

Revision
~~APPENDIX A.~~
Nov 7, 1978

RULE 57

JURORS

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A. Challenging compliance with selection procedures.

A.(1) Motion. Within 7 days after the moving party discovered or by the exercise of diligence could have discovered the grounds therefor, and in any event before the jury is sworn to try the case, a party may move to stay the proceedings or for other appropriate relief, on the ground of substantial failure to comply with ORS 10.010 to 10.490 in selecting the jury.

A.(2) Stay of proceedings. Upon motion filed under subsection (1) of this section containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with ORS 10.010 to 10.490, the moving party is entitled to present in support of the motion the testimony of the clerk or court administrator any relevant records and papers not public or otherwise available used by the clerk or court administrator, and any other relevant evidence. If the court determines that in selecting the jury there has been a substantial failure to comply

with ORS 10.010 to 10.490, the court shall stay the proceedings pending the selection of the jury in conformity with ORS 10.010 to 10.490, or grant other appropriate relief.

A.(3) Exclusive means of challenge. The procedures prescribed by this section are the exclusive means by which a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with ORS 10.010 to 10.490.

B. Jury; how drawn. When the action is called for trial the clerk shall draw from the trial jury box of the court, one by one, the ballots containing the names of the jurors until the jury is completed or the ballots are exhausted. If the ballots become exhausted before the jury is complete, the sheriff, under the direction of the court, shall summon from the bystanders, or the body of the county, so many qualified persons as may be necessary to complete the jury. Whenever the sheriff shall summon more than one person at a time from the bystanders or the body of the county, the sheriff shall return a list of the persons so summoned to the clerk. The clerk shall write the

names of such persons upon separate ballots, and deposit the same in the trial jury box, and then draw such ballots therefrom, as in the case of the panel of trial jurors for the term.

C. Examination of jurors. The full number of jurors having been called shall thereupon be examined as to their qualifications. The court may examine the prospective jurors to the extent it deems appropriate, and shall permit the parties or their attorneys to ask reasonable questions.

D. Challenges.

D.(1) Challenges for cause; grounds. Challenges for cause may be taken on any one or more of the following grounds:

D.(1)(a) The want of any qualifications prescribed by ORS 10.030 for a person competent to act as a juror or improper summons under ORS 10.030 (3).

D.(1)(b) The existence of a mental or physical defect which satisfies the court that the challenged person is incapable of performing the duties of a juror in the particular action without prejudice to the substantial rights of the challenging party.

D.(1)(c) Consanguinity or affinity within the fourth degree to any party.

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that ^{stut} the ~~attorneys~~ ~~Anderson~~ ~~is~~
D.(1)(d) ~~Standing in the relation of~~
guardian and ward, ~~attorney and client,~~ ^{out} physician
and patient, master and servant, landlord and ten-
ant, or debtor and creditor, to the ~~adverse party;~~ ^{is party adverse to the party} ~~Assenting to~~
~~or being a member of the family of,~~ ^{stut} or a partner ~~challenge.~~
in business with, or in the employment for wages of, ^{add this} or being on
the adverse party; ^{is stut} or being surety in the action ^{attending for or}
called for trial, or otherwise, for the adverse ^{a client or,}
party.

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D.(1)(e) Having served as a juror on a previ-
ous trial in the same action or proceeding; or in
another action or proceeding between the same par-
ties for the same cause of action, upon substantially
the same facts or transaction.

^{outcome or} D.(1)(f) Interest on the part of the juror in
the ~~action,~~ or the principal question involved therein.
~~except such juror's interest as a member of or citi-
zen or taxpayer of a county or incorporated city.~~

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D.(1)(g)

^{Actual P. 150} D.(2) Challenges for cause; trial. Challenges
for cause may be tried by the court. The juror chal-
lenged and any other person may be examined as a
witness on trial of the challenge.

D.(3) Peremptory challenges; number. A per-
emptory challenge is an objection to a juror for which
no reason need be given, but upon which the court shall

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exclude such juror. Either party shall be entitled to three peremptory challenges, and no more. Where there are multiple parties plaintiff or defendant in the case, or where cases have been consolidated for trial, the parties plaintiff or defendant must join in the challenge and are limited to a total of three peremptory challenges.

D. (3) Conduct of peremptory challenges.

After the full number of jurors have been passed for cause, peremptory challenges shall be conducted as follows: The plaintiff may challenge one and then the defendant may challenge one, and so alternating until the peremptory challenges shall be exhausted. After each challenge, the panel shall be filled and the additional juror passed for cause before another peremptory challenge shall be exercised, and neither party is required to exercise a peremptory challenge unless the full number of jurors are in the jury box at the time. The refusal to challenge by either party in the said order of alternation shall not defeat the adverse party of his full number of challenges, and such refusal by a party to exercise his challenge in proper turn shall conclude that party as

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(b) the court may decrease the number of peremptory challenges and may allocate peremptory challenges between or among parties in. can only be under the circumstances. three challenges. aen

would not be sufficient to allow all parties
on one side a reasonable opportunity to
assent peremptory challenges or the
parties on one side would not be likely
to agree on peremptory challenges.

to the jurors once accepted by that party, and if his right of peremptory challenge be not exhausted, that party's further challenges shall be confined, in that party's proper turn, to such additional jurors as may be called. The court may, for good cause shown, permit a challenge to be taken to any juror before the jury is completed and sworn, notwithstanding the juror challenged may have been theretofore accepted, *→* ~~may increase the number of peremptory challenges and may allocate peremptory challenges allowed to one side between or among parties on one side.~~

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challenge

E. Oath of jury. As soon as the number of the jury has been completed, an oath or affirmation shall be administered to the jurors, in substance that they and each of them will well and truly try the matter in issue between the plaintiff and defendant, and a true verdict give according to the law and evidence as given them on the trial.

F. Alternate jurors. The court may direct that not more than six jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the

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order in which they are called shall replace jurors who, prior to the time the jury retired to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged as the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impanelled, two peremptory challenges if three or four alternate jurors are to be impanelled, and three peremptory challenges if five or six alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

RULE 57

JURORS

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A. Jury; how drawn. Trial juries shall be formed as follows: When the action is called for trial the clerk shall draw from the trial jury box of the court, one by one, the ballots containing the names of the jurors until the jury is completed or the ballots are exhausted. If the ballots become exhausted before the jury is complete, the sheriff, under the direction of the court, shall summon from the bystanders, or the body of the county, so many qualified persons as may be necessary to complete the jury. Whenever the sheriff shall summon more than one person at a time from the bystanders or the body of the county, the sheriff shall return a list of the persons so summoned to the clerk. The clerk shall write the names of such persons upon separate ballots, and deposit the same in the trial jury box, and then draw such ballots therefrom, as in the case of the panel of trial jurors for the term.

B. Challenges; examination of jurors.

B.(1) Types of challenges. No challenge shall be made or allowed to the panel. A challenge to a particular juror may be either peremptory or for cause.

B.(2) Challenge for cause; grounds.

B.(2)(a) Challenge for cause may be either general, that the juror is disqualified from serving in any action, or particular, that the juror is disqualified from serving in the action or proceeding on trial.

B.(2)(b) General causes of challenges are:

B.(2)(b)(i) A want of any of the qualifications prescribed by law for a juror.

B.(2)(b)(ii) Unsoundness of mind.

B.(2)(b)(iii) Such defect in the faculties of the mind, or organs of the body, as renders the person incapable of performing the duties of a juror in the action or proceeding on trial.

B.(2)(b)(iv) That such person has been summoned and attended said court as a juror at any term of court held within one year prior to the time of such challenge; or that such person has been summoned from the bystanders or body of the county, and has served as a juror in any cause upon such summons within one year prior to the time of such challenge.

An exemption from service on a jury shall not be cause of challenge, but the privilege of the person exempted.

B.(2)(c) A particular challenge may be for implied bias, which is such a bias as, when the existence of the facts is ascertained, in judgment of law disqualifies the juror. A challenge for implied bias may be taken for any or all of the following causes, and not otherwise:

B.(2)(c)(i) Consanguinity or affinity within the fourth degree to either party.

B.(2)(c)(ii) Standing in the relation of guardian and ward, attorney and client, physician and patient, master and servant, landlord and tenant, or debtor and creditor, to the

adverse party; or being a member of the family of, or a partner in business with, or in the employment for wages of, the adverse party; or being surety in the action called for trial, or otherwise, for the adverse party.

B.(2)(c)(iii) Having served as a juror on a previous trial in the same action or proceeding, or in another action or proceeding between the same parties for the same cause of action, upon substantially the same facts or transaction.

B.(2)(c)(iv) Interest on the part of the juror in the event of the action, or the principal question involved therein.

B.(2)(d) A particular challenge may be for actual bias, which is the existence of a state of mind on the part of the juror, in reference to the action or proceeding, or to either party, which satisfies the court, in the exercise of a sound discretion, that the juror cannot try the issue impartially and without prejudice to the substantial rights of the party challenging. A challenge for actual bias may be taken for the causes mentioned in this paragraph, but on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon the merits of the cause from what the juror may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all the circumstances, that the juror cannot disregard such opinion and try the issue impartially.

B.(3) Challenge for cause; procedure.

B.(3)(a) The challenges for cause of either party shall be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

B.(3)(a)(i) For general disqualification.

B.(3)(a)(ii) For implied bias.

B.(3)(a)(iii) For actual bias.

B.(3)(b) The challenge may be excepted to by the adverse party for insufficiency, and if so, the court shall determine the sufficiency thereof, assuming the facts alleged therein to be true. The challenge may be denied by the adverse party, and if so, the court shall try the issue and determine the law and the fact.

B.(3)(c) Upon the trial of a challenge, the rules of evidence applicable to testimony offered upon the trial of an ordinary issue of fact shall govern. The juror challenged, or any other person otherwise competent, may be examined as a witness by either party. If a challenge is determined to be sufficient, or found to be true, as the case may be, it shall be allowed, and the juror to whom it was taken excluded; otherwise, it shall be disallowed.

B.(3)(d) The challenge, the exception and the denial may be made orally.

B.(4) Peremptory challenges. A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude such juror. Either party shall be

entitled to three peremptory challenges, and no more.

Where there are multiple parties plaintiff or defendant in the case, or where cases have been consolidated for trial, the parties plaintiff or defendant must join in the challenge and are limited to a total of three peremptory challenges.

B.(5) Order of examining jurors; conduct of peremptory challenges.

B.(5)(a) The full number of jurors having been called shall thereupon be examined as to their qualifications, and having been passed for cause, peremptory challenges shall be conducted as follows: The plaintiff may challenge one and then the defendant may challenge one, and so alternating until the peremptory challenges shall be exhausted. After each challenge, the panel shall be filled and the additional juror passed for cause before another peremptory challenge shall be exercised, and neither party is required to exercise a peremptory challenge unless the full number of jurors are in the jury box at the time. The refusal to challenge by either party in the said order of alternation shall not defeat the adverse party of his full number of challenges, and such refusal by a party to exercise his challenge in proper turn shall conclude him as to the jurors once accepted by him, and if his right of peremptory challenge be not exhausted, his further challenges shall be confined, in his proper turn, to such additional jurors as may be called. The court may, for good cause shown, permit a challenge to be taken to any juror before the jury is completed and sworn,

notwithstanding the juror challenged may have been theretofore accepted, but nothing herein shall be construed to increase the number of peremptory challenges allowed.

B.(5)(b) The court may examine the prospective jurors to the extent it deems appropriate, and shall permit the parties or their attorneys to ask reasonable questions.

C. Oath of jury. As soon as the number of the jury has been completed, an oath or affirmation shall be administered to the jurors, in substance that they and each of them will well and truly try the matter in issue between the plaintiff and defendant, and a true verdict give according to the law and evidence as given them on the trial.

D. Alternate jurors. The court may direct that not more than 6 jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retired to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged as the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are

to be impanelled, two peremptory challenges if three or four alternate jurors are to be impanelled, and three peremptory challenges if five or six alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

BACKGROUND NOTE

ORS sections superseded: 17.110, 17.115, 17.120, 17.125, 17.130, 17.135, 17.140, 17.145, 17.150, 17.155, 17.160, 17.165, 17.170, 17.175, 17.180, 17.185, 17.190.

COMMENT

This rule is based almost entirely upon existing ORS provisions. The ORS language was reorganized to put the rule in a more logical order. The only notable modifications of ORS language are: Subsection B.(4), which clarifies the language in ORS 17.155 to clearly limit peremptory challenges to three challenges per side when there are multiple plaintiffs or defendants; paragraph B.(5)(b), which was added to make clear that, while the court has the authority to examine, the parties retain the right to conduct their voir dire by reasonable questions; and, section 57 D., which clarifies the language of ORS 17.190 relating to alternate jurors.

Since the ORS sections involved apply to both civil and criminal cases, they would remain as ORS sections for criminal cases.

RULE 58

TRIAL PROCEDURE

A. Order of proceedings on trial by the court. Trial by the court shall proceed in the order prescribed in subsections (1) to (5) of section B. of this rule, unless the court, for special reasons, otherwise directs.

B. Order of proceedings on jury trial. When the jury has been selected and sworn, the trial, unless the court for

RULE 57

JURORS

A. Jury; how drawn. Trial juries shall be formed as follows; When the action is called for trial the clerk shall draw from the trial jury box of the court, one by one, the ballots containing the names of the jurors until the jury is completed or the ballots are exhausted. If the ballots become exhausted before the jury is complete, the sheriff, under the direction of the court, shall summon from the bystanders, or the body of the county, so many qualified persons as may be necessary to complete the jury. Whenever the sheriff shall summon more than one person at a time from the bystanders or the body of the county, he shall return a list of the persons so summoned to the clerk. The clerk shall write the names of such persons upon separate ballots, and deposit the same in the trial jury box, and then draw such ballots therefrom, as in the case of the panel of trial jurors for the term.

B. Challenges; examination of jurors.

B.(1) Types of challenges. No challenge shall be made or allowed to the panel. A challenge to a particular juror may be either peremptory or for cause.

B.(2) Challenge for cause; grounds.

B.(2)(a) Challenge for cause may be either general; that the juror is disqualified from serving in any action; or particular, that the juror is disqualified from serving in the action on trial.

B.(2)(b) General causes of challenges are:

B3 | B.(2)(b)(i) A want of any of the qualifications prescribed by law for a juror.

B.(2)(b)(ii) Unsoundness of mind.

B.(2)(b)(iii) Such defect in the faculties of the mind, or organs of the body, as renders him incapable of performing the duties of a juror in the action on trial.

B.(2)(b)(iv) That such person has been summoned and attended said court as a juror at any term of court held within one year prior to the time of such challenge; or that such person has been summoned from the bystanders or body of the county, and has served as a juror in any cause upon such summons within one year prior to the time of such challenge.

An exemption from service on a jury shall not be cause of challenge, but the privilege of the person exempted.

B.(2)(c) A particular challenge may be for implied bias, which is such a bias as, when the existence of the facts is ascertained, in judgment of law disqualifies the juror. A challenge for implied bias may be taken for any or all of the following causes, and not otherwise:

B.(2)(c)(i) Consanguinity or affinity within the fourth degree to either party.

B.(2)(c)(ii) Standing in the relation of guardian and ward, attorney and client, physician and patient, master and servant, landlord and tenant, or debtor and creditor, to the adverse party; or being a member of the family of, or a partner in business with, or in the employment for wages of, the adverse party; or being surety in the ⁶⁴action called for trial, or otherwise, for the adverse party.

B.(2)(c)(iii) Having served as a juror on a previous trial in the same action, or in another action between the same parties for the same cause of action, upon substantially the same facts or transaction.

B.(2)(c)(iv) Interest on the part of the juror in the event of the action, or the principal question involved therein.

B.(2)(d) A particular challenge may be for actual bias, which is the existence of a state of mind on the part of the juror, in reference to the action,

or to either party, which satisfies the court, in the exercise of a sound discretion, that he cannot try the issue impartially and without prejudice to the substantial rights of the party challenging. A challenge for actual bias may be taken for the causes mentioned in this paragraph, but on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon the merits of the cause from what he may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all the circumstances, that the juror cannot disregard such opinion and try the issue impartially.

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B.(3)(a)(i) For general disqualification.

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B.(3)(b) The challenge may be excepted to by the adverse party for insufficiency, and if so, the court shall determine the sufficiency thereof, assuming the facts alleged therein to be true. The challenge may be denied by the adverse party, and if so, the court shall try the issue and determine the law and the fact.

B.(3)(c) Upon the trial of a challenge, the rules of evidence applicable to testimony ~~offered~~ upon the trial of an ordinary issue of fact shall govern. The juror challenged, or any other person otherwise competent, may be examined as a witness by either party. If a challenge is determined to be sufficient,

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or found to be true, as the case may be, it shall be allowed, and the juror to whom it was taken excluded; otherwise, it shall be disallowed.

B.(3)(d) The challenge, the exception and the denial may be made orally. The judge shall note the same upon his minutes, and the substance of the testimony on either side.

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B.(4) Peremptory challenges. A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude him. Either party shall be entitled to three peremptory challenges, and no more. Where there are multiple parties plaintiff or defendant in the case, or where cases have been consolidated for trial, the parties plaintiff or defendant must join in the challenge and are limited to a total of three peremptory challenges.

B.(5) Order of examining jurors; conduct of peremptory challenges.

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a challenge to be taken to any juror before the jury is completed and sworn, notwithstanding the juror challenged may have been theretofore accepted, but nothing herein shall be construed to increase the number of peremptory challenges allowed.

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Background note.

ORS sections suspended.

17.110, 17.115, 17.120, 17.125, 17.130, 17.135,
 17.140, 17.145, 17.150, 17.155, 17.160, 17.165,
 17.170, 17.175, 17.180, 17.185, 17.190.

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JURORS

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B. (2) (b) (iii) Such defect in the faculties of the mind, or organs of the body, as renders him incapable of performing the duties of a juror in the action on trial.

B. (2) (b) (iv) That such person has been summoned and attended said court as a juror at any term of court held within one year prior to the time of such challenge; or that such person has been summoned from the bystanders or body of the county, and has served as a juror in any cause upon such summons within one year prior to the time of such challenge.

An exemption from service on a jury shall not be cause of challenge, but the privilege of the person exempted.

B. (2) (c) A particular challenge may be for implied bias, which is such a bias as, when the existence of the facts is ascertained, in judgment of law disqualifies the juror. A challenge for implied bias may be taken for any or all of the following causes, and not otherwise:

B. (2) (c) (i) Consanguinity or affinity within the fourth degree to either party.

B. (2) (c) (ii) Standing in the relation of guardian and ward, attorney and client, physician and patient, master and servant, landlord and tenant, or debtor and creditor, to the adverse party; or being a member of the family of, or a partner in business with, or in the employment for wages of, the adverse party; or being surety in the

action called for trial, or otherwise, for the adverse party.

B.(2)(c)(iii) Having served as a juror on a previous trial in the same action, or in another action between the same parties for the same cause of action, upon substantially the same facts or transaction.

B.(2)(c)(iv) Interest on the part of the juror in the event of the action, or the principal question involved therein.

B.(2)(d) A particular challenge may be for actual bias, which is the existence of a state of mind on the part of the juror, in reference to the action, or to either party, which satisfies the court, in the exercise of a sound discretion, that he cannot try the issue impartially and without prejudice to the substantial rights of the party challenging. A challenge for actual bias may be taken for the causes mentioned in this paragraph, but on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon the merits of the cause from what he may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied from all the circumstances, that the juror cannot disregard such opinion and try the issue impartially.

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party for insufficiency, and if so, the court shall determine the sufficiency thereof, assuming the facts alleged therein to be true. The challenge may be denied by the adverse party, and if so, the court shall try the issue and determine the law and the fact.

B.(3)(c) Upon the trial of a challenge, the rules of evidence applicable to testimony offered upon the trial of an ordinary issue of fact shall govern. The juror challenged, or any other person otherwise competent, may be examined as a witness by either party. If a challenge is determined to be sufficient, or found to be true, as the case may be, it shall be allowed, and the juror to whom it was taken excluded; otherwise, it shall be disallowed.

B.(3)(d) The challenge, the exception and the denial may be made orally. ~~The judge shall note the same upon his minutes, and the substance of the testimony on either side.~~

B.(4) Peremptory challenges. A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude him. Either party shall be entitled to three peremptory challenges, and n o more. Where there are multiple parties plaintiff or defendant in the case, or where cases have been consolidated for trial, the parties plaintiff or defendant must join in the challenge and are limited to a total of three peremptory challenges.

B.(5) Order of examining jurors; conduct of peremptory challenges.

B.(5)(a) The full number of jurors having been called shall thereupon be examined as to their qualifications, and having been passed for cause, peremptory challenges shall be conducted as follows: The plaintiff may challenge one and then the deffendant may challenge

one, and so alternating until the peremptory challenges shall be exhausted. After each challenge, the panel shall be filled and the additional juror passed for cause before another peremptory challenge shall be exercised, and neither party is required to exercise a peremptory challenge unless the full number of jurors are in the jury box at the time. The refusal to challenge by either party in the said order of alternation shall not defeat the adverse party of his full number of challenges, and such refusal by a party to exercise his challenge in proper turn shall conclude him as to the jurors once accepted by him, and if his right of peremptory challenge be not exhausted, his further challenges shall be confined, in his proper turn, to such additional jurors as may be called. The court may, for good cause shown, permit a challenge to be taken to any juror before the jury is completed and sworn, notwithstanding the juror challenged may have been theretofore accepted, but nothing herein shall be construed to increase the number of peremptory challenges allowed.

B.(5)(b) The court may examine the prospective jurors to the extent it deems appropriate, and shall permit the parties or their attorneys to ask reasonable questions.

C. Oath of jury. As soon as the number of the jury has been completed, an oath or affirmation shall be administered to the jurors, in substance that they and each of them will well and truly try the matter in issue between the plaintiff and defendant, and a true verdict give according to the law and evidence as given them on the trial.

D. Alternate jurors. The court may direct that not more than 6 jurors in addition to the regular jury be called and impanelled to

sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retired to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged as the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impanelled, two peremptory challenges if three or four alternate jurors are to be impanelled, and three peremptory challenges if five or six alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

BACKGROUND NOTE

ORS sections superseded: 17.110, 17.115, 17.120, 17.125, 17.130, 17.135, 17.140, 17.145, 17.150, 17.155, 17.160, 17.165, 17.170, 17.175, 17.180, 17.185, 17.190.

COMMENT

This rule is based almost entirely upon existing ORS provisions. The ORS language was reorganized to put the rule in a more logical order. The only notable modifications of ORS language are: Subsection B.(4), which clarifies the language in ORS 17.155 to clearly limit peremptory challenges to three challenges per side when there are multiple plaintiffs or defendants; paragraph B.(5)(b), which was added to make clear that, while the court has the authority to examine, the parties retain the right to conduct their voir dire by reasonable questions; and, section 57 D., which clarifies the language of ORS 17.190 relating to alternate jurors.

RULE 57

JURORS

A. Jury; how drawn. Trial juries shall be formed as follows: When the action is called for trial the clerk shall draw from the trial jury box of the court, one by one, the ballots containing the names of the jurors until the jury is completed or the ballots are exhausted. If the ballots become exhausted before the jury is complete, the sheriff, under the direction of the court, shall summon from the bystanders, or the body of the county, so many qualified persons as may be necessary to complete the jury. Whenever the sheriff shall summon more than one person at a time from the bystanders or the body of the county, he shall return a list of the persons so summoned to the clerk. The clerk shall write the names of such persons upon separate ballots, and deposit the same in the trial jury box, and then draw such ballots therefrom, as in the case of the panel of trial jurors for the term.

B. Challenges; examination of jurors.

B.(1) Types of challenges. No challenge shall be made or allowed to the panel. A challenge to a particular juror may be either peremptory or for cause.

B.(2) Challenge for cause; grounds.

B.(2)(a) Challenge for cause may be either general; that the juror is disqualified from serving in any action; or particular, that the juror is disqualified from serving in the action on trial.

B.(2)(b) General causes of challenges are:

B.(2)(b)(i) A want of any of the qualifications prescribed by law for a juror.

B.(2)(b)(ii) Unsoundness of mind.

B.(2)(b)(iii) Such defect in the faculties of the mind, or organs of the body, as renders him incapable of performing the duties of a juror in the action on trial.

B.(2)(b)(iv) That such person has been summoned and attended said court as a juror at any term of court held within one year prior to the time of such challenge; or that such person has been summoned from the bystanders or body of the county, and has served as a juror in any cause upon such summons within one year prior to the time of such challenge.

An exemption from service on a jury shall not be cause of challenge, but the privilege of the person exempted.

B.(2)(c) A particular challenge may be for implied bias, which is such a bias as, when the existence of the facts is ascertained, in judgment of law disqualifies the juror. A challenge for implied bias may be taken for any or all of the following causes, and not otherwise:

B.(2)(c)(i) Consanguinity or affinity within the fourth degree to either party.

B.(2)(c)(ii) Standing in the relation of guardian and ward, attorney and client, physician and patient, master and servant, landlord and tenant, or debtor and creditor, to the adverse party; or being a member of the family of, or a partner in business with, or in the employment for wages of, the adverse party; or being surety in the

action called for trial, or otherwise, for the adverse party.

B.(2)(c)(iii) Having served as a juror on a previous trial in the same action, or in another action between the same parties for the same cause of action, upon substantially the same facts or transaction.

B.(2)(c)(iv) Interest on the part of the juror in the event of the action, or the principal question involved therein.

B.(2)(d) A particular challenge may be for actual bias, which is the existence of a state of mind on the part of the juror, in reference to the action, or to either party, which satisfies the court, in the exercise of a sound discretion, that he cannot try the issue impartially and without prejudice to the substantial rights of the party challenging. A challenge for actual bias may be taken for the causes mentioned in this paragraph, but on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon the merits of the cause from what he may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all the circumstances, that the juror cannot disregard such opinion and try the issue impartially.

B.(3) Challenge for cause; procedure.

B.(3)(a) The challenges for cause of either party shall be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

B.(3)(a)(i) For general disqualification.

B.(3)(a)(ii) For implied bias.

B.(3)(a)(iii) For actual bias.

B.(3)(b) The challenge may be excepted to by the adverse

party for insufficiency, and if so, the court shall determine the sufficiency thereof, assuming the facts alleged therein to be true. The challenge may be denied by the adverse party, and if so, the court shall try the issue and determine the law and the fact.

B.(3)(c) Upon the trial of a challenge, the rules of evidence applicable to testimony offered upon the trial of an ordinary issue of fact shall govern. The juror challenged, or any other person otherwise competent, may be examined as a witness by either party. If a challenge is determined to be sufficient, or found to be true, as the case may be, it shall be allowed, and the juror to whom it was taken excluded; otherwise, it shall be disallowed.

B.(3)(d) The challenge, the exception and the denial may be made orally.

B.(4) Peremptory challenges. A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude him. Either party shall be entitled to three peremptory challenges, and no more. Where there are multiple parties plaintiff or defendant in the case, or where cases have been consolidated for trial, the parties plaintiff or defendant must join in the challenge and are limited to a total of three peremptory challenges.

B.(5) Order of examining jurors; conduct of peremptory challenges.

B.(5)(a) The full number of jurors having been called shall thereupon be examined as to their qualifications, and having been passed for cause, peremptory challenges shall be conducted as follows: The plaintiff may challenge one and then the defendant may challenge

one, and so alternating until the peremptory challenges shall be exhausted. After each challenge, the panel shall be filled and the additional juror passed for cause before another peremptory challenge shall be exercised, and neither party is required to exercise a peremptory challenge unless the full number of jurors are in the jury box at the time. The refusal to challenge by either party in the said order of alternation shall not defeat the adverse party of his full number of challenges, and such refusal by a party to exercise his challenge in proper turn shall conclude him as to the jurors once accepted by him, and if his right of peremptory challenge be not exhausted, his further challenges shall be confined, in his proper turn, to such additional jurors as may be called. The court may, for good cause shown, permit a challenge to be taken to any juror before the jury is completed and sworn, notwithstanding the juror challenged may have been theretofore accepted, but nothing herein shall be construed to increase the number of peremptory challenges allowed.

B.(5)(b) The court may examine the prospective jurors to the extent it deems appropriate, and shall permit the parties or their attorneys to ask reasonable questions.

C. Oath of jury. As soon as the number of the jury has been completed, an oath or affirmation shall be administered to the jurors, in substance that they and each of them will well and truly try the matter in issue between the plaintiff and defendant, and a true verdict give according to the law and evidence as given them on the trial.

D. Alternate jurors. The court may direct that not more than 6 jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they

are called shall replace jurors who, prior to the time the jury retired to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged as the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impanelled, two peremptory challenges if three or four alternate jurors are to be impanelled, and three peremptory challenges if five or six alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

BACKGROUND NOTE

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COMMENT

This rule is based almost entirely upon existing ORS provisions. The ORS language was reorganized to put the rule in a more logical order. The only notable modifications of ORS language are: Subsection B.(4), which clarifies the language in ORS 17.155 to clearly limit peremptory challenges to three challenges per side when there are multiple plaintiffs or defendants; paragraph B.(5)(b), which was added to make clear that, while the court has the authority to examine, the parties retain the right to conduct their voir dire by reasonable questions; and, section 57 D., which clarifies the language of ORS 19.190 relating to alternate jurors.

Since the ORS sections involved apply to both civil and criminal cases, they would remain as ORS sections for criminal cases.

RULE 58

TRIAL PROCEDURE

A. Order of proceedings on trial by the court. Trial by the court shall proceed in the order prescribed in subsections (1) to (5) of section B. of this rule, unless the court, for special reasons, otherwise directs.

B. Order of proceedings on jury trial. When the jury has been selected and sworn, the trial, unless the court for good and sufficient reason otherwise directs, shall proceed in the following order:

B.(1) The plaintiff shall concisely state his cause of action and the issues to be tried; the defendant then in like manner shall state his defense or counterclaim or both.

B.(2) The plaintiff then shall introduce the evidence on his case in chief, and when he has concluded, the defendant shall do likewise.

B.(3) The parties respectively then may introduce rebutting evidence only, unless the court in futherance of justice permits them to introduce evidence upon the original cause of action, defense or counterclaim.

B.(4) When the evidence is concluded, unless the case is submitted by both sides to the jury without argument, the plaintiff shall commence and conclude the argument to the jury. The plaintiff may waive the opening argument, and if the defendant then argues the

RULE 57

JURORS

A. Jury; how drawn. Trial juries shall be formed as follows: When the action is called for trial the clerk shall draw from the trial jury box of the court, one by one, the ballots containing the names of the jurors until the jury is completed or the ballots are exhausted. If the ballots become exhausted before the jury is complete, the sheriff, under the direction of the court, shall summon from the bystanders, or the body of the county, so many qualified persons as may be necessary to complete the jury. Whenever the sheriff shall summon more than one person at a time from the bystanders or the body of the county, the sheriff shall return a list of the persons so summoned to the clerk. The clerk shall write the names of such persons upon separate ballots, and deposit the same in the trial jury box, and then draw such ballots therefrom, as in the case of the panel of trial jurors for the term.

B. Challenges; examination of jurors.

B.(1) Types of challenges. No challenge shall be made or allowed to the panel. A challenge to a particular juror may be either peremptory or for cause.

B.(2) Challenge for cause; grounds.

B.(2)(a) Challenge for cause may be either general, that the juror is disqualified from serving in any action, or particular, that the juror is disqualified from serving in the action or proceeding on trial.

B.(2)(b) General causes of challenges are:

B.(2)(b)(i) A want of any of the qualifications prescribed by law for a juror.

B.(2)(b)(ii) Unsoundness of mind.

B.(2)(b)(iii) Such defect in the faculties of the mind, or organs of the body, as renders the person incapable of performing the duties of a juror in the action or proceeding on trial.

B.(2)(b)(iv) That such person has been summoned and attended said court as a juror at any term of court held within one year prior to the time of such challenge; or that such person has been summoned from the bystanders or body of the county, and has served as a juror in any cause upon such summons within one year prior to the time of such challenge.

An exemption from service on a jury shall not be cause of challenge, but the privilege of the person exempted.

B.(2)(c) A particular challenge may be for implied bias, which is such a bias as, when the existence of the facts is ascertained, in judgment of law disqualifies the juror. A challenge for implied bias may be taken for any or all of the following causes, and not otherwise:

B.(2)(c)(i) Consanguinity or affinity within the fourth degree to either party.

B.(2)(c)(ii) Standing in the relation of guardian and ward, attorney and client, physician and patient, master and servant, landlord and tenant, or debtor and creditor, to the

adverse party; or being a member of the family of, or a partner in business with, or in the employment for wages of, the adverse party; or being surety in the action called for trial, or otherwise, for the adverse party.

B.(2)(c)(iii) Having served as a juror on a previous trial in the same action or proceeding, or in another action or proceeding between the same parties for the same cause of action, upon substantially the same facts or transaction.

B.(2)(c)(iv) Interest on the part of the juror in the event of the action, or the principal question involved therein.

B.(2)(d) A particular challenge may be for actual bias, which is the existence of a state of mind on the part of the juror, in reference to the action or proceeding, or to either party, which satisfies the court, in the exercise of a sound discretion, that the juror cannot try the issue impartially and without prejudice to the substantial rights of the party challenging. A challenge for actual bias may be taken for the causes mentioned in this paragraph, but on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon the merits of the cause from what the juror may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all the circumstances, that the juror cannot disregard such opinion and try the issue impartially.

B.(3) Challenge for cause; procedure.

B.(3)(a) The challenges for cause of either party shall be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

B.(3)(a)(i) For general disqualification.

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B.(3)(b) The challenge may be excepted to by the adverse party for insufficiency, and if so, the court shall determine the sufficiency thereof, assuming the facts alleged therein to be true. The challenge may be denied by the adverse party, and if so, the court shall try the issue and determine the law and the fact.

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entitled to three peremptory challenges, and no more.

Where there are multiple parties plaintiff or defendant in the case, or where cases have been consolidated for trial, the parties plaintiff or defendant must join in the challenge and are limited to a total of three peremptory challenges.

B.(5) Order of examining jurors; conduct of peremptory challenges.

B.(5)(a) The full number of jurors having been called shall thereupon be examined as to their qualifications, and having been passed for cause, peremptory challenges shall be conducted as follows: The plaintiff may challenge one and then the defendant may challenge one, and so alternating until the peremptory challenges shall be exhausted. After each challenge, the panel shall be filled and the additional juror passed for cause before another peremptory challenge shall be exercised, and neither party is required to exercise a peremptory challenge unless the full number of jurors are in the jury box at the time. The refusal to challenge by either party in the said order of alternation shall not defeat the adverse party of his full number of challenges, and such refusal by a party to exercise his challenge in proper turn shall conclude him as to the jurors once accepted by him, and if his right of peremptory challenge be not exhausted, his further challenges shall be confined, in his proper turn, to such additional jurors as may be called. The court may, for good cause shown, permit a challenge to be taken to any juror before the jury is completed and sworn,

notwithstanding the juror challenged may have been theretofore accepted, but nothing herein shall be construed to increase the number of peremptory challenges allowed.

B. (5)(b) The court may examine the prospective jurors to the extent it deems appropriate, and shall permit the parties or their attorneys to ask reasonable questions.

C. Oath of jury. As soon as the number of the jury has been completed, an oath or affirmation shall be administered to the jurors, in substance that they and each of them will well and truly try the matter in issue between the plaintiff and defendant, and a true verdict give according to the law and evidence as given them on the trial.

D. Alternate jurors. The court may direct that not more than 6 jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retired to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged as the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are

to be impanelled, two peremptory challenges if three or four alternate jurors are to be impanelled, and three peremptory challenges if five or six alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

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RULE 58

TRIAL PROCEDURE

A. Order of proceedings on trial by the court. Trial by the court shall proceed in the order prescribed in subsections (1) to (5) of section B. of this rule, unless the court, for special reasons, otherwise directs.

B. Order of proceedings on jury trial. When the jury has been selected and sworn, the trial, unless the court for

APPENDIX A.

RULE 57

JURORS

A. Challenging compliance with selection procedures.

A.(1) Motion. Within 7 days after the moving party discovered or by the exercise of diligence could have discovered the grounds therefor, and in any event before the jury is sworn to try the case, a party may move to stay the proceedings or for other appropriate relief, on the ground of substantial failure to comply with ORS 10.010 to 10.490 in selecting the jury.

A.(2) Stay of proceedings. Upon motion filed under subsection (1) of this section containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with ORS 10.010 to 10.490, the moving party is entitled to present in support of the motion the testimony of the clerk or court administrator any relevant records and papers not public or otherwise available used by the clerk or court administrator, and any other relevant evidence. If the court determines that in selecting the jury there has been a substantial failure to comply

with ORS 10.010 to 10.490, the court shall stay the proceedings pending the selection of the jury in conformity with ORS 10.010 to 10.490, or grant other appropriate relief.

A.(3) Exclusive means of challenge. The procedures prescribed by this section are the exclusive means by which a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with ORS 10.010 to 10.490.

B. Jury; how drawn. When the action is called for trial the clerk shall draw from the trial jury box of the court, one by one, the ballots containing the names of the jurors until the jury is completed or the ballots are exhausted. If the ballots become exhausted before the jury is complete, the sheriff, under the direction of the court, shall summon from the bystanders, or the body of the county, so many qualified persons as may be necessary to complete the jury. Whenever the sheriff shall summon more than one person at a time from the bystanders or the body of the county, the sheriff shall return a list of the persons so summoned to the clerk. The clerk shall write the

names of such persons upon separate ballots, and deposit the same in the trial jury box, and then draw such ballots therefrom, as in the case of the panel of trial jurors for the term.

C. Examination of jurors. The full number of jurors having been called shall thereupon be examined as to their qualifications. The court may examine the prospective jurors to the extent it deems appropriate, and shall permit the parties or their attorneys to ask reasonable questions.

D. Challenges.

D.(1) Challenges for cause; grounds. Challenges for cause may be taken on any one or more of the following grounds:

D.(1)(a) The want of any qualifications prescribed by ORS 10.030 for a person competent to act as a juror or improper summons under ORS 10.030 (3).

D.(1)(b) The existence of a mental or physical defect which satisfies the court that the challenged person is incapable of performing the duties of a juror in the particular action without prejudice to the substantial rights of the challenging party.

D.(1)(c) Consanguinity or affinity within the fourth degree to any party.

D.(1)(d) Standing in the relation of guardian and ward, attorney and client, physician and patient, master and servant, landlord and tenant, or debtor and creditor, to the adverse party; or being a member of the family of, or a partner in business with, or in the employment for wages of, the adverse party; or being surety in the action called for trial, or otherwise, for the adverse party.

D.(1)(e) Having served as a juror on a previous trial in the same action or proceeding, or in another action or proceeding between the same parties for the same cause of action, upon substantially the same facts or transaction.

D.(1)(f) Interest on the part of the juror in the action, or the principal question involved therein, except such juror's interest as a member of or citizen or taxpayer of a county or incorporated city.

D.(2) Challenges for cause; trial. Challenges for cause may be tried by the court. The juror challenged and any other person may be examined as a witness on trial of the challenge.

D.(3) Peremptory challenges; number. A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall

exclude such juror. Either party shall be entitled to three peremptory challenges, and no more. Where there are multiple parties plaintiff or defendant in the case, or where cases have been consolidated for trial, the parties plaintiff or defendant must join in the challenge and are limited to a total of three peremptory challenges.

D.(4) Conduct of peremptory challenges.

After the full number of jurors have been passed for cause, peremptory challenges shall be conducted as follows: The plaintiff may challenge one and then the defendant may challenge one, and so alternating until the peremptory challenges shall be exhausted. After each challenge, the panel shall be filled and the additional juror passed for cause before another peremptory challenge shall be exercised, and neither party is required to exercise a peremptory challenge unless the full number of jurors are in the jury box at the time. The refusal to challenge by either party in the said order of alternation shall not defeat the adverse party of his full number of challenges, and such refusal by a party to exercise his challenge in proper turn shall conclude that party as

to the jurors once accepted by that party, and if his right of peremptory challenge be not exhausted, that party's further challenges shall be confined, in that party's proper turn, to such additional jurors as may be called. The court may, for good cause shown, permit a challenge to be taken to any juror before the jury is completed and sworn, notwithstanding the juror challenged may have been theretofore accepted, may increase the number of peremptory challenges and may allocate peremptory challenges allowed to one side between or among parties on one side.

E. Oath of jury. As soon as the number of the jury has been completed, an oath or affirmation shall be administered to the jurors, in substance that they and each of them will well and truly try the matter in issue between the plaintiff and defendant, and a true verdict give according to the law and evidence as given them on the trial.

F. Alternate jurors. The court may direct that not more than six jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the

order in which they are called shall replace jurors who, prior to the time the jury retired to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged as the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impanelled, two peremptory challenges if three or four alternate jurors are to be impanelled, and three peremptory challenges if five or six alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

RULE 57

JURORS

A. Challenging compliance with selection procedures.

A.(1) Motion. Within 7 days after the moving party discovered or by the exercise of diligence could have discovered the grounds therefor, and in any event before the jury is sworn to try the case, a party may move to stay the proceedings or for other appropriate relief, on the ground of substantial failure to comply with ORS 10.010 to 10.490 in selecting the jury.

A.(2) Stay of proceedings. Upon motion filed under subsection (1) of this section containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with ORS 10.010 to 10.490, the moving party is entitled to present, in support of the motion, the testimony of the clerk or court administrator, any relevant records and papers not public or otherwise available used by the clerk or court administrator, and any other relevant evidence. If the court determines that in selecting the jury there has been a substantial failure to comply

with ORS 10.010 to 10.490, the court shall stay the proceedings pending the selection of the jury in conformity with ORS 10.010 to 10.490, or grant other appropriate relief.

A.(3) Exclusive means of challenge. The procedures prescribed by this section are the exclusive means by which a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with ORS 10.010 to 10.490.

B. Jury; how drawn. When the action is called for trial the clerk shall draw from the trial jury box of the court, one by one, the ballots containing the names of the jurors until the jury is completed or the ballots are exhausted. If the ballots become exhausted before the jury is complete, the sheriff, under the direction of the court, shall summon from the bystanders, or the body of the county, so many qualified persons as may be necessary to complete the jury. Whenever the sheriff shall summon more than one person at a time from the bystanders or the body of the county, the sheriff shall return a list of the persons so summoned to the clerk. The clerk shall write the

names of such persons upon separate ballots, and deposit the same in the trial jury box, and then draw such ballots therefrom, as in the case of the panel of trial jurors for the term.

C. Examination of jurors. The full number of jurors having been called shall thereupon be examined as to their qualifications. The court may examine the prospective jurors to the extent it deems appropriate, and shall permit the parties or their attorneys to ask reasonable questions.

D. Challenges.

D.(1) Challenges for cause; grounds. Challenges for cause may be taken on any one or more of the following grounds:

D.(1)(a) The want of any qualifications prescribed by ORS 10.030 for a person competent to act as a juror or improper summons under ORS 10.030 (3).

D.(1)(b) The existence of a mental or physical defect which satisfies the court that the challenged person is incapable of performing the duties of a juror in the particular action without prejudice to the substantial rights of the challenging party.

D.(1)(c) Consanguinity or affinity within the fourth degree to any party.

D.(1)(d) Standing in the relation of guardian and ward, physician and patient, master and servant, landlord and tenant, or debtor and creditor, to the adverse party; or being a member of the family of, or a partner in business with, or in the employment for wages of, or being an attorney for or a client of, the adverse party; or being surety in the action called for trial, or otherwise, for the adverse party.

D.(1)(e) Having served as a juror on a previous trial in the same action ~~or proceeding~~; or in another action ~~or proceeding~~ between the same parties for the same cause of action, upon substantially the same facts or transaction.

D.(1)(f) Interest on the part of the juror in the outcome of the action, or the principal question involved therein.

D.(1)(g) Actual bias, which is the existence of a state of mind on the part of the juror, in reference to the action ~~or proceeding~~, or to either party, which satisfies the court, in the exercise of a sound discretion, that the juror cannot try the issue impartially and without prejudice to the substantial rights of the party challenging. A challenge for actual bias may be

taken for the causes mentioned in this paragraph, but on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon the merits of the cause from what the juror may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all the circumstances, that the juror cannot disregard such opinion and try the issue impartially.

D.(2) Peremptory challenges; number. A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude such juror. Either party shall be entitled to three peremptory challenges, and no more. Where there are multiple parties plaintiff or defendant in the case or where cases have been consolidated for trial, the parties plaintiff or defendant must join in the challenge and are limited to a total of three peremptory challenges, except ~~that if the court finds there is a good faith controversy existing between multiple plaintiffs or multiple defendants,~~ the court, in its discretion and in the interest of justice, may allow any of the parties, single or multiple, additional peremptory challenges and permit them to be exercised separately or jointly.

D.(3) Conduct of peremptory challenges. After the full number of jurors have been passed for cause, peremptory challenges shall be conducted as follows: the plaintiff may challenge one and then the defendant may challenge one, and so alternating until the peremptory challenges shall be exhausted. After each challenge, the panel shall be filled and the additional juror passed for cause before another peremptory challenge shall be exercised, and neither party is required to exercise a peremptory challenge unless the full number of jurors are in the jury box at the time. The refusal to challenge by either party in the said order of alternation shall not defeat the adverse party of such adverse party's ~~his~~ full number of challenges, and such refusal by a party to exercise ^a~~his~~ challenge in proper turn shall conclude that party as to the jurors once accepted by that party's ~~his~~ right of peremptory challenge be not exhausted, that party's further challenges shall be confined, in that party's proper turn, to such additional jurors as may be called. The court may, for good cause shown, permit a challenge to be taken to any juror before the jury is completed and sworn, notwithstanding the juror challenged may have been theretofore accepted, but nothing in this subsection shall be construed to increase the number of peremptory challenges allowed.

E. Oath of jury. As soon as the number of the jury has been completed, an oath or affirmation shall be administered to the jurors, in substance that they and each of them will well and truly try the matter in issue between the plaintiff and defendant, and a true verdict give according to the law and evidence as given them on the trial.

F. Alternate jurors. The court may direct that not more than six jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retired to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged as the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impanelled, two peremptory challenges if

three or four alternate jurors are to be impanelled, and three peremptory challenges if five or six alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

COMMENT

Section 57 A. allows a challenge to jury selection procedures. It is not the common law challenge to the array but a specific method of insisting upon compliance with jury selection procedures before trial. It was taken from Section 12 of the Uniform Jury Selection Act. The procedure is limited to questioning validity of jury selection methods. Any defect must be "substantial", and the court can refuse to stay proceedings when only a technical defect is involved.

Section 57 B. comes from ORS 17.110.

The first sentence of section 57 C. comes from ORS 17.160. The second sentence is new but is intended to retain existing practice; that is, the parties' existing right to conduct voir dire remains the same.

Section 57 D. combines the grounds for challenge for cause. Reference to general and particular causes of challenge and actual and implied bias are eliminated as archaic and unnecessary. The order of challenges in ORS 17.165 is eliminated. The Council intended to retain the same grounds for challenge for cause existing in ORS. The elaborate provisions relating to trials of challenges for cause of ORS 17.170 through 17.180 are eliminated.

Section 57 D.(2) is new and clarifies the number and exercise of peremptory challenges in multiple party situations. The procedure for conduct of peremptory challenges in 57 D.(3) is the same as in ORS 17.160. Note, the number of peremptory challenges in district court is governed by ORS 41.190.

Section 57 F. clarifies the procedure relating to alternate jurors.

RULE 57

JURORS

A. Challenging compliance with selection procedures.

A.(1) Motion. Within 7 days after the moving party discovered or by the exercise of diligence could have discovered the grounds therefor, and in any event before the jury is sworn to try the case, a party may move to stay the proceedings or for other appropriate relief, on the ground of substantial failure to comply with ORS 10.010 through 10.490 in selecting the jury.

A.(2) Stay of proceedings. Upon motion filed under subsection (1) of this section containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with ORS 10.010 through 10.490, the moving party is entitled to present in support of the motion: the testimony of the clerk or court administrator, any relevant records and papers not public or otherwise available used by the clerk or court administrator, and any other relevant evidence. If the court determines that in selecting the jury there has been a substantial failure to comply with ORS 10.010 through 10.490, the court shall stay the proceedings pending the selection of the jury in conformity with ORS 10.010 through 10.490, or grant other appropriate relief.

A.(3) Exclusive means of challenge. The procedures prescribed by this section are the exclusive means by which a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with ORS 10.010 through 10.490.

B. Jury; how drawn. When the action is called for trial

the clerk shall draw from the trial jury box of the court, one by one, the ballots containing the names of the jurors until the jury is completed or the ballots are exhausted. If the ballots become exhausted before the jury is complete, the sheriff, under the direction of the court, shall summon from the bystanders, or the body of the county, so many qualified persons as may be necessary to complete the jury. Whenever the sheriff shall summon more than one person at a time from the bystanders or the body of the county, the sheriff shall return a list of the persons so summoned to the clerk. The clerk shall write the names of such persons upon separate ballots, and deposit the same in the trial jury box, and then draw such ballots therefrom, as in the case of the panel of trial jurors for the term.

C. Examination of jurors. The full number of jurors having been called shall thereupon be examined as to their qualifications. The court may examine the prospective jurors to the extent it deems appropriate, and shall permit the parties or their attorneys to ask reasonable questions.

D. Challenges.

D.(1) Challenges for cause; grounds. Challenges for cause may be taken on any one or more of the following grounds:

D.(1)(a) The want of any qualifications prescribed by ORS 10.030 for a person competent to act as a juror or improper summons under ORS 10.030(3).

D.(1)(b) The existence of a mental or physical defect which

satisfies the court that the challenged person is incapable of performing the duties of a juror in the particular action without prejudice to the substantial rights of the challenging party.

D.(1)(c) Consanguinity or affinity within the fourth degree to any party.

D.(1)(d) Standing in the relation of guardian and ward, physician and patient, master and servant, landlord and tenant, or debtor and creditor, to the adverse party; or being a member of the family of, or a partner in business with, or in the employment for wages of, or being an attorney for or a client of, the adverse party; or being surety in the action called for trial, or otherwise, for the adverse party.

D.(1)(e) Having served as a juror on a previous trial in the same action, or in another action between the same parties for the same cause of action, upon substantially the same facts or transaction.

D.(1)(f) Interest on the part of the juror in the outcome of the action, or the principal question involved therein.

D.(1)(g) Actual bias, which is the existence of a state of mind on the part of the juror, in reference to the action, or to either party, which satisfies the court, in the exercise of a sound discretion, that the juror cannot try the issue impartially and without prejudice to the substantial rights of the party challenging. A challenge for actual bias may be taken for

the cause mentioned in this paragraph, but on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon the merits of the cause from what the juror may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all the circumstances, that the juror cannot disregard such opinion and try the issue impartially.

D.(2) Peremptory challenges; number. A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude such juror. Either party shall be entitled to three peremptory challenges, and no more. Where there are multiple parties plaintiff or defendant in the case or where cases have been consolidated for trial, the parties plaintiff or defendant must join in the challenge and are limited to a total of three peremptory challenges, except the court, in its discretion and in the interest of justice, may allow any of the parties, single or multiple, additional peremptory challenges and permit them to be exercised separately or jointly.

D.(3) Conduct of peremptory challenges. After the full number of jurors have been passed for cause, peremptory challenges shall be conducted as follows: the plaintiff may challenge one and then the defendant may challenge one, and so alternating until the peremptory challenges shall be exhausted. After each challenge, the panel shall be filled and the additional juror

passed for cause before another peremptory challenge shall be exercised, and neither party is required to exercise a peremptory challenge unless the full number of jurors are in the jury box at the time. The refusal to challenge by either party in the said order of alternation shall not defeat the adverse party of such adverse party's full number of challenges, and such refusal by a party to exercise a challenge in proper turn shall conclude that party as to the jurors once accepted by that party, and if that party's right of peremptory challenge be not exhausted, that party's further challenges shall be confined, in that party's proper turn, to such additional jurors as may be called. The court may, for good cause shown, permit a challenge to be taken to any juror before the jury is completed and sworn, notwithstanding the juror challenged may have been theretofore accepted, but nothing in this subsection shall be construed to increase the number of peremptory challenges allowed.

E. Oath of jury. As soon as the number of the jury has been completed, an oath or affirmation shall be administered to the jurors, in substance that they and each of them will well and truly try the matter in issue between the plaintiff and defendant, and a true verdict give according to the law and evidence as given them on the trial.

F. Alternate jurors. The court may direct that not more than six jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the

order in which they are called shall replace jurors who, prior to the time the jury retired to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged as the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impanelled, two peremptory challenges if three or four alternate jurors are to be impanelled, and three peremptory challenges if five or six alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

COMMENT

Section 57 A. allows a challenge to jury selection procedures and supersedes ORS 17.115. It is not the common law challenge to the array, but is a specific method of insisting upon compliance with jury selection procedures before trial. It was taken from Section 12 of the Uniform Jury Selection Act. The procedure is limited to questioning validity of jury selection methods. Any defect must be "substantial", and the court can refuse to stay proceedings when only a technical defect is involved.

Section 57 B. comes from ORS 17.110.

The first sentence of section 57 C. comes from ORS 17.160.

The second sentence is new but is intended to retain existing practice; that is, the parties' existing right to conduct voir dire remains the same.

Section 57 D. combines the grounds for challenge for cause set forth in ORS 17.125 through 17.150. Reference to general and particular causes of challenge and actual and implied bias are eliminated as archaic and unnecessary. The order of challenges in ORS 17.165 is eliminated. The Council intended to retain the same grounds for challenge for cause existing in ORS. The elaborate provisions relating to trials of challenges for cause of ORS 17.170 through 17.180 are eliminated and the determination of facts upon a challenge for cause is left to the discretion of the court.

Section 57 D.(2) is based on ORS 17.120 and 17.155 and clarifies the number and exercise of peremptory challenges in multiple party situations. The procedure for conduct of peremptory challenges in 57 D.(3) is the same as in ORS 17.160. Note, the number of peremptory challenges in district court is governed by ORS 41.190.

Section 57 E. is based on ORS 17.185.

Section 57 F. clarifies the procedure of ORS 17.190 relating to alternate jurors.