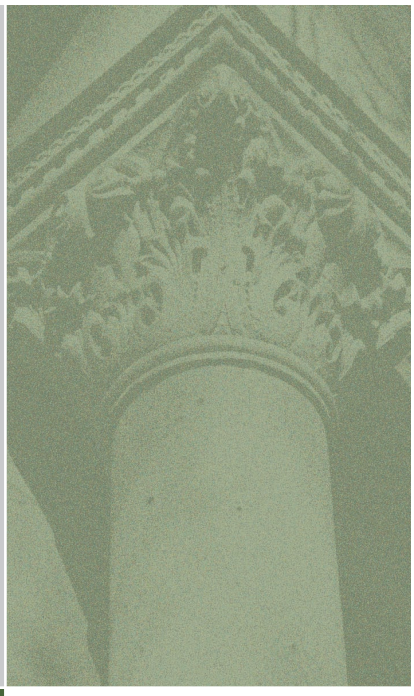

Civil Case Processing in the Oregon Courts

An Analysis of Multnomah County

Institute *for the* Advancement *of the* American Legal System

University of Denver

INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM

The Institute for the Advancement of the American Legal System (IAALS) is a national, non-partisan organization dedicated to improving the process and culture of the civil justice system. Executive Director and former Colorado Supreme Court Justice Rebecca Love Kourlis leads a staff distinguished not only by their expertise but also by their diversity of ideas, backgrounds and beliefs.

IAALS provides principled leadership, conducts comprehensive and objective research, and develops innovative and practical solutions—all focused on serving the individuals and organizations who rely on the system to clarify rights and resolve disputes.

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EXECUTIVE SUMMARY

This report represents the third stage of an extended study of civil litigation in the State of Oregon by the Institute for the Advancement of the American Legal System at the University of Denver (IAALS). The first two stages examined, respectively, civil case processing in the United States District Court for the District of Oregon (as well as other federal district courts), and perceptions of the Oregon bench and bar about the civil justice system in that state.

The workings of the civil justice system in Oregon should be of interest to anyone concerned about access to civil justice in the United States. Civil practice in Oregon is widely believed to be among the most collegial and efficient in the nation. Anecdotes about the civility of the litigation process, the relative cost-effectiveness of the system, and attorney satisfaction with the system abound. The three IAALS studies were designed in part to examine these beliefs more deeply and better understand what is working – and not working – in Oregon civil litigation from a quantitative perspective.

The instant study focused on the processing of contract and tort cases in the Circuit Court of Multnomah County, Oregon. IAALS researchers examined the dockets of nearly 500 cases that closed between October 1, 2005 and September 30, 2006, and recorded critical events and other information from the life of each case. In particular, researchers tracked motion practice, requests to deviate from scheduled events, the time between key events in the case, and the overall time from filing to disposition for each case. The study's key findings follow.

Contract cases tended to be resolved within four months after filing, a majority of them by default judgment. Tort cases tended to take longer to resolve, most frequently by settlement.

Contract cases were the most predominant case type in Multnomah County Circuit Court, representing approximately two-thirds of all closed cases in the October 2005-September 2006 time frame. In this study, a surprisingly large number of those cases – 52% – were terminated by default judgment. Perhaps because defaults were so common, the median time to disposition of all contract cases was less than four months. Only 12% of contract cases were terminated by settlement, and only 1% each were resolved by summary judgment, arbitration, or trial.

Tort cases in Multnomah County exhibited a wider variety of case length and type of disposition. The median time to disposition was exactly one year for tort cases, although forcible entry and property damage cases tended to be completed in less than three months on average, and fraud cases averaged more than three years from filing to final disposition. Slightly more than half of all tort cases settled, and another sixth were removed to federal court. As with contract cases, there were few resolutions by summary judgment, arbitration, or trial.

Parties filed relatively few disputed motions, such as motions to dismiss, motions for summary judgment, or motions to compel discovery. When motions were filed, on average they were resolved more quickly, and granted less frequently, than corresponding motions in federal court.

One of the most striking features of the Multnomah County cases was the relative dearth of disputed motion practice. Out of 495 cases, the study recorded only 54 motions challenging the sufficiency of the pleadings, 21 motions to compel discovery, and 91 motions for summary judgment. Motions to dismiss and motions for summary judgment were filed at roughly half the rate in Multnomah County than the equivalent motions were in the U.S. District Court for the District of Oregon, and also granted much less frequently than in federal court. Motions to compel were filed at about one-eighth the rate of the federal court – perhaps because the applicable rules of civil procedure in state court already restrict discovery much more significantly than in the federal system.

Even though plaintiffs in Multnomah County are required to plead "ultimate facts" supporting the allegations in their complaints, the sufficiency of the complaint was challenged at a much lower rate than in federal court.

The state courts in Oregon use a system of fact pleading that requires a party to include in the complaint the "ultimate facts" supporting that party's allegations. This requirement stands in stark contrast to the notice pleading system in the federal courts, which (at the time the cases in this study were pending) required only that the plaintiff provide a "short and plain statement of the claim showing that the pleader is entitled to relief."

One frequently voiced concern about fact-based pleading standards is that they set a higher bar for plaintiffs, and increase the likelihood that a defendant will seek – and that the court will grant – dismissal of the case at the pleading stage. The Oregon data strongly refute this presumption. Despite the ostensibly higher fact pleading standard, the legal sufficiency of contract and tort complaints in Multnomah County was challenged much less frequently than for similar cases in federal court, and motions to dismiss were granted at a much lower rate (46% in Multnomah County versus almost 63% in federal court). These numbers were even more striking for cases alleging civil discrimination: not a single discrimination case was dismissed on sufficiency grounds at the pleading stage in Multnomah County (as opposed to 68% of equivalent cases for which dismissal was granted in the U.S. District Court for the District of Oregon), and summary judgment motions in discrimination cases were filed in Multnomah County at one-fifth the federal rate.

Parties rarely sought to extend or continue pretrial deadlines. Where continuances were requested, they related almost exclusively to rescheduling court hearings or trial.

The study found virtually no motions to extend deadlines during the ordinary pretrial process. Whereas motions to extend time to answer the complaint, respond to motions, file or respond to discovery requests, or file additional material with the court are commonplace in federal civil cases, the parties in Multnomah County only sought such extensions on the rarest of occasions. There

were only two exceptions to this general trend: motions to stay or continue a hearing with the court, and motions to continue the trial date. When requested, these motions were granted almost all of the time.

Relatively few cases participated in court-ordered arbitration.

Oregon law mandates that Circuit Court claims involving only requests for monetary relief of $50,000 or less be subject to arbitration. About 10% of the cases in this study were initially scheduled for arbitration, but less than 3% of cases actually proceeded to arbitration and received an award. Nearly half of cases put down for mandatory arbitration settled after the arbitration was scheduled but before it could occur.

Thoughts for a national audience

Some of the key findings from the Multnomah County study offer lessons for other state and federal courts. In particular, this study suggests that restrictions on the use of discovery devices and the narrowing of issues through fact-based pleading are consistent with limited motion practice, relative speed in resolving cases, and a legal culture that provides high attorney satisfaction. We cannot – and do not – suggest that these practices are the sole cause of such positive outcomes, but we *can* say that such practices do not hinder these outcomes.

We hope that this report will spur new discussions about ways to make the American civil justice system as fair, efficient, and cost-effective as possible. While some lessons drawn from the Oregon experience are more easily transferable than others, the broad conclusions about the overall effectiveness of the Oregon state system should encourage constructive dialogue in every state and federal jurisdiction across the country.

I. INTRODUCTION

This is a study of civil case processing in Oregon state court – in particular, the Circuit Court of Multnomah County, which encompasses much of the Portland area. The study examined the dockets of nearly 500 closed contract and tort cases in order to better understand aspects of Oregon civil pretrial practice – aspects such as scheduling, motion practice, time between events, and time from filing to disposition.

While the conclusions from this study stand on their own, they also may be viewed as a bridge between two other studies of Oregon pretrial procedure recently completed by the Institute for the Advancement of the American Legal System at the University of Denver (IAALS). The first study, published in January 2009, examined nearly 7,700 closed civil cases in eight federal district courts – including more than 1,300 cases from the U.S. District Court for the District of Oregon.[1] Like the Multnomah County study here, the federal study reviewed case dockets to better understand scheduling, motion practice, and time between events in civil cases.

The second study was a survey of the Oregon bench and bar concerning Oregon civil procedure, completed in March 2010 (Oregon Rules Survey).[2] That survey asked respondents to offer their perspectives on various aspects of the rules that govern civil cases in Oregon state court, including rules concerning fact pleading, limits on fact discovery, expert witnesses, trial scheduling, and mandatory arbitration. While survey respondents drew from their professional experience, many of the questions in the survey necessarily required a subjective response. The docket data in the Multnomah County study supplement the survey by offering an objective framework for the perspectives of the bench and bar on these issues.

In order to derive the highest benefit from bridging these three studies, this report sets out its findings in two different ways. First, we discuss the Multnomah County docket data directly, using responses from the Oregon Rules Survey to provide additional context for the findings. In the second part of the findings, we compare the Multnomah County data to the data gleaned from the federal docket study, in order to determine notable similarities and differences in caseflow and case processing between the state and federal courts in Oregon.

This report is intended to be illustrative, not exhaustive. Many of the findings are worthy of further examination, and additional study is welcome. We hope, however, that these findings will help inform the broader national discussion of the effectiveness and the United States civil justice system.

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[1] INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM, CIVIL CASE PROCESSING IN THE FEDERAL DISTRICT COURTS: A 21ST CENTURY ANALYSIS (2009).

[2] INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM, SURVEY OF THE OREGON BENCH AND BAR ON THE OREGON RULES OF CIVIL PROCEDURE (2010) [*hereinafter* OREGON RULES SURVEY].

II. WHY OREGON? LESSONS FOR A NATIONAL AUDIENCE

The decisions to conduct a state case processing study, and to focus on Oregon for that study, were not arbitrary. In comparison to the heyday of caseflow management research in the 1970s and 1980s, there has been relatively little examination of civil case processing in the past two decades. Most of the research in the last twenty years has been aimed at federal courts, largely in response to Congressional curiosity about the impact of the Civil Justice Reform Act of 1990.[3] It would be a mistake, however, to limit caseflow studies to the federal arena. Nearly all civil cases in the United States are filed in state court, and the variety of rules and procedures adopted in state court systems around the country offers potential lessons about efficient practices in bringing cases to judicial resolution.

So state courts matter. But why look specifically at Oregon? The short answer is that, at least anecdotally, the system works well. In fact, lawyers – representing both plaintiffs and defendants – prefer to litigate in Oregon state court in comparison to federal court or neighboring state courts.[4]

The possible reasons for this preference are multi-layered. To begin with, Oregon attorneys are fiercely proud of their state's legal culture. In the Oregon Rules Survey, 86% of respondents said that the culture of the Oregon bar enhances the civility of litigation.[5] One respondent specifically emphasized his preference for Oregon over other state courts in which he had practiced, "primarily because of the camaraderie of the [Oregon] bar."[6] Another respondent remarked, "We have an amazingly professional and ethical practice in Oregon, and I want it to stay that way as long as possible."[7]

A constructive legal culture is not the only proffered explanation for attorney satisfaction. Some have also speculated that the legal culture in Oregon is influenced, at least in part, by its civil rules. In a time when the costs of pretrial discovery nationally are considered to be skyrocketing, another state's highest court cited Oregon's rules as creating a "sanctuary of sanity"[8] that contributes to a process that reduces the cost of civil litigation for all users. Similarly, many respondents to the Oregon Rules Survey suggested that the state's trial courts are faster and more flexible than their federal counterpart. Summing up this sentiment, one commentator has suggested that:

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[3] Civil Justice Reform Act, Pub. L. No. 101-650, *codified a*t 28 U.S.C. § 471 *et seq*. Efforts to evaluate the impact of the Act include JAMES S. KAKALIK ET AL., JUST, SPEEDY, AND INEXPENSIVE? AN EVALUATION OF JUDICIAL CASE MANAGEMENT UNDER THE CIVIL JUSTICE REFORM ACT (1996) and JUDICIAL CONFERENCE OF THE UNITED STATES, THE CIVIL JUSTICE REFORM ACT OF 1990 FINAL REPORT: ALTERNATIVE PROPOSALS FOR REDUCTION OF COST AND DELAY (1997).

[4] OREGON RULES SURVEY, *supra* note 2, at 12-15.

[5] *Id.* at 46.

[6] *Id.* at 49.

[7] *Id.*

[8] State ex rel. Crown Power and Equipment Co., L.L.C. v. Ravens, 2009 WL 3833830, *6 (Mo. Nov. 17, 2009) (Wolff, J., concurring).

> The cause may be the laid-back lifestyle and good health of Oregonians, the sylvan setting, the mild climate, the good food and wine, and the frequent vision of snow capped mountains in the Cascade range. I also suspect, though, that Oregon rules of civil procedure permit fewer opportunities to engage in "litigation within litigation." I certainly know that to be true with respect to discovery.[9]

There are indeed significant differences between the rules of civil procedure in Oregon Circuit Court and corresponding rules in neighboring state courts and the federal system, and one purpose of this study is to ascertain the impact of those differences on the flow of civil litigation. While some state court systems adopted some or all of the Federal Rules of Civil Procedure (FRCP) as their own state rules after 1938, Oregon did not do so. In the early 1980s, however, Oregon did replace its longstanding statutory civil procedure code with a new set of procedural rules called the Oregon Rules of Civil Procedure (ORCP).[10] The ORCP represent a combination of prior Oregon statutory civil code, procedural rules from other states, and selected aspects of the FRCP.[11] While an attorney practicing in Oregon would recognize the civil pretrial process as broadly similar to any jurisdiction in the United States, there are a number of important differences that potentially impact speed, cost, and satisfaction in civil litigation. For example, the Oregon Circuit Court employs fact pleading, requiring complaints to contain a "plain and concise statement of the ultimate facts constituting a claim for relief ."[12] The ORCP also do not permit certain forms of pretrial discovery, including interrogatories and discovery concerning independent expert witnesses. Furthermore, the state court's case management practices are designed to bring a majority of cases to trial or resolution within one year of filing.

This study is intended in part to determine whether and how these rules and guidelines are enforced, and how their enforcement impacts civil case processing – either directly through changes in the time between events or the filing of motions, or indirectly through influences on the legal culture and the attitudes of attorneys and judges. Certain lessons from this study may be transferable to other courts, especially those using different approaches to those in Multnomah County.

III. STUDY METHODOLOGY

This study considered exclusively contract and tort cases that were closed in Multnomah County Circuit Court between October 1, 2005 and September 30, 2006 (including cases that were reopened and reclosed during that time frame). This court has the largest civil docket of any of the state's 27

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[9] Douglas M. Branson, *No Contest: Corporate Lawyers and the Perversion of Justice in America*, 48 CASE W. RES. L. REV. 459, 472-73 (1998).
[10] *See* Frederic R. Merrill, *The Oregon Rules of Civil Procedure – History, Background, Basic Application, and the "Merger" of Law and Equity*, 65 OR. L. REV. 527, 527 (1986).
[11] Lois Lindsay Davis, Note, *Civil Procedure*, 16 WILLAMETTE L. REV. 703, 703 (1979).
[12] OR. R. CIV. P. 18.

general jurisdiction circuit courts.[13] During the 2005-06 period there were 38 judges working in the general jurisdiction court.[14]

The State of Oregon Judicial Department graciously assisted IAALS in identifying the population of closed cases eligible for the study, and provided a list of all civil cases closed in Multnomah County during the relevant time frame. IAALS researchers then limited this list – which originally totaled more than 14,500 cases – to only contract and tort actions. From this smaller list (which still contained over 11,000 closed cases), a random sample of approximately 500 cases was selected for actual analysis; contract and tort cases were sampled in the same proportion as they appeared in the original closed case list. Contract cases were simply so designated, but tort cases were broken out into more than a dozen different case types. The final case list included cases designated as:

- Civil Contract
- Civil Damages: Property
- Civil Defamation
- Civil Discrimination
- Civil False Arrest/Imprisonment
- Civil Fraud
- Civil Forcible Entry/Detainer
- Civil Malpractice: Legal
- Civil Malpractice: Medical
- Civil Negligence
- Civil Personal Injury
- Civil Tort: Products Liability
- Civil Wrongful Death.

The Oregon Judicial Department also granted IAALS permission and training to access the Oregon Judicial Information Network (OJIN), the electronic docketing system for the Oregon state courts. Through OJIN, IAALS researchers were able to review individual case dockets for relevant information. That information was entered into a customized database developed specifically for this study.

A. THE STUDY DATABASE

The database for this study was modeled to mirror as closely as possible the database used in the IAALS federal docket study, in an effort to create content that was amenable to comparison.[15] The

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[13] *See* 2009 CIRCUIT COURT CASE STATISTICS (e.g., for the year 2006, Multnomah County Circuit Court saw 13,781 civil cases filed comprising over 26% of all civil cases filed in Oregon circuit courts that year), *available at* http://courts.oregon.gov/OJD/OSCA/statistics.page?.

[14] *See* 2006 State of the Oregon Courts: Justice in the 21st Century, at 33.

[15] For information on the development of the IAALS federal database, see CIVIL CASE PROCESSING IN THE FEDERAL DISTRICT COURTS, *supra* note 1, at 24-26.

dataset broadly included eight types of information: (1) basic case information, (2) the judge(s) assigned to the case, (3) discovery motions, (4) dispositive motions, (5) other relevant motions, (6) trials, (7) scheduling and continuances, and (8) arbitration information.

Basic case information included the following:

- The nature of the suit/case type
- The case number
- Date filed
- Date closed
- Name of the lead plaintiff and lead defendant
- Number of total plaintiffs and number of total defendants
- Number of total plaintiffs' lawyers and total defendants' lawyers
- Whether any defendant filed counterclaims or claims against a third party
- The case's progress at the point it was terminated[16]
- The case's final disposition; and
- If the case was ever reopened and reclosed, the dates of reopening or reclosing.

Cases in Multnomah County Circuit Court are not assigned to a single judge; rather, motions and other pretrial procedures are handled by different judges throughout the life of the case.[17] Accordingly, IAALS researchers recorded information on each judge who presided over the case or portions of the case. This included date of initial assignment.

Researchers entered information on every discovery motion and dispositive motion recorded in the OJIN system. Each motion was designated by type with the date filed, party filing, the date of ruling (if available), and whether a hearing was held to consider the motion. A number of other motions deemed relevant to the study, mostly concerning extensions of time or postponing a hearing, were also recorded in the same manner.

Trial settings, if available, were recorded, along with any pretrial hearings. If trials were conducted, the length of trial was noted, as was the verdict and the amount of any judgment. Any post-trial motions and dispositions were also entered. In addition, information on arbitrations was tracked to reflect the party requesting arbitration (or whether it was court ordered), disposition of decision, original deadlines, continuances, and any appeals of arbitration decisions to the Circuit Court.

Requests for continuances of discovery deadlines, dispositive motion hearings, pre-trial conferences, and trial dates were also recorded. These requests were tracked to include information on the requesting party, reasons for the continuance, date of ruling, and new dates scheduled as applicable.

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[16] Progress at the point of termination, and case disposition, are not delineated in the OJIN system. Researchers utilized a set of termination codes based on those in the federal CM/ECF system, and adapted to fit Oregon's rules.
[17] This practice varies in other Circuit Courts in the Oregon state system.

B. Data Entry and Analysis

A law student at the University of Denver Sturm College of Law was hired to enter the data from the OJIN system. The student was trained on the database and supervised by IAALS staff throughout the data entry process. Two members of the IAALS research staff and a University of Denver statistics professor, Sachin Desai, also performed limited data entry.

The OJIN system does not provide links to electronic versions of the filed documents. As such, during data entry, researchers had to rely exclusively on the designations listed on the case docket itself. This required some interpretation of the information listed. For example, entries for court orders frequently listed a separate designation for the date the judge signed an order, while the date of entry of the actual order was for a later date. This appeared to be a result of a delay in physically filing the order by the clerk's office. As such, to maintain consistency, if an order indicated that it was signed on a different date than the actual filing date, the date the order was signed was recorded to reflect the date of ruling.

The data in this report were not subjected to a formal inter-rater reliability study, because one person entered almost all of the information. As with the federal docket study, ongoing efforts to promote consistency in data entry were maintained throughout the project, including an initial training session with intense supervision over the data entry by an IAALS Research Analyst who had worked on the federal study. The student entering the data received immediate feedback on questions regarding the data, and engaged in regular meetings with the research staff to discuss questions and identify trends in the data throughout the course of data entry. The student also maintained a log of notes for each case entered.

Once data entry was complete, the data were scoured for obvious errors and any discrepancies were researched and addressed. The final verified data were subjected to a range of statistical analyses, which are discussed later in this report. In total, 495 cases were analyzed.

IV. Findings

A. Multnomah County Data

This section sets out the key findings from the Multnomah County study, and is organized by the ordinary sequence of pretrial events. There were some clear trends in the data. First, the Multnomah County cases saw relatively limited motion practice at every stage of the pretrial process, especially with respect to motions to compel discovery or similar disputed discovery motions. Likewise, parties generally did not ask the court for permission to deviate from original deadlines – at least until trial, when a significant number of continuances were sought and granted. Finally, tort and contract cases tended to be terminated in very different ways, with tort cases much more likely to settle before trial and contract cases much more likely to be resolved through a default judgment.

1. SCHEDULING AND CIVIL CASEFLOW

a. Standards for timely disposition

Between 2003 and 2008, Oregon Circuit Courts collectively averaged a little over 600,000 case filings per year.[18] General civil cases[19] made up a small but growing percentage of these cases, from 7.7% of total filings in 2003 to 12.7% in 2008. Multnomah County Circuit Court has seen a lower percentage of general civil cases as part of the court's overall docket than the statewide average, with civil cases comprising 9.5% of total case filings in 2008.

Since the creation of Oregon's unified court system in 1983, the Oregon Supreme Court has promulgated Unified Trial Court Rules (UTCR) to promote "just, speedy, and inexpensive case resolution; efficient use of court time and resources; and uniform, consistent practice in every judicial district."[20] Circuit courts are permitted to adopt Supplemental Local Rules (SLR) to govern local practice as long as they are consistent with the UTCR, the ORCP, and state laws.

The UTCR provide for rapid trial settings in civil cases. Once all named defendants to a complaint have made an appearance, the case is deemed "at issue" 91 days after the filing of the complaint or when the pleadings are complete, whichever is earlier.[21] The parties have 14 days after the case is at issue to agree among themselves and with the court on a trial date, which must fall within one year from the filing of the complaint.[22] If the parties fail to agree on a date or fail to confer with the court in that time frame, the clerk of the court is required to set a trial date "at the convenience of the court."[23]

Parties may move to designate a civil matter as "complex." Cases designated complex are not subject to the UTCR's one year trial setting guidelines although they still must be set "as soon as practical" and "in any event, within two years from the date of filing unless, for good cause shown, the trial date is extended by the assigned judge."[24]

In addition, the Oregon Judicial Conference has established Standards for Timely Disposition for all cases.[25] For general civil matters, timely disposition is defined as 90% of all civil cases settled, tried or otherwise concluded within 12 months of the date of case filing, 98% within 18 months of

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[18] Annual Report for the Oregon Judicial Branch, 21 (2008), *available at* http://courts.oregon.gov/OJD/docs/OSCA/2008_Oregon_Annual_Report.pdf.

[19] Oregon also delineates small claims cases as civil matters. The statistics for those are excluded in this research because of the differences in procedure applied to those cases and the frequent summary nature of the proceedings do not provide meaningful information for purposes of this study nor do they provide a ready comparison to the federal docket study data.

[20] Uniform Trial Court Rules, http://www.ojd.state.or.us/programs/utcr/index.htm.

[21] UTCR 7.020(4).

[22] UTCR 7.020(6).

[23] UTCR 7.020(7).

[24] UTCR 7.030(4).

[25] Oregon Judicial Conference Standards for Timely Disposition, http://courts.oregon.gov/Multnomah/docs/AboutUs/OregonJudicialConferenceStandardsForTimelyDisposition_StandardsForTimelyDisposition.pdf.

such filing, and the remainder within 24 months of such filing, except for individual cases in which the court determines exceptional circumstances exist and for which a continuing review should occur. Judges are required to "bear in mind that the court's obligation is to meet these standards" when considering requests for continuances, and "parties should be able to rely on these time lines for the disposition of filed actions."

Most cases in the Multnomah County study did in fact terminate within one year, with a mean time from filing to disposition of 295.5 days and median time to disposition of only 127 days. However, 22.4% of cases took more than one year to complete, and 8.7% took more than two years. Furthermore, there was substantial variation in the overall time to disposition based on case type. Most tort cases took considerably longer on average to resolve than contract cases. Among tort cases, forcible entry, wrongful death and property damage cases tended to move the most quickly on average, while fraud and product liability cases took the longest on average, with a mean and median time of more than three years from filing to final resolution. Table 1 below shows the number of cases logged per case type, and the mean and median times to disposition for each type.

TABLE 1
TIME TO DISPOSITION FOR MULTNOMAH COUNTY CONTRACT AND TORT CASES

NATURE OF SUIT	CASES LOGGED	MEAN TIME TO DISPOSITION (DAYS)	MEDIAN TIME TO DISPOSITION (DAYS)
All Contract	**332**	**199.02**	**114.5**
All Tort	**163**	**492.06**	**365**
Damages: Property	8	105.38	77.5
Defamation	1	416.00	416
Discrimination	21	844.24	852
False Arrest/Imprisonment	2	408.00	408
Fraud	6	1301.17	1183
Forcible Entry/Detainer	8	25.13	8
Malpractice: Legal	3	383.00	239
Malpractice: Medical	2	209.50	209.5
Negligence	19	320.89	250
Personal Injury	89	470.42	407
Tort: Products Liability	3	927.67	1093
Wrongful Death	1	78.00	78
TOTAL CASES	**495**	**295.51**	**127**

There was also considerable variation between contract and tort cases in the nature of the final disposition. More than half of the contract cases terminated in a default judgment, with another 20% falling into the catch-all category of "other dismissal." Only 12% of contract cases settled. By contrast, more than half of the tort cases in the study terminated as a result of settlement, while another 17% were removed to federal court. For both contract and tort actions, 2% of less of cases terminated as a result of summary judgment, arbitration awards, or trial.

FIGURE 1
DISPOSITION OF MULTNOMAH COUNTY CONTRACT CASES

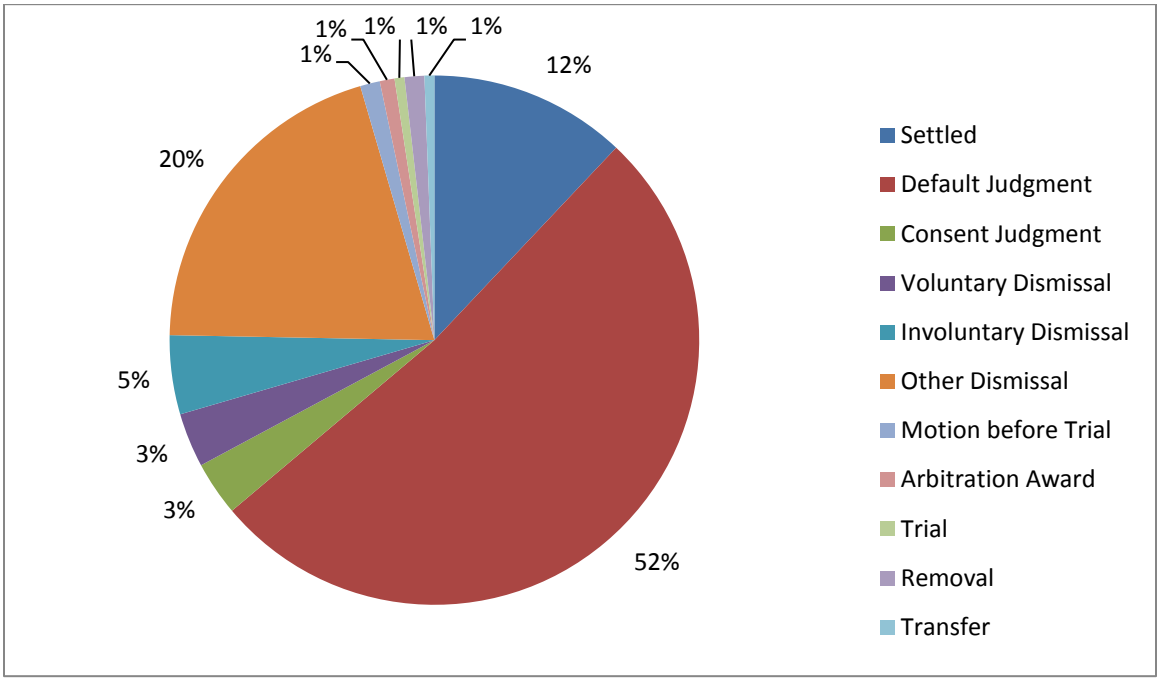
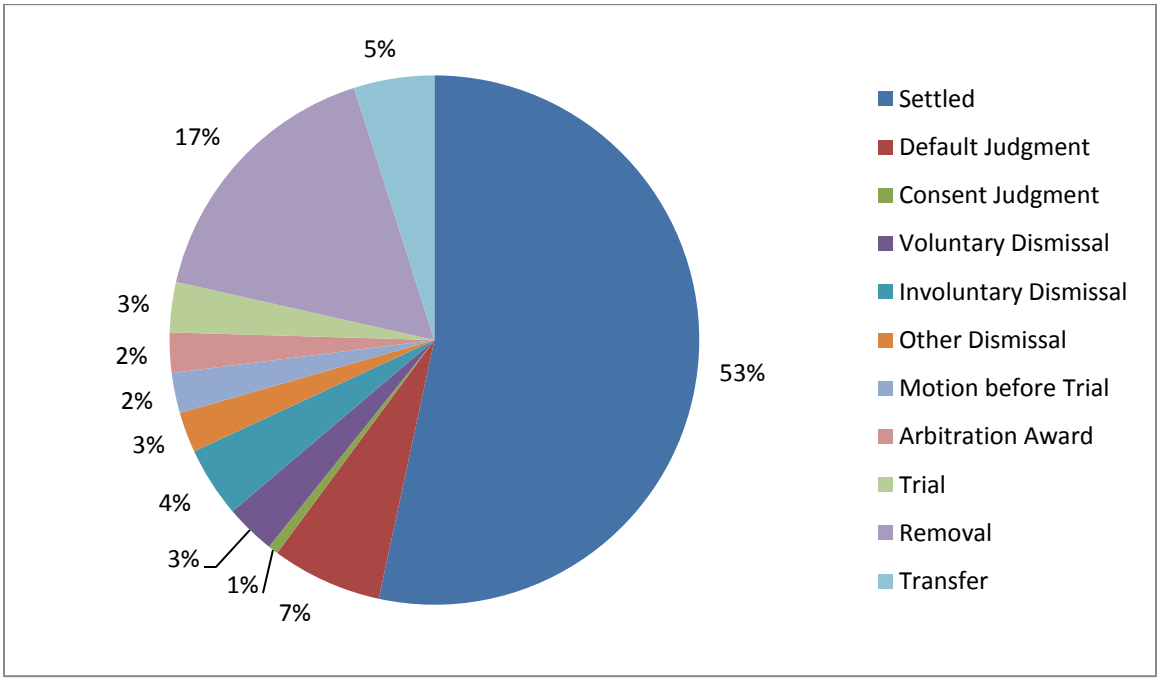


FIGURE 2
DISPOSITION OF MULTNOMAH COUNTY TORT CASES



2. Scheduling and continuances

This study observed very few motions to extend deadlines in the Multnomah County court. Although the study protocol required researchers to log motions to extend time to answer a complaint or counterclaims, serve discovery requests, respond to discovery requests, respond or reply to a discovery motion, respond or reply to a non-discovery motion, continue the overall discovery or dispositive motion deadline, or otherwise continue a deadline or scheduled event, virtually no such motions were observed in any of the 495 Multnomah County cases studied. Where parties did make requests to extend time, they were almost entirely confined to motions to stay or continue a hearing, or to continue the trial date.

Motions to continue a trial date must be signed by the attorney of record and contain a certificate stating that counsel has advised the client of the request. The motion must set forth, among other things, the reason for the requested postponement, the date(s) of previous trial settings and postponements (if any), and whether any parties to the proceeding object to the requested postponement.[26] While the information available on the OJIN dockets did not usually explain the reason provided for a requested trial continuance, every continuance in the study that was requested was in fact granted.

TABLE 2
MOTIONS TO EXTEND OR CONTINUE A DEADLINE OR EVENT

MOTION TYPE*	NUMBER FILED	PCT. OF TOTAL FILINGS GRANTED
Stay or continue hearing	141	99.28
Respond or reply to non-discovery motion	7	100.00
Continue trial date	88	100.00

* Other motions to extend deadlines were included for tracking, but no such motions were observed.

The relative absence of docketed motions to extend or continue deadlines may be a function of the rules and culture of Oregon state practice. First, the court sets relatively few hard deadlines prior to trial. Deadlines that are relatively common in other jurisdictions, such as a discovery cutoff or the deadline for filing dispositive motions, are uncommon in Oregon. Second, where deadlines are established, in most cases they are set initially by agreement of the parties, so the possibility of a scheduling conflict is lessened. Third, changes to some deadlines may be arranged by agreement of the parties and filed with the court by letter rather than by formal motion.

The near-universal granting of hearing and trial continuances may also be influenced by a combination of Oregon's litigation rules and culture. Motion hearings are set by praecipe, which

[26] UTCR 6.030(2).

requires the parties to confer on possible dates before contacting the court. Because there are rarely disputes about the propriety or timing of a new date, most continuances are unopposed and granted. Similarly, a party may request that a trial date be reset in the ordinary course, as long as the request is made more than 30 days before the scheduled trial date, and the continuance would not cause the case to be pending for more than twelve months (for ordinary cases). It is worth noting is this regard that the commentary to the UTCR regarding trial continuances "recommends that the court generally allow a motion … if the new trial date requested can be reasonably accommodated on the court's docket."[27]

2. PLEADING PRACTICE

Oregon's rules require parties to plead ultimate facts rather than providing mere notice of a cause of action. Civil complaints must contain a "plain and concise statement of the ultimate facts constituting a claim for relief without unnecessary repetition."[28] If the demand includes a claim for money the pleading must also state the amount claimed.[29] The Oregon Supreme Court has interpreted these rules to mean that "whatever the theory of recovery, facts must be alleged which, if proved, will establish the right to recovery."[30] Thus, a pleading is sufficient even if it contains "an allegation of material fact as to each element of the claim for relief, even if vague."[31] Legal conclusions are disregarded except to the extent they are supported by facts that would prove them.[32] In reviewing a motion to dismiss, all allegations and the reasonable inferences to be drawn therefrom are accepted as true.[33]

Respondents to the Oregon Rules Survey were generally quite supportive of the state's fact-based pleading system. Sixty-eight percent agreed that fact-based pleading reveals facts early in the case, and 64% agreed that fact-based pleading narrows issues early in the case.[34] Furthermore, almost three times as many respondents with relative comparative experience thought that the requirement to plead ultimate facts increased the efficiency of litigation as believed that such pleading standards decreased efficiency.[35]

Oregon survey respondents were somewhat divided in their perceptions as to how often parties litigate the scope and adequacy of the pleadings. Fifty percent of respondents stated that this type of satellite litigation "almost never" or "only occasionally" occurs, but 19% said it "often" occurs and 8% said it "almost always" occurs.[36]

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[27] *Id.*, 1993 Commentary.
[28] OR. R. CIV. P. 18A.
[29] OR. R. CIV. P. 18B.
[30] Davis v. Tyee Indus., Inc., 668 P.2d 1186, 1193 (Or. 1983).
[31] McAlpine v. Multnomah County, 883 P.2d 869, 870 (Or. Ct. App. 1994).
[32] Huang v. Claussen, 936 P.2d 394, 394 (Or. Ct. App. 1997).
[33] *Id.*; McAlpine, *supra* note 31.
[34] OREGON RULES SURVEY, *supra* note 2, at 16 & Fig. 8.
[35] *Id.* at 19 & Fig. 11.
[36] *Id.* at 23 & Fig. 15.

In fact, the Multnomah County data demonstrate that fact-based pleading does *not* lead to high amounts of satellite litigation or actual dismissals. Oregon Rule of Civil Procedure 21 provides for an array of dispositive motions at the pleading stage, including motions for judgment on the pleadings and motions to dismiss for "failure to state ultimate facts sufficient to constitute a claim."[37] In practice, it is not uncommon for the court to allow a plaintiff ten days to replead if the complaint is dismissed or stricken. The Multnomah County data, however, revealed relatively few instances in which a party affirmatively sought dismissal or judgment in the first instance based on the substance of the pleadings. As shown in Table 3 below, the study logged only 56 motions brought under Rule 21, the ORCP counterpart to Federal Rule of Civil Procedure 12. These motions only received a ruling 57% of the time, but rulings tended to occur within two months of filing.

TABLE 3
MOTIONS UNDER ORCP 21

MOTION TYPE	NO. FILED	PCT. WITH RULING	PCT. OF TOTAL FILINGS GRANTED IN FULL	PCT. OF TOTAL FILINGS GRANTED IN PART	DAYS FROM FILING TO RULING	
					Mean	Median
Dismiss under Rule 21(A)	28	53.57	28.57	17.86	93.6	76
Judgment on the Pleadings under Rule 21(B)	2	50.00	50.00	0.00	55.0	55
Strike pleadings under Rule 21(E)	19	63.16	21.05	26.32	38.1	40
Rule 21 request (subsec. unknown)	7	71.43	14.29	28.57	45.0	43
TOTAL	**56**	**57.14**	**25.00**	**21.43**	**64.8**	**55**

3. DISCOVERY PRACTICE

In comparison to the Federal Rules of Civil Procedure, Oregon's civil rules impose stricter limitations on the use of discovery devices. No more than 30 requests for admission are allowed, and interrogatories are not permitted at all. Furthermore, discovery of expert witnesses is significantly curtailed. The Oregon rules do not permit depositions of experts, nor do they require the production of expert reports. Indeed, the identity of expert witnesses need not even be disclosed until trial. The prevailing opinion at bench and bar is that the absence of specific rules regarding experts makes expert discovery essentially unavailable.[38]

[37] *See, e.g.*, Marks v. McKenzie High Sch. Fact-Finding Team, 878 P.2d 417, 420 (Or. 1994); First Interstate Bank or Ore., N.A. v. Haynes, 743 P.2d 1139, 1140 (Or. App. 1987).

[38] *See* Poppino v. Columbia Neurosurgical Assocs., L.L.C., 2006 WL 4041462 (Or. Cir. Aug. 5, 2006) ("To this court's knowledge, Oregon remains the only jurisdiction in the country which does not require some type of expert witness disclosure or discovery in civil litigation.").

Perhaps due in part to these restrictions, the number of discovery motions recorded on the docket sheets was quite low. In all, only 54 motions concerning any aspect of discovery were observed, and less than half of that total (21 in all) sought to compel discovery responses. Obviously there should be no motions to compel interrogatory answers or expert discovery when such discovery devices are not permitted in any event. Still, the absence of any motions to strike discovery requests or responses, quash discovery requests, or sanction any party for failing to cooperate in discovery was notable – especially because attorneys in the Oregon Rules Survey indicated that they would prefer that the court impose sanctions more frequently.[39]

Another possible explanation for the low number of disputed discovery motions is the consensus statement of the Civil Motions Panel of the Circuit Court. The Civil Motions Panel is a "voluntary group of judges who agree to take on the work of hearing and deciding pretrial motions in civil actions that are not assigned specifically to a judge."[40] The Panel's consensus statement indicates areas in which panel members have ruled similarly over time. Much of the consensus statement concerns the conduct of discovery, including depositions and discoverable subject matter.[41] Even though the consensus statement has no binding force, it may be hypothesized that lawyers familiar with the statement forgo filing certain discovery motions if the consensus counsels against granting the motions.

TABLE 4
MOTIONS RELATED TO DISCOVERY

MOTION TYPE	NO. FILED	PCT. WITH RULING	PCT. OF TOTAL FILINGS GRANTED	DAYS FROM FILING TO RULING	
				Mean	Median
Admit Electronic Discovery	1	0.00	0.00	---	---
Commission to Take Out of State Discovery	3	100.00	100.00	0	0
Compel Production (Documents)	8	62.50	37.50	27.4	35
Compel Production (Multiple Issues)	1	100.00	100.00	0	0
Compel Production (Unknown Issues)	12	75.00	66.67	26.0	23
Leave to Conduct Additional Discovery	6	100.00	33.33	43.2	55
Limit Discovery	2	0.00	0.00	---	---
Protective Order	21	83.33	61.90	5.3	0
TOTAL	**54**	**77.78**	**55.56**	**17.3**	**7**

[39] OREGON RULES SURVEY, *supra* note 2, at 52. Attorneys also indicated their belief that courts rarely impose sanctions, even when warranted. *Id.*, fig. 48. Perhaps the belief that motions for sanctions are unlikely to be granted contributes to the low filing rate.

[40] Civil Motions Panel Statement of Consensus, *available at* http://courts.oregon.gov/Multnomah/docs/CivilCourt/CivilMotionPanel_CivilMotionPanelStatementOfConsensus.pdf.

[41] *See id.*

4. DISPOSITIVE MOTION PRACTICE

a. Dismissals on procedural grounds

Many cases in Multnomah County (especially contract actions) were dismissed on grounds not directly related to the substantive merits of the case. In some instances the cases were dismissed voluntarily by the plaintiff, in others involuntarily by the court. Most common were default judgments, which were frequently sought and almost always granted.

One form of technical dismissal worthy of more extended discussion is a "Rule 7 notice," so named because it is authorized by UTCR 7.020. That rule requires the plaintiff to file a return or acceptance of service on the defendant within 63 days of the filing of a complaint; if the plaintiff does not meet this requirement, the court issues a notice of pending dismissal that gives the plaintiff 28 days from the date of mailing to take action to avoid the dismissal.[42] As shown in Table 5 below, in less than 40 percent of cases did the court act on the notice and close the case, and the median time to act was 61 days – more than twice the time anticipated by the rule. Moreover, in many cases in which a Rule 7 notice did result in a technical dismissal, the case was almost always reopened at the plaintiff's request. Rule 7, then, frequently acted to grant a *de facto* continuance to the plaintiff if service could not be made within the time frame contemplated by the rules.

TABLE 5
MOTIONS TO DISMISS OR TRANSFER ON PROCEDURAL GROUNDS

MOTION TYPE	NO.	PCT. WITH RULING	PCT. OF TOTAL FILINGS GRANTED	DAYS FROM FILING TO RULING	
				Mean	Median
Default Judgment	209	98.56	97.61	1.6	1
Dismiss Voluntarily under Rule 54(A)(1)	241	99.17	99.17	2.3	0
Dismiss Involuntarily under Rule 54(B)(1) (Failure to comply with rule or order)	1	0.00	0.00	---	---
Dismiss Involuntarily under Rule 54(B)(3) (Want of prosecution)	71	49.30	49.30	46.2	47
Dismiss Involuntarily under Rule 54(B) (subsection unknown)	14	85.71	85.71	18.6	3.5
Order to show cause why claims should not be dismissed	52	21.15	21.15	43.2	41
Order to show cause why parties should not be dismissed	2	100.00	100.00	0.0	0
Rule 7 notice	281	37.72	37.72	70.3	61
Transfer to another court	17	70.59	58.82	20.0	14

While Table 5 describes the total number of motions filed for each category, it is important to remember that a single case may see several permutations of the same motion. In particular, motions for a default judgment or voluntary dismissal, or a Rule 7 notice, are typically filed

[42] UTCR 7.020; *In re Worth*, 82 P.3d 605, 610 n.8 (Or. 2003).

separately for each party. In certain cases in the study, a plaintiff brought suit against multiple defendants, and ultimately filed a separate motion for each defendant.

b. Summary judgment

Under ORCP 47, motions for summary judgment are to be granted "if the pleadings, depositions, affidavits, declarations and admissions on file show that there is no genuine issue as to any material fact and that the moving party is entitled to prevail as a matter of law."[43] Oregon state courts are required to consider the record in a manner most favorable to the adverse party.

Motions for summary judgment were sought and granted relatively rarely in Multnomah County Circuit Court. Only 91 such motions were filed in the 495 cases studied, and more than one-third of those motions were concentrated in two cases (23 motions in one case, and 11 motions in another). The seemingly low overall numbers might be partially explained as an outgrowth of Oregon's rules concerning expert witnesses. ORCP 47E declares that summary judgment motions under this rule "are not designed to be used as discovery devices to obtain the names of potential expert witnesses or to obtain their facts or opinions," and further provides that a party may defeat summary judgment simply by filing "an affidavit or a declaration of the party's attorney stating that an unnamed qualified expert has been retained who is available and willing to testify to admissible facts or opinions creating a question of fact."[44] While the affidavit surely must be presented truthfully and in good faith, this relatively easy way of presenting a dispute of material fact may discourage some parties from seeking summary judgment, on the assumption that it is likely to be defeated.

Interestingly, more than half of the summary judgment motions filed in Multnomah County never received a ruling from the court. Fewer than 30% of summary judgment motions filed were granted in whole or in part. When the court did rule, however, it tended to do so rather quickly; the median time to ruling was less than two months after filing, and only four motions in the study took more than three months to receive a ruling.

TABLE 6
MOTIONS FOR SUMMARY JUDGMENT

MOTION TYPE	NO. FILED	PCT. WITH RULING	PCT. OF TOTAL FILINGS GRANTED IN FULL	PCT. OF TOTAL FILINGS GRANTED IN PART	DAYS FROM FILING TO RULING	
					Mean	Median
Full Summary Judgment	79	49.37	22.78	8.86	71.9	57
Partial Summary Judgment	12	25.00	16.67	0.00	59.7	57
TOTAL	**91**	**46.15**	**21.98**	**7.69**	**71.1**	**57**

[43] OR. R. CIV. P. 47C.
[44] OR. R. CIV. P. 47E.

5. MANDATORY ARBITRATION

Oregon law requires that all civil cases with $50,000 or less at issue, except small claims cases, go to arbitration.[45] In Multnomah County parties may agree to mediate any civil matter otherwise subject to mandatory arbitration as long as the mediation takes place in the same time period required for the court-annexed mandatory arbitration program.[46]

Parties to civil actions in Multnomah County who are required to participate in dispute resolution in civil cases must file a certificate indicating that they have done so within 270 days from the filing of the first complaint or petition in the action.[47] For cases exempt from dispute resolution requirements, parties nevertheless are required to participate in a judicial settlement conference before a matter may proceed to trial.[48]

The mandatory arbitration provisions are part of a larger cultural movement in the Oregon Circuit Court to foster all forms of dispute resolution that are appropriate to the matter filed – including trials, arbitration, mediation, judicial settlement conferences, and inter-party negotiations. This approach views alternative (or "appropriate") dispute resolution as another tool to moving cases toward resolution within the time frames set by the Oregon Judicial Conference.

In the Oregon Rules Survey, the majority of respondents who had at least one case proceed through arbitration reported their belief that mandatory arbitration decreased overall time to disposition and cost to litigants; however, one-third of respondents also indicated their belief that mandatory arbitration reduced the fairness of the process.[49] A majority of respondents further indicated that in their experience, losing parties only "occasionally" or "almost never" appeal the arbitration award.[50]

The Multnomah County docket study showed that mandatory arbitration occurred relatively rarely for contract and tort cases. Of the 495 cases reviewed, in only 51 did the court actually schedule an arbitration, and in fewer than one-third of those cases was the arbitration actually conducted. In almost half the cases in which arbitration was scheduled, the case settled before the arbitration could be held. Because arbitrations tended to be scheduled within a month of the court's first raising the issue, the high settlement rate suggests that an impending arbitration hearing may push the parties toward settlement more quickly.

As shown in Table 7 below, arbitrations tended to be scheduled and conducted more frequently in tort cases than in contract cases. All but six of the tort cases in which an arbitration was scheduled involved personal injury claims.

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[45] *See* OR. REV. STAT. §36.400 *et seq.*
[46] SLR 12.025(2).
[47] SLR 7.075(2).
[48] SLR 7.075(3).
[49] OREGON RULES SURVEY, *supra* note 2, at 60.
[50] *Id.* at 61.

The study logged five appeals of arbitration awards in the sixteen cases in which awards were given. All of the appeals were by defendants.

TABLE 7
ARBITRATIONS IN CIRCUIT COURT FOR MULTNOMAH COUNTY

	TOTAL CASES FILED	ARBITRATION SCHEDULED	ARBITRATION CONDUCTED	SETTLED BEFORE ARBITRATION	ARBITRATION NOT CONDUCTED – OTHER[51]
Contract Cases	332	22	6	8	8
Tort Cases	163	29	10	16	3
All Cases	**495**	**51**	**16**	**24**	**11**

6. TRIAL

The Oregon Constitution guarantees the right of trial by jury in civil cases "shall remain inviolate."[52] Nevertheless, many trials are conducted by the court alone. ORCP 51 provides that trial of all issues of fact shall be by jury unless the parties stipulate to a trial without jury.[53] The number of civil cases concluded by trial, jury or bench, are quite low at the state level and in Multnomah County. For the years 2005 to 2008 the statewide average for civil cases closed in a calendar year by trial was 1.6% and the average for Multnomah County was 1.4%.

This study logged an identical rate of terminations by trial for Multnomah County: 1.4% of contract and tort cases in the study reached a trial verdict. In all, seven cases in the study were terminated by trial verdict – two bench trials and five jury trials. Three of these trials (all jury trials) ended in judgments for the plaintiff, with awards ranging from approximately $35,000 to approximately $1.025 million. In five other cases, a trial commenced but the parties settled the case during the trial process and before a verdict was reached.

B. COMPARING STATE AND FEDERAL DATA

In this section, we compare some of the Multnomah County data with corresponding data from the United States District Court for the District of Oregon. As discussed below, by most measures the Multnomah County system is faster, less prone to motion practice, and less likely to see schedules interrupted by continuances or extensions of time. These conclusions should not be read to say that the state civil justice system is preferable for every case, or that attorneys and judges who practice in federal court are not industrious, diligent or cost-conscious. The comparison, however, offers valuable feedback for those interested in investing every court system with the ability to assure the just, speedy and inexpensive resolution of every civil action.

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[51] In eleven cases, a scheduled arbitration was not held because the case was removed to federal court (2 cases), the case was dismissed for a party's failure to comply with the rules (6 cases), or for a reason not provided on the docket sheet.
[52] OR. CONST. §17. *See also* OR. R. CIV. P. 50 ("The right of trial by jury as declared by the Oregon Constitution or as given by a statute shall be preserved to the parties inviolate.").
[53] OR. R. CIV. P. 51C(1).

1. METHODOLOGY FOR THE COMPARISON

The IAALS federal docket study logged data from the dockets of 1,362 civil cases filed in the U.S. District Court for the District of Oregon that closed between October 1, 2005 and September 30, 2006 – the same one-year time period as the cases in the Multnomah County study. Of these nearly 1,400 federal cases, 878 may be categorized broadly as contract or tort cases.[54] Of the 878 cases, 203 are contract cases and 675 are tort cases (including 478 cases alleging discrimination or civil rights abuses).

Many of the data categories used for the federal study were identical or substantially similar to the data categories used for the Multnomah County study. For example, both studies logged all discovery and dispositive motions and orders, scheduling orders, and requests for extensions or continuances.

There are, of course, inherent challenges in comparing data from state and federal systems. Many different variables contribute to the processing of each case, including (among other things) case type, judge, prevailing legal culture, and applicable procedural rules. Despite these challenges, however, there is considerable value to the Oregon state-federal comparison. The legal culture in Oregon is reasonably uniform, with significant overlap between attorneys in state and federal court.[55] For purposes of this study, the cases being compared have been limited to contract and tort actions; cases that are exclusively the province of either the federal or state court system have been excluded. We are left to test differences in civil rules and case management practices, and these differences (or similarities, as the case may be) offer interesting insight into more efficient practices generally.

Throughout this section, wherever total numbers are compared between state and federal court, the numbers have been normalized. For example, the number of summary judgment motions recorded is provided not in absolute terms, but as a ratio of summary judgment motions filed per 100 cases.

2. TIME TO DISPOSITION

Overall, the time to disposition of cases in Multnomah County was three to four months faster on average than the time to disposition in the U.S. District Court for the District of Oregon, as

[54] Specifically, the Oregon federal cases that were classified as Insurance, Marine Contract, Negotiable Instrument, Franchise, Contract Product Liability and Other Contract according to the federal nature of suit classification system were considered to be "contract" cases for purposes of this comparison, and Oregon federal cases classified as Torts to Land, Tort Product Liability, Airplane Product Liability, Assault Libel & Slander, Federal Employers Liability, Marine Product Liability, Motor Vehicle, Motor Vehicle Product Liability, Personal Injury – Medical Malpractice, Personal Injury – Product Liability, Other Personal Injury, Asbestos Personal Injury – Product Liability, Truth in lending, Other Fraud, Property Damage – Product Liability, Other Personal Property Damage, Voting, Employment, Housing/Accommodations, Welfare, Americans with Disabilities Act – Employment, Americans with Disabilities Act – Other, and Other Civil Rights were considered to be "torts" cases for purposes of this comparison.

[55] Over 70% of the respondents to the Oregon Rules Survey indicated litigation experience both in Oregon Circuit Court and in the U.S. District Court for the District of Oregon. *See* OREGON RULES SURVEY, *supra* note 2, at 12.

demonstrated in Figure 3 below. The difference was apparent even when the federal cases were limited to contract and tort cases, to correspond to the case types tracked in Multnomah County.

FIGURE 3
MEAN DAYS FROM FILING TO DISPOSITION – OREGON STATE AND FEDERAL COURTS

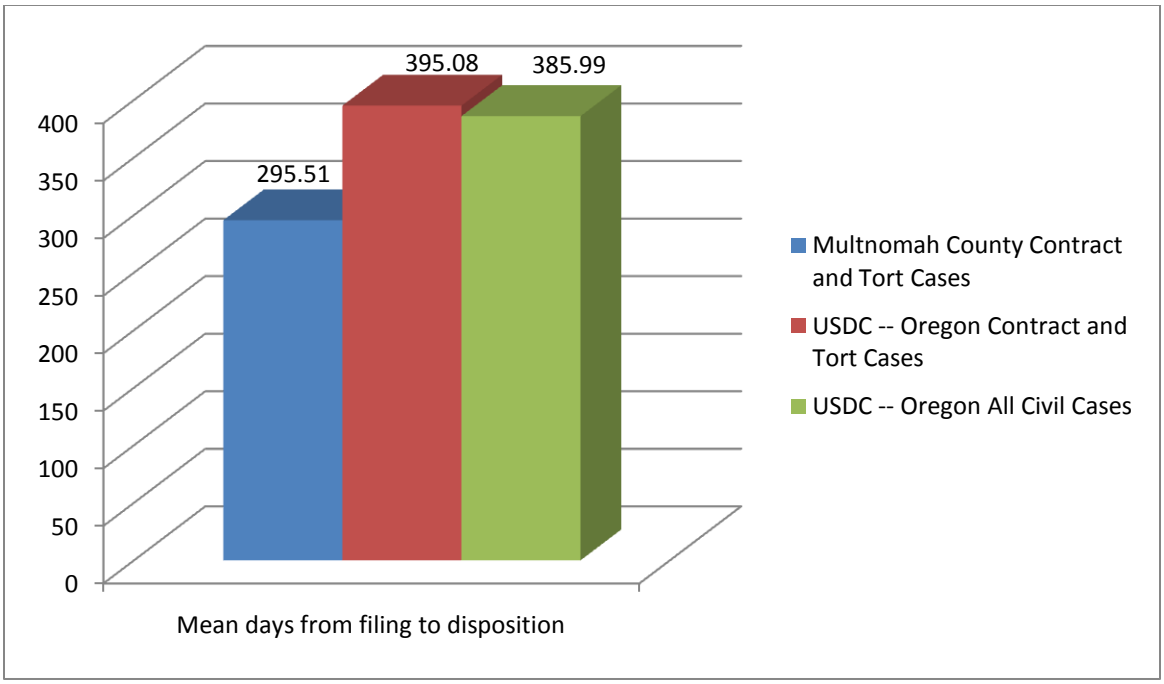
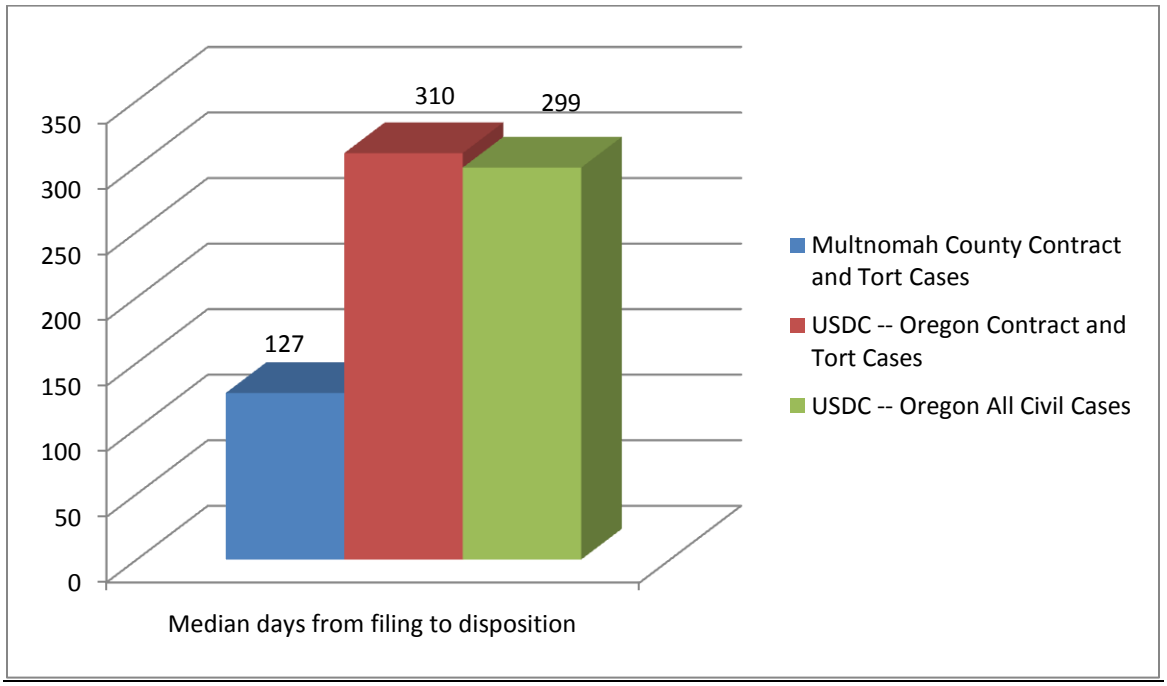


FIGURE 4
MEDIAN DAYS FROM FILING TO DISPOSITION – OREGON STATE AND FEDERAL COURTS



3. PLEADINGS

The filing rate of motions seeking to dismiss the case, strike pleadings, or for judgment on the pleadings, was considerably lower than that observed in the U.S. District Court for the District of Oregon. As shown in Figure 5, slightly more than 11 such motions were recorded for every 100 contract and tort cases in Multnomah County, compared more than 21 such motions per 100 contract and tort cases in the District of Oregon. These motions were also granted at a lower rate in state court – fewer than 47% of all such motions filed in Multnomah County were eventually granted in whole or part, as compared to more than 62% of equivalent (Rule 12) motions in federal court.

FIGURE 5
FILING RATES FOR MOTIONS TO DISMISS, STRIKE PLEADINGS, OR FOR JUDGMENT ON THE PLEADINGS IN OREGON STATE AND FEDERAL COURT

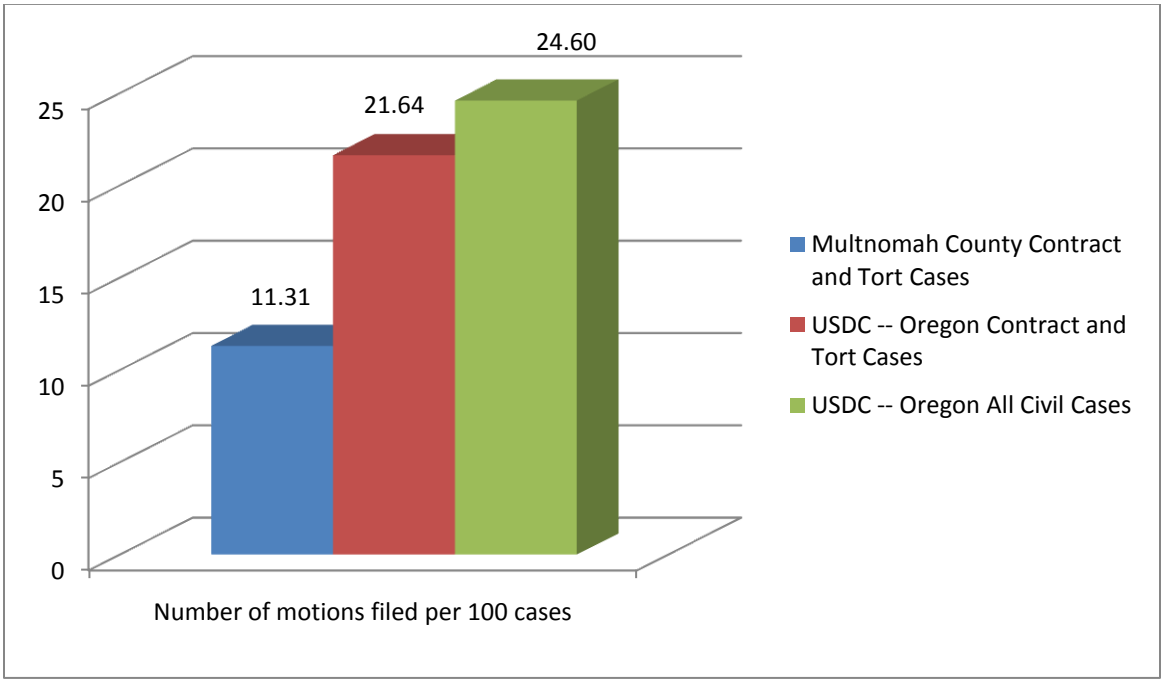
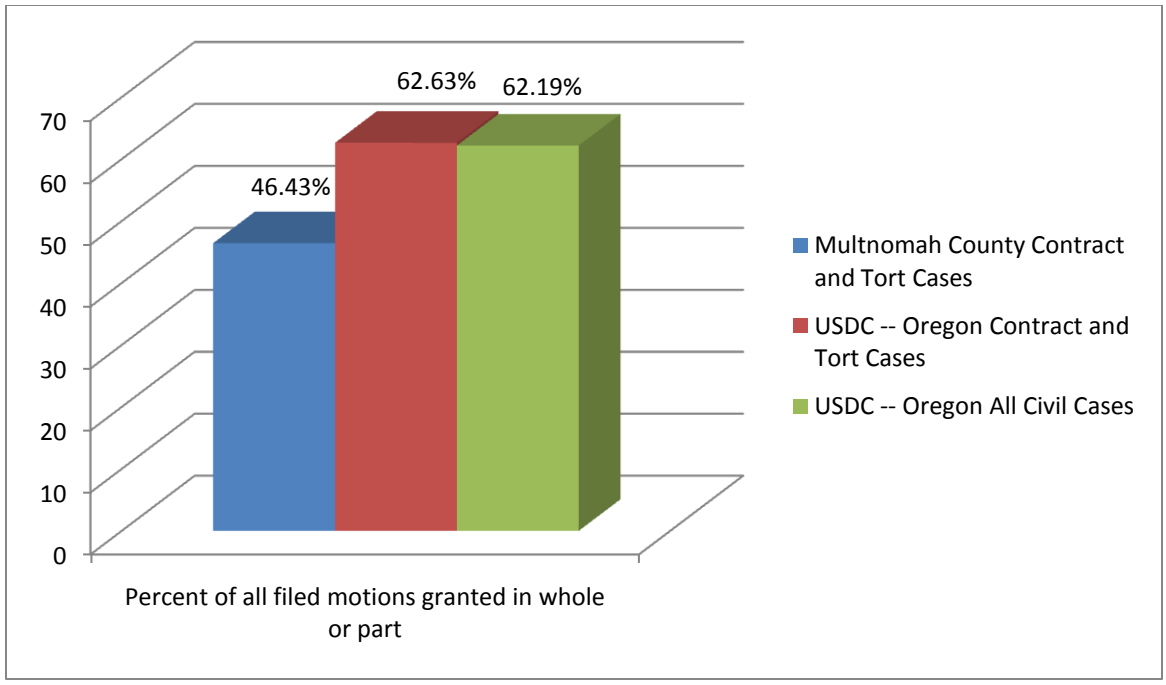


FIGURE 6
GRANT RATES FOR MOTIONS TO DISMISS, STRIKE PLEADINGS, OR FOR JUDGMENT ON THE PLEADINGS IN OREGON STATE AND FEDERAL COURT



The comparatively low filing and grant rates for motions to dismiss in Oregon state court offers powerful evidence that requiring parties to include facts in their initial pleadings does not necessarily result in more dismissals at the pleading stage. Indeed, many fewer cases per 100 were challenged on sufficiency grounds at the state level than in the federal court, where the wide open pleading standard of *Conley v. Gibson*[56] governed during the time period for this study.

Based on this study alone, it is not possible to say exactly why the comparative filing and grant rates for motions to dismiss in Multnomah County Circuit Court are so low. It may be that the inclusion of ultimate facts at the pleading stage bolster claims and make those claims more resistant to early dismissal on sufficiency grounds. Perhaps relatedly, it may be that defense lawyers do not believe that a motion to dismiss is cost-effective in most cases, given the relatively low grant rate. What is clear, however, is that cases in Multnomah County are less likely to be challenged at the pleading stage – and more likely to survive such a challenge – than similar cases in the federal court.

[56] 355 U.S. 41, 45-46 (1957) (holding that "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.").

4. DISCOVERY MOTION PRACTICE

The small number of discovery motions in Multnomah County is striking when compared to similar motions filed in the federal district court in Oregon. As shown in Figure 7 below, in federal court more than 30 motions on disputed discovery (i.e., motions to compel, quash, strike discovery responses or issue discovery sanctions) were filed for every 100 contract or tort cases. In state court, that number was only about 4 motions per 100 cases. Indeed, as noted above, in Multnomah County not a single motion to quash discovery was observed; neither were there any motions seeking sanctions based on failure to cooperate in discovery. As indicated in Figure 8, where motions on disputed discovery were filed, they were resolved twenty days faster on average on the state court than in federal court.

FIGURE 7
FILING RATES FOR MOTIONS ON DISPUTED DISCOVERY IN OREGON STATE AND FEDERAL COURT

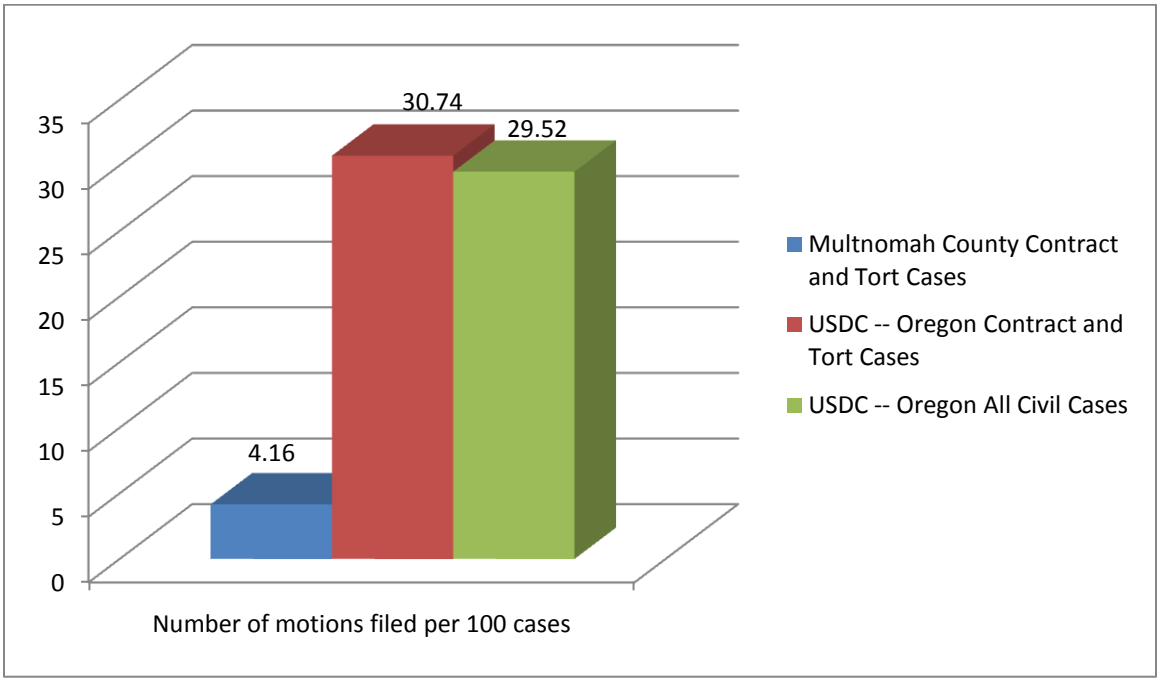
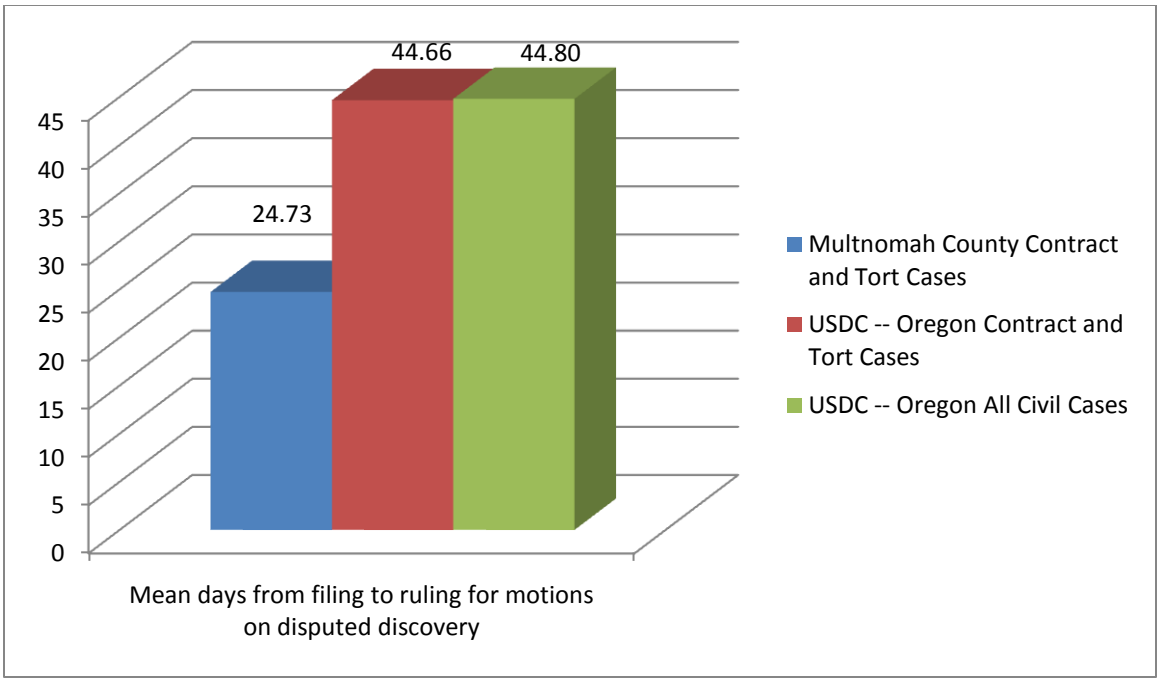


FIGURE 8
TIME TO RULE ON MOTIONS ON DISPUTED DISCOVERY IN OREGON STATE AND FEDERAL COURT



5. SUMMARY JUDGMENT

Similar to motions to dismiss or motions on disputed discovery, the filing and grant rates for motions for summary judgment were considerably lower in Multnomah County than in the U.S. District Court for the District of Oregon. As noted above, this may be attributable in part to the unique state rule that allows summary judgment to be defeated by an affidavit stating that an expert's testimony at trial will create a disputed issue of material fact. While this rule may discourage filing of summary judgment motions in state court, conversely the absence of such a rule may encourage filing of summary judgment motions in federal court, since parties may conclude that the chances of prevailing are higher. The numbers bear out this final supposition – almost 60% of motions for summary judgment in contract and tort cases in the U.S. District Court for the District of Oregon were granted, a rate twice that of the state court.

FIGURE 9
FILING RATES FOR SUMMARY JUDGMENT MOTIONS IN OREGON STATE AND FEDERAL COURT

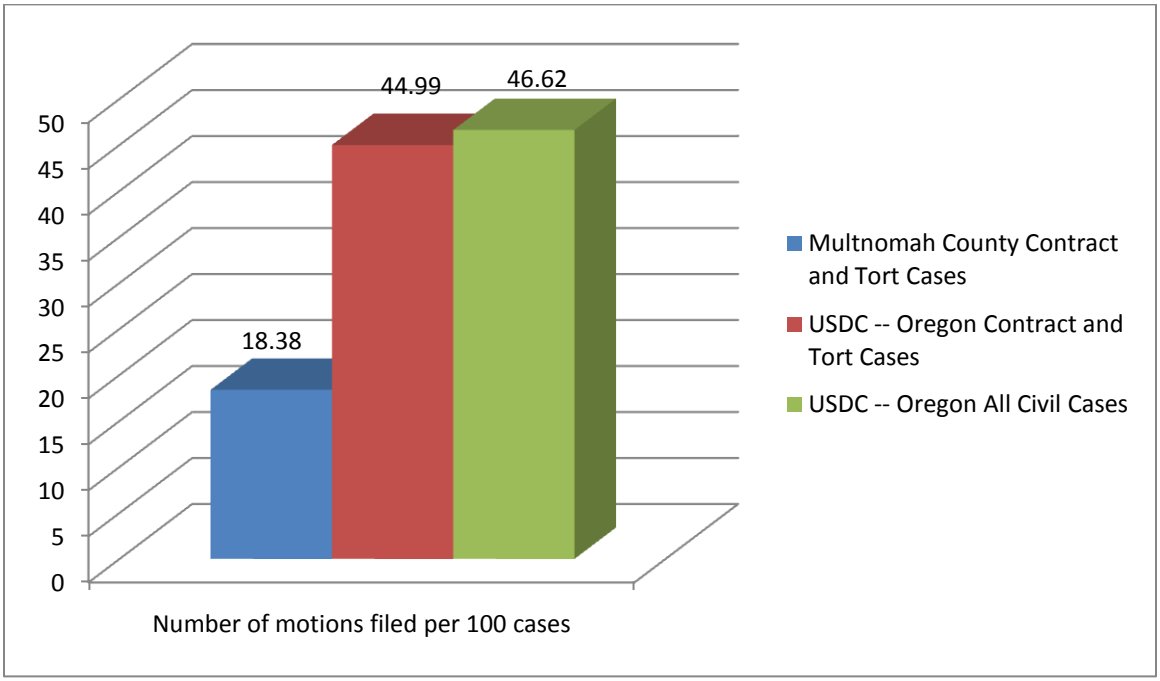
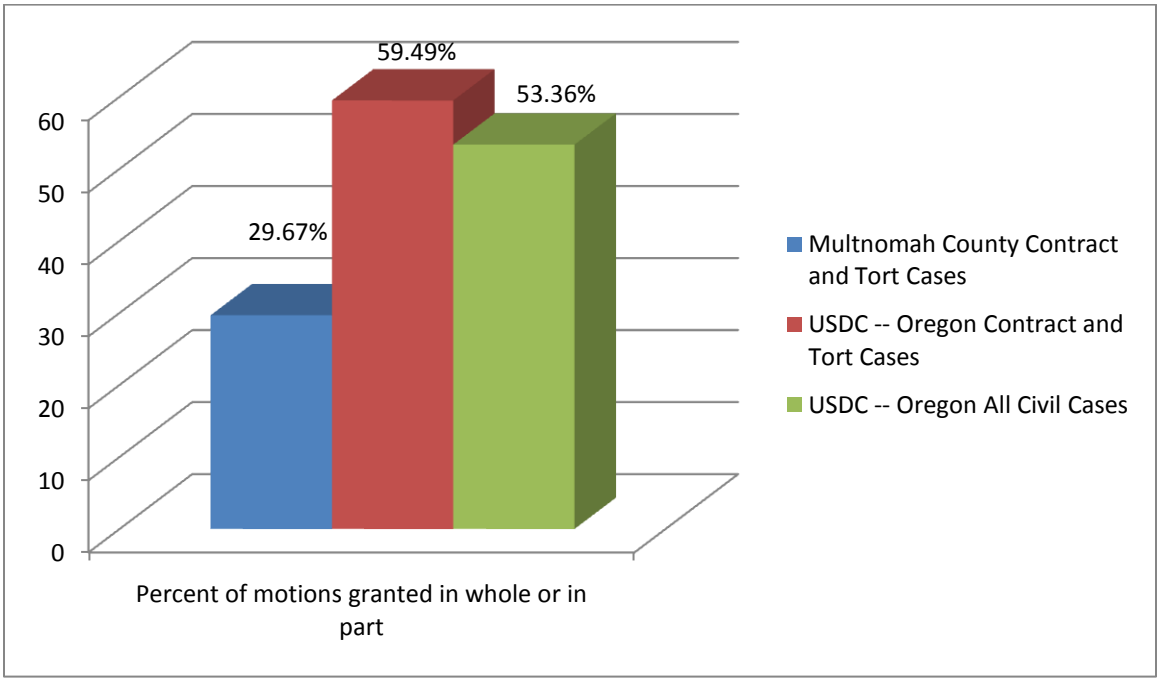


FIGURE 10
GRANT RATES FOR SUMMARY JUDGMENT MOTIONS IN OREGON STATE AND FEDERAL COURT



6. A CLOSER LOOK AT DISCRIMINATION CASES

Much of the recent discussion concerning the rules of civil procedure at the both the state and federal levels has concerned the procedural circumstances of civil rights plaintiffs. Several commentators have argued, for example, that only a broad system of classical notice pleading (such as that permitted by the *Conley* case) combined with broad discovery can afford plaintiffs in discrimination suits a level playing field when they assert violations by government or business entities.[57] Such commentators have predicted that any change in pleading standards or limitations on discovery will make it extremely difficult for civil rights plaintiffs to gain fair access to the civil justice system. Among other things, these commentators predict that fact-based pleading – or even the qualitatively different "plausibility pleading" mandated by the United States Supreme Court in *Bell Atlantic Corp. v. Twombly*[58] and *Ashcroft v. Iqbal*[59] – will create a massive growth in the filing and grant rates of motions to dismiss (causing many civil rights claims to be dismissed before the discovery stage), and that discovery limits will make it impossible for such plaintiffs who do survive a dismissal motion to collect adequate information, since virtually all relevant evidence lies in the hands of the defendant.

Oregon state law recognizes claims for discrimination and civil rights violations, and portions of Oregon statutes are designed to make state antidiscrimination law a mirror image of federal law.[60] Twenty-one state discrimination cases were included among the 495 Multnomah County cases studied. This is admittedly a small number of cases on which to base any significant conclusions, but even these limited data cut against the prognostications of most commentators. Specifically, as shown in Figures 11 and 12 below, the Multnomah County discrimination cases exhibited vastly lower filing and grant rates for motions to dismiss, motions on disputed discovery, and motions for summary judgment than federal civil rights and discrimination cases closed in the U.S. District Court for the District of Oregon in the same time frame.[61]

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[57] *E.g.*, Elizabeth M. Schneider, *The Changing Shape of Federal Pretrial Practice: The Disparate Impact on Civil Rights and Employment Discrimination Cases*, 158 U. PA. L. REV. 517 (2010); A. Benjamin Spencer, Iqbal *and the Slide Toward Restrictive Procedure*, 14 LEWIS & CLARK L. REV. 101 (2010); Howard M. Wasserman, Iqbal, *Procedural Mismatches, and Civil Rights Litigation*, 14 LEWIS & CLARK L. REV. 157 (2010).

[58] 550 U.S. 544 (2007).

[59] 129 S. Ct.. 1937 (2009).

[60] *See, e.g.*, Washburn v. Columbia Forest Prods., Inc., 134 P.3d 161, 163 (Or. 2006) (discussing the portions of disability law designed to mirror the Americans with Disabilities Act); Hofsheier v. Farmers Ins. Exch., 963 P.2d 48, 49 (Or. App. 1998) (discussing a lawsuit involving discrimination allegations brought under the Federal Housing Act and Oregon state law).

[61] For this comparison, cases were drawn from the U.S. District Court for the District of Oregon from the following categories: Americans with Disabilities Act – Employment, Americans with Disabilities Act – Other, Employment, Housing/Accommodations, Voting, Welfare, and "Other Civil Rights."

FIGURE 11
FILING RATES PER 100 CASES FOR KEY MOTIONS IN OREGON STATE AND FEDERAL DISCRIMINATION/CIVIL RIGHTS CASES

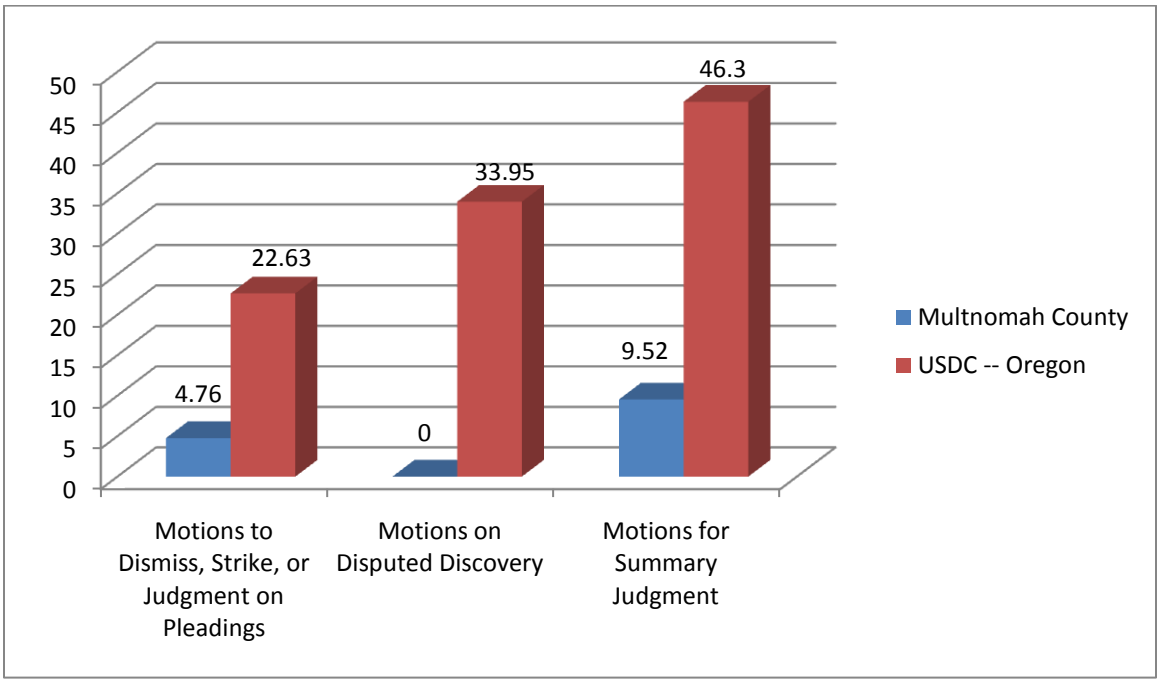
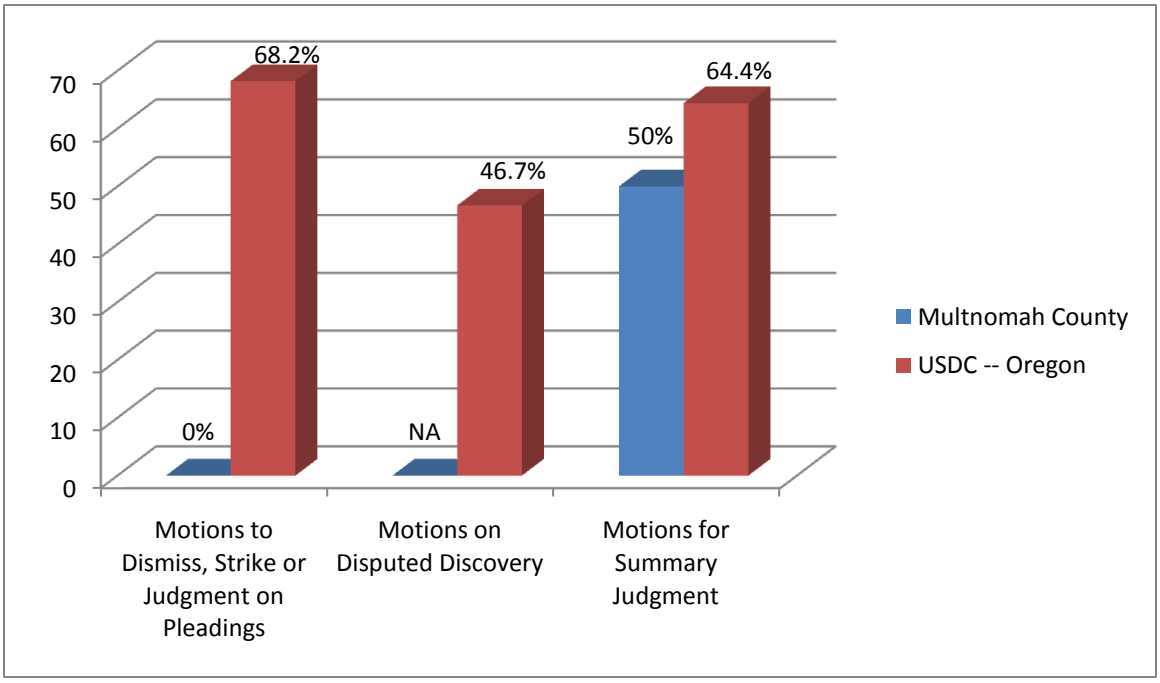


FIGURE 12
GRANT RATES FOR KEY MOTIONS IN OREGON STATE AND FEDERAL DISCRIMINATION/ CIVIL RIGHTS CASES (MOTIONS GRANTED IN WHOLE OR IN PART)



V. CONCLUSION

This study highlights some of the core characteristics related to the processing of contract and tort cases in the Circuit Court of Multnomah County, Oregon. Limited motion practice, the general absence of continuances and extensions of time, and relative efficiency in terminating cases are manifest. Furthermore, in comparison to the federal district court servicing the same geographic area and using the same pool of attorneys, the Multnomah County Court fares quite well with respect to moving cases to resolution effectively.

This report is not the end of the discussion. Indeed, we hope to see further examination of the Oregon courts, and comparative court systems in other states. Those familiar with and supportive of the Oregon state system should consider additional review in order to pinpoint the reasons behind the efficiencies noted in this study. Those inclined to be skeptical about the value of some of Oregon's civil rules – especially rules concerning fact pleading and limited discovery – might consider these findings with an open mind and ask whether some of the skepticism was misplaced.

In any event, let the discussion continue. The American civil justice system deserves nothing less.