

RULE 5

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, he shall affix his seal of office to such process. Summons and subpoenas are not process and are covered by Rules 4 and 55.

B. Who may serve. Process may be served by the sheriff of the county where a person upon whom process is to be served or executed may be found, or the sheriff's deputy, unless the sheriff is a party to the action, or by any person specifically appointed by the court for that purpose.

C. County is a party. Process in an action where any county is a party shall be served on the county clerk, and an additional copy shall also be served upon the District Attorney of the county.

D. 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.

E. Telegraphic transmission of writ, order or paper, for service; procedure. Any writ or order in any civil action, suit or proceeding, and all other papers requiring service, may be transmitted by telegraph for service in any place, and the telegraphic copy, as defined in ORS 757.631, of such writ, order or paper so transmitted may be served or executed by the officer or person to whom it is sent for that purpose, and returned by him if any return be requisite, in the same manner and with the same force and effect in all respects as the original might be if delivered to him. The officer or person serving

or executing the same shall have the same authority and be subject to the same liabilities as if the copy were the original. The original, if a writ or order, shall also be filed in the court from which it was issued, and a certified copy thereof shall be preserved in the telegraph office from which it was sent. In sending it, either the original or a certified copy may be used by the operator for that purpose.

F. Proof of service or execution. Proof of service or execution of process shall be made as provided in Rule 4 E.

## COMMENT TO RULE 5

This Rule picks up bits and pieces of ORS Chap. 16 relating to service and process. There is no equivalent federal rule as summons is process in federal court and Rule 4 covers all process.

A. This is ORS 16.760. I eliminated the last sentence of the statute, as it does not make sense. I also eliminated ORS 16.765 as it seems unnecessary. The last sentence of the Rule was added to make the application of this particular process rule clear.

B. There is no equivalent provision. Chapter 16 talks about process without ever saying who may serve and how. The sheriff is the logical person to execute court orders and writs, and the Rule retains the sheriff as the person to serve process. The Rule, however, also makes it possible for the court to specially appoint someone to serve process. Since this is possible, the specific provisions of ORS 16.880 are not necessary and have been eliminated. I did not attempt to define how process may be served, as it is unclear exactly what falls within the term, and different forms of process may require different manners of service. This is best left to other statutes or local court rules.

C. This is the second half of ORS 16.820 relating to serving the District Attorney when process is served on the county. Serving the D.A. when summons is served on the county is covered under Rule 4 above.

D. This is the Bar service of process on Sunday bill which was formerly adopted by the Council. It replaces ORS 16.830.

E. This is ORS 16.840.

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E. Proof of service or execution. Proof of service or execution of process shall be made as provided in Rule <sup>7</sup>~~3~~ E.

## Rule 8

### Background.

~~These~~ sections since ~~the~~  
~~sections~~ replaced.

17.760, 1765, 16.880, 16.820, 16.830, 16.840 ↗

### Comment.

This rule is primarily based on existing ORS sections in Chapter 16.

A separate section for service of process is necessary as subpoenas and summons ~~are~~ not issued by a court are not court process. The only substantial change is Section C which is the modification of ORS 16.830 suggested to the last legislature by the Oregon State Bar. ORS 16.880 relating to elisors is eliminated entirely as archaic. Persons who may serve process and manners of service are covered in the various sections of ORS relating to such process.

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E. Proof of service or execution. Proof of service or execution of process shall be made as provided in Rule 7 E.

BACKGROUND NOTE

ORS sections superseded: ~~16.760, 17.650, 16.820, 16.830, 16.840, 16.880.~~ ~~16.765, +~~

COMMENT

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*and 16.765*

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.

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P10 nov  
10 Memo  
New Process  
Rule

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Stet.

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.

P 9  
Nov  
10 Memo  
Any Person

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#### RULE 9

##### SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

A. Service; when required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer or judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 7.

B. Service; how made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless otherwise ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to such attorney or party or by mailing it to such attorney's or party's last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within

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