

statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the state so provides, an action for the use or benefit of another shall be brought in the name of the state. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

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~~27~~ MINOR OR INCAPACITATED PARTIES

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Appearance of minor parties by guardian or conservator.

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When a minor who has a conservator of his estate or a guardian is a party to any action or proceeding, ~~he~~ shall appear by the conservator or guardian as may be appropriate or, if the court so orders, by a guardian ad litem appointed by the court in which the action or proceeding is brought. If the minor does not have a conservator of his estate or a guardian, he shall appear by a guardian ad litem appointed by the court. The court shall appoint some suitable person to act as guardian ad litem:

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When the minor is plaintiff, upon application of the minor, if the minor is 14 years of age or older, or upon application of a relative or friend of the minor if the minor is under 14 years of age.

(D) When the minor is defendant, upon application of the minor, if the minor is 14 years of age or older, filed within the period of time specified by law for appearance and answer after service of summons, or if the minor fails so to apply or is under 14 years of age, upon application of any other party or of a relative or friend of the minor.

^{22.6}
(2) Appearance of incapacitated person by conservator or guardian. When an incapacitated person who has a conservator of his estate or a guardian is a party to any action or proceeding, he shall appear by the conservator or guardian as may be appropriate or, if the court so orders, by a guardian ad litem appointed by the court in which the action or proceeding is brought. If the incapacitated person does not have a conservator of his estate or a guardian, he shall appear by a guardian ad litem¹⁰⁸ appointed by the court. The court shall appoint some suitable person to act as guardian ad litem:

(1) When the incapacitated person is plaintiff, upon application of a relative or friend of the incapacitated person.

(2) When the incapacitated person is defendant, upon application of a relative or friend of the incapacitated person filed within the period of time specified by law for appearance and answer after service of summons, or if the application is not so filed, upon application of any party other than the incapacitated person.

Rule 25 - Reserved.

Rule. 26
Real Party in Interest

Background

ORS. sections Superseded.

13.030

COMMENT:

This rule is based upon Federal Rule 17(a) but is generally the same as ORS 13.030. The rule specifically deals with guardians and actions in the name of the state and provides a procedure for dealing with real party in interest objections.

Rule 27

Minor or Incapable Parties.

Background.

ORS sections Superseded.

13.041, 13.051

XCOMMENT:

This rule is the existing ORS sections without any change.

RULE 27

MINOR OR INCAPACITATED PARTIES

A. Appearance of minor parties by guardian or conservator. When a minor who has a conservator of his estate or a guardian is a party to any action or proceeding, such minor shall appear by the conservator or guardian as may be appropriate or, if the court so orders, by a guardian ad litem appointed by the court in which the action or proceeding is brought. If the minor does not have a conservator of his estate or a guardian, he shall appear by a guardian ad litem appointed by the court. The court shall appoint some suitable person to act as guardian ad litem:

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BACKGROUND NOTE

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COMMENT

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BACKGROUND NOTE

ORS sections superseded: 13.041, 13.051.

COMMENT

This rule is based on the existing ORS sections.

RULE 28

JOINDER OF PARTIES

A. Permissive joinder as plaintiffs or defendants. All persons may join in one action or proceeding as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any

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COMMENT

This rule is based on ORS 13.041 and 13.051.