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**Testimony from the Oregon Council on Court Procedures**  
**House Judiciary Committee**  
**January 26, 2023**

Chair Kropf and members of the Committee:

My name is Mark Peterson, I have served as the Executive Director of the Oregon Council on Court Procedures since 2005. I am also a circuit court judge, pro tem, in Multnomah County. I am, after 28 years, a retired clinical professor of law at Lewis & Clark Law School, an institution that continues to support the work of the Council. With me today is Kelly Anderson who is the Council's presumptive incoming chair next biennium. Kelly is a plaintiff's attorney from Medford who has been in practice since 1979. Kelly has been a Council member since 2017.

Thank you for inviting us here today. This is the first time during my tenure that we have been asked to speak to this Committee, so I appreciate the opportunity to tell the Committee a little bit about what the Council is and what we do.

**History of the Council on Court Procedures**

The Council on Court Procedures was created by the legislature in 1977. The purpose of this new body was to codify and to continually review the Oregon Rules of Civil Procedure (ORCP) to ensure that the rules would keep current with changes to the law, major court cases, and simply the changing nature of legal practice.

The ORCP are the rules that govern civil proceedings in Oregon's state courts. The ORCP do not apply to Oregon's appellate courts. In most cases, the rules do not apply to criminal proceedings, though there are some rules that have been made applicable to criminal proceedings through specific statutes. A significant example is Rule 57, Jurors, that will be addressed today.

The Council is made up of 23 members – one justice of the Oregon Supreme Court, one judge from the Court of Appeals, eight circuit court judges, twelve attorneys appointed by the Oregon State Bar, and one public member appointed by the Supreme Court. These members serve four-year appointments, and can serve at most two terms, so there are new members coming in every cycle.

The Council has a budget just under \$54,000 per biennium that covers two staff – a part time Executive Director, and a part time Executive Assistant. Office space for the Council is donated by the Lewis and Clark Law School, and funding for travel expenses for the Council is donated by the Oregon State Bar.

In addition to codifying Oregon's procedural trial rules and keeping those rules current, the Council provides a service to the bench and bar by making readily available and transparent the deliberations of the Council in selecting which rules to consider for amendment and in the deliberations that conclude in an amendment or a decision not to amend. One of the Council's previous chairs remarked that perhaps the most important value that the Council brings to this renewal process is consigning ideas that are objectively bad and ideas that will produce unwelcome and unintended consequences to the trash can. The current ORCP, and each earlier

version of each rule, and the detailed minutes that represent the Council's rather wonkish "legislative history," are readily available to practitioners, judges, and researchers 24/7 from anywhere with access to the Internet. Previously, this kind of research required a trip to one of seven law libraries located more or less along Interstate 5.

### **Council Process**

The Council employs a deliberative process for promulgating changes to the ORCP. The Council begins a new two-year cycle of rules review in September of each odd-numbered year. Prior to that initial biennial meeting, Council staff work with the Oregon State Bar to publish a survey to OSB members seeking input on rules that attorneys believe may be appropriate for update or review. The Council will review this input along with suggestions from members themselves, and normally settle on a half dozen or so rules that the Council will discuss in depth during the new review cycle. Each rule approved for possible amendment is assigned to a committee for a process of research and drafting.

The Council meets once per month between September and the following summer. All Council meetings are open to the public, and agendas and minutes are available on the Council's website, [counciloncourtprocedures.org](http://counciloncourtprocedures.org). Committee reports and drafts are considered by the whole Council and, almost without exception, are returned to the committee for further consideration and a new draft. In order to promulgate new rules, the Council is required to post any proposed rules changes for public comment and, specifically, to make the rules available to all OSB members at least 30 days in advance of any final action. The published amendments are printed in the Oregon reporters (published opinions of the Oregon Supreme Court and the Oregon Court of Appeals) and posted on the Oregon Judicial Department's website and the Council's own website. The Council further endeavors to provide for expansive notice by working with the Bar to publish notice both in the Bar Bulletin and through various email communications between the Bar and its members.

Final promulgation of new rules requires the support of a fifteen-member super-majority of the Council. This vote is taken at a meeting in December of each even-numbered year, just before the new legislative session. The Council then submits these changes to the rules via letter to the Senate President and Speaker of the House, along with notice to the Judiciary Committees, Legislative Counsel, and other officials. The new rules will take effect on January 1, following the close of the new legislative session, unless the Legislature amends, rejects, or modifies a promulgated rule. This means that the rules the Council approved in December of 2022 will take effect January 1, 2024.

### **Importance of Consensus**

Throughout its history, the Council on Court Procedures has been a great venue for bringing together practitioners with very different perspectives and experiences to make sure that the ORCP function for all Oregonians.

Both the Circuit Judges Association and the Oregon State Bar make significant efforts to appoint members with a wide variety of backgrounds to the Council. The Oregon State Bar in particular specifically seeks to appoint an equal number of plaintiff's attorneys and defense attorneys each cycle to maintain that critical balance in perspectives. An effort is made to appoint trial judges from Oregon's most rural and most urban counties and from various geographic areas with the idea being that the ORCP must work from Multnomah County to Morrow County – in all of Oregon's 36 counties.

The result of this is that the Council tends to only put forward rules that have significant support from within the bar. If a rule change is particularly divisive among practitioners, it is unlikely that the Council will pursue it, and those matters are left for discussion by other bodies.

As stated, I have been the Executive Director since 2005. I am extremely proud of the work that the Council has done during that time. I think the Council has been instrumental in keeping the ORCP up to date and making sure they continue to function well for practitioners and for the public, and I hope that we have the opportunity to continue to do so for years to come.