MINUTES OF MEETING
COUNCIL ON COURT PROCEDURES
Saturday, November 8, 2025, 9:30 a.m.
Zoom Meeting Platform

ATTENDANCE

Members Present:

Hon. Benjamin M. Bloom
Hon. Andrew Erwin
Hon. Christopher L. Garrett
Barry J. Goehler
Hon. Jonathan R. Hill
Melissa Hopkins
Ryan Jennings
Lara Johnson
Eric Kekel
Julian Marrs
Hon. Thomas A. McHill
Hon. Michelle McIver
Hon. Melvin Oden-Orr
Hon. Robert Raschio
Hon. Scott Shorr
Tom Spooner
Hon. Todd Van Rysselberghe
Bryce Whitman
Alicia Wilson

Members Absent:

Nadia Dahab
YoungWoo Joh
Derek Larwick
Michael Shin

Guests:

John Adams, Oregon Tax Court
Sean Glinka, Elevate Law Group
Kevin Sasse, Dunn Carney
Matt Shields, Oregon State Bar
Troy Sexton, Elevate Law Group
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 24 • ORCP 36 • ORCP 38 • ORCP 54 • ORCP 55 • ORCP 67 • ORCP 68	• ORCP 60 • Abusive Litigants in Probate Proceedings • Arbitration • Clarity • Civil Motion Practice • Contempt • Default Orders/Judgments • Depositions • Disclosures • Discovery • Ex Parte	• Federalization • Guardians Ad Litem • "How To" Guides • Offers of Judgment • Pleadings • Receiverships • Remote Appearance • Security Bonds • Self-Represented Litigants • Subpoenas • Summary Judgment	• Timelines • Trial Practice • Uniform Collaborative Law Act • UTCR		

I. Call to Order

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

II. Approval of September 13, 2025, Minutes and October 11, 2025, Minutes

Mr. Goehler reminded the Council that there had been a question regarding a statement made by Mr. Kekel in the September 13, 2025, minutes (Appendix A). Ms. Nilsson stated that she had double checked the recording and corrected the statement. Mr. Goehler asked whether any Council members had any changes to the revised draft minutes. Judge Peterson made three suggestions:

- Page 6, paragraph two, fourth line, change the word “wants” to “want
- Page 9, paragraph three, last full line, change the word “that emails” to “those emails”
- Page 10, first line, change “the party, through their motion,” to “the party filing the motion”

Judge Raschio made a motion to approve the draft minutes with the corrections suggested by Judge Peterson. Judge Bloom seconded the motion, which was approved unanimously by voice vote.

Mr. Goehler called the Council’s attention to the draft minutes from the October 11, 2025, meeting (Appendix B) and asked whether there were any suggestions for corrections. Hearing none, he asked for a motion to approve the minutes. Judge Oden-Orr made a motion to approve the draft minutes. Judge McHill seconded the motion, which was approved by voice vote with one abstention.

III. Administrative Matters

A. Staff Comments

This topic was carried over to the December agenda.

B. June Council Meeting

Judge Peterson explained that a conflict has arisen and that he will not be able to attend the Council meeting scheduled for June 13, 2026. After some discussion, the Council decided to change the date of the meeting to June 6, 2026.

IV. Old Business

A. Committee Reports

1. Attorney Fees/Rule 68

Mr. Goehler referred the Council to a memo from the ORCP 68 committee (Appendix C). He stated that the committee had looked at the application of the ORCP 68 procedures to a Family Abuse Restraining Order case with fees issued by an order. The case was brought to the attention of the Council by Senior Judge Eve Miller. Mr. Goehler noted that ORCP 68 is pretty explicit about when it does and when it does not apply. The committee's initial examination of the decision in question seems to indicate that the court merely applied the rule and that the decision should not be that much of a surprise. However, after the committee met and drafted the memo, Judge Peterson had shared some thoughts with Mr. Goehler and Judge Miller had also weighed in. Mr. Goehler's recommendation is for him to reach out to Judge Miller and to talk with Judge Peterson and to report back at the December Council meeting.

Judge Peterson noted that, the previous week, the, Oregon Supreme Court had accepted review of an insurance attorney fee case. He pointed out that the other suggestion received by the Council regarding ORCP 68 was in regard to insurance cases, and that it might be a good idea for the committee to take a look at that case. Mr. Goehler acknowledged that the other feedback on ORCP 68 dealt with an insurance-specific statute, ORS 742.061, but that the committee felt that was more of a statutory issue than an ORCP issue. However, he stated that could also be revisited.

2. Judgments/Rule 67

Mr. Kekel apologized for missing the October Council meeting and thanked Judge Peterson for reporting on behalf of the committee. He referred the Council to the two draft versions of Rule 67 that the committee had previously shared (Appendix D), both of which add a new subsection B(2) to address what has happened to other parties when there is a multiple-party case and one party is seeking entry of a general judgment.

Judge Peterson reminded the Council that the two versions are essentially the same, with one just using more passive language that he feels reads better. He noted that Mr. Joh had expressed concern at the last Council meeting that the language was not clear and that it could be interpreted to mean that the substance of each prior judgment needed to be included in the general judgment. Judge Peterson stated that this is not the intention and that the language could be tweaked to make the intention more clear.

Judge Peterson stated that it would be helpful to hear feedback from the Council about whether the words "limited judgment" and date of entry are sufficient or whether the judge who made the ruling should also be included, as well as any parties who were directly affected, such as parties that were dismissed in the limited judgment of dismissal. Mr. Goehler agreed that it would be helpful to pin down exactly what information is desired.

Judge Bloom noted that domestic relations cases and probate matters typically have a lot of limited judgments entered prior to the final judgment, so he wondered how this change would affect those cases, to the extent that the ORCP apply to them. He asked if there would be a carve-out for those cases. Mr. Kekel stated that he has not practiced much in that area and agreed that this is definitely something to consider. Judge Bloom stated that, as a practical matter, it could be helpful to the bench to list prior judgments when there are different judges handling cases and there are many. This could also be helpful to parties.

As a public member, Mr. Whitman asked for a better understanding of why one would not want to include the judges or the other parties that were originally listed on the case. Judge Peterson thanked Mr. Whitman for his question and for the opportunity to explain further. He stated that it is helpful to indicate any previous judgments and their dates. Including the names of judges who signed any previous judgment would probably be more helpful. Noting that certain parties had been dismissed would be even more helpful. However, the trade-off is how to keep all of this information in a relatively short paragraph that provides useful information but does not become overly burdensome.

Judge Peterson recalled that the issue of caption amendment had come up at the previous Council meeting. He noted that there was agreement that amending the caption to reflect parties added to or dismissed in a case can be done by court order, but he wondered about the practical process. If there is a named plaintiff or a named defendant who is no longer in the case, are those names removed from the caption, or should they be left in with some kind of indication that they have been replaced by someone else? He noted that judges and staff typically call cases by the named parties, not by case numbers, so it can be confusing if a case name changes midstream, so to speak. Judge Peterson pointed out that, in the appellate arena, they use the name of the original party, *sub nom*, and then the new party, but that does not quite apply in the trial court. Mr. Goehler stated that he thinks that this issue might even go beyond judgments and reach into the pleading rules. It is an issue that sometimes has inconsistent application. Judge Peterson noted that Rule 34 covers substitution of parties, and that might be the proper place for it. He stated that he has been pondering the issue since it came up at the last meeting because it does come up in cases before him. Judge Bloom stated that the parties listed in the caption cannot just be changed and parties just be substituted; a motion to modify must be filed. He noted that it is not popular, but he requires a motion to modify and

an amended pleading.

Mr. Jennings stated that his belief is that captions should accurately reflect who is currently in the case. When a motion to dismiss a party is filed, the caption is more of a summary than it is a substantive part of the case, because dismissals happen frequently. At trial, nobody wants parties that are no longer in the case in the caption. A multi-party lawsuit with three parties in the caption is really just suing three parties; it is like three separate lawsuits, so, to leave dismissed parties in the caption seems strange. He stated that it almost seems like it should just be a rule that it is automatic that, after an order is entered where a party is dismissed, the caption must change and be current.

Pivoting back to judgments, Judge Hill agreed with Judge Bloom that, in terms of volume, domestic relations cases could be impacted by this kind of change to Rule 67. A custody case, for example, could go on for 18 years, which could result in many, many judgments. In application, it could be, frankly, a lot of work for the practitioner as well. While he does think that the amendment to Rule 67 could be helpful, he expressed concern about the implications for the workload of domestic relations practitioners and self-represented litigants.

Mr. Spooner stated that, with regard to how much information is included, from his perspective this will lie with the preference of the bench and the bench's staff, who will derive most of the benefit from this information. He thought that the bare minimum would be sufficient, listing prior judgments and the dates of them, since it is possible to look them up in the case register to determine what they are for, who is being dismissed, and which judge signed them. If the bench thinks, that it would be helpful to have more information to eliminate that task, that makes sense to him.

Ms. Wilson stated that, when she was a domestic relations practitioner, she often needed to look back at prior judgments to determine whether a new judgment would affect the other ones. For example, custody might be changing, but no-contact provisions from the same judgment might be left in place. She stated that she actually does not think that it would be a huge burden and that it would actually help in terms of clarity for everyone.

Judge Erwin stated that he was not sure how helpful such a change truly would be to judges. He noted that it would depend on the court. Personally, he has a judge's edition PDF reader that he can use when he opens a case to open every judgment from that case. He does that for every case he deals with. He stated that he does appreciate the comments about domestic relations and probate cases and the large number of judgments that can exist there. That could make the first several pages of every judgment document useless to him, personally. He agreed that it could be useful to other judges and staff who do not use the PDF reader feature.

Mr. Jennings noted that Ms. Nilsson had asked a good question in the comments: was the actual goal of the suggestion in the first place just knowing who had been dismissed already? He stated that coming back to the problem we were trying to solve could be helpful in narrowing what might be required in the judgment. Judge Peterson stated that the staff that handles the civil judgments that are submitted in Multnomah County reported that it is a challenge for them to determine whether a judgment covers all issues and all parties, and to whom it should be routed. That was the original problem, and it seemed to him that, as a matter of practice, attorneys should want to make sure that they have covered all of the claims and all of the parties, and that there are no inconsistencies.

Judge Oden-Orr proposed the following language to help clarify the draft proposed by the committee:

> ". . .date of entry of each such judgment, and a brief summary of the effect of the judgment."

Judge Peterson noted that he has very seldom dealt with probate cases. However, he has become aware that there is a statute that makes certain ORCP applicable in probate and certain ORCP not. It might be possible to solve the problem of listing an inordinate number of judgments in probate cases by making the new subsection B(2) inapplicable to probate cases.

Mr. Goehler thanked the Council for the discussion and the committee for its work. He asked Council members to think further about the issue and stated that he looked forward to hearing the next committee report at the December meeting.

3. Service/Rules 7, 9, & 10

Judge Raschio reported that the committee had met and invited two of the lawyers who had made suggestions regarding service to attend that meeting. He stated that one of his takeaways was that there is some consideration to be done about whether or not the 3-day mailbox rule (ORCP 10 B) still needs to exist in Oregon's modern service process. One of the lawyers who attended the meeting expressed concerns that the three days are just being used as a tool of litigation delay and causing additional expenses to parties. It is a valid question that needs to be addressed by the committee. Another question is whether to make the email service rules post-summons more robust and create better accountability on both ends of that for how items are getting served, and whether attorneys should be encouraged to use that type of service to drive down litigation costs.

Mr. Spooner stated that it seemed that the bigger issue for both of the attorneys who attended the committee meeting was the 3-day rule that is

currently in the ORCP that applies to service by any means other than personal service. He stated that his recollection is that the rule originated with mailing and delays in mailing but, the way the current rule is written, it applies to facsimile transmission and email. Secondary concerns were clarifying e-service and email service and looking at the way the FRCP is written on service versus the current ORCP.

Judge Raschio stated that the committee would report again after its next meeting.

4. Third Party Practice/Rule 22

Mr. Kekel reported that the committee had been unable to meet, but that it would do so prior to the next Council meeting.

5. Joinder/Rule 24

Judge Peterson reminded the Council that the issue in question was raised by former Council member Judge Susie Norby. He noted that Rule 24 has not been modified since it was originally promulgated, and the language in question is not only imprecise, but also probably incorrect. Judge Peterson stated that the most recent change to the Oregon Residential Landlord-Tenant Act (Act) had defined non-payment much more clearly. It includes rent, utilities, late fees, and other fees provided by ORS 90.302 and other statutes, or the rental agreement. He pointed out that the eviction process is a summary process. If a plaintiff is entitled to bring a claim for some other relief, other than possession of the property, including it in the summary eviction process would be problematic, given the speed with which the process proceeds. A plaintiff can join their other claims, but that would convert it to a regular civil case. In the memo to the Council (Appendix E), Judge Peterson noted that the statute says that a judgment is only for possession of the premises. There are two other statutes within the Act that make it quite clear that for two specialized areas, return of personal property and return to a group home, the only issue that can be raised is possession. Any side issues must be raised separately in a different action. It is true that the defendant can enlarge the jurisdiction in a residential eviction case by filing counterclaims, which can cause the plaintiff to lose a little bit of control of their case. The intent of the draft amendment to section B is to make it more clear that, if you bring an action for possession, you get the benefit of the very summary procedure and, if you want to bring an action for possession plus any kind of other relief, injunctive or monetary, you will proceed on the regular civil track.

Judge Oden-Orr stated that he had reviewed Judge Peterson's proposed changes to Rule 24 and thought they had the effect that he just mentioned of making it clear that, if you join claims, you are out of the FED world in terms of

summary determination. Mr. Goehler stated that he believed that was the original intention, but it would be nice to bring the rule up to date and have it be accurate in terms of what kinds of other claims may be involved. He stated that he did not think that the Council was ready to vote on the rule. His suggestion was to ponder the issue some more and look at the statutes and consider any unintended consequences.

Judge Oden-Orr stated that there may be value in getting input from regular landlord-tenant practitioners. Judge Hill agreed. Judge Peterson stated that he would be happy to reach out to some of the lawyers who appear frequently in landlord-tenant court in Multnomah County to get their opinions.

Judge Peterson noted that he and Judge Oden-Orr were the only two people working on this issue; a true committee had not been formed. He asked for volunteers to join a formal committee. Mr. Whitman stated that his business relates to landlord-tenant matters and that he would be happy to join a committee. Mr. Goehler also joined the committee.

B. Suggestions for Amendments to the ORCP

1. ORCP 38 C

Mr. Goehler stated that Kevin Sasse, an attorney from Dunn Carney, was present at the meeting to explain further his suggestion regarding ORCP 38 C. Mr. Sasse thanked the Council for giving him the opportunity to speak about the issue. He stated that the issue seems to be rare, which may be why it is has not come up a lot. ORCP 38 C governs depositions in Oregon for matters pending in other states, and the relevant related Uniform Trial Court Rule (UTCR) is 5.140. He explained that there is an expedited procedure under UTCR 5.140(1) and a more lengthy procedure that requires an ex parte appearance in UTCR 5.140(2).

In the issue that came up for his firm, they were local counsel for a matter that was pending in Missouri, which is one of the very few jurisdictions that has not enacted the Uniform Interstate Depositions and Discovery Act (UIDDA). Depositions were going to be taken in Oregon. Although the first couple of subpoenas for depositions were actually issued by the court under UTCR 5.140(1), the court refused to issue the last subpoena and required them to undertake the procedure in UTCR 5.140(2) and appear in person at ex parte. Mr. Sasse noted that the process was not particularly painful. However, considering that subpoenas had been previously issued under the more expedited procedures, he looked at the both the ORCP and the UTCR. It was not clear to him that there is actually a limitation in either ORCP 38 C or UTCR 5.140 that requires the other jurisdiction in which the matter is pending to have also enacted the UIDDA. He observed that there are some jurisdictions that actually do impose such a requirement, such as West Virginia, where it is contained in a

statute which specifies that, as long as the foreign jurisdiction is also subject to the UIDDA, the expedited procedure is allowed. Mr. Sasse stated that he thought this may be what ORCP 38 C(6) might be implying with the following language:

> In applying and construing this section, consideration shall be given to the need to promote the uniformity of the law with respect to its subject matter among states that enact it.

However, that was unclear to him. In addition, UTCR 5.140(1) and 5.140(2) state that, in trying to determine which one applies, one should look at whether the matter is pending in a state as defined in ORCP 38 C, but that is defined broadly and Missouri qualifies under that definition. Mr. Sasse stated that he is not taking a position on exactly what the fix might be, but stated that the situation is confusing so some clarity would be helpful.

Mr. Goehler stated that he has not dealt with this situation personally; however he agreed that it does not seem very clear and stated that this may be a good rule to look at and clarify. He asked whether the Council is interested in forming a committee. Judge Peterson stated that, if the ORCP and UTCR are inconsistent, it is something that should be addressed. Ms. Wilson agreed to join and chair a committee. Judge McHill also joined the committee. Mr. Goehler thanked them for taking a preliminary look and stated that additional committee members could be added if needed. Judge Peterson noted that there are many Council members who have not yet joined a committee. He encouraged them to take a look at the committees that have been formed and to join any that interest them. Mr. Goehler agreed that the committees are where the hard work of the Council happens and also encouraged members to join committees.

2. Post-Judgment Subpoenas

Mr. Goehler introduced attorney Troy Sexton and asked him to give more details about the issue regarding post-judgment subpoenas that he had brought before the Council. Mr. Sexton referred the Council to the memo he had submitted (Appendix F). He hoped that the citations in the memo would be helpful to Council members in understanding the issue.

Mr. Sexton stated that, after he obtains a judgment, judgment debtors are many times not very cooperative. The issuance of third-party subpoenas is an extremely helpful tool for finding assets that have been transferred or bank account information in order to ensure compliance with the judgment and to limit costs. ORS 18.268 explicitly allows for the issuance of subpoenas in aid of execution of judgments. However, there is no further connection with how those subpoenas get issued. He then looks to ORCP 55, the subpoena rule. The language in ORCP 55, though, presumes that a claim has to be pending. The

general discovery rules also refer to discovery being available in aid of claims and defenses, not in execution of a judgment. Mr. Sexton explained that some practitioners and some judges argue that post-judgment subpoenas are not allowable. Therefore, there is a clash between a statute saying post-judgment subpoenas to examine witnesses are allowed and ORCP saying that subpoenas can only be issued when a claim is pending or in aid of discovery for a claim or defense.

Mr. Sexton clarified that the bar books regarding this issue make it clear that the longstanding practice has been to issue post-judgment subpoenas in aid of collections. He stated that he has issued many of these and, for the most part, they go uncontested. If they do get contested, it is a rare event where that contest is successful. However, in his view, if this is the practice and it is endorsed by statute, any potential roadblocks to the practice should be eliminated. If there is a question of the scope, or who can issue a subpoena, or to whom a subpoena should be issued, those are perfectly appropriate questions to bring before the court, but the basic issue of whether or not this type of discovery is allowable should not be. His proposal would be to take language from FRCP 69 ("if a tool of discovery is available to a party pre-judgment, it is available post-judgment") and insert similar language limited to subpoenas into ORCP 55.

Mr. Goehler asked whether the problem is with ORCP 36 that says that the discovery has to be relevant to a claim or defense, or whether it is with ORCP 55. Mr. Sexton stated that his experience has been that most people have objected on the basis of ORCP 55. He noted that there is case law that says that the language in ORCP 36 is limited to the scope of discovery, rather than the ability to discover. He stated that people are able to point to the post-judgment subpoena statute, ORS 18.268, that refers to issuing subpoenas to examine witnesses, and state that a subpoena to obtain documents cannot be issued. He gave the example of a judgment debtor who rents property. He would send a subpoena to their landlord asking for payment records to find out their bank account information for later garnishment. There is no need to haul a landlord into court for a debtor's exam hearing to ask them how the debtor pays their rent. More efficient document discovery is a much more cost-efficient for everybody.

Mr. Jennings suggested that a simple fix might be to state that a claim is still pending until a judgment is satisfied or there is a general judgment of dismissal filed. He stated that he may just be ignorant of how the rules work but, to his mind, the claim is still pending until the judgment is satisfied. Mr. Sexton stated that would be one possible workaround. It would satisfy a lot of the arguments, but maybe not all of them. It does not address the issue about whether subpoenas are explicitly available for a subpoena duces tecum rather than for examining witnesses.

Judge Peterson thanked Mr. Sexton for the memo, which is very helpful in explaining the issue and suggesting specific potential fixes. He stated that it seems clear to him that the court has authority to render judgments and, also, to enforce its judgments. He noted that the Council had amended Rule 68, adding subsection C(7), to make it clear that a litigant can collect attorney fees post-judgment on their collection and enforcement efforts. He stated that, between the statute that Mr. Sexton cited and common sense, it seems clear to him that the court has jurisdiction. He appreciated Mr. Sexton's discussion about administrative closure as opposed to loss of jurisdiction. It seems to him that there may be a simple fix to this, perhaps the one Mr. Sexton suggested or amendments to both Rule 36 and Rule 55. Mr. Sexton stated that he had attempted to craft a simple solution, but that he would not claim that his solution was the perfect one. He was not certain of the potential consequences of a modification to Rule 36 or Rule 55.

Judge Bloom stated that he would be willing to join a committee to take a look at the issue. He observed that Mr. Sexton's suggestion seems to make sense, but stated that he would want to look at potential unintended consequences, including the potential of exposing people not related to the action to subpoenas in what has essentially become a closed case. Judge Erwin, Judge Hill, Ms. Johnson, Mr. Marrs, Judge Peterson, and Mr. Whitman also joined the committee, with Mr. Whitman chairing.

V. New Business

A. Motions within Responses

Judge Peterson explained that attorney Brandon McKay had written to the Council (Appendix G) regarding the issue of motions combined within a response to a motion, wondering if that was allowed under the ORCP. Mr. McKay had suggested that this practice is confusing and can interfere with deadlines, and he pointed to Local Rule 7.1 for the Federal District of Oregon, which states that every motion must concisely state the relief sought, and be listed in a separate section, and that motions may not be combined with any response, reply, or other pleading.

Judge Peterson noted that, in the email exchange, he stated that, if one cannot include a motion in a response, one could simply file the motion contemporaneously with the response. However, because the exchange caused him to ponder a bit, he wanted to bring it before the Council to see if anyone had experience with this issue and whether any action needs to be taken.

Mr. Goehler stated that he has sometimes found that the federal rules tend to create more pleadings and more paper rather than getting to the issue. A motion to dismiss with an alternate motion to strike is something that comes up in initial pleadings. Saying that only one thing can be done at a time and requiring a separate motion to dismiss

and motion to strike does not make sense from a practice perspective. However, that is just his experience.

Judge Oden-Orr pointed out that motions within responses are actually fairly typical. In addition to motions in the alternative, a response to a motion often includes a motion to strike something that was in the moving papers. In a response, there is often a request for leave to amend. He opined that Oregon's current practice is pretty efficient.

Mr. Goehler stated that there may be issues about timing of responses and who gets the last word; however, filing separately will not change those times. Mr. Spooner noted that this also occurs in motions for summary judgment where a responding party files a cross-motion for summary judgment with their response. Mr. Goehler stated that this is also the nature of counterclaims and contingent counterclaims. Judge Shorr stated that the only issue that he could see, which may already be addressed in the UTCR, is that the motion should be separately stated in the caption and denominated, and not hidden within a paragraph, just so everyone understands what is at issue.

The Council did not feel the need to create a committee to look at this issue.

B. E-Mail Service

Judge Peterson raised an issue that was not precisely new business, but was something for the Rule 7, 9, and 10 committee to think about. He pointed out that, after the signature line in Mr. McKay's email regarding the issue discussed in Item V.A., there is a disclaimer that states, in part:

> "Pursuant to ORCP 9G this firm does NOT consent to service under Oregon Rules of Civil Procedure by e-mail."

Mr. Goehler stated that he had noticed that as well. He pointed out that this does not mean that they *cannot* be served by email. It means that service is not automatic upon sending. He stated that perhaps part of what the committee can do is make sure that Rule 9 is crystal clear so that everybody knows what the effect of this disclaimer is. Judge Peterson agreed and stated that he believes that the committee has its work cut out for it to create this clarity.

C. Offers of Compromise

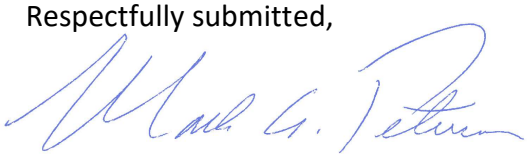
Judge Peterson again raised an issue that was not exactly new business, but related back to the Council's prior decision not to form a committee related to offers of compromise under Rule 54 E. He wanted to clarify for Council legislative history that the person making the suggestion did not just want to "make attorney fees reciprocal," but to change the language in the rule to say that not only does the party that did not accept the offer of judgment not get attorney fees after the offer that they did not beat was made, but also that the other side should get attorney fees from that point forward

as well as costs. He stated that he just wanted to make sure that the Council said that it was not forming a committee on what the suggestor was asking it to form a committee on: to shift not only costs, but attorney fees, so that the party that declined the offer would then be subject to both court costs and attorney fees for rejecting the offer. He stated that he did not even know that the Council had the authority to do this. Mr. Goehler agreed and stated that the conclusion was that anything dealing with reciprocity of fees would need to be a statutory change.

VI. Adjournment

Mr. Goehler adjourned the meeting at 10:51 a.m.

Respectfully submitted,



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 UTCR 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 wants 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 (UTCR) 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 UTCR, 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 an 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 themself 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, and engineering issues. 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.

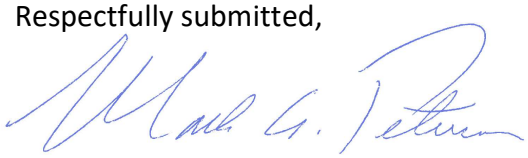
XI. Adjournment

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

DRAFT 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 they 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.

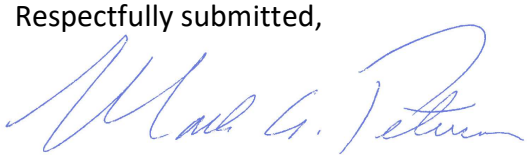
VII. Adjournment

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,



Hon. Mark A. Peterson
Executive Director

ORCP 68 Committee Report

The ORCP 68 Committee (Judge Scott Shorr, Barry Goehler, and Tom Spooner) met on 10/31/25. The purpose of the committee was to address the following feedback: "In light of A.N.A. v Alexander, 336 Or App 369 (2024) clarify whether Rule 68 does not apply to attorney fee requests for all orders; for example, after a judge rules on a motion brought for relief pursuant to ORCP 71." We reviewed the case, applicable statute (ORS 107.716(3)(b)), and ORCP 68. ORCP 68C(1) provides that the rule applies to all attorney fee awards except those where fees are awarded as damages, where fees are awarded by order, or where a statute provides a different specific procedure. The consensus is that we do not see a need to remove the exception for orders, as that fulfills a purpose specific to the order and not as part of a general judgment. There may be other circumstances where fees are awarded by order, such as ORCP 46A(4). The rule is clear as to when it does or does not apply and the rules procedures are well established. Additionally, it was noted that any fee award would be subject to ORS 20.075. Accordingly, the recommendation is that no further action be taken.

The committee also addressed comments relating to ORS 742.061, which allows for attorney fees in first party insurance cases. We concluded that any issue with "proof of loss" or other aspects of ORS 742.061 could not be resolved by changes to ORCP 68.

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.

JUDGMENTS

RULE 67

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

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

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

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

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

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

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

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

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

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

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

F Judgment by stipulation.

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

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

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

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

JUDGMENTS

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

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

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

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

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

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

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

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

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

MEMO

To: Council on Court Procedures

From: Judge Peterson

Date: 10/26/25

Re: ORCP 24

In response to the Council's biennial survey of the bench and relevant sections and committees of the Oregon State Bar, a judge and former Council member suggested that section B of Rule 24 on joinder of claims, as written, is confusing and may not reflect recent amendments the Legislature has made to Oregon's landlord and tenant laws. The suggestion was to review section B for amendment or deletion.

The existing language is imprecise. And outdated. Section B describes joinder of a claim for forcible entry and detainer and a claim for "rent due." Per HB 2001 (2003), codified as relevant in ORS 90.395, 105.135(2)(a)(B) and (d), and ORS 105.137(6), cases involving "nonpayment" are handled differently in terms of scheduling. "Nonpayment" is defined and includes more than rent. *See*, ORS 90.395(a) and (b). "Nonpayment" includes rent, late charges, utility or service charges, or any other charge or fee describe in the rental agreement or in several statutes including ORS 90.302, but not including payments required to cure damages alleged to have been caused by the tenant. So, under the current language of Rule 24, a plaintiff could join an action for possession with a claim for unpaid utility charges, for example. Or, some kind of equitable relief. Such joined claims are not a part of the summary FED procedures that require an appearance as soon as seven days following the judicial day following the filing of the complaint and trials no later than 15 days following the first appearance hearing in cases not involving "nonpayment." The FED statutes do not explicitly speak to a plaintiff joining other claims with a claim for possession of the real property but do, in at least two instances, make clear that a plaintiff **cannot** expand the scope of relief and remain on the summary FED track from the filing of the complaint until trial. *See*, ORS 105.112(2)(f) related to a tenant's claim for return of personal property and ORS 105.121(2)(g) related to an ousted tenant's claim to regain possession of a dwelling unit in a group home. *See also*, ORS 105.145(1) providing that a successful plaintiff is entitled to a judgment for possession of the premises.

Deleting section B is an option but that could signal the sense of the Council that a plaintiff can join other legal or equitable claims with a claim for possession and be allowed to use the summary FED process. There are occasional plaintiffs that attempt to file FED claims with other legal or equitable claims but the FED forms from OJD limit the number of such filings as there is no place in the complaint for adding such claims. *See* ORS 105.124 (form of complaint). It may be useful to have a clear directive, e.g., in the joinder rule, that clearly precludes such joinder.

JOINDER OF CLAIMS

RULE 24

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

B Forcible entry and detainer [*and rental due.*] actions. If a claim of forcible entry and detainer and a claim for [*rental due*] **any other legal or equitable relief** are joined, the defendant shall have the same time to appear as is provided by rule or statute in **civil** actions [*for the recovery of rental due.*] **and the action is not governed by the provisions of ORS 105.100 to 105.168.**

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

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MEMORANDUM

To: Oregon Council on Court Procedures

From: Troy G. Sexton

Date: November 5, 2025

Subject: Proposed Amendments to the ORCPs to specifically allow post-judgment discovery subpoenas.

Thank you for considering my proposal to amend the Oregon Rules of Civil Procedure to specifically provide for issuance of post-judgment discovery subpoenas. This area of the law is lightly litigated at the appellate level, and judgment collection issues are seldom encountered by practitioners who are primarily concerned with obtaining rather than collecting judgments. Although it receives little serious attention, it is highly impactful to real people trying to collect on real judgments.

Background & Proposed Language

My familiarity with post-judgment subpoenas arises from my practice areas: bankruptcy, business judgment collections, and business litigation. Insurance is rarely implicated in my cases, and so for my clients, a trial win only counts for half the battle. They still need to collect; frequently from people who are either unwilling to cooperate or are affirmatively obstructing the collection process. Many times, judgment debtors have absconded or actively ignored express collection avenues under ORS Chapter 18 (like judgment debtor interrogatories). Post-judgment collection is a vital part of vindicating a judgment. Without effective judgment collection procedures, winners at trial are left with only paper victories.

I do not claim to be an expert on post-judgment collection procedures in other forums, but Oregon can do better. The structure of Oregon's rules and statutes has

created an ambiguity gap that should be filled with an express endorsement of post-judgment subpoena power. Oregon should follow the model set by the federal rules of civil procedure and adopt a version of FRCP 69(a)(2) which provides that:

> *Obtaining Discovery*. In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment debtor—as provided in these rules or by the procedure of the state where the court is located.

As FRCP 69(a)(2) makes explicit, if discovery as provided for under the federal rules, it is available in aid of executing on a judgment. This rule simply continues the available discovery remedies post-judgment.

From my perspective, the Oregon Rules should include similar language akin to the following:

> In aid of a judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may issue subpoenas to obtain discovery from any person—including the judgment debtor—as provided in these rules in the same manner as a subpoena issued prior to judgment.

The Problem

Currently, ORCP 36 and 55 can be viewed as ambiguous. Under ORCP 36 B(1), a party is limited to discovery that "is relevant to *the claim or defense* of the party seeking discovery." Some judges and practitioners take the position that because a judgment has been entered, there is no longer "a claim or defense" for which a party is entitled to discovery. ORCP 55 also creates its own issues because subpoenas "must originate in the court where the action is *pending*". ORCP 55 A(1)(a)(i). Some judges and practitioners take the position that because a judgment has been entered, there is "no longer an action pending" and no subpoena may be issued.

Other portions of the ORCPs and Oregon statutes give the opposite impression. For example, ORCP 55 C(3) provides that "a copy of a subpoena issued solely to command production or inspection *prior to* a deposition, hearing, or trial must comply with the following…" The structure of the sentence implicitly approves subpoenas commanding production or inspection *after* a trial, because only those subpoenas that are issued "*prior to*" trial must comply with ORCP 55 C(3).

The Oregon Revised Statutes provide the best argument for incorporating language that expressly permits post-judgment subpoena. ORS 18.268 provides that "[t]he judgment creditor and judgment debtor **may subpoena** and examine witnesses" in support of judgment execution. (emphasis added). Despite the clarity of the statute, it does not point to any specific mechanism, and this language suggests that subpoena power is only limited to subpoenaing live witnesses to testify at a debtor's exam hearing. That is a clumsy and costly process when the production of documents is sufficient.

Since ORCP 55 is the only rule governing subpoenas, it must be through that rule that a post-judgment subpoena may be issued. But proceeding through ORCP 55 also introduces the ambiguities discussed above. My position on this point is that the Oregon Revised Statutes are superior to the ORCPs, and therefore the explicit mention of subpoenas under ORS 18.268 provides for all the authority that we need to issue a document subpoena. While I'm confident that this argument is accurate and correct, I am aware of no Oregon case law that clearly stands for this proposition. The ambiguities provided by ORCP 55 provide an avenue for contesting an otherwise facially valid subpoena, driving up costs for parties and occupying valuable court time.

Specific Questions

Shari Nilsson provided some feedback from the Counsel's discussions on this issue last month, and I want to address those questions.

- **Is there some limitation on subpoenas in Rule 55 now that indicates that subpoenas are not available at any point in the litigation, including collection?**

As I discussed above, the ambiguities about discovery being limited to "a claim or defense" under ORCP 36 and "pending" actions under ORCP 55 create arguments for resisting a post-judgment subpoena.

- **Does the court still have jurisdiction once the general judgment has been entered? Once a case has been dismissed, can one come before the court to reopen it and issue a subpoena to facilitate a supplemental judgment?**

Yes, the court's jurisdiction does not cease once a general judgment has been entered in a civil case. Without jurisdiction, the court is powerless to act, but "closing" a case is administrative and does not terminate jurisdiction. ORS 14.030 provides for general subject matter jurisdiction over "any cause of action or suit wherever arising, except for the specific recovery of real property situated without this state" provided that there is personal jurisdiction over the parties. ORCP 4 specifies that when Oregon courts have subject matter jurisdiction, they have personal jurisdiction over a party served in an action pursuant to Rule 7.

Judgments don't terminate jurisdiction, and Courts routinely exercise a variety of powers post-judgment. Writs of Execution are filed and heard. Exemptions to garnishments and sheriff sales are heard. Supplemental judgments for additional accrued collection costs are entered. Court orders compelling a party to do or abstain from doing some act ordered in the judgment are enforced.

From my standpoint, the only time a case is "closed" is when there is nothing possible to be accomplished between the parties, and any judgments are satisfied. The administrative "closing" of a case with the clerk is substantially meaningless for practitioners. Since subpoenas can be issued by attorneys in Oregon, there is no need to reopen a closed case for the court to issue a subpoena. The administrative "reopening" of a case seems to be unnecessary, since many cases involving post-

judgment collection issues remain closed post-judgment, despite numerous activities taking place.

The only practical impact of a "closed" case is that, in Multnomah County, a motions judge's assignment is terminated on case closing. If a motion had to be heard on a closed case, then a party needed to proceed to ex parte to secure a Judge assignment to hear a post-judgment motion.

- **Securing a judgment and collecting on that judgment are not necessarily the same action.**

I agree, depending on the type of collection action. Fraudulent transfer cases bring new claims against new parties and require their own case. However, actions against non-compliant garnishees are prosecuted within the existing case because the garnishment is issued under the case where the principal judgment resides. I recently had a case involving non-compliant garnishees who failed to respond to a garnishment concerning assets they held that belonged to their son (against whom we had obtained a judgment). A judgment was obtained against the parents for their failure to respond and execution was issued on the judgment against them. Effectively, we had one case with two judgments entered in it: one against the principal judgment debtor, the son, and one against his parents for not complying with a garnishment to collect on the underlying judgment. The parents appealed that case and lost at the Court of Appeals.

- **Rule 55 does not keep the original case open forever for someone to collect on the judgment.**

Correct, but as discussed above, a "closed" case is meaningless for a practitioner. It is an administrative designation. The court can and does routinely entertain numerous post-judgment actions—subpoenas being but one of many—and the court always retains jurisdiction to enforce its judgments.

- **There is a process in place for post-judgment requests for examinations of the defendant to find out where their assets are in order to seek other sanctions.**

Correct, but that process is incomplete without express subpoena authority. ORS 18 provides for judgment debtor examinations but judgment debtors are rarely forthcoming about the extent of their assets, and discovery of third parties is significantly more effective at discovering assets. Chapter 18 does provide for the issuance of collection subpoenas to "examine witnesses" but runs into the cost-imposing ambiguities discussed above under ORCP 36 and 55. Additionally, the threat of sanctions to non-complying judgment debtors is not a functional remedy, in my experience. Judges simply do not impose confinement (the truly only effective coercive tool) on judgment debtors who fail to respond to post-judgment discovery, such as judgment debtor interrogatories, and obtaining a confinement order is many times cost prohibitive for clients who have paid tens or hundreds of thousands of dollars to obtain a paper judgment.

To be clear, it is the current practice to issue post-judgment subpoenas, and most are complied with. The Creditors' Rights and Remedies Bar Book offers many examples of using document subpoenas to obtain discovery post-judgment. *See e.g.* Section 5.1-4 ("A lawyer should use a subpoena if necessary….") *see also* Section 5.2-2(a)("The judgment-debtor examination allows the lawyer to question the debtor under oath about the debtor's assets, to examine documents in the debtor's possession or control concerning the debtor's assets, to subpoena other witnesses and documents, and to obtain court orders directing the debtor to turn over certain assets in partial or full satisfaction of the judgment.") It is my view that this proposal is not functionally expanding post-judgment discovery. What it does is remove costly and time consuming arguments about the availability of the practice that crops up from time to time.

Shari Nilsson <nilsson@lclark.edu>

RE: Question on ORCP re motions combined with responses, replies, or other pleadings

Brandon McKay <Brandon@erwattorneys.com> Mon, Oct 13, 2025 at 1:38 AM
To: Mark Peterson <mpeterso@lclark.edu>
Cc: Shari Nilsson <nilsson@lclark.edu>

Thank you, I tend to agree. It is a complicated matter, and this maneuver has only made it more complicated. The filing in question is actually a response to a motion to strike, so we intend to reply with our position that the response improperly includes a motion. Our motion to strike attacks this same party's reply to our amended answer for including amendments to the complaint which we objected to. In short, it is a mess. Perhaps an amendment to the ORCP to reflect the local rule I linked in this thread would prevent this sort of thing.

Again, I appreciate your time.

-Brandon

Brandon L. McKay | Attorney

78 NW Kearney Avenue,
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Bend, OR 97703
Phone: (541) 383-3755

From: Mark Peterson <mpeterso@lclark.edu>
Sent: Friday, October 10, 2025 9:26 PM
To: Brandon McKay <Brandon@erwattorneys.com>
Cc: Shari Nilsson <nilsson@lclark.edu>
Subject: Re: Question on ORCP re motions combined with responses, replies, or other pleadings

I do not believe that the ORCP prohibit including a motion within a response to another's motion. The practice would complicate the timing (See UTCR 5.030) but seems akin to filing a counterclaim in response to a complaint. You could file a motion to strike that portion of the response that constitutes the motion and can be separated from the

response; I'd be curious to see how the motion judge would respond. That said, the opposing party could instead file a timely response to your motion and contemporaneously file the motion that they seem to want to get before the court.

I would be happy to see how this procedural scenario works out and if practice would be improved with an amendment to the ORCP.

Mark

--

Mark A. Peterson

Executive Director

Council on Court Procedures

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On Fri, Oct 10, 2025 at 4:21 PM Brandon McKay <Brandon@erwattorneys.com> wrote:

> Good afternoon Your Honor,
>
> Thank you for your email. I have reviewed the history available on the Council's website, and my remaining question is whether the ORCP address motions included within responses. The Oregon district court has a local rule prohibiting such a filing: https://www.ord.uscourts.gov/index.php/rules-orders-and-notices/local-rules/civil-procedure/1987-lr-07-motions-practice
>
> It seems to me that combining a response with a motion confuses the time for replying to the response and responding to the motion.
>
> **Brandon L. McKay | Attorney**
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From: Mark Peterson <mpeterso@lclark.edu>
Sent: Friday, October 10, 2025 3:57 PM
To: Shari Nilsson <nilsson@lclark.edu>
Cc: Brandon McKay <Brandon@erwattorneys.com>
Subject: Re: Question on ORCP re motions combined with responses, replies, or other pleadings

Brandon McKay,

I may be able to point you in the right direction. The history of each rule is available by accessing the Council's website—councilonc ourtprocedures@lclark.edu.

Mark

Sent from my iPhone

> On Oct 10, 2025, at 3:31 PM, Shari Nilsson <nilsson@lclark.edu> wrote:
>
> Hi Brandon,
>
> Forgive the late reply - I work remotely and part-time. I can help you with questions about where to find information about ORCP history, but since I'm not a lawyer I would not be much help otherwise. Mark Peterson, our Executive Director, is probably the person to talk to. He is just getting back from out of town today, so I'm not sure he would be available for a conversation, but I've copied him here so that he can let you know his availability.
>
> In the meantime, if I can be of any assistance with research, please let me know.
>
> Regards,
>
> Shari
>
> _____
> Shari Cullen Nilsson
> Executive Assistant
> **Oregon Council on Court Procedures**
>
> nilsson@lclark.edu
>
> *(she/her)*

Council on Court Procedures
November 8, 2025, Meeting
Appendix G-3

I am now working 100% remotely. The best time to reach me is between 9 a.m. and 12 p.m. PST at 315-454-1280. Otherwise, please send me an email!

On Fri, Oct 10, 2025 at 6:53 PM Brandon McKay <Brandon@erwattorneys.com> wrote:

> Good morning,
>
> I am an attorney in Bend, OR doing some research on a procedural issue. If I can have a call back to discuss some ORCP history, I would greatly appreciate the time. I am available this morning until noon and then again this afternoon from about 2:30-4pm.
>
> Thank you very much,
>
> **Brandon L. McKay | Attorney**
>
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5K