

Revision Aug 4
- 1978

OREGON RULES OF CIVIL PROCEDURE

12.

~~A.~~ PLEADINGS LIBERALLY CONSTRUED - DISREGARD OF ERROR

12 A

~~A(1)~~ Liberal Construction. All pleadings shall be liberally construed with a view of substantial justice between the parties.

12 B

~~A(2)~~ Disregard of error or defect not affecting substantial right. The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the adverse party.

13

~~B.~~ KINDS OF PLEADINGS ALLOWED - FORMER PLEADINGS ABOLISHED

13 A

~~B(1)~~ Pleadings. The pleadings are the written statements by the parties of the facts constituting their respective claims and defenses.

13 B

~~B(2)~~ Pleadings allowed. There shall be a complaint and an answer. An answer may include a counterclaim against a plaintiff including a party joined under Rule ~~K(4)~~^{22 D} and a cross-claim against a defendant, ~~including a party joined under Rule K(4).~~ A pleading against any person joined under Rule ~~K(3)~~^{22 C} is a third-party complaint. There shall be an answer to a cross-claim and a third party complaint. There shall be a reply to a counterclaim denominated as such and a reply to assert any affirmative allegations.

There shall be no other pleading unless the court orders otherwise.

13 C

~~B(3)~~ Pleadings abolished. Demurrers and pleas shall not be used.

14.

~~C.~~ MOTIONS

14 A

~~C(1)~~ Motions, in writing, grounds. (1) An application for an order is a motion. Every motion, unless made during trial, shall be in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

Rule 12.

Pleadings Liberally construed etc.

~~For Form~~

Background.

ORS ~~Chapters~~ ^{sections} ~~part~~. Superseded:

16.120, 16.160.

~~~~~~~~~

Rule 13

Kinds of pleadings

Background.

ORS ~~Chapters~~ <sup>sections</sup> superseded:

16.020, 16.325,  
16.010, 16.030, 16.460.

~~16.460~~

P

COMMENT: ~~X~~ Section 13A indicates the intent of the council to retain fact pleading,

The description of pleadings <sup>section</sup> ~~changes~~ <sup>in 13B</sup> the existing Oregon practice by eliminating the routine reply containing only denials of affirmative matter in the answer. No reply is required ~~XXX~~ <sup>to</sup> affirmative matter in an answer by this rule and under rule ~~MX~~ 18C allegations in a pleading to which no responsive pleading is required or permitted are automatically taken as denied. A <sup>reply</sup> ~~responsive~~ ~~pleading~~ is required to a counterclaim in an answer ~~KX~~ or to raise ~~XXXXXXXXXX~~ new matter in avoidance of defenses asserted in the ~~reply~~ <sup>answer</sup>. The proper response to a cross claim is an answer; the proper response of a party summoned to respond to a counterclaim under rule 22 D is a reply.

see Rule 18

The ~~label~~ demurrer or pleas is eliminated by 13C. ~~XXXXXXXXXX~~ the functions performed by these ~~devices~~ <sup>provisions</sup> are taken over by the motions specified in Rule 21.

to do any act or take any proceeding in any civil action which <sup>is</sup> ~~has been~~ pending before it.

BACKGROUND NOTE

ORS section superseded: 174.120.

COMMENT

Section 10 A. is based upon Federal Rule 6 (a). The only substantial difference from the time computation provided in ORS 174.120 is the next to the last sentence of section 10 A. relating to intermediate Saturdays, Sundays and holidays for periods of less than 7 days. Section 10 B. was eliminated from the federal rule in 1968 because federal courts no longer have terms. Since Oregon courts do have terms, it was included in this rule.

RULE 11 (RESERVED)

RULE 12

PLEADINGS LIBERALLY CONSTRUED  
DISREGARD OF ERROR

A. Liberal Construction. All pleadings shall be liberally construed with a view of substantial justice between the parties.

B. Disregard of error or defect not affecting substantial right. The court shall, in every stage of an action or proceeding, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the adverse party.

BACKGROUND NOTE

ORS sections superseded: 16.120, 16.660.

10 10 new 10  
memo  
Add rule E

RULE 13  
KINDS OF PLEADINGS ALLOWED  
FORMER PLEADINGS ABOLISHED

A. Pleadings. The pleadings are the written statements by the parties of the facts constituting their respective claims and defenses.

B. Pleadings allowed. There shall be a complaint and an answer. An answer may include a counterclaim against a plaintiff, including a party joined under Rule 22 D., and a cross-claim against a defendant. A pleading against any person joined under Rule 22 C. is a third-party complaint. There shall be an answer to a cross-claim and a third party complaint. There shall be a reply to a counterclaim denominated as such and a reply to assert any affirmative allegations in avoidance of any defenses asserted in an answer. There shall be no other pleading unless the court orders otherwise.

C. Pleadings abolished. Demurrers and pleas shall not be used.

BACKGROUND NOTE

ORS sections superseded: 16.020, 16.030, 16.240, 16.325, 16.460. *16.620*

COMMENT

The description of pleadings in section 13 B. changes the existing Oregon practice by eliminating the routine reply containing only denials of affirmative matter in the answer. No reply is required to deny affirmative matter in an answer. Under Rule 19 C., allegations in a pleading to which no responsive pleading is required or permitted are automatically taken as denied. A reply is required to a counterclaim in an answer or to raise new matter in avoidance of defenses asserted in the answer. The proper response to a crossclaim is an answer; the proper response of a party summoned to respond to a counterclaim under Rule 22 D. is a reply. ORS 16.020 and 16.460 are unnecessary under Rules 1 and 2.

P7  
mw  
10  
memo

*mw*  
*10*  
*memo*

RULE 12

PLEADINGS LIBERALLY CONSTRUED - DISREGARD OF ERROR

A. Liberal Construction. All pleadings shall be liberally construed with a view of substantial justice between the parties.

B. Disregard of error or defect not affecting substantial right.  
The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the adverse party.

BACKGROUND NOTE

ORS sections superseded: 16.120, 16.<sup>6</sup>~~160~~.

RULE 13

KINDS OF PLEADINGS ALLOWED - FORMER PLEADINGS ABOLISHED

A. Pleadings. The pleadings are the written statements by the parties of the facts constituting their respective claims and defenses.

B. Pleadings allowed. There shall be a complaint and an answer. An answer may include a counterclaim against a plaintiff including a party joined under Rule 22 D. and a cross-claim against a defendant. A pleading against any person joined under Rule 22 C. is a third-party complaint. There shall be an answer to a cross-claim and a third party complaint. There shall be a reply to a counterclaim denominated as such and a reply to assert any affirmative allegations. There shall be no other pleading unless the court orders otherwise.

C. Pleadings abolished. Demurrers and pleas shall not be used.

BACKGROUND NOTE

ORS sections superseded: ~~16.010~~, 16.020, 16.030, 16.325, 16.460. 16.240

COMMENT

The description of pleadings in section 13 B, changes the existing Oregon practice by eliminating the routine reply containing only denials of affirmative matter in the answer. No reply is required to assert deny affirmative matter in an answer by this rule, and under Rule 19 C., allegations in a pleading to which no responsive pleading is required or permitted are automatically taken as denied. A reply is required to a counterclaim in an answer or to raise new matter in avoidance of defenses asserted in the answer. The proper response to a cross-claim is an answer; the proper response of a party summoned to respond to a counterclaim under Rule 22 D. is a reply.

ORS. 16.020 is unnecessary under Rule 1. and 2,  
and 16.460 are

RULE 14

MOTIONS

A. Motions, in writing, grounds. An application for an order is a motion. Every motion, unless made during trial, shall be in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

B. Form. The rules applicable to captions, signing and other matters or form of pleadings apply to all motions and other papers provided for by these rules.

BACKGROUND NOTE

ORS sections superseded: 16.710, 16.720, 16.730, 16.740.

14B  
(27)

Form. The rules applicable to captions, signing and other matters or form of pleadings apply to all motions and other papers provided for by these rules.

15

D. TIME FOR FILING PLEADINGS OR MOTIONS - NOTICE OF APPEARANCE

15A

~~D(1) Time for filing motions and pleadings. A motion or answer to the complaint or third party complaint or the answer to a cross-claim or reply to a counterclaim of a party summoned under the provisions of Rule ~~70~~ shall be filed with the clerk by the time required by Rule 70 to appear and <sup>defend</sup> answer. A motion or answer by any other party to a cross-claim shall be filed within 10 days after the service of an answer containing such cross-claim, but in any case, no defendant shall be required to file a motion or an answer to a cross-claim before the time required by Rule 70 to appear and respond to a complaint or third-party complaint served upon such party. A motion or reply to an answer shall be filed within 10 days after the service of the answer.~~

*shall be filed within 10 days after the service of an answer containing a cross claim*  
*and*  
*A motion to a reply shall be filed within 10 day days after service of the reply.*

15B D(2) Pleading after motion. (1) If the court denies a motion, any responsive pleading required shall be filed within 10 days after service of the order, unless the order otherwise directs.

(b) If the court grants a motion and an amended pleading is allowed or required, such pleading shall be filed within 10 days after service of the order, unless the order otherwise directs.

(c) A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

Rule 14.

Motions

Background  
sections

ORS ~~chapters~~ superseded:

16.710, 17.720, 16.730, 16.740

COMMENT:

Section 14A is based on Ors 16.710. Section 14B comes from ~~XXXXX~~  
*incorporates Rule 17A to make*  
federal rule 7 and ~~makes~~ clear that a party or attorney signing a motion *can't then*  
is certifying that there is good ground to support it and it is not *paper*  
interposed for harrassment or delay.

Rule 15

time

Background  
sections

ORS ~~chapters~~ superseded.

~~16.770~~ 16.040, 16.050, 16.420

*For provisions relating to and pleadings and  
responses to and pleadings  
see rule 23*

COMMENT: This rule attempts to bring all time requirements for responding to  
pleadings together in one rule.  
~~Section 15 A provides the same time for response to pleadings as~~

ORS 16.040. ~~XXXXXX~~ Subsections 15 B(1) and (2) are new; Subsection 15

B(3) is <sup>was</sup> ~~presently~~ covered by ORS 16.420. Section 15C is ~~existing~~ ORS 16.050

RULE 14

MOTIONS

Hollis P.  
C.  
local  
rules

A. Motions, in writing, grounds. An application for an order is a motion. Every motion, unless made during trial, shall be in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

B. Form. The rules applicable to captions, signing and other matters or form of pleadings, including Rule 17 A., apply to all motions and other papers provided for by these rules.

BACKGROUND NOTE

ORS sections superseded: 16.710, 16.720, 16.730, 16.740.

COMMENT

Section 14 A. is based on ORS 16.710. Section 14 B. is based on Federal Rule 7 and incorporates Rule 17 A. to make clear that a party or attorney signing a motion or other paper is certifying that there is good ground to support it and it is not interposed for harassment or delay. ORS 16.720 to 16.740 are eliminated.

RULE 15

TIME FOR FILING PLEADINGS OR MOTIONS

A. Time for filing motions and pleadings. A motion or answer to the complaint or third party complaint or the reply to a counterclaim of a party summoned under the provisions of Rule 22 D. shall be filed with the clerk by the time required by Rule 7 C.(4) to appear and defend. ~~A motion or answer to a OR responsive pleading shall be filed within 10 days after service of a cross-claim shall be filed within 10 days after service of an~~ *any other motion or responsive pleading shall be filed within 10 days after service of a motion or responsive pleading*

Hollis P  
C  
10 days to  
cc.

-37-  
moved against or to which the responsive pleading is directed.

~~answer containing a cross-claim and a motion or reply to an answer, other than a party summoned under the provisions of Rule 22 D., shall be filed within 10 days after the service of the answer. A motion to a reply shall be filed within 10 days after service of the reply.~~

B. Pleading after motion. (1) If the court denies a motion, any responsive pleading required shall be filed within 10 days after service of the order, unless the order otherwise directs.

B.(2) If the court grants a motion and an amended pleading is allowed or required, such pleading shall be filed within 10 days after service of the order, unless the order otherwise directs.

C. Responding to amended pleading. A party shall <sup>plead</sup> ~~in response to an amended pleading~~ within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise directs.

D. Enlarging time to plead or do other act. The court may, in its discretion, and upon such terms as may be just, allow an answer or reply to be made, (or other act to be done) after the time limited by the procedural rules, or by an order enlarge such time.

BACKGROUND NOTE

For provisions relating to amended pleadings and responding to amended pleadings, see Rule 23.

ORS sections superseded: 16.040, 16.050, 16.420.

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P 7  
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Mollis  
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20 days

Mollis  
P 7

plead

RE-DONE  
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COMMENT

Section 14 A. is based on ORS 16.710. Section 14 B. <sup>is based on</sup> ~~comes from~~ Federal Rule 7 and incorporates Rule 17 A. to make clear that a party or attorney signing a motion or other paper is certifying that there is good ground to support it and it is not interposed for harassment or delay. **ORS 16.720 To 16.740 are eliminated.**

RULE 15

TIME FOR FILING PLEADINGS OR MOTIONS - NOTICE OF APPEARANCE

A. Time for filing motions and pleadings. A motion or answer to the complaint or third party complaint or the reply to a counterclaim of a party summoned under the provisions of Rule 22 D. shall be filed with the clerk by the time required by Rule 7 <sup>(4)</sup> to appear and defend. A motion or answer to a cross-claim shall be filed within 10 days after service of an answer containing a cross-claim and a motion or reply to an <sup>other than a party</sup> answer shall <sup>summoned</sup> be filed within 10 days after the service of the answer. A motion to a <sup>under the</sup> reply shall be filed within 10 days after service of the reply. <sup>provisions</sup> <sup>of Rule</sup> <sup>22 D,</sup>

B. Pleading after motion. (1) If the court denies a motion, any <sup>(b)</sup> responsible pleading required shall be filed within 10 days after service of the order, unless the order otherwise directs.

B.(2) If the court grants a motion and an amended pleading is allowed or required, such pleading shall be filed within 10 days after service of the order, unless the order otherwise directs.

**(3) Responding to amended pleading**  
A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise <sup>directs</sup> orders.

Enlarging time to plead or do other act. The court may, in its discretion, and upon such terms as may be just, allow an answer or reply to be made, or other act to be done after the time limited by the procedural rules, or by an order enlarge such time.

BACKGROUND NOTE

For provisions relating to amended pleadings and responding to amended pleadings, see Rule 23.

ORS sections superseded: 16.040, 16.050, 16.420.

COMMENT

This rule ~~attempt to~~ bring all time requirements for responding to pleadings together in one rule. Section 15 A. provides the same time for response to pleadings as ORS 16.040. Subsections 15 B. (1) and (2) are new; ~~subsection 15 B. (3)~~ was covered by ORS 16.420. Section 15 ~~C~~ is ORS 16.050. *section 15 C*

RULE 16

PLEADINGS - FORM

A. Captions, names of parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the register number of the cause and a designation in accordance with Rule <sup>13</sup> B. In the complaint the title of the action shall include the names of all the parties, but in ~~such~~ other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

B. Concise and direct statement; paragraphs; statement of claims or defenses. Every pleading shall consist of plain and concise statements

in consecutively numbered paragraphs, the contents of which shall be limited as far as practicable to a statement of a single set of circumstances, and a paragraph may be referred to by number in all succeeding pleadings. Separate claims or defenses shall be separately stated and numbered.

C. Consistency in pleading alternative statements. Inconsistent claims or defenses are not objectionable, and when a party is in doubt as to which of two or more statements of fact is true, the party may allege them in the alternative. A party may also state as many separate claims or defenses as the party has, regardless of consistency and whether based upon legal or equitable grounds or upon both. All statements shall be made subject to the obligation set forth in Rule 17.

D. Adoption by reference; exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading.

BACKGROUND NOTE

ORS sections superseded: 16.060, 16.090.

✓ 13.010

COMMENT

The Council intends to retain existing Oregon practice in sections 16 A., 16 B. and 16 D., including separate statements of claims and defenses required by ORS 16.040. Section 16 C. is intended to eliminate any objection based upon hypothetical, alternative and inconsistent pleading as such. Inconsistent statements of simple facts clearly within the knowledge of the pleader would, however, be improper, because of the obligation to plead truthfully under Rule 17A. ~~Section 16 C. is intended to eliminate any objection based upon hypothetical, alternative and inconsistent pleading as such.~~

stet

15C  
~~D(5)~~ Enlarging time to plead or do other act. The court may, in its discretion, and upon such terms as may be just, allow an answer or reply to be made, or other act to be done after the time limited by the procedural rules, or by an order enlarge such time. 16

~~B~~ PLEADINGS - FORM

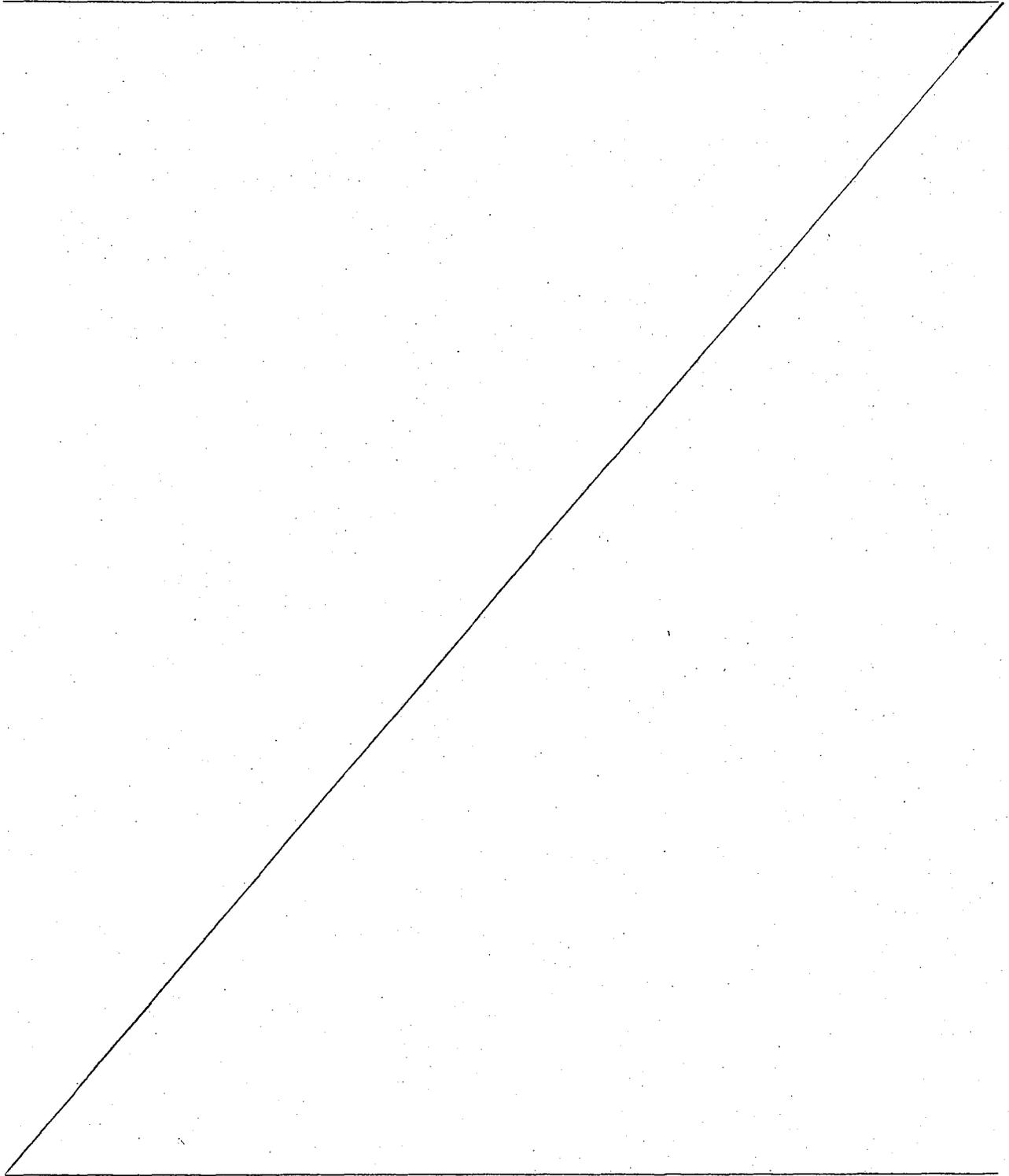
16A  
~~E(1)~~ Captions, names of parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the register number of the cause and a designation in accordance with Rule <sup>13B</sup>~~E(2)~~. In the complaint the title of the action shall include the names of all the parties, but in such other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

16B  
~~E(2)~~ Concise and direct statement; paragraphs; statement of claims or defenses. Every pleading shall consist of plain and concise statements in consecutively numbered paragraphs, the contents of which shall be limited as far as practicable to a statement of a single set of circumstances, and a paragraph may be referred to by number in all succeeding pleadings. Separate claims or defenses shall be separately stated and numbered.

16C  
~~E(3)~~ Consistency in pleading alternative statements. Inconsistent claims or defenses are not objectionable, and when a party is in doubt as to which of two or more statements of fact is true, the party may allege them in the alternative. A party may also state as many separate claims or defenses as the party has, regardless of consistency and whether based upon legal or equitable grounds or upon both. All statements shall be made subject to the obligation set forth in Rule ~~E~~ 17.

16.D  
~~16.C~~

Adoption by reference; exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading.



Rule 16

Form

Background note  
sections  
ORS ~~16.060~~ 16.090

16.060, 16.090

COMMENT:

*of. E. ...*

The council intends to retain existing Oregon practice in Sections 16A, 16B and 16D. Section 16C is intended to eliminate any objection based upon hypothetical, alternative and inconsistent pleading as such. Inconsistent statements of simple facts clearly within the knowledge of the pleader would, however, be improper, because of the obligation to plead truthfully of Rule 17.

Rule 17,

Subscription

Background

For subscription of Actus Brought in  
the name of the state, see: 30.610.

ORS sections Supplemented

16.070, 16.080, 30.350.

COMMENT: This replaces the general verification requirements of ORS 16.070, 16.080 and 30.350 with a rule ~~governing subscription~~ requiring only signature. *But specifying that such signature certifies truthfulness and merit.* The approach is that suggested to the last legislature by the

Oregon State Bar. *If a court or entity pur to litigate without another the signature would be signed by one with a person Authority to Act for such corporation or entity.*

COMMENT

This rule brings all time requirements for responding to pleadings together in one rule. Section 15 A. provides the same time for response to pleadings as ORS 16.040. Subsections 15 B. (1) and (2) are new, Section 15 C. was covered by ORS 16.420. Section 15 D. is ORS 16.050.

*2 note  
R do 9 A  
Requires  
service of  
orders.*

RULE 16

PLEADINGS - FORM

A. Captions, names of parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action or proceeding, the register number of the cause, and a designation in accordance with Rule 13 B. In the complaint the title of the action or proceeding shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

B. Concise and direct statement; paragraphs; statement of claims or defenses. Every pleading shall consist of plain and concise statements in consecutively numbered paragraphs, the contents of which shall be limited as far as practicable to a statement of a single set of circumstances, and a paragraph may be referred to by number in all succeeding pleadings. Separate claims or defenses shall be separately stated and numbered.

C. Consistency in pleading alternative statements. Inconsistent claims or defenses are not objectionable, and when a party

is in doubt as to which of two or more statements of fact is true, the party may allege them in the alternative. A party may also state as many separate claims or defenses as the party has, regardless of consistency and whether based upon legal or equitable grounds or upon both. All statements shall be made subject to the obligation set forth in Rule 17.

D. Adoption by reference: ~~substantive~~. Statements in a pleading may be adopted by reference in a different part of the same pleading ~~or in another pleading~~.

BACKGROUND NOTE

ORS sections superseded: 13.010, 16.060, 16.090.

COMMENT

The Council intends to retain existing Oregon practice in sections 16 A., 16 B. and 16 D., including separate statements of claims and defenses required by ORS 16.040. Section 16 C. is intended to eliminate any objection based upon hypothetical, alternative and inconsistent pleading as such. Inconsistent statements of simple facts clearly within the knowledge of the pleader would, however, be improper because of the obligation to plead truthfully under Rule 17 A.

RULE 17

SUBSCRIPTION OF PLEADINGS

A. Subscription by party or attorney, certificate. Every pleading shall be subscribed by the party or by a resident attorney of the state, except that if there are several parties united in interest and pleading together, the pleading may be subscribed by at least one of such parties or his resident attorney. If <sup>a</sup> party is represented by an attorney, every pleading <sup>of that party</sup> shall be signed

Handwritten note: "Hoff's p 7 same, adding"

Handwritten note: "P 13 new 13 (mand) sanction"

Handwritten note: "Allen letter Winston"

RULE 17

SUBSCRIPTION OF PLEADINGS

A. Subscription by party or attorney, certificate. Every pleading shall be subscribed by the party or by a resident attorney of the state, except that if there are several parties united in interest and pleading together, the pleading <sup>may</sup> ~~must~~ be subscribed by at least one of such parties or his resident attorney. If any party is represented by an attorney, every pleading shall be signed by at least one attorney in such attorney's individual name. Verification of pleadings shall not be required unless otherwise required by rule or statute. The subscription of a pleading constitutes a certificate by the person signing that such person has read the pleading, that to the best of the person's knowledge, information and belief, there is a good ground to support it and that it is not interposed for harassment or delay.

B. Pleadings not subscribed. Any pleading not duly subscribed may, on motion of the adverse party, be stricken out of the case.

BACKGROUND NOTE

For subscription of actions brought in the name of the State, see: 30.610.

ORS sections superseded: 16.070, 16.080, 30.350.

COMMENT

This replaces the general verification requirements of ORS 16.070, 16.080 and 30.350 with a rule requiring only signature but specifying that such signature certifies truthfulness and merit. The approach is that suggested to the last legislature by the Oregon State Bar. If a corporation or entity were litigating without an attorney, the pleading would be signed by a person with authority to act for such corporation or entity.

17  
A. SUBSCRIPTION OF PLEADINGS

17A  
~~17A~~) Subscription by party or attorney, certificate. Every pleading shall be subscribed by the party or by a resident attorney of the state, except that if there are several parties united in interest and pleading together, the pleading must be subscribed by at least one of such parties or his resident attorney. If any party is represented by an attorney, every pleading shall be signed by at least one attorney in such attorney's individual name. Verification of pleadings shall not be required unless otherwise required by rule or statute. The subscription of a pleading constitutes a certificate by the person signing that such person has read the pleading, that to the best of the person's knowledge, information and belief there is a good ground to support it and that it is not interposed for harrassment or delay.

17B  
~~17B~~) Pleadings not subscribed. Any pleading not duly subscribed may, on motion of the adverse party, be stricken out of the case.

18  
B. COMPLAINT, COUNTERCLAIM, CROSS-CLAIM AND THIRD PARTY CLAIM

A pleading which asserts a claim for relief, whether an original claim, counterclaim, cross-claim or third party claim, shall contain: (1) a plain and concise statement of the ultimate facts constituting a claim for relief without unnecessary repetition; (2) a demand of the relief which the party claims; if recovery of

Rule 18  
court etc.

Back ground.

ORS sections sponsored

16.210,

COMMENT:

The council decided to retain fact pleading as opposed to notice pleading; that is, to retain a requirement of ~~XXXXXXXXXXXXXXXXXXXX~~ ~~XXXXXXXXXXXXXXXXXXXX~~ fairly specific description of facts ~~equivalent to present Oregon Practice~~ as opposed to adopting the ~~XXXXXXXXXXXXXXXX~~ less specific fact description allowable in federal courts. This rule is a rewording of Ors 16,210 to fit any ~~XXXXXXXXXXXX~~ form in which a claim for affirmative relief is asserted and refer to pleading a claim for relief rather than a cause of action. The necessity of pleading ultimate facts retains the present ~~XXXX~~ Oregon requirements of pleading facts at a fairly specific level. ~~The language used was~~ <sup>see</sup> adapted from Florida Rules of Civil Procedure, 1.110(b) (2).

~~For a similar rule~~

Completed

money or damages is demanded, the amount thereof shall be stated; relief in the alternative or of several different types may be demanded.

19  
A. RESPONSIVE PLEADINGS

19 A  
~~19 A~~ Defenses; form of denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the allegations upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an allegation, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. When a pleader intends in good faith to deny only a part or a qualification of an allegation, the pleader shall admit so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the allegations of the preceding pleading, the denials may be made as specific denials of designated allegations or paragraphs, or the pleader may generally deny all the allegations except such designated allegations or paragraphs as he expressly admits; but, when the pleader does so intend to controvert all its allegations, the pleader may do so by general denial subject to the obligations set forth in Rule 17

19 B  
~~19 B~~ Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, comparative or contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute

RULE 18

COMPLAINT, COUNTERCLAIM, CROSS-CLAIM  
THIRD PARTY CLAIM

A pleading which asserts a claim for relief, whether an original claim, counterclaim, cross-claim or third party claim, shall contain:

*Sente paragraph*  
A. ~~a~~ a plain and concise statement of the ultimate facts constituting a claim for relief without unnecessary repetition; ~~a~~<sup>B.</sup> a demand of the relief which the party claims; if recovery of money or damages is demanded, the amount thereof shall be stated; relief in the alternative or of several different types may be demanded.

BACKGROUND NOTE

ORS section superseded: 16.210.

COMMENT

The Council decided to retain fact pleading as opposed to notice pleading; that is, to retain a requirement of fairly specific description of facts as opposed to adopting the less specific fact description allowable in federal courts. This rule is a rewording of ORS 16.210 to fit any form in which a claim for affirmative relief is asserted and refer to pleading a claim for relief rather than a cause of action. The necessity of pleading ultimate facts retains the present Oregon requirements of pleading facts at a fairly specific level. For a comparable rule, see Florida Rules of Civil Procedure, 1.110(b)(2).

*Not found*

by at least one attorney in such attorney's individual name. Verification of pleadings shall not be required unless otherwise required by rule or statute. The subscription of a pleading constitutes a certificate by the person signing that such person has read the pleading, that to the best of the person's knowledge, information, and belief, there is a good ground to support it and that it is not interposed for harassment or delay.

B. Pleadings not subscribed. Any pleading not duly subscribed may, on motion of the adverse party, be stricken out of the case.

BACKGROUND NOTE

For subscription of actions brought in the name of the state, see: 30.610.

ORS sections superseded: 16.070, 16.080, 30.350.

COMMENT

This replaces the general verification requirements of ORS 16.070, 16.080 and 30.350, with a rule requiring only signature but specifying that such signature certifies truthfulness and merit. The approach is that suggested to the last legislature by the Oregon State Bar. If a corporation or entity were litigating without an attorney, the pleading would be signed by a person with authority to act for such corporation or entity.

RULE 18

COMPLAINT, COUNTERCLAIM, CROSS-CLAIM  
THIRD PARTY CLAIM

A pleading which asserts a claim for relief, whether an original claim, counterclaim, cross-claim, or third party claim, shall contain:

A. A plain and concise statement of the ultimate facts constituting a claim for relief without unnecessary repetition;

B. A demand of the relief which the party claims; if recovery of money or damages is demanded, the amount thereof shall

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be stated; relief in the alternative or of several different types may be demanded.

BACKGROUND NOTE

ORS section superseded: 16.210.

COMMENT

The Council decided to retain fact pleading as opposed to notice pleading, i.e., to retain a requirement of fairly specific description of facts as opposed to adopting the less specific fact description allowable in federal courts. This rule is a rewording of ORS 16.210 to fit any form in which a claim for affirmative relief is asserted and to refer to pleading a claim for relief rather than a cause of action. The necessity of pleading ultimate facts retains the present Oregon requirements of pleading facts at a fairly specific level. For a comparable rule, see Florida Rules of Civil Procedure, 1.110(b)(2).

RULE 19

RESPONSIVE PLEADINGS

A. Defenses; form of denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the allegations upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an allegation, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. When a pleader intends in good faith to deny only a part or a qualification of an allegation, the pleader shall admit so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the allegations of the preceding pleading, the denials may be made as specific denials of designated allegations or paragraphs, or the pleader may generally deny all the allegations<sup>s</sup> except such designated allegations or

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Gen denial

OR in opposite pleading

paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all ~~the~~ <sup>the</sup> allegations, the pleader may do so by general denial ~~subject to the obligations set forth~~ <sup>OR all on the allegations set on opposite pleading.</sup> in Rule 17.

B. Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, comparative or contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, unconstitutionality, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

C. Effect of failure to deny. Allegations in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading. Allegations in a pleading to which no responsive pleading is required (or permitted) shall be taken as denied, except allegations in a reply to a counterclaim which shall be taken as denied or avoided.

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BACKGROUND NOTE

ORS sections superseded: 16.290, 16.620.

## COMMENT

This rule governs all responsive pleadings. The language comes from Federal Rule 8(b) through (d) modified to fit Oregon practice. The rule is consistent with Oregon practice in most cases. In section 19 A. a general denial could only be used where the pleader intends to controvert absolutely every allegation in the opposing pleading; this is more consistent with specific pleading. Section 19 B. does not change the existing burden of pleading. Several specific affirmative defenses which do not appear in the federal rule but which are the subject of Oregon cases are included. Assumption of risk, ~~contributory negligence~~ and fellow servant are not defenses of much currency under existing Oregon law but were left in the rule for an unusual case or where an Oregon court might be applying foreign law.

## RULE 20

### SPECIAL PLEADING RULES

A. Conditions precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to allege generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity, and when so made the party pleading the performance or occurrence shall on the trial establish the facts showing such performance or occurrence.

B. Judgment or other determination of court or officer; how pleaded. In pleading a judgment or other determination of a court or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation is controverted, the party pleading is bound to establish on the trial the facts conferring jurisdiction.

C. Private statute; how pleaded. In pleading a private

## RULE 19

### RESPONSIVE PLEADINGS

A. Defenses; form of denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the allegations upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an allegation, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. When a pleader intends in good faith to deny only a part or a qualification of an allegation, the pleader shall admit so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the allegations of the preceding pleading, the denials may be made as specific denials of designated allegations or paragraphs, or the pleader may generally deny all the allegations except such designated allegations or paragraphs as he expressly admits; but, when the pleader does so intend to controvert all its allegations, the pleader may do so by general denial subject to the obligations set forth in Rule 17.

B. Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, comparative or contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, unconstitutionality, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a

defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

C. Effect of failure to deny. Allegations in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading. Allegations in a pleading to which no responsive pleading is required or permitted shall be taken as denied. ~~and allegations in a reply filed by a person summoned ~~and~~ under the provisions of Rule 22D shall be taken as denied or avoided.~~

BACKGROUND NOTE

ORS sections superseded: 16.290, 16.620. ~~or avoided~~

*except allegations in a reply to a counterclaim which shall be taken as denied or avoided*

COMMENT

This rule governs all responsive pleadings. The language comes from Federal Rule 8(b) through (d) modified to fit Oregon practice. The rule is consistent with Oregon practice in most cases. In section 19 A. a general denial could only be used where the pleader intends to controvert absolutely every allegation in the opposing pleading; this is more consistent with specific pleading. Section 19 B. does not change the existing burden of pleading. Several specific affirmative defenses which do not appear in the federal rule but which are the subject of Oregon cases are included. Assumption of risk, contributory negligence and fellow servant are not defenses of much currency under existing Oregon law but were left in the rule for an unusual case or where an Oregon court might be applying foreign law.

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of limitations, unconstitutionality, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

<sup>19.C</sup>  
~~H.3~~) Effect of failure to deny. Allegations in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading. Allegations in a pleading to which no responsive pleading is required or permitted shall be taken as denied.

<sup>20</sup>  
4. SPECIAL PLEADING RULES

<sup>20A</sup>  
~~I(1)~~ Conditions precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to allege generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity, and when so made the party pleading the performance or occurrence shall on the trial establish the facts showing such performance or occurrence.

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20.B

~~I(2)~~ Judgment or other determination of court or officer,

how pleaded. In pleading a judgment or other determination of a court or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation is controverted, the party pleading is bound to establish on the trial the facts conferring jurisdiction.

20.C

~~I(3)~~ Private statute, how pleaded. In pleading a private

statute, or a right derived therefrom, it is sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

20.D

~~I(4)~~ Corporate existence of city or county and of ordinances

or comprehensive plans generally, how pleaded. (1) In pleading the corporate existence of any city, it shall be sufficient to state in the pleading that the city is existing and duly incorporated and organized under the laws of the state of its incorporation. In pleading the existence of any county, it shall be sufficient to state in the pleading that the county is existing and was formed under the laws of the state in which it is located.

(2) In pleading an ordinance, comprehensive plan or enactment of any county or incorporated city, or a right derived therefrom, in any court, it shall be sufficient to refer to the ordinance, comprehensive plan or enactment by its title, if any, otherwise by its commonly accepted name, and the date of its passage or the date of its approval when approval is necessary to render it effective, and the court shall thereupon take judicial notice thereof. As used

in this subsection, "comprehensive plan" has the meaning given that term by ORS 197.015.

<sup>20.E</sup>  
~~15~~) Libel or slander action. (4) In an action for libel or slander it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff. If such allegation is controverted, the plaintiff shall be bound to establish on the trial that it was so published or spoken.

(2) In the answer, the defendant may allege both the truth of the matter charged as defamatory, and any mitigating circumstances, to reduce the amount of damages, and whether the defendant proves the justification or not, the defendant may give in evidence the mitigating circumstances.

<sup>20.F</sup>  
~~16~~) Official document or act. In pleading an official document or official act it is sufficient to allege that the document was issued or the act done in compliance with law.

<sup>20.G</sup>  
~~17~~) Recitals and negative pregnant. No allegations in a pleading shall be held insufficient on the grounds that they are pled by way of recital rather than alleged directly. No denial shall be treated as an admission on the grounds that it contains a negative pregnant.

<sup>20.H</sup>  
~~18~~) Fictitious parties. When a party is ignorant of the name of an opposing party and so alleges in his pleading, the opposing

Rule 19.

Responsive Pleadings.

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one sections superseded

16.290, 16.620.

COMMENT:

This rule governs all responsive pleadings. The language comes from Federal Rule 8(b) through (d) modified to fit Oregon Practice. The rule is consistent with Oregon practice in most cases. In Section 19A a general denial could only be used where the pleader intends to controvert absolutely every allegation in the opposing pleading; this is more consistent with specific pleading. Section 19B does not change the existing burden of pleading. Several specific affirmative defenses <sup>which do not appear in the federal rule</sup> ~~which~~ are the subject of <sup>but which</sup> Oregon cases are included. Assumption of risk, contributory negligence and fellow servant ~~XXXXX~~ are not defenses of much currency under existing Oregon law but were left in the rule for an unusual case or where an Oregon court might be applying foreign law.

Rule 20.

Special Pleading Rules.

Background note.

one sections superseded.

13.060  
13.020, 13.070, 16.480, 16.490, 16.500, 16.510, 16.520

16.540.

Rule 20

COMMENT

Except for Section 20 F and G, these rules are based upon existing Oregon Statutes. Section 20F comes from Federal Rule 9(d) and Section 20G is new and designed to eliminate some archaic pleading rules that remain in old Oregon cases. Section 20A is similar to ORS 16.480, except that the defendant must specifically allege the condition precedent not performed and the language makes it clear that the burden of proof remains with the plaintiff; the language used ~~XXXXXX~~ came from Utah Rule of Procedure 9(c). Section 19H has the same effect as ORS 13.20 020. But the clearer language in Federal Rule 9(h) was used.

*Law*  
*burden on Utah Rule of Procedure 9(c)*  
*From Alabama Supreme Court Rule 9(h)*

RULE 20

SPECIAL PLEADING RULES

A. Conditions precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to allege generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity, and when so made the party pleading the performance or occurrence shall on the trial establish the facts showing such performance or occurrence.

B. Judgment or other determination of court or officer; how pleaded. In pleading a judgment or other determination of a court or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation is controverted, the party pleading is bound to establish on the trial the facts conferring jurisdiction.

C. Private statute; how pleaded. In pleading a private statute, or a right derived therefrom, it is sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

D. Corporate existence of city or county and of ordinances or comprehensive plans generally; how pleaded.

D.(1) In pleading the corporate existence of any city, it shall be sufficient to state in the pleading that the city is existing and duly incorporated and organized under the laws of the state of its incorporation. In pleading the existence of any county, it shall be

sufficient to state in the pleading that the county is existing and was formed under the laws of the state in which it is located.

D. (2) In pleading an ordinance, comprehensive plan or enactment of any county or incorporated city, or a right derived therefrom, in any court, it shall be sufficient to refer to the ordinance, comprehensive plan or enactment by its title, if any, otherwise by its commonly accepted name, and the date of its passage or the date of its approval when approval is necessary to render it effective, and the court shall thereupon take judicial notice thereof. As used in this subsection, "comprehensive plan" has the meaning given that term by ORS 197.015.

E. Libel or slander action.

E. (1) In an action for libel or slander it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff. If such allegation is controverted, the plaintiff shall be bound to establish on the trial that it was so published or spoken.

E. (2) In the answer, the defendant may allege both the truth of the matter charged as defamatory, and any mitigating circumstances, to reduce the amount of damages, and whether the defendant proves the justification or not, the defendant may give in evidence the mitigating circumstances.

F. Official document or act. In pleading an official document or official act it is sufficient to allege that the document was issued or the act done in compliance with law.

G. Recitals and negative pregnant. No allegations in a

party may be designated by any name, and when his true name is discovered, the process and all pleadings and proceedings in the action may be amended by substituting the true name.

<sup>20 F</sup>  
~~19~~) Designation of unknown heirs in actions relating to real property. When the heirs of any deceased person are proper parties defendant to any action relating to real property in this state, and the names and residences of such heirs are unknown, they may be proceeded against under the name and title of the "unknown heirs" of the deceased.

<sup>20 J</sup>  
~~19~~) Designation of unknown persons. In any action to determine any adverse claim, estate, lien or interest in real property, or to quiet title to real property, the plaintiff may include as a defendant in such action, and insert in the title thereof, in addition to the names of such persons or parties as appear of record to have, and other persons or parties who are known to have, some title, claim, estate, lien or interest in the real property in controversy, the following: "Also all other persons or parties unknown claiming any right, title, estate, lien or interest in the real property described in the complaint herein."

<sup>21</sup>  
DEFENSES AND OBJECTIONS - HOW PRESENTED - BY PLEADING OR MOTION - MOTION FOR JUDGMENT ON THE PLEADINGS

<sup>21 A</sup>  
~~19~~) How presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a complaint, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto, except that the following defenses may at the option of the pleader be made by motion: (A) lack of jurisdiction over the subject matter, (B) lack of jurisdiction over the person,

(1) that there is another action pending between the same parties for the same cause, (2) that plaintiff has not the legal capacity to sue, (3) insufficiency of process or insufficiency of service of process, (4) failure to join a party under Rule 29, (5) failure to state ultimate facts sufficient to constitute a claim, and (6) that the pleading shows that the action has not been commenced within the time limited by statute. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. The grounds upon which any of the enumerated defenses are based shall be stated specifically and with particularity in the responsive pleading or motion. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If, on a motion asserting defenses (A) through (6), the facts constituting such defenses do not appear on the face of the pleading and matters outside the pleading, including affidavits and other evidence, are presented to the court, all parties shall be given a reasonable opportunity to present evidence and affidavits and the court may determine the existence or non-existence of the facts supporting such defense or may defer such determination until further discovery or until trial on the merits.

21 (3) Motion for judgment on the pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.

21 (3) Preliminary hearings. The defenses specifically denominated (A) through (6) in <sup>section</sup> subdivision (A) of this Rule, whether made in a pleading or by motion and the motion for judgment on the pleadings mentioned in <sup>section</sup> subdivision (B) of this Rule, shall be heard and determined before trial on application of any party, unless the court orders

that the hearing and determination thereof be deferred until the trial.

~~21 D~~  
~~21 D~~) Motion to make more definite and certain. When the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge, defense or reply is not apparent, upon motion made by a party before responding to a pleading, or if no responsive pleading is permitted by these rules upon motion by a party within 20 days after service of the pleading, or upon the court's own initiative at any time, the court may require the pleading to be made definite and certain by amendment. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

~~21 F~~  
~~21 F~~) Motion to strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken: (A) any sham or frivolous or irrelevant pleading or defense; (B) any insufficient defense<sup>or</sup> or any sham, frivolous, irrelevant or redundant matter inserted in a pleading.

~~21 R~~  
~~21 R~~) Consolidation of defenses in motion. A party who makes a motion under this Rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this Rule but omits therefrom any defense or objection then available to the party which this Rule permits to be raised

by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in ~~subdivision 2(b)~~ <sup>Subsection 2(2)</sup> of this Rule on any of the grounds there stated.

<sup>21G</sup>  
~~117~~ Waiver. (A) A defense of lack of jurisdiction over the person, that a plaintiff has not legal capacity to sue, that there is another action pending between the same parties for the same cause, insufficiency of <sup>summons on</sup> process, or insufficiency of service of <sup>summons on</sup> process, is waived (a) if omitted from a motion in the circumstances described in ~~subdivision (6)~~ <sup>Section F</sup> of this Rule, or (2) if it is neither made by motion under this Rule not included in a responsive pleading or an amendment thereof permitted by Rule ~~117~~ <sup>23A</sup> to be made as a matter of course; provided, however, the defenses enumerated in ~~subdivision (1)(b) and (2)~~ <sup>Subsections A(2) and A(4)</sup> of this Rule shall not be raised by amendment.

(B) A defense of failure to state ultimate facts constituting a claim, a defense that the action has not been commenced within the time limited by statute, a defense of failure to join a party indispensable under Rule <sup>29</sup> 8, and an objection of failure to state a legal defense to a claim or insufficiency of new matter in a reply to avoid a defense, may be made in any pleading permitted or ordered under Rule <sup>BB</sup> ~~117~~ or by motion for judgment on the pleadings, or at the trial on the merits. The objection or defense, if made at trial, shall be disposed of as provided in Rule <sup>23B</sup> ~~117~~ in light of any evidence that may have been received.

(c) If it appears by motion of the parties or otherwise that the court lacks jurisdiction over the subject matter, the court shall dismiss the action.

statute, or a right derived therefrom, it is sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

D. Corporate existence of city or county and of ordinances or comprehensive plans generally; how pleaded.

D.(1) In pleading the corporate existence of any city, it shall be sufficient to state in the pleading that the city is existing and duly incorporated and organized under the laws of the state of its incorporation. In pleading the existence of any county, it shall be sufficient to state in the pleading that the county is existing and was formed under the laws of the state in which it is located.

D.(2) In pleading an ordinance, comprehensive plan or enactment of any county or incorporated city, or a right derived therefrom, in any court, it shall be sufficient to refer to the ordinance, comprehensive plan or enactment by its title, if any, otherwise by its commonly accepted name, <sup>or Number</sup> and the date of its passage or the date of its approval when approval is necessary to render it effective, and the court shall thereupon take judicial notice thereof. As used in this subsection, "comprehensive plan" has the meaning given that term by ORS 197.015.

E. Libel or slander action.

E.(1) In an action for libel or slander it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it shall

be sufficient to state generally that the same was published or spoken concerning the plaintiff. If such allegation is controverted, the plaintiff shall be bound to establish on the trial that it was so published or spoken.

E.(2) In the answer, the defendant may allege both the truth of the matter charged as defamatory, and any mitigating circumstances, to reduce the amount of damages, and whether the defendant proves the justification or not, the defendant may give in evidence the mitigating circumstances.

F. Official document or act. In pleading an official document or official act it is sufficient to allege that the document was issued or the act done in compliance with law.

G. Recitals and negative pregnant. No allegations in a pleading shall be held insufficient on the grounds that they are pled by way of recital rather than alleged directly. No denial shall be treated as an admission on the ground that it contains a negative pregnant.

H. Fictitious parties. When a party is ignorant of the name of an opposing party and so alleges in a pleading, the opposing party may be designated by any name, and when such party's true name is discovered, the process and all pleadings and proceedings in the action may be amended by substituting the true name.

I. Designation of unknown heirs in actions relating to real property. When the heirs of any deceased person are proper parties defendant to any action relating to real property in this

state, and the names and residences of such heirs are unknown, they may be proceeded against under the name and title of the "unknown heirs" of the deceased.

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personal  
property

J. Designation of unknown persons. In any action to determine any adverse claim, estate, lien or interest in real property, or to quiet title to real property, the plaintiff may include as a defendant in such action, and insert in the title thereof, in addition to the names of such persons or parties as appear of record to have, and other persons or parties who are known to have, some title, claim, estate, lien or interest in the real property in controversy, the following: "Also all other persons or parties unknown claiming any right, title, lien or interest in the real property described in the complaint herein."

BACKGROUND NOTE

For provisions relating to service of summons or unknown heirs or persons, see Rule 7 G. (5).

ORS sections superseded: 13.020, 13.060, 13.070, 16.480, 16.490, 16.500, 16.510, 16.530, 16.540.

COMMENT

Except for sections 20 F. and G., these rules are based upon existing Oregon statutes. Section 20 F. comes from Federal Rule 9 (d), and section 20 G. is new and designed to eliminate some ~~archaic~~ archaic pleading rules that remain in old Oregon case law. Section 20 A., based on Utah Rule of Procedure 9(c), is similar to ORS 16.480, except that the defendant must specifically allege the conditions precedent not performed. Section 20 H. has the same effect as ORS 13.020, but the clearer language from Alabama Rule of Civil Procedure 9(h) was used. ORS 16.540 was eliminated.