

OREGON RULES OF CIVIL PROCEDURE

RULE 1

SCOPE

These rules govern procedure and practice in all Circuit and District Courts of this state for all civil actions and special proceedings whether cognizable as cases at law, in equity or of statutory origin except where a different procedure is specified by statute or rule. These rules shall also govern practice and procedure in all civil actions and special proceedings, whether cognizable as cases at law, in equity or of statutory origin, for all other courts of this state to the extent they are made applicable to such courts by rule or statute. These rules shall be construed to secure the just, speedy and inexpensive determination of every action. These Rules, and amendments thereto, shall apply to all actions filed after their effective date.

COMMENT TO RULE 1

In general the Council has been examining rules in terms of utility in Circuit and District Courts in general civil cases. Justice courts may require special treatment. Many of the more elaborate discovery and pleading rules may be unnecessary and beyond reasonable application for minor courts. Until special minor court rules can be promulgated, the question is how to handle these courts. There is also the question of procedure in the tax court, and in original jurisdiction cases in the Supreme Court and in the few remaining County Courts with jurisdiction for preliminary orders and injunctions and probate cases. Finally, there is also the question of application of these procedures to domestic relations, probate, habeas corpus, post conviction and the variety of special proceedings provided in the Oregon statutes.

The approach followed in this Rule is to make these rules specifically applicable to all cases in Circuit and District Courts unless the particular statute or rule regulating the proceeding makes some procedure inapplicable or provides a substitute procedure. For all other courts the approach is reversed with these rules only being applicable to the extent the statutes or rules regulating those courts make general existing civil procedure applicable.

Under the present statute there is no express application of the procedures of ORS Chapters 11 to 45 to Circuit Courts. The procedures are generally specified for actions and suits, and the Circuit Courts possess

complete legal and equitable jurisdiction and this seems to make the general statutes applicable.

For District Courts, the practice and procedure followed in Circuit Courts and for summonses is made specifically applicable by ORS 46.100 and 46.110 unless otherwise specified in Chapter 46. For the time being, these two statutes should be retained. This Rule might be misinterpreted as applying only to new rules promulgated by the Council (although technically all procedural statutes are now rules). These statutes make clear that any procedure, whether specified by the numbered rules or by an ORS numbered provision, would be applicable in District Courts. Of the special procedures specified in Chap. 46, two seem clearly inconsistent with the rules and should be repealed: ORS 46.155 relating to judgment NOV and new trial; and, ORS 46.160, relating to instructions and non-suits.

For Justice Courts, ORS 52.020 and 52.010 say that the practice in such courts shall be the same as Circuit Courts unless otherwise provided. This statute again should be retained. It would be an example of the specific provision in the second clause making the Oregon Rules of Civil Procedure applicable in a court other than a Circuit or District Court. The reference to "actions at law" in ORS 52.010 should be changed to "actions" and the reference to otherwise provided should include rules as well as statutes.

By virtue of ORS 305.425 (3), the tax court is given authority to promulgate its own rules of practice and procedure where it should conform as far as practicable to equity procedure. This would not be changed, with the Oregon Rules of Civil Procedure applying only to the extent specified in the tax court rules. The statute should be modified to refer to conforming to actions tried without a jury in the Circuit Courts.

Where a county judge is empowered to grant preliminary injunctions and orders for Circuit Court suits by ORS 5.030, the statute specifies, the procedure in Chapter 32 should be followed. This would be retained, as Chapter 32 will probably retain its own ORS number for the present.

For original proceedings in Supreme Court, there may be some question of our ability to promulgate anything. The Council has no power in the appeals area but does in all other proceedings in all courts of the state which would include appellate courts. The Supreme Court has original jurisdiction in mandamus, quo warranto and habeas corpus, by virtue of Article VII, Section 2, of the Oregon Constitution. The existing statutes provide a procedure for a mandamus and habeas corpus, but ORS 2.130 says the Supreme Court is empowered to make its own rules for original jurisdiction cases. There also are two statutory original jurisdiction references for constitutional challenges of new statutes in ORS 276.890 and 752.190. Those two statutes say the procedure shall be the same as the courts of equity. I assume this means that the Supreme Court could make its own equity rules. In any case, the Supreme Court would be the most appropriate body to make its own rules for original jurisdiction cases and no action in this area seems necessary.

The rules would apply to all types of cases in any court. In probate proceedings the procedure specified is equity procedure except as otherwise provided by the probate statutes. ORS 111.205. This statute should be retained, changing

the reference to "actions in equity" to "actions tried without a jury," and saying "unless otherwise provided by statute or rule." This would cover both the probate procedure in the Circuit Courts and in County Courts retaining probate jurisdiction. For domestic relations cases, there is no specific statute covering procedure; since these proceedings are in Circuit Courts, the rules generally would apply, unless some special provisions are provided in domestic relations statutes. See, for example, ORS 107.085, relating to the contents of a petition in a dissolution. The same analysis would apply to post conviction, habeas corpus and all special proceedings. Since these are in Circuit Courts, the rules would apply to the extent there is no inconsistent provision within the statute.

The last sentence specifies that the rules apply to all actions filed after they go into effect, not to claims that arise after they go into effect.

OREGON RULES OF CIVIL PROCEDURE

RULE 1

SCOPE

These rules govern procedure and practice in all circuit and district courts of this state for all civil actions and special proceedings whether cognizable as cases at law, in equity or of statutory origin except where a different procedure is specified by statute or rule. These rules shall also govern practice and procedure in all civil actions and special proceedings, whether cognizable as cases at law, in equity or of statutory origin, for all other courts of this state to the extent they are made applicable to such courts by rule or statute. These rules shall be construed to secure the just, speedy and inexpensive determination of every action. These rules, and amendments thereto, shall apply to all actions pending at the time of or filed after their effective date.

BACKGROUND NOTE

For district courts, see: ORS 46.100 and 46.^{110.}~~100~~
For justice courts, see: ORS 52.010 and 52.020.
For tax court, see: ORS 305.425(3).
For effective date of rules, see ORS 1.735.

Revision copy
after July 28 meeting

Revision
July 28 =

OREGON RULES OF CIVIL PROCEDURE

RULE 1

SCOPE

These rules govern procedure and practice in all circuit and district courts of this state for all civil actions and special proceedings whether cognizable as cases at law, in equity or of statutory origin except where a different procedure is specified by statute or rule. These rules shall also govern practice and procedure in all civil actions and special proceedings, whether cognizable as cases at law, in equity or of statutory origin, for all other courts of this state to the extent they are made applicable to such courts by rule or statute. These rules shall be construed to secure

the just, speedy and inexpensive determination of every action. These Rules, and amendments thereto, shall apply to all ~~actions~~ ^{or proceedings} ~~filed~~ ^{or pending} after their effective date. ~~or pending at that date~~ ^{or pending at that date}

* Insert background note
RULE 2

Pending at
the time of or filed
after their

ONE FORM OF ACTION

There shall be one form of action known as a civil action. All procedural distinctions between actions at law and suits in equity are hereby abolished, except for those distinctions specifically provided for by these rules, by statute or by the Constitution.

Oregon Rules of Civil Procedure

I Scope and Actions

Rule 1.

SCOPE

Background note caps)

For district courts, see: ORS 46.100 and 46.110

For justice courts, see: ORS 52.010 and 52.020

For Tax court, see: ORS 305.425(3)

For effective date of Rules, see: ORS 1.735

Rule 2

one Form of Action

Background note caps)

For Right to Jury trial, see: Rule 56

ORS. sections Replaced:

11.010

29.510

11.020

35.225

~~12.040~~

~~18.010~~

18.020

18.310

23.010

For other Rules and statutes affected see

Low-equity Revisions

↳ Comment.

this rule abolishes the last vestiges of procedural difference based upon the nature of the case being historically legal or equitable. Right to jury trial is not affected as it is a ^{constitutional} ~~common law~~ ^{right} ~~proceeding~~ ^{one} ~~is~~ ^{is} ~~applied~~ ^{applied} in ~~jury and non jury cases~~ ^{in cases} ~~in the Rules,~~ ^{in the Rules,} tried to a jury and to a court. ~~situations~~ ^{situations} where a "low-equity" or an "Action-suit" distinction was used to specify procedures appropriate to a jury trial or non jury trial, this has been changed to a direct reference to cases tried to a court or a jury. dual terminology such as "Actions and suits" and "Judgments and decrees" has been eliminated. Since the original statute has a reference to special "proceedings", reference to "actions and proceedings" is retained.

RULE 1

SCOPE

These rules govern procedure and practice in all circuit and district courts of this state ^{except in the small claims department of district courts,} for all civil actions and special proceedings whether cognizable as cases at law, in equity, or of statutory origin except where a different procedure is specified by statute or rule. These rules shall also govern practice and procedure in all civil actions and special proceedings, whether cognizable as cases at law, in equity, or of statutory ^{from the small claims department of district courts and} origin, for all other courts of this state to the extent they are made applicable to such courts by rule or statute. These rules shall be construed to secure the just, speedy and inexpensive determination of every action. These rules, and amendments thereto, shall apply to all actions pending at the time of or filed after their effective date.

set up sub sections

p 9
Nov 10
memo
transition

Hollis
memo
p 1
(Filed)

BACKGROUND NOTE

For district courts, see: ORS 46.100 and 46.110. For justice courts, see: ORS 52.010 and 52.020. For tax court, see: ORS 305.425(3). For effective date of rules, see: ORS 1.735. ^{Add last sentence below -}

Hollis p 20
citation

RULE 2

ONE FORM OF ACTION

There shall be one form of action known as a civil action. All procedural distinctions between actions at law and suits in equity are hereby abolished, except for those distinctions specifically provided for by these rules, by statute or by the Constitution. ^{OR 115}

p 10
Nov 13
memo

order book
district

p 2
Nov 13
memo

State Const

OREGON RULES OF CIVIL PROCEDURE

RULE 1

SCOPE

These rules govern procedure and practice in all circuit and district courts of this state for all civil actions and special proceedings whether cognizable as cases at law, in equity or of statutory origin except where a different procedure is specified by statute or rule. These rules shall also govern practice and procedure in all civil actions and special proceedings, whether cognizable as cases at law, in equity or of statutory origin, for all other courts of this state to the extent they are made applicable to such courts by rule or statute. These rules shall be construed to secure the just, speedy and inexpensive determination of every action. These rules, and amendments thereto, shall apply to all actions pending at the time of or filed after their effective date.

BACKGROUND NOTE

For district courts, see: ORS 46.100 and 46.110.
For justice courts, see: ORS 52.010 and 52.020.
For tax court, see: ORS 305.425(3).
For effective date of rules, see ORS 1.735.

RULE 1

SCOPE

These rules govern procedure and practice in all circuit and district courts of this state for all civil actions and special proceedings whether cognizable as cases at law, in equity or of statutory origin except where a different procedure is specified by statute or rule. These rules shall also govern practice and procedure in all civil actions and special proceedings, whether cognizable as cases at law, in equity or of statutory origin, for all other courts of this state to the extent they are made applicable to such courts by rule or statute. These rules shall be construed to secure the just, speedy and inexpensive determination of every action. These rules, and amendments thereto, shall apply to all actions pending at the time of or filed after their effective date.

BACKGROUND NOTE

For district courts, see: ORS 46.100 and 46.110. For justice courts, see: ORS 52.010 and 52.020. For tax court, see: ORS 305.425(3). For effective date of rules, see: ORS 1.735.

RULE 2

ONE FORM OF ACTION

There shall be one form of action known as a civil action. All procedural distinctions between actions at law and suits in equity are hereby abolished, except for those distinctions specifically provided for by these rules, by statute or by the Constitution.

RULE 1

SCOPE: CONSTRUCTION; APPLICATION; CITATION

A. Scope. These rules govern procedure and practice in all circuit and district courts of this state, except in the small claims department of district courts, for all civil actions and special proceedings whether cognizable as cases at law, in equity, or of statutory origin except where a different procedure is specified by statute or rule. These rules shall also govern practice and procedure in all civil actions and special proceedings, whether cognizable as cases at law, in equity, or of statutory origin, for the small claims department of district courts and for all other courts of this state to the extent they are made applicable to such courts by rule or statute. Reference in these rules to actions shall include all civil actions and special proceedings whether cognizable as cases at law, in equity, or of statutory origin.

B. Construction. These rules shall be construed to secure the just, speedy, and inexpensive determination of every action.

C. Application. These rules, and amendments thereto, shall apply to all actions pending at the time of or filed after their effective date.

D. Citation. These rules may be referred to as ORCP and may be cited, for example, by citation of Rule 7, section D.,

subsection (3), paragraph (a), subparagraph (i), as ORCP 7 D.
(3)(a)(1).

COMMENT

For district courts, see: ORS 46.100 and 46.110. For justice courts, see: ORS 52.010 and 52.020. For tax court, see ORS 305.425(3). For effective date of rules, see: ORS 1.735. The Council will recommend January 1, 1980, as the effective date for these rules.

RULE 2

ONE FORM OF ACTION

There shall be one form of action known as a civil action. All procedural distinctions between actions at law and suits in equity are hereby abolished, except for those distinctions specifically provided for by these rules, by statute, or by the Constitution of this state.

COMMENT

For right to jury trial, see: ORCP 50.

This rule abolishes the last vestiges of procedural difference based upon a case being historically legal or equitable. Right to jury trial is not affected as it is a constitutional right. Different procedures are, of course, followed in cases tried to a jury and to a court. In the rules, where a "law - equity" or an "action - suit" distinction was used to specify procedures appropriate to a jury trial or non-jury trial, this has been changed to a direct reference to cases tried to a court or a jury. Terminology, such as "actions and suits" and "judgments and decrees" has been eliminated.

RULE 1

SCOPE; CONSTRUCTION; APPLICATION; CITATION

A. Scope. These rules govern procedure and practice in all circuit and district courts of this state, except in the small claims department of district courts, for all civil actions and special proceedings whether cognizable as cases at law, in equity, or of statutory origin except where a different procedure is specified by statute or rule. These rules shall also govern practice and procedure in all civil actions and special proceedings, whether cognizable as cases at law, in equity, or of statutory origin, for the small claims department of district courts and for all other courts of this state to the extent they are made applicable to such courts by rule or statute. Reference in these rules to actions shall include all civil actions and special proceedings whether cognizable as cases at law, in equity, or of statutory origin.

B. Construction. These rules shall be construed to secure the just, speedy, and inexpensive determination of every action.

C. Application. These rules, and amendments thereto, shall apply to all actions pending at the time of or filed after their effective date.

D. Citation. These rules may be referred to as ORCP and may be cited, for example, by citation of Rule 7, section D.,

subsection (3), paragraph (a), subparagraph (i), as ORCP 7 D.

(3)(a)(i).

COMMENT

For district courts, see: ORS 46.100. For justice courts, see: ORS 52.010, 52.020, and 52.030. For tax court, see ORS 305.425(3). For effective date of rules, see: ORS 1.735. The Council will recommend that the legislature establish January 1, 1980, as the effective date for these rules.