. "How To" Guides

Mr. Goehler observed that the Council's mandate is to make improvements to the rules, not to create instructional guides. He suggested that this would perhaps be a suggestion for the OSB's publication department. The Council agreed and declined to form a committee on this issue.

c. Clarity

Mr. Goehler noted that there were two suggestions regarding having more clarity, more definitions, and less ambiguity in the ORCP. He stated

that it would be helpful to have more detailed comments from the survey responder to understand more specifically where the suggested definitions or improvements to clarity are thought to be necessary would be helpful. He agreed that, if there is a perception of ambiguity in the rules, the Council should strive to make improvements; however, sometimes rules cannot be simplified. Sometimes rules can be modernized, and sometimes they need to be kept the way they are. The Council agreed and declined to form a committee on this issue.

d. Federalization

Mr. Goehler noted that there are components of the federal rules that the Council has incorporated into the ORCP, and that there are components that it has not incorporated. Each time this issue has come before the Council, there has been agreement that the ORCP will not be rewritten in a wholesale manner to match the Federal Rules of Civil Procedure. The Council agreed that this continues to be the case today, and declined to form a committee on this issue.

e. Guardians Ad Litem

Mr. Goehler explained that this comment states that ORCP 27 does not contain any disqualifiers that prevent someone from serving as a guardian ad litem (GAL) and suggests that those who ask to be appointed as a GAL should be required to disclose certain things. Judge Peterson agreed with the commenter that the goal is to avoid appointing an inappropriate GAL, but noted that Rule 27 D indicates that the appointed person should be a "suitable person" and that the rule requires the judge to make those determinations. He also pointed out that, several biennia ago, the Council was made aware of some abuses of Rule 27 and wrote in rather robust notice requirements as well. Mr. Goehler stated that he believes that those parts of the rule are adequate, and that trying to create an exhaustive list of the things that would make a GAL either suitable or unsuitable would be difficult. Judge Bloom opined that this would be a legislative issue. The Council declined to form a committee on this issue.

f. Joinder

Mr. Goehler stated that he has not dealt with joinder and ORCP 24, and he was not aware that there was a special carve-out for forcible entry and detainer (FED) actions within the joinder rule. He explained that the comment states that the words "rental due" may be ambiguous.

Judge Peterson noted that it has been his lot in life to become quite familiar with FED practice. He explained that it is a special statutory

procedure that is summary in nature. Using that summary procedure, one can only bring an action for possession, and not also for unpaid rent, fees, property damage, and so forth. To bring those additional claims, one must file a separate civil action with a summons under Rule 7 and all of the process that is involved there. Judge Peterson observed that Rule 24 has not been amended since it was promulgated. He agreed that the statement about “rental due” is not very precise or encompassing, because it would seem that it would allow a plaintiff to sue for possession and also injunctive relief. A potential cleanup might include language suggesting that, if a claim for other than possession is brought, it will be on the regular civil track, and if only possession is sought, it will remain in the ORS chapter 105 summary procedure track.

Mr. Goehler asked whether any Council members wished to form a committee on this issue. Judge Peterson suggested that there might be a simple fix to the imprecise language in section B. He stated that he does, from time to time, see people try to bring their legal or equitable claims in addition to an FED claim, and Rule 24 as written seems to say that you are free to do that. A simple fix would be to change the terminology to make it clear that FED procedures only include an action for possession of the property.

Mr. Goehler stated that he was not sure that a committee was necessary. He asked Judge Peterson if he could attempt a draft amendment to present to the Council. Judge Oden-Orr stated that he agreed that the term “rental due” is odd, and that it appears to just be a synonym for the word “rent.” He stated that he would also be willing to investigate further. Judge Bloom stated that he does not even believe that the term belongs in the rule, as FED actions are claims about the right to possession that are not joined with claims for rent. Mr. Goehler stated that this may be the right approach, but that he would be curious to see if there are any potential consequences to that. Judge Peterson opined that the term “rental due” is not appropriate because one can sue over utilities and fees as well. He was not sure that the term should be deleted but, rather, that the rule could be cleaned up so that it says what it means and means what it says. Judge Oden-Orr stated that he would be happy to work with Judge Peterson on an attempt to clean up the rule.

g. Offers of Judgment

Mr. Goehler stated that the next proposal suggests that the offer of judgment rule (Rule 54 E) should reverse attorney fees if the offer is not accepted and the litigation result is less favorable than the offer. He noted that his first reaction was that this is more appropriately handled in the statutes on fees, as some provide for reciprocity and some do not. He

did not believe that ORCP 54 is the place to impose reciprocity of fees where the Legislature has not done so. The Council agreed and declined to form a committee on this issue.

h. Pleadings

Mr. Goehler noted that the suggestion to remove the motion to amend for punitive damages is a statutory issue (ORS 31.725), not an ORCP issue. The other suggestion regarding pleadings is for Oregon follow the FRCP to allow one amendment of a complaint by right, regardless of whether or not an answer has been filed. Mr. Goehler explained that, per Rule 23 A, the plaintiff is allowed to amend as many times as they wish until someone files a responsive pleading, at which time the leave of court procedure must be followed. On the other hand, in the federal court, one “freebie” amendment is allowed. He asked whether any Council member saw a need to change or to federalize this rule, and whether there are problems with how it is currently working. Mr. Jennings stated that he does not believe there is a problem with Oregon’s rule. He opined that, if an amendment is filed without talking to the other side, nothing will be streamlined. There will still be Rule 21 motions and disagreements. If anything, it would just delay motion practice and slow things down.

Judge Peterson stated that, after there has been a pleading in response, you have to have permission from the other side, or you can file your motion. UTCR 5.010 makes it mandatory to confer on those motions. The problem is that, once there has been a responsive pleading, if you file an amended complaint, that will require an amended responsive pleading, so it is not without some cost to the other side. He stated that he was not sure that this is something that is broken. Mr. Goehler stated that he has never heard of it being a problem. Mr. Larwick stated that, as a plaintiffs’ lawyer, he does not see it as a problem. He has never had an issue getting leave to file an amended complaint when it seemed like it was fair to do so. He noted that, as long as judges keep applying the liberal standard of allowing pleadings to be amended, he does not believe a rule change is needed. The Council agreed and declined to form a committee on either of the suggestions regarding pleadings.

i. Receivership Cases

Mr. Goehler stated that the comment suggests that the ORCP should include more detailed rules regarding receivership. He noted that the proposal is not very detailed, and it is difficult to form a committee to flesh out such a general statement. The Council agreed and declined to form a committee on this issue.

j. Remote Appearance/Remote Testimony, Discovery, Depositions

Mr. Goehler stated that the comments suggest that it would be helpful if the ORCP codified/updated the ability of attorneys and parties to appear via remote methods. He noted that, on January 1, 2026, that is going to happen, thanks to the amendments to Rule 39 and Rule 58 promulgated by the Council last biennium.

k. Security Bonds

Mr. Goehler explained that the next proposal is to combine ORCP 82 with ORS chapter 19. He noted that he is not that familiar with the world of security bonds; however, the Council obviously cannot do anything with regard to changing statutes. Judge Peterson observed that the Council has not made any changes to rules 80, 81, or 82 in quite some time, so some cleanup may be appropriate. However, without a more targeted suggestion on how to improve those rules, it is difficult to know what might be worthwhile outside of the thought to combine a rule with a statute. Ms. Nilsson noted that the person who made the comment did not leave their name or contact information, so there is no way to get in touch with them. Mr. Goehler stated that it is sometimes good to revisit rules, but it is sometimes nice to leave rules alone, particularly if they have not generated appellate problems. The Council agreed and declined to form a committee on this issue.

l. Self-Represented Litigants

Mr. Goehler stated that there were numerous suggestions regarding making the ORCP more accessible to self-represented litigants, reviewing the service rules through a self-represented litigant perspective, and similar thoughts. He noted that this is something that the Council has discussed in previous biennia in the context of different rules. There is a tension between making the rules clear and accessible and sacrificing accuracy and technical requirements that need to be met, as well as satisfying due process. He pointed out that it is not a simple fix to make things completely accessible to the general public. Some rules need to be, as a practical matter, more accessible to attorneys.

Judge Bloom stated that certain test courts, including his, are currently testing web service on a specific Oregon Judicial Department (OJD) website for domestic relations and certain other cases. He noted that the Council may need to amend the ORCP to allow that, as it will soon be available statewide, if it is not already. Mr. Goehler stated that this might be something for the service committee to take a look at to see whether it would be included in service by publication or service by alternative

means. He asked whether a court order would be required for this type of service or whether it would be an option that is available in all cases. Judge Bloom stated that a court order is currently required, but that he thinks that it would be helpful to let litigants know that it is an alternative. He stated that the method works in the states that currently allow it, and the current Oregon option of service by publication is very unlikely to reach the intended recipient. Judge Peterson noted that the Council did make substantial changes to ORCP 7 D to greatly expand alternative service with permission of the court. He stated that it may appropriate to make a change in Rule 7 D to make this one of the alternatives that is relatively easily available, but that the Council would have to wait until the method is available statewide and that there are enough test results to know that it does not have any kind of a problem. Judge Bloom stated that he was unsure of the date of the statewide rollout, but that he would check into it.

Judge Peterson also noted that one of the suggestions mentioned having more forms available for self-represented litigants. He pointed out that the Oregon Judicial Department (OJD) is working on making that happen in many areas. However, that is not a Council issue. He stated that another comment was that the summons form should be looked at with a view toward self-represented litigants. The Council has had a Rule 7 committee during many biennia and has worked on the rule; however, he did not believe that any substantial work had been done on the form of the summons. If any Council members feel that the summons could be made more user-friendly, that is something that could be looked at. It is, after all, a document that is served on people who are not usually lawyers. Mr. Goehler suggested that the current service committee can look at the summons in the context of its work. The Council agreed and declined to form a separate committee on self-represented litigants.

m. Subpoenas

Mr. Goehler stated that the next suggestion was to allow subpoenas to be issued post judgment to facilitate collection. He stated that his understanding is that, at the very least, if you need to issue a subpoena to collect a judgment, you could do that through the court. He noted that he may be mistaken, however. Judge Peterson asked whether there is some limitation on subpoenas in the current Rule 55 that indicates that subpoenas are not available at any point in the litigation, including collection. Mr. Goehler stated that he was not sure whether the court still has jurisdiction once the general judgment has been entered, and he pointed out that jurisdiction is required to issue a subpoena. However, he would think that, if a case has been dismissed, one could come before the court to reopen it and issue a subpoena to facilitate a supplemental

judgment. Mr. Jennings stated that securing a judgment and collecting on that judgment are not necessarily the same action. To collect on a judgment, you would be getting subpoena power in that effort. Attaching property, foreclosing on property, or whatever the collection effort is, is a different thing than having a judgment that you can collect on. He stated that he does not believe that Rule 55 keeps the original case open forever for someone to collect on the judgment.

Judge Oden-Orr noted that, post-judgment, there are often requests for examinations of the defendant to find out where their assets are in order to seek other sanctions. So, there is a process in place for that. Judge Peterson echoed Judge Oden-Orr's comments and added that there is a statutory procedure for judgment debtor exams, as well as a Rule 68 C(7) procedure with regard to collecting attorney fees for enforcement and collection efforts.

Ms. Nilsson stated that she does have the name of the person who sent the suggestion, so she could contact them for more specifics. Mr. Goehler agreed that this is a good idea and suggested carrying over the item to the November agenda.

n. Summary Judgment

Mr. Goehler noted that there were several proposals regarding summary judgment from the survey, including opinions on both sides about ORCP 47 E. He pointed out that, each biennium, the Council receives differing opinions on this matter; however, the ideal balance is protecting Oregon's expert discovery rules while also allowing a party to oppose summary judgment. He stated that his sense is that Oregon has pretty good case law regarding when an affidavit is required and what issues can be defeated by an affidavit. With the rule and case law, he was not sure that this issue needs to be looked at, but he asked the Council if their opinions differed. He stated that he realizes that this is a point of concern, primarily for defense counsel, who feel that certain cases should get dismissed on summary judgment, but do not. He noted that, in his practice, there may be a case in Oregon where he would not get summary judgment, yet he would in Washington.

Mr. Spooner stated that, from his experience as a former defense attorney doing personal injury defense and a current plaintiffs' attorney doing the same types of cases, he does not believe that ORCP 47 E needs to be changed. When he has had motions for summary judgment that have been successful, it is because he has had a good factual and legal basis to succeed. Rule 47 had nothing to do with it. On the motions for summary judgment where he did not succeed, it was because the facts

and the law did not match up and that meant that he should lose. Again, Rule 47 did not dictate that loss for him. He opined that there are safeguards and guideposts in the rule and how it is applied by judges. Attorneys are also signing affidavits stating that they have people who can testify to certain matters and, if they are not telling the truth and end up in court, those lies are going to get exposed very quickly. Mr. Spooner stated that he has not encountered lawyers who are casually using ORCP 47 E to defeat someone's motion.

Mr. Jennings opined that some of the comments read as though the commenters believe that there are a bunch of plaintiffs' lawyers running around filing frivolous lawsuits and lying about having experts as a way to obtain discovery, which is not typical Oregon practice. He stated that he often deals with what he considers frivolous motions for summary judgment, and that the implication that the plaintiffs' bar is abusing the ORCP 47 E process is offensive to him. Mr. Goehler stated that his experience is that ORCP 47 E provides a check because it does not apply to everything. In a case where the facts are pretty undisputed and it is an issue of law, an affidavit is not going to make a difference.

Mr. Joh stated that he agreed with Mr. Spooner and Mr. Jennings. Speaking as a current member of the defense bar, he felt that some of the comments were overstated. He stated that the fact of the matter is, if there is an expert who will testify on a factual issue, that will preclude summary judgment anyway. What he did feel may be underlying these suggestions is some of the frustrations that he has experienced on the defense side in preparing for trial. For instance, in medical malpractice cases, it is pretty clear to the parties and their experts what the disputed expert issues will be. However, in some other cases, such as water law cases, there may be a vast range of things that could be raised as expert issues at trial, and that makes preparing for trial very difficult and costly. He opined that ORCP 47 E does not seem to be the place to address this. Mr. Goehler noted that the Council had addressed the subject of expert discovery at the September meeting and that the consensus of the Council was not to change the current system in Oregon.

Judge Peterson noted that there was a suggestion about moving the deadline out to 90 days from 60 to make it easier to get the summary judgment process done. The rule currently does allow for the timeline to be shortened in appropriate cases, so he stated that he does not know if that is something that is worth considering. Judge Bloom explained that he was an attorney Council member when the Council passed the "Judge Barron" rule that created the 60-day deadline. Prior to that, there was no limitation. He opined that changing the 60 days to 90 days would not be productive. Many times, attorneys are still doing discovery up until the

deadline. Clearly, it is better to file a motion for summary judgment earlier to avoid impeding on trial preparation for the lawyers and the courts. However, he acknowledged that the reality is that it cannot always be done. As a judge, if someone has a dispositive motion, he will let them file it even if it is within the 60 days. He does not see a reason to change that to 90 days to create another trap for lawyers.

Mr. Goehler asked the Council whether it wished to create a committee to look further at summary judgment issues. It declined to do so.

o. Timelines

Mr. Goehler noted that the suggestion that timelines should be truncated in some cases to prevent unnecessary delay and that judges should have stricter deadlines in which to issue opinions seems more like a case management issue than an ORCP issue, and that it may be more appropriately dealt with in the Uniform Trial Court Rules (*see* UTCR 2.030). The Council agreed and declined to form a committee on this issue.

p. Trial Practice

Mr. Goehler noted that the suggestion was that Oregon's practice of requiring the production of full expert files, and not extending work product, should be codified in the ORCP. He observed that the ORCP do not provide for expert disclosure and stated that the production of files, in his experience, is usually done with a motion in limine or by a judge's pretrial order. He stated that his thought is that, if anything, this is an issue for the UTCR.

Mr. Joh stated that, from the perspective of a relatively newer attorney, it can be a little bit of a practice trap, because there is nothing in the rules that specify what expert disclosure looks like, so a lawyer must ask around. Lawyers will get different stories about what particular judges are doing and the expected practice for different courtrooms throughout the state, which can be difficult. He stated that it would be good to have some kind of baseline guide that parties may then confer about deviating from if they prefer a different practice.

Mr. Spooner stated that he has had the fortunate experience of appearing in a lot of counties throughout the state and experiencing a lot of different judges and methods of courtroom management. He has always looked at it from a multi-tiered approach. He always starts out with conferring with opposing counsel well in advance of trial about how expert files will be handled: when will they be provided, in which format,

etc. If agreement cannot be reached, he brings it up with the court in advance of the trial, either through a special status conference or at a pre-trial conference for those counties that set them. In his experience, 98% of the time that takes care of the situation. In very rare circumstances, a motion in limine may be needed, but talking to opposing counsel is the best practice.

Mr. Goehler noted that this brings up the philosophical point of whether expert file disclosure is a part of trial practice that ought to be separately dealt with rather than including it with all of the other things that a judge would do that are the variables when you go from courtroom to courtroom, such as voir dire. He stated that his sense is that this is an issue that counsel need to deal with and, absent their agreement or the judge's preference, he was not sure that the ORCP should be guiding it.

Judge Bloom pointed out that he was not sure what a potential rule would even say. Would it say the expert file would need to be turned over on a specific day and time, or before a specific phase of the trial? He stated that the practice of agreement of the parties seems to work. If the parties cannot agree, they will be unable to examine the expert file before the witness testifies, which may cause a time delay. He did not think that this was a can of worms worth opening up when there is case law on the matter and a policy in Oregon of no expert discovery.

The Council declined to form a committee on this issue.

q. Uniform Collaborative Law Act

Mr. Goehler reminded the Council that it had looked at the Uniform Collaborative Law Act (UCLA) last biennium. He recalled that this is an Act that was being considered in Oregon that has not been implemented. It deals primarily with the domestic relations arena and it provides for basically a stay of the proceedings and disqualifies the judges and attorneys that are involved in the process from an ultimate trial if collaboration fails, because their participation is limited to the collaborative process. The conclusion reached by the Council last biennium was that, if the UCLA gets adopted by the Legislature, the Council may have some work to do in making some rule changes. However, until that happens, there is not much for the Council to do.

Ms. Nilsson stated that Ms. Wilson was not present at today's meeting. However, she had written a memo (Appendix E) that summarized the Council's work last biennium and her recent conversations with some Oregon practitioners who support the UCLA. Mr. Goehler reiterated that it seems that the Council is in a holding pattern at this point.

Judge Peterson recalled that the OSB had opposition to parts of the UCLA and noted again that the Act is not currently law in Oregon. In terms of attorneys withdrawing, he believes that they can do that by contract. Unless the UCLA passes, he did not think it was worth the Council's time to form a committee regarding this issue.

Ms. Trickett, the UTCR reporter for the OJD, stated that there are proposals that will be considered by the UTCR Committee this fall for both adopting receivership changes that have been requested by a subcommittee from the OSB, as well as a proposal to adopt the UCLA rules into the UTCR. She stated that she suspects that there will be quite a bit of conversation about whether the UTCR is the appropriate place for either of those proposals. She noted that Council members can access the agenda for the UTCR Committee to see the details of those proposals. She stated that she would report back in November after the fall UTCR Committee meeting.

Mr. Goehler thanked Ms. Trickett, and pointed out to new Council members that it is helpful to have a liaison from the UTCR Committee to help the Council determine whether there may be consequences or conflicts with the UTCR when crafting rule amendments. It is also helpful when the Council wishes to refer potential UTCR changes.

The Council declined to form a committee on this issue.

r. UTCR

Mr. Goehler stated that this was a suggestion to "fix UTCR 5.100," as it creates more issues than it solves. As this is clearly not an ORCP issue, he suggested not forming a committee. The Council agreed and declined to form a committee on this issue.

VI. New Business

No new business was raised.

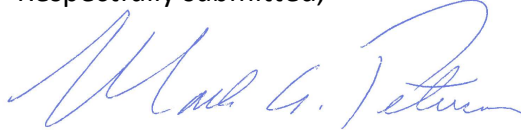
VII. Adjournment

Mr. Goehler noted that there is still time for other issues to be raised to the Council for which committees may be formed. However, as time passes, it becomes more and more difficult to spend the time necessary to thoroughly examine newer issues. Judge Peterson agreed that sooner is better in order to have enough time for a deliberative process. He stated that, if any

Council members have thoughts about improvement to the ORCP, they should let Ms. Nilsson know as soon as possible. He also asked Council members who wish to join an existing committee to let Ms. Nilsson or the committee chair know.

Mr. Goehler adjourned the meeting at 11:00 a.m.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Mark A. Peterson". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Hon. Mark A. Peterson
Executive Director

DRAFT MINUTES OF MEETING
COUNCIL ON COURT PROCEDURES
 Saturday, September 13, 2025, 9:30 a.m.
 Oregon State Bar & Zoom Meeting Platform

ATTENDANCE

Members Present:

Hon. Benjamin M. Bloom (Zoom)
 Nadia Dahab (Zoom)
 Hon. Andrew Erwin (In Person)
 Hon. Christopher L. Garrett (Zoom)
 Barry J. Goehler (In Person)
 Hon. Jonathan R. Hill (Zoom)
 Melissa Hopkins (Zoom)
 Ryan Jennings (Zoom)
 Lara Johnson (Zoom)
 Eric Kekel (In Person)
 Derek Larwick (Zoom)
 Julian Marrs (Zoom)
 Hon. Thomas A. McHill (Zoom)
 Hon. Michelle McIver (Zoom)
 Hon. Melvin Oden-Orr (Zoom)
 Hon. Robert Raschio (Zoom)
 Michael Shin (Zoom)
 Hon. Scott Shorr (In Person)
 Tom Spooner (In Person)
 Hon. Todd Van Rysselberghe (In Person)

Bryce Whitman (In Person)
 Alicia Wilson (Zoom)

Members Absent:

Vacant Defense Position

Guests:

John Adams, Oregon Tax Court (Zoom)
 Kelly L. Andersen, Outgoing Chair (Zoom)
 Aja Holland, Oregon Tax Court (In Person)
 Avery Pickard, Oregon State Bar (In Person)
 Rachel Trickett, Oregon Judicial Dept. (Zoom)
 Margurite Weeks, Former Council Member (Zoom)
 Nik Yanchar, Yanchar Law Office (Zoom)

Council Staff:

Shari C. Nilsson, Executive Assistant (Zoom)
 Hon. Mark A. Peterson, Executive Director (In Person)

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 9 • ORCP 10 • ORCP 22 C • ORCP 27 • ORCP 38 C • ORCP 60 • Abusive Litigants in Probate Proceedings • Judgments • Arbitration • Attorney Fees • Civil Motion Practice • Contempt	• Council-Prepared Summaries of Rule Changes • Default Orders/Judgments • Depositions • Disclosures • Discovery	• ORCP 60 • Abusive Litigants in Probate Proceedings • Arbitration • Civil Motion Practice • Contempt • Default Orders/Judgments • Depositions • Disclosures • Discovery	

I. Call to Order

Mr. Andersen, outgoing Council chair, called the meeting to order at 9:30 a.m.

II. Introductions

Mr. Andersen asked guests and new members to introduce themselves. He then asked whether anyone had any corrections to the roster (Appendix A). Hearing none, he proceeded to the next agenda item.

III. Approval of December 14, 2025, Minutes

Mr. Andersen asked whether any member had suggestions for changes or corrections to the draft December 14, 2025, minutes (Appendix B). Hearing none, he asked for a motion to approve those minutes. Ms. Dahab made a motion to approve the December 14, 2025, minutes. The motion was seconded by Judge Bloom and approved by voice vote with no opposition or abstentions.

IV. Annual election of officers per ORS 1.730(2)(b)

Mr. Andersen asked for nominations for the position of Council chair. Ms. Dahab nominated Mr. Goehler as chair. Judge Hill seconded the nomination, which was approved by voice vote with no opposition or abstentions. Mr. Goehler nominated Ms. Dahab as vice chair. Mr. Spooner seconded the nomination, which was approved by voice vote with no opposition or abstentions. Judge Peterson explained that, by tradition, the position of treasurer is held by the Council's public member. He stated that it is not a position that has strenuous duties. Judge Hill nominated Mr. Whitman as treasurer. Mr. Kekel seconded the nomination, which was approved by voice vote with no opposition or abstentions.

At this point, Mr. Andersen turned over the meeting to the new chair, Mr. Goehler. Mr. Andersen stated that he had truly enjoyed and valued his time on the Council, and wished the new Council the best of luck. Judge Peterson presented Mr. Andersen with a plaque as a token of the Council's appreciation for his eight years on the Council and two years as chair.

V. Council Rules of Procedure per ORS 1.730(2)(b)

Judge Peterson referred the Council to the rules of procedure (Appendix C). He explained that these rules contain information about the Council's processes and that they were last updated in 2016 to bring them up to date with current practice. They are intended as a reference for Council members.

VI. Council Timeline & Workflow

Judge Peterson referred the Council to the timeline and workflow documents (Appendix D) that Ms. Nilsson created. They provide an overview of the Council's biennial process as well as a behind-the-scenes look at the administrative tasks that Council staff tends to throughout the biennium. They are intended as a reference for Council members.

VII. Reports Regarding Last Biennium

A. Promulgated Rules

Judge Peterson referred the Council to the rules promulgated by the Council last biennium (Appendix E). He noted that the statutory procedure is that, if the Legislature does not modify or reject the Council's promulgations, those promulgations become law effective January 1 of the following even-numbered year. The Legislature did not take any actions on the amendments promulgated in December of 2024, so they will become effective on January 1, 2026.

Judge Peterson explained that changes were made to Rule 1 to reflect the new associate members of the Oregon State Bar (OSB), as well as other changes to clean up the rule. Changes were made to Rule 14 to allow a judge to intervene during a deposition without the need to make the request in writing, reflecting current practice that was not written in the rule. Rule 35 is a new rule to curb abusive litigants from using the court system essentially to brutalize someone that they do not like very well, or taking actions that have no basis in law to try to obtain an unfair advantage, often by exhaustion or working the percentages that some parties will not defend themselves. Cleanup changes were made to Rule 39. Significant changes were made to Rule 55, including that the subpoena form must state that, if the subpoena is not honored, fines or jail time could result. Another change is to remove the objection process for document subpoenas and replace it with a motion to quash or motion to modify. Judge Peterson stated that he noticed that the UCTR Committee had made a change to UCTR 5.010 that requires conferral for this Rule 55 motion as well.

B. Council's Suggested Statutory Changes

Judge Peterson referred the Council to Appendix G. He stated that the Council had made a recommendation to the Legislature for a change to ORS 45.400. 30 days' notice in advance of the hearing for remote testimony did not seem to make sense any more, given the Council's changes to Rule 39 and Rule 58. The OSB included this suggestion as part of its law improvement package, it went to the Legislature, Judge Peterson testified before the House Judiciary Committee, and the Legislature made the change.

Judge Peterson stated that the Council had also wished to make a suggestion to the Legislature to amend ORS 46.415 to have the newly promulgated Rule 35 clearly apply to small claims cases, since Rule 1 of the ORCP states that the ORCP do not apply to small

claims cases where a different procedure is specified by statute or rule. Unfortunately, the Council did not have a lobbyist to present that suggestion to the Legislature, so the Legislature did not act on it.

C. Legislative Assembly's ORCP Amendments Outside of Council Amendments

Judge Peterson explained that the Legislature had not made any amendments to the ORCP nor made any changes to the Oregon Revised Statutes that will affect any of the ORCP. He noted that, both last biennium and this biennium, there were suggestions that the Council should include family law and probate lawyer members. This would potentially require a statutory change, as the makeup of the Council is set by statute. Another way to approach the issue would be to have the Oregon Association of Defense Council and the Oregon Trial Lawyers Association be cognizant of members who work in these areas and encourage them to apply for membership on the Council. Judge Peterson mentioned this because, not being a probate practitioner, as he looked at Senate Bill 168 he came to the realization that there is a statutory provision that certain ORCP apply to probate matters and certain ones do not.

D. Staff Comments

Judge Peterson stated that he is working on staff comments for the last two biennia. He noted that the Council had received a suggestion last biennium from attorney Richard Weill to provide a summary when amendments are published so that people who are reading them have a way of quickly determining what prompted the Council to make the change versus what may just be technical changes. This will also make it easier for staff to create staff comments at the end of the biennium, as they will already be largely drafted. The staff comments are not legislative history but, rather, just a shortcut to help the reader get to the heart of the matter.

VIII. Administrative Matters

A. Set Meeting Dates for Biennium

Mr. Goehler explained that, by tradition, the Council meets on the second Saturday of each month, with the exception of July and August. From time to time special meetings have been needed in the summer months, depending on workload, but not often. He asked whether any Council member had any comments about changing to a different Saturday schedule. Judge Hill stated that he would prefer to maintain the second Saturday schedule, as it is what most Council members expect and it works well.

Mr. Goehler then stated that, before the pandemic, the Council held in-person meetings with a phone-in option for members who were unable to attend in person. During the pandemic, meetings changed to fully remote via Zoom, and they have remained that way since. Today's meeting is hybrid, with both in-person and Zoom options. He stated that, from his perspective, there are advantages and disadvantages to both types of

meetings. One disadvantage to in-person meetings is that he is unable to have access to the same technology that he has in his home office, such as two screens to flip between documents and the meeting screen. Another disadvantage is that the members spread throughout the state are not always able to travel to Portland. He asked members their thoughts about continuing to hold hybrid meetings or changing back to entirely virtual meetings.

Judge Bloom stated that he was on the Council at a time when all meetings were held in person, and he appreciated that model. He stated that, while he recognized the advantages of virtual meetings, he would be in favor of keeping in-person meetings with the option of remote participation. He suggested perhaps having a certain number of meetings with an in-person option and the rest entirely remote. Mr. Goehler asked whether having meetings with an in-person option once per quarter would be reasonable. Judge Bloom suggested once per quarter and also for the publication and promulgation meetings.

Judge Hill stated that he thought that it would be good to get together in person once a year, but he acknowledged that there are members coming from remote places in the state who are unable to attend in person. He noted that we want to encourage judges and practitioners throughout the state to participate, so he thought that the default should be video conferencing. Judge Raschio stated that he does not have a major highway route to Portland, but that he is happy to travel there when he can. He stated that he likes in-person meetings, but that he also needs to have the hybrid option available.

With regard to the second Saturday schedule, Judge Raschio pointed out that second Saturdays work every month for him except for possibly in February 2026. The second Saturday is Valentine's Day and it is also a long holiday weekend. He suggested shifting the February meeting to the first Saturday. Judge Hill agreed.

Judge Peterson stated that he might be a bit old-fashioned, but that he likes meeting in person. He has felt a bit out of touch with Council members the last few biennia. However, as he lives just 5 minutes from the OSB center, he recognizes his privilege. Mr. Kekel asked whether the Council has ever considered a sort of retreat where members get together at a central location in the state. Judge Peterson explained that the Council's enabling statutes indicate that the Council should endeavor to meet at least one time in each congressional district, of which there are now six. The Council has, at times, held meetings in Eugene, Newport, Hood River, and Medford. Judge Shorr stated that he thinks that the virtual meetings have worked quite well because it is a statewide Council, and virtual meetings have also encouraged public participation. He noted that the limited in-person participation of the current meeting might be a quiet vote for the convenience of web-based meetings, although he could envision having the most important meetings be hybrid, like the publication and promulgation meetings.

Mr. Goehler stated that the consensus of the Council seemed to be in favor of the second Saturday schedule with the exception of the February meeting, which would be held on the first Saturday. He suggested holding the October 11, 2025, meeting via Zoom only to see how that goes, and postponing the decision on hybrid versus virtual only meetings until after that. He noted that, if the meetings are going to be hybrid, he may need to bring another computer to allow him to see all participants who are not on the big screen and to monitor the chat.

Ms. Hopkins stated that she is a member of Oregon Attorneys with Disabilities, and pointed out that virtual meetings are actually more accessible for a lot of individuals. She stated that requiring in-person meetings could eliminate participation that the Council would want to encourage. Ms. Nilsson pointed out that no meeting would be entirely in-person; there would always be a Zoom option available. Mr. Goehler did note that, with hybrid meetings, the people participating virtually may not be on a level playing field with the people participating in person, so that is definitely something to think about.

B. Funding

Judge Peterson explained that the Council is funded by general funds from the Oregon Legislature as a pass-through in the Oregon Judicial Department's (OJD) budget. The Council receives just under of \$60,000 per biennium, a small sum that covers a stipend for the Executive Director and an hourly wage for the Executive Assistant. It also pays for software and things of that nature that the Council needs to keep going, and it seems to be adequate. A number of years ago, the Oregon State Bar began allocating \$4,000 per year for member travel expenses so, to the extent that the Council does have meetings that are in person, members may fill out an OSB expense reimbursement form, turn it in to Ms. Nilsson, and receive reimbursement. The practice has been to pay the public member first, the judges second, and attorney members third.

The Council was hosted by the University of Oregon Law School for many years. When the last professor there who was Executive Director of the Council retired, Judge Peterson was chosen to head the Council at Lewis and Clark, which now provides office space, business services, insurance, computers, and other overhead. This is of real benefit for the state.

C. Results of Survey of Bench and Bar: Generally

Judge Peterson directed the Council's attention to the general public comments received from the Council's survey of bench and bar (Appendix I). He noted that there are several that seem to indicate that some lawyers and judges are not familiar with the work of the Council. One in particular states that there should be real lawyers on the Council; this seems to indicate that the respondent does not have a very deep understanding of the Council. Judge Peterson noted that Rule 1 states that the ORCP should provide for the speedy, inexpensive, and just administration of civil cases, and public feedback in the

past has indicated that “inexpensive” is where the Council has fared the worst and is something the Council should be mindful of. Mr. Goehler pointed out that there were some kudos in the comments, and that those were nice to see.

IX. Old Business

A. ORCP/Topics to be Re-examined from Previous Biennium (Appendix J)

1. ORCP 9 & ORCP 10

Judge Peterson called the Council’s attention to the suggestions regarding Rule 9 and Rule 10 made last biennium and carried over to this biennium’s agenda. He noted that, the last time the Council made a change to Rule 9, fax machines were still in vogue and email service was relatively new. However, the comments that were made then might still be true now: that attorneys can get a few hundred emails per day. Young practitioners may not recognize this, but email service is only effective if the recipient agrees to it. So, if an attorney who does not appreciate the technology of email and is nonetheless very inundated with them chooses not to agree to email service, they are stuck. Judge Peterson stated that he was not speaking in favor or against automatic email service; however, now that e-filing exists, it may be time to reconsider email service without consent.

Ms. Nilsson noted that attorney Nik Yanchar, who had made a suggestion regarding email service both last biennium and in this biennium’s survey, was present via Zoom and willing to speak to the Council about his suggestions. Mr. Goehler invited him to speak. Mr. Yanchar thanked the Council for allowing him to speak. Although he is a member of the OSB’s Board of Governors, he noted that he was speaking on this matter as an individual.

Mr. Yanchar stated that he had submitted suggestions relating to ORCP 9 and ORCP 10 in tandem with each other. He stated that the suggested change relating to email service is important for a few different reasons, the foremost being efficiency. It is 2025, Oregon has e-filing, and the federal courts only use electronic case filing. He feels that, if attorneys must accept email service through the federal court system, there is no reason why Oregon should not fall in line with that. He pointed out that the efficiency of email service is undeniable, especially given that the United States Postal Service (USPS) is not as reliable as it once was. He stated that he had done a test where he sent mail with USPS from one side of Portland to the other and it took five and a half days to arrive. Email, on the other hand, is instantaneous. When an attorney registers with the OSB, they are required to provide an email. This is an acknowledgment that email is a part of an attorney’s daily practice life.

A second consideration for email service is money. Email is mostly free. There may be minor costs with other providers, but anyone can get a free Gmail

account. With the rising cost of USPS, mail is getting more and more expensive and, as mentioned, unreliable. Mr. Yanchar noted that he has recently run into situations with some defense counsel who will reply to every single email except ones that have discovery attached and who will argue that they received every other email except that one. At the motion hearing, the judge will tell the opposing counsel, this is your email on file with the OSB, you received all of the other emails, so you are presumed to have received the discovery email as well. That whole motion practice should not have to happen.

Mr. Yanchar pointed out that this is also an access to justice issue. Email will be vital for self-represented parties because it is less expensive and it makes it easier to have a discussion with the opposite side regarding discovery and potential resolution of the case outside of court.

Mr. Yanchar noted that he believes that a summons still does need to be served properly, but stated that his proposal is to otherwise allow email service if there is an attorney registered with the OSB who has an email address with the OSB. In tandem with this suggestion, he would like to do away with the 3-day mailing requirement in ORCP 10, because mail service would no longer exist. Email is instantaneously received. If it bounces back, then obviously that is a bad email and would not count. But if it goes through to the email on file with the OSB, there should be no reason to have an extra three days just for the sake of having an extra three days.

Mr. Yanchar also suggested including something in the ORCP to join with the Uniform Trial Court Rules (UTC) that, if a lawyer registers to go through the Odyssey system, the e-file and serve is also proper service, just to kind of mirror each other because, in the UTC, if you sign up through Odyssey and get served through Odyssey, that is proper service by email.

Mr. Goehler thanked Mr. Yanchar for bringing these suggestions to the Council. He stated that he disagreed with Judge Peterson's remark that an attorney can opt out of email service. An attorney can get a court order not to be electronically served, but opting out by rule is not there and he thinks that there is some confusion about that. Mr. Goehler stated that this is an issue that has evolved and that it is perhaps time to take another look at how email service can be fine tuned. He stated that a committee could examine service as a whole and think about things that may be needed in the future, such as cloud service.

Judge Erwin stated that, in Odyssey, the court has the ability to track when an email has been received and opened, and that has worked very well for the courts. He did not know whether that level of confirmation exists in other applications, but stated that it is worth looking into. Mr. Goehler observed that this is a concern that people have, as well as the concern that an email could end up in their spam filter. Mr. Yanchar pointed out that the current rule states that

dropping something in the mail is an assumption that someone receives it. He posited that email is more reliable than the USPS at this point and, since there is no confirmation requirement for USPS mail, there may not need to be one for email.

Ms. Hopkins stated that there is the ability to request a delivery receipt when sending an email, which is the same type of confirmation currently received in Odyssey. Mr. Yanchar pointed out that, at least in Gmail, the recipient is the one who needs to respond affirmatively to that delivery receipt request. It does not work automatically like it might in Outlook or other platforms.

Judge Peterson reiterated that this topic had not been looked at in some time and that it would be a good idea to have a committee consider it. He also stated that it may be a good idea to bring the UTCR Committee into the fold because, with the volume of emails that people receive, it might be wise to require some kind of language in the subject line identifying that emails that are related to a case or legal dispute.

Judge Bloom pointed out that there are many suggestions on the agenda to get through, and suggested forming a committee without further discussion. Judge Peterson asked whether there was at least one plaintiffs' attorney, one defense attorney, and one judge who wanted to serve on a service committee. Ms. Dahab, Judge McIver, Judge Peterson, Judge Raschio, Mr. Spooner, and Ms. Wilson agreed to serve on the committee, with Judge Raschio as chair. Ms. Nilsson pointed out that there are many more suggestions regarding service on the biennial survey, and asked the committee to include those in its considerations, as well as the suggestion regarding Rule 10 from last biennium received from attorney Young Walgenkim.

2. ORCP 27

Judge Peterson referred the Council to Judge Norby's suggestion regarding Rule 27 that was carried over from last biennium. He noted that the question was whether Rule 27 allows an unmarried minor in a case who is a parent to nominate themselves as their own guardian ad litem. He noted that there is another suggestion from Judge Norby regarding Rule 27 later on the survey, so the Council may wish to postpone discussion about forming a committee at this time. However, this suggestion re-enforces the idea that it could be helpful to have a family law practitioner as a Council member.

3. ORCP 60

Judge Peterson explained that former Council chair Brooks Cooper had submitted a suggestion regarding Rule 60 to make it clear that a case cannot be dismissed without prejudice following a motion for directed verdict unless the court finds

that the party, through their motion, can provide sufficient evidence to make a prima facie case that they should be given a second chance. Judge Peterson stated that he does not know how often this issue comes up, but expressed that it would probably be frustrating for a litigant. Mr. Goehler stated that he had not heard of the situation outlined by Mr. Cooper happening, and asked whether anyone on the Council had encountered it. No Council member stated that they had. Mr. Goehler asked whether any Council members wished to form a committee to look into this suggestion or to look at Rule 60 generally. The Council did not express such an interest.

4. Judgments

Judge Peterson explained that the Civil Roundtable of Multnomah County judges had a meeting with some of the processing staff last biennium, and the staff had expressed that it is sometimes unclear when they are processing judgments which parties are still involved in the case. Judge Peterson thought that it might be helpful to amend Rule 67 to require, when submitting a judgment, language reciting any previous judgments that have occurred, so that court staff and judges are clear on which parties and issues still remain in the case.

Mr. Kekel pointed out that it is good practice to do this, and that he does it. Judge Peterson noted that he had taught his students to do this, but that it apparently is not being done by many lawyers. Mr. Kekel stated that the court needs to know that any parties that are not signing or stipulating to the general judgment have been dismissed or defaulted. Mr. Goehler wondered whether this is an ORCP issue or a UTCR issue. The issue of what types of judgments exist falls within the ORCP, but the form or contents of a judgment may fall within the UTCR. Judge Peterson stated that the contents are really driven by statute, specifically ORS Chapter 18, but he thought that Rule 67 would have a place for this. He acknowledged that it might be a bad idea, but it seemed to him that it could solve a problem for the court staff and judges. Mr. Goehler asked about the last time the Council made a change to Rule 67. Ms. Nilsson stated that it was 2014.

Ms. Dahab summarized the proposal as requiring a form of judgment where the attorney would summarize at the outset the prior judgments that have been entered in the case. Judge Peterson agreed with this summary. Mr. Goehler stated that the current practice is handled differently by different attorneys. Attorneys who rarely handle cases with multiple litigants, in contrast to Mr. Kekel, would not necessarily follow his practice of listing prior judgments when reaching the point of submitting a general judgment, as a convenience to the court. Ms. Wilson pointed out that the Legislature, by statute, has set forth the form of judgment. Ms. Dahab asked whether there is a problem with the Council supplementing the requirements that the Legislature has already set forth. Judge Peterson stated that he did not believe that requiring an introductory paragraph

within a judgment would conflict with anything in ORS Chapter 18. Mr. Goehler noted that Chapter 18 states the minimum requirements of what must be in a judgment, particularly what makes a judgment creditor. He opined that the Council adding gloss on that should not be problematic.

Judge McIver stated that she would volunteer to be on a committee to take a look at this issue. She agreed that it is a huge waste of time if the parties are not listed in a judgment. In her district, which has a master docket and no case assignments, it can take a long time before a proposed final judgment even lands with the correct judge because practitioners do not list the date of the last hearing or the judge who presided. This causes a backup in queue work and has more downstream consequences than one might anticipate.

Mr. Kekel, Judge McIver, Judge Peterson, and Mr. Spooner agreed to serve on a committee to examine Rule 67 and general judgments, with Mr. Kekel serving as chair.

5. Council-Prepared Summaries of Proposed Rule Changes

Judge Peterson noted that he had discussed the proposal for the Council to prepare summaries of proposed rule changes when he talked about staff comments. He stated that it is a brilliant idea and that Council staff will begin preparing these summaries this biennium.

X. New Business

A. Potential amendments received by Council Members or Staff since Last Biennium (Appendix K)

1. ORCP 22 C(1)

Mr. Goehler explained that the potential amendments received by staff since last biennium were both from Mr. Kekel. One suggestion was in regard to ORCP 22 C(1) and third-party practice. Mr. Kekel stated that, in the current rule, one has 90 days from service of the original complaint to file and serve a third party complaint. Should that not occur, the rule requires leave of court and consent of all parties. One of his concerns with this is that it is a potential malpractice trap if the 90 days is missed for whatever reason. In addition, if a plaintiff's lawyer or another defendant's lawyer does not want that party in the case, they can simply object and adding that party is foreclosed. Mr. Kekel explained that he just became involved in a large matter where the client he is representing was brought in very late. The matter deals with design, architectural engineering, and navigation. His immediate question was whether his client's sub-consultant engineers should be brought into the case. He stated that this requires certification by a similarly credentialed professional to state in the pleadings that

they believe this potential third party may have liability. The case has many documents, and attempting to locate and retain an expert and have them get through thousands of pages of documents within 90 days was almost impossible. Mr. Kekel stated that he would propose eliminating the consent of all parties requirement and trust the judges as to whether or not they want to allow the addition of third parties after 90 days. Mr. Kekel stated that another question is whether the 90-day time frame is needed at all. He stated that he could understand the reason for a time frame, especially if courts are trying to adhere to a 12-month or 18-month schedule for resolution of a case. However, if the 90-day deadline is not met for whatever reason, it can have a huge impact.

Mr. Goehler summarized Mr. Kekel's proposal as changing the word "and" to the word "or" and taking a look at the 90-day time frame stated in the rule. Mr. Kekel stated that he would like to consider potentially eliminating the requirement of consent of all parties and taking a look at the time frame.

Judge Bloom agreed that subsection C(2) is an interesting part of the rule, and he knows of nothing else like it. It can be a "gotcha" because, even if the court was going to allow the third party to be added and there was no harm, if another party does not consent, it will not happen. He stated that he would be happy to join a committee to examine the rule. Part of the committee's work will be to examine why the provision was added and what other jurisdictions do. He stated that he believes that part of the reason is likely to allow the plaintiff to control the action, to some extent, so that additional parties are not brought in and the litigation is not delayed. Ms. Dahab stated that it is her understanding that there was a good reason for this part of the rule being created and that there are solutions to it in the appropriate case with consolidation. She stated that she would be happy to join a committee to help think through whether the Council's rationale for this part of the rule when Rule 22 was amended still hold true. Judge Bloom, Mr. Kekel, and Ms. Johnson also joined the committee, with Ms. Dahab serving as chair.

Mr. Goehler stated that he has done third-party practice in federal court. He stated that "federalizing" third-party practice in Oregon might actually be a good idea, because it is a lot simpler. There is a shorter, 14-day time frame, with just leave of court required. He stated that the federal rules would be one source for the committee to look at the pros and cons of how the federal rules deal with third-party practice. Judge Peterson noted that this issue had been raised with the Council when he first became Executive Director and then again when Bob Keating was chair of the Council. He stated that the pushback against making a change was substantial, but pointed out that this is a new Council and it is good to reconsider these issues. He also noted that this is the only rule in the ORCP that requires the consent of all parties and the court. Judge Peterson acknowledged the concern about trials being delayed, so he stated that the judge will certainly want to have a hand in decisions about parties being added at a late

date. However, he noted that Mr. Keating had made a great argument that sometimes these parties are not known about until day 89, and there is no way to get them in otherwise.

2. ORCP 38 C

Mr. Kekel stated that his law partner, Kevin Sasse, had sent him a suggestion regarding ORCP 38 C. Mr. Sasse was unable to attend the meeting, so Mr. Kekel stated that he would do his best to try to explain the issue. ORCP 38 C and its UTCR counterpart, UTCR 5.140, govern the taking of depositions for matters pending in other jurisdictions and states. His understanding is that there seems to be a clash between the processes in the two and that they can be read differently. The question seems to be whether the word “state” means any state or limited to a state that has adopted the Uniform Interstate Deposition and Discovery Act. Arguably speaking, UTCR 5.140 would only apply to the latter, but not ORCP 38 C.

Judge Peterson stated that his understanding is that the line of hierarchy is: 1) statutes; 2) ORCP; and 3) UTCR. If there is an ambiguity in Rule 38, perhaps it could be modified or made more clear. Mr. Goehler stated that it might be helpful to have Mr. Sasse come to a Council meeting and explain the issue further. He noted that this may be a situation where the rule is fine but that the UTCR may need some tweaking. Judge Hill noted that the Council may want to make the UTCR Committee aware of the issue. Ms. Trickett stated that, as the UTCR reporter from the Oregon Judicial Department, she is taking careful notes.

B. Potential amendments received from Council Survey (Appendix L)

Mr. Goehler stated that he would go through the suggestions from the Council survey, either line by line or subject by subject, and the Council would decide whether there is enough interest to form a committee to investigate further.

1. Abusive Litigants in Probate Proceedings

Judge Peterson stated that he had just learned of the probate code statute that states that some of the ORCP apply to probate matters and some do not. He noted that this may mean that a legislative fix is required to make Rule 35 apply to probate matters. Mr. Goehler asked Judge Peterson to explain the process for sending feedback to the people who submitted the comments. Judge Peterson stated that they have already been thanked for their comment and given information about today’s meeting. Ms. Nilsson noted that not every person who had made a suggestion had included their name and contact information, so it would not necessarily be possible to contact them to let them know the results of the Council’s discussion about their proposal. In this case, the person who made the suggestion did not leave contact information.

2. Arbitration

Mr. Goehler noted that arbitration is a statutory matter and that the Council has no power to make legislative changes. The Council agreed and declined to form a committee about this issue.

3. Attorney Fees, Relief from Judgment

Judge Peterson stated that he had read the case that was cited in the first suggestion regarding attorney fees. Family Abuse Prevention Act (FAPA) restraining order cases are, by statute, concluded by an order, not a judgment, so the judge determined that Rule 68 does not apply because Rule 68 has a carve-out for fees awarded pursuant to an order. He stated that another observation, not central to the ruling, was that FAPA forms are provided by the OJD and they do not contain an allegation claiming an entitlement to fees, which is required by Rule 68. Judge Peterson stated that he is currently working with a committee to revise some OJD forms, and some forms can definitely use some work. However, the fact that the case also mentions Rule 71 leads him to believe that perhaps someone filed a frivolous motion for relief from judgment and lost. Judge Peterson pondered whether a party is entitled to collect prevailing party and attorney fees on that order denying the Rule 71 motion. He noted that the case is a FAPA case, but it may have broader implications on other orders.

Judge Hill asked about the last time the Council looked at ORCP 68. Ms. Nilsson stated that it was 2014. Mr. Goehler noted that the next comment about attorney fees is very insurance law specific. He asked whether there were any volunteers for a committee to look at ORCP 68 and attorney fees. Mr. Goehler, Judge Shorr, and Mr. Spooner volunteered to serve on a committee, with Mr. Goehler as chair. Ms. Nilsson mentioned that retired Judge Eve Miller had made the first suggestion regarding Rule 68 and that the judge had e-mailed her to let her know she was unable to attend today's meeting. Ms. Nilsson suggested that the Judge Miller would be willing to talk to the committee about the issue.

4. Civil Motion Practice

Mr. Goehler noted that this comment appears to be a suggestion to revamp the entire judicial system, and he was not sure what could be done about that from an ORCP standpoint. The Council agreed and declined to form a committee about this issue.

5. Contempt/Order to Show Cause

Judge Hill stated that the comment about orders to show cause was quite broad and that he would require more specifics in order to pursue the matter further. Judge Bloom noted that the OJD is modifying its contempt procedure to try to

streamline it across the state. There will be changes coming, but those changes do not implicate the ORCP. Mr. Goehler asked whether there were any names given for the two comments about this issue so that the Council could reach out for more information. Ms. Nilsson stated that there were not. The Council declined to form a committee about this issue.

6. Default Orders/Judgments

Mr. Goehler stated that ORCP 69 B is critical, especially for defense practitioners. In some jurisdictions, one has to answer within 30 days, period, or one has defaulted. In other jurisdictions there is a notice of appearance that operates in the same way as ORCP 69 B. He asked Council members whether they believe that anything is broken about the current system, because doing anything different would be a huge change. Judge Peterson stated that ORCP 69 B is, in some respects, a professionalism rule. It also, theoretically, makes Rule 71 motions less challenging, because first one gets served with the summons and complaint, then one receives the 10-day notice. It seems to him that this reduces some litigation, as “surprise” is a basis for a Rule 71 B motion. Judge Peterson noted that the comment asked about limiting the requirement of notice of intent to take the default to originating complaints. He stated that he could understand how it could be a little frustrating to be required to give a 10-day notice on an amended complaint after a motion to dismiss with the right to re-plead, but he did not know how often it happens.

Mr. Kekel stated that he tends to look at it through the lens of what is good practice. If he is faced with a ruling and a motion is granted against all of his pleadings and he has to amend, it is good practice to clarify the exact time frame and what is going to happen in the order itself. Judge Peterson stated that, in the scope of a year, from commencement of a case until trial, it is just 10 days. The Council declined to form a committee about this issue.

7. Depositions

Mr. Goehler pointed out that, with regard to the first comment, the Council cannot make depositions apply to criminal proceedings. Only the Legislature can do that. The other comment suggests imposing a time limit on depositions, as the federal rules do. Judge Bloom stated that the thought that would be problematic. He pointed out that protective orders are available when needed. Imposing time limits, particularly under Oregon’s system without interrogatories and other forms of discovery, would be problematic. He stated that he is wary of changing the mode of discovery in Oregon. Mr. Goehler stated that he agreed with Judge Bloom. He thinks that the system works the way it currently is designed, and attorneys can get assistance on a case-by-case basis if there is truly an issue. Protective orders are available if it seems like the other party is just trying to run up costs with a meaningless deposition. The Council declined to form a

committee about this issue.

8. Disclosures

Mr. Goehler stated that the suggestion was to require disclosures, similar to the federal rules. Judge Hill stated that it would be a pretty big lift logistically to even consider making such a change in Oregon, requiring bringing in a lot of outside entities for input. Mr. Kekel stated that it would either have to be mandatory in all cases or that there would have to be a waiver procedure, and wondered how that would be accomplished. He noted that more judicial resources would be expended addressing the waiver. The Council declined to form a committee about this issue.

9. Discovery

Mr. Goehler noted that there were many suggestions regarding discovery from the survey. He stated that the Council has, over the years, received many suggestions about “federalizing” Oregon’s rules as far as expert disclosure, interrogatories, and no trial by ambush. He observed that, as the Council starts a new biennium with new membership, it is good to have a discussion about discovery. He recalled that the Council had a standing discovery committee for several biennia but that it had reached a sort of stasis where it did not seem to be required. He asked the Council whether it felt that a committee needed to be formed now to look at discovery, either generally or specifically to go over the suggestions from the survey. Mr. Goehler stated that his opinion is that the Oregon legal system is special because of its camaraderie and cooperativeness, which is fostered by the ORCP. A sanction-oriented rule system makes the attorneys less cooperative and more likely to look to gain an advantage to get sanctions.

Ms. Hopkins agreed and stated that she did not believe that Oregon needs any sort of explicit expert discovery. She stated that the bulk of her work is in medical negligence, and she feels a camaraderie with opposing counsel. While she may not provide the name of an expert, she will certainly discuss with opposing counsel what her expert will or will not testify to in an effort to resolve cases ahead of trial. Mr. Goehler noted that another thing that Oregon should be proud of is keeping the cost of litigation low. While he acknowledges that the Council receives comments that the cost of litigation in Oregon is high, his experience is that the cost of litigation in federal court is much higher, because there is more extensive discovery and more court deadlines. In terms of cost for litigants, he thinks that Oregon’s system is good. Mr. Spooner agreed with Mr. Goehler. He stated that, in his practice, 90% of discovery disputes that do arise are in federal court cases, not Oregon cases, because of the federal discovery rules. The Council declined to form a committee about this issue.

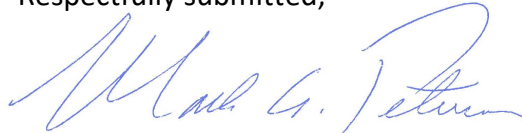
XI. Adjournment

Mr. Goehler noted that there were still more suggestions from the survey to examine, and he proposed forwarding them to the agenda for the October 11, 2025, meeting. The Council agreed. Mr. Goehler stated that he would appreciate if the committees that had been formed would meet, but that he would not necessarily expect any work product before the next Council meeting. Judge Peterson did ask committee chairs to provide a short written summary of their meetings to Ms. Nilsson to include in the meeting packet for the October meeting, as those summaries do help provide context in the history of how a rule change did or did not occur.

Ms. Wilson noted that the Uniform Collaborative Law Act is included in the survey suggestions. Since she was chair of a committee on that subject last biennium, she talked briefly to some of the practitioners who have their own committee on issue. She stated that she would draft a short memo on the subject to include in the meeting packet for October.

Mr. Goehler adjourned the meeting at 11:34 a.m.

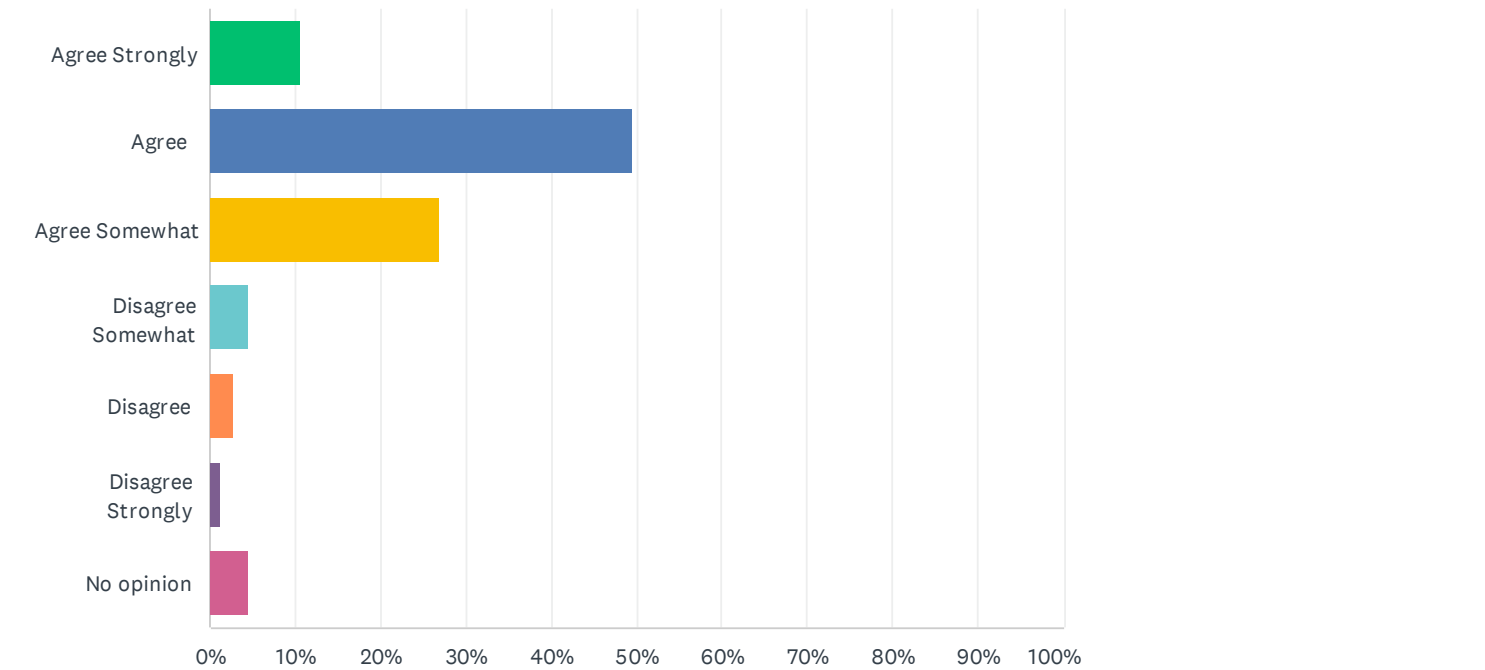
Respectfully submitted,



Hon. Mark A. Peterson
Executive Director

Q1 Do you agree that the Oregon Rules of Civil Procedure promote the just determination of civil court actions?

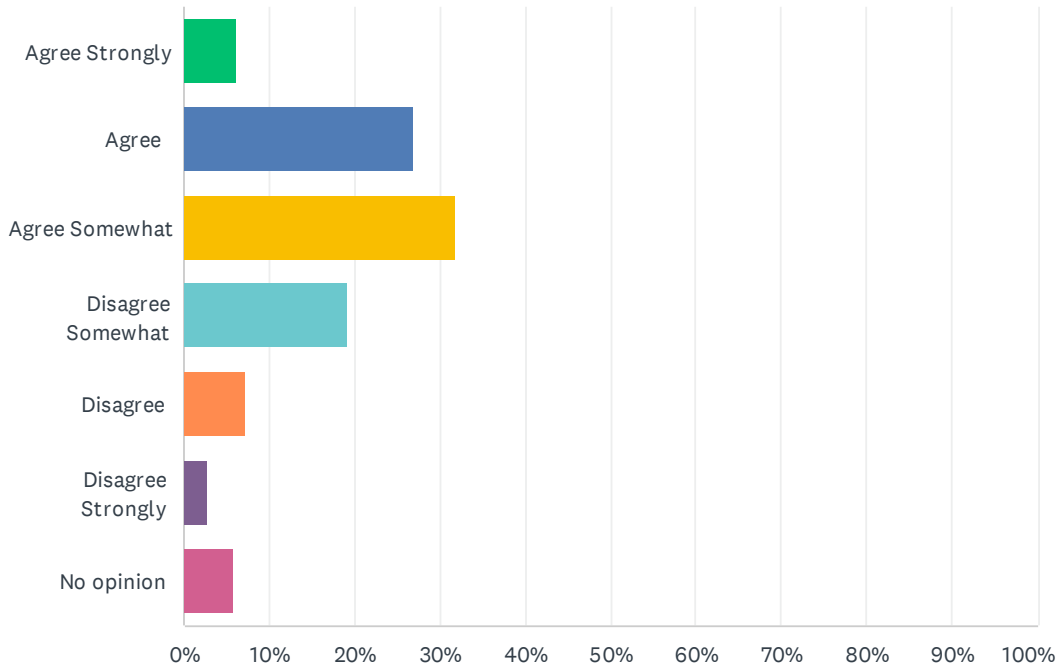
Answered: 245 Skipped: 0



ANSWER CHOICES	RESPONSES	
Agree Strongly	10.61%	26
Agree	49.39%	121
Agree Somewhat	26.94%	66
Disagree Somewhat	4.49%	11
Disagree	2.86%	7
Disagree Strongly	1.22%	3
No opinion	4.49%	11
TOTAL		245

Q2 Do you agree that the Oregon Rules of Civil Procedure promote the speedy determination of civil court actions?

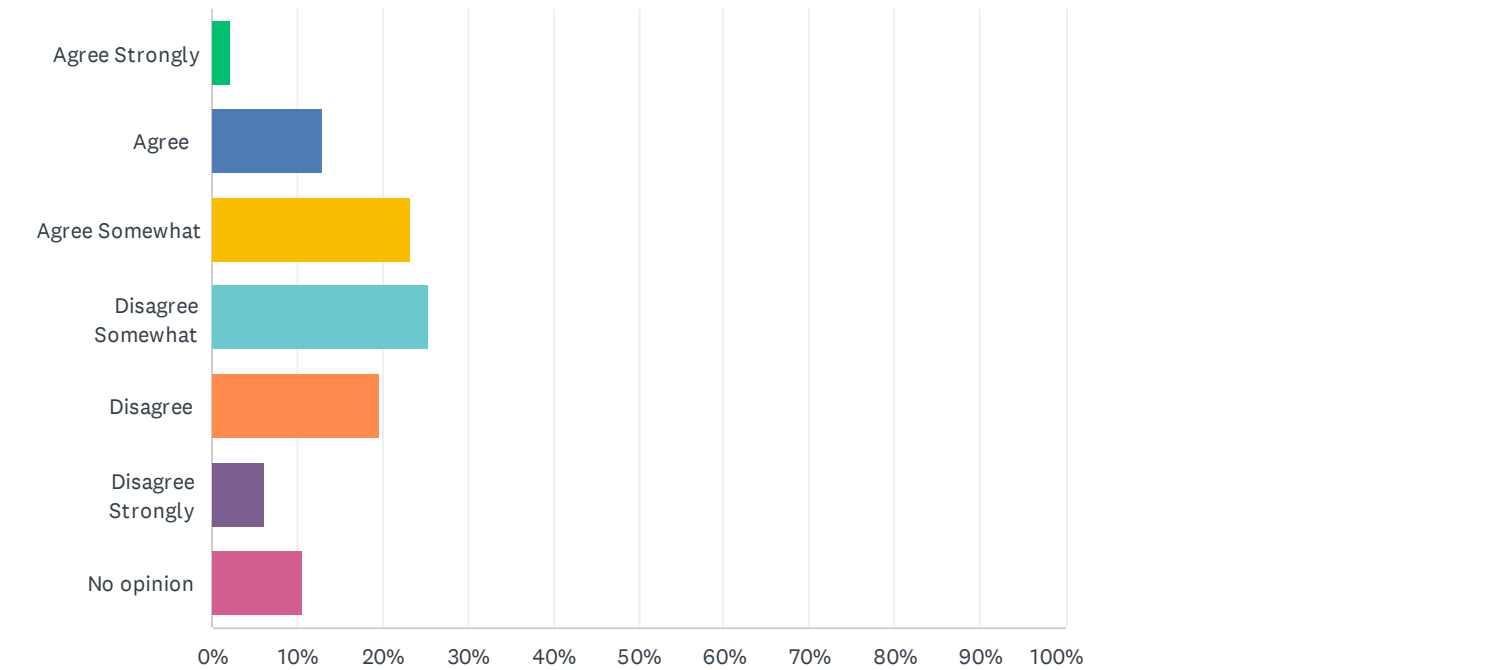
Answered: 245 Skipped: 0



ANSWER CHOICES	RESPONSES	
Agree Strongly	6.12%	15
Agree	26.94%	66
Agree Somewhat	31.84%	78
Disagree Somewhat	19.18%	47
Disagree	7.35%	18
Disagree Strongly	2.86%	7
No opinion	5.71%	14
TOTAL		245

Q3 Do you agree that the Oregon Rules of Civil Procedure promote the inexpensive determination of civil court actions?

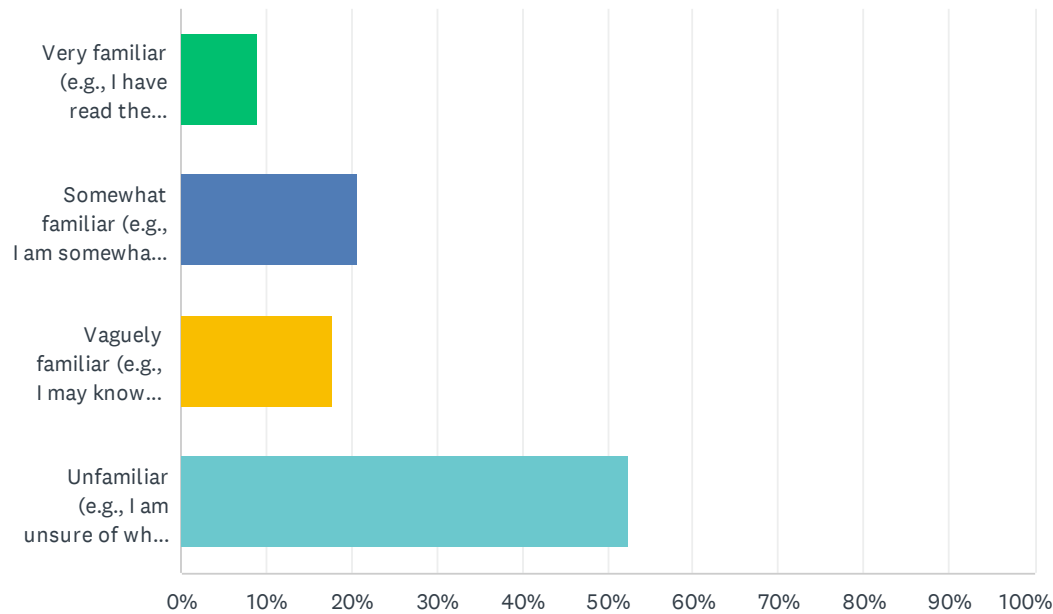
Answered: 245 Skipped: 0



ANSWER CHOICES	RESPONSES	
Agree Strongly	2.04%	5
Agree	13.06%	32
Agree Somewhat	23.27%	57
Disagree Somewhat	25.31%	62
Disagree	19.59%	48
Disagree Strongly	6.12%	15
No opinion	10.61%	26
TOTAL		245

Q4 Please rate your familiarity with the composition of the CCP.

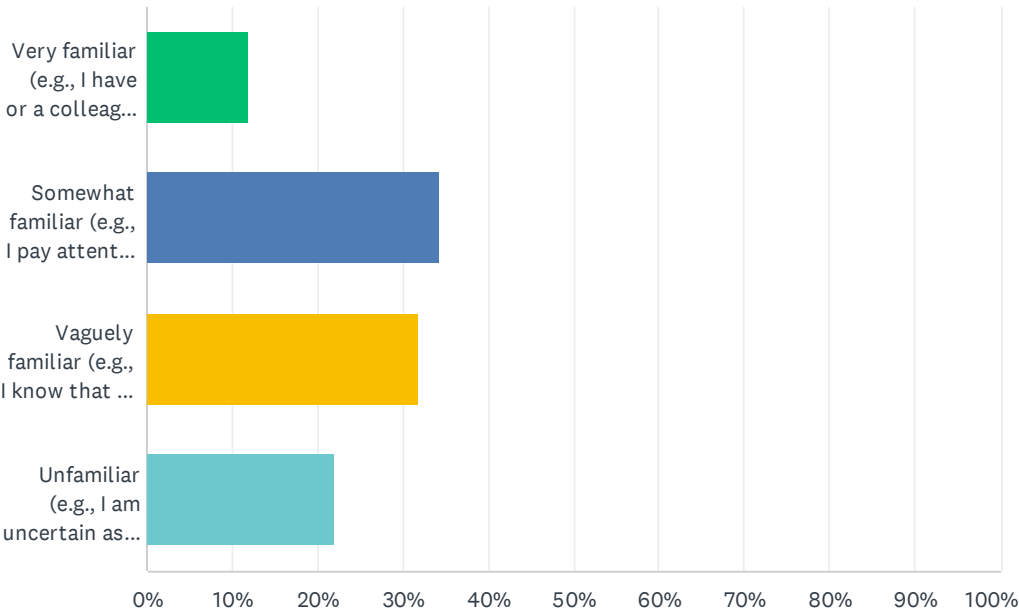
Answered: 236 Skipped: 9



ANSWER CHOICES	RESPONSES	
Very familiar (e.g., I have read the statute that provides for appointments to the Council and its makeup; I have served on the Council)	8.90%	21
Somewhat familiar (e.g., I am somewhat aware of the makeup of the Council; I have a friend or colleague who has served on the Council)	20.76%	49
Vaguely familiar (e.g., I may know someone who has served on the Council)	17.80%	42
Unfamiliar (e.g., I am unsure of who serves on the Council)	52.54%	124
TOTAL		236

Q5 Please rate your familiarity with the work of the CCP.

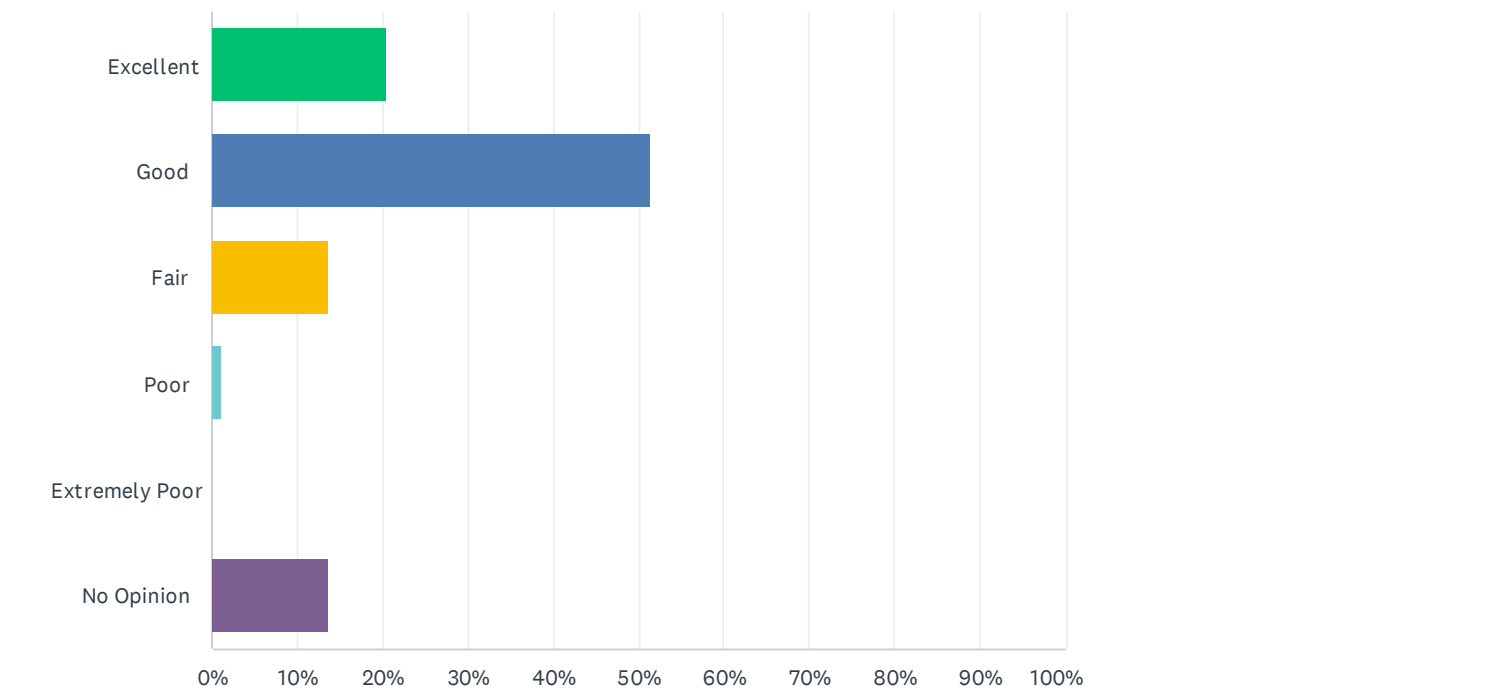
Answered: 236 Skipped: 9



ANSWER CHOICES	RESPONSES	
Very familiar (e.g., I have or a colleague has served on the Council; I have made a proposal to the Council; I regularly follow the work of the Council)	11.86%	28
Somewhat familiar (e.g., I pay attention to when the Council amends the ORCP)	34.32%	81
Vaguely familiar (e.g., I know that the Legislature does not have primary responsibility for the ORCP; I am unsure of when and how amendments are made)	31.78%	75
Unfamiliar (e.g., I am uncertain as to how the ORCP were created; I do not know when or how the ORCP are amended)	22.03%	52
TOTAL		236

Q6 How would you rate the quality of the CCP's work?

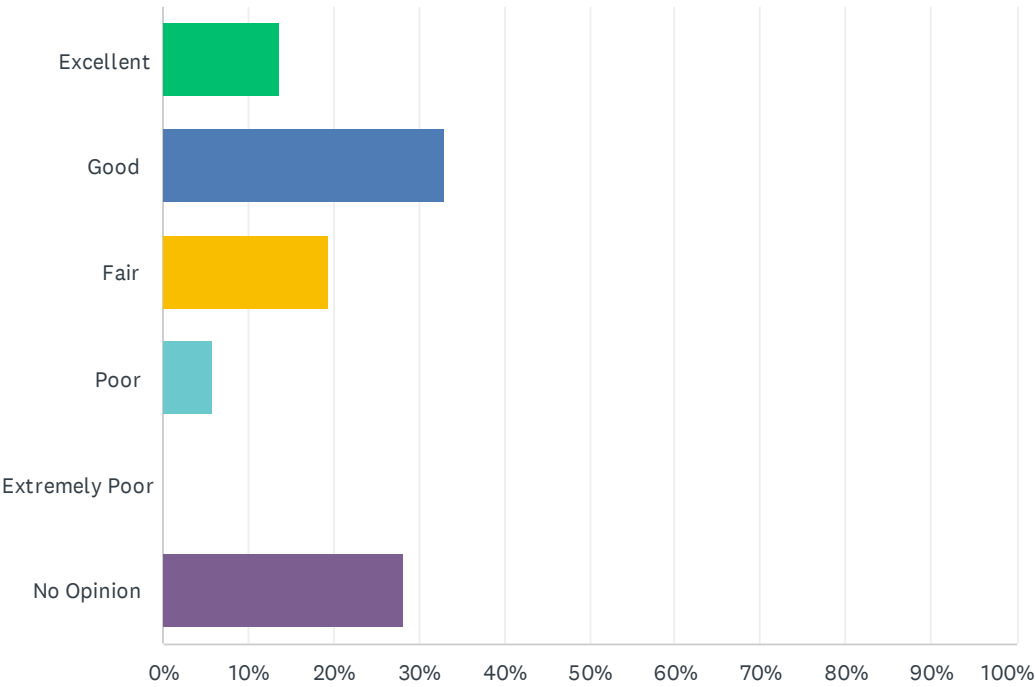
Answered: 103 Skipped: 142



ANSWER CHOICES	RESPONSES	
Excellent	20.39%	21
Good	51.46%	53
Fair	13.59%	14
Poor	0.97%	1
Extremely Poor	0.00%	0
No Opinion	13.59%	14
TOTAL		103

Q7 How would you rate the CCP's responsiveness to the needs of litigants?

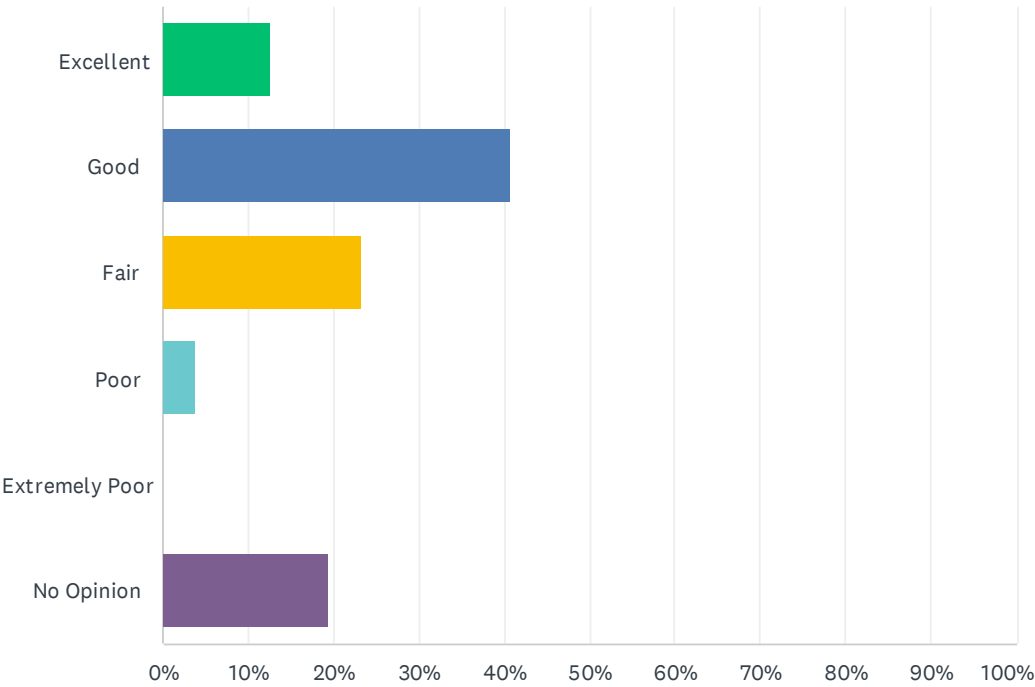
Answered: 103 Skipped: 142



ANSWER CHOICES	RESPONSES	
Excellent	13.59%	14
Good	33.01%	34
Fair	19.42%	20
Poor	5.83%	6
Extremely Poor	0.00%	0
No Opinion	28.16%	29
TOTAL		103

Q8 How would you rate the CCP's responsiveness to the needs of lawyers?

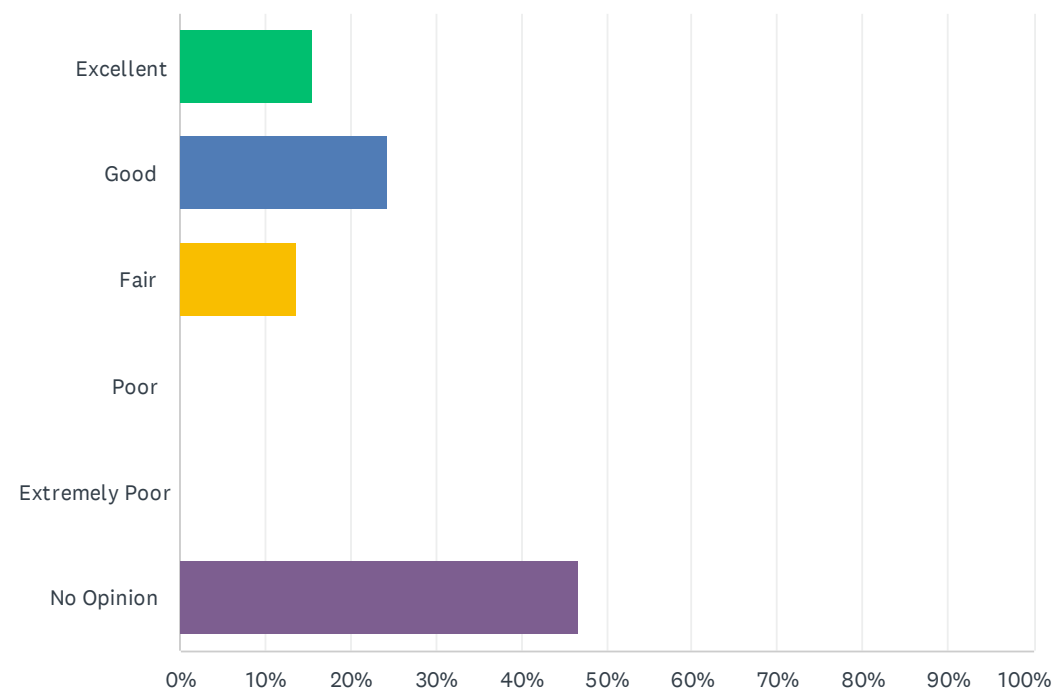
Answered: 103 Skipped: 142



ANSWER CHOICES	RESPONSES	
Excellent	12.62%	13
Good	40.78%	42
Fair	23.30%	24
Poor	3.88%	4
Extremely Poor	0.00%	0
No Opinion	19.42%	20
TOTAL		103

Q9 How would you rate the CCP's responsiveness to the needs of judges?

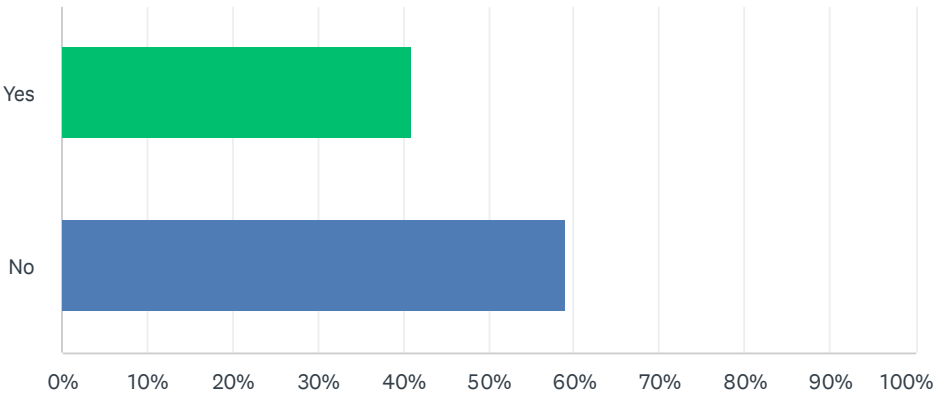
Answered: 103 Skipped: 142



ANSWER CHOICES	RESPONSES	
Excellent	15.53%	16
Good	24.27%	25
Fair	13.59%	14
Poor	0.00%	0
Extremely Poor	0.00%	0
No Opinion	46.60%	48
TOTAL		103

Q10 Have you visited the CCP website?

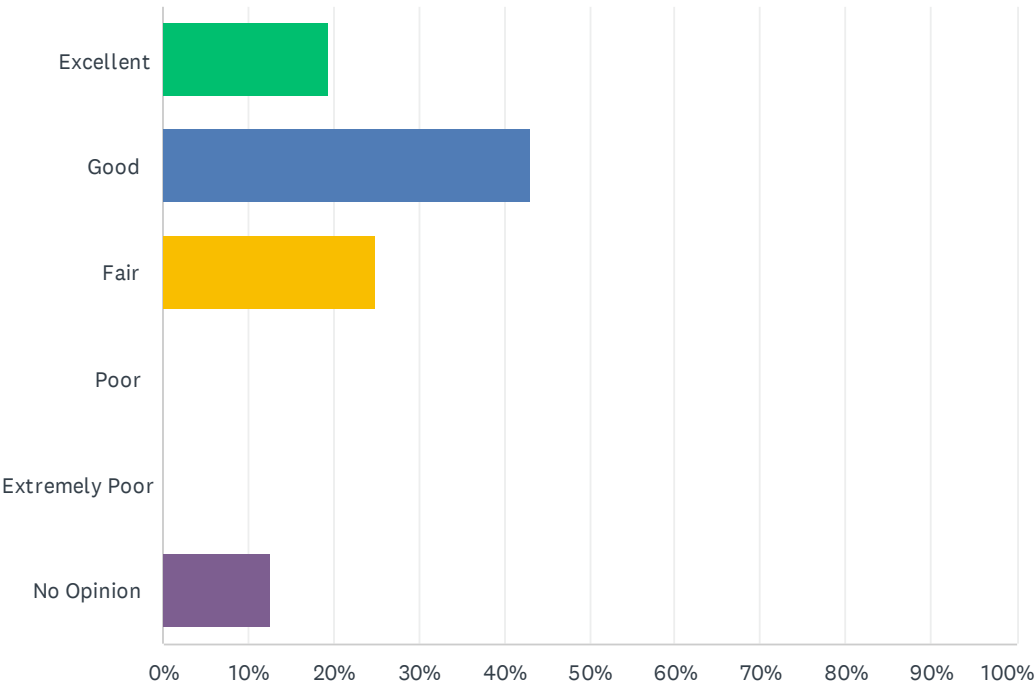
Answered: 178 Skipped: 67



ANSWER CHOICES	RESPONSES	
Yes	41.01%	73
No	58.99%	105
TOTAL		178

Q11 Please rate the CCP website’s usefulness in terms of content:

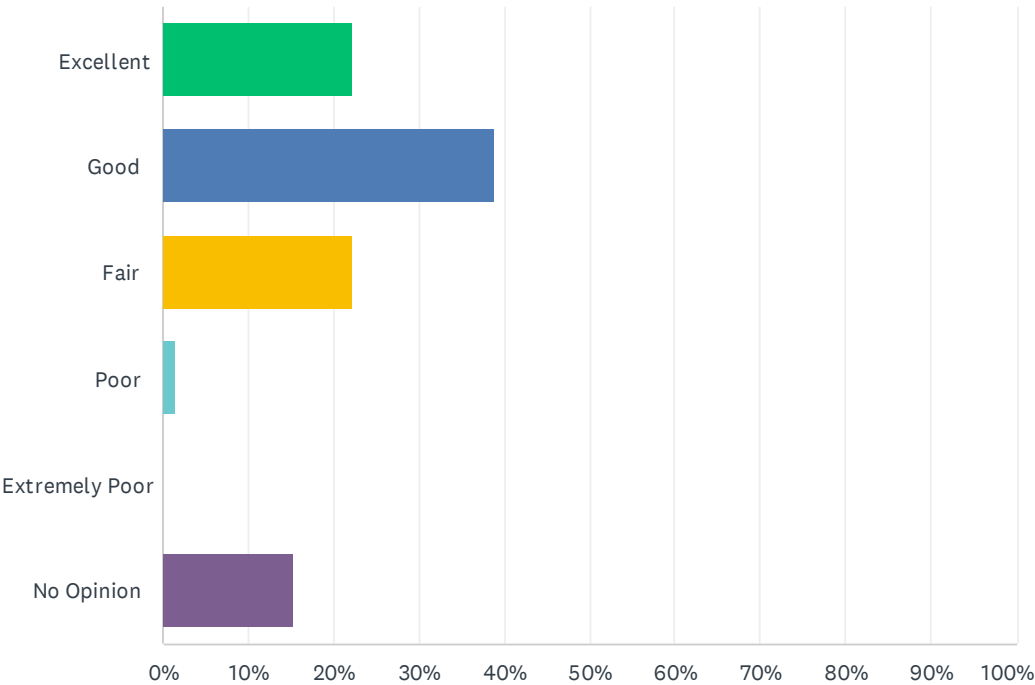
Answered: 72 Skipped: 173



ANSWER CHOICES	RESPONSES	
Excellent	19.44%	14
Good	43.06%	31
Fair	25.00%	18
Poor	0.00%	0
Extremely Poor	0.00%	0
No Opinion	12.50%	9
TOTAL		72

Q12 Please rate the CCP website’s usefulness in terms of organization:

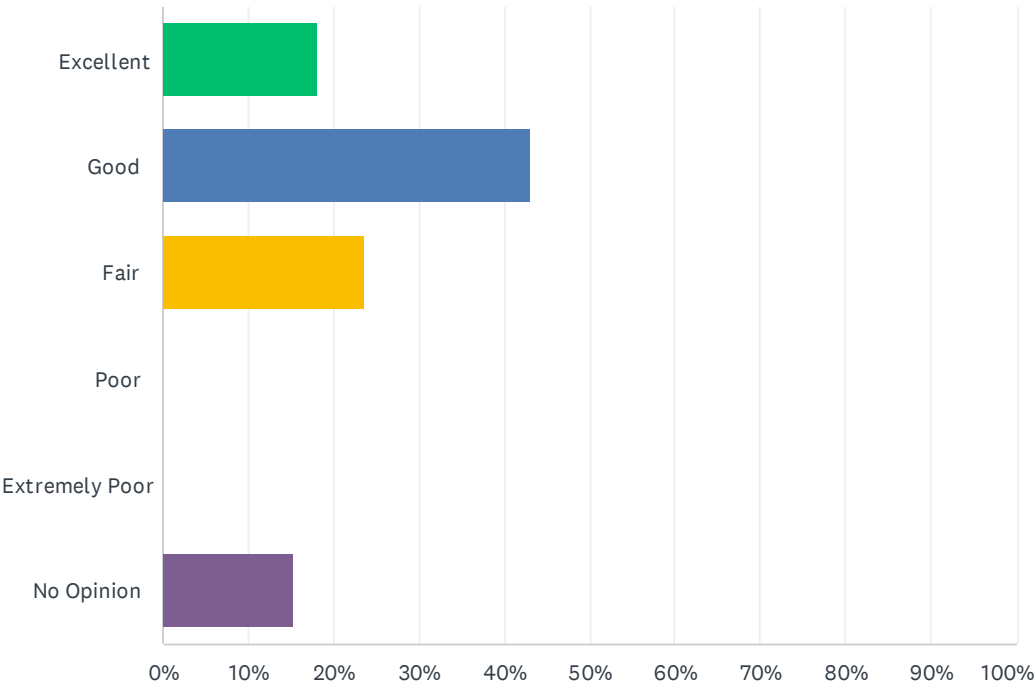
Answered: 72 Skipped: 173



ANSWER CHOICES	RESPONSES	
Excellent	22.22%	16
Good	38.89%	28
Fair	22.22%	16
Poor	1.39%	1
Extremely Poor	0.00%	0
No Opinion	15.28%	11
TOTAL		72

Q13 Please rate the CCP website’s usefulness in terms of navigability:

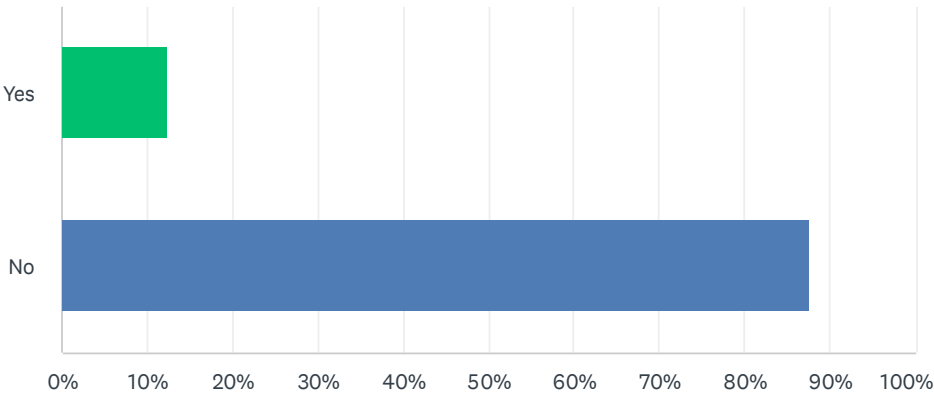
Answered: 72 Skipped: 173



ANSWER CHOICES	RESPONSES	
Excellent	18.06%	13
Good	43.06%	31
Fair	23.61%	17
Poor	0.00%	0
Extremely Poor	0.00%	0
No Opinion	15.28%	11
TOTAL		72

Q14 Have you ever made a proposal to the CCP?

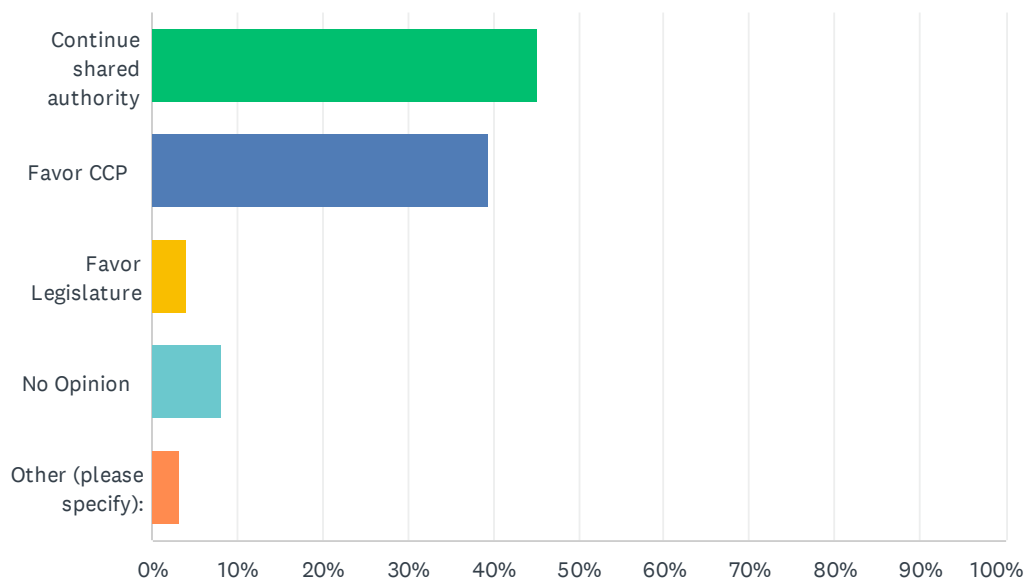
Answered: 177 Skipped: 68



ANSWER CHOICES	RESPONSES	
Yes	12.43%	22
No	87.57%	155
TOTAL		177

Q15 Prior to 1979, most civil trial procedures were found in statutes enacted by the Legislature. The ORCP were drafted by the CCP and can be amended by the CCP, subject to a review by the Legislature, which can amend or reject the CCP's promulgated changes (i.e., the authority is now shared between the Legislature and the CCP). Who do you think should have the authority to draft and amend Oregon's civil trial procedures?

Answered: 223 Skipped: 22



ANSWER CHOICES	RESPONSES	
Continue shared authority	45.29%	101
Favor CCP	39.46%	88
Favor Legislature	4.04%	9
No Opinion	8.07%	18
Other (please specify):	3.14%	7
TOTAL		223

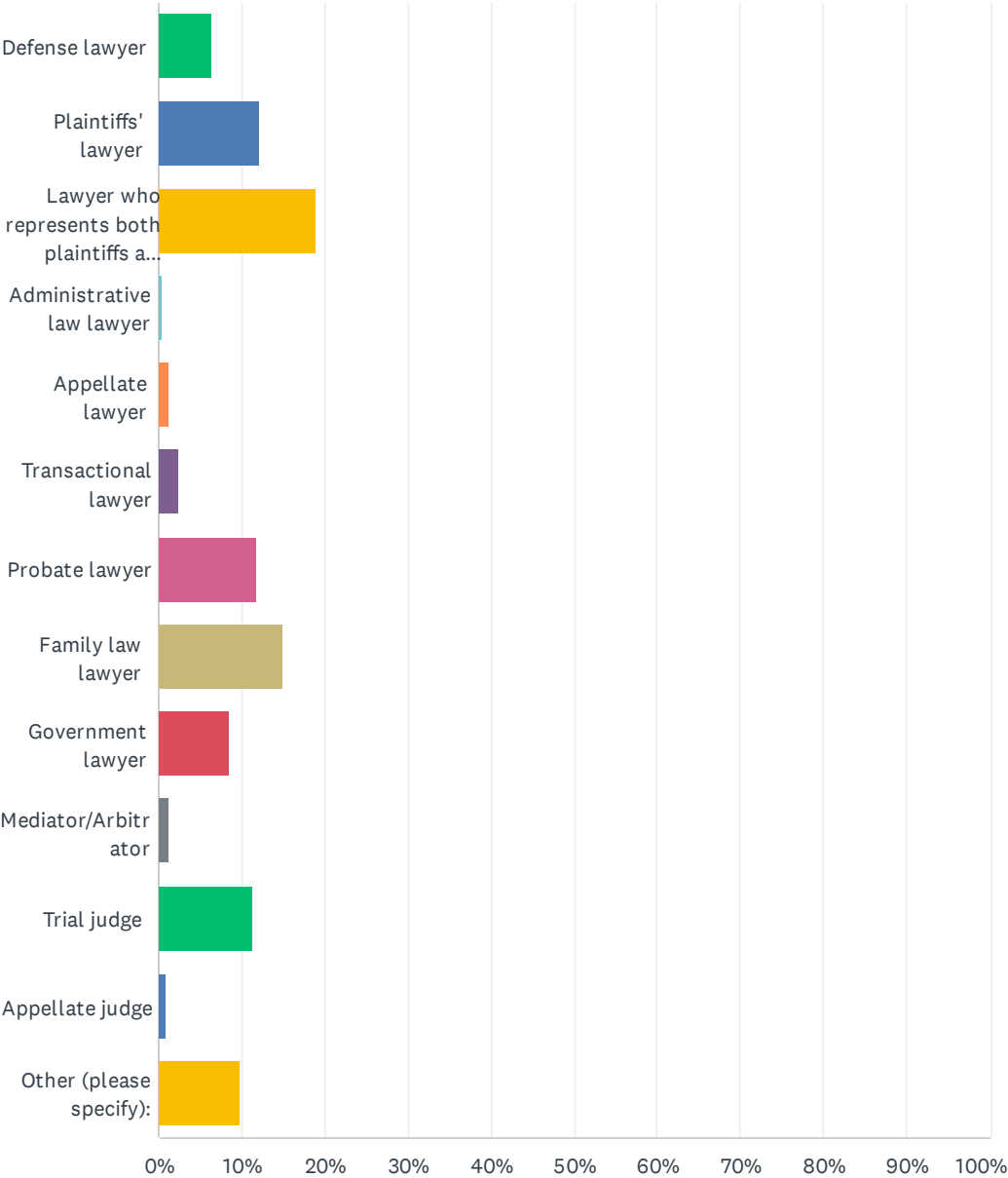
#	OTHER (PLEASE SPECIFY):	DATE
1	Favor CCP, disfavor legislature, favor judicial review	6/23/2025 4:42 PM
2	Deferring to expertise of CCP, with some legislative check or ratification.	6/23/2025 2:58 PM
3	I would be more likely to strongly support shared or CCP-only control over the ORCPs if the CCP were more responsive. As it is, there appears to be little benefit to the additional layer.	6/10/2025 8:52 AM
4	Ccp with Input from current practitioners	6/10/2025 2:31 AM
5	CCP supervised by Oregon Supreme Court	6/9/2025 3:00 PM

Council On Court Procedures Survey 2025

6	Supreme Court	6/9/2025 2:32 PM
7	The Bar, through its members	6/9/2025 2:02 PM

Q16 The following best describes my practice area:

Answered: 222 Skipped: 23



Council On Court Procedures Survey 2025

ANSWER CHOICES	RESPONSES	
Defense lawyer	6.31%	14
Plaintiffs' lawyer	12.16%	27
Lawyer who represents both plaintiffs and defendants	18.92%	42
Administrative law lawyer	0.45%	1
Appellate lawyer	1.35%	3
Transactional lawyer	2.25%	5
Probate lawyer	11.71%	26
Family law lawyer	14.86%	33
Government lawyer	8.56%	19
Mediator/Arbitrator	1.35%	3
Trial judge	11.26%	25
Appellate judge	0.90%	2
Other (please specify):	9.91%	22
TOTAL		222

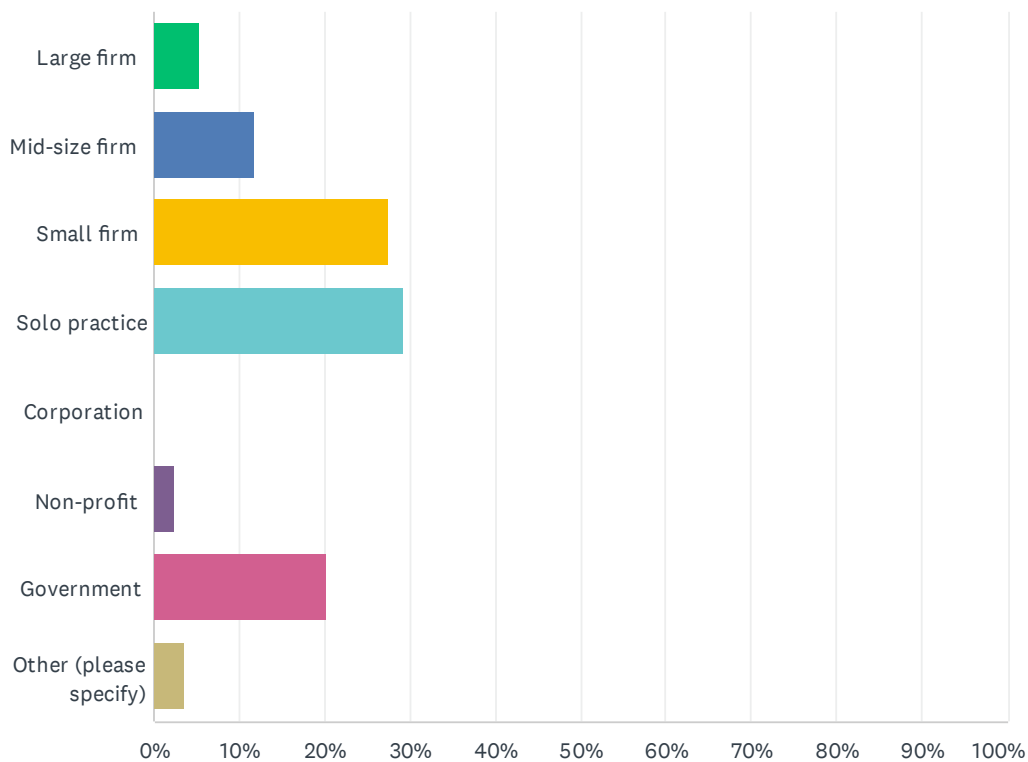
#	OTHER (PLEASE SPECIFY):	DATE
1	I have been a plaintiff's atty as well as an insurance defense atty and now serve as an arbitrator in retirement from litigation	6/23/2025 8:44 PM
2	some commercial litigation, much transactional, and immigration	6/23/2025 5:29 PM
3	Retired	6/23/2025 3:17 PM
4	staff counsel for a court	6/23/2025 3:09 PM
5	Oregon State Bar Licensed Paralegal - Family Law Endorsed	6/23/2025 3:09 PM
6	General Practitioner focusing on Family and Probate Law areas	6/23/2025 3:02 PM
7	Bankruptcy/Debtor's Side Attorney	6/23/2025 2:54 PM
8	Sr Judge and Mediator/Arbitrator	6/18/2025 4:10 PM
9	former plaintiff atty 26 yrs and defense atty 16 yrs, now arbitrator in retirement with many court appointments	6/16/2025 10:27 PM
10	state court staff	6/12/2025 8:55 AM
11	collection lawyer	6/11/2025 11:02 AM
12	General practice though not currently practicing	6/10/2025 12:46 PM
13	I represent plaintiffs, defendants and am a mediator & arbitrator	6/10/2025 12:29 PM
14	bankruptcy lawyer	6/10/2025 11:29 AM
15	Tax and bankruptcy lawyer	6/9/2025 11:38 PM
16	Senior Judge	6/9/2025 7:42 PM
17	Retired	6/9/2025 5:52 PM
18	estate planning	6/9/2025 4:44 PM
19	consumer protection litigation	6/9/2025 2:45 PM

Council On Court Procedures Survey 2025

20	General	6/9/2025 2:42 PM
21	Real property	6/9/2025 2:35 PM
22	Family law mediator	6/9/2025 2:06 PM

Q17 The following best describes my office:

Answered: 222 Skipped: 23



ANSWER CHOICES	RESPONSES	
Large firm	5.41%	12
Mid-size firm	11.71%	26
Small firm	27.48%	61
Solo practice	29.28%	65
Corporation	0.00%	0
Non-profit	2.25%	5
Government	20.27%	45
Other (please specify)	3.60%	8
TOTAL		222

#	OTHER (PLEASE SPECIFY)	DATE
1	court	7/24/2025 4:27 PM
2	Not Applicable....I am retired.	6/23/2025 3:17 PM
3	judicial branch	6/23/2025 3:09 PM
4	solo sharing space with 12 other solos	6/10/2025 10:54 AM

Council On Court Procedures Survey 2025

5	Retired	6/9/2025 5:52 PM
6	There are 35 lawyers in my firm. "large" or "small" depends if you are comparing nationally, just in Oregon, or in a rural area.	6/9/2025 4:24 PM
7	judge	6/9/2025 3:19 PM
8	judicial branch	6/9/2025 2:24 PM

MEMO

To: Council on Court Procedures

From: Rule 67/Judgments Committee

Date: 10/1/25

Re: First Meeting

The committee met via Zoom on October 1, 2025, for its first meeting. Kekel, Peterson, and Spooner were present. McIver was absent.

The proposal before the committee is to require a form of judgment to summarize at the outset any prior judgments that have been entered in the case. In cases presenting multiple claims and parties, especially with entry of some limited judgments in advance of the general judgment, such a summary is thought to assist court staff in routing the judgment form to the correct judge and for the judge to more readily confirm that the general judgment resolves all claims as to all parties. Such a requirement will impose a modest amount of additional work for the judgment drafter but has the benefit of confirming that the judgment document does not omit any claims or parties.

The form of judgments is substantially dictated by statute, specifically ORS18.035-18.058. For civil actions, ORS 18.038 and 18.042 are most applicable. There would appear to be nothing in chapter 18 that would preclude a requirement of a short history of any previous judgments in a particular action. Indeed, a common form of judgment will begin with “this case came on regularly for trial with or without a jury before judge _____.” It would seem that requiring a listing of any previously entered judgments would not be prohibited by anything in chapter 18.

Section B of Rule 67 refers to actions in which there are multiple claims, multiple parties, or both. Therefore, making the existing section B a subsection and adding a second subsection may be a logical placement. Attached are two versions of a subsection B(2) for discussion.

1 JUDGMENTS

2 RULE 67

3 **A Definitions.** "Judgment" as used in these rules has the meaning given that term in ORS
4 18.005. "Order" as used in these rules means any other determination by a court or judge that
5 is intermediate in nature.

6 *[B Judgment for less than all claims or parties in action. When more than one claim for*
7 *relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third party*
8 *claim, or when multiple parties are involved, the court may render a limited judgment as to one*
9 *or more but fewer than all of the claims or parties. A judge may render a limited judgment*
10 *under this section only if the judge determines that there is no just reason for delay.]*

11 **B Judgment for less than all claims or parties in action.**

12 **B(1) When more than one claim for relief is presented in an action, whether as a claim,**
13 **counterclaim, cross-claim, or third party claim, or when multiple parties are involved, the**
14 **court may render a limited judgment as to one or more but fewer than all of the claims or**
15 **parties. A judge may render a limited judgment under this section only if the judge**
16 **determines that there is no just reason for delay.**

17 **B(2) A party submitting a form of judgment must recite in the first paragraph of the**
18 **judgment any judgment that was previously entered in the action that has not been**
19 **vacated and the date of entry of each judgment. A supplemental judgment must recite**
20 **only the date of entry of the general judgment and any judgment entered thereafter in**
21 **the action.**

22 **C Relief granted.** Every judgment shall grant the relief to which the party in whose favor
23 it is rendered is entitled. A judgment for relief different in kind from or exceeding the amount
24 prayed for in the pleadings may not be rendered unless reasonable notice and opportunity to
25 be heard are given to any party against whom the judgment is to be entered.

26 **D Judgment in action for recovery of personal property.** In an action to recover the

1 possession of personal property, judgment for the plaintiff may be for the possession of the
2 property, or for the value of the property in case a delivery cannot be had, and for damages for
3 the detention of the property. If the property has been delivered to the plaintiff and the
4 defendant claims a return of the property, judgment for the defendant may be for a return of
5 the property, or the value of the property in case a return cannot be had, and damages for
6 taking and withholding the property.

7 **E Judgment in action against partnership, unincorporated association, or parties jointly**
8 **indebted.**

9 **E(1) Partnership and unincorporated association.** Judgment in an action against a
10 partnership or unincorporated association that is sued in any name that it has assumed or by
11 which it is known may be entered against that partnership or association and shall bind the
12 joint property of all of the partners or associates.

13 **E(2) Joint obligations; effect of judgment.** In any action against parties jointly indebted
14 upon a joint obligation, contract, or liability, judgment may be taken against less than all of
15 those parties and a default, dismissal, or judgment in favor of or against less than all of those
16 parties in an action does not preclude a judgment in the same action in favor of or against the
17 remaining parties.

18 **F Judgment by stipulation.**

19 **F(1) Availability of judgment by stipulation.** At any time after commencement of an
20 action, a judgment may be given upon stipulation that a judgment for a specified amount or for
21 a specific relief may be entered. The stipulation shall be by the party or parties against whom
22 judgment is to be entered and the party or parties in whose favor judgment is to be entered. If
23 the stipulation provides for attorney fees, costs, and disbursements, they may be entered as
24 part of the judgment according to the stipulation.

25 **F(2) Filing; assent in open court.** The stipulation for judgment may be in a writing signed
26 by the parties, their attorneys, or their authorized representatives. That writing shall be filed in

1 accordance with Rule 9. The stipulation may be subjoined or appended to, and part of, a
2 proposed form of judgment. If not in writing, the stipulation shall be assented to by all parties
3 thereto in open court.

4 **G Judgment on portion of claim exceeding counterclaim.** The court may direct entry of a
5 limited judgment as to that portion of any claim that exceeds a counterclaim asserted by the
6 party or parties against whom the judgment is entered, if the party or parties have admitted
7 the claim and asserted a counterclaim amounting to less than the claim.

1 JUDGMENTS

2 RULE 67

3 **A Definitions.** "Judgment" as used in these rules has the meaning given that term in ORS
4 18.005. "Order" as used in these rules means any other determination by a court or judge that
5 is intermediate in nature.

6 *[B Judgment for less than all claims or parties in action. When more than one claim for*
7 *relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third party*
8 *claim, or when multiple parties are involved, the court may render a limited judgment as to one*
9 *or more but fewer than all of the claims or parties. A judge may render a limited judgment*
10 *under this section only if the judge determines that there is no just reason for delay.]*

11 **B Judgment for less than all claims or parties in action.**

12 **B(1) When more than one claim for relief is presented in an action, whether as a claim,**
13 **counterclaim, cross-claim, or third party claim, or when multiple parties are involved, the**
14 **court may render a limited judgment as to one or more but fewer than all of the claims or**
15 **parties. A judge may render a limited judgment under this section only if the judge**
16 **determines that there is no just reason for delay.**

17 **B(2) The first paragraph of any form of judgment submitted by a party must recite any**
18 **previous judgment entered in the action that has not been vacated and the date of entry**
19 **of each such judgment. A supplemental judgment must recite only the date of entry of**
20 **the general judgment and any judgement entered in the action thereafter.**

21 **C Relief granted.** Every judgment shall grant the relief to which the party in whose favor
22 it is rendered is entitled. A judgment for relief different in kind from or exceeding the amount
23 prayed for in the pleadings may not be rendered unless reasonable notice and opportunity to
24 be heard are given to any party against whom the judgment is to be entered.

25 **D Judgment in action for recovery of personal property.** In an action to recover the
26 possession of personal property, judgment for the plaintiff may be for the possession of the

1 property, or for the value of the property in case a delivery cannot be had, and for damages for
2 the detention of the property. If the property has been delivered to the plaintiff and the
3 defendant claims a return of the property, judgment for the defendant may be for a return of
4 the property, or the value of the property in case a return cannot be had, and damages for
5 taking and withholding the property.

6 **E Judgment in action against partnership, unincorporated association, or parties jointly**
7 **indebted.**

8 **E(1) Partnership and unincorporated association.** Judgment in an action against a
9 partnership or unincorporated association that is sued in any name that it has assumed or by
10 which it is known may be entered against that partnership or association and shall bind the
11 joint property of all of the partners or associates.

12 **E(2) Joint obligations; effect of judgment.** In any action against parties jointly indebted
13 upon a joint obligation, contract, or liability, judgment may be taken against less than all of
14 those parties and a default, dismissal, or judgment in favor of or against less than all of those
15 parties in an action does not preclude a judgment in the same action in favor of or against the
16 remaining parties.

17 **F Judgment by stipulation.**

18 **F(1) Availability of judgment by stipulation.** At any time after commencement of an
19 action, a judgment may be given upon stipulation that a judgment for a specified amount or for
20 a specific relief may be entered. The stipulation shall be by the party or parties against whom
21 judgment is to be entered and the party or parties in whose favor judgment is to be entered. If
22 the stipulation provides for attorney fees, costs, and disbursements, they may be entered as
23 part of the judgment according to the stipulation.

24 **F(2) Filing; assent in open court.** The stipulation for judgment may be in a writing signed
25 by the parties, their attorneys, or their authorized representatives. That writing shall be filed in
26 accordance with Rule 9. The stipulation may be subjoined or appended to, and part of, a

1 proposed form of judgment. If not in writing, the stipulation shall be assented to by all parties
2 thereto in open court.

3 **G Judgment on portion of claim exceeding counterclaim.** The court may direct entry of a
4 limited judgment as to that portion of any claim that exceeds a counterclaim asserted by the
5 party or parties against whom the judgment is entered, if the party or parties have admitted
6 the claim and asserted a counterclaim amounting to less than the claim.

**Council on Court Procedures
2025-2027 Biennium
Survey Results - Rule Proposals**

*Remainder to be
discussed at
October meeting*

Category	Topic	Rule(s) Mentioned	Staff Notes	Suggestion
Ex Parte				I would like to see uniformity regarding what constitutes an appropriate ex parte submission. This is currently left to the SLR's, which are vague which makes things uncertain. I see attorneys submitting things ex parte that really should be due to the grey areas.
General	"How To" Guides		ORCP 69 C ORCP 69 D	I think it would be helpful for there to be published "how to" guides that walk through the steps needed to accomplish certain tasks like, filing for default, motions to strike, allow for service by email when defendants reside outside the country, etc. With links to the rules that require X procedure or filing of a document, because the rules can be very unclear and reference a certain
General	Clarity			More definitions and less ambiguity would be helpful.
General	Clarity			Simplification and modernization of the ORCP.
General	Federalization		UTCR 5.010 FRCP 26 FRCP 6(c)	In general, I believe that the rules should more closely mimic the federal rules of civil procedure, particularly regarding discovery and timing of motions practice.
Guardians ad litem		ORCP 27	ORCP 27 E ORCP 27 F	ORCP 27 does not contain any disqualifiers that prevent someone from serving as a GAL. Those who ask to be a GAL should be required to disclose their criminal histories, any serious mental health conditions, and any potential conflicts with the interest of the person they seek to represent. Perhaps the rule should be modified to create threshold disqualifiers.
Joinder	FED cases	ORCP 24 B		ORC 24B is confusing. The words "rental due" may mean the rental property itself, or the rent paid. Also, the timeline topic may not take into account recent law changes that focus directly on the link between eviction cases and rent issues. This section of the rule may need to be deleted or modified.
Offers of Judgment			ORCP 54 E	Offer of Judgment Rule should reverse attorney fees if not accepted.
Pleadings	Motion to amend for punitive damages		ORS 31.725	Remove motion to amend for punitive damages. Time intensive and burden on attorneys and the courts.
Pleadings			ORCP 23 A FRCP 15(a)(1)	I would like to see Oregon follow the FRCP change to allow one amendment to a complaint "of right" regardless of whether or not an answer has been filed. This improves efficiency and reduces gamesmanship. There is no good justification to deny one amendment of right.
Receivership Cases			ORCP 80 ORCP 81 ORCP 82	The ORCPs should include much more detailed rules governing receivership cases
Remote Appearance			UTCR 5.050 CJO 23-028	It would be extremely helpful if the ORCP codified the ability of attorneys/parties to appear via remote methods for any kind of hearing or appearance. Thank you!

**Council on Court Procedures
2025-2027 Biennium
Survey Results - Rule Proposals**

*Remainder to be
discussed at
October meeting*

Category	Topic	Rule(s) Mentioned	Staff Notes	Suggestion
Remote Testimony, Discovery, Depositions			ORCP 39 ORCP 58	Rules for remote testimony, discovery, and depositions should be updated.
Security Bonds		ORCP 82 ORS 19		The ORS Chapter 19 could be combined with ORCP 82 or elsewhere in the ORCP to help simplify and clarify the rules concerning security and undertaking requirements on appeal.
Self-Represented Litigants	Domestic relations, discovery			Procedures related to pro se parties needs work, especially in domestic relations and discovery.
Self-Represented Litigants	Generally		ORCP 7 ORCP 9	The ORCPs work well for attorneys, but are difficult for self-represented people to navigate, especially with regard to service of process and motions. I think it would be helpful to have more pro se forms, especially with evictions and with service of process,
Self-Represented Litigants	Landlord-tenant matters, summons		ORCP 7	I would like to see an effort to reconsider some rules from the perspective of self-represented litigants. The reality is that a large volume of civil cases involves self-represented litigants (landlord-tenant matters and debt collection matters typically have at least one self-represented party). With this in mind, I would particularly like to see a revision of the Summons form.
Self-Represented Litigants	Service rules		ORCP 7 ORCP 9	Service rules DESPERATELY need to be reviewed by someone willing to see through a self-represented litigant's eyes. Preferably someone with an understanding of how the rules are used by servers (and sheriffs in particular).
Subpoenas	Allow post- judgment issuance		ORCP 55 A(1)(a)(i) ORCP 55 A(1)(b)	Specifically allow subpoenas to be issued post judgment to facilitate collection.
Summary Judgment		ORCP 47		ORCP 47 should be modified in a way that results in substantially more cases being dismissed on summary judgement.
Summary Judgment		ORCP 47 C		ORCP 47 C - Consider requiring motions for summary judgment to be filed at least 90 days before trial (to assist with scheduling).
Summary Judgment		ORCP 47	ORCP 47 E	Eliminate the ability of parties to avoid summary judgment under ORCP 47 by saying they have an expert who would testify to certain matters; parties should be required to actually offer expert evidence by affidavit or declaration
Summary Judgment		ORCP 47 E		Also, we need to eliminate ORCP 47 E, which is an affront to due process.
Summary Judgment		ORCP 47 E		(3) With the allowance of expert discovery, ORCP 47 E should be deleted.
Summary Judgment		ORCP 47 E		ORCP 47E needs to be revisited. It helps to insulate dubious claims from scrutiny in the hopes that defendants will merely settle prior to trial on the belief that the claims are stronger than they appear. It shifts the burdens of litigation almost exclusively to defendants, that when combined with Oregon's absurd negligence law subverts the truth seeking aspects of litigation in favor of quick and inflated settlements.

**Council on Court Procedures
2025-2027 Biennium
Survey Results - Rule Proposals**

*Remainder to be
discussed at
October meeting*

Category	Topic	Rule(s) Mentioned	Staff Notes	Suggestion
Summary Judgment		ORCP 47 E	ORCP 47 G	(B) Amend ORCP 47E to provide (1) a party electing to rely on an unnamed expert affidavit must specify the issue(s) on which the expert will testify to create a genuine issue of material fact, and; (2) Amend Rule 47E to provide that, if a party elects to rely on an unnamed expert affidavit under 47E and does not prevail at trial, that party is responsible for attorneys fees and costs (including expert costs) incurred by the MSJ moving party in responding to the issue(s) in the unnamed expert affidavit. A party that chooses to submit an affidavit from a named expert in responding to an ORCP 47 motion would not be subject to this rule
Timelines			UTCR 2.030	Timelines should be truncated in some cases to prevent unnecessary delay. Judges should have stricter deadlines in which to issue opinions.
Trial Practice	Expert files, work product protection	ORCP 42 [sic] ORCP 47 E ORCP 58 FRCP 26(b)(4)(c)	ORCP 43 FRCP 26(b)(4)(d)	At ORCP 42, 47E, 58, or elsewhere, Oregon's practice of requiring the production of full expert files and not extending work product protection (contra FRCP 26(b)(4)(C)) should be codified. In my last three state trials, opposing counsel was unaware of this practice, and it is not documented in any authority outside of the tradition of Oregon trial practice.
Uniform Collaborative Law Act				The Uniform Collaborative Law Act (unanimously approved by the Uniform Law Commission in 2009 when Justice Martha Walters was a member) needs to be enacted in Oregon. Family law litigants are opting out of the court process, but they are doing so by cobbling together private contracts to take the place of the ORCP and UTCRs. Adopting rule changes in Oregon consistent with the act would provide meaningful protections for these folks, making it easier to resolve family disputes outside of courts, and free the courts up to focus on other cases.
UTCR		UTCR 5.100		Fix UTCR 5.100 - creates more issues than it solves, especially with over-aggressive litigants re-litigating issues previously decided.



Shari Nilsson <nilsson@lclark.edu>

RE: New Twist on ORCP 27

Susie Norby <Susie.L.Norby@ojd.state.or.us>

Thu, Aug 29, 2024 at 1:05 AM

To: "Mark A. Peterson" <Mark.A.Peterson@ojd.state.or.us>, Shari Nilsson <nilsson@lclark.edu>

I think the policy is essentially elevating parental rights over presumptions that minors are incapacitated by age. I think I agree with that, but I haven't put a lot of thought into it.

From: Mark A. Peterson <Mark.A.Peterson@ojd.state.or.us>**Sent:** Wednesday, August 28, 2024 3:58 PM**To:** Susie Norby <Susie.L.Norby@ojd.state.or.us>; Shari Nilsson <nilsson@lclark.edu>**Subject:** RE: New Twist on ORCP 27

In addition to being questionable in the policy department, the statute could be better written. I suspected there might be such a law, but is it saying that minors can represent themselves in those three limited kinds of proceedings or that they can sign waivers and settlement agreements and the like as a part of, e.g., a filiation case?.

Mark

Mark A. Peterson

Circuit Court Judge Pro Tem

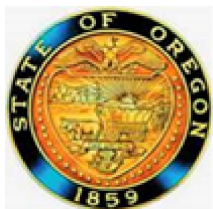
Multnomah County Circuit Court

[1200 SW First Avenue](#)

[Portland, OR 97204](#)

Office: (971) 274-0453

Email: Mark.A.Peterson@ojd.state.or.us



From: Susie Norby <Susie.L.Norby@ojd.state.or.us>**Sent:** Wednesday, August 28, 2024 3:51 PM**To:** Mark A. Peterson <Mark.A.Peterson@ojd.state.or.us>; Shari Nilsson <nilsson@lclark.edu>**Subject:** RE: New Twist on ORCP 27

Council on Court Procedures
October 11, 2025, Meeting Packet
Appendix D-4

Here's the obscure statute! But I still think ORCP 27 should refer to this situation somehow. 😊

109.112 Mother, father or putative father deemed to have attained majority. The mother, father or putative father of a child shall be deemed to have attained majority and, regardless of age, may give authorizations, releases or waivers, or enter into agreements, in adoption, juvenile court, filiation or other proceedings concerning the care or custody of the child. [1975 c.640 §10]

From: Mark A. Peterson <Mark.A.Peterson@ojd.state.or.us>
Sent: Wednesday, August 28, 2024 3:46 PM
To: Susie Norby <Susie.L.Norby@ojd.state.or.us>; Shari Nilsson <nilsson@lclark.edu>
Subject: RE: New Twist on ORCP 27

Susie,

My initial thought is that minors should not be having babies! But, I stopped handling family law cases a long, long time ago, so what do I know. This is but one example of why there should be a couple of family law lawyers on the Council who spend time in the trenches and whose vantage point is not from a perch on the bench. Seriously, I think Rule 27 B says they must have an adult in charge for the proceeding. However, there may be some obscure statute in the family law part of the ORS that points in another direction. Could use some family law practitioners. We should put this in the list of issues for next biennium's September meeting.

Mark

Mark A. Peterson

Circuit Court Judge Pro Tem

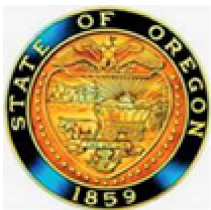
Multnomah County Circuit Court

[1200 SW First Avenue](#)

[Portland, OR 97204](#)

Office: (971) 274-0453

Email: Mark.A.Peterson@ojd.state.or.us



From: Susie Norby <Susie.L.Norby@ojd.state.or.us>
Sent: Wednesday, August 28, 2024 2:53 PM

Council on Court Procedures
 October 11, 2025, Meeting Packet

To: Shari Nilsson <nilsson@lclark.edu>; Mark A. Peterson <Mark.A.Peterson@ojd.state.or.us>
Subject: New Twist on ORCP 27

Something to put on the list for the next biennium!

Today a colleague came to see me to ask about the application of ORCP 27 to a specific Custody & Parenting Time court case.

The parties – Mother and Father to the child – are both under 18 years of age. Neither is emancipated. Neither has a GAL. My colleague asked whether he could proceed with the scheduled hearing in spite of their ages and their absence of a fiduciary of any kind.

I interpreted B(1)(a) to potentially allow a minor over 14 to apply to be his/her own GAL, if necessary. Therefore, I reasoned, my colleague should go ahead with the hearing without that odd step.

Then our (non-lawyer) Family Court Services employee advised, with assurance, that minors who are parents of a child need not have a fiduciary or GAL to proceed. So he did. But the employee did not cite us to any legal authority for her position.

The CCP may want to consider another amendment to ORCP 27 to clarify that minor parents of a child may litigate their family law cases without an adult representative.

Just thought I'd pass this on!

Susie

MEMORANDUM

TO: Council on Court Procedures

FROM: Alicia Wilson

DATE: 9/15/2025

RE: Uniform Collaborative Law Act

Included in the 2025-2027 Biennium Rule Proposals is the suggestion on adding to the ORCPs the Uniform Collaborative Law Act. Enclosed is some background information in order for the Council to review this suggestion.

Collaborative Law

This is an approach to litigation often in family law that focuses on a cooperative and negotiated divorce process as an alternative to normal court process. Collaborative practitioners are trained in this approach and there are professional standards. See the website for the Oregon Association of Collaborative Professionals for more information: <https://collaborativepracticeoregon.org/index.php>

Uniform Collaborative Law Act

The Uniform Law Commission has put forth two enactment routes for the Collaborative Law Act, one method of enactment by rule and one by statute. See <https://www.uniformlaws.org/viewdocument/enactment-kit-3?CommunityKey=fdd1de2f-baea-42d3-bc16-a33d74438eaf&tab=librarydocuments> for actual proposed rule changes and/or statutory bill language.

Key Rule Priorities

Getting feedback from actual Collaborative Law practitioners in Oregon the following are the key substantive rule priorities that would help facilitate the collaborative law approach:

- (1) **Automatic Stay** on litigation proceedings for 4-6 months when both parties agree to enter the collaborative law agreement.
 - a. Draft language would include the ability to seek lifting of the stay by judicial order

- (2) **Confidentiality** of communications and information shared during the collaborative law process.
 - a. Suggestions include making it clear that work product and communications between lawyers and the clients during the process are not later discoverable under ORCP 36
- (3) **Limited Representation:** Collaborative Law process requires the clients to both agree and the lawyers have limited representation for the time period of during the collaborative law process only. Collaborative law practitioners withdraw as attorneys for their clients if the process fails and traditional litigation process proceeds.