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.

MINOR OR INCAPACITATED PARTIES

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:

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.

(2) 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.

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 litem appointed by the court. The court shall appoint some suitable person to act as guardian ad litem:

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

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Rile. 26

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MS. Sections 8 spenceded.

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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.

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13.041, 13.08/

XCOMMENT:

This rule is the existing ORS sections without any change.

- 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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- B. 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 litem



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

BACKGROUND NOTE

ORS sections superseded: 13.041, 13.051.

COMMENT

This rule is the existing ORS sections without any changes:

Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

Separate trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to unnecessary expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

Persons to be joined if feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (4) in that person's absence complete relief cannot be accorded among those already parties, or (1) that person claims an interest relating to the subject of the action and is so situated that the disposition in that person's absence may (A) as a practical matter impair or impede the person's ability to protect that interest or (ia) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of their claimed interest. If such person has not been so joined, the court shall order that such person be made a party. lack If the joined party objects to venue and the joinder would render the venue of the action improper, the joined party shall be dismissed from the action.

Sucy penson & Most be made a defendant, the reason being stated in the country.

- A. Appearance of minor parties by guardian or conservator. When a minor, who has a conservator of such minor's 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 such minor's estate or a guardian, the minor 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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- B. Appearance of incapacitated person by conservator or guardian. When an incapacitated person, who has a conservator of such person's estate or a guardian, is a party to any action or proceeding, the incapacitated person shall appear by the conservator or guardian as may be appropriate or, if the court so

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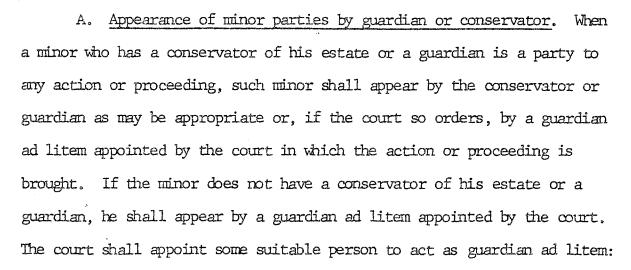
RULE 28

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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BACKGROUND NOIE

ORS sections superseded: 13.041, 13.051.

COMMENT

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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.