

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ORS sections superseded: 17.110, 17.115, 17.120, 17.125, 17.130, 17.135, 17.140, 17.145, 17.150, 17.155, 17.160, 17.165, 17.170, 17.175, 17.180, 17.185, 17.190.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

good and sufficient reason otherwise directs, shall proceed in the following order:

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

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

B.(3) The parties respectively then may introduce rebutting evidence only, unless the court in furtherance 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 case to the jury, the plaintiff shall have the right to reply to the argument of the defendant, but not otherwise.

B.(5) Not more than two counsel shall address the jury in behalf of the plaintiff or defendant; the whole time occupied in behalf of either shall not be limited to less than two hours, ~~and the court may extend such time beyond two hours.~~

B.(6) The court then shall charge the jury.

C. Separation of jury before submission of cause; admonition.

The jurors may be kept together in charge of a proper officer, or may, in the discretion of the court, at any time before the submission of the cause to them, be permitted to separate; in

Mollie's
p14
C O P A

either case they may be admonished by the court that it is their duty not to converse with any other person, or among themselves, on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to them.

D. Proceedings if juror becomes sick. If, after the formation of the jury, and before verdict, a juror becomes sick, so as to be unable to perform his or her duty, the court may order such juror to be discharged. In that case, unless an alternate juror, seated under Rule 57 D., is available to replace the discharged juror or unless the parties agree to proceed with the remaining jurors, a new juror may be sworn, and the trial begin anew; or the jury may be discharged, and a new jury then or afterwards formed.

BACKGROUND NOTE

ORS sections superseded: 17.205, 17.210, 17.215, 17.220, 17.225, 17.235, 17.240, 17.245.

COMMENT

This rule is based upon ORS 17.205, 17.210, 17.220 and 17.225. ORS 17.215, 17.235, 17.240 and 17.245 (except the last sentence, which appears in Rule 59) were eliminated as unnecessary. ORS 17.230 and 17.250 were deemed so closely related to evidentiary rules that they were left as statutes.

RULE 58

TRIAL PROCEDURE

A. Order of proceedings on trial by the court and in suits. (1) The order of proceedings on a trial by the court shall be the same as provided in trials by jury.

A.(2) When a suit is called for trial, ~~the~~ ^{By the court.} trial 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 furtherance of justice permits them to introduce evidence upon the original cause of action, defense or counterclaim.

B. (4) Not more than two counsel shall address the jury in behalf of the plaintiff or defendant; the whole time occupied in behalf of either shall not be limited to less than two hours; and the court may extend such time beyond two hours.

B. (5) 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 case to the jury, the plaintiff

By the court
Betw 4

shall have the right to reply to the argument of the defendant, but not otherwise.

B.(6) The court then shall charge the jury.

C. Separation of jury before submission of cause; admonition. The jurors may be kept together in charge of a proper officer, or may, in the discretion of the court, at any time before the submission of the cause to them, be permitted to separate; in either case they may be admonished by the court that it is their duty not to converse with any other person, or among themselves, on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to them.

D. Proceedings if juror becomes sick. If, after the formation of the jury, and before verdict, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case, unless an alternate juror, seated under Rule 57 D., is available to replace the discharged juror or unless the parties agree to proceed with the remaining jurors, a new juror may be sworn, and the trial begin anew; or the jury may be discharged, and a new jury then or afterwards formed.

COMMENT: Section A. is ORS 17.205; section B. is 17.210; section C. is 17.220; section D. is 17.225. ORS 17.230 was not included in this Rule as it is a rule of evidence and should be left as a statute. ORS 17.250 was also not included; although it relates to instructions about evidence rather than rule of evidence, it probably should be left to action by the Legislature in their consideration of the rules of evidence.

The Committee recommended deletion of all of ORS 17.245; the last sentence of that statute covers an instruction and should be incorporated in the instruction rule. The Committee referred to ORS 17.235 as superseded by Rule B (Rule 51 herein); this appears to be a typographical error as 17.240 is superseded by Rule 51. I did not, however, include ORS 17.235 in these rules, as I am unsure what this procedure is, unless it refers to findings of fact and conclusions of law in non-jury trials, which is already covered by ORS 17.431.

~~File~~

Rule 58.

Background Note. ~~ORs. Sections~~
ORs sections superseded.

17. 205, 17.210, ~~17.215~~ 17.215,
17. 220, 17.225., 17.235., 17.240
17.245.

Comment:

This rule is Based upon ORs 17.205, 17.210,
17.220 and 17.225. ORs 17.215., 17.235, ^{and} 17.245
(except the last sentence which appears in Rule 59) were
eliminated as unnecessary. ORs. 17.230 and 17.250
were deemed so closely related to Policies
~~to be~~ involved in Evidentiary Rules They
were left as Statutes.

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

case to the jury, the plaintiff shall have the right to reply to the argument of the defendant, but not otherwise.

B.(5) Not more than two counsel shall address the jury in behalf of the plaintiff or defendant; the whole time occupied in behalf of either shall not be limited to less than two hours; and the court may extend such time beyond two hours.

B.(6) The court then shall charge the jury.

C. Separation of jury before submission of cause; admonition.

The jurors may be kept together in charge of a proper officer, or may, in the discretion of the court, at any time before the submission of the cause to them, be permitted to separate; in either case they may be admonished by the court that it is their duty not to converse with any other person, or among themselves, on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to them.

D. Proceedings if juror becomes sick. If, after the formation of the jury, and before verdict, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case, unless an alternate juror, seated under ^{Rule 57D} ~~ORS 17.190~~, is available to replace the discharged juror or unless the parties agree to proceed with the remaining jurors, a new juror may be sworn, and the trial begin anew; or the jury may be discharged, and a new jury then or afterwards formed.

BACKGROUND NOTE

ORS sections superseded: 17.205, 17.210, 17.215, 17.220, 17.225, 17.235, 17.240, 17.245.

COMMENT

This rule is based upon ORS 17.205, 17.210, 17.220 and 17.225. ORS 17.215, 17.235, and 17.245 (except the last sentence which appears in Rule 59) were eliminated as unnecessary. ORS 17.230 and 17.250 were deemed so closely related to policies involved in evidentiary rules that they were left as statutes.

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

case to the jury, the plaintiff shall have the right to reply to the argument of the defendant, but not otherwise.

B.(5) Not more than two counsel shall address the jury in behalf of the plaintiff or defendant; the whole time occupied in behalf of either shall not be limited to less than two hours; and the court may extend such time beyond two hours.

B.(6) The court then shall charge the jury.

C. Separation of jury before submission of cause; admonition.

The jurors may be kept together in charge of a proper officer, or may, in the discretion of the court, at any time before the submission of the cause to them, be permitted to separate; in either case they may be admonished by the court that it is their duty not to converse with any other person, or among themselves, on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to them.

D. Proceedings if juror becomes sick. If, after the formation of the jury, and before verdict, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case, unless an alternate juror, seated under Rule 57 D., is available to replace the discharged juror or unless the parties agree to proceed with the remaining jurors, a new juror may be sworn, and the trial begin anew; or the jury may be discharged, and a new jury then or afterwards formed.

BACKGROUND NOTE

ORS sections superseded: 17.205, 17.210, 17.215, 17.220, 17.225, 17.235, 17.240, 17.245.

COMMENT

This rule is based upon ORS 17.205, 17.210, 17.220 and 17.225. ORS.215, 17.235, 17.240 and 17.245 (except the last sentence, which appears in Rule 59) were eliminated as unnecessary. ORS 17.230 and 17.250 were deemed so closely related to policies involved in evidentiary rules that they were left as statutes.

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

good and sufficient reason otherwise directs, shall proceed in the following order:

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

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

B.(3) The parties respectively then may introduce rebutting evidence only, unless the court in furtherance 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 case to the jury, the plaintiff shall have the right to reply to the argument of the defendant, but not otherwise.

B.(5) Not more than two counsel shall address the jury in behalf of the plaintiff or defendant; the whole time occupied in behalf of either shall not be limited to less than two hours; and the court may extend such time beyond two hours.

B.(6) The court then shall charge the jury.

C. Separation of jury before submission of cause; admonition.

The jurors may be kept together in charge of a proper officer, or may, in the discretion of the court, at any time before the submission of the cause to them, be permitted to separate; in

either case they may be admonished by the court that it is their duty not to converse with any other person, or among themselves, on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to them.

D. Proceedings if juror becomes sick. If, after the formation of the jury, and before verdict, a juror becomes sick, so as to be unable to perform his or her duty, the court may order such juror to be discharged. In that case, unless an alternate juror, seated under Rule 57 D., is available to replace the discharged juror or unless the parties agree to proceed with the remaining jurors, a new juror may be sworn, and the trial begin anew; or the jury may be discharged, and a new jury then or afterwards formed.

BACKGROUND NOTE

ORS sections superseded: 17.205, 17.210, 17.215, 17.220, 17.225, 17.235, 17.240, 17.245.

COMMENT

This rule is based upon ORS 17.205, 17.210, 17.220 and 17.225. ORS 17.215, 17.235, 17.240 and 17.245 (except the last sentence, which appears in Rule 59) were eliminated as unnecessary. ORS 17.230 and 17.250 were deemed so closely related to evidentiary rules that they were left as statutes.

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 plaintiff's case ~~cause of action~~ and the issues to be tried; the defendant then defendant's case based upon any in like manner shall state ~~any~~ defense or counterclaim or both.

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

B.(3) The parties respectively then may introduce rebutting evidence only, unless the court in furtherance 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 case to the jury, the plaintiff shall have the right to reply to the argument of the defendant, but not otherwise.

B.(5) Not more than two counsel shall address the jury in behalf of the plaintiff or defendant; the whole time occupied in behalf of either shall not be limited to less than two hours/
~~and the court may extend such time beyond two hours.~~

B.(6) The court then shall charge the jury.

C. Separation of jury before submission of cause; admonition.

The jurors may be kept together in charge of a proper officer, or may, in the discretion of the court, at any time before the submission of the cause to them, be permitted to separate; in either case they may be admonished by the court that it is their duty not to converse with any other person, or among themselves, on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to them.

D. Proceedings if juror becomes sick. If, after the formation of the jury, and before verdict, a juror becomes sick, so as to be unable to perform the duty of a juror, the court may order such juror to be discharged. In that case, unless an alternate juror, seated under Rule 57 D., is available to replace the discharged juror or unless the parties agree to proceed with the remaining jurors, a new juror may be sworn, and the trial begin anew; or the jury may be discharged, and a new jury then or afterwards formed.

COMMENT

This rule is based upon ORS 17.205, 17.210, 17.220 and 17.225. ORS 17.215, 17.235, 17.240 and 17.245 (except the last sentence, which appears in ORS 59) were eliminated as unnecessary. ORS 17.230 and 17.250 were deemed so closely related to evidentiary rules that they were left as statutes.

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) through (4) 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 plaintiff's case and the issues to be tried; the defendant then, in like manner, shall state defendant's case based upon any defense or counterclaim or both.

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

B.(3) The parties respectively then may introduce rebutting evidence only, unless the court in furtherance 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 case to the jury, the plaintiff shall have the right to reply to the argument of the defendant, but not otherwise.

B.(5) Not more than two counsel shall address the jury in behalf of the plaintiff or defendant; the whole time occupied in behalf of either shall not be limited to less than two hours.

B.(6) The court then shall charge the jury.

C. Separation of jury before submission of cause; admonition. The jurors may be kept together in charge of a proper officer, or may, in the discretion of the court, at any time before the submission of the cause to them, be permitted to separate; in either case they may be admonished by the court that it is their duty not to converse with any other person, or among themselves, on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to them.

D. Proceedings if juror becomes sick. If, after the formation of the jury, and before verdict, a juror becomes sick, so as to be unable to perform the duty of a juror, the court may order such juror to be discharged. In that case, unless an alternate juror, seated under Rule 57 F., is available to replace the discharged juror or unless the parties agree to proceed with the remaining jurors, a new juror may be sworn, and the trial begin

anew; or the jury may be discharged, and a new jury then or afterwards formed.

COMMENT

This rule is based upon ORS 17.205, 17.210, 17.220, and 17.225. ORS 17.215, 17.235, 17.240, and 17.245 (except the last sentence, which appears in ORCP 59) were eliminated as unnecessary. ORS 17.230 and 17.250 were deemed so closely related to evidentiary rules that they were left as statutes.