

OREGON RULES OF CIVIL PROCEDURE

A. PLEADINGS LIBERALLY CONSTRUED - DISREGARD OF ERROR

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

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.

B. KINDS OF PLEADINGS ALLOWED - FORMER PLEADINGS ABOLISHED

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

B(2) Pleadings allowed. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule K(5); and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

C. MOTIONS

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

(b) The rules applicable to captions, signing and other matters or form of pleadings apply to all motions and other papers provided for by these rules.

C(2) Where and to whom motions made. Motions shall be made to the court or

COMMENTARY
OREGON RULES OF CIVIL PROCEDURE
PLEADING

RULE A

- (1) Based on ORS 16.120.
- (2) Existing ORS 16.660.

RULE B

(1) This section was inserted to clearly indicate the intent to retain fact pleading. It was taken from the Indiana statutes.

(2) This section is Federal Rule 7(a). For the most part it describes existing Oregon practice replacing separate coverage of plaintiff's and defendant's pleadings. It also clearly describes the pleadings to be used in cross claims and third party practice.

The most significant change is the elimination of the automatic reply to new matter in an answer. The rule only requires an answer where there is a counterclaim denominated as such. In any other situation it must be read in conjunction with Rule H(3) which says that allegations in a pleading to which no responsive pleading is required are taken as avoided or denied. Usually the reply is a routine denial and the rule eliminates an unnecessary pleading step. For those situations where a reply would in fact contribute to clarifying the issues, the court is given the authority to order a reply. This pleading simplification not only follows the federal rule approach but a number of other states which retain code pleading, e.g. California.

(3) For absolute clarity a third section should be added here which states, "Pleadings abolished. Demurrers and pleas shall not be used." ORS 16.460 contains language abolishing a number of common law pleadings but no such statement seems necessary.

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B. KINDS OF PLEADINGS ALLOWED - FORMER PLEADINGS ABOLISHED

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

B(2) Pleadings allowed. There shall be a complaint and an answer; a permissive reply to any answer or third party answer and a mandatory reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule K(5); and a third-party answer, if a third-party complaint is served. No other pleadings shall be allowed, except that the court may order a mandatory reply to an answer or a third-party answer.

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

C. MOTIONS

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

(2) Form. The rules applicable to captions, signing and other matters or form of pleadings apply to all motions and other papers provided for by these rules.

4/18/78

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- 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 D} 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.

Background.

ORS ~~Charter~~ ^{sections} ~~part~~ ^{superseded}:

16.120, 16.160.

Rule 13

Kinds of pleadings

Background.

ORS ~~Charter~~ ^{sections} ~~part~~ ^{superseded}:

16.020, 16.325,
16.010, 16.030, 16.460.

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

The description of pleadings ^{section} ~~changes~~ ^{in 13B} the existing Oregon practice by eliminating the routine reply containing only denials of affirmative matter in the answer. No reply is required ~~XXX~~ ^{to} 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 ^{reply} ~~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~~ ^{answer}. 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.

The ~~label~~ demurrer or pleas is eliminated by 13C. ~~XXXXXXXXXX~~ the functions performed by these ~~devices~~ ^{provisions} are taken over by the motions specified in rule 21.

to do any act or take any proceeding in any civil action which ^{is} ~~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.

10 10 new 10
memo
Add rule E

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, 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, 16.⁶~~1~~60.

RULE 13

KINDS OF PLEADINGS ALLOWED - FORMER PLEADINGS ABOLISHED

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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. There shall be no other pleading unless the court orders otherwise.

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, 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.

RULE 13

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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. There shall be no other pleading unless the court orders otherwise.

to do any act or take any proceeding in any civil action which 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.

6

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 ^{is} ~~has been~~ pending before it.

C. 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 such party and the notice or paper is served by mail, 3 days shall be added to the prescribed period.

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

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DISREGARD OF ERROR

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

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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.

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.

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

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B. 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.

COMMENT

This rule is based on ORS 16.120 and 16.660.