

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 question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. 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.

N(2) 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.

O. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

O(1) 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 (a) in that person's absence complete relief cannot be accorded among those already parties, or (b) that person claims an interest relating to the subject of the action and is so situated that the disposition of the action in that person's absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject

to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If such person has not been so joined, the court shall order that such person be made a party. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

O(2) Determination by court whenever joinder not feasible. If a person as described in subdivision (1) (a) and (b) of this rule cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or whose already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

O(3) Pleading reasons for nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (1) (a) and (b) of this rule who are not joined, and the reasons why they are not joined.

O(4) Exception of class actions. This rule is subject to the provisions of Rule _____ (class action rule).

O(5) State agencies as parties in governmental administration proceedings. In any action or proceeding arising out of county administration of functions delegated or contracted to the county by a state agency, the state agency must be made a party to the action, suit or proceeding.

pleading after a successful motion for judgment on the pleadings was added to give the trial judge discretion where such motion is actually a late blooming motion to dismiss for failure to state a claim. If the motion is denied, the existing statute relating to demurrers gave the trial judge discretion to not allow further pleading. This rule automatically allows pleading over after an unsuccessful motion, absent bad faith.

(5) This is ORS 16.400(2) and covers a motion to strike a part of a pleading.

(6) This is existing ORS 16.410.

(7) The language is taken from Federal Rule 15(d). It does not change the existing rule under ORS 16.360 but the language is clearer.

RULE M

This is existing ORS 16.221. (The title should be JOINDER OF CLAIMS).

RULE N

This is existing ORS 13.161.

RULE O

This is Federal Rule 19. This is one of the best drafted federal rules and seems to be a clear and reasonable elaboration of ORS 13.110. The last section, (5), is ORS 13.190 covering a specific situation.

RULE P

This is Federal Rule 21 and replaces all other remedies for party joinder problems with the simple device of dropping or adding parties.

RULE Q

This is Federal Rule 17(a) and has the same effect as ORS 13.030, using clearer language. It also provides a procedure for dealing with real party in interest objections.

N. JOINDER OF PARTIES

N(1) Permissive joinder as plaintiffs or defendants. All persons may join in one action 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 question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. 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.

N(2) 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.

O. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

O(1) 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 (a) in that person's absence complete relief cannot be accorded among those already parties, or (b) that person claims an interest relating to the subject of the action and is so situated that the disposition of the action in that person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) 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. 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.

O(2) Determination by court whenever joinder not feasible. If a person as described in subdivision (1) (a) and (b) of this rule cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

O(3) Pleading reasons for nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (1) (a) and (b) of this rule who are not joined, and the reasons why they are not joined.

O(4) Exception of class actions. This rule is subject to the provisions of Rule _____ (class action rule).

O(5) State agencies as parties in governmental administration proceedings. In any action or proceeding arising out of county administration of functions delegated or contracted to the county by a state agency, the state agency must be made a party to the action or proceeding.

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.

^{28B}
~~28A~~ 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.

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10. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

^{29A}
~~29A~~ 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 (1) in that person's absence complete relief cannot be accorded among those already parties, or (2) 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 (b) 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. 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.

^{29B}
~~29B~~ Determination by court whenever joinder not feasible. If

~~if a person~~ ^{plaintiff} should join as a ~~party~~ but refuses to do so,

Such person shall be made a defendant, the reason being stated in the complaint.

Subsections A (1) (2)

a person as described in subdivision ~~(1)~~ ~~(3)~~ and ~~(5)~~ of this Rule cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include; first, to what extent a judgment rendered in the person's absence might be ^{III} prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

29 C
~~0(3)~~ Exception of class actions. This Rule is subject to the provisions of Rule 32 (~~class action rule~~).

29 D
~~0(4)~~ State agencies as parties in governmental administration proceedings. In any action or proceeding arising out of county administration of functions delegated or contracted to the county by a state agency, the state agency must be made a party to the action or proceeding.

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~~B.~~ MISJOINDER AND NONJOINDER OF PARTIES

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of

question of law or fact common to all these persons will arise in the action. All persons may be joined in one action or proceeding as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. 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.

B. 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.

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clause.

BACKGROUND NOTE

ORS sections superseded: 13.140, 13.150, 13.161.

COMMENT

This is based on existing ORS 13.161.

RULE 29

JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

A. 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 or proceeding if (1) in that person's absence complete relief cannot be accorded among those already parties, or (2) that person claims an interest relating to the subject of the action or proceeding 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 (b) 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. If a person should join as a plaintiff but refuses to do so, such person shall be made a defendant, the reason being stated in the complaint. 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.

B. Determination by court whenever joinder not feasible.

If a person as described in subsections A.(1) and (2) of this rule cannot be made a party, the court shall determine whether in equity and good conscience the action or proceeding should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a

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13.140, 13.150, 13.161.

Comment:

This is the existing ~~ons~~ ^{13.161} ~~section~~ without
change.

29.

Background note
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For a specific Rule relating
to joint obligations see
ORS. 13.100

13.110, 13.170, 13.190

COMMENT:

This is based upon Federal Rule 19. The existing Oregon rules do ^{not}
~~not have a comprehensive indispensable~~ party rule. This rule directs
to court to look to the factors relevant to a decision whether X
a party should be included and whether the case should proceed
when joinder of an interested person is not feasible. Those factors
are described in terms of particular consequences to the existing
parties and the interested person and the ways by which these
consequences might be ameliorated by shaping relief or other steps.
The ~~labels necessary party and indispensable party~~ apply only as
~~conclusions not rules of decision.~~ ~~and~~

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Section 29 Debas not upon in the Federal Rule
and was taken from ORS. 13.190

RULE 29

JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

A. 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 (1) in that person's absence complete relief cannot be accorded among those already parties, or (2) 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 (b) 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. If a person should join as a plaintiff but refuses to do so, such person shall be made a defendant, the reason being stated in the complaint. If the joined party objects to venue and the joinder would render the value *venue* of the action improper, the joined party shall be dismissed from the action.

B. Determination by court whenever joinder not feasible. If a person as described in subsections A. (1) and (2) of this rule cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be

prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

C. Exception of class actions. This rule is subject to the provisions of Rule 32.

D. State agencies as parties in governmental administration proceedings. In any action or proceeding arising out of county administration of functions delegated or contracted to the county by a state agency, the state agency must be made a party to the action or proceeding.

BACKGROUND NOTE

For a specific rule relating to joint obligations, see ORS 15.100.

ORS sections superseded: 13.110, 13.170, 13.190.

COMMENT

This is based upon Federal Rule 19. The existing Oregon rules do not contain an adequate indispensable party rule. This rule directs a court to look to the factors relevant to a decision whether a party should be included and whether the case should proceed when joinder of an interested person is not feasible. Those factors are described in terms of particular consequences to the existing parties and the interested person and the ways by which these consequences might be ameliorated by shaping relief or other steps. Section ~~29~~ 29 D does not appear in the federal rule and was taken from ORS 13.190.

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JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

A. 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 (1) in that person's absence complete relief cannot be accorded among those already parties, or (2) 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 (b) 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. If a person should join as a plaintiff but refuses to do so, such person shall be made a defendant, the reason being stated in the complaint. 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.

B. Determination by court whenever joinder not feasible. If a person as described in subsections A.(1) and (2) of this rule cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be

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C. Exception of class actions. This rule is subject to the provisions of Rule 32.

D. State agencies as parties in governmental administration proceedings. In any action or proceeding arising out of county administration of functions delegated or contracted to the county by a state agency, the state agency must be made a party to the action or proceeding.

BACKGROUND NOTE

For a specific rule relating to joint obligations, see ORS 15.100.

ORS sections superseded: 13.110, 13.170, 13.190.

COMMENT

This is based upon Federal Rule 19. The existing Oregon rules do not contain an adequate indispensable party rule. This rule directs a court to look to the factors relevant to a decision whether a party should be included and whether the case should proceed when joinder of an interested person is not feasible. Those factors are described in terms of particular consequences to the existing parties and the interested person and the ways by which these consequences might be ameliorated by shaping relief or other steps. Section 29 D. does not appear in the federal rule and was taken from ORS 13.190.

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B. 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.

BACKGROUND NOTE

ORS sections superseded: 13.140, 13.150, 13.161.

COMMENT

This is based on existing ORS 13.161.

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B. Determination by court whenever joinder not feasible.

If a person as described in subsections A.(1) and (2) of this rule cannot be made a party, the court shall determine whether in equity and good conscience the action or proceeding should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a

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C. Exception of class actions. This rule is subject to the provisions of Rule 32.

D. State agencies as parties in governmental administration proceedings. In any action or proceeding arising out of county administration of functions delegated or contracted to the county by a state agency, the state agency must be made a party to the action or proceeding.

BACKGROUND NOTE

For a specific rule relating to joint obligations, see ORS 15.100.

ORS sections superseded: 13.110, 13.170, 13.190.

COMMENT

This is based upon Federal Rule 19. The existing Oregon rules do not contain an adequate indispensable party rule. This rule directs a court to look to the factors relevant to a decision whether a party should be included and whether the case should proceed when joinder of an interested person is not feasible. Those factors are described in terms of particular consequences to the existing parties and the interested person and the ways by which these consequences might be ameliorated by shaping relief or other steps. Section 29 D. does not appear in the federal rule and was taken from ORS 13.190.

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If a person as described in subsections A.(1) and (2) of this rule cannot be made a party, the court shall determine whether in equity and good conscience the action ~~or proceeding~~ should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a

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C. Exception of class actions. This rule is subject to the provisions of Rule 32.

D. State agencies as parties in governmental administration ~~proceedings~~ actions. In any action ~~or proceeding~~ arising out of county administration of functions delegated or contracted to the county by a state agency, the state agency must be made a party to the action ~~or proceeding~~.

COMMENT

For a specific rule relating to joint obligations, see ORS 15.100

This is based upon Federal Rule 19. The existing Oregon rules do not contain an adequate indispensable party rule. This rule directs a court to look to the factors relevant to a decision whether a party should be included and whether the case should proceed when joinder of an interested person is not feasible. Those factors are described in terms of particular consequences to the existing parties and the interested person and the ways by which these consequences might be ameliorated by shaping relief or other steps. Section 29 D. does not appear in the federal rule and was taken from ORS 13.190.

References to subject matter jurisdiction and venue were deleted as inappropriate to state practice.

RULE 29

JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

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B. Determination by court whenever joinder not feasible. If a person as described in subsections A.(1) and (2) of this rule cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective

provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

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D. State agencies as parties in governmental administration actions. In any action arising out of county administration of functions delegated or contracted to the county by a state agency, the state agency must be made a party to the action..

COMMENT

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This rule is based upon Federal Rule 19. The existing Oregon rules do not contain an adequate indispensable party rule. This rule directs a court to look to the factors relevant to a decision whether a party should be included and whether the case should proceed when joinder of an interested person is not feasible. Those factors are described in terms of particular consequences to the existing parties and the interested person and the ways by which these consequences might be ameliorated by shaping relief or other steps. References in the federal rule to subject matter jurisdiction and venue were deleted as inappropriate to state practice. Section 29 D. does not appear in the federal rule and was taken from ORS 13.190.