

RULE 4

SUMMONS

A. Plaintiff and defendant defined. For purposes of issuance and service of summons, "plaintiff" shall include any party issuing summons and "defendant" shall include any party upon whom service of summons is sought.

B. Issuance. Any time after the action is commenced, plaintiff or plaintiff's attorney may issue as many original summonses as either may elect and deliver such summonses to a person authorized to serve summons under section D. of this Rule.

C. Contents. The summons shall contain:

C.(1) The title of the cause, specifying the name of the court in which the complaint is filed and the names of the parties to the action.

C.(2) A direction to the defendant requiring defendant to appear and defend within the time required by subsection (4) of this section and shall notify defendant that in case of failure to do so, the plaintiff will apply to the court for the relief demanded in the complaint.

C.(2)(a) All summonses other than a summons to join a party pursuant to Rule K.(4) shall contain a notice in a size equal to at least 8-point type which may be substantially in the following form with the appropriate number of days inserted:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer."

This paper must be given to the court within _____ days along with the required filing fee. It must be in proper form and a copy must be delivered or mailed to the plaintiff or his attorney.

If you have questions, you should see an attorney immediately.

C.(2)(b) A summons to join a party pursuant to Rule K.4(a) shall contain a notice in size equal to at least 8-point type which may be substantially in the following form with the appropriate number of days inserted.

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." This paper must be given to the court within _____ days along with the required filing fee. It must be in proper form and a copy must be delivered or mailed to the defendant or his attorney.

If you have questions, you should see an attorney immediately.

C.(2)(c) A summons to join a party pursuant to Rule K.4(b) shall contain a notice in size equal to at least 8-point type which may be substantially in the following form with the appropriate number of days inserted.

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You may be liable for attorney fees in this case. Should plaintiff in this case not prevail, a judgment for reasonable attorney fees will be entered against you, as provided by the agreement to which defendant alleges you are a party.

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." This paper must be given to the court within _____ days along with the required filing fee. It must be in proper form and a copy must be delivered or mailed to the defendant or his attorney.

If you have questions, you should see an attorney immediately.

C.(3) A subscription by the plaintiff or by a resident attorney of this state, with the addition of the post office address at which papers in the action, may be served by mail.

C.(4) The summons shall require the defendant to appear and defend within the following times:

C.(4)(a) If the summons is served within the state personally or by mail upon defendant or served personally or by mail upon another authorized to accept service of the summons for the defendant, the defendant shall appear and defend within 20 days from the date of service.

C.(4)(b) If the summons is served outside this state personally or by mail upon defendant or served personally or by mail upon another authorized to accept service of the summons for the defendant, the defendant shall appear and defend within 30 days from the date of service.

C.(4)(c) If the summons is served by publication pursuant to section G. of this Rule, the defendant shall appear and defend within 45 days from a date stated in the summons. The date so stated in the summons shall be the date of the first publication.

D. By whom served; compensation. A summons may be served by any competent person 18 years of age or older who is a resident of the state where service is made or of this state and is not a party to the action nor an officer or director

of a corporate party. Compensation to a sheriff or a sheriff's deputy of the county in this state where the person served is found, or such person's dwelling house or usual place of abode is located, who serves a summons, shall be prescribed by statute or rule. If any other person serves the summons, a reasonable fee shall be paid for the service. This compensation shall be part of the disbursements and shall be recovered as provided in ORS 20.020.

E. Return; proof of service. (1) The summons shall be returned to the clerk with whom the complaint is filed with proof of service or mailing, or that defendant cannot be found. When served out of the county in which the action is commenced, the summons may be returned by mail.

E.(2) Proof of service of summons or mailing may be made as follows:

E.(2)(a) Personal service or mailing shall be proved by (i) the affidavit of the server indicating the time, place and manner of service, that the server is a competent person 18 years of age or older and a resident of the state of service or this state and is not a party to nor an officer or director of a corporate party to the action, and that the server knew that the person, firm or corporation served is the identical one named in the action. If the defendant is not personally served, the server shall state in the affidavit when, where and with whom a copy of the summons and complaint was left and shall state such facts as show reasonable diligence in attempting to effect personal service upon the defendant. If the summons and complaint were mailed, the affidavit shall state the circumstances of mailing and the return receipt shall be attached. (ii) If the copy of the summons is served by the sheriff, or a sheriff's deputy, of the county in this state where the person served was found or such person's dwelling house or usual place of abode is located, proof may be made by the sheriff's or deputy's certificate of service indicating the time, place and manner of service, and if defendant is not personally served, when, where and with whom the copy of the

E.(2)(b) Service by publication shall be proved by the affidavit of the owner, editor, publisher, manager or advertising manager of the newspaper or the principal clerk of any of them, or the printer or foreman of such newspaper, showing the same and shall be in substantially the following form:

Affidavit of Publication

State of Oregon,)
) ss.
County of _____)

I, _____, being first duly sworn, depose and say that I am the owner, editor, publisher, manager, advertising manager, principal clerk of the _____, printer or his foreman of the _____, a newspaper of general circulation, as defined by ORS 193.010 and 193.020; published at _____ in the aforesaid county and state; that the _____, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper for _____ successive and consecutive weeks in the following issues (here set forth dates of issues in which the same was published).

Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public of Oregon.

My commission expires
_____ day of _____, 19____.

E.(2)(c) In any case proof may be made by written admission of the defendant.

E.(2)(d) The affidavit of service may be made and certified by a notary public, or other official authorized to administer oaths and acting as such by authority of the United States, or any state or territory of the United States, or the District of Columbia, and his official seal, if he has one, shall be

summons and complaint was left and such facts as show reasonable diligence in attempting to effect personal service on defendant. If the summons and complaint were mailed, the affidavit shall state the circumstances of mailing and the return receipt shall be attached. (iii) An affidavit or certificate containing proof of service may be made upon the summons or as a separate endorsement.

E.(2)(b) Service by publication shall be proved by the affidavit of the owner, editor, publisher, manager or advertising manager of the newspaper or the principal clerk of any of them, or the printer or foreman of such newspaper, showing the same and shall be in substantially the following form:

Affidavit of Publication

State of Oregon,)
) ss.
County of _____)

I, _____, being first duly sworn, depose and say that I am the owner, editor, publisher, manager, advertising manager, principal clerk of the _____, printer or his foreman of the _____, a newspaper of general circulation, as defined by ORS 193.010 and 193.020; published at _____ in the aforesaid county and state; that the _____, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper for _____ successive and consecutive weeks in the following issues (here set forth dates of issues in which the same was published).

Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public of Oregon.

My commission expires
_____ day of _____, 19____.

E.(2)(c) In any case proof may be made by written admission of the defendant.

E.(2)(d) The affidavit of service may be made and certified by a notary public, or other official authorized to administer oaths and acting as such by authority of the United States, or any state or territory of the United States, or the District of Columbia, and his official seal, if he has one, shall be

affixed to the affidavit. The signature of such notary or other official, when so attested by the affixing of his official seal, if he has one, shall be prima facie evidence of his authority to make and certify such affidavit.

E.(3) Failure to return the summons or make or file proof of service shall not affect the validity of the service.

F. Manner of service. (1) Unless otherwise specified, the methods of service of summons provided in this section shall be used for service of summons either within or without this state.

F.(2) For personal service, the person serving the summons shall deliver a certified copy of the summons and a certified copy of the complaint to the person to be served. For service by mail under paragraph (d) of subsection (3) of this section or subsection (4) of this section or mailing of summons and complaint as otherwise required or allowed by this Rule, the plaintiff shall mail a certified copy of the summons and a certified copy of the complaint to the person to be served by certified or registered mail, return receipt requested, with instructions to deliver to the addressee only. Service by mail shall be complete when the registered or certified mail is delivered and the return receipt signed or when acceptance is refused.

F.(3) Except when service by publication is available pursuant to section G. of this Rule for service pursuant to subsections (4) and (5) of this section, service of summons shall be as follows:

F.(3)(a) Except as provided in paragraphs (b) and (c) of this subsection, upon a natural person:

F.(3)(a)(i) By personally serving the defendant; or,

F.(3)(a)(ii) If with reasonable diligence the defendant cannot be served under subparagraph (i) of this paragraph, then by personal service upon any person over 14 years of age residing in the dwelling house or usual place of abode of defendant, or if defendant maintains a regular place of business or office, by leaving a copy of the summons and complaint at such place of business or office, with the person who is apparently in charge.

Where service under this subparagraph is made on one other than the defendant, the plaintiff shall cause to be mailed a copy of the summons and complaint to the defendant at his dwelling house or usual place of abode, together with a statement of the date, time and place at which service was made; or,

F.(3)(a)(iii) In any case, by serving the summons in a manner specified in this Rule or by any other rule or statute on the defendant or upon an agent authorized by appointment or law to accept service of summons for the defendant.

F.(3)(b) Upon a minor under the age of 14 years, by service in the manner specified in paragraph (a) of this subsection upon such minor, and also upon his father, mother, conservator of his estate or guardian, or if there be none, then upon any person having the care or control of the minor or with whom such minor resides or in whose service such minor is employed or upon a guardian ad litem appointed pursuant to Rule V.(1)(b).

F.(3)(c) Upon an incapacitated person, by service in the manner specified in paragraph (a) of this subsection upon such person and also upon the conservator of such person's estate or guardian, or if there be none, upon a guardian ad litem appointed pursuant to Rule V.(2)(b).

F.(3)(d) Upon a domestic or foreign corporation, limited partnership or other unincorporated association which is subject to suit under a common name:

F.(3)(d)(i) By personal service upon a registered agent, officer, director, general partner, or managing agent of the corporation, limited partnership or association. In lieu of delivery of a copy of summons and complaint to the registered agent, officer, general partner or managing agent, such copies may be left at the office of such registered agent, officer, general partner or managing agent, with the person who is apparently in charge of the office.

F.(3)(d)(ii) If no registered agent, officer, director, general partner, or managing agent resides in this state or can be found in this state, then plaintiff

may serve such person by mail. Service by mail under this subparagraph shall be fully effective service and permit the entry of a default judgment if defendant fails to appear.

F.(3)(d)(iii) If by reasonable diligence, the defendant cannot be served pursuant to subparagraphs (i) and (ii) of this paragraph, then by personal service upon any person over the age of 14 years who resides at the dwelling house or usual place of abode of any person identified in subparagraph (i) of this paragraph, or by personal service on any clerk or agent of the corporation, limited partnership or association who may be found in the state. Where service is made by leaving a copy of the summons and complaint at the dwelling house or usual place of abode of persons identified in subparagraph (i) of this paragraph, the plaintiff shall immediately cause a copy of the summons and complaint to be mailed to the person to whom the summons is directed, at his dwelling house or usual place of abode, together with a statement of the date, time and place at which service was made.

F.(3)(d)(iv) In any case, by serving the summons in a manner specified in this Rule or by any other rule or statute upon the defendant or an agent authorized by appointment or law to accept service of summons for the defendant.

✓ F.(3)(e) Upon a partnership or unincorporated association not subject to suit under a common name, relating to partnership or association activities, by personal service individually upon each partner known to the plaintiff, in any manner prescribed in paragraphs (a), (b) or (c) of this subsection. If less than all of the partners are served, the plaintiff may proceed against those partners served and against the partnership and a judgment rendered under such circumstances is a binding adjudication against all partnership members as to partnership assets anywhere.

F.(3)(f) Upon the State, by personal service upon the Attorney General or by leaving a copy of the summons and complaint at the Attorney General's office with a deputy, assistant or clerk. Service upon the Adult and Family Services

Division shall be by personal service upon the administrator of the Family Services Division or by leaving a copy of the summons and complaint at the office of such administrator with the person apparently in charge.

F.(3)(g) Upon any county, incorporated city, school district, or other public corporation, commission or board, by personal service upon an officer, director, managing agent, clerk or secretary thereof. In lieu of delivery of the copy of the summons and complaint personally to such officer, director, managing agent, clerk or secretary, such copies may be left in the office of such officer, director, managing agent, clerk, or secretary with the person who is apparently in charge of the office. When a county is a party to an action, in addition to the service of summons specified above, an additional copy of the summons and complaint shall also be served upon the District Attorney of the county in the same manner as required for service upon the county clerk.

F.(4) In lieu of service provided above, service upon any defendant of the class referred to in paragraphs (a) and (d) of subsection (3) may be made by mail, but such service shall not permit entry of a judgment by default. If the defendant served fails to appear, supplemental service shall be made as provided in paragraphs (a) and (d) of subsection (3) of this Rule.

F.(5) When service is to be effected upon a party in a foreign country, it is also sufficient if service of summons is made in the manner prescribed by the law of the foreign country for service in that country in its courts of general jurisdiction, or as directed by the foreign authority in response to letters rogatory, or as directed by order of the court, provided, however, that in all cases such service shall be reasonably calculated to give actual notice.

G. Publication. (1) On motion upon a showing by affidavit that service cannot with due diligence be made by another method described in subsection (3) of section F. of this Rule, the court may order service by publication.

G.(2) In addition to the contents of a summons as described in section C. of this Rule, a published summons shall also contain a summary statement of the object of the complaint and the demand for relief, and the notice required in section C.(2) shall state: "This paper must be given to the court within 45 days of the date of first publication specified herein along with the required filing fee." The published summons shall also contain the date of the first publication of the summons.

G.(3) An order for publication shall direct publication to be made in a newspaper of general circulation in the county where the action is commenced, or if there is no such newspaper, then in a newspaper to be designated as most likely to give notice to the person to be served. Such publication to be not less than once a week for four consecutive weeks.

G.(4) If service by publication is ordered and defendant's post office address is known or can with reasonable diligence be ascertained, the plaintiff shall mail a copy of the summons and complaint to the defendant. When the address of any defendant is not known or cannot be ascertained upon diligent inquiry, a copy of the summons and complaint shall be mailed to the defendant at his last known address. If plaintiff does not know and cannot ascertain, upon diligent inquiry, the present and last known address of the defendant, mailing a copy of the summons and complaint is not required.

G.(5) If service cannot with due diligence be made by another method described in subsection (3) of section F. of this Rule because defendants are unknown heirs or persons/as described in sections (9) and (10) of Rule I, the action shall proceed against such unknown heirs or persons in the same manner as against named defendants served by publication and with like effect, and any such unknown heirs or persons who have or claim any right, estate, lien or interest in the real property in controversy, at the time of the commencement of the action and served by publication, shall be bound and concluded by the judgment in the action,

if the same is in the favor of the plaintiff, as effectively as if the action was brought against such defendants by name.

G.(6) A defendant against whom publication is ordered or his representatives may, upon good cause shown and upon such terms as may be proper, be allowed to defend after judgment and within one year after entry of judgment. If the defense is successful, or the judgment or any part thereof has been collected or otherwise enforced, restitution may be ordered by the court, but the title to property sold upon execution issued on such judgment, to a purchaser in good faith, shall not be affected thereby.

G.(7) Service shall be complete at the date of the last publication.

H. Disregard of error; actual notice. Failure to strictly comply with the provisions of this Rule relating to the form of summons, issuance of summons, the person who may serve summons, and the manner of service of summons shall not affect the validity of service of summons or the existence of jurisdiction over the person, if the court determines that the defendant received actual notice of the substance and pendency of the action. The court may allow amendment to a summons or proof of summons and shall disregard any error in service of summons that does not materially prejudice the substantive rights of the party against whom summons was issued.

I. Telegraphic transmission. A summons and complaint may be transmitted by telegraph as provided in Rule 5 E.

COMMENT TO RULE 4

A. This section does not appear in the Oregon law or in the federal rules but was added to clarify the situation when summons is being used to join a party to respond to a counterclaim and an answer pursuant to ORS 13.180.

B. This is ORS 15.020. The Rule retains the practice of having summons issued by the plaintiff or plaintiff's attorney. Because the summons is issued by a party rather than a court, it is technically not process, and this Rule deals only with service of summons. Process is presently covered in ORS Chapter 16 and the references to it are incorporated in Rule 5 which follows. A subpoena is also not process and is covered by Rule 500. See 6 Or. 72 (1876). ORS 15.070 provides that if a defendant is not found, the plaintiff may issue another summons. This probably was necessary prior to 1977 when the summons had to be returned in 60 days, but at the present time the summons does not expire, and therefore no alias summons would be required.

C. This section is the same as ORS 15.040 (1) and (2) with some reorganization and language clarification. The language requiring an appearance and "answer" was changed to appear and "defend." The section continues the requirement of the notices presently specified in ORS 15.040(2) and ORS 15.220 (2) with reference to proof of service eliminated (see Rule 6). The reference to K.(4) is the joinder to respond to a counterclaim rule of ORS 13.080. Special notice is required because the proper response is a reply rather than an answer, as specified in the normal notice. ORS 15.220 deals only with the attorney's fee counterclaim under 18.180(2) but seems to require no special notice for 13.180 (1). The Rule covers both.

Under subsection (3) of the section, a summons may be signed by the plaintiff or resident attorney. ORS 15.040 allows only resident plaintiffs to sign summons. This would literally force a non-resident plaintiff to retain an attorney and seems unfair and discriminatory. The requirement that the attorney be a resident was retained.

Subsection (4) includes all of the time requirements for response as follows:

(a) This is ORS 15.040 (3) with language changed to indicate that it does not cover personal service outside the state.

(b) This is ORS 15.110 (3). Four weeks was changed to 30 days. It makes more sense to describe all the time periods in the same unit. ORS 15.110 (3) provides 6 weeks for service outside the United States. This Rule simply provides 30 days for any service outside the state.

(c) This modifies the existing time to respond under ORS 15.140, which gives the defendant until the last date of publication (four weeks) to respond. The problem with this is that theoretically a defendant might not see the published notice until the last publication and have no time to respond. See 43 Or. 513 (1903). This Rule gives the defendant an additional 15 days from the last date of publication.

D. This section replaces ORS 15.060 (1) and (2). There seems to be no reason to specify the sheriff specifically as a person to serve. The sheriff would be a competent person over the age of 18. This also takes care of the question of who serves the sheriff when the sheriff is a party. There used to be a provision for service by the coroner under ORS 207.010, but this was repealed with the coroner's statute. Under this Rule, some other person would have to serve the summons because the sheriff would be a party. The return specified below is different when the summons is served by the sheriff other than that, ORS 206.030 makes serving a summons part of the duties of the sheriff, and no particular reference seems necessary in this Rule.

This Rule also differs from the statute in:

- (a) Allowing an attorney for a party to serve the summons. Given the ethical restrictions on attorneys, it seems useless to eliminate them from serving a summons, especially when they are entitled to serve subpoenas.
- (b) Covering out-of-state service and in-state service.
- (c) Making clear who is a party when the defendant is a corporation.

The compensation provisions in the last two sentences are identical to ORS 15.060 (3) with a slight wording change to clarify out-of-state service. The last sentence perhaps more properly belongs under the fees rule but was left in this Rule for the present.

E. (1) This contains the substance of ORS 15.060 (2). The last sentence of the existing statute was eliminated as it relates to the repealed 60-day return requirement.

(2) This contains the return and proof of service provisions of 15.160 which incorporates 15.110. The existing difference between the sheriff's certificate and affidavit of another person to prove service is retained. The content requirements of the existing statutes are slightly expanded. Since the manner of service provision makes substituted service available only when personal service cannot be effected, the proof of service is required to show due diligence when substituted service is used.

The return for a publication is similar to that of ORS 15.160 (2) except the number of people who can make the affidavit is increased slightly. The written admission possibility is preserved exactly as it exists in the existing statutes. The language relating to who may notarize the affidavit comes from ORS 15.110. ORS 45.120, which provides that an affidavit may be used to prove service, is unnecessary and should be eliminated.

Subsection (3) is probably the most important change in this provision. Under the existing law, a defect in the return is jurisdictional. See State ex rel School District #56 vs. Kleckner, 116 Or. 371 (1925). There seems to be no reasonable basis for invalidating a perfectly good service because a mistake is made in the return. The language is taken from the Wisconsin statutes.

F. and G. These sections should be considered together and are the most important in this Rule. Generally, they were drafted with several general objectives in mind:

(a) That the method of service specified be as simple and inexpensive as possible while guaranteeing maximum actual notice to a defendant consistent with maximum flexibility to a plaintiff to effectuate service.

(b) To avoid any distinction between in-state and out-of-state service. This Rule does not cover those circumstances which make a defendant amenable to the court's authority. The amenability rule will provide that a defendant who is served within the state or where substituted service may be effectuated within the state is amenable to the court's authority, and in this sense it makes a difference whether service is in-state or out-of-state. Other than that, with a few exceptions specifically covered in the Rule (for example, corporations), there seems no particular reason to specify different methods for in-state or out-of-state service. The key question is the same in both cases, whether the service is being effectuated in a way that will maximize notice. It should be noted that one of the most important aspects of this is that it makes substituted service available out-of-state as well as in-state where a defendant cannot otherwise be found.

(c) To eliminate service of process on any state official such as the Corporation Commissioner, Insurance Commissioner or the Secretary of State. Such services on state officials are wasteful, burdensome on the state officials involved, and conceptually not required under our present ideas of jurisdiction. Formerly, it was thought conceptually necessary that some service be effectuated within the boundaries of the state. Under the International Shoe case and the present long arm statutes, no such in-state service is required. The Rule totally eliminates any service on state officials. Thus, the entire nonresident motor vehicle statute and all of the foreign and domestic corporation service rules are eliminated.

(2) This specifies the mode of effectuating service and is that of the existing statute, ORS 15.080. The mailing provisions would relate to service of process by mail for a corporation where no one may be found in the state, mailings required supplementary to substituted service, and the alternative of service of process by mail which would not allow a default judgment. The language describing service by mail comes from the Michigan rules.

(3) This subsection brings together all methods of service of process presently specified in the Oregon statutes.

(a) The order of preference for service of process of individuals would be, first, personal service, whenever that can be accomplished, either within or without the state, and then substituted service if personal service is impossible. The provision relating to substituted service was changed from "usual place of abode" to "dwelling house or usual place of abode." This added language comes from the federal rules and would liberalize the use of substituted service. Usual place of abode has been restrictively interpreted in Oregon. See Thoenes v. Tatro, ___ Or. ___ (1974). In any case, if there is a legally appointed or specially appointed agent for an individual for receiving service of process, this would be an alternative.

(b) and (c) These two sections incorporate the existing provisions for service of minors and incapacitated persons from ORS 15.080 (4) and (5). In both cases the possibility of having the plaintiff seek appointment of a guardian ad litem under Rule V. was added to this Rule.

(d) This was one of the most difficult rules to draft. The present law for in-state service of process of ORS 15.080 (1) is basically retained but now applies to both service within or without the state. Personal service is the preferred method of service but if a domestic or foreign corporation does not have a registered agent or any other officer, etc., within the state, then the plaintiff is given a second alternative of service of process by mail. This special service of process by mail was added because under the existing law, in most cases, the statutes specify service upon some state official and the net result is that process is mailed to the defendant anyway. Eliminating the intermediate step of service on the state official, we retain the same type of notice by specifying service of process by mail. The service of process by mail could be eliminated and the same scheme followed as for individuals, but this would perhaps change the existing patterns of service and put burden on plaintiffs to make out-of-state service on domestic and foreign corporations without in-state agents. The third level of preference in service as specified in the Rule is either serving a registered agent, officer, etc., by substituted service, within or without the state, or by serving any agent that can be found within the state. This again differs slightly from the existing system; at the present time, substituted service can only be used against an agent within the state, but it can be used against any agent, not just a registered agent or an officer, provided service is made within the county. (The existing statute under ORS 15.180 (1) is very confusing because it seems to limit some types of service to within the county which is inconsistent with the rest of the statute). This subsection of the Rule also provides that process may be left at the office of a registered agent or officer, etc. Again, the alternative of service upon an appointive agent is preserved.

Note that the Rule applies to limited partnerships and any other business entity that may be sued under a common name. Existing ORS 15.180 (2) refers to limited partnerships and is virtually identical to 15.180 (1) relating to corporations. There seems to be no provision for any other business entity suitable under a common name in Chapter 15. ORS 62.155 requires cooperatives to appoint a registered agent.

(e) At the present time, there is no statute specifically covering service of process on partnerships. A partnership is not suable as an entity, and each person must be served individually. Under ORS 15.100, however, persons jointly liable on a contract can be served individually with only some joint obligors served and any judgment is effective against the joint assets for non-served parties. In other words, the partnership assets are subject to judgment if a claim is contractual, which is a joint obligation, but not for any other claim against the partnership, which is joint and several. See ORS 68.250 - 270. This Rule expands the existing situation. It does not make the partnership suable as an entity, but it

does make the partnership subject to a bind judgment as to partnership assets where only part of the partners are served, whether or not the claim is contractual in nature, providing the claim is related to partnership activities.

The language of ORS 15.100, relating to persons jointly liable, has not been retained in this Rule. That statute is part of the original Deady Code and was passed to reverse the common law rule that plaintiff had to proceed against all joint obligors or none. In that sense, ORS 15.100 (1) (a) and (b) are joinder rules; sort of a special indispensable party rule. That aspect would now be covered by Rule O, relating to indispensable parties, and the necessity of joinder or non-joinder, and proceeding against parties to a contract, would be determined under the factors specified in that rule, rather than any reference to joint or joint and several obligations.

ORS 15.100 (1) (a), however, goes beyond joinder and seems to make joint obligors agents for each other to receive process, at least to the extent of binding joint property. This was not included because it is of doubtful constitutionality. For a partnership or other unincorporated association, there is an agency relationship between the participants. Merely making a joint promise, however, does not imply any agency aspect.

ORS 15.100 (2) seems to state the obvious; if you sue two defendants and prove a case against one, you can recover against one. Apparently, there was a common law rule that if you sued parties jointly, you recovered jointly or not at all, but in light of existing joinder rules and judgment provisions, specific rejection of the common law rule seems unnecessary.

ORS 15.090 relating to serving one defendant in an equity suit is eliminated. The distinction has been abolished and the section was probably unconstitutional anyway.

(f) There is no present provision for service on the state in the Oregon statutes but with increasing waivers of sovereign immunity by the state, such a provision seems necessary. The last specific reference to the Adult and Family Services Division is ORS 15.085.

(g) This is ORS 15.080 (3). The only changes were adding "officer, director, and managing agent" to those persons who may be served and also incorporating the provisions of ORS 16.820 relating to service of summons and the District Attorney when the county is a party.

(4) Although the committee has previously indicated that it did not want to adopt service of process by mail, this Rule comes from the Judicial Conference Committee's recommended changes to Rule 4. It actually is not service in a binding sense but more in the nature of a request to appear voluntarily. Of course, without the default judgment any person anticipating trouble or facing statute of limitations problems would be advised not to use this provision. The one thing that perhaps should be clarified is whether service of process for this purpose is effective to relate back to the commencement of the action for purposes of satisfying the statute of limitations. I am not sure, however, it is within our rule-making power to do so.

(5) This does not appear in Oregon law but was adapted from Federal Rule 4 (i). It provides maximum flexibility for Oregon plaintiffs to conform to peculiarities of foreign law relating to service of summons.

G. This publication statute differs from the existing publication statutes of ORS 15.120 to 15.180 in the circumstances in which it can be used. The existing statutes make publication available under a complex set of conditions which are different for residents, nonresidents, domestic and foreign corporations which apply to different types of cases and to certain equity suits. Many of the situations specified in the Oregon statutes are of doubtful Constitutionality because under the Mullene case, publication may only be used when no better method of giving notice can be used. This Rule literally complies with the Mullene case by making this the ultimate resort when process can be effected by no more reasonable method. It also differs from the Oregon rule by making this available in any case, so there always is a last resort for service of process, which would allow the plaintiff to proceed when the defendant cannot be found or is unknown.

The procedures are not substantially changed from the existing Oregon statutes. A court order is required. The form of the summons published is generally the same. The time for response provided in the summons is changed to 45 days, and the summons must give the first publication date and a clear warning. The place of publication is changed from a newspaper to a newspaper of general circulation. Mailing of the summons and complaint continues to be required. In most cases, if you knew defendant's address, publication could not be used because either personal or substituted service would be more effective; but it is literally possible to have an address for the plaintiff which is not the plaintiff's dwelling house or usual place of abode, so publication still might be used and mailing required.

The specific provisions relating to unknown parties are ORS 15.170 and 15.180. The provision allowing the person to come in and defend after a year comes from ORS 15.150. ORS 18.160 does give a party a year to seek a vacation of any judgment by default. This section does not require vacation of judgment, but allows a defendant to defend.

H. This last section is completely new and does not appear either in the federal rules or any other statutory rule scheme which could be found. It is a response to Bob Lacy's suggestion for de-emphasizing the importance of process. Some of the language referring to amendment comes from Federal Rule 5 (b).

RULE 7

SUMMONS

A. Plaintiff and defendant defined. For purposes of this rule, "plaintiff" shall include any party issuing summons and "defendant" shall include any party upon whom service of summons is sought.

B. Issuance. Any time after the action or proceeding is commenced, plaintiff or plaintiff's attorney may issue as many original summonses as either may elect and deliver such summonses to a person authorized to serve summons under section D. of this rule.

C. Contents. The summons shall contain:

C.(1) The title of the cause, specifying the name of the court in which the complaint is filed and the names of the parties to the action.

C.(2) A direction to the defendant requiring defendant to appear and defend within the time required by subsection (4) of this section and ~~shall notify~~ ^{as notified by the court} defendant that in case of failure to do so, the plaintiff will apply to the court for the relief demanded in the complaint.

C.(2)(a) ~~All~~ ^{Printed File} summonses other than a summons to join a party pursuant to Rule 22 D. shall contain ~~a~~ ^{Printed File} notice in a size equal to at least 8-point type which may be substantially in the following form with the appropriate number of days inserted:

All
summons
must be in
this form

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." This paper must be given to the court within _____ days along with the required filing fee. It must be in proper form and a copy must be delivered or mailed to the plaintiff or the plaintiff's attorney.

*clerk
on court
Administration*

If you have questions, you should see an attorney immediately.

C.(2)(b) A summons to join a party pursuant to Rule 22 D. (2) shall contain a notice in size equal to at least 8-point type which may be substantially in the following form with the appropriate number of days inserted.

*Small
change.*

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." This paper must be given to the court within _____ days along with the required filing fee. It must be in proper form and a copy must be delivered or mailed to the defendant

or the defendant's attorney. If you have questions, you should see an attorney immediately.

C.(2)(c) A summons to join a party pursuant to Rule 22 D. (3) shall contain a notice in size equal to at least 8-point type which may be substantially in the following form with the appropriate number of days inserted.

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You may be liable for attorney fees in this case. Should plaintiff in this case not prevail, a judgment for reasonable attorney fees will be entered against you, as provided by the agreement to which defendant alleges you are a party.

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." This paper must be given to the court within ___ days along with the required filing fee. It must be in proper form and a copy must be delivered or mailed to the defendant or the defendant's attorney.

If you have questions, you should see an attorney immediately.

C.(3) A subscription by the plaintiff or by a resident attorney of this state, with the addition of the post office address at which papers in the action may be served by mail.

C.(4) The summons shall require the defendant to appear and defend within the following times:

C.(4)(a) If the summons is served personally or by mail upon defendant or served personally or by mail upon another authorized to accept service of the summons for the defendant, the defendant shall appear and defend within 30 days from the date of service.

C.(4)(b) If the summons is served by publication pursuant to section G. of this rule, the defendant shall appear and defend within 30 days from a date stated in the summons. The date so stated in the summons shall be the date of the first publication.

D. By whom served; compensation. A summons may be served by any competent person 18 years of age or older who is a resident of the state where service is made or of this state and is not a party to the action nor an officer, director or employee of, nor attorney for, any party, corporate or otherwise. Compensation to a sheriff or a sheriff's deputy of the county in this state where the person served is found, or such person's dwelling house or usual place of abode is located, who serves a summons, shall be prescribed by statute or rule. If any other person serves the summons, a reasonable fee may be paid for service. This compensation shall be part of disbursements and shall be recovered as provided in ORS 20.020.

E. Return; proof of service. (1) The summons shall be promptly returned to the clerk with whom the complaint is filed

with proof of service or mailing, or that defendant cannot be found. When served out of the county in which the action or proceeding is commenced, the summons may be returned by mail.

E.(2) Proof of service of summons or mailing may be made as follows:

E.(2)(a)(i) Personal service or mailing shall be proved by the affidavit of the server indicating the time, place and manner of service, that the server is a competent person 18 years of age or older and a resident of the state of service or this state and is not a party to nor an officer, director or employee of, nor attorney for any party, corporate or otherwise, and that the server knew that the person, firm or corporation served is the identical one named in the action. If the defendant is not personally served, the server shall state in the affidavit when, where and with whom a copy of the summons and complaint was left or describe in detail the manner and circumstances of service. If the summons and complaint were mailed, the affidavit shall state the circumstances of mailing and the return receipt shall be attached.

E.(2)(a)(ii) If the copy of the summons is served by the sheriff, or a sheriff's deputy, of the county in this state where the person served was found or such person's dwelling house or usual place of abode is located, proof may be made by the sheriff's or deputy's certificate of service indicating the time, place and manner of service, and if defendant is not personally served, when, where and with whom the copy of the summons and complaint was left or describe in detail the manner and circumstances

of service. If the summons and complaint were mailed, the affidavit shall state the circumstances of mailing and the return receipt shall be attached.

E.(2)(a)(iii) An affidavit or certificate containing proof of service may be made upon the summons or as a separate endorsement.

E.(2)(b) Service by publication shall be proved by an affidavit in substantially the following form:

Affidavit of Publication

State of Oregon,)
) ss.
County of _____)

I, _____, being first duly sworn, depose and say that I am the _____ (here set forth the title or job description of the person making the affidavit), of the _____, a newspaper of general circulation, as defined by ORS 193.010 and 193.020; published at _____ in the aforesaid county and state; that I know from my personal knowledge that the _____, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper four times in the following issues: (here set forth dates of issues in which the same was published).

Subscribed and sworn to before me this ____ day of _____, 19__.

Notary Public of Oregon.

My commission expires

____ day of _____, 19 __.

E.(2)(c) In any case proof may be made by written admission of the defendant.

E.(2)(d) The affidavit of service may be made and certified by a notary public, or other official authorized to administer oaths and acting as such by authority of the United States, or any state or territory of the United States, or the District of Columbia, and the official seal, if any, of such person shall be affixed to the affidavit. The signature of such notary or other official, when so attested by the affixing of the official seal, if any, of such person, shall be prima facie evidence of authority to make and certify such affidavit.

E.(3) If summons has been properly served, failure to return the summons or make or file a proper proof of service shall not affect the validity of the service.

F. Manner of service. (1) Summons shall be served, either within or without this State, in any manner reasonably calculated, under all the circumstances, to apprise the defendant of the existence and pendency of the action or proceeding and to afford a reasonable opportunity to appear and defend.

F.(2) For personal service, the person serving the summons shall deliver a certified copy of the summons and a certified copy of the complaint to the person to be served. For service by mail or mailing of summons and complaint as otherwise required or allowed by this rule, the plaintiff shall mail a certified copy of the summons and a certified copy of the complaint to the person to be served by certified or registered mail, return receipt requested.

Service by mail shall be complete when the registered or certified mail is delivered and the return receipt signed or when acceptance is refused.

F.(3) Except when service by publication is available pursuant to section G. of this rule and service pursuant to subsection (4) of this section, service of summons either within or without this state may be substantially as follows:

F.(3)(a) Except as provided in paragraphs (b) and (c) of this subsection, upon a natural person:

F.(3)(a)(i) By personally serving the defendant; or,

F.(3)(a)(ii) If defendant cannot be found personally at defendant's dwelling house or usual place of abode, then by personal service upon any person over 14 years of age residing in the dwelling house or usual place of abode of defendant, or if defendant maintains a regular place of business or office, by leaving a copy of the summons and complaint at such place of business or office, with the person who is apparently in charge. Where service under this subparagraph is made on one other than the defendant, the plaintiff shall cause to be mailed a copy of the summons and complaint to the defendant at defendant's dwelling house or usual place of abode, together with a statement of the date, time and place at which service was made; or,

F.(3)(a)(iii) In any case, by serving the summons in a manner specified in this rule or by any other rule or statute on the defendant or upon an agent authorized by law to accept service of summons for the defendant.

F.(3)(b) Upon a minor under the age of 14 years, by service in the manner specified in paragraph (a) of this subsection upon such minor, and also upon such minor's father, mother, conservator of such minor's estate or guardian, or if there be none, then upon any person having the care or control of the minor or with whom such minor resides or in whose service such minor is employed or upon a guardian ad litem appointed pursuant to Rule 27 A.(2).

F.(3)(c) Upon an incapacitated person, by service in the manner specified in paragraph (a) of this subsection upon such person and also upon the conservator of such person's estate or guardian, or if there be none, upon a guardian ad litem appointed pursuant to Rule 27 B.(2).

F.(3)(d) Upon a domestic or foreign corporation, limited partnership or other unincorporated association which is subject to suit under a common name:

F.(3)(d)(i) By personal service upon a registered agent, officer, director, general partner, or managing agent of the corporation, limited partnership or association. In lieu of delivery of a copy of summons and complaint to the registered agent, officer, director, general partner or managing agent, such copies may be left at the office of such registered agent, officer, director, general partner or managing agent, with the person who is apparently in charge of the office; or

F.(3)(d)(ii) If no registered agent, officer, director, general partner, or managing agent can be found nor has an

office in the county where the action or proceeding is filed, the summons may be served: by personal service upon any person over the age of 14 years who resides at the dwelling house or usual place of abode of such registered agent, officer, director, general partner or managing agent; or, by personal service on any clerk or agent of the corporation, limited partnership or association who may be found in the county where the action or proceeding is filed; or by mailing a copy of the summons and complaint to such registered agent, officer, director, general partner or managing agent. Where service is made by leaving a copy of the summons and complaint at the dwelling house or usual place of abode of a registered, agent, officer, director, general partner, or managing agent, the plaintiff shall immediately cause a copy of the summons and complaint to be mailed to the person to whom the summons is directed, at his dwelling house or usual place of abode, together with a statement of the date, time and place at which service was made.

F.(3)(d)(iii) In any case, by serving the summons in a manner specified in this rule or by any other rule or statute upon the defendant or an agent authorized by appointment or law to accept service of summons for the defendant.

F.(3)(e) Upon the state, by personal service upon the Attorney General or by leaving a copy of the summons and complaint at the Attorney General's office with a deputy, assistant or clerk.

F.(3)(f) Upon any county, incorporated city, school district, or other public corporation, commission or board, by

personal service upon an officer, director, managing agent, clerk or secretary thereof. In lieu of delivery of the copy of the summons and complaint personally to such officer, director, managing agent, clerk or secretary, such copies may be left in the office of such officer, director, managing agent, clerk, or secretary with the person who is apparently in charge of the office. When a county is a party to an action or proceeding, in addition to the service of summons specified above, an additional copy of the summons and complaint shall also be served upon the District Attorney of the county in the same manner as required for service upon the county clerk.

F.(4) When service is to be effected upon a party in a foreign country, it is also sufficient if service of summons is made in the manner prescribed by the law of the foreign country for service in that country in its courts of general jurisdiction, or as directed by the foreign authority in response to letters rogatory, or as directed by order of the court, provided, however, that in all cases such service shall be reasonably calculated to give actual notice.

G. Publication. (1) On motion upon a showing by affidavit that service cannot be made by any other method more reasonably calculated to apprise the defendant of the existence and pendency of the action or proceeding, the court may order service by publication.

G.(2) In addition to the contents of a summons as described in section C. of this rule, a published summons shall

also contain a summary statement of the object of the complaint and the demand for relief, and the notice required in section C.(2) shall state: "This paper must be given to the court within 30 days of the date of first publication specified herein along with the required filing fee." The published summons shall also contain the date of the first publication of the summons.

G.(3) An order for publication shall direct publication to be made in a newspaper of general circulation in the county where the action is commenced, or if there is no such newspaper, then in a newspaper to be designated as most likely to give notice to the person to be served. Such publication shall be four times in successive calendar weeks.

G.(4) If service by publication is ordered and defendant's post office address is known or can with reasonable diligence be ascertained, the plaintiff shall mail a copy of the summons and complaint to the defendant. When the address of any defendant is not known or cannot be ascertained upon diligent inquiry, a copy of the summons and complaint shall be mailed to the defendant at defendant's last known address. If plaintiff does not know and cannot ascertain, upon diligent inquiry, the present and last known address of the defendant, mailing a copy of the summons and complaint is not required.

G.(5) If service cannot be made by another method described in section F. of this rule because defendants are unknown heirs or persons as described in sections I. and J.

of Rule 20, the action or proceeding shall proceed against such unknown heirs or persons in the same manner as against named defendants served by publication and with like effect, and any such unknown heirs or persons who have or claim any right, estate, lien or interest in the real property in controversy, at the time of the commencement of the action and served by publication, shall be bound and concluded by the judgment in the action, if the same is in the favor of the plaintiff, as effectively as if the action or proceeding was brought against such defendants by name.

G.(6) A defendant against whom publication is ordered or such defendant's representatives may, upon good cause shown and upon such terms as may be proper, be allowed to defend after judgment and within one year after entry of judgment. If the defense is successful, or the judgment or any part thereof has been collected or otherwise enforced, restitution may be ordered by the court, but the title to property sold upon execution issued on such judgment, to a purchaser in good faith, shall not be affected thereby.

G.(7) Service shall be complete at the date of the last publication.

H. Disregard of error; actual notice. Failure to strictly comply with provisions of this rule relating to the form of summons, issuance of summons and the person who may serve summons shall not affect the validity of service of summons or the existence of jurisdiction over the person, if the court determines

7
RULE 2

SUMMONS

A. Plaintiff and defendant defined. For purposes of issuance and service of summons, "plaintiff" shall include any party issuing summons and "defendant" shall include any party upon whom service of summons is sought.

B. Issuance. Any time after the action ^{is proceeding} is commenced, plaintiff or plaintiff's attorney may issue as many original summonses as either may elect and deliver such summonses to a person authorized to serve summons under section D. of this Rule.

C. Contents. The summons shall contain:

C.(1) The title of the cause, specifying the name of the court in which the complaint is filed and the names of the parties to the action.

C.(2) A direction to the defendant requiring defendant to appear and defend within the time required by subsection (4) of this section and shall notify defendant that in case of failure to do so, the plaintiff will apply to the court for the relief demanded in the complaint.

C.(2)(a) All summonses other than a summons to join a party pursuant to Rule ~~8(4)~~ ^{32 D} shall contain a notice in a size equal to at least 8-point type which may be substantially in the following form with the appropriate number of days inserted:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer."

This paper must be given to the court within _____ days along with the required filing fee. It must be in proper form and a copy must be delivered or mailed to the plaintiff or his attorney.

If you have questions, you should see an attorney immediately.

C.(2)(b) A summons to join a party pursuant to Rule ~~24(a)~~²²⁰⁴⁾ shall contain a notice in size equal to at least 8-point type which may be substantially in the following form with the appropriate number of days inserted.

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." This paper must be given to the court within _____ days along with the required filing fee. It must be in proper form and a copy must be delivered or mailed to the defendant or his attorney.

If you have questions, you should see an attorney immediately.

C.(2)(c) A summons to join a party pursuant to Rule ~~24(b)~~²²⁰²⁾ shall contain a notice in size equal to at least 8-point type which may be substantially in the following form with the appropriate number of days inserted.

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You may be liable for attorney fees in this case. Should plaintiff in this case not prevail, a judgment for reasonable attorney fees will be entered against you, as provided by the agreement to which defendant alleges you are a party.

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." This paper must be given to the court within ____ days along with the required filing fee. It must be in proper form and a copy must be delivered or mailed to the defendant or his attorney.

If you have questions, you should see an attorney immediately.

C.(3) A subscription by the plaintiff or by a resident attorney of this state, with the addition of the post office address at which papers in the action may be served by mail.

C.(4) The summons shall require the defendant to appear and defend within the following times:

C.(4)(a) If the summons is served ~~within the state~~ ^{either in or without} personally or by mail upon defendant or served personally or by mail upon another authorized to accept service of the summons for the defendant, ~~the defendant shall appear and defend within 30 days from the date of service.~~ ^{or by leaving a copy of summons and complaint at} the defendant shall appear and defend within ³⁰ days from the date of service.

~~C.(4)(b) If the summons is served outside this state personally or by mail upon defendant or served personally or by mail upon another authorized to accept service of the summons for the defendant, the defendant shall appear and defend within 30 days from the date of service.~~

C.(4)(b) If the summons is served by publication pursuant to section G. of this Rule, the defendant shall appear and defend within ³⁰ ~~35~~ days from a date stated in the summons. The date so stated in the summons shall be the date of the first publication.

D. By whom served; compensation. A summons may be served by any competent person 18 years of age or older who is a resident of the state where service is made or of this state and is not a party to the action nor an officer, or director

OR Employee of any corporate or otherwise
of a corporate party

Compensation to a sheriff or a sheriff's deputy of the county in this state where the person served is found, or such person's dwelling house or usual place of abode is located, who serves a summons, shall be prescribed by statute or rule. If any other person serves the summons, a reasonable fee shall be paid for the service. This compensation shall be part of the disbursements and shall be recovered as provided in ORS 20.020.

E. Return; proof of service. (1) The summons shall be returned to the clerk with whom the complaint is filed with proof of service or mailing, or that defendant cannot be found. When served out of the county in which the action is commenced, the summons may be returned by mail.

E.(2) Proof of service of summons or mailing may be made as follows:

E.(2)(a) Personal service or mailing shall be proved by (i) the affidavit of the server indicating the time, place and manner of service, that the server is a competent person 18 years of age or older and a resident of the state of service or this state and is not a party to nor an officer or director of a corporate party to the action, and that the server knew that the person, firm or corporation served is the identical one named in the action. If the defendant is not personally served, the server shall state in the affidavit when, where and with whom a copy of the summons and complaint was left, and shall state such facts as show reasonable diligence in attempting to effect personal service upon the defendant.

This is the to be attached to call to prove

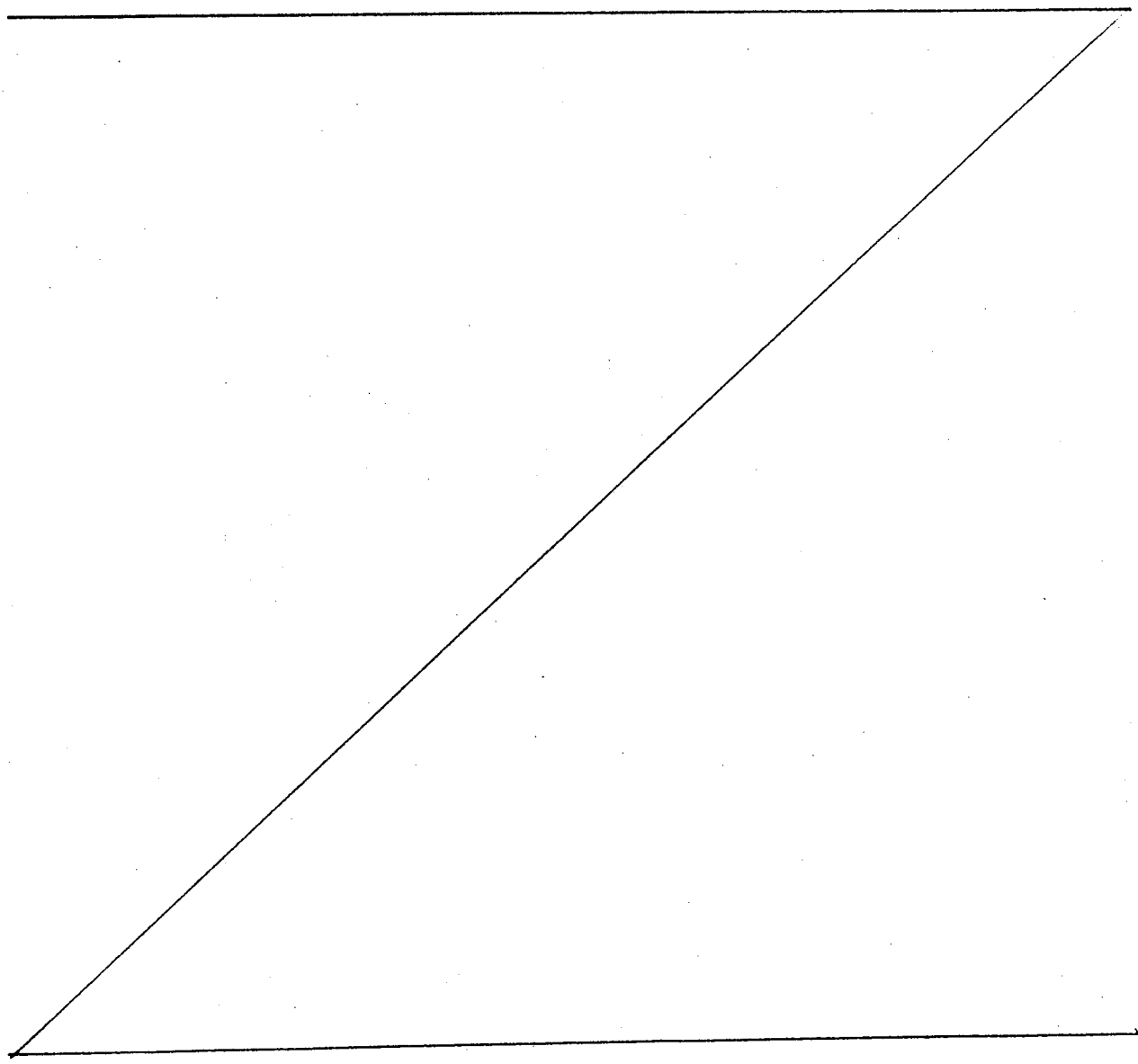
Add p2 memo attached.

If the summons and complaint were mailed, the affidavit shall state the circumstances of mailing and the return receipt shall be attached. (ii) If the copy of the summons is served by the sheriff, or a sheriff's deputy, of the county in this state where the person served was found or such person's dwelling house or usual place of abode is located, proof may be made by the sheriff's or deputy's certificate of service indicating the time, place and manner of service, and if defendant is not personally served, when, where and with whom the copy of the

6 And six to court

*insert
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page
from D*

summons and complaint was left ^{or describe in detail the manner and} and such facts as show reasonable diligence in ^{circumstances or service} attempting to effect personal service on defendant. If the summons and complaint were mailed, the affidavit shall state the circumstances of mailing and the return receipt shall be attached. (iii) An affidavit or certificate containing proof of service may be made upon the summons or as a separate endorsement.



E. (2) (b) Service by publication shall be proved by an affidavit in substantially the following form:

Affidavit of Publication

State of Oregon,)
) ss.
County of _____)

I, _____, being first duly sworn, depose and say that I am the _____ (here set forth the title or job description of the person making the affidavit), of the _____, a newspaper of general circulation, as defined by ORS 193.010 and 193.020; published at _____ in the aforesaid county and state; that I know from my personal knowledge that the _____, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper four times in the following issues (here set forth dates of issues in which the same was published).

Subscribed and sworn to before me this ____ day of _____, 19__.

Notary Public of Oregon.

My commission expires
____ day of _____, 19 __.

E. (2) (c) In any case proof may be made by written admission of the defendant.

E. (2) (d) The affidavit of service may be made and certified by a notary public, or other official authorized to administer oaths and acting as such by authority of the United States, or any state or territory of the United States, or the District of Columbia, and his official seal, if he has one, shall be

affixed to the affidavit. The signature of such notary or other official, when so attested by the affixing of his official seal, if he has one, shall be prima facie evidence of his authority to make and certify such affidavit.

*E.(3) If summons has been properly served, failure to return the summons or make or file a proper proof of service shall not affect the validity of the service.

*F. Manner of service. (1) ~~Unless otherwise specified, the methods of service of summons provided in this section shall be used for service of summons either within or without this state.~~

Put in language from p 1 non

F.(2) For personal service, the person serving the summons shall deliver a certified copy of the summons and a certified copy of the complaint to the person to be served. For service by mail ~~under paragraph (d) of subsection (3) of this section or subsection (4) of this section~~ or mailing of summons and complaint as otherwise required or allowed by this Rule, the plaintiff shall mail a certified copy of the summons and a certified copy of the complaint to the person to be served by certified or registered mail, return receipt requested. Service by mail shall be complete when the registered or certified mail is delivered and the return receipt signed or when acceptance is refused.

Job

F.(3) Except when service by publication is available pursuant to section G. of this Rule and service pursuant to subsection (4) of this section, service of summons ~~shall~~ *may substantially* be as follows:

either within or without this state.

F.(3)(a) Except as provided in paragraphs (b) and (c) of this subsection, upon a natural person:

Put this in as on defendant - summons shall be served.

F.(3)(a)(i) By personally serving the defendant; or,

F.(3)(a)(ii) ~~If with reasonable diligence the defendant cannot be served under subparagraph (i) of this paragraph, then by personal service upon any person~~

If defendant cannot be found personally at defendant's dwelling house or usual place of abode,

get her on this

over 14 years of age residing in ^{stet} the dwelling house or usual place of abode of defendant, or if defendant ~~maintains~~ a regular place of business or office, by leaving a copy of the summons and complaint at such place of business or office, with the person who is apparently in charge. Where service under this subparagraph is made on one other than the defendant, the plaintiff shall cause to be mailed a copy of the summons and complaint to the defendant at his dwelling house or ^{rod} usual place of abode, together with a statement of the date, time and place at which service was made; or,

F.(3)(a)(iii) In any case, by serving the summons in a manner specified in this Rule or by any other rule or statute on the defendant or upon an agent authorized by law to accept service of summons for the defendant.

F.(3)(b) Upon a minor under the age of 14 years, by service in the manner specified in paragraph (a) of this subsection upon such minor, and also upon ^{Suit minor's} his father, mother, conservator of his estate or guardian, or if there be none, then upon any person having the care or control of the minor or with whom such minor resides or in whose service such minor is employed or upon a guardian ad litem appointed pursuant to Rule ^{27 A (2)} ~~V.(1)(b)~~.

F.(3)(c) Upon an incapacitated person, by service in the manner specified in paragraph (a) of this subsection upon such person and also upon the conservator of such person's estate or guardian, or if there be none, upon a guardian ad litem appointed pursuant to Rule ^{27 B (3)} ~~V.(2)(b)~~.

F.(3)(d) Upon a domestic or foreign corporation, limited partnership or other unincorporated association which is subject to suit under a common name:

F.(3)(d)(i) By personal service upon a registered agent, officer, director, general partner, or managing agent of the corporation, limited partnership or association. In lieu of delivery of a copy of summons and complaint to the registered agent, officer, general partner or managing agent, such copies may be left at the office of such registered agent, ⁷⁰⁹ officer, general partner or managing agent,

with the person who is apparently in charge of the office.

now OR maintain has an office.

F(3)(d) ii
~~F. (3)(d)(ii)~~

If no registered agent, officer, director, general partner, or managing agent ~~resides in this state or~~ can be found *in the country where the action or proceeding is filed,* then plaintiff may serve such person by mail. Service by mail under this subparagraph shall be fully effective service and permit the entry of a default judgment if defendant fails to appear. *copy to plaintiff as name above ->*

~~F. (3)(d)(iii)~~ If by reasonable diligence, the defendant cannot be served

the summons may be served:

pursuant to subparagraphs (i) and (ii) of this paragraph, then by personal service upon any person over the age of 14 years who resides at the dwelling house or usual place of abode *of such registered agent, officer, director, general partner OR managing agent;* or, by personal service on any clerk or agent of the *corporation* ~~corporation~~, limited partnership or association who may be found in the ~~state~~. Where service is made by leaving a copy of the summons and complaint at the dwelling house or usual place of abode of persons identified in subparagraph (i) of this paragraph, the plaintiff shall immediately cause a copy of the summons and complaint to be mailed to the person to whom the summons is directed, at his dwelling house or usual place of abode, together with a statement of the date, time and place at which service was made.

OR by mail upon such registered agent, officer, director, general partner OR managing agent;

country due the return on proceeding is filed; or by mail; any copy of the summons and complaint to be sent to the select. agent and director; collection on union part.

~~F. (3)(d)(iii)~~ In any case, by serving the summons in a manner specified in this Rule or by any other rule or statute upon the defendant or an agent authorized by appointment or law to accept service of summons for the defendant.

managing agent; OR,

F. (3)(e) Upon a partnership or unincorporated association not subject to suit under a common name or persons jointly indebted on a contract, relating to partnership or association activities or the joint contract, by personal service individually upon each partner, association member or joint obligor known to the plaintiff, in any manner prescribed in paragraphs (a), (b) or (c) of this subsection. If less than all of the defendants are served, the plaintiff may proceed against those defendants served and against the partnership, association or joint obligors and a judgment rendered under such circumstances is a binding adjudication against all partnership or association members or joint obligors

as to ~~partnership or association assets or joint property, wherever such assets~~
or property may be located.

10 F.(3) ~~(2)~~ Upon the State, by personal service upon the Attorney General or
by leaving a copy of the summons and complaint at the Attorney General's office
with a deputy, assistant or clerk. ~~Service upon the Adult and Family Services~~
Division shall be by personal service upon the administrator of the Family Services
Division or by leaving a copy of the summons and complaint at the office of such
administrsator with the person apparently in charge.

F.(3) ~~(3)~~ Upon any county, incorporated city, school district, or other public
corporation, commission or board, by personal service upon an officer, director,
managing agent, clerk or secretary thereof. In lieu of delivery of the copy of
the summons and complaint personally to such officer, director, managing agent,
clerk or secretary, such copies may be left in the office of such officer, director,
managing agent, clerk, or secretary with the person who is apparently in charge of
the office. When a county is a party to an action, in addition to the service of
summons specified above, an additional copy of the summons and complaint shall also
be served upon the District Attorney of the county in the same manner as required
for service upon the county clerk.

F.(4) When service is to be effected upon a party in a foreign country,
it is also sufficient if service of summons is made in the manner prescribed by the
law of the foreign country for service in that country in its courts of general
jurisdiction, or as directed by the foreign authority in response to letters
rogatory, or as directed by order of the court, provided, however, that in all
cases such service shall be reasonably calculated to give actual notice.

G. Publication. ~~(1) On motion upon a showing by affidavit that service~~
~~cannot with due diligence be made by another method described in subsection~~
~~(3) of section F. of this Rule, the court may order service by publication.~~

Resubmitted
12/13/12
12

11 G.(2) In addition to the contents of a summons as described in section C. of this Rule, a published summons shall also contain a summary statement of the object of the complaint and the demand for relief, and the notice required in section C.(2) shall state: "This paper must be given to the court within 30 days of the date of first publication specified herein along with the required filing fee." The published summons shall also contain the date of the first publication of the summons.

*G.(3) An order for publication shall direct publication to be made in a newspaper of general circulation in the county where the action is commenced, or if there is no such newspaper, then in a newspaper to be designated as most likely to give notice to the person to be served. Such publication shall be four times, ~~with intervals of at least 7 days between each successive publication~~ *in successive calendar weeks*

G.(4) If service by publication is ordered and defendant's post office address is known or can with reasonable diligence be ascertained, the plaintiff shall mail a copy of the summons and complaint to the defendant. When the address of any defendant is not known or cannot be ascertained upon diligent inquiry, a copy of the summons and complaint shall be mailed to the defendant at his last known address. If plaintiff does not know and cannot ascertain, upon diligent inquiry, the present and last known address of the defendant, mailing a copy of the summons and complaint is not required.

G.(5) If service cannot with ~~diligence~~ *diligence* be made by another method described in subsection (3) of section F. of this Rule because defendants are unknown heirs or persons as described in sections (9) and (10) of Rule I, the action shall proceed against such unknown heirs or persons in the same manner as against named defendants served by publication and with like effect, and any such unknown heirs or persons who have or claim any right, estate, lien or interest in

the real property in controversy, at the time of the commencement of the action and served by publication, shall be bound and concluded by the judgment in the action, if the same is in the favor of the plaintiff, as effectively as if the action was brought against such defendants by name.

G.(6) A defendant against whom publication is ordered or his representatives may, upon good cause shown and upon such terms as may be proper, be allowed to defend after judgment and within one year after entry of judgment. If the defense is successful, or the judgment or any part thereof has been collected or otherwise enforced, restitution may be ordered by the court, but the title to property sold upon execution issued on such judgment, to a purchaser in good faith, shall not be affected thereby.

G.(7) Service shall be complete at the date of the last publication.

*H. Disregard of error; actual notice. Failure to strictly comply with ~~provisions of this Rule relating to the form of summons, issuance of summons,~~ ~~the person who may serve summons (and the manner of service of summons)~~ shall not affect the validity of service of summons or the existence of jurisdiction over the person, if the court determines that the defendant received actual notice of the substance and pendency of the action and had a reasonable opportunity to appear and defend. The court may allow amendment to a summons or proof of summons and shall disregard any error in service of summons that does not materially prejudice the substantive rights of the party against whom summons was issued.

I. Telegraphic transmission. A summons and complaint may be transmitted by telegraph as provided in Rule ~~80~~

Rule 7 Summons

Background
For service or process see Rule 8. ~~Replaced.~~
ORS sections ~~Replaced.~~ ~~Summons.~~

For service
of subpoenas
see rule . 55

15.010, 15.020, 15.030, 15.040,
15.060, 15.080, 15.090, 15.110, 15.120
15.130, 15.140, 15.150, 15.160
15.170, 15.180, 15.210, 15.220, 45.120

Comment:

Rule 7
COMMENT

This rule brings all general provisions for service of summons together in one place. ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ It is designed to give a fairly specific description of the procedure to be followed but to reduce overtechnical requirements in commencement of an action. The ~~XXXXXXXXXXXX~~ important standard to be maintained is adequate notice to the defendant; ~~XXXXXXXX~~ if this is met then deviations from the prescribed procedures for form of summons, issuance of summons, person serving, form of return and manner of service should not invalidate the service. ~~XXXXXXXX~~ Subsections E(3) and F(1) and Section H make this clear. Subsection F(3) is the basic rule for manner of service: Subsection ~~F(3)~~ describes acceptable ~~XXXXXX~~ methods of service but these are not exclusive. Note, however, ^{that would meet the standard of subsection F 3,} that summons must be served in some manner; mere knowledge of pendency and nature of the action will not require the defendant ~~to~~ to appear and defend.

15 #

The defined ~~methods~~ methods of service apply both to in state and out of state service. The grounds for personal jurisdiction are covered in rule 4. They include service within the state and domicile within the state and to that extent location of service is related to personal jurisdiction; beyond that, ~~assuming some basis exists for personal jurisdiction,~~ there ^{Limit by} is no reason to ~~use~~ methods of service ~~to~~ territorial boundaries.

The rule, in conjunction with revisions to ORS sections relating to appointments of agents, ~~set out in the process jurisdiction revisions,~~ eliminates ~~XXXXXX~~ any service of process on state agents who are fictionally appointed as agents for service of process upon out of state defendants.

Modern jurisdictional theory does not require service within the boundaries of the state and requiring service on the Corporation Commissioner or other state official is a useless act which is burdensome and expensive for the officials and litigants.

~~(A) This is based upon~~

Section ~~(B)~~ B is based upon Ors 15.020

Sub Section ~~(1) to (3)~~ C is based upon ORS 15.040 and 15.220. Subsection C. (4) eliminates disparate ^{one} the ~~time~~ time for response ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ to services in the state, in another state, outside the United states, and by publication of ORS 15.040, 15.110 and 15.140 to a uniform 30 day period. ^{changes} ~~eliminates~~ ^{service upon other} ~~called to court~~ ^{Summons for defendant}

Section D is based upon ORS 15.160 but eliminates a specific description of the sherriff. The sherriff, as a person over 18, can of course serve unless the sherriff is a party.

Section E is based upon 15.060, 15.110 and 15.160. Subsection E(3) would avoid invalidation of ~~3~~ good service of summoms because of some technical defenct in the return. A return and proof of service ~~is~~ ^{are still} required by subsections E(1) and (2).

The methods of service described in Subsection F(3) are modified forms of the methods of service described in 15.180. The most significant ~~relating to corporations or XXXXXXXX entities suable under their own names~~ change is F(3) ~~(d)~~ ^(c) which proves that the preferred method of service is ~~personal~~ ^{al} (including leaving at their office) upon a responsible officer, director or agent in the county where the suit is filed; if this cannot be accomplished ~~XXXXX~~ ^{four} alternatives ~~(including leaving at their office)~~ are available to the plintiff: Personal service on such persons anywhere ~~within or without the state~~ (including leaving at their office) they may be found; Substituted service at the dwelling house or usual ~~whther~~ ^{whther} located within or without the state place of abode of such persons; mailing to such perons; or service upon ~~any~~ agent who may be found in the county where the suit was filed. Since the basic standard remains adequacy of notice, the agent so served must be one likely to notify responsible persons in the corporation of the pendency of the action. ~~This rule~~ ^{rule} ~~applies~~ ^{applies} to associations and limited partnerships which may be sued under a common name; service in the case of partnerhsips

could include
summons
at a dwelling
house or usual
place of abode
or
office or
other
type of service
described in
rule ~~also~~ ^{upon}
some other
method ~~of~~
service

Paragraph

For all the friends
of the
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and associations not suable under a common name, is service on the named individual defendants ~~PARTNERS AND MEMBERS~~ and is covered by ^{*Council*} section F (3) (a). The effect of service ~~in terms of judgments~~ on less than all partnership or association members in terms of judgements and enforcement of judgements is left to ORS 15.100 ~~and other~~ other rules dealing with that subject.

Subsection F(4) was adapted from Federal Rule 4(i).

The publication provisions of ~~XXXXXX~~ section G differ from ORS 15.120 to 15.180 in the circumstances when publication is available. Under the existing statutes publication is available ^{*✓*} only in certain classes of cases depending upon location and availability of a defendant for service ^{*✓*} within the state. This rule makes publication available only as a last resort, when service can be accomplished by no other reasonable method, but makes such publication available in those circumstances for any case. Once publication is available the procedure followed is similar to that of the present statutes.

Section H is totally new and was drafted by the council to carry out the general purpose of this rule.

MEMORANDUM

TO: COUNCIL ON COURT PROCEDURES
FROM: PROCESS COMMITTEE
RE: SUMMONS AND PROCESS RULES
DATE: July 16, 1978

*Don't put
periods into
rule making
rules*

The process committee has met and considered in detail the specific rules relating to the form and manner of service of summons and process, as well as general introductory rules covering application of the rules, commencement of actions, service and filing of papers subsequent to the summons and computation of time. A copy of these rules, numbered 1 through 7, as approved by the committee, is attached. Those portions of the rules marked with an asterisk involve issues which the committee felt should be considered by the full Council, as discussed below. A staff commentary on each of these rules was furnished to the committee and is available to Council members upon request.

The committee is also considering rules governing bases for personal jurisdiction. A copy of a memorandum furnished to the committee, relating to rule-making authority in this area and jurisdictional rules numbered 4 A. through D., with staff commentary, is attached. The committee will report its recommendations on these rules at the meeting to be held July 28, 1978.

1. BASIC ISSUES

The committee considered the question of whether the Council has rule-making authority in the area of specifying the basis for jurisdiction. It was decided that, although the issue is not free from doubt, rules should be promulgated governing bases for personal jurisdiction. It is extremely difficult to make extensive revisions in the rules governing service of process without complementary changes relating to jurisdiction. The ultimate question should be left to the Legislature, as recommended on the last page of the staff memorandum.

Secondly, in the area of service of process under Rule 4, the committee felt that the present approach to service of summons was over-technical and placed too much emphasis on correctness of form. The basic question is whether the service of summons and complaint provides notice to the defendant. In an attempt to avoid over-technical interpretation of summons statutes, the draft accepted by the committee includes provisions 4 E. (3) and 4 H. which should be carefully examined by the Council. The committee also discussed the possibility of going even further in replacing the detailed provisions of Rule 4 F. (3), relating to the manner of service, with the following provisions:

(either within or without this state)

A F. (3) Summons shall be served in any manner reasonably calculated, under all the circumstances, to apprise the defendant of the existence and pendency of the action and to afford a reasonable opportunity to appear and defend.

insert

Memo to Council
Re: Summons and process rules
July 16, 1978

3. Change 4 G.(1) to say:

"On motion upon a showing by affidavit that service cannot be made by any other method more reasonably calculated to apprise the defendant of the existence and pendency of the action, the court may order..."

2. OTHER QUESTIONS

4 F.(3)(a). There is no present Oregon statute covering service of process on partnerships and unincorporated associations. This paragraph fills that gap. The issue is whether to include the existing language of ORS 15.100 relating to joint obligors. Although they are made so by existing statute, there may be some question whether one joint obligor should be the agent for service of process upon another.

4 G.(3). The language in the last sentence is designed to avoid a possible interpretation of the existing statutory language, "not less than once a week for four consecutive weeks," to require five publications.

7 B. At common law, a judgment could be modified by a court within the same term of court but not beyond that time. It is unclear whether this common law rule still applies in Oregon, but subsection (2) of this section reciting an ability of the court to relieve someone of a mistake due to excusable neglect would literally allow a judge to vacate a judgment long after it was entered by allowing late filings of motions for NOV and new trial, etc. Federal rules prohibit this by making the subsection inapplicable to those post judgment motions described in this rule. The issue is whether the Council wishes to follow the same pattern or further limit a judge's ability to allow an untimely act based on excusable neglect.

RULE 7

SUMMONS

A. Plaintiff and defendant defined. For purposes of ~~issuance and~~ ^{this rule} ~~service of summons~~, "plaintiff" shall include any party issuing summons and "defendant" shall include any party upon whom service of summons is sought.

B. Issuance. Any time after the action or proceeding is commenced, plaintiff or plaintiff's attorney may issue as many original summonses as either may elect and deliver such summonses to a person authorized to serve summons under section D. of this Rule.

C. Contents. The summons shall contain:

C.(1) The title of the cause, specifying the name of the court in which the complaint is filed and the names of the parties to the action.

C.(2) A direction to the defendant requiring defendant to appear and defend within the time required by subsection (4) of this section and shall notify defendant that in case of failure to do so, the plaintiff will apply to the court for the relief demanded in the complaint.

C.(2)(a) All summonses other than a summons to join a party pursuant to Rule 22 D. shall contain a notice in a size equal to at least 8-point type which may be substantially in the following form with the appropriate number of days inserted:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" in this case or the other side will win automatically. to "appear" you must file with the court a legal paper called a "motion" or

"answer." This paper must be given to the court within _____ days along with the required filing fee. It must be in proper form and a copy must be delivered or mailed to the plaintiff or his attorney.

If you have questions, you should see an attorney immediately.

C.(2)(b) A summons to join a party pursuant to Rule 22 D. (2) shall contain a notice in size equal to at least 8-point type which may be substantially in the following form with the appropriate number of days inserted.

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." This paper must be given to the court within _____ days along with the required filing fee. It must be in proper form and a copy must be delivered or mailed to the defendant or his attorney. If you have questions, you should see an attorney immediately.

C.(2)(c) A summons to join a party pursuant to Rule 22 D. (3) shall contain a notice in size equal to at least 8-point type which may be substantially in the following form with the appropriate number of days inserted.

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You may be liable for attorney fees in this case. Should plaintiff in

this case not prevail, a judgment for reasonable attorney fees will be entered against you, as provided by the agreement to which defendant alleges you are a party.

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." This paper must be given to the court within ___ days along with the required filing fee. It must be in proper form and a copy must be delivered or mailed to the defendant or his attorney.

If you have questions, you should see an attorney immediately.

C.(3) A subscription by the plaintiff or by a resident attorney of this state, with the addition of the post office address at which papers in the action, may be served by mail.

C.(4) The summons shall require the defendant to appear and defend within the following times:

C.(4)(a) If the summons is served personally or by mail upon defendant or served personally or by mail upon another authorized to accept service of the summons for the defendant, the defendant shall appear and defend within 30 days from the date of service.

C.(4)(b) If the summons is served by publication pursuant to section G. of this Rule, the defendant shall appear and defend within 30 days from a date stated in the summons. The date so stated in the summons shall be the date of the first publication.

D. By whom served; compensation. A summons may be served by any competent person 18 years of age or older who is a resident of the state where service is made or of this state and is not a party to the action nor an officer, director, ^{OR} ~~or~~ ^{NDR attorney Fox} employee of any party, corporate or otherwise. Compensation to

a sheriff or a sheriff's deputy of the county in this state where the person served is found, or such person's dwelling house or usual place of abode is located, who serves a summons, shall be prescribed by statute or rule. If any other person serves the summons, a reasonable fee may be paid for service. This compensation shall be part of disbursements and shall be recovered as provided in ORS 20.020.

E. Return; proof of service. (1) The summons shall be promptly returned to the clerk with whom the complaint is filed with proof of service or mailing, or that defendant cannot be found. When served out of the county in which the action is commenced, the summons may be returned by mail.

E.(2) Proof of service of summons or mailing may be made as follows:

E.(2)(a) Personal service or mailing shall be proved by (i) the affidavit of the server indicating the time, place and manner of service, that the server is a competent person 18 years of age or older and a resident of the state of service or this state and is not a party to nor an officer, ^{or employee of any corporation or otherwise,} ~~or director of a corporate party to the action,~~ and that the ^{NOR attorney fee} server knew that the person, firm or corporation served is the identical one named in the action. If the defendant is not personally served, the server shall state in the affidavit when, where and with whom a copy of the summons and complaint was left or describe in detail the manner and circumstances of service. If the summons and complaint were mailed, the affidavit shall state the circumstances of mailing and the return receipt shall be attached. (ii) If the copy of the summons is served by the sheriff, or a sheriff's deputy, of the county in this state where the person served was found or

such person's dwelling house or usual place of abode is located, proof may be made by the sheriff's or deputy's certificate of service indicating the time, place and manner of service, and if defendant is not personally served, when, where and with whom the copy of the summons and complaint was left or describe in detail the manner and circumstances of service. If the summons and complaint were mailed, the affidavit shall state the circumstances of mailing and the return receipt shall be attached. (iii) An affidavit or certificate containing proof of service may be made upon the summons or as a separate endorsement.

E.(2)(b) Service by publication shall be proved by an affidavit in substantially the following form:

Affidavit of Publication

State of Oregon,)
) ss.
County of _____)

I, _____, being first duly sworn, depose and say that I am the _____
_____ (here set forth the title or job description of the
person making the affidavit), of the _____,
a newspaper of general circulation, as defined by ORS 193.010 and 193.020;
published at _____ in the aforesaid county and state; that I know
from my personal knowledge that the _____, a printed copy of
which is hereto annexed, was published in the entire issue of said newspaper
four times in the following issues (here set forth dates of issues in which
the same was published).

Subscribed and sworn to before me this ____ day of _____, 19__.

Notary Public of Oregon.

My commission expires

_____ day of _____, 19 __.

E.(2)(c) In any case proof may be made by written admission of the defendant.

E.(2)(d) The affidavit of service may be made and certified by a notary public, or other official authorized to administer oaths and acting as such by authority of the United States, or any state or territory of the United States, or the District of Columbia, and his official seal, if he has one, shall be affixed to the affidavit. The signature of such notary or other official, when so attested by the affixing of his official seal, if he has one, shall be prima facie evidence of his authority to make and certify such affidavit.

E.(3) If summons has been properly served, failure to return the summons or make or file a proper proof of service shall not affect the validity of the service.

F. Manner of service. (1) Summons shall be served, either within or without this State, in any manner reasonably calculated, under all the circumstances, to apprise the defendant of the existence and pendency of the action and to afford a reasonable opportunity to appear and defend.

F.(2) For personal service, the person serving the summons shall

deliver a certified copy of the summons and a certified copy of the complaint to the person to be served. For service by mail or mailing of summons and complaint as otherwise required or allowed by this Rule, the plaintiff shall mail a certified copy of the summons and a certified copy of the complaint to the person to be served, by certified or registered mail, return receipt requested. Service by mail shall be complete when the registered or certified mail is delivered and the return receipt signed or when acceptance is refused.

F. (3) Except when service by publication is available pursuant to section G. of this Rule ^{and} ~~for~~ service pursuant to subsection (4) of this section, service of summons either within or without this State may be substantially as follows:

F. (3)(a) Except as provided in paragraphs (b) and (c) of this subsection, upon a natural person:

F. (3)(a)(i) by personally serving the defendant; or,

F. (3)(a)(ii) If defendant cannot be found personally at defendant's dwelling house or usual place of abode, then by personal service upon any person over 14 years of age residing in the dwelling house or usual place of abode of defendant, or if defendant maintains a regular place of business or office, by leaving a copy of the summons and complaint at such place of business or office, with the person who is apparently in charge. Where service under this subparagraph is made on one other ~~than~~ the defendant, the plaintiff shall cause to be mailed a copy of the summons and complaint to the defendant at his dwelling house or

usual place of abode, together with a statement of the date, time and place at which service was made; or,

F.(3)(a)(iii) In any case, by serving the summons in a manner specified in this Rule or by any other rule or statute on the defendant or upon an agent authorized by law to accept service of summons for the defendant.

F.(3)(b) Upon a minor under the age of 14 years, by service in the manner specified in paragraph (a) of this subsection upon such minor, and also upon such minor's father, mother, conservator of his estate or guardian, or if there be none, then upon any person having the care or control of the minor or with whom such minor resides or in whose service such minor is employed or upon a guardian ad litem appointed pursuant to Rule 27 A.(2).

F.(3)(c) Upon an incapacitated person, by service in the manner specified in paragraph (a) of this subsection upon such person and also upon the conservator of such person's estate or guardian, or if there be none, upon a guardian ad litem appointed pursuant to Rule 27 B.(2).

F.(3)(d) Upon a domestic or foreign corporation, limited partnership or other unincorporated association which is subject to suit under a common name:

F.(3)(d)(i) By personal service upon a registered agent, officer, director, general partner, or managing agent of the corporation, limited partnership or association. In lieu of delivery of a copy of summons and complaint to the registered agent, officer, general partner or managing agent, such copies may be left at the office of such registered agent,

director
officer, general partner or managing agent, with the person who is apparently in charge of the office.

F.(3)(d)(ii) If no registered agent, officer, director, general partner, or managing agent can be found nor had ^s an office in the county where the action or proceeding is filed, the summons may be served: by personal service upon any person over the age of 14 years who resides at the dwelling house or usual place of abode of such registered agent, officer, director, general partner *or* managing agent; ~~or by mail upon such registered agent, officer, director, general partner or managing agent;~~ or, by personal service on any clerk or agent of the corporation, limited partnership or association who may be found in the county where the action or proceeding is filed; or by mailing a copy of the summons and complaint to such registered agent, officer, director, general partner or managing agent. Where service is made by leaving a copy of the summons and complaint at the dwelling house or usual place of abode of ^{a registered agent,} persons ~~officer, director, general partner, or managing agent,~~ identified in subparagraph (i) of this paragraph, the plaintiff shall immediately cause a copy of the summons and complaint to be mailed to the person to whom the summons is directed, at his dwelling house or usual place of abode, together with a statement of the date, time and place at which service was made.

F.(3)(d)(iii) In any case, by serving the summons in a manner specified in this Rule or by any other rule or statute upon the defendant or an agent authorized by appointment or law to accept service of summons for the defendant.

7th page

Rule 7

F.(3)(e) Upon the State, by personal service upon the Attorney General or by leaving a copy of the summons and complaint at the Attorney General's office with a deputy, assistant or clerk.

F.(3)(f) Upon any county, incorporated city, school district, or other public corporation, commission or board, by personal service upon an officer, director, managing agent, clerk or secretary thereof. In lieu of delivery of the copy of the summons and complaint personally to such officer, director, managing agent, clerk or secretary, such copies may be left in the office of such officer, director, managing agent, clerk, or secretary with the person who is apparently in charge of the office. When a county is a party to an action, in addition to the service of summons specified above, an additional copy of the summons and complaint shall also be served upon the District Attorney of the county in the same manner as required for service upon the county clerk.

F.(4) When service is to be effected upon a party in a foreign country, it is also sufficient if service of summons is made in the manner prescribed by the law of the foreign country for service in that country in its courts of general jurisdiction, or as directed by the foreign authority in response to letters rogatory, or as directed by order of the court, provided, however, that in all cases such service shall be reasonably calculated to give actual notice.

G. Publication. (1) On motion upon a showing by affidavit that service cannot be made by any other method more reasonably calculated to apprise the defendant of the existence and pendency of the action, the court may order service by publication.

shall proceed against such unknown heirs or persons in the same manner as against named defendants served by publication and with like effect, and any such unknown heirs or persons who have or claim any right, estate, lien or interest in the real property in controversy, at the time of the commencement of the action and served by publication, shall be bound and concluded by the judgment in the action, if the same is in the favor of the plaintiff, as effectively as if the action was brought against such defendants by name.

G.(6) A defendant against whom publication is ordered or his representatives may, upon good cause shown and upon such terms as may be proper, be allowed to defend after judgment and within one year after entry of judgment. If the defense is successful, or the judgment or any part thereof has been collected or otherwise enforced, restitution may be ordered by the court, but the title to property sold upon execution issued on such judgment, to a purchaser in good faith, shall not be affected thereby.

G.(7) Service shall be complete at the date of the last publication.

H. Disregard of error; actual notice. Failure to strictly comply with provisions of this Rule relating to the form of summons, issuance of summons and the person who may serve summons shall not affect the validity of service of summons or the existence of jurisdiction over the person, if the court determines that the defendant received actual notice of the substance and pendency of the action. The court may allow amendment to a summons or proof of summons and shall disregard any error in service of summons that does not materially prejudice the substantive rights of the party against whom summons was issued.

I. Telegraphic transmission. A summons and complaint may be transmitted by telegraph as provided in Rule 8 D.

BACKGROUND NOTE

For service of process, see Rule 8.

For service of subpoenas, see Rule 55.

15.085
ORS sections superseded: ~~15.010~~, 15.020, 15.030, 15.040, 15.060, 15.080, 15.090, 15.110, 15.120, 15.130, 15.140, 15.150, 15.160, 15.170, 15.180, ~~15.210~~, 15.220, ~~15.225~~.

15.210,

COMMENT

This rule brings all general provisions for service of summons together in one place. It is designed to give a fairly specific description of the procedure to be followed but to reduce overtechnical requirements in commencement of an action. The important standard to be maintained is adequate notice to the defendant; if this is met, then deviations from the prescribed procedures for form of summons, issuance of summons, person serving, form of return and manner of service should not invalidate the service. Subsections E.(3) and F.(1) and Section H. make this clear. Subsection F.(2) is the basic rule for manner of service; subsection F.(3) describes acceptable methods of service that would meet the standard of subsection F.(2), but these are not exclusive. Note, however, that summons must be served in some manner; mere knowledge of pendency and nature of the action will not require the defendant to appear and defend.

The defined methods of service apply both to in state and out of state service. The grounds for personal jurisdiction are covered in Rule 4. They include service within the state and domicile within the state and to that extent location of service is related to personal jurisdiction; beyond that, there is no reason to limit methods of service by territorial boundaries.

The rule, in conjunction with revisions to ORS sections relating to appointments of agents, eliminates any service of process on state agents who are fictionally appointed as agents for service of process upon out of state defendants. Modern jurisdictional theory does not require service within the boundaries of the state, and requiring service on the Corporation Commissioner or other state official is a useless act which is burdensome and expensive for the officials and litigants.

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Section B. is based upon ORS 15.020.

Subsections C.(1) to (3) are based upon ORS 15.040 and 15.220. Subsection C.(4) changes the disparate time for response to services in the state, in another state, outside the United States, and by publication of ORS 15.040, 15.110 and 15.140 to a uniform 30-day period. Service upon another authorized to accept service of summons for the defendant would include leaving a copy of the summons and complaint at a dwelling house or usual place of abode or an office or other type of service upon someone other than the named defendant, as described in these rules or by statute.

Section D. is based upon ORS 15.160 but eliminates a specific description of the sheriff. The sheriff, as a person over 18, can, of course, serve unless the sheriff is a party.

Section E. is based upon 15.060, 15.110 and 15.160. Subsection E.(3) would avoid invalidation of good service of summons because of some technical defect in the return. A return and proof of service are still required by subsections E.(1) and (2).

The methods of service described in subsection F.(3) are modified forms of the methods of service described in 15.100. The most significant change is paragraph F.(3)(d), which provides that the preferred method of service is personal service (including leaving at their office) upon a responsible officer, director or agent in the county where the suit is filed; if this cannot be accomplished, four alternatives are available to the plaintiff: personal service (including leaving at their office) on such persons wherever they may be found within or without the state; substituted service at the dwelling house or usual place of abode of such persons, whether located within or without the state; mailing to such persons; or service upon any agent who may be found in the county where the suit was filed. Since the basic standard remains adequacy of notice, the agent so served must be one likely to notify responsible persons in the corporation of the pendency of the action. This paragraph applies to associations and limited partnerships which may be sued under a common name; service in the case of partnerships and associations not suable under a common name is service on the named individual defendants and is covered by paragraph F.(3)(a). The effect of service on less than all partnership or association members in terms of judgments and enforcement of judgments is left to ORS 15.100 and other rules dealing with that subject. ORS 17.085 and 17.090 were eliminated.

Subsection F.(4) was adapted from Federal Rule 4(i).

The publication provisions of section G. differ from ORS 15.120 to 15.180 in the circumstances when publication is available. Under the existing statutes, publication is available only in certain classes of cases depending upon location and availability of a defendant for service within the state. This rule makes publication available only as a last resort, when service can be accomplished by no other reasonable method, but makes such publication available in those circumstances for any case. Once publication is available, the procedure followed is similar to that of the present statutes.

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Rule 7
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...for purposes of this rule, the court shall have jurisdiction to order the production of documents and information in the possession, custody or control of any party to the litigation.

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Rule 7

October 16, 1978

...The title of the case, specifying the name of the court in which the complaint is filed and the names of the parties to the action.

...This rule shall apply to the court for the relief described in the complaint.

RULE 7

SUMMONS

A. Plaintiff and defendant defined. For purposes of this rule, "plaintiff" shall include any party issuing summons and "defendant" shall include any party upon whom service of summons is sought.

B. Issuance. Any time after the action or proceeding is commenced, plaintiff or plaintiff's attorney may issue as many original summonses as either may elect and deliver such summonses to a person authorized to serve summons under section E. of this rule. A summons is issued when subscribed by plaintiff or a resident attorney of this state.

C.(1) Contents. The summons shall contain:

C.(1)(a) Title. The title of the cause, specifying the name of the court in which the complaint is filed and the names of the parties to the action.

C.(1)(b) Direction to defendant. A direction to the defendant requiring defendant to appear and defend within the time required by subsection (2) of this section and ^{a notikulu} shall ~~shall~~ ^{to} notify defendant that in case of failure to do so, the plaintiff will apply to the court for the relief demanded in the complaint.

C.(1)(c) Subscription; post office address. A subscription by the plaintiff or by a resident attorney of this state, with the addition of the post office address at which papers in the action may be served by mail.

C. (2) Time for response. If the summons is served by any manner other than publication, the defendant shall appear and defend within 30 days from the date of service. If the summons is served by publication pursuant to section D. (5) of this rule, the defendant shall appear and defend within 30 days from a date stated in the summons. The date so stated in the summons shall be the date of the first publication.

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C. (3) Notice to party served.

C. (3)(a) In general. All summonses other than a summons to join a party pursuant to Rule 22 D. shall contain a notice ^{printed type} in a size equal to at least 8-point type which may be substantially in the following form with the appropriate number of days inserted:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." This paper must be given to the court within 30 days along with the required filing fee. It must be in proper form and a copy must be delivered or mailed to the plaintiff or the plaintiff's attorney.

If you have questions, you should see an attorney immediately.

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C. (3) (b) Service on maker of contract for counterclaim.

A summons to join a party pursuant to Rule 22 D. (2) shall contain a notice ^{printed in a type} in size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." This paper must be given to the court within 30 days along with the required filing fee. It must be in proper form and a copy must be delivered or mailed to the defendant or the defendant's attorney.

If you have questions, you should see an attorney immediately.

C. (3) (c) Service on maker of contract for attorney's fees.

A summons to join a party pursuant to Rule 22 D. (3) shall contain a notice ^{printed in a type} in size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You may be liable for attorney fees in this case. Should plaintiff in this case not prevail, a judgment for reasonable

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attorney fees will be entered against you, as provided by the agreement to which defendant alleges you are a party.

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." This paper must be given to the court within 30 days along with the required filing fee. It must be in proper form and a copy must be delivered or mailed to the defendant or the defendant's attorney.

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If you have questions, you should see an attorney immediately.

D. Manner of service.

D. (1) Notice required. Summons shall be served, either within or without this state, in any manner reasonably calculated, under all the circumstances, to apprise the defendant of the existence and pendency of the action and to afford a reasonable opportunity to appear and defend. Summons may be served in a manner specified in this rule or by any other rule or statute on the defendant or upon an agent authorized by appointment or law to accept service of summons for the defendant. Service may be made, subject to the restrictions and requirements of this rule, by the following methods: personal service of summons upon defendant or an agent of defendant authorized

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to receive process; substituted service by leaving a copy of summons and complaint at a person's dwelling house or usual place of abode; ^{office service by leaving with a person who is usually in charge of or on control of} service by mail; or, service by publication.

P3 Hollis memo - ways of service

D. (2) Service methods.

D. (2)(a) Personal service. Personal service may be made by delivery of a certified copy of the summons and a certified copy of the complaint to the person to be served.

D. (2)(b) Substituted service. Substituted service may be made by delivering a certified copy of the summons and complaint to any person over 14 years of age residing in the dwelling house or usual place of abode of the person to be served. Where substituted service is used, the plaintiff shall cause to be mailed a certified copy of the summons and complaint to the defendant at defendant's dwelling house or usual place of abode, together with a statement of the date, time and place at which substituted service was made.

P9 New 10 memo Residing therein P3 Hollis memo

D. (2)(c) Office service. If the person to be served maintains an office ~~accessible to the public~~ for the conduct of business, office service may be made ^{during normal working hours} by leaving a certified copy of the summons and complaint at such office ^{with the person} who is apparently in charge. ^{where office service is used the plaintiff shall cause to be mailed a certified copy}

P4 Hollis memo not reliable

D. (2)(d) Service by mail. Service by mail, when required or allowed by this rule, shall be made by mailing a certified copy of the summons and a certified copy of the complaint to the defendant by certified or registered mail, return receipt requested. Service by mail shall be complete when the registered or certified

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OR The summons and complaint to the defendant at defendant's dwelling house or usual place of abode, together with a statement of the date, time and place at which substituted service was made.

mail is delivered and the return receipt signed or when acceptance is (refused.)

D. (3) Particular defendants. Service may be made upon specified defendants as follows:

D. (3) (a) Individuals.

D. (3) (a) (i) Generally. Upon an individual defendant by personal service upon such defendant or an agent authorized by appointment or law to receive service of summons or if defendant cannot be personally found, at defendant's dwelling house or usual place of abode, then by substituted service or by office service upon such defendant or an agent authorized by appointment or law to receive service of summons.

D. (3) (a) (ii) Minors. Upon a minor under the age of 14 years, by service in the manner specified in subparagraph (i) of this paragraph upon such minor, and also upon such minor's father, mother, conservator of such minor's estate, or guardian, or if there be none, then upon any person having the care or control of the minor or with whom such minor resides or in whose service such minor is employed or upon a guardian ad litem appointed pursuant to Rule 27 A. (2).

D. (3) (a) (iii) Incapacitated persons. Upon an incapacitated person, by service in the manner specified subparagraph (i) of this paragraph upon such person and also upon the conservator of such person's estate or guardian, or if there be none, upon a guardian ad litem

appointed pursuant to Rule 27 B. (2).

D. (3) (b) Corporations; limited partnerships, unincorporated associations subject to suit under a common name. Upon a domestic or foreign corporation, limited partnership, or other unincorporated association which is subject to suit under a common name:

D. (3) (b) (i) Primary service method. By personal service or office service upon a registered agent, officer, director, general partner, or managing agent of the corporation, limited partnership, or association.

D. (3) (b) (ii) Alternatives. If a registered agent, officer, director, general partner, or managing agent cannot be found and (does not have an office in the county) where the action or proceeding is filed, the summons may be served: by substituted service upon such registered agent, officer, director, general partner, or managing agent; or, by personal service on any clerk or agent of the corporation, limited partnership or association who may be found in the county where the action or proceeding is filed; or by mailing a copy of the summons and complaint to a registered agent, officer, director, general partner, or managing agent.

D. (3) (c) State. Upon the state, by personal service upon the Attorney General or by leaving a copy of the summons and complaint at the Attorney General's office with a deputy, assistant, or clerk.

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D. (3)(d) Public bodies. Upon any county, incorporated city, school district, or other public corporation, commission or board, by personal service/upon an officer, director, managing agent, clerk or secretary thereof. When a county is a party to an action, in addition to the service of summons specified above, an additional copy of the summons and complaint shall also be served upon the District Attorney of the county in the same manner as required for service upon the county clerk.

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clerk or secretary

D. (4) Service in foreign country. When service is to be effected upon a party in a foreign country, it is also sufficient if service of summons is made in the manner prescribed by the law of the foreign country for service in that country in its courts of general jurisdiction, or as directed by the foreign authority in response to letters rogatory, or as directed by order of the court, provided, however, that in all cases such service shall be reasonably calculated to give actual notice.

~~D. (5)~~ Service by publication or mailing to a post office address.

✓ ~~D. (5)~~ (a) On motion upon a showing by affidavit that service cannot be made by any other method more reasonably calculated to apprise the defendant of the existence and pendency of the action or proceeding, the

the court may order service by publication, or at the discretion of the court, by mailing without publication to a specified post office address of defendant, return receipt requested, deliver to addressee only.

~~D E~~ (5) (b) Contents of published summons. In addition to the contents of a summons as described in section C. of this rule, a published summons shall also contain a summary statement of the object of the complaint and the demand for relief, and the notice required in section C. (3) shall state: "This paper must be given to the court within 30 days of the date of first publication specified herein along with the required filing fee." The published summons shall also contain the date of the first publication of the summons.

~~D E~~ (5) (c) Where published. An order for publication shall direct publication to be made in a newspaper of general circulation in the county where the action is commenced, or if there is no such newspaper, then in a newspaper to be designated as most likely to give notice to the person to be served. Such publication shall be four times in successive calendar weeks.

~~D E~~ (5) (d) Mailing summons and complaint. If service by publication is ordered and defendant's post office address is known or can with reasonable diligence be ascertained, the plaintiff shall mail a copy of the summons and complaint to the defendant. When the address of any defendant is not known or cannot be ascertained upon diligent inquiry, a copy of the summons and complaint shall be mailed to the defendant at

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defendant's last known address. If plaintiff does now know and cannot ascertain, upon diligent inquiry, the present ^{or} ~~and~~ last known address of the defendant, mailing a copy of the summons and complaint is not required.

~~D.B.~~ (5) (e) Unknown heirs or persons. If service cannot be made by another method described in this section because defendants are unknown heirs or persons as described in sections I. and J. of Rule 20, the action or proceeding shall proceed against such unknown heirs or persons in the same manner as against named defendants served by publication and with like effect, and any such unknown heirs or persons who have or claim any right, estate, lien or interest in the real property in controversy, at the time of the commencement of the action and served by publication, shall be bound and concluded by the judgment in the action, if the same is in ~~the~~ favor of the plaintiff, as effectively as if the action or proceeding was brought against such defendants by name.

~~D.B.~~ (5) (f) Defending after judgment. A defendant against whom publication is ordered or such defendant's representatives may, upon good cause shown and upon such terms as may be proper, be allowed to defend after judgment and within one year after entry of judgment. If the defense is successful, ^{= and =} ~~of~~ the judgment or any part thereof has been collected or otherwise enforced, restitution may

be ordered by the court, but the title to property sold upon execution issued on such judgment, to a purchaser in good faith, shall not be affected thereby.

~~D.B.~~ (5)(g) Completion of service. Service shall be complete ~~at~~ the date of the last publication.

~~E.B.~~ By whom served; compensation. A summons may be served by any competent person 18 years of age or older who is a resident of the state where service is made or of this state and is not a party to the action nor an officer, director, or employee of, nor attorney for, any party, corporate or otherwise. Compensation to a sheriff or a sheriff's deputy in this state who serves a summons shall be prescribed by statute or rule. If any other person serves the summons, a reasonable fee may be paid for service. This compensation shall be part of disbursements and shall be recovered as provided in ORS 20.020.

~~F.B.~~ Return; proof of service.

~~F.B.~~ (1) Return of summons. The summons shall be promptly returned to the clerk with whom the complaint is filed with proof of service or mailing, or that defendant cannot be found. The summons may be returned by mail.

~~F.B.~~ (2) Proof of service. Proof of service of summons or mailing may be made as follows:

~~F.B.~~ (2)(a) Personal service or mailing. Personal service or mailing shall be proved by:

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~~F.R.~~ (2)(a)(i) The affidavit of the server indicating the time, place, and manner of service, that the server is a competent person 18 years of age or older and a resident of the state of service or this state and is not a party to nor an officer, director, ~~or~~ ~~employee~~ employee of, nor attorney for any party, corporate or otherwise, and that the server knew that the person, firm or corporation served ^{was} ~~is~~ the identical one named in the action. If the defendant is not personally served, the server shall state in the affidavit when, where, and with whom a copy of the summons and complaint was left or describe in detail the manner and circumstances of service. If the summons and complaint were mailed, the affidavit shall state the circumstances of mailing and the return receipt shall be attached.

~~F.R.~~ (2)(a)(ii) If the copy of the summons is served by the sheriff, or a sheriff's deputy, proof may be made by the sheriff's or deputy's certificate of service indicating the time, place, and manner of service, and if defendant is not personally served, when, where, and with whom the copy of the summons and complaint was left or describe in detail the manner and circumstances of service. If the summons and complaint were mailed, the affidavit shall state the circumstances of mailing and the return receipt shall be attached.

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~~F.~~ (2)(a)(iii) An Affidavit or certificate containing proof of service may be made upon the summons or as a separate ~~document~~ endorsement.

~~F.~~ (2)(b) Publication. Service by publication shall be ~~proved~~ proved by an affidavit in substantially the following form:

Affidavit of Publication

State of Oregon,)
) ss.
County of _____)

I, _____, being first duly sworn, depose and say that I am the _____ (here set forth the title or job description of the person making the affidavit), of the _____, a newspaper of general circulation, as defined by ORS 193.010 and 193.020; published at _____ in the aforesaid county and state; that I know from my personal knowledge that the _____, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper four times in the following issues: (here set forth dates of issues in which the same was published.

Subscribed and sworn to before me this ____ day of _____, 19 ____.

Notary Public of Oregon
My commission expires
____ day of _____, 19 ____.

Add.
Part I

~~F.R.~~ (2)(c) Making and certifying affidavit. The affidavit of service may be made and certified ^{by} a notary public, or other official authorized to administer oaths and acting as such by authority of the United States, or any state or territory of the United States, or the District of Columbia, and the official seal, if any, of such person shall be affixed to the affidavit. The signature of such notary or other official, when so attested by the affixing of the official seal, if any, of such person, shall be prima facie evidence of authority to make and certify such affidavit.

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~~F.R.~~ (3) Written admission. In any case proof may be made by written admission of the defendant.

~~F.R.~~ (4) Failure to make proof; validity of service. If summons has been properly served, failure to make or file a proper proof of service shall not affect the validity of the service.

~~C.R.~~ Disregard of error; actual notice. Failure to strictly comply with provisions of this rule relating to the form of summons, issuance of summons, and the person who may serve summons shall not affect the validity of service of summons or the existence of jurisdiction over the person, if the court determines that the defendant received actual notice of the substance and pendency of the action. The court may allow amendment to a summons or affidavit or certificate of service of summons and shall disregard any error in the content or

service of summons that does not materially prejudice the substantive rights of the party against whom summons was issued.

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that the defendant received actual notice of the substance and pendency of the action. The court may allow amendment to a summons or proof of service of summons and shall disregard any error in service of summons that does not materially prejudice the substantive rights of the party against whom summons was issued.

I. Telegraphic transmission. A summons and complaint may be transmitted by telegraph as provided in Rule 8 D.

BACKGROUND NOTE

For service of process, see Rule 8. For service of subpoenas, see Rule 55.

ORS sections superseded: 15.020, 15.030, 15.040, 15.060, 15.080, 15.085, 15.090, 15.110, 15.120, 15.130, 15.140, 15.150, 15.160, 15.170, 15.180, 15.210, 15.220, 45.120.

COMMENT

This rule brings all general provisions for service of summons together in one place. It is designed to give a fairly specific description of the procedure to be followed but to reduce overtechnical requirements in commencement of an action. The important standard to be maintained is adequate notice to the defendant; if this is met, then deviations from the prescribed procedures for form of summons, issuance of summons, person serving, form of return and manner of service should not invalidate the service. Subsections E.(3) and F.(1) and Section 7 H. make this clear. Subsection F.(1) is the basic rule for manner of service; subsection F.(3) describes acceptable methods of service that would meet the standard of subsection F.(1), but these are not exclusive. Note, however, that summons must be served in some manner; mere knowledge of pendency and nature of the action will not require the defendant to appear and defend.

The defined methods of service apply both to in state and out of state service. The grounds for personal jurisdiction are covered in Rule 4. They include service within the state and domicile within the state and to that extent location of service is related to personal jurisdiction; beyond that, there is no reason to limit methods of service by territorial boundaries.

The rule does not include any service of process on state agents who are fictionally appointed as agents for service of

process upon out of state defendants. Modern jurisdictional theory does not require service within the boundaries of the state, and requiring service on the Corporation Commissioner or other state official is a useless act which is burdensome and expensive for the officials and litigants. To the extent that such service is retained in separate ORS sections, it would be within subparagraphs F.(3)(a)(iii) and F.(3)(d)(iii).

Section B. is based upon ORS 15.020.

Subsections C.(1) to (3) are based upon ORS 15.040 and 15.220. Subsection C.(4) changes the disparate time for response to services in the state, in another state, outside the United States, and by publication of ORS 15.040, 15.110 and 15.140 to a uniform 30-day period. Service upon another authorized to accept service of summons for the defendant would include leaving a copy of the summons and complaint at a dwelling house or usual place of abode or an office or any type of service upon someone other than the named defendant.

Section 7 D. is based upon ORS 15.060 but eliminates a specific description of the sheriff. The sheriff, as a person over 18, can, of course, serve unless the sheriff is a party.

Section 7 E. is based upon 15.060, 15.110 and 15.160. Subsection E.(3) would avoid invalidation of good service of summons because of some technical defect in the return. A return and proof of service are still required by subsections E.(1) and (2).

The methods of service described in subsection F.(3) are modified forms of the methods of service described in 15.080. The most significant change is paragraph F.(3)(d), which provides that the preferred method of service is personal service (including leaving at their office) upon a responsible officer, director or agent in the county where the action is filed; if this cannot be accomplished, four alternatives are available to the plaintiff: personal service (including leaving at their office) upon such persons wherever they may be found within or without the state; substituted service at the dwelling house or usual place of abode of such persons, whether located within or without the state; mailing to such persons; or service upon any agent who may be found in the county where the action was filed. Since the basic standard remains adequacy of notice, the agent so served must be one likely to notify responsible persons in the corporation of the pendency of the action. This paragraph applies to associations and limited partnerships which may be sued under a common name; service in the case of partnerships and associations not suable under a common name is service on the named individual defendants and is covered by paragraph F.(3)(a). The effect of service on less than all partnership or association members in terms of judgments and enforcement of judgments is left to ORS 15.100 and other rules

RULE 7

SUMMONS

A. Plaintiff and defendant defined. For purposes of this rule, "plaintiff" shall include any party issuing summons and "defendant" shall include any party upon whom service of summons is sought.

B. Issuance. Any time after the action or proceeding is commenced, plaintiff or plaintiff's attorney may issue as many original summonses as either may elect and deliver such summonses to a person authorized to serve summons under section D. of this rule.

C. Contents. The summons shall contain:

C.(1) The title of the cause, specifying the name of the court in which the complaint is filed and the names of the parties to the action.

C.(2) A direction to the defendant requiring defendant to appear and defend within the time required by subsection (4) of this section and shall notify defendant that in case of failure to do so, the plaintiff will apply to the court for the relief demanded in the complaint.

C.(2)(a) All summonses other than a summons to join a party pursuant to Rule 22 D. shall contain a notice in a size equal to at least 8-point type which may be substantially in the following form with the appropriate number of days inserted:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or

"answer." This paper must be given to the court within _____ days along with the required filing fee. It must be in proper form and a copy must be delivered or mailed to the plaintiff or his attorney.

If you have questions, you should see an attorney immediately.

C.(2)(b) A summons to join a party pursuant to Rule 22 D.(2) shall contain a notice in size equal to at least 8-point type which may be substantially in the following form with the appropriate number of days inserted.

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." This paper must be given to the court within _____ days along with the required filing fee. It must be in proper form and a copy must be delivered or mailed to the defendant or his attorney. If you have questions, you should see an attorney immediately.

C.(2)(c) A summons to join a party pursuant to Rule 22 D.(3) shall contain a notice in size equal to at least 8-point type which may be substantially in the following form with the appropriate number of days inserted.

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You may be liable for attorney fees in this case. Should plaintiff in

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this case not prevail, a judgment for reasonable attorney fees will be entered against you, as provided by the agreement which defendant alleges you are a party.

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." This paper must be given to the court within ____ days along with the required filing fee. It must be in proper form and a copy must be delivered or mailed to the defendant or his attorney.

If you have questions, you should see an attorney immediately.

C.(3) A subscription by the plaintiff or by a resident attorney of this state, with the addition of the post office address at which papers in the action, may be served by mail.

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C.(4) The summons shall require the defendant to appear and defend within the following times:

C.(4)(a) If the summons is served personally or by mail upon defendant or served personally or by mail upon another authorized to accept service of the summons for the defendant, the defendant shall appear and defend within 30 days from the date of service.

C.(4)(b) If the summons is served by publication pursuant to section G. of this Rule, the defendant shall appear and defend within 30 days from a date stated in the summons. The date so stated in the summons shall be the date of the first publication.

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D. By whom served; compensation. A summons may be served by any competent person 18 years of age or older who is a resident of the state where service is made or of this state and is not a party to the action nor an officer, director, or employee of, nor attorney for, any party, corporate or otherwise. Compensation to a sheriff or a sheriff's deputy

of the county in this state where the person served is found, or such person's dwelling house or usual place of abode is located, who serves a summons, shall be prescribed by statute or rule. If any other person serves the summons, a reasonable fee may be paid for service. This compensation shall be part of disbursements and shall be recovered as provided in ORS 20.020.

E. Return; proof of service. (1) The summons shall be promptly returned to the clerk with whom the complaint is filed with proof of service or mailing, or that defendant cannot be found. When served out of the county in which the action is commenced, the summons may be returned by mail.

E.(2) Proof of service of summons or mailing may be made as follows:

E.(2)(a) Personal service or mailing shall be proved by (i) the affidavit of the server indicating the time, place and manner of service, that the server is a competent person 18 years of age or older and a resident of the state of service or this state and is not a party to nor an officer, director or employee of, nor attorney for, any party, corporate or otherwise, and that the server knew that the person, firm or corporation served is the identical one named in the action. If the defendant is not personally served, the server shall state in the affidavit when, where and with whom a copy of the summons and complaint was left or describe in detail the manner and circumstances of service. If the summons and complaint were mailed, the affidavit shall state the circumstances of mailing and the return receipt shall be attached. (ii) If the copy of the summons is served by the sheriff, or a sheriff's deputy, of the county in this state where the person served was found or

such person's dwelling house or usual place of abode is located, proof may be made by the sheriff's or deputy's certificate of service indicating the time, place and manner of service, and if defendant is not personally served, when, where and with whom the copy of the summons and complaint was left or describe in detail the manner and circumstances of service. If the summons and complaint were mailed, the affidavit shall state the circumstances of mailing and the return receipt shall be attached. (iii) An affidavit or certificate containing proof of service may be made upon the summons or as a separate endorsement.

E.(2)(b) Service by publication shall be proved by an affidavit in substantially the following form:

Affidavit of Publication

State of Oregon,)
) ss.
 County of _____.)

I, _____, being first duly sworn, depose and say that I am the _____
 _____ (here set forth the title or job description of the
 person making the affidavit), of the _____,
 a newspaper of general circulation, as defined by ORS 193.010 and 193.020;
 published at _____ in the aforesaid county and state; that I know
 from my personal knowledge that the _____, a printed copy of
 which is hereto annexed, was published in the entire issue of said newspaper
 four times in the following issues; (here set forth dates of issues in which
 the same was published).

Subscribed and sworn to before me this ____ day of _____, 19__.

Notary Public of Oregon.

My commission expires

_____ day of _____, 19 __.

E.(2)(c) In any case proof may be made by written admission of the defendant.

E.(2)(d) The affidavit of service may be made and certified by a notary public, or other official authorized to administer oaths and acting as such by authority of the United States, or any state or territory of the United States, or the District of Columbia, and his official seal, if he has one, shall be affixed to the affidavit. The signature of such notary or other official, when so attested by the affixing of his official seal, if he has one, shall be prima facie evidence of his authority to make and certify such affidavit.

E.(3) If summons has been properly served, failure to return the summons or make or file a proper proof of service shall not affect the validity of the service.

F. Manner of service. (1) Summons shall be served, either within or without this State, in any manner reasonably calculated, under all the circumstances, to apprise the defendant of the existence and pendency of the action and to afford a reasonable opportunity to appear and defend.

F.(2) For personal service, the person serving the summons shall

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deliver a certified copy of the summons and a certified copy of the complaint to the person to be served. For service by mail or mailing of summons and complaint as otherwise required or allowed by this Rule, the plaintiff shall mail a certified copy of the summons and a certified copy of the complaint to the person to be served by certified or registered mail, return receipt requested. Service by mail shall be complete when the registered or certified mail is delivered and the return receipt signed or when acceptance is refused.

F.(3) Except when service by publication is available pursuant to section G. of this Rule and service pursuant to subsection (4) of this section, service of summons either within or without this State may be substantially as follows:

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F.(3)(a) Except as provided in paragraphs (b) and (c) of this subsection, upon a natural person:

F.(3)(a)(i) by personally serving the defendant; or,

F.(3)(a)(ii) If defendant cannot be found personally at defendant's dwelling house or usual place of abode, then by personal service upon any person over 14 years of age residing in the dwelling house or usual place of abode of defendant, or if defendant maintains a regular place of business or office, by leaving a copy of the summons and complaint at such place of business or office, with the person who is apparently in charge. Where service under this subparagraph is made on one other than the defendant, the plaintiff shall cause to be mailed a copy of the summons and complaint to the defendant at his dwelling house or

usual place of abode, together with a statement of the date, time and place at which service was made; or,

F.(3)(a)(iii) In any case, by serving the summons in a manner specified in this Rule or by any other rule or statute on the defendant or upon an agent authorized by law to accept service of summons for the defendant.

F.(3)(b) Upon a minor under the age of 14 years, by service in the manner specified in paragraph (a) of this subsection upon such minor, and also upon such minor's father, mother, conservator of his estate or guardian, or if there be none, then upon any person having the care or control of the minor or with whom such minor resides or in whose service such minor is employed or upon a guardian ad litem appointed pursuant to Rule 27 A.(2).

F.(3)(c) Upon an incapacitated person, by service in the manner specified in paragraph (a) of this subsection upon such person and also upon the conservator of such person's estate or guardian, or if there be none, upon a guardian ad litem appointed pursuant to Rule 27 B.(2).

F.(3)(d) Upon a domestic or foreign corporation, limited partnership or other unincorporated association which is subject to suit under a common name:

F.(3)(d)(i) By personal service upon a registered agent, officer, director, general partner, or managing agent of the corporation, limited partnership or association. In lieu of delivery of a copy of summons and complaint to the registered agent, officer, general partner or managing agent, such copies may be left at the office of such registered agent,

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F.(3)(e) Upon the State, by personal service upon the Attorney General or by leaving a copy of the summons and complaint at the Attorney General's office with a deputy, assistant or clerk.

F.(3)(f) Upon any county, incorporated city, school district, or other public corporation, commission or board, by personal service upon an officer, director, managing agent, clerk or secretary thereof. In lieu of delivery of the copy of the summons and complaint personally to such officer, director, managing agent, clerk or secretary, such copies may be left in the office of such officer, director, managing agent, clerk, or secretary with the person who is apparently in charge of the office. When a county is a party to an action, in addition to the service of summons specified above, an additional copy of the summons and complaint shall also be served upon the District Attorney of the county in the same manner as required for service upon the county clerk.

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F.(4) When service is to be effected upon a party in a foreign country, it is also sufficient if service of summons is made in the manner prescribed by the law of the foreign country for service in that country in its courts of general jurisdiction, or as directed by the foreign authority in response to letters rogatory, or as directed by order of the court, provided, however, that in all cases such service shall be reasonably calculated to give actual notice.

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G. Publication. (1) On motion upon a showing by affidavit that service cannot be made by any other method more reasonably calculated to apprise the defendant of the existence and pendency of the action, the court may order service by publication.

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G.(2) In addition to the contents of a summons as described in section C. of this Rule, a published summons shall also contain a summary statement of the object of the complaint and the demand for relief, and the notice required in section C.(2) shall state: "This paper must be given to the court within 30 days of the date of first publication specified herein along with the required filing fee." The published summons shall also contain the date of the first publication of the summons.

G.(3) An order for publication shall direct publication to be made in a newspaper of general circulation in the county where the action is commenced, or if there is no such newspaper, then in a newspaper to be designated as most likely to give notice to the person to be served. Such publication shall be four times in successive calendar weeks.

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G.(4) If service by publication is ordered and defendant's post office address is known or can with reasonable diligence be ascertained, the plaintiff shall mail a copy of the summons and complaint to the defendant. When the address of any defendant is not known or cannot be ascertained upon diligent inquiry, a copy of the summons and complaint shall be mailed to the defendant at his last known address. If plaintiff does not know and cannot ascertain, upon diligent inquiry, the present and last known address of the defendant, mailing a copy of the summons and complaint is not required.

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G.(5) If service cannot be made by another method described in section F. of this rule because defendants are unknown heirs or persons as described in sections I. and J. of Rule 20, the action shall proceed against such unknown heirs or persons in the same manner as against named defendants served by publication and with like effect, and any such unknown

heirs or persons who have or claim any right, estate, lien or interest in the real property in controversy, at the time of the commencement of the action and served by publication, shall be bound and concluded by the judgment in the action, if the same is in the favor of the plaintiff, as effectively as if the action was brought against such defendants by name.

G.(6) A defendant against whom publication is ordered or his representatives may, upon good cause shown and upon such terms as may be proper, be allowed to defend after judgment and within one year after entry of judgment. If the defense is successful, or the judgment or any part thereof has been collected or otherwise enforced, restitution may be ordered by the court, but the title to property sold upon execution issued on such judgment, to a purchaser in good faith, shall not be affected thereby.

G.(7) Service shall be complete at the date of the last publication.

H. Disregard of error; actual notice. Failure to strictly comply with provisions of this rule relating to the form of summons, issuance of summons and the person who may serve summons shall not affect the validity of service of summons or the existence of jurisdiction over the person, if the court determines that the defendant received actual notice of the substance and pendency of the action. The court may allow amendment to a summons or proof of summons and shall disregard any error in service of summons that does not materially prejudice the substantive rights of the party against whom summons was issued.

I. Telegraphic transmission. A summons and complaint may be transmitted by telegraph as provided in Rule 8 D.

BACKGROUND NOTE

For service of process, see Rule 8.

For service of subpoenas, see Rule 55.

ORS sections superseded: 15.020, 15.030, 15.040, 15.060, 15.080, 15.085, 15.090, 15.110, 15.120, 15.130, 15.140, 15.150, 15.160, 15.170, 15.180, 15.210, 15.220, 45.120.

COMMENT

This rule brings all general provisions for service of summons together in one place. It is designed to give a fairly specific description of the procedure to be followed but to reduce overtechnical requirements in commencement of an action. The important standard to be maintained is adequate notice to the defendant; if this is met, then deviations from the prescribed procedures for form of summons, issuance of summons, person serving, form of return and manner of service should not invalidate the service. Subsections E.(3) and F.(1) and Section 7 H. make this clear. Subsection F.(1) is the basic rule for manner of service; subsection F.(3) describes acceptable methods of service that would meet the standard of subsection F.(1), but these are not exclusive. Note, however, that summons must be served in some manner; mere knowledge of pendency and nature of the action will not require the defendant to appear and defend.

The defined methods of service apply both to in state and out of state service. The grounds for personal jurisdiction are covered in Rule 4. They include service within the state and domicile within the state and to that extent location of service is related to personal jurisdiction; beyond that, there is no reason to limit methods of service by territorial boundaries.

The rule, in conjunction with revisions to ORS sections relating to appointments of agents, eliminates any service of process on state agents who are fictionally appointed as agents for service of process upon out of state defendants. Modern jurisdictional theory does not require service within the boundaries of the state, and requiring service on the Corporation Commissioner or other state official is a useless act which is burdensome and expensive for the officials and litigants.

Section B. is based upon ORS 15.020.

Subsections C. (1) to (3) are based upon ORS 15.040 and 15.220. Subsection C. (4) changes the disparate time for response to services in the state, in another state, outside the United States, and by publication of ORS 15.040, 15.110 and 15.140 to a uniform 30-day period. Service upon another authorized to accept service of summons for the defendant would include leaving a copy of the summons and complaint at a dwelling house or usual place of abode or an office or any type of service upon someone other than the named defendant.

Section 7 D. is based upon ORS 15.060 but eliminates a specific description of the sheriff. The sheriff, as a person over 18, can, of course, serve unless the sheriff is a party.

Section 7 E. is based upon 15.060, 15.110 and 15.160. Subsection E. (3) would avoid invalidation of good service of summons because of some technical defect in the return. A return and proof of service are still required by subsections E. (1) and (2).

The methods of service described in subsection F. (3) are modified forms of the methods of service described in 15.080. The most significant change is paragraph F. (3)(d), which provides that the preferred method of service is personal service (including leaving at their office) upon a responsible officer, director or agent in the county where the suit is filed; if this cannot be accomplished, four alternatives are available to the plaintiff: personal service (including leaving at their office) on such persons wherever they may be found within or without the state; substituted service at the dwelling house or usual place of abode of such persons, whether located within or without the state; mailing to such persons; or service upon any agent who may be found in the county where the suit was filed. Since the basic standard remains adequacy of notice, the agent so served must be one likely to notify responsible persons in the corporation of the pendency of the action. This paragraph applies to associations and limited partnerships which may be sued under a common name; service in the case of partnerships and associations not suable under a common name is service on the named individual defendants and is covered by paragraph F. (3)(a). The effect of service on less than all partnership or association members in terms of judgments and enforcement of judgments is left to ORS 15.100 and other rules dealing with that subject. ORS 17.085 and 17.090 were eliminated.

Subsection F. (4) was adapted from Federal Rule 4(i).

The publication provisions of section 7 G. differ from ORS 15.120 to 15.180 in the circumstances when publication is available. Under the existing statutes, publication is available only in certain classes of cases depending upon the nature of the case or location and availability of a defendant for service within the state. This rule makes publication available only as a last resort, when service can be accomplished by no other reasonable method but makes such publication available for any case. Once publication is available, the procedure followed is similar to that of the present statutes.

RULE 7

SUMMONS

A. Plaintiff and defendant defined. For purposes of this rule, "plaintiff" shall include any party issuing summons and "defendant" shall include any party upon whom service of summons is sought.

B. Issuance. Any time after the action or proceeding is commenced, plaintiff or plaintiff's attorney may issue as many original summonses as either may elect and deliver such summonses to a person authorized to serve summons under section D. of this rule.

C. Contents. The summons shall contain:

C.(1) The title of the cause, specifying the name of the court in which the complaint is filed and the names of the parties to the action.

C.(2) A direction to the defendant requiring defendant to appear and defend within the time required by subsection (4) of this section and shall notify defendant that in case of failure to do so, the plaintiff will apply to the court for the relief demanded in the complaint.

C.(2)(a) All summonses other than a summons to join a party pursuant to Rule 22 D. shall contain a notice in a size equal to at least 8-point type which may be substantially in the following form with the appropriate number of days inserted:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." This paper must be given to the court within _____ days along with the required filing fee. It must be in proper form and a copy must be delivered or mailed to the plaintiff or the plaintiff's attorney.

If you have questions, you should see an attorney immediately.

C.(2)(b) A summons to join a party pursuant to Rule 22 D. (2) shall contain a notice in size equal to at least 8-point type which may be substantially in the following form with the appropriate number of days inserted.

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." This paper must be given to the court within _____ days along with the required filing fee. It must be in proper form and a copy must be delivered or mailed to the defendant

or the defendant's attorney. If you have questions, you should see an attorney immediately.

C.(2)(c) A summons to join a party pursuant to Rule 22 D. (3) shall contain a notice in size equal to at least 8-point type which may be substantially in the following form with the appropriate number of days inserted.

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You may be liable for attorney fees in this case. Should plaintiff in this case not prevail, a judgment for reasonable attorney fees will be entered against you, as provided by the agreement to which defendant alleges you are a party.

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." This paper must be given to the court within ___ days along with the required filing fee. It must be in proper form and a copy must be delivered or mailed to the defendant or the defendant's attorney.

If you have questions, you should see an attorney immediately.

C.(3) A subscription by the plaintiff or by a resident attorney of this state, with the addition of the post office address at which papers in the action may be served by mail.

C.(4) The summons shall require the defendant to appear and defend within the following times:

C.(4)(a) If the summons is served personally or by mail upon defendant or served personally or by mail upon another authorized to accept service of the summons for the defendant, the defendant shall appear and defend within 30 days from the date of service.

C.(4)(b) If the summons is served by publication pursuant to section G. of this rule, the defendant shall appear and defend within 30 days from a date stated in the summons. The date so stated in the summons shall be the date of the first publication.

D. By whom served; compensation. A summons may be served by any competent person 18 years of age or older who is a resident of the state where service is made or of this state and is not a party to the action nor an officer, director or employee of, nor attorney for, any party, corporate or otherwise. Compensation to a sheriff or a sheriff's deputy of the county in this state where the person served is found, or such person's dwelling house or usual place of abode is located, who serves a summons, shall be prescribed by statute or rule. If any other person serves the summons, a reasonable fee may be paid for service. This compensation shall be part of disbursements and shall be recovered as provided in ORS 20.020.

E. Return; proof of service. (1) The summons shall be promptly returned to the clerk with whom the complaint is filed

with proof of service or mailing, or that defendant cannot be found. When served out of the county in which the action or proceeding is commenced, the summons may be returned by mail.

E.(2) Proof of service of summons or mailing may be made as follows:

E.(2)(a)(i) Personal service or mailing shall be proved by the affidavit of the server indicating the time, place and manner of service, that the server is a competent person 18 years of age or older and a resident of the state of service or this state and is not a party to nor an officer, director or employee of, nor attorney for any party, corporate or otherwise, and that the server knew that the person, firm or corporation served is the identical one named in the action. If the defendant is not personally served, the server shall state in the affidavit when, where and with whom a copy of the summons and complaint was left or describe in detail the manner and circumstances of service. If the summons and complaint were mailed, the affidavit shall state the circumstances of mailing and the return receipt shall be attached.

E.(2)(a)(ii) If the copy of the summons is served by the sheriff, or a sheriff's deputy, of the county in this state where the person served was found or such person's dwelling house or usual place of abode is located, proof may be made by the sheriff's or deputy's certificate of service indicating the time, place and manner of service, and if defendant is not personally served, when, where and with whom the copy of the summons and complaint was left or describe in detail the manner and circumstances

of service. If the summons and complaint were mailed, the affidavit shall state the circumstances of mailing and the return receipt shall be attached.

E.(2)(a)(iii) An affidavit or certificate containing proof of service may be made upon the summons or as a separate endorsement.

E.(2)(b) Service by publication shall be proved by an affidavit in substantially the following form:

Affidavit of Publication

State of Oregon,)
) ss.
County of _____)

I, _____, being first duly sworn, depose and say that I am the _____ (here set forth the title or job description of the person making the affidavit), of the _____, a newspaper of general circulation, as defined by ORS 193.010 and 193.020; published at _____ in the aforesaid county and state; that I know from my personal knowledge that the _____, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper four times in the following issues: (here set forth dates of issues in which the same was published).

Subscribed and sworn to before me this ____ day of _____, 19__.

Notary Public of Oregon.
My commission expires
____ day of _____, 19__.

E.(2)(c) In any case proof may be made by written admission of the defendant.

E.(2)(d) The affidavit of service may be made and certified by a notary public, or other official authorized to administer oaths and acting as such by authority of the United States, or any state or territory of the United States, or the District of Columbia, and the official seal, if any, of such person shall be affixed to the affidavit. The signature of such notary or other official, when so attested by the affixing of the official seal, if any, of such person, shall be prima facie evidence of authority to make and certify such affidavit.

E.(3) If summons has been properly served, failure to return the summons or make or file a proper proof of service shall not affect the validity of the service.

F. Manner of service. (1) Summons shall be served, either within or without this State, in any manner reasonably calculated, under all the circumstances, to apprise the defendant of the existence and pendency of the action or proceeding and to afford a reasonable opportunity to appear and defend.

F.(2) For personal service, the person serving the summons shall deliver a certified copy of the summons and a certified copy of the complaint to the person to be served. For service by mail or mailing of summons and complaint as otherwise required or allowed by this rule, the plaintiff shall mail a certified copy of the summons and a certified copy of the complaint to the person to be served by certified or registered mail, return receipt requested.

Service by mail shall be complete when the registered or certified mail is delivered and the return receipt signed or when acceptance is refused.

F.(3) Except when service by publication is available pursuant to section G. of this rule and service pursuant to subsection (4) of this section, service of summons either within or without this state may be substantially as follows:

F.(3)(a) Except as provided in paragraphs (b) and (c) of this subsection, upon a natural person:

F.(3)(a)(i) By personally serving the defendant; or,

F.(3)(a)(ii) If defendant cannot be found personally at defendant's dwelling house or usual place of abode, then by personal service upon any person over 14 years of age residing in the dwelling house or usual place of abode of defendant, or if defendant maintains a regular place of business or office, by leaving a copy of the summons and complaint at such place of business or office, with the person who is apparently in charge. Where service under this subparagraph is made on one other than the defendant, the plaintiff shall cause to be mailed a copy of the summons and complaint to the defendant at defendant's dwelling house or usual place of abode, together with a statement of the date, time and place at which service was made; or,

F.(3)(a)(iii) In any case, by serving the summons in a manner specified in this rule or by any other rule or statute on the defendant or upon an agent authorized by law to accept service of summons for the defendant.

F.(3)(b) Upon a minor under the age of 14 years, by service in the manner specified in paragraph (a) of this subsection upon such minor, and also upon such minor's father, mother, conservator of such minor's estate or guardian, or if there be none, then upon any person having the care or control of the minor or with whom such minor resides or in whose service such minor is employed or upon a guardian ad litem appointed pursuant to Rule 27 A.(2).

F.(3)(c) Upon an incapacitated person, by service in the manner specified in paragraph (a) of this subsection upon such person and also upon the conservator of such person's estate or guardian, or if there be none, upon a guardian ad litem appointed pursuant to Rule 27 B.(2).

F.(3)(d) Upon a domestic or foreign corporation, limited partnership or other unincorporated association which is subject to suit under a common name:

F.(3)(d)(i) By personal service upon a registered agent, officer, director, general partner, or managing agent of the corporation, limited partnership or association. In lieu of delivery of a copy of summons and complaint to the registered agent, officer, director, general partner or managing agent, such copies may be left at the office of such registered agent, officer, director, general partner or managing agent, with the person who is apparently in charge of the office; or

F.(3)(d)(ii) If no registered agent, officer, director, general partner, or managing agent can be found nor has an

office in the county where the action or proceeding is filed, the summons may be served: by personal service upon any person over the age of 14 years who resides at the dwelling house or usual place of abode of such registered agent, officer, director, general partner or managing agent; or, by personal service on any clerk or agent of the corporation, limited partnership or association who may be found in the county where the action or proceeding is filed; or by mailing a copy of the summons and complaint to such registered agent, officer, director, general partner or managing agent. Where service is made by leaving a copy of the summons and complaint at the dwelling house or usual place of abode of a registered, agent, officer, director, general partner, or managing agent, the plaintiff shall immediately cause a copy of the summons and complaint to be mailed to the person to whom the summons is directed, at his dwelling house or usual place of abode, together with a statement of the date, time and place at which service was made.

F.(3)(d)(iii) In any case, by serving the summons in a manner specified in this rule or by any other rule or statute upon the defendant or an agent authorized by appointment or law to accept service of summons for the defendant.

F.(3)(e) Upon the state, by personal service upon the Attorney General or by leaving a copy of the summons and complaint at the Attorney General's office with a deputy, assistant or clerk.

F.(3)(f) Upon any county, incorporated city, school district, or other public corporation, commission or board, by

personal service upon an officer, director, managing agent, clerk or secretary thereof. In lieu of delivery of the copy of the summons and complaint personally to such officer, director, managing agent, clerk or secretary, such copies may be left in the office of such officer, director, managing agent, clerk, or secretary with the person who is apparently in charge of the office. When a county is a party to an action or proceeding, in addition to the service of summons specified above, an additional copy of the summons and complaint shall also be served upon the District Attorney of the county in the same manner as required for service upon the county clerk.

F.(4) When service is to be effected upon a party in a foreign country, it is also sufficient if service of summons is made in the manner prescribed by the law of the foreign country for service in that country in its courts of general jurisdiction, or as directed by the foreign authority in response to letters rogatory, or as directed by order of the court, provided, however, that in all cases such service shall be reasonably calculated to give actual notice.

G. Publication. (1) On motion upon a showing by affidavit that service cannot be made by any other method more reasonably calculated to apprise the defendant of the existence and pendency of the action or proceeding, the court may order service by publication.

G.(2) In addition to the contents of a summons as described in section C. of this rule, a published summons shall

also contain a summary statement of the object of the complaint and the demand for relief, and the notice required in section C.(2) shall state: "This paper must be given to the court within 30 days of the date of first publication specified herein along with the required filing fee." The published summons shall also contain the date of the first publication of the summons.

G.(3) An order for publication shall direct publication to be made in a newspaper of general circulation in the county where the action is commenced, or if there is no such newspaper, then in a newspaper to be designated as most likely to give notice to the person to be served. Such publication shall be four times in successive calendar weeks.

G.(4) If service by publication is ordered and defendant's post office address is known or can with reasonable diligence be ascertained, the plaintiff shall mail a copy of the summons and complaint to the defendant. When the address of any defendant is not known or cannot be ascertained upon diligent inquiry, a copy of the summons and complaint shall be mailed to the defendant at defendant's last known address. If plaintiff does not know and cannot ascertain, upon diligent inquiry, the present and last known address of the defendant, mailing a copy of the summons and complaint is not required.

G.(5) If service cannot be made by another method described in section F. of this rule because defendants are unknown heirs or persons as described in sections I. and J.

of Rule 20, the action or proceeding shall proceed against such unknown heirs or persons in the same manner as against named defendants served by publication and with like effect, and any such unknown heirs or persons who have or claim any right, estate, lien or interest in the real property in controversy, at the time of the commencement of the action and served by publication, shall be bound and concluded by the judgment in the action, if the same is in the favor of the plaintiff, as effectively as if the action or proceeding was brought against such defendants by name.

G.(6) A defendant against whom publication is ordered or such defendant's representatives may, upon good cause shown and upon such terms as may be proper, be allowed to defend after judgment and within one year after entry of judgment. If the defense is successful, or the judgment or any part thereof has been collected or otherwise enforced, restitution may be ordered by the court, but the title to property sold upon execution issued on such judgment, to a purchaser in good faith, shall not be affected thereby.

G.(7) Service shall be complete at the date of the last publication.

H. Disregard of error; actual notice. Failure to strictly comply with provisions of this rule relating to the form of summons, issuance of summons and the person who may serve summons shall not affect the validity of service of summons or the existence of jurisdiction over the person, if the court determines

that the defendant received actual notice of the substance and pendency of the action. The court may allow amendment to a summons or proof of service of summons and shall disregard any error in service of summons that does not materially prejudice the substantive rights of the party against whom summons was issued.

I. Telegraphic transmission. A summons and complaint may be transmitted by telegraph as provided in Rule 8 D.

BACKGROUND NOTE

For service of process, see Rule 8. For service of subpoenas, see Rule 55.

ORS sections superseded: 15.020, 15.030, 15.040, 15.060, 15.080, 15.085, 15.090, 15.110, 15.120, 15.130, 15.140, 15.150, 15.160, 15.170, 15.180, 15.210, 15.220, 45.120.

COMMENT

This rule brings all general provisions for service of summons together in one place. It is designed to give a fairly specific description of the procedure to be followed but to reduce overtechnical requirements in commencement of an action. The important standard to be maintained is adequate notice to the defendant; if this is met, then deviations from the prescribed procedures for form of summons, issuance of summons, person serving, form of return and manner of service should not invalidate the service. Subsections E.(3) and F.(1) and Section 7 H. make this clear. Subsection F.(1) is the basic rule for manner of service; subsection F.(3) describes acceptable methods of service that would meet the standard of subsection F.(1), but these are not exclusive. Note, however, that summons must be served in some manner; mere knowledge of pendency and nature of the action will not require the defendant to appear and defend.

The defined methods of service apply both to in state and out of state service. The grounds for personal jurisdiction are covered in Rule 4. They include service within the state and domicile within the state and to that extent location of service is related to personal jurisdiction; beyond that, there is no reason to limit methods of service by territorial boundaries.

The rule does not include any service of process on state agents who are fictionally appointed as agents for service of

process upon out of state defendants. Modern jurisdictional theory does not require service within the boundaries of the state, and requiring service on the Corporation Commissioner or other state official is a useless act which is burdensome and expensive for the officials and litigants. To the extent that such service is retained in separate ORS sections, it would be within subparagraphs F.(3)(a)(iii) and F.(3)(d)(iii).

Section B. is based upon ORS 15.020.

Subsections C.(1) to (3) are based upon ORS 15.040 and 15.220. Subsection C.(4) changes the disparate time for response to services in the state, in another state, outside the United States, and by publication of ORS 15.040, 15.110 and 15.140 to a uniform 30-day period. Service upon another authorized to accept service of summons for the defendant would include leaving a copy of the summons and complaint at a dwelling house or usual place of abode or an office or any type of service upon someone other than the named defendant.

Section 7 D. is based upon ORS 15.060 but eliminates a specific description of the sheriff. The sheriff, as a person over 18, can, of course, serve unless the sheriff is a party.

Section 7 E. is based upon 15.060, 15.110 and 15.160. Subsection E.(3) would avoid invalidation of good service of summons because of some technical defect in the return. A return and proof of service are still required by subsections E.(1) and (2).

The methods of service described in subsection F.(3) are modified forms of the methods of service described in 15.080. The most significant change is paragraph F.(3)(d), which provides that the preferred method of service is personal service (including leaving at their office) upon a responsible officer, director or agent in the county where the action is filed; if this cannot be accomplished, four alternatives are available to the plaintiff: personal service (including leaving at their office) upon such persons wherever they may be found within or without the state; substituted service at the dwelling house or usual place of abode of such persons, whether located within or without the state; mailing to such persons; or service upon any agent who may be found in the county where the action was filed. Since the basic standard remains adequacy of notice, the agent so served must be one likely to notify responsible persons in the corporation of the pendency of the action. This paragraph applies to associations and limited partnerships which may be sued under a common name; service in the case of partnerships and associations not suable under a common name is service on the named individual defendants and is covered by paragraph F.(3)(a). The effect of service on less than all partnership or association members in terms of judgments and enforcement of judgments is left to ORS 15.100 and other rules

dealing with that subject. ORS 17.085 and 17.090 were eliminated.

Subsection F.(4) was adapted from Federal Rule 4 (i).

The publication provisions of section 7 G. differ from ORS 15.120 to 15.180 in the circumstances when publication is available. Under the existing statutes, publication is available only in certain classes of cases depending upon the nature of the case or location and availability of a defendant for service within the state. This rule makes publication available only as a last resort, when service can be accomplished by no other reasonable method but makes such publication available for any case. Once publication is available, the procedure followed is similar to that of the present statutes.

RULE 8

PROCESS - SERVICE OF PROCESS

A. Process. All process authorized to be issued by any court or officer thereof shall run in the name of the State of Oregon and be signed by the officer issuing the same, and if such process is issued by a clerk of court, the seal of office of such clerk shall be affixed to such process. Summons and subpoenas are not process and are covered by Rules 7 and 55, respectively.

B. County is a party. Process in an action or proceeding where any county is a party shall be served on the county clerk or the person exercising the duties of that office, or if the office is vacant, upon the chairperson of the governing body of the county, or in the absence of the chairperson, any member thereof.

C. Service or execution. Any person may serve or execute any civil process on Sunday or any other legal holiday. No limitation or prohibition stated in ORS 1.060 shall apply to such service or execution of any civil process on a Sunday or other legal holiday.

RULE 7

SUMMONS

A. Plaintiff and defendant defined. For purposes of this rule, "plaintiff" shall include any party issuing summons and "defendant" shall include any party upon whom service of summons is sought.

B. Issuance. Any time after the action is commenced, plaintiff or plaintiff's attorney may issue as many original summonses as either may elect and deliver such summons to a person authorized to serve summons under section E. of this rule. A summons is issued when subscribed by plaintiff or a resident attorney of this state.

C.(1) Contents. The summons shall contain:

C.(1)(a) Title. The title of the cause, specifying the name of the court in which the complaint is filed and the names of the parties to the action.

C.(1)(b) Direction to defendant. A direction to the defendant requiring defendant to appear and defend within the time required by subsection (2) of this section and a notification to defendant that in case of failure to do so, the plaintiff will apply to the court for the relief demanded in the complaint.

C.(1)(c) Subscription; post office address. A subscription by the plaintiff or by a resident attorney of this state, with the addition of the post office address at which papers in the action may be served by mail.

C.(2) Time for response. If the summons is served by any other manner other than publication, the defendant shall appear and defend within 30 days from the date of service. If the summons is served by publication pursuant to section D.(5) of this rule, the defendant shall appear and defend within 30 days from a date stated in the summons. The date so stated in the summons shall be the date of the first publication.

C.(3) Notice to party served.

C.(3)(a) In general. All summonses other than a summons to join a party pursuant to Rule 22 D. shall contain a notice printed in a type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." This paper must be given to the court within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff.

If you have questions, you should see an attorney immediately.

C.(3)(b) Service on maker of contract for counterclaim.

A summons to join a party pursuant to Rule 22 D.(2) shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." This paper must be given to the court within 30 days along with the required filing fee. It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant.

If you have questions, you should see an attorney immediately.

C.(3)(c) Service on persons liable for attorney fees.

A summons to join a party pursuant to Rule 22 D.(3) shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You may be liable for attorney fees in this case. Should

plaintiff in this case not prevail, a judgment for reasonable attorney fees will be entered against you, as provided by the agreement to which defendant alleges you are a party.

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." This paper must be given to the court within 30 days along with the required filing fee. It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant.

If you have questions, you should see an attorney immediately.

D. Manner of service.

D.(1) Notice required. Summons shall be served, either within or without this state, in any manner reasonably calculated, under all the circumstances, to apprise the defendant of the existence and pendency of the action and to afford a reasonable opportunity to appear and defend. Summons may be served in a manner specified in this rule or by any other rule or statute on the defendant or upon an agent authorized by appointment or law to accept service of summons for the defendant. Service may be made, subject to the restrictions and requirements of this rule, by the following methods: personal service of summons upon defendant or an agent of defendant

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authorized to receive process; substituted service by leaving a copy of summons and complaint at a person's dwelling house or usual place of abode; office service by leaving with a person who is apparently in charge of an office; service by mail; or, service by publication.

D.(2) Service methods.

D.(2)(a) Personal service. Personal service may be made by delivery of a certified copy of the summons and a certified copy of the complaint to the person to be served.

D.(2)(b) Substituted service. Substituted service may be made by delivering a certified copy of the summons and complaint at the dwelling house or usual place of abode of the person to be served, to any person over 14 years of age residing in the dwelling house or usual place of abode of the person to be served. Where substituted service is used, the plaintiff immediately shall cause to be mailed a certified copy of the summons and complaint to the defendant at defendant's dwelling house or usual place of abode, together with a statement of the date, time and place at which substituted service was made. Substituted service shall be complete upon such mailing.

D.(2)(c) Office service. If the person to be served maintains an office for the conduct of business, office service may be made by leaving a certified copy of the summons and complaint at such office during normal working hours with the person

who is apparently in charge. Where office service is used, the plaintiff immediately ~~thereafter~~ shall cause to be mailed a certified copy of the summons and complaint to the defendant at the defendant's dwelling house or usual place of abode, together with a statement of the date, time, and place at which office service was made. Office service shall be complete upon such mailing.

D.(2)(d) Service by mail. Service by mail, when required or allowed by this rule, shall be made by mailing a certified copy of the summons and a certified copy of the complaint to the defendant by certified or registered mail, return receipt requested. Service by mail shall be complete when the registered or certified mail is delivered and the return receipt signed or when acceptance is refused.

D.(3) Particular defendants. Service may be made upon specified defendants as follows:

D.(3)(a) Individuals.

D.(3)(a)(i) Generally. Upon an individual defendant by personal service upon such defendant or an agent authorized by appointment or law to receive service of summons or, if defendant personally cannot be found at defendant's dwelling house or usual place of abode, then by substituted service or by office service upon such defendant or an agent authorized by appointment or law to receive service of summons.

D.(3)(a)(ii) Minors. Upon a minor under the age of 14 years, by service in the manner specified in subparagraph (i) of this paragraph upon such minor, and also upon such minor's father, mother, conservator of such minor's estate, or guardian or, if there be none, then upon any person having the care or control of the minor or with whom such minor resides or in whose service such minor is employed or upon a guardian ad litem appointed pursuant to Rule 27 A.(2).

D.(3)(a)(iii) Incapacitated persons. Upon an incapacitated person, by service in the manner specified in subparagraph (i) of this paragraph upon such person and also upon the conservator of such person's estate or guardian or, if there be none, upon a guardian ad litem appointed pursuant to Rule 27 B.(2).

D.(3)(b) Corporations; limited partnerships, unincorporated associations subject to suit under a common name. Upon a domestic or foreign corporation, limited partnership, or other unincorporated association which is subject to suit under a common name:

D.(3)(b)(i) Primary service method. By personal service or office service upon a registered agent, officer, director, general partner, or managing agent of the corporation, limited partnership, or association.

D.(3)(b)(ii) Alternatives. If a registered agent, officer, director, general partner, or managing agent cannot be found and does not have an office in the county where the action

or proceeding is filed, the summons may be served: by substituted service upon such registered agent, officer, director, general partner, or managing agent; or, by personal service on any clerk or agent of the corporation, limited partnership, or association who may be found in the county where the action or proceeding is filed; or by mailing a copy of the summons and complaint to a registered agent, officer, director, general partner, or managing agent.

D.(3)(c) State. Upon the state, by personal service upon the Attorney General or by leaving a copy of the summons and complaint at the Attorney General's office with a deputy, assistant, or clerk.

D.(3)(d) Public bodies. Upon any county, incorporated city, school district, or other public corporation, commission or board, by personal service or office service upon an officer, director, managing agent, clerk, or secretary thereof. When a county is a party to an action, in addition to the service of summons specified above, an additional copy of the summons and complaint shall also be served upon the District Attorney of the county in the same manner as required for service upon the county clerk.

D.(4) Service in foreign country. When service is to be effected upon a party in a foreign country, it is also sufficient if service of summons is made in the manner prescribed

by the law of the foreign country for service in that county in its courts of general jurisdiction, or as directed by the foreign authority in response to letters rogatory, or as directed by order of the court, provided, however, that in all cases such service shall be reasonably calculated to give actual notice.

D.(5) Service by publication or mailing to a post office address.

Order for publication or mailing.

D.(5)(a) On motion upon a showing by affidavit that service cannot be made by any other method more reasonably calculated to apprise the defendant of the existence and pendency of the action, the court may order service by publication, or at the discretion of the court, by mailing without publication to a specified post office address of defendant, return receipt requested, deliver to addressee only.

D.(5)(b) Contents of published summons. In addition to the contents of a summons as described in section C. of this rule, a published summons shall also contain a summary statement of the object of the complaint and the demand for relief, and the notice required in section C.(3) shall state: "This paper must be given to the court within 30 days of the date of first publication specified herein along with the required filing fee." The published summons shall also contain the date of the first publication of the summons.

D.(5)(c) Where published. An order for publication shall direct publication to be made in a newspaper of general circulation in the county where the action is commenced or, if there is no such newspaper, then in a newspaper to be designated as most likely to give notice to the person to be served. Such publication shall be four times in successive calendar weeks.

D.(5)(d) Mailing summons and complaint. If service by publication is ordered and defendant's post office address is known or can with reasonable diligence be ascertained, the plaintiff shall mail a copy of the summons and complaint to the defendant. When the address of any defendant is not known or cannot be ascertained upon diligent inquiry, a copy of the summons and complaint shall be mailed to the defendant at defendant's last known address. If plaintiff does not know and cannot ascertain, upon diligent inquiry, the present or last known address of the defendant, mailing a copy of the summons and complaint is not required.

D.(5)(e) Unknown heirs or persons. If service cannot be made by another method described in this section because defendants are unknown heirs or persons as described in sections I. and J. of Rule 20, the action or ~~proceeding~~ shall proceed against such unknown heirs or persons in the same manner as against named defendants served by publication and with like effect, and any such unknown heirs or persons who have or claim any right, estate, lien, or interest in the property in controversy at the time of

the commencement of the action, and served by publication, shall be bound and concluded by the judgment in the action, if the same is in favor of the plaintiff, as effectively as if the action was brought against such defendants by name.

D.(5)(f) Defending after judgment. A defendant against whom publication is ordered or such defendant's representatives may, upon good cause shown and upon such terms as may be proper, be allowed to defend after judgment and within one year after entry of judgment. If the defense is successful, and the judgment or any part thereof has been collected or otherwise enforced, restitution may be ordered by the court, but the title to property sold upon execution issued on such judgment, to a purchaser in good faith, shall not be affected thereby.

D.(5)(g) Completion of service. Service shall be complete at the date of the last publication.

E. By whom served; compensation. A summons may be served by any competent person 18 years of age or older who is a resident of the state where service is made or of this state and is not a party to the action nor an officer, director, or employee of, nor attorney for, any party, corporate or otherwise. Compensation to a sheriff or a sheriff's deputy in this state who serves a summons shall be prescribed by statute or rule. If any other person serves the summons, a reasonable fee may be paid for service. This compensation shall be part of disbursements and shall be recovered as provided in ORS 20.020.

F. Return; proof of service.

F.(1) Return of summons. The summons shall be promptly returned to the clerk with whom the complaint is filed with proof of service or mailing, or that defendant cannot be found. The summons may be returned by mail.

F.(2) Proof of service. Proof of service of summons or mailing may be made as follows:

F.(2)(a) Service other than publication. Service other than publication shall be proved by:

Affidavit of service.

F.(2)(a)(i) The affidavit of the server indicating the time, place, and manner of service, that the server is a competent person 18 years of age or older and a resident of the state of service or this state and is not a party to nor an officer, director, or employee of, nor attorney for any party, corporate or otherwise; and that the server knew that the person, firm, or corporation served is the identical one named in the action. If the defendant is not personally served, the server shall state in the affidavit when, where, and with whom a copy of the summons and complaint was left or describe in detail the manner and circumstances of service. If the summons and complaint were mailed, the affidavit shall state the circumstances of mailing and the return receipt shall be attached.

Certificate of service.

F.(2)(a)(ii) If the copy of the summons is served by the sheriff, or a sheriff's deputy, proof may be made by the sheriff's or deputy's certificate of service indicating the time,

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place, and manner of service, and if defendant is not personally served, when, where, and with whom the copy of the summons and complaint was left or ~~describe~~ ^{describing} in detail the manner and circumstances of service. If the summons and complaint were mailed, the certificate ~~affidavit~~ shall state the circumstances of mailing and the return receipt shall be attached.

Form.
F.(2)(a)(iii) / An affidavit or certificate containing proof of service may be made upon the summons or as a separate document attached to the summons.

F.(2)(b) Publication. Service by publication shall be proved by an affidavit in substantially the following form:

Affidavit of Publication

State of Oregon,)
 : ss.
County of _____)

I, _____, being first duly sworn, depose and say that I am the _____ (here set forth the title or job description of the person making the affidavit), of the _____, a newspaper of general circulation, as defined by ORS 193.010 and 193.020; published at _____ in the aforesaid county and state; that I know from my personal knowledge that the _____, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper four times in the following issues: (here set forth

dates of issues in which the same was published).

Subscribed and sworn to before me this ____ day of _____,
19 __.

Notary Public for Oregon

My commission expires
____ day of _____, 19 __.

F.(2)(c) Making and certifying affidavit. The affidavit of service may be made and certified before a notary public, or other official authorized to administer oaths and acting as such by authority of the United States, or any state or territory of the United States, or the District of Columbia, and the official seal, if any, of such person shall be affixed to the affidavit. The signature of such notary or other official, when so attested by the affixing of the official seal, if any, of such person, shall be prima facie evidence of authority to make and certify such affidavit.

F.(3) Written admission. In any case proof may be made by written admission of the defendant.

F.(4) Failure to make proof; validity of service. If summons has been properly served, failure to make or file a proper proof of service shall not affect the validity of the service.

G. Disregard of error; actual notice. Failure to ~~strictly~~ comply with provisions of this rule relating to the form of summons,

issuance of summons, and the person who may serve summons shall not affect the validity of service of summons or the existence of jurisdiction over the person, if the court determines that the defendant received actual notice of the substance and pendency of the action. The court may allow amendment to a summons, or affidavit or certificate of service of summons, and shall disregard any error in the content of service of summons that does not materially prejudice the substantive rights of the party against whom summons was issued.

H. Telegraphic transmission. A summons and complaint may be transmitted by telegraph as provided in Rule 8 D.

COMMENT

For process, see Rule 8. For service of subpoenas, see Rule 55.

This rule brings all general provisions for service of summons together in one place. The basic standards of adequacy of service of summons is set forth in the first sentence of ORCP 7 D.(1). Succeeding portions of the rule provide ways in which service may be made and how these ways may be used for particular defendants, including conditional preferences. The particular methods, however, are methods which may be used. The rule does not require them to be used. Compliance with the specific methods of service would be ~~prima facie~~ service reasonably calculated, under all the circumstances, to apprise the defendant of the pendency of the action and afford a reasonable opportunity to appear and defend. Other methods of service might accomplish the same thing. Subsection 4 F.(4) and section 4 G. also make clear that any technical defects in the return, form of summons, issuance of summons, and persons serving do not invalidate service if the defendant received actual notice of the existence and pendency of the action. Note, however, that summons must be served and returned; mere knowledge of the pendency and nature of the action will not require the defendant to appear and defend.

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The defined methods of service apply both to in state and out of state service. The grounds for personal jurisdiction are covered in ~~CRCP~~ 4. They include service within the state and domicile within the state and, to that extent, location of service is related to personal jurisdiction; beyond that, there is no reason to limit methods of service by territorial boundaries.

The rule does not describe any service of process on state agents who are fictionally appointed as agents for service of process upon out of state defendants. Modern jurisdictional theory does not require service within the boundaries of the state, and requiring service on the Corporation Commissioner or other state official is a useless act which is burdensome and expensive for the officials and litigants. To the extent that such service has been left temporarily in separate ORS sections, it is incorporated by the second sentence of subsection D.(1).

Section B. is based upon ORS 15.020 but makes clear what "issued" means.

Subsections C.(1) and (3) are based upon ORS 15.040 and 15.220. Subsection C.(2) changes the disparate time for response to services in the state, in another state, outside the United States, and by publication, previously contained in ORS 15.040, 15.110 and 15.140, to a uniform 30-day period. The notices to defendant in subsection C.(3) have been changed slightly to conform to changes elsewhere in the rules.

Again, the basic test of adequate service is set forth in the first sentence of subsection D.(1). A type of service, called office service, has been added in D.(2) and a specific description of service by mail has been added. The only specific service by mail described in the rule is in D.(3)(b)(ii).

The specific methods of service described in subsection D.(3) for particular defendants are modified forms of the methods of service described in ORS 15.080. The most significant change is in paragraph D.(3)(b), which provides that the preferred method of service is personal service or office service upon a responsible officer, director or agent in the county where the action is filed; if this cannot be accomplished, four alternatives are available to the plaintiff: personal service or office service upon such persons wherever they may be found within or without the state; substituted service at the dwelling house or usual place of abode of such persons, whether located within or without the state; mailing to such persons; or service upon any agent who may be found in the county where the action was filed. Since the basic standard remains adequacy of notice, the agent

so served must be one likely to notify responsible persons in the corporation of the pendency of the action. This paragraph applies to associations and limited partnerships which may be sued under a common name; service in the case of partnerships and associations not suable under a common name is service on the named individual defendants and is covered by paragraph D.(3)(a). The effect of service on less than all partnership or association members in terms of judgments and enforcement of judgments is left to ORS 15.100 and other rules dealing with that subject. ORS 17.085 and 17.090 were eliminated.

Subsection D.(4) was adapted from Federal Rule 4 (i).

The publication provisions of section D.(5) differ from ORS 15.120 to 15.180 in the circumstances when publication is available. Under the existing statutes, publication is available only in certain classes of cases depending upon the nature of the case or location and availability of a defendant for service within the state. This rule makes publication available only as a last resort, when service can be accomplished by no other reasonable method but makes such publication available for any case. Once publication is available, the procedure followed is similar to that of the present statutes.

Subsection E. is based upon ORS 15.060 but eliminates a specific description of the sheriff. The sheriff, as a person over 18, can, of course, serve unless the sheriff is a party.

Section 7 F. is based upon ORS 15.060, 15.110 and 15.160. Subsection F.(4) would avoid invalidation of good service of summons because of some technical defect in the return. A return and proof of service are still required by subsections F.(1) and (2)

Subsection G. prevents invalidation of service because of technical defects and would allow amendment of summons or return.

Note; if a defendant has a mailing address and cannot otherwise be served, section D.(5)(a) allows a judge to order mailing instead of publication.

RULE 7

SUMMONS

A. Plaintiff and defendant defined. For purposes of this rule, "plaintiff" shall include any party issuing summons and "defendant" shall include any party upon whom service of summons is sought.

B. Issuance. Any time after the action is commenced, plaintiff or plaintiff's attorney may issue as many original summonses as either may elect and deliver such summons to a person authorized to serve summons under section E. of this rule. A summons is issued when subscribed by plaintiff or a resident attorney of this state.

C.(1) Contents. The summons shall contain:

C.(1)(a) Title. The title of the cause, specifying the name of the court in which the complaint is filed and the names of the parties to the action.

C.(1)(b) Direction to defendant. A direction to the defendant requiring defendant to appear and defend within the time required by subsection (2) of this section and a notification to defendant that in case of failure to do so, the plaintiff will apply to the court for the relief demanded in the complaint.

C.(1)(c) Subscription; post office address. A subscription by the plaintiff or by a resident attorney of this state, with the addition of the post office address at which papers in the action may be served by mail.

C.(2) Time for response. If the summons is served by any manner other than publication, the defendant shall appear and defend within 30 days from the date of service. If the summons is served by publication pursuant to subsection D.(5) of this rule, the defendant shall appear and defend within 30 days from a date stated in the summons. The date so stated in the summons shall be the date of the first publication.

C.(3) Notice to party served.

C.(3)(a) In general. All summonses other than a summons to join a party pursuant to Rule 22 D. shall contain a notice printed in a type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." This paper must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff.

If you have questions, you should see an attorney immediately.

C.(3)(b) Service on maker of contract for counterclaim.

A summons to join a party pursuant to Rule 22 D.(2) shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." This paper must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant.

If you have questions, you should see an attorney immediately.

C.(3)(c) Service on persons liable for attorney fees. A summons to join a party pursuant to Rule 22 D.(3) shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You may be liable for attorney fees in this case. Should

plaintiff in this case not prevail, a judgment for reasonable attorney fees will be entered against you, as provided by the agreement to which defendant alleges you are a party.

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." This paper must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant.

If you have questions, you should see an attorney immediately.

D. Manner of service.

D.(1) Notice required. Summons shall be served, either within or without this state, in any manner reasonably calculated, under all the circumstances, to apprise the defendant of the existence and pendency of the action and to afford a reasonable opportunity to appear and defend. Summons may be served in a manner specified in this rule or by any other rule or statute on the defendant or upon an agent authorized by appointment or law to accept service of summons for the defendant. Service may be made, subject to the restrictions and requirements of this rule, by the following methods: personal service of summons upon defendant or an agent of defendant

authorized to receive process; substituted service by leaving a copy of summons and complaint at a person's dwelling house or usual place of abode; office service by leaving with a person who is apparently in charge of an office; service by mail; or, service by publication.

D.(2) Service methods.

D.(2)(a) Personal service. Personal service may be made by delivery of a certified copy of the summons and a certified copy of the complaint to the person to be served.

D.(2)(b) Substituted service. Substituted service may be made by delivering a certified copy of the summons and complaint at the dwelling house or usual place of abode of the person to be served, to any person over 14 years of age residing in the dwelling house or usual place of abode of the person to be served. Where substituted service is used, the plaintiff immediately shall cause to be mailed a certified copy of the summons and complaint to the defendant at defendant's dwelling house or usual place of abode, together with a statement of the date, time, and place at which substituted service was made. Substituted service shall be complete upon such mailing.

D.(2)(c) Office service. If the person to be served maintains an office for the conduct of business, office service may be made by leaving a certified copy of the summons and complaint at such office during normal working hours with the person

who is apparently in charge. Where office service is used, the plaintiff immediately shall cause to be mailed a certified copy of the summons and complaint to the defendant at the defendant's dwelling house or usual place of abode, together with a statement of the date, time, and place at which office service was made. Office service shall be complete upon such mailing.

D.(2)(d) Service by mail. Service by mail, when required or allowed by this rule, shall be made by mailing a certified copy of the summons and a certified copy of the complaint to the defendant by certified or registered mail, return receipt requested. Service by mail shall be complete when the registered or certified mail is delivered and the return receipt signed or when acceptance is refused.

D.(3) Particular defendants. Service may be made upon specified defendants as follows:

D.(3)(a) Individuals.

D.(3)(a)(i) Generally. Upon an individual defendant, by personal service upon such defendant or an agent authorized by appointment or law to receive service of summons or, if defendant personally cannot be found at defendant's dwelling house or usual place of abode, then by substituted service or by office service upon such defendant or an agent authorized by appointment or law to receive service of summons.

D.(3)(a)(ii) Minors. Upon a minor under the age of 14 years, by service in the manner specified in subparagraph (i) of this paragraph upon such minor, and also upon such minor's father, mother, conservator of the minor's estate, or guardian, or, if there be none, then upon any person having the care or control of the minor or with whom such minor resides, or in whose service such minor is employed, or upon a guardian ad litem appointed pursuant to Rule 27 A.(2).

D.(3)(a)(iii) Incapacitated persons. Upon an incapacitated person, by service in the manner specified in subparagraph (i) of this paragraph upon such person, and also upon the conservator of such person's estate or guardian or, if there be none, upon a guardian ad litem appointed pursuant to Rule 27 B.(2).

D.(3)(b) Corporations; limited partnerships; unincorporated associations subject to suit under a common name. Upon a domestic or foreign corporation, limited partnership, or other unincorporated association which is subject to suit under a common name:

D.(3)(b)(i) Primary service method. By personal service or office service upon a registered agent, officer, director, general partner, or managing agent of the corporation, limited partnership, or association.

D.(3)(b)(ii) Alternatives. If a registered agent, officer, director, general partner, or managing agent cannot be found and does not have an office in the county where the action

is filed, the summons may be served: by substituted service upon such registered agent, officer, director, general partner, or managing agent; or by personal service on any clerk or agent of the corporation, limited partnership, or association who may be found in the county where the action is filed; or by mailing a copy of the summons and complaint to a registered agent, officer, director, general partner, or managing agent.

D.(3)(c) State. Upon the state, by personal service upon the Attorney General or by leaving a copy of the summons and complaint at the Attorney General's office with a deputy, assistant, or clerk.

D.(3)(d) Public bodies. Upon any county, incorporated city, school district, or other public corporation, commission or board, by personal service or office service upon an officer, director, managing agent, clerk, or secretary thereof. When a county is a party to an action, in addition to the service of summons specified above, an additional copy of the summons and complaint shall also be served upon the District Attorney of the county in the same manner as required for service upon the county clerk.

D.(4) Service in foreign country. When service is to be effected upon a party in a foreign country, it is also sufficient if service of summons is made in the manner prescribed

by the law of the foreign country for service in that county in its courts of general jurisdiction, or as directed by the foreign authority in response to letters rogatory, or as directed by order of the court, provided, however, that in all cases such service shall be reasonably calculated to give actual notice.

D.(5) Service by publication or mailing to a post office address; other service by court order.

D.(5)(a) Order for publication or mailing or other service. On motion upon a showing by affidavit that service cannot be made by any other method more reasonably calculated to apprise the defendant of the existence and pendency of the action, the court may order service: by publication; or at the discretion of the court, by mailing without publication to a specified post office address of defendant, return receipt requested, deliver to addressee only; or by any other method. If service is ordered by any manner other than publication, the court may order a time for response.

D.(5)(b) Contents of published summons. In addition to the contents of a summons as described in section C. of this rule, a published summons shall also contain a summary statement of the object of the complaint and the demand for relief, and the notice required in subsection C.(3) shall state: "This paper must be given to the court clerk or administrator within 30 days of the date of first publication specified herein along with the required filing fee." The published summons shall also contain the date of the first publication of the summons.

D.(5)(c) Where published. An order for publication shall direct publication to be made in a newspaper of general circulation in the county where the action is commenced or, if there is no such newspaper, then in a newspaper to be designated as most likely to give notice to the person to be served. Such publication shall be four times in successive calendar weeks.

D.(5)(d) Mailing summons and complaint. If service by publication is ordered and defendant's post office address is known or can with reasonable diligence be ascertained, the plaintiff shall mail a copy of the summons and complaint to the defendant. When the address of any defendant is not known or cannot be ascertained upon diligent inquiry, a copy of the summons and complaint shall be mailed to the defendant at defendant's last known address. If plaintiff does not know and cannot ascertain, upon diligent inquiry, the present or last known address of the defendant, mailing a copy of the summons and complaint is not required.

D.(5)(e) Unknown heirs or persons. If service cannot be made by another method described in this section because defendants are unknown heirs or persons as described in sections I. and J. of Rule 20, the action shall proceed against the unknown heirs or persons in the same manner as against named defendants served by publication and with like effect, and any such unknown heirs or persons who have or claim any right, estate, lien, or interest in the property in controversy at the time of

the commencement of the action, and served by publication, shall be bound and concluded by the judgment in the action, if the same is in favor of the plaintiff, as effectively as if the action was brought against such defendants by name.

D.(5)(f) Defending after judgment. A defendant against whom publication is ordered or such defendant's representatives may, upon good cause shown and upon such terms as may be proper, be allowed to defend after judgment and within one year after entry of judgment. If the defense is successful, and the judgment or any part thereof has been collected or otherwise enforced, restitution may be ordered by the court, but the title to property sold upon execution issued on such judgment, to a purchaser in good faith, shall not be affected thereby.

D.(5)(g) Completion of service. Service shall be complete at the date of the last publication.

E. By whom served; compensation. A summons may be served by any competent person 18 years of age or older who is a resident of the state where service is made or of this state and is not a party to the action nor an officer, director, or employee of, nor attorney for, any party, corporate or otherwise. Compensation to a sheriff or a sheriff's deputy in this state who serves a summons shall be prescribed by statute or rule. If any other person serves the summons, a reasonable fee may be paid for service. This compensation shall be part of disbursements and shall be recovered as provided in ORS 20.020.

F. Return; proof of service.

F.(1) Return of summons. The summons shall be promptly returned to the clerk with whom the complaint is filed with proof of service or mailing, or that defendant cannot be found. The summons may be returned by mail.

F.(2) Proof of service. Proof of service of summons or mailing may be made as follows:

F.(2)(a) Service other than publication. Service other than publication shall be proved by:

F.(2)(a)(i) Affidavit of service. The affidavit of the server indicating: the time, place, and manner of service; that the server is a competent person 18 years of age or older and a resident of the state of service or this state and is not a party to nor an officer, director, or employee of, nor attorney for any party, corporate or otherwise; and that the server knew that the person, firm, or corporation served is the identical one named in the action. If the defendant is not personally served, the server shall state in the affidavit when, where, and with whom a copy of the summons and complaint was left or describe in detail the manner and circumstances of service. If the summons and complaint were mailed, the affidavit shall state the circumstances of mailing and the return receipt shall be attached.

F.(2)(a)(ii) Certificate of service. If the copy of the summons is served by the sheriff, or a sheriff's deputy, proof may be made by the sheriff's or deputy's certificate of service

indicating the time, place, and manner of service, and if defendant is not personally served, when, where, and with whom the copy of the summons and complaint was left or describing in detail the manner and circumstances of service. If the summons and complaint were mailed, the certificate shall state the circumstances of mailing and the return receipt shall be attached.

F.(2)(a)(iii) Form. An affidavit or certificate containing proof of service may be made upon the summons or as a separate document attached to the summons.

F.(2)(b) Publication. Service by publication shall be proved by an affidavit in substantially the following form:

Affidavit of Publication

State of Oregon)
 : ss.
County of)

I, _____, being first duly sworn, depose and say that I am the _____ (here set forth the title or job description of the person making the affidavit), of the _____, a newspaper of general circulation, as defined by ORS 193.010 and 193.020; published at _____ in the aforesaid county and state; that I know from my personal knowledge that the _____, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper four times in the following issues:

(here set forth dates of issues in which the same was published).

Subscribed and sworn to before me this ___ day of _____,
19 ___.

Notary Public for Oregon

My commission expires
____ day of _____, 19 ___.

F.(2)(c) Making and certifying affidavit. The affidavit of service may be made and certified before a notary public, or other official authorized to administer oaths and acting as such by authority of the United States, or any state or territory of the United States, or the District of Columbia, and the official seal, if any, of such person shall be affixed to the affidavit. The signature of such notary or other official, when so attested by the affixing of the official seal, if any, of such person, shall be prima facie evidence of authority to make and certify such affidavit.

F.(3) Written admission. In any case proof may be made by written admission of the defendant.

F.(4) Failure to make proof; validity of service. If summons has been properly served, failure to make or file a proper proof of service shall not affect the validity of the service.

G. Disregard of error; actual notice. Failure to comply with provisions of this rule relating to the form of summons,

issuance of summons, and the person who may serve summons shall not affect the validity of service of summons or the existence of jurisdiction over the person, if the court determines that the defendant received actual notice of the substance and pendency of the action. The court may allow amendment to a summons, or affidavit or certificate of service of summons, and shall disregard any error in the content of or service of summons that does not materially prejudice the substantive rights of the party against whom summons was issued.

H. Telegraphic transmission. A summons and complaint may be transmitted by telegraph as provided in Rule 8 D.

COMMENT

For process, see ORCP 8. For service of subpoenas, see ORCP 55.

This rule brings all general provisions for service of summons together in one place. The basic standards of adequacy of service of summons is set forth in the first sentence of ORCP 7 D.(1). Succeeding portions of the rule provide ways in which service may be made and how these ways may be used for particular defendants, including conditional preferences. The particular methods, however, are methods which may be used. The rule does not require them to be used. Compliance with the specific methods of service is presumed to be service reasonably calculated, under all the circumstances, to apprise the defendant of the pendency of the action and to afford a reasonable opportunity to appear and defend. Other methods of service might accomplish the same thing. Subsection 4 F.(4) and section 4 G. also make clear that any technical defects in the return, form of summons, issuance of summons, and persons serving do not invalidate service if the defendant received actual notice of the existence and pendency of the action. Note, however, that summons must be served and returned; mere knowledge of the pendency and nature of the action will not require the defendant to appear and defend.

The defined methods of service apply both to in state and out of state service. The grounds for personal jurisdiction are covered in ORCP 4. They include service within the state and domicile within the state and, to that extent, location of service is related to personal jurisdiction; beyond that, there is no reason to limit methods of service by territorial boundaries.

The rule does not describe any service of process on state agents who are fictionally appointed as agents for service of process upon out of state defendants. Modern jurisdictional theory does not require service within the boundaries of the state, and requiring service on the Corporation Commissioner or other state official is a useless act which is burdensome and expensive for the officials and litigants. To the extent that such service has been left temporarily in separate ORS sections, it is incorporated by the second sentence of subsection D.(1).

Section B. is based upon ORS 15.020 but makes clear what "issued" means.

Subsections C.(1) and (3) are based upon ORS 15.040 and 15.220. Subsection C.(2) changes the disparate time for response to services in the state, in another state, outside the United States, and by publication, previously contained in ORS 15.040, 15.110, and 15.140, to a uniform 30-day period. Note, if the court orders a special method of service under paragraph D.(5)(a), it can set the time for response. The notices to defendant in subsection C.(3) have been changed slightly.

Again, the basic test of adequate service is set forth in the first sentence of subsection D.(1). A type of service, called office service, has been added in D.(2) and a specific description of service by mail has been added. The only specific service by mail described in the rule is in D.(3)(b)(ii).

The specific methods of service described in subsection D.(3) for particular defendants are modified forms of the methods of service described in ORS 15.080. The most significant change is in paragraph D.(3)(b), which provides that the preferred method of service is personal service or office service upon a responsible officer, director, or agent in the county where the action is filed; if this cannot be accomplished, four alternatives are available to the plaintiff: personal

service or office service upon such persons wherever they may be found within or without the state; substituted service at the dwelling house or usual place of abode of such persons, whether located within or without the state; mailing to such persons; or service upon any agent who may be found in the county where the action was filed. Since the basic standard remains adequacy of notice, the agent so served must be one likely to notify responsible persons in the corporation of the pendency of the action. This paragraph applies to associations and limited partnerships which may be sued under a common name; service in the case of partnerships and associations not suable under a common name is service on the named individual defendants and is covered by paragraph D.(3)(a). The effect of service on less than all partnership or association members in terms of judgments and enforcement of judgments is left to ORS 15.100 and other rules dealing with that subject. ORS 15.085 and 15.090 were eliminated.

Subsection D.(4) was adapted from Federal Rule 4(i).

The publication provisions of section D.(5) differ from ORS 15.120 to 15.180 in the circumstances when publication is available. Under the existing statutes, publication is available only in certain classes of cases depending upon the nature of the case or location and availability of a defendant for service within the state. This rule makes publication available only as a last resort, when service can be accomplished by no other reasonable method but makes such publication available for any case. Once publication is available, the procedure followed is similar to that of the present statutes. If a defendant has a mailing address and cannot otherwise be served, section D.(5)(a) allows a judge to order mailing instead of publication. Under other circumstances the court may order service by other methods. This might be required in the case of an indigent petitioner in a dissolution suit. See Boddie v. Connecticut, 401 U.S. 371, 382 (1971). In any case, a plaintiff seeking to use some method of service not specified in section D. might wish to seek court approval in advance, rather than serve without an indication that the service method complied with the standard of subsection D.(1).

Subsection E. is based upon ORS 15.060 but eliminates a specific description of the sheriff. The sheriff, as a person over 18, can, of course, serve unless the sheriff is a party. Employees of attorneys may serve summonses.

Section 7 F. is based upon ORS 15.060, 15.110, and 15.160. Subsection F.(4) would avoid invalidation of good service of

summons because of some technical defect in the return. A return and proof of service are still required by subsections F.(1) and (2).

Subsection G. prevents invalidation of service because of technical defects and would allow amendment of summons or return.