

OREGON RULES OF CIVIL PROCEDURE

A. PLEADINGS LIBERALLY CONSTRUED - DISREGARD OF ERROR

Liberal Construction

A1. ✓ All pleadings shall be liberally construed with a view of substantial justice between the parties. Based on ORS 16.120.

A2.

~~16.660~~ 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.

(Existing ORS 16.660)

B. KINDS OF PLEADINGS ALLOWED - FORMER PLEADINGS ABOLISHED

pleadings allowed

B1. ✓ There shall be a complaint and an answer. An answer may include a counterclaim and a crossclaim. A defendant's pleading against any other person not already a party under Rule K is a third party complaint. There shall be a reply to a counterclaim denominated as such and the court may order a reply to any matter constituting a defense in an answer. There shall be an answer to a crossclaim and to a third party complaint. Based on CPLR 3011 and Federal Rule 7.

pleadings abolished

B2. ✓ Bills of revivor and bills of review, of whatsoever nature, exceptions for insufficiency, impertinence or irrelevancy, and cross-bills, demurrers and pleas shall not be used. Based on ORS 16.460(1)

C. ORDERS AND MOTIONS

orders

C1. ✓ Every direction of a court or charge made and entered in writing in an action of special proceeding, and not included in a judgment, is denominated an order.

no motions, with the exception of motions and writs subject

C2. ✓ An application for an order is a motion. Every motion, unless made during trial, shall be made in writing, shall state with particularity

COMMENTARY
OREGON RULES OF CIVIL PROCEDURE
PLEADING

RULE A

- (1) Based on ORS 16.120.
- (2) Existing ORS 16.660.

RULE B

(1) This section was inserted to clearly indicate the intent to retain fact pleading. It was taken from the Indiana statutes.

(2) This section is Federal Rule 7(a). For the most part it describes existing Oregon practice replacing separate coverage of plaintiff's and defendant's pleadings. It also clearly describes the pleadings to be used in cross claims and third party practice.

The most significant change is the elimination of the automatic reply to new matter in an answer. The rule only requires an answer where there is a counterclaim denominated as such. In any other situation it must be read in conjunction with Rule H(3) which says that allegations in a pleading to which no responsive pleading is required are taken as avoided or denied. Usually the reply is a routine denial and the rule eliminates an unnecessary pleading step. For those situations where a reply would in fact contribute to clarifying the issues, the court is given the authority to order a reply. This pleading simplification not only follows the federal rule approach but a number of other states which retain code pleading, e.g. California.

(3) For absolute clarity a third section should be added here which states, "Pleadings abolished. Demurrers and pleas shall not be used." ORS 16.460 contains language abolishing a number of common law pleadings but no such statement seems necessary.

OREGON RULES OF CIVIL PROCEDURE

A. PLEADINGS LIBERALLY CONSTRUED - DISREGARD OF ERROR

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

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.

B. KINDS OF PLEADINGS ALLOWED - FORMER PLEADINGS ABOLISHED

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

B(2) Pleadings allowed. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule K(5); and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

C. MOTIONS

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

(b) 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.

C(2) Where and to whom motions made. Motions shall be made to the court or

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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.

B. KINDS OF PLEADINGS ALLOWED - FORMER PLEADINGS ABOLISHED

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

B(2) Pleadings allowed. There shall be a complaint and an answer; a permissive reply to any answer or third party answer and a mandatory reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule K(5); and a third-party answer, if a third-party complaint is served. No other pleadings shall be allowed, except that the court may order a mandatory reply to an answer or a third-party answer.

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

C. MOTIONS

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

(2) 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.

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- 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.

Background.

~~For Form~~

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

16.120, 16.160.

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Rule 13

Kinds of pleadings

Background.

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

16.020, 16.325,  
16.010, 16.030, 16.460.

~~16.460~~

PP

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 see Rule 18  
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 ~~XX~~ 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; <sup>S</sup>  
the proper response of a party summoned to respond to a counterclaim under  
rule 22 D is a reply.

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.

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

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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.

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, 16.660.

RULE 13

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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.

COMMENT

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BACKGROUND NOTE

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

RULE 13  
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6  
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.

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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 CRCP 22 D. is a reply. ORS 16.020 and 16.460 are unnecessary under CRCP 1 and 2.

## 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, including Rule 17 A., apply to all motions and other papers provided for by these rules.

### COMMENT

Section 14 A. is based on ORS 16.710. Section 14 B. is based on Federal Rule 7 and incorporates CRCP 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 13

### KINDS OF PLEADINGS ALLOWED; FORMER PLEADINGS ABOLISHED

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