RULE 111

REQUESTS FOR ADMISSION

(a) **Request for Admission.** A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule ~~26~~ 191(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Each matter of which an admission is requested shall be separately set forth. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

(b) Response. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 60 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of ~~Rule 37(c)~~ 215(c), deny the matter or set forth reasons why he cannot admit or deny it.

(c) Motion to determine sufficiency.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at ~~a pre-trial conference or at~~ a designated time prior to trial. The provisions of Rule ~~37(a)(4)~~ 215(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Effect of admission.

Any matter admitted pursuant to ~~ORS 41.626 to 41.685~~ → this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. The court may permit withdrawal or amendment when the presentation of the merits of the case will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his case or his defense on the merits. Any admission made by a party pursuant to ~~ORS 41.626 to 41.685~~ → this rule is for the purpose of the pending proceeding only, and neither constitutes an admission by him for any other purpose nor may be used against him in any other proceeding.

(a) Form of response.

Admissions, denials and objections to requests for admissions shall identify and quote each request for admission in full immediately preceding the statement of any admission, denial or objection thereto.

COMMENT:

This rule is a combination of ORS 41.626 and Federal Rule 36. The present Oregon statute is very similar to the federal rule but has a number of small language variations and three substantial differences. Most of the minor language variations have no purpose and the federal language was used. Some of the Oregon language is awkward, e.g., use of "shall" in the first sentence of ORS 41.620(2), and repetitive, e.g., first two sentences of ORS 41.626(4). The more significant language deviations from the Oregon statutes are:

(a) Addition of the provision in paragraph (c) that allows the court to postpone determination of objections. The federal rule also makes specific reference to a postponement to a pretrial conference, but this was deleted to conform to Oregon practice. This reference was part of the 1970 revisions to this rule and was designed to provide flexibility because of the increased scope of admissions under paragraph (a) by the addition of reference to opinions of the application of fact to law.

(b) The statute contains specific descriptions of attorneys fee awards in subsection (5) and a sanction provision for refusal to admit in subsection (6). With the general sanctions rule of these rules, this was changed in section (c) to a reference to the sanctions rule for attorneys fee awards. The sanctions for failure to admit appear in Rule 112(c).

The rule does have some variations from the federal rule. It

was subparagraphed with titles added and the order of some sentences slightly rearranged. In subsection (d), the federal rule permits withdrawal or amendment of admissions under the standards of Rule 16, the pretrial rule. The Oregon language which spells out the same standard, i.e., "when the presentation of the merits of the case will be subserved thereby", was used. The most important variation from the federal rule is the retention of ORS 41.626(3) as subsection (e) of this rule. This provision does not appear in the federal rules but seems desirable to avoid shuffling back and forth between requests and admissions. This approach does end up with the requests being typed twice. An alternative approach would be the following provision from the Ohio rules:

> "(C) Form of answers and objections to requests for admissions. The party submitting requests for admissions shall arrange them so that there is sufficient space after each request for admission in which to type the answer or objections to that request for admission. The minimum vertical space between requests for admissions shall be one inch."

The Ohio approach seems to have its own mechanical problems, and the difference did not seem important enough to change the existing Oregon statute.

The three substantial variations from the Oregon statute are all 1970 revisions to Federal Rule 36. At least two of these involve policy questions which the Council should consider:

(1) The Oregon rule prohibits service of a request by a plaintiff within 20 days after service of summons, unless leave of court is obtained. This was the pre-1970 federal rule designed to protect a defendant from being forced to admit before the defendant had time to get an attorney. The present federal rule says the request may be served at any time, but a defendant does not have to answer until the expiration of 45 days from the service of summons. This achieves the same objective and is more consistent with the approach of the other rules and is designed to require less court intervention. The important limit is not when the request may be served but when it must be answered. Since an Oregon defendant may have up to six weeks to respond to the summons, the time limit for defendant's response was increased from 45 to 60 days.

(2) The Oregon statute provides that a party may request admission of "relevant matters within the scope of ORS 41.635 or documents...". The federal rule says that admissions may be requested of matters "that relate to statements or opinions of fact or the application of law to fact" within the scope of discovery. The Oregon statutory language appears deliberate but leaves the issue hanging in the air. The existing Oregon statutory language could be interpreted as consistent with the existing federal rule or more restrictive. Whatever policy decision is to be made, it should be clearly spelled out in the rule. The suggested approach was that of the federal rules. The argument of the advisory committee that drafted the federal rule is persuasive:

> "Not only is it difficult as a practical matter to separate 'fact' from 'opinion' * * * * but an admission on a matter of opinion may facilitate proof or narrow the issues or both. An admission of a matter involving the application of law to fact may, in a given case, even more clearly narrow the issues. For example, an admission that an employee acted in the scope of his employment may remove a major issue from the trial."

(c) In defining the conditions under which lack of information and belief may be asserted in a response, the Oregon statute says this can be done only where the answering party states that the information known or readily obtainable by him is insufficient. The federal rule adds the requirement of a statement that "he has made reasonable inquiry" and the information is not sufficient. The federal language was used in section (b) of this rule. It seems reasonable to require a party to ask agents or look at readily available records rather than simply respond, "I don't know". The advisory committee comment on this change is as follows:

> The rule as revised adopts the majority view, as in keeping with a basic principle of the discovery rules that a reasonable burden may be imposed on the parties when its discharge will facilitate preparation for trial and ease the trial process. It has been argued against this view that one side should not have the burden of "proving" the other side's case. The revised rule requires only that the answering party make reasonable inquiry and secure such knowledge and information as are readily obtainable by him. In most instances, the investigation will be necessary either to his own case or to preparation for rebuttal. Even when it is not, the information may be close enough at hand to be "readily obtainable." Rule 36 requires only that the party state that he has taken these steps. The sanction for failure of a party to inform himself before he answers lies in the award of costs after trial, as provided in Rule 37(c). * * *

cases to any situation where the mental and physical condition of a party is at issue. The reference to blood tests and persons in the custody or under the legal control of a party would authorize court-ordered blood tests in paternity disputes.

Section 44 B. is also adapted from the federal rule. It provides for a more complete exchange of reports than that contemplated by the existing ORS sections. In one respect the rule is narrower than existing practice; it only allows the examined party to secure a copy of the report, as opposed to any party.

Section 44 C. is based on ORS 44.620(2).

Section 44 D. is based on ORS 44.630 but the language was modified to specifically cover the situation where the party obligated to furnish a report does not have a written report.

Section 44 E. is based upon ORS 441.810. Despite its location in ORS, the provision is a discovery rule. As enacted, the provision was apparently intended to allow examination of hospital records related to the injuries forming the basis for a claim, but the language used in the codification did not make this clear. See State ex rel Calley v. Olsen, 271 Or 369 (1975). The language was modified to conform to the original intent.

RULE 45

REQUESTS FOR ADMISSION

A. Request for admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action or proceeding only, of the truth of any matters within the scope of Rule 36 B. set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Each matter of which an admission is requested shall be separately set forth. The request may, without leave of court, be served upon the

plaintiff after commencement of the action or proceeding and upon any other party with or after service of the summons and complaint upon that party.

B. Response. Within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed shall serve upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the attorney for the party, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon such defendant. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the responding party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless it is stated in the answer that the answering party has made reasonable inquiry and that the information known or readily obtainable by the answering party is insufficient to enable such party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request;

such party may, subject to the provisions of Rule 46 C., deny the matter or set forth reasons why he cannot admit or deny it. If a written answer or objection to any request, other than a request for the admission of the genuineness of documents or things, is not served within the time specified above, the party requesting the admission may apply to the court for an order that the matter requested shall be deemed admitted. The order shall be granted unless the party to whom the request is directed establishes that the failure to respond was due to mistake, inadvertence or excusable neglect. Requests for admission as to the genuineness of documents or things are deemed admitted without court order if a written answer or objection is not served within the time specified above. The provisions of Rule 46 A.(4) apply to the award of expenses incurred in relation to the motion.

C. Motion to determine sufficiency. The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a designated time prior to trial. The provisions of Rule 46 A.(4) apply to the award of expenses incurred in relation to the motion.

D. Effect of admission. Any matter admitted pursuant to this Rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. The court may permit withdrawal or amendment when the presentation of the merits of the case will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice such party in maintaining such party's case or his defense on the merits. Any admission made by a party pursuant to this rule is for the purpose of the pending action or proceeding only, and neither constitutes an admission by such party for any other purpose nor may be used against such party in any other action or proceeding.

E. Form of response. The request for admissions shall be so arranged that a blank space shall be provided after each separately numbered request. The space shall be reasonably calculated to enable the answering party to insert the admissions, denials or objections within the space. If sufficient space is not provided, the answering party may attach additional papers with the admissions, denials or objections and refer to them in the space provided in the request.

F. Number. A party may serve more than one set of requested admissions upon an adverse party, but the total number of requests shall not exceed thirty, unless the court otherwise orders for good cause shown after the proposed additional requests have been filed. In determining what constitutes a request for admission for the purpose of applying this limitation in number, it is intended that each request be counted separately, whether or not it is subsidiary

or incidental to or dependent upon or included in another request, and however the requests may be grouped, combined or arranged.

BACKGROUND NOTE

ORS sections superseded: 41.626.

COMMENT

This rule is a combination of ORS 41.626 and Federal Rule 36. The principal variations from the ORS section, which were taken from the federal rule are: elimination of any restrictions on when requests for admissions may be served in Section 46 A. and the additional time to respond for defendants served with requests; the specific language in section 46 A. allowing requests as to "statements or opinions of fact of the application of law to fact"; and, the addition of a requirement in 46 B. that lack of information and belief may only be used as a response where "the answering party has made reasonable inquiry."

The Council also added several provisions that appear neither in the ORS section or the federal rule. Section 46 B. was modified to eliminate the automatic admission arising from failure to respond within the time allowed for admissions other than the genuineness of documents and things. The party serving the admission must apply to the court for an order that the matter requested is deemed admitted. This was done because it was felt the automatic admission created a procedural trap. Parties receiving requests for admissions cannot simply ignore them, however, and then resist a court order, as the rule provides the order establishing the admission shall be given unless mistake, inadvertence or excusable neglect is shown. Requests for admission of the genuineness of documents and things are automatically admitted if not denied; the danger of a serious procedural mistake arising from an admission of this type is slight, and such admissions are routinely used to avoid the necessity of authentication of exhibits at trial. The Council also added sections 46 E. and F. Section 46 E. replaces ORS 41.626(3) and provides that space shall be left for responses in the admissions form, rather than requiring that the request be retyped on a separate response. It was felt this would be consistent with the approach in the interrogatories rule and would minimize total typing time involved. Section 46 F. provides a number limitation on requests for admissions similar to the rule governing interrogatories.

EXHIBIT D

RULE ~~111~~ 45

REQUESTS FOR ADMISSION

A. Request for admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule ~~101~~ 36 B. set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Each matter of which an admission is requested shall be separately set forth. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

B. Response. Within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed shall serve upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which

an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule ~~112~~ 46 C., deny the matter or set forth reasons why he cannot admit or deny it. If a written answer or objection is not served within the time specified above, the party requesting the admission may apply to the court for an order that the matter requested shall be deemed admitted. The order shall be granted unless the party to whom the request is directed establishes that the failure to respond was due to mistake, inadvertence or excusable neglect. The provisions of Rule ~~112~~ 46 A. apply to the award of expenses incurred in relation to the motion. ! That is right!

C. Motion to determine sufficiency. The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this Rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a designated time prior to trial. The provisions of Rule ~~112~~ 46. A. apply to the award of expenses incurred in relation to the motion.

D. Effect of admission. Any matter admitted pursuant to this Rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. The court may permit withdrawal or amendment when the presentation of the merits of the case will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his case or his defense on the merits. Any admission made by a party pursuant to this Rule is for the purpose of the pending proceeding only, and neither constitutes an admission by him for any other purpose nor may be used against him in any other proceeding.

E. Form of reponse. The request for admissions shall be so arranged that a blank space shall be provided after each separately numbered request. The space shall be reasonably calculated to enable the answering party to insert the admissions, denials or objections within the space. If sufficient space is not provided, the answering party may attach additional papers with the admissions, denials or objections and refer to them in the space provided in the request.

F. Number. A party may serve more than one set of requested admission upon an adverse party, but the total number of requests shall not exceed thirty, unless the court otherwise orders for good cause shown after the proposed additional requests have been filed. In determining what constitutes a request for admission for the purpose of applying this limitation in number, it is intended that each request be counted separately, whether or not it is subsidiary or incidental to or dependent upon or included in another request, and however the requests may be grouped, combined or arranged.

Rule 45

Background note

ORS. sections superseded

41.426.

COMMENT:

This rule is a combination of ORS 41.626 and Federal Rule 36. The principle variations from the ORS section, which were taken from the federal rule are: elimination of any restrictions on when requests for admissions could be served in Section 46 A and the additional time to respond for defendants served with requests with the complaint; the specific language in section 46 A allowing requests as to "statements or opinons of fact or the application of law to fact; and, the addition of a requriement that lack of information and belief may only be used as a response where a party states that "he has made reasonable inquiry". in 46B

The council also added several provisions that appear neither in the ORS section or the federal rule. Section 46B was modified to eliminate the automatic admission arising from failure to respond within the time allowed. The party serving the admission must apply to the court for an order that the matter requested is deemed admitted. This was done because it was felt the automatic admission created a procedural trap. Parties receiving requests for admissions cannot simply ignore them, however, and then seek to avoid a court order as the rule provides the order establishing the admission shall be given unless mistake, inadvertance or excusable neglect is shown. The council also added sections 46E and 46F. Section E replaces ORS 41.626(3) and provides that space shall be left for responses in the admissions form, father than requiring that the request be retyped on a seperate response. It was felt this would be consistant with the approach in the interrogatories rule and would minimize toatl typing time involved. Section 46F provides a number limitation on requests for admissions similar to the rule governing interrogatories.

RULE 45

REQUESTS FOR ADMISSION

A. Request for admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 36 B. set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Each matter of which an admission is requested shall be separately set forth. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

B. Response. ~~The matter is admitted unless,~~ within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of ~~60~~ 45 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission,

and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the rerquest; he may, subject to the provisions of Rule 46 C., deny the matter or set forth reasons why he cannot admit or deny it. If a written answer or objection is not served within the time specified above, the party requesting the admission may apply to the court for an order that the matter requested shall be deemed admitted. The order shall be granted unless the party to whom the request is directed establishes that the failure to respond was due to mistake, inadvertence or excusable neglect. The provisions of Rule 46 A.(4) apply to the award of expenses incurred in relation to the motion.

C. Motion to determine sufficiency. The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a designated time prior to

(4)

trial. The provisions of Rule 46 A. apply to the award of expenses incurred in relation to the motion.

D. Effect of admission. Any matter admitted pursuant to this Rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. The court may permit withdrawal or amendment when the presentation of the merits of the case will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his case or his defense on the merits. Any admission made by a party pursuant to this Rule is for the purpose of the pending proceeding only, and neither constitutes an admission by him for any other purpose nor may be used against him in any other proceeding.

E. Form of reponse. The request for admissions shall be so arranged that a blank space shall be provided after each separately numbered request. The space shall be reasonably calculated to enable the answering party to insrt the admissions, denials or objections within the space. If sufficient space is not provided, the answering party may attach additional papers with the admissions, denials or objections and refer to them in the space provided in the request.

F. Number. A party may serve more than one set of requested admission upon an adverse party, but the total number of requests shall not exceed thirty, unless the court otherwise orders for good cause shown after the proposed additional requests have been filed. In determining what constitutes a request for admission for the purpose of applying this limitation in number, it is intended that each request be counted separately, whether or not it is subsidiary or incidental to or dependent upon or included in another request, and however the requests

may be grouped, combined or arranged.

BACKGROUND NOTE

ORS sections superseded: 41.626.

COMMENT

This rule is a combination of ORS 41.626 and Federal Rule 36. The principle variations from the ORS section, which were taken from the federal rule are: elimination of any restrictions on when requests for admissions ~~could~~ may be served in Section 46 A. and the additional time to respond for defendants served with requests, ~~with the complaint~~; the specific language in section 46 A. allowing requests as to "statements or opinions of fact of the application of law to fact"; and, the addition of a requirement in 46 B. that lack of information and belief may only be used as a response where a party states that "he has made reasonable inquiry".

The Council also added several provisions that appear neither in the ORS section or the federal rule. Section 46 B. was modified to eliminate the automatic admission arising from failure to respond within the time allowed. The party serving the admission must apply to the court for an order that the matter requested is deemed admitted. This was done because it was felt the automatic admission created a procedural trap. Parties receiving requests for admissions cannot simply ignore them, however, and then seek to avoid a court order, as the rule provides the order establishing the admission shall be given unless mistake, inadvertence or excusable neglect is shown. The Council also added sections 46 E. and F. Section 46 E. replaces ORS 41.626(3) and provides that space shall be left for responses in the admissions form, rather than requiring that the request be retyped on a separate respnse. It was felt this would be consistent with the approach in the interrogatories rule and would minimize total typing time involved. Section 46 F. provides a number limitation on requests for admissions similar to the rule governing interrogatories.

RULE 45

REQUESTS FOR ADMISSION

A. Request for admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 36 B. set forth in the request that relate to statements or opinions of fact or of the application of law to fact, inlcuding the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Each matter of which an admission is requested shall be separately set forth. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

B. Response. Within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission,

and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 46 C., deny the matter or set forth reasons why he cannot admit or deny it. If a written answer or objection is not served within the time specified above, the party requesting the admission may apply to the court for an order that the matter requested shall be deemed admitted. The order shall be granted unless the party to whom the request is directed establishes that the failure to respond was due to mistake, inadvertence or excusable neglect. The provisions of Rule 46 A.(4) apply to the award of expenses incurred in relation to the motion.

C. Motion to determine sufficiency. The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a designated time prior to

trial. The provisions of Rule 46 A.(4) apply to the award of expenses incurred in relation to the motion.

D. Effect of admission. Any matter admitted pursuant to this Rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. The court may permit withdrawal or amendment when the presentation of the merits of the case will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his case or his defense on the merits. Any admission made by a party pursuant to this Rule is for the purpose of the pending proceeding only, and neither constitutes an admission by him for any other purpose nor may be used against him in any other proceeding.

E. Form of reponse. The request for admissions shall be so arranged that a blank space shall be provided after each separately numbered request. The space shall be reasonably calculated to enable the answering party to insert the admissions, denials or objections within the space. If sufficient space is not provided, the answering party may attach additional papers with the admissions, denials or objections and refer to them in the space provided in the request.

F. Number. A party may serve more than one set of requested admission upon an adverse party, but the total number of requests shall not exceed thirty, unless the court otherwise orders for good cause shown after the proposed additional requests have been filed. In determining what constitutes a request for admission for the purpose of applying this limitation in number, it is intended that each request be counted separately, whether or not it is subsidiary or incidental to or dependent upon or included in another request, and however the requests

may be grouped, combined or arranged.

BACKGROUND NOTE

ORS sections superseded: 41.626

COMMENT

This rule is a combination of ORS 41.626 and Federal Rule 36. The principle variations from the ORS section, which were taken from the federal rule are: elimination of any restrictions on when requests for admissions may be served in Section 46 A. and the additional time to respond for defendants served with requests; the specific language in section 46 A. allowing requests as to "statements or opinions of fact of the application of law to fact"; and, the addition of a requirement in 46 B. that lack of information and belief may only be used as a response where a party states that "he has made reasonable inquiry".

The Council also added several provisions that appear neither in the ORS section or the federal rule. Section 46 B. was modified to eliminate the automatic admission arising from failure to respond within the time allowed. The party serving the admission must apply to the court for an order that the matter requested is deemed admitted. This was done because it was felt the automatic admission created a procedural trap. Parties receiving requests for admissions cannot simply ignore them, however, and then seek to avoid a court order, as the rule provides the order establishing the admission shall be given unless mistake, inadvertence or excusable neglect is shown. The Council also added section 46 E. and F. Section 46 E. replaces ORS 41.626(3) and provides that space shall be left for responses in the admissions form, rather than requiring that the request be retyped on a separate response. It was felt this would be consistent with the approach in the interrogatories rule and would minimize total typing time involved. Section 46 F. provides a number limitation on requests for admissions similar to the rule governing interrogatories.

cases to any situation where the mental and physical condition of a party is at issue. The reference to blood tests and persons in the custody or under the legal control of a party would authorize court-ordered blood tests in paternity disputes.

Section 44 B. is also adapted from the federal rule. It provides for a more complete exchange of reports than that contemplated by the existing ORS sections. In one respect the rule is narrower than existing practice; it only allows the examined party to secure a copy of the report, as opposed to any party.

Section 44 C. is based on ORS 44.620(2).

Section 44 D. is based on ORS 44.630 but the language was modified to specifically cover the situation where the party obligated to furnish a report does not have a written report.

Section 44 E. is based upon ORS 441.810. Despite its location in ORS, the provision is a discovery rule. As enacted, the provision was apparently intended to allow examination of hospital records related to the injuries forming the basis for a claim, but the language used in the codification did not make this clear. See State ex rel Calley v. Olsen, 271 Or 369 (1975). The language was modified to conform to the original intent.

RULE 45

REQUESTS FOR ADMISSION

A. Request for admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action or proceeding only, of the truth of any matters within the scope of Rule 36 B. set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Each matter of which an admission is requested shall be separately set forth. The request may, without leave of court, be served upon the

plaintiff after commencement of the action or proceeding and upon any other party with or after service of the summons and complaint upon that party.

B. Response. Within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed shall serve upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the attorney for the party, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon such defendant. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the responding party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless it is stated in the answer that the answering party has made reasonable inquiry and that the information known or readily obtainable by the answering party is insufficient to enable such party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request;

such party may, subject to the provisions of Rule 46 C., deny the matter or set forth reasons why he cannot admit or deny it. If a written answer or objection to any request, other than a request for the admission of the genuineness of documents or things, is not served within the time specified above, the party requesting the admission may apply to the court for an order that the matter requested shall be deemed admitted. The order shall be granted unless the party to whom the request is directed establishes that the failure to respond was due to mistake, inadvertence or excusable neglect. Requests for admission as to the genuineness of documents or things are deemed admitted without court order if a written answer or objection is not served within the time specified above. The provisions of Rule 46 A.(4) apply to the award of expenses incurred in relation to the motion.

C. Motion to determine sufficiency. The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a designated time prior to trial. The provisions of Rule 46 A.(4) apply to the award of expenses incurred in relation to the motion.

D. Effect of admission. Any matter admitted pursuant to this Rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. The court may permit withdrawal or amendment when the presentation of the merits of the case will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice such party in maintaining such party's case or his defense on the merits. Any admission made by a party pursuant to this rule is for the purpose of the pending action or proceeding only, and neither constitutes an admission by such party for any other purpose nor may be used against such party in any other action or proceeding.

E. Form of response. The request for admissions shall be so arranged that a blank space shall be provided after each separately numbered request. The space shall be reasonably calculated to enable the answering party to insert the admissions, denials or objections within the space. If sufficient space is not provided, the answering party may attach additional papers with the admissions, denials or objections and refer to them in the space provided in the request.

F. Number. A party may serve more than one set of requested admissions upon an adverse party, but the total number of requests shall not exceed thirty, unless the court otherwise orders for good cause shown after the proposed additional requests have been filed. In determining what constitutes a request for admission for the purpose of applying this limitation in number, it is intended that each request be counted separately, whether or not it is subsidiary

or incidental to or dependent upon or included in another request, and however the requests may be grouped, combined or arranged.

BACKGROUND NOTE

ORS sections superseded: 41.626.

COMMENT

This rule is a combination of ORS 41.626 and Federal Rule 36. The principal variations from the ORS section, which were taken from the federal rule are: elimination of any restrictions on when requests for admissions may be served in Section 46 A. and the additional time to respond for defendants served with requests; the specific language in section 46 A. allowing requests as to "statements or opinions of fact of the application of law to fact"; and, the addition of a requirement in 46 B. that lack of information and belief may only be used as a response where "the answering party has made reasonable inquiry."

The Council also added several provisions that appear neither in the ORS section or the federal rule. Section 46 B. was modified to eliminate the automatic admission arising from failure to respond within the time allowed for admissions other than the genuineness of documents and things. The party serving the admission must apply to the court for an order that the matter requested is deemed admitted. This was done because it was felt the automatic admission created a procedural trap. Parties receiving requests for admissions cannot simply ignore them, however, and then resist a court order, as the rule provides the order establishing the admission shall be given unless mistake, inadvertence or excusable neglect is shown. Requests for admission of the genuineness of documents and things are automatically admitted if not denied; the danger of a serious procedural mistake arising from an admission of this type is slight, and such admissions are routinely used to avoid the necessity of authentication of exhibits at trial. The Council also added sections 46 E. and F. Section 46 E. replaces ORS 41.626(3) and provides that space shall be left for responses in the admissions form, rather than requiring that the request be retyped on a separate response. It was felt this would be consistent with the approach in the interrogatories rule and would minimize total typing time involved. Section 46 F. provides a number limitation on requests for admissions similar to the rule governing interrogatories.

RULE 45

REQUESTS FOR ADMISSION

A. Request for admission. After commencement of an action, a party may serve upon any other party a request for the admission by the latter of the truth of relevant matters within the scope of Rule 36 B. specified in the request, including facts or opinions of fact, or the application of law to fact, or of the genuineness of any relevant documents or physical objects described in or exhibited with the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Each matter of which an admission is requested shall be separately set forth. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

B. Response. The request for admissions shall be preceded by the following statement printed in capital letters of the type size in which the request is printed: "FAILURE TO SERVE A WRITTEN ANSWER OR OBJECTION WITHIN THE TIME ALLOWED BY ORCP 45 B. WILL RESULT IN ADMISSION OF THE FOLLOWING REQUESTS." Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the

party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon ~~him~~ such defendant. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason failure to admit or deny unless the answering party states that reasonable inquiry has been made and that the information known or readily obtainable by the answering party is insufficient to enable the answering party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 46 c., deny the matter or set forth reasons why the party cannot admit or deny it.

C. Motion to determine sufficiency. The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order than an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a designated time prior to trial. The provisions of Rule 46 A.(4) apply to the award of expenses incurred in relation to the motion.

D. Effect of admission. Any matter admitted pursuant to this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. The court may permit withdrawal or amendment when the presentation of the merits of the case will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice such party in maintaining such party's case or his defense on the merits. Any admission made by a party pursuant to this rule is for the purpose of the pending action only, and neither constitutes an admission by such party for any other purpose nor may be used against such party in any other action.

E. Form of response. The request for admissions shall be so arranged that a blank space shall be provided after each separately numbered request. The space shall be reasonably

calculated to enable the answering party to insert the admissions, denials, or objections within the space. If sufficient space is not provided, the answering party may attach additional papers with the admissions, denials, or objections and refer to them in the space provided in the request.

F. Number. A party may serve more than one set of requested admissions upon an adverse party, but the total number of requests shall not exceed thirty, unless the court otherwise orders for good cause shown after the proposed additional requests have been filed. In determining what constitutes a request for admission for the purpose of applying this limitation in number, it is intended that each request be counted separately, whether or not it is subsidiary or incidental to or dependent upon or included in another request, and however the requests may be grouped, combined or arranged.

COMMENT

This rule is a combination of ORS 41.626 and Federal Rule 36. The principal variations from the ORS section, which were taken from the federal rule are: elimination of any restrictions on when requests for admissions may be served in section 46 A. and the additional time to respond for defendants served with requests; the specific language in section 46 A. allowing requests as to "facts or opinions of fact,or the application of law to fact"; and, the addition of a requirement in 46 B. that lack of information and belief may only be used as a response where "the answering party states that reasonable inquiry has been made."

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directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon such defendant. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the answering party states that reasonable inquiry has been made and that the information known or readily obtainable by the answering party is insufficient to enable the answering party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 46 C., deny the matter or set forth reasons why the party cannot admit or deny it.

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