

RULE 33

INTERVENTION

A. Definition. Intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, ~~or~~ by uniting with the defendant in resisting the claims of the plaintiff, or by demanding ^{something} ~~anything~~ adversely to both the plaintiff and defendant.

B. Intervention of right. At any time before trial, any person shall be permitted to intervene in an action or proceeding when a statute of this state or these rules confers an unconditional right to intervene.

C. Permissive intervention. At any time before trial any person who has an interest in the matter in litigation may, by leave of court, intervene. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

D. Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 9. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. If the court allows the intervention, parties shall, within 10 days, file those responsive pleadings which are permitted or required by these rules for such pleading.

BACKGROUND NOTE

ORS sections superseded: 13.130.

12/1/13
P 13
Resubmit
Time

P 9
Nov 13
memo
RES submit
Nov 14
Wisenet
letter

COMMENT

This rule is based upon the existing Oregon intervention rule in ORS 13.130. Section 33 B. recognizes the possibility of mandatory statutory intervention; see, ORS 105.760, 105.755 and 373.060. The first sentence of section 33 C. comes from the existing ORS section; the second is taken from Federal Rule 24(b). The existing rules do not clearly cover the procedure for intervention; this rule includes a new section 33 D. relating to procedure.

RULE 34

SUBSTITUTION OF PARTIES

A. Nonabatement of action or proceeding by death, disability or transfer. No action or proceeding shall abate by the death or disability of a party, or by the transfer of any interest therein, if the claim survives or continues.

Kollic's
p13
transfer
rule

B. Death of a party; continued proceedings. In case of the death of a party, the court shall, on motion, allow the action or proceeding to be continued:

B.(1) By such party's personal representative or successors in interest at any time within one year after such party's death; or

B.(2) Against such party's personal representative or successors in interest at any time within four months after the date of the first publication of notice to interested persons, but not more than one year after such party's death.

C. Disability of a party; continued proceedings. In case of the disability of a party, the court may, at any time within one year thereafter, on motion, allow the action or proceeding

320

~~R(15)~~ Attorney fees. Any award of attorney fees against the party opposing the class and any fee charged class members shall be reasonable and shall be set by the court.

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32. INTERVENTION

33A

~~S(1)~~ Definition. Intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and defendant.

33B

~~S(2)~~ Intervention of right. At any time before trial, any person shall be permitted to intervene in an action when a statute of this state or these rules confers an unconditional right to intervene.

33C

~~S(3)~~ Permissive intervention. At any time before trial any person who has an interest in the matter in litigation may, by leave of court, intervene. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

33D

~~S(4)~~ Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 9 ~~(service of papers after summons)~~. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. If the court allows the intervention, parties shall, within 10 days,

file those responsive pleadings and motions to the intervenor's pleading which are required by these rules for such pleading.

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~~B~~. SUBSTITUTION OF PARTIES

34A

~~(1)~~ Nonabatement of action or suit by death, disability

or transfer; continuing proceedings. No action shall abate by

the death or disability of a party, or by the transfer of any interest therein, if the claim survives or continues. ^{P 34 B 11} In case of

the death of a party, the court shall, on motion, allow the action to be continued:

(1)^a By his personal representative or successors in interest at any time within one year after his death.

(2)^b Against his personal representative or successors in interest at any time within four months after the date of the first publication of notice to interested persons, but not more than one year after his death.

(3)^c In case of the disability of a party, the court may, at any time within one year thereafter, on motion, allow the action to be continued by or against his guardian or conservator or successors in interest.

(4)^d In case of the transfer of an interest in the action, the court may, on motion, allow the action to be continued by or against the successors in interest of the transferor.

34C

~~(1)~~ In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not

abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

^{34D}
~~34D~~) Public officers; death or separation from office. (d) When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(e) When a public officer sues or is sued in his official capacity, he may be described as a party by his official title rather than by name; but the court may require his name to be added.

^{34E}
~~34E~~) Procedure. The motion for substitution may be made by any party or by the successors in interest or representatives of the deceased or disabled party or the successors in interest of the transferor and shall be served on the parties as provided in Rule 9 ~~(service of papers after summons)~~ and upon persons not parties in the manner provided in Rule 7 for the service of a summons.

*U. REAL PARTY IN INTEREST

Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by

Rule 33

Background Note:

ORS. sections superseded:

13.130

COMMENT:

This rule is based upon the existing Oregon intervention rule in 13.130. ~~XX~~ Section 33B Recognizes the possibility of mandatory statutory intervention; see; ORS ~~XX~~ 105.760, 105.755 and 373.060.. The first sentence of Section 33C comes from the existing ORS section; the second is taken from Federal Rule 24~~XX~~ (b). The existing rules do not clearly cover the procedure for intervention; this rule includes a new section 33D relating to procedure.

Rule 34.

Background Note.

ORS sections superseded.

13.080, 13.090

COMMENT:

This rule generally preserves the existing rules of ORS 13.080. ORS 13.~~XXXXX~~ 090 ~~X~~ was unnecessary and was eliminated. Section 34 A and B ~~XXXXX~~ use the language of the existing statute~~X~~. The words "if the claim survives or continues" were added to the first sentence to make clear that this rule relates only to the procedural question of abatement of the action. ~~The language added appeared in the original Oregon Abatement statute but was omitted in a 1975 revision.~~

Sections C and D are based upon Sections (a) and (d) of federal rule 25. The problem covered by Section ~~C~~ is not addressed by existing Oregon rules and the federal approach to substitution ~~for~~ federal officials ~~XXXXXXXXXX~~ is more direct and flexible than existing Oregon practice.

Section E is new and spells out the procedure for substitution of parties which is not clear from the existing Oregon rules.

Rule 35 f/g/j

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B. Intervention of right. At any time ~~before~~ ^{before} trial, any person shall be permitted to intervene in an action when a statute of this state or these rules confers an unconditional right to intervene.

C. Permissive intervention. At any time before trial any person who has an interest in the matter in litigation may, by leave of court, intervene. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

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*not on
tape*

RULE 34

SUBSTITUTION OF PARTIES

A. Nonabatement of action or suit by death, disability or transfer; continuing proceedings.

A.(1) No action shall abate by the death or disability of a party, or by the transfer of any interest therein, if the claim survives or continues. *A. Death of a party; continued Proceedings*
B. In case of the death of a party, the court shall, on motion, allow the action to be continued:

B. (1) (a) By his personal representative or successors in interest at any time within one year after his death;

B. (2) (a) Against his personal representative or successors in interest at any time within four months after the date of the first publication of notice to interested persons, but not more than one year after his death.

C. disability of a party; continued Proceedings
A.(1)(c) In case of the disability of a party, the court may, at any time within one year thereafter, on motion, allow the action to be continued by or against his guardian or conservator or successors in interest.

D. Death of ~~an~~ party; surviving parties
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