

VANGELISTI KOCHER LLP

Welcome to Oregon: What Every Lawyer Should Know About Practice in Oregon Courts

April 2009

By Richard J. Vangelisti and Scott F. Kocher

811 SW Naito Parkway
Suite 420
Portland, OR 97204
tel 503.445.2100
fax 503.445.2120
www.vangelisti.com

I. INTRODUCTION

Like every jurisdiction, Oregon has a number of unique rules and local practices. This article provides a practical summary of the unique aspects of practice in Oregon federal and state trial courts that are most important for *pro hac vice* counsel and other attorneys who are new to Oregon.

All of the Oregon state and federal court rules and resources discussed in this article are available on our firm's Trial Attorney Resources page at www.vangelisti.com/trial

II. FEDERAL COURT PRACTICE

A. Local Rules

In addition to the Federal Rules of Procedure, counsel should review the Local Rules of the District of Oregon USDC. They are online at www.ord.uscourts.gov/Rules/LRTableofContents.htm.

B. Pro Hac Vice Admission

Local Rule 83.3 provides instructions for pro hac vice admission. Form 22 accompanying the Local Rules is a template *Application for Special Admission – Pro Hac Vice*.

C. Judges' Courtroom Practices

Individual judges' courtroom practices can be found in the Federal Practice Handbook published by the Oregon Chapter of the Federal Bar Association. The Handbook includes the judges' responses to survey questions regarding their individual procedures and preferences. The FBA Oregon Chapter completed a supplement that includes our two newest judges, Magistrate Judges Paul Papak, Pat Sullivan, Mark Clarke and John Acosta. Consult your local counsel or contact the FBA Oregon Chapter for a copy.

D. Magistrate Judges

The magistrate judges in the District of Oregon are exceptionally well-qualified, and operate as equals to their Article III peers to the full extent allowed by statute. Findings and recommendations issued by magistrates are almost always adopted. Parties frequently consent to

assignment to a magistrate. *See* “Resumes of Oregon Magistrate Judges” at www.ord.uscourts.gov.

E. Scheduling and Discovery

At the time of filing of the complaint or petition for removal, the Clerk of Court will issue a Discovery and Pretrial Scheduling Order, which is often modified upon joint motion of the parties.

The FRCP 26(f) conference is required, but no written report of the initial conference is required. Local Rule 26.1.

After the FRCP 26(f) conference, counsel for both plaintiff and defendant shall notify the judge’s courtroom deputy clerk to report that the conference has been completed. Some judges do not hold the follow-up Rule 16 conference, although such a conference is provided by Local Rule 16.2.

The initial disclosures required by FRCP 26(a)(1) are disfavored. The parties are encouraged to opt out pursuant to Local Rule 26.2.

“Broad general interrogatories” are prohibited. Local Rule 33.1(d). Interrogatories generally are disfavored with some judges, such that motions challenging interrogatories based on their breadth or number may be granted. This practice has its roots in the Oregon Rules of Civil Procedure, applicable in state courts, under which no interrogatories are permitted.

F. Filing of Documents

With the exception of the initial pleading, electronic filing is mandatory. *See* Local Rule 100.

G. Timekeeping

In any case where your client may submit a fee petition or otherwise seek to recover attorney fees, “block billing” is not allowed. A fee petition is likely to be disallowed if it is based on “bock billing” format. *See* “Message From the Court re Attorney Fee Petitions” at www.ord.uscourts.gov. Proper time entries should be kept daily by all attorneys and non-secretarial staff, and should include task-by-task detail. For example:

10/03/07 Telephone conference with John Smith re motions scheduling (0.2); research Oregon products liability case law re motion to dismiss (1.3); direct paralegal re preparation of medical documents for production (0.1); review correspondence from Juana Flores re settlement offer (0.2); letter to same responding to same (0.3)

III. STATE COURT PRACTICE

A. Applicable Rules

Oregon's general trial courts handling civil and criminal cases are the Circuit Courts. The Oregon Rules of Civil Procedure are the primary rules of practice in these courts. The Oregon Uniform Trial Court Rules ("UTCRC") provide additional rules of procedure that are important throughout a case. Most counties, including Multnomah County, also have Supplementary Local Rules that provide additional county-specific practices. Links to these three sets of rules, as well as the Oregon Evidence Code and selected other Oregon Revised Statutes affecting civil proceedings are available on our firm's Trial Attorney Resources page at www.vangelisti.com/trial.

B. Assignment to Judges and Judges' Practices

A motions judge is assigned at the time of "praecipe" of the first motion. A trial judge is generally not assigned until the call date, which is one judicial day before the trial date. A judge will be assigned if the case meets the criteria for "complex" case designation. In cases where case management is likely to be particularly difficult, counsel may also seek assignment to a specific judge.

With the exception of medical malpractice cases and cases that have been designated as "complex," most cases are tried within one year of filing.

Individual judges' courtroom practices and preferences can be found in the Multnomah Bar Association's Judicial Practices Survey. Consult your local counsel or the MBA for a copy.

C. Pleading

Oregon requires fact pleading. The plaintiff must allege "ultimate facts" sufficient to constitute a claim. ORCP 18 A. Notice pleading is insufficient.

A complaint seeking money or damages must state a specific monetary amount. ORCP 18 B.

A complaint may not include a claim for punitive damages. ORS 31.725. A party seeking punitive damages must file a motion to obtain leave to assert a claim for punitive damages.

D. Discovery

Interrogatories are not permitted in Oregon state court practice.

Expert discovery is not permitted in Oregon state court practice. Parties generally do not disclose the identity of their experts to opposing counsel until the time of trial. When a party's expert testifies at trial, his or her complete file is disclosed at that time.

E. Pro Hac Vice Admission

Instructions for pro hac vice admission are posted on the Oregon State Bar web site at <http://www.osbar.org/rulesregs/phvinstruction.html>. This web page includes a link to Uniform Trial Court Rule 3.170, which governs the process. As noted, the process requires submission of a form to the Oregon State Bar. Proof of professional liability insurance is required. The bar returns an acknowledgement form that is submitted with a motion by local counsel for the court to grant the admission. This process can take as long as two months to complete. Once completed, pro hac vice admissions expire after one year and must be renewed.

F. Timekeeping

In any case where your client may submit a fee petition or otherwise seek to recover attorney fees, “block billing” is disfavored. A fee petition is likely to be disallowed if it is based on “block billing” format. This is now true even where the fee petition is merely needed to support a petition for a contingent fee to be awarded based on a percentage of a client’s recovery. Proper time entries should be kept daily by all attorneys and non-secretarial staff, and should include task-by-task detail. For example:

10/03/07 Telephone conference with John Smith re motions scheduling (0.2); research Oregon products liability case law re motion to dismiss (1.3); direct paralegal re preparation of medical documents for production (0.1); review correspondence from Juana Flores re settlement offer (0.2); letter to same responding to same (0.3)

About the Authors

Richard J. Vangelisti is a trial lawyer representing individuals and families in personal injury, wrongful death and other plaintiff-side civil matters in Oregon and Washington. After graduating with high honors from law school in 1995, Mr. Vangelisti served as a law clerk to a federal chief trial judge for two years. Thereafter he worked for an international law firm and a national law firm for more than five years. More recently, he served as President of the Federal Bar Association of Oregon. In 2007 he was selected by federal judges to serve as a Lawyer Representative to the Ninth Circuit Judicial Conference. Mr. Vangelisti has been awarded an AV Peer Review Rating by LexisNexis Martindale-Hubbell, the highest rating awarded in the peer survey of expertise, experience, integrity and overall professional excellence. He is a partner in Vangelisti Kocher LLP, 811 SW Naito Parkway, Ste. 420, Portland, Oregon 97204. Mr. Vangelisti can be reached on the internet at www.vangelisti.com or by telephone at 503-445-2101.

Scott F. Kocher is a trial lawyer representing individuals and families in personal injury, wrongful death and other plaintiff-side civil matters in Oregon and Washington. He holds degrees from Harvard Law School (J.D. 2001) and Harvard College (A.B. *magna cum laude* 1997). He currently serves as a Member and Chair of the Products Liability Executive Committee of the Oregon State Bar. Mr. Kocher is a partner in Vangelisti Kocher LLP, 811 SW Naito Parkway, Ste. 420, Portland, Oregon 97204. Mr. Kocher can be reached on the internet at www.vangelisti.com or by telephone at 503-445.2102.

VANGELISTI KOCHER LLP