

9.
RULE 8

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~~ ⁷.

B. Same; 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 service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to ~~him~~ ^{such attorney or party} or by mailing it to ~~him~~ ^{such attorney or party's} at his last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the person to be served; or leaving it at ~~his~~ ^{such person's} office with ~~his~~ ^{such person's} clerk or ~~other person~~ ^{person} in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at ~~his~~ ^{such person's} dwelling house or usual place of abode with some person of ~~suitable age and discretion~~ ^{person with age} then residing therein. Service by mail is complete upon mailing.

Contra
~~over 18~~
~~14-17~~
14-17
years of age

C. Same; numerous defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or

matter constituting an affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereupon upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

D. Filing; no proof of service required. All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter. Such filing by a party or a party's attorney shall constitute a representation that a copy of the paper has been served upon each of the other parties as required by section A. of this Rule. No further proof of service is required unless an adverse party raises a question of notice. In such instance the affidavit of the person making service shall be prima facie evidence.

E. Filing with the court defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court or the person exercising the duties of that office, ~~except that the judge may permit the papers to be filed with him, in which event the judge will note thereon the filing date and forthwith transmit them to the office of the clerk or the person exercising the duties of that office.~~ The clerk or the person exercising the duties of that office shall endorse upon such pleading or paper ^{the time or day} the day of the month and the year. The clerk or person exercising the duties of that office is not required to receive for filing any paper unless the name of the court, the title of the cause and the paper, and the names of the parties, and the attorney, if there be one, is legibly endorsed on the front of the document, nor unless the contents thereof can be read by a person of ordinary skill.

F. Effect of failure to file. If any party to an action fails to file within five (5) days after the service any of the papers required by this Rule to be filed, the court, on motion of any party or of its own motion, may

order the papers to be filed forthwith, and if the order be not obeyed, the court may order them to be regarded as stricken and their service to be of no effect.

Bule 9

BAckground

Section 9 replaced
ORS Chapters Preplaced .

16.770, 16.790, 16.800, 16.810, ~~16.820~~, 16.860, 16.870

COMMENT

This rule replaces the existing statutory provisions relating to serving and filing of papers subsequent to the summons and original complaint. The lanuage used was adapted from Rhode Island Rule of civil Phocedure 5. The major variation from Oregon Practice is Section D which eliminates the need for proof of service of papers subsequent to the original ~~xxxxxxx~~ complaint and summons unless a question is raised as to service.

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. Same; 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 service upon the party himself is 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 this rule means: handing it to the person to be served; or leaving it at such person's office with such person's clerk or person apparently in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at such person's dwelling house or usual place of abode with some person over 14 years of age then residing therein. Service by mail is complete upon mailing.

C. Same; numerous defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereupon upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

D. Filing; no proof of service required. All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter. Such filing by a party or a party's attorney shall constitute a representation that a copy of the paper has been served upon each of the other parties as required by section A. of this rule. No further proof of service is required unless an adverse party raises a question of notice. In such instance the affidavit of the person making service shall be prima facie evidence.

E. Filing with the court defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court or the person exercising the duties of that office. The clerk or the person exercising the duties of that office shall endorse upon such pleading or paper the time of day, the day of the month and the year. The clerk or person exercising the duties of that office is not required to receive for filing any paper unless the name of the court, the title of the cause and the paper, and the names of

the parties, and the attorney, if there be one, is legibly endorsed on the front of the document, nor unless the contents thereof can be read by a person of ordinary skill.

F. Effect of failure to file. If any party to an action fails to file within five (5) days after the service any of the papers required by this rule to be filed, the court, on motion of any party or of its own motion, may order the papers to be filed forthwith, and if the order be not obeyed, the court may order them to be regarded as stricken and their service to be of no effect.

BACKGROUND NOTE

ORS sections superseded: 16.770, 16.790, 16.800, 16.810, 16.860, 16.870.

16.430

16.780

16.850

COMMENT

This rule replaces the existing statutory provisions relating to serving and filing of papers subsequent to the summons and original complaint. The language used was adapted from Rhode Island Rule of Civil Procedure 5. The major variation from Oregon practice is section D., which eliminates the need for proof of service of papers subsequent to the original complaint and summons unless a question is raised as to service.

ORS. 16.810, 16.830 and 16.870 are eliminated

RULE 11 (RESERVED)

entirely. Persons who may serve process and manner of service are covered in the various sections of ORS relating to such process.

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 defend-^{note}ants, 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, ^{without parties 25:} 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

this rule means: handing it to the person to be served; or leaving it at such person's office with such person's clerk or person apparently in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at such person's dwelling house or usual place of abode with some person over 14 years of age then residing therein. Service by mail is complete upon mailing.

C. Service; numerous defendants. In any action or proceeding in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereupon upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

D. Filing; no proof of service required. All papers after the ~~complaint~~ ^{complaint} required to be served upon a party shall be filed with the court either ~~before service~~ or within a reasonable time thereafter. Such filing by a party or a party's attorney shall constitute a representation that a copy of the paper has been or will be served upon each of the other parties

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as required by section A. of this rule. No further proof of service is required unless an adverse party raises a question of notice. In such instance the affidavit of the person making service shall be prima facie evidence.

E. Filing with the court defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court or the person exercising the duties of that office. The clerk or the person exercising the duties of that office shall endorse upon such pleading or paper the time of day, the day of the month and the year. The clerk or person exercising the duties of that office is not required to receive for filing any paper unless the name of the court, the title of the cause and the paper, and the names of the parties, and the attorney, if there be one, ^{are} ~~is~~ legibly endorsed on the front of the document, nor unless the contents thereof can be read by a person of ordinary skill.

F. Effect of failure to file. If any party to an action or proceeding fails to file within five (5) days after the service any of the papers required by this rule to be filed, the court, ~~on motion of any party or of its own motion,~~ may order the papers to be filed forthwith, and if the order is not obeyed, the court may order them to be regarded as stricken and their service to be of no effect.

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BACKGROUND NOTE

ORS sections superseded: 16.430, 16.770, 16.780, 16.790,

16.800, 16.810, 16.850, 16.860, 16.870.

COMMENT

This rule replaces the existing statutory provisions relating to serving and filing of papers subsequent to the summons and original complaint. The language used was adapted from Rhode Island Rule of Civil Procedure 5. The major variation from Oregon practice is section 9 D. which eliminates the need for proof of service of papers subsequent to the original complaint and summons unless a question is raised as to service. ORS 16.810, 16.850 and 16.870 are eliminated.

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RULE 10

TIME

A. Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, or a legal holiday, including Sunday, in which event the period runs until the end of the next day which is not a Saturday or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" means legal holiday as defined in ORS 187.010 and 187.020.

B. Unaffected by expiration of term. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court

For purposes of this rule, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, or a legal holiday, including Sunday, in which event the period runs until the end of the next day which is not a Saturday or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" means legal holiday as defined in ORS 187.010 and 187.020.

RULE 10

TIME

A. Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, or a legal holiday, including Sunday, in which event the period runs until the end of the next day which is not a Saturday or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" means legal holiday as defined in ORS 137.010 and 13.020.

* B. Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to do so was the result of excusable neglect, but it may not extend the time for taking any action to file, object or hear and determine findings of fact or to vacate, set aside, amend or otherwise change a judgment which has been entered, beyond the time specified for taking such action in the applicable rule or statute.

B. Unaffected by expiration of term. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued

existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action which has been pending before it.

C. For motions; affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.

D. Additional time after service by mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.

Rule 10

Background

^{sentences}
ORS Chapters ~~Superseded~~:

174.120

COMMENT

This rule is ~~XXXXXX~~ based upon Federal Rule 6. The only substantial difference from the time computation provided in Ors 174.120 is the next to the last ~~XXXXXXXX~~ sentence of section A relating to intermediate saturdays, sundays and holidays for periods of less than 7 days. *Section B was eliminated from the Federal Rule in 1968 because Federal Courts no longer have terms. Since Oregon Courts do have terms, it was included in this rule.*

Rule 11 = Reserved

RULE 10

TIME

A. Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, or a legal holiday, including Sunday, in which event the period runs until the end of the next day which is not a Saturday or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" means legal holiday as defined in ORS 187.010 and 187.020.

B. Unaffected by expiration of term. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action which has been pending before it.

C. For motions; affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, opposing affidavits may be served not later

than 1 day before the hearing, unless the court permits them to be served at some other time.

BACKGROUND NOTE

ORS section superseded: 174.120.

COMMENT

This rule is based upon Federal Rule 6. The only substantial difference from the time computation provided in ORS 174.120 is the next to the last sentence of section ¹²A., relating to intermediate Saturdays, Sundays and holidays for periods of less than 7 days. Section ¹⁰B. was eliminated from the federal rule in 1968 because federal courts no longer have terms. Since Oregon courts do have terms, it was included in this rule.

RULE 11 (RESERVED)

Revision Aug 4
- 1978

OREGON RULES OF CIVIL PROCEDURE

12.

A. PLEADINGS LIBERALLY CONSTRUED - DISREGARD OF ERROR

12 A

A(1) Liberal Construction. All pleadings shall be liberally construed with a view of substantial justice between the parties.

12 B

A(2) Disregard of error or defect not affecting substantial right. The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the adverse party.

13

B. KINDS OF PLEADINGS ALLOWED - FORMER PLEADINGS ABOLISHED

13 A

B(1) Pleadings. The pleadings are the written statements by the parties of the facts constituting their respective claims and defenses.

13 B

B(2) Pleadings allowed. There shall be a complaint and an answer. An answer may include a counterclaim against a plaintiff including a party joined under Rule ~~K(4)~~^{22 B} and a cross-claim against a defendant, ~~including a party joined under Rule K(4).~~ A pleading against any person joined under Rule ~~K(3)~~^{22 C} is a third-party complaint. There shall be an answer to a cross-claim and a third party complaint. There shall be a reply to a counterclaim denominated as such and a reply to assert any affirmative allegations. There shall be no other pleading unless the court orders otherwise.

13 C

B(3) Pleadings abolished. Demurrers and pleas shall not be used.

14.

C. MOTIONS

14 A

C(1) Motions, in writing, grounds. (1) An application for an order is a motion. Every motion, unless made during trial, shall be in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

Rule 12.

Pleadings Liberally construed etc.

~~For Forms~~

Background.

ORS ~~Sections~~ ~~Articles~~ ~~part~~ ~~d.~~ Superseded:

16.120, 16.160.

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Rule 13

Kinds of pleadings

Background.

ORS ~~Sections~~ ~~Articles~~ ~~part~~ ~~d.~~ Superseded:

16.020, 16.325

16.010, 16.030, 16.460.

~~16.460~~

P

COMMENT: ~~Section 13A indicates the intent of the council to retain fact pleading~~

The description of pleadings <sup>section</sup> ~~changes~~ <sup>in 13B</sup> the existing Oregon practice by eliminating the routine reply containing only denials of affirmative matter in the answer. No reply is required ~~XXX~~ affirmative matter in an answer by this rule and under rule ~~MX~~ 18C allegations in a pleading to which no responsive pleading is required or permitted are automatically taken as denied. A <sup>reply</sup> responsive ~~pleading~~ is required to a counterclaim in an answer ~~XX~~ or to raise ~~XXXXXXXXXX~~ new matter in avoidance of defenses asserted in the ~~reply~~ <sup>answer</sup>. The proper response to a cross claim is an answer; the proper response of a party summoned to respond to a counterclaim under rule 22 D is a reply.

see Rule 18

The label ~~demurrer or pleas~~ is eliminated by 13C. ~~XXXXXXXXXX~~ the functions performed by these ~~devices~~ <sup>as provided in rule 13C</sup> are taken over by the motions specified in rule 21.

to do any act or take any proceeding in any civil action which <sup>is</sup> ~~has been~~ pending before it.

BACKGROUND NOTE

ORS section superseded: 174.120.

COMMENT

Section 10 A. is based upon Federal Rule 6 (a). The only substantial difference from the time computation provided in ORS 174.120 is the next to the last sentence of section 10 A. relating to intermediate Saturdays, Sundays and holidays for periods of less than 7 days. Section 10 B. was eliminated from the federal rule in 1968 because federal courts no longer have terms. Since Oregon courts do have terms, it was included in this rule.

RULE 11 (RESERVED)

RULE 12

PLEADINGS LIBERALLY CONSTRUED  
DISREGARD OF ERROR

A. Liberal Construction. All pleadings shall be liberally construed with a view of substantial justice between the parties.

B. Disregard of error or defect not affecting substantial right. The court shall, in every stage of an action or proceeding, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the adverse party.

BACKGROUND NOTE

ORS sections superseded: 16.120, 16.660.

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RULE 13  
KINDS OF PLEADINGS ALLOWED  
FORMER PLEADINGS ABOLISHED

A. Pleadings. The pleadings are the written statements by the parties of the facts constituting their respective claims and defenses.

B. Pleadings allowed. There shall be a complaint and an answer. An answer may include a counterclaim against a plaintiff, including a party joined under Rule 22 D., and a cross-claim against a defendant. A pleading against any person joined under Rule 22 C. is a third-party complaint. There shall be an answer to a cross-claim and a third party complaint. There shall be a reply to a counterclaim denominated as such and a reply to assert any affirmative allegations in avoidance of any defenses asserted in an answer. There shall be no other pleading unless the court orders otherwise.

C. Pleadings abolished. Demurrers and pleas shall not be used.

BACKGROUND NOTE

ORS sections superseded: 16.020, 16.030, 16.240, 16.325, 16.460. *16.620*

COMMENT

The description of pleadings in section 13 B. changes the existing Oregon practice by eliminating the routine reply containing only denials of affirmative matter in the answer. No reply is required to deny affirmative matter in an answer. Under Rule 19 C., allegations in a pleading to which no responsive pleading is required or permitted are automatically taken as denied. A reply is required to a counterclaim in an answer or to raise new matter in avoidance of defenses asserted in the answer. The proper response to a crossclaim is an answer; the proper response of a party summoned to respond to a counterclaim under Rule 22 D. is a reply. ORS 16.020 and 16.460 are unnecessary under Rules 1 and 2.

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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. Same; 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 service upon the party himself is 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 this rule means: handing it to the person to be served; or leaving it at such person's office with such person's clerk or person apparently in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at such person's dwelling house or usual place of abode with some person over 14 years of age then residing therein. Service by mail is complete upon mailing.

C. Same; numerous defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereupon upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

D. Filing; no proof of service required. All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter. Such filing by a party or a party's attorney shall constitute a representation that a copy of the paper has been served upon each of the other parties as required by section A. of this rule. No further proof of service is required unless an adverse party raises a question of notice. In such instance the affidavit of the person making service shall be prima facie evidence.

E. Filing with the court defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court or the person exercising the duties of that office. The clerk or the person exercising the duties of that office shall endorse upon such pleading or paper the time of day, the day of the month and the year. The clerk or person exercising the duties of that office is not required to receive for filing any paper unless the name of the court, the title of the cause and the paper, and the names of

the parties, and the attorney, if there be one, is legibly endorsed on the front of the document, nor unless the contents thereof can be read by a person of ordinary skill.

F. Effect of failure to file. If any party to an action fails to file within five (5) days after the service any of the papers required by this rule to be filed, the court, on motion of any party or of its own motion, may order the papers to be filed forthwith, and if the order be not obeyed, the court may order them to be regarded as stricken and their service to be of no effect.

#### BACKGROUND NOTE

ORS sections superseded: 16.430, 16.770, 16.780, 16.790, 16.800, 16.810, 16.850, 16.860, 16.870.

#### COMMENT

This rule replaces the existing statutory provisions relating to serving and filing of papers subsequent to the summons and original complaint. The language used was adapted from Rhode Island Rule of Civil Procedure 5. The major variation from Oregon practice is section 9 D. which eliminates the need for proof of service of papers subsequent to the original complaint and summons unless a question is raised as to service. ORS 16.810, 16.850 and 16.870 are eliminated.

entirely. Persons who may serve process and manner of service are covered in the various sections of ORS relating to such process.

## 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



this rule means: handing it to the person to be served; or leaving it at such person's office with such person's clerk or person apparently in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at such person's dwelling house or usual place of abode with some person over 14 years of age then residing therein. Service by mail is complete upon mailing.

C. Service; numerous defendants. In any action or proceeding in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereupon upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

D. Filing; no proof of service required. All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter. Such filing by a party or a party's attorney shall constitute a representation that a copy of the paper has been or will be served upon each of the other parties

as required by section A. of this rule. No further proof of service is required unless an adverse party raises a question of notice. In such instance the affidavit of the person making service shall be prima facie evidence.

E. Filing with the court defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court or the person exercising the duties of that office. The clerk or the person exercising the duties of that office shall endorse upon such pleading or paper the time of day, the day of the month and the year. The clerk or person exercising the duties of that office is not required to receive for filing any paper unless the name of the court, the title of the cause and the paper, and the names of the parties, and the attorney, if there be one, is legibly endorsed on the front of the document, nor unless the contents thereof can be read by a person of ordinary skill.

F. Effect of failure to file. If any party to an action or proceeding fails to file within five (5) days after the service any of the papers required by this rule to be filed, the court, on motion of any party or of its own motion, may order the papers to be filed forthwith, and if the order is not obeyed, the court may order them to be regarded as stricken and their service to be of no effect.

BACKGROUND NOTE

ORS sections superseded: 16.430, 16.770, 16.780, 16.790,

16.800, 16.810, 16.850, 16.860, 16.870.

COMMENT

This rule replaces the existing statutory provisions relating to serving and filing of papers subsequent to the summons and original complaint. The language used was adapted from Rhode Island Rule of Civil Procedure 5. The major variation from Oregon practice is section 9 D. which eliminates the need for proof of service of papers subsequent to the original complaint and summons unless a question is raised as to service. ORS 16.810, 16.850 and 16.870 are eliminated.

RULE 10

TIME

A. Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, or a legal holiday, including Sunday, in which event the period runs until the end of the next day which is not a Saturday or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" means legal holiday as defined in ORS 187.010 and 187.020.

B. Unaffected by expiration of term. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court

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 <sup>OF</sup> ~~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

this rule means: handing it to the person to be served; or leaving it at such person's office with such person's clerk or person apparently in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at such person's dwelling house or usual place of abode with some person over 14 years of age then residing therein. Service by mail is complete upon mailing.

~~C. Service; numerous defendants. In any action or proceeding in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereupon upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.~~

D. Filing; no proof of service required. All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter. Such filing by a party or a party's attorney shall constitute a representation that a copy of the ~~paper has been or will be served upon each of the other parties~~

~~as required by section A. of this rule. No further proof of service is required unless an adverse party raises a question of notice. In such instance the affidavit of the person making service shall be prima facie evidence.~~

✓  
C. Filing proof of service. All papers required to be served upon a party by section A. of this rule shall be filed with the court within a reasonable time after service. Except as otherwise provided in Rules 7 and 8, proof of service of all papers required or permitted to be served may be by written acknowledgment of service, by affidavit of the person making service, or by certificate of an attorney. Such proof of service may be made upon the papers served or as a separate document attached to the papers.

D. Filing with the court defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court or the person exercising the duties of that office. The clerk or the person exercising the duties of that office shall endorse upon such pleading or paper the time of day, the day of the month and the year. The clerk or person exercising the duties of that office is not required to receive for filing any paper unless the name of the court, the title of the cause and the paper, and the names of the parties, and the attorney, if there <sup>are</sup> be one, ~~is~~ legibly endorsed on the front of the document, nor unless the contents thereof can be read by a person of ordinary skill.

~~F. Effect of failure to file. If any party to an action or proceeding fails to file within five (5) days after the service any of the papers required by this rule to be filed, the court, on motion of any party or of its own motion, may order the papers to be filed forthwith, and if the order is not obeyed, the court may order them to be regarded as stricken and their service to be of no effect.~~

COMMENT

This rule replaces the existing statutory provisions relating to serving and filing of papers subsequent to the summons and original complaint. The language used was adapted from Rhode Island Rule of Civil Procedure 5. Note, the rule requires service of orders. ORS 16.810, 16.850 and 16.870 are eliminated.

RULE 10

TIME

A. Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday<sup>✓</sup> or a legal holiday, including Sunday, in which event the period runs until the end of the next day which is not a Saturday or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in <sup>this</sup> rule, "legal holiday" means legal holiday as defined in ORS 187.010 and 187.020.

## RULE 9

### SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

A. Service; when required. Except as otherwise provided in these rules, every order, every pleading subsequent to the original complaint, every written motion other than one which may be heard ex parte, and every written request, notice, appearance, demand, offer of 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 this rule means: handing it to the person to be served; or leaving it at such person's office with such person's clerk or person apparently in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at



such person's dwelling house or usual place of abode with some person over 14 years of age then residing therein. Service by mail is complete upon mailing.

C. Filing; proof of service. All papers required to be served upon a party by section A. of this rule shall be filed with the court within a reasonable time after service. Except as otherwise provided in Rules 7 and 8, proof of service of all papers required or permitted to be served may be by written acknowledgment of service, by affidavit of the person making service, or by certificate of an attorney. Such proof of service may be made upon the papers served or as a separate document attached to the papers.

D. Filing with the court defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court or the person exercising the duties of that office. The clerk or the person exercising the duties of that office shall endorse upon such pleading or paper the time of day, the day of the month, month, and the year. The clerk or person exercising the duties of that office is not required to receive for filing any paper unless the name of the court, the title of the cause and the paper, and the names of the parties, and the attorney, if there be one, are legibly endorsed on the front of the document, nor unless the contents thereof can be read by a person of ordinary skill.

COMMENT

This rule replaces the existing statutory provisions relating to serving and filing of papers subsequent to the summons and original complaint. The language used was adapted from Rhode Island Rule of Civil Procedure 5. Note, the rule requires service of orders. ORS 16.810, 16.850, and 16.870 are eliminated.