

E. PLEADINGS - FORM

E(1) Captions, names of parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the register number of the cause and a designation as in Rule B(1). In the complaint the title of the action shall include the names of all the parties, but in such other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

E(2) Concise and direct statement; paragraphs; statement of claims or defenses. Every pleading shall consist of plain and concise statements in consecutively numbered paragraphs, the contents of which shall be limited as far as practicable to a statement of a single set of circumstances, and a paragraph may be referred to by number in all succeeding pleadings. Separate claims or defenses shall be separately stated and numbered.

E(3) Consistency in pleading alternative statements.
Inconsistent claims or defenses are not objectionable, and when a party is in doubt as to which of two or more statements of fact is true, he may allege them in the alternative. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based upon legal or equitable grounds or upon both. All statements shall be made subject to the obligation set forth in Rule J.

E(4) Adoption by reference; exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

(4) This is the notice of appearance rule requested by the Council. It is a new draft. The Washington and California notice of appearance rules are very vague as to form and further pleading and appear to be rarely used. The notice of appearance here operates as an automatic time extension. It must be filed by an attorney retained by a party, which prevents the party from securing the extension and then still waiting until the last day to contact an attorney. The required affirmative statement, coupled with the Rule F certification of truthfulness, should limit abuse. Since under Rule J the concept of special appearance is abolished, there is no need to specify the nature of the appearance.

RULE E

(1) This combines ORS 16.060 and 16.210(2)(a). The language comes from Federal Rule 10(a) but reference to "register number" from 16.060 is used rather than "file number".

(2) Most of this rule states existing Oregon practice. The language comes from Federal Rule 10(b) and New York CPLR 3014. The most significant aspect is the last sentence which retains the requirement of separate statements of claims and defenses. This is not consistent with the federal rules and most states; the federal rule only requires separate counts when claims are founded on separate transactions or occurrences. The requirement of separate statement is more consistent with fact pleading.

(3) In existing practice, one theoretically cannot plead inconsistent statements of fact within one count or between counts or present inconsistent causes of action. The court, however, has held that if an apparent inconsistency is in the application of law to facts or in interpretation, inconsistent

statements are permitted. Thus, in Pruett v. Lininger, 224 Or. 614 (1960), a defendant was allowed to allege that a worker was employed by two different people in the same pleading. Therefore, the only alternative or inconsistent pleading not allowed is where the statements are simple expository fact clearly within the knowledge of the pleader. This limit would be retained because the obligations of Rule F regarding truthful pleading apply, e.g. a party could not file a pleading alleging that he had mailed a letter on two different dates if he clearly knew the correct date because one of the statements would be untruthful. Requiring any more consistency at the pleading stage is unrealistic and does not appear to be required under present Oregon law; this rule will eliminate useless motions to elect and make more definite and certain and simplify pleading. The language used was taken from Michigan Rule 112.9(2).

(4) This is Federal Rule 10(c). There are some old Oregon cases discussing the necessity of specific incorporation of exhibits, but this rule seems more sensible.

RULE F

This is the new subscription rule adopted by the Council.

RULE G

This is the crucial rule retaining fact pleading. It follows a federal rule format of stating the requirements for any type of pleading asserting a claim (Chapter 16 deals only with complaints).

(1) Differs from the federal rules in requiring the pleading of ultimate facts rather than merely a statement of a claim. The language is based upon existing ORS 16.210 but substitutes the word, claim, for cause of action and says "ultimate" facts. Most of the recently enacted Oregon statutes in the

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D(3) Enlarging time to plead or do other act. The court may, in its discretion, and upon such terms as may be just, allow an answer or reply to be made, or other act to be done after the time limited by the procedural rules, or by an order enlarge such time.

E. PLEADINGS - FORM

E(1) Captions, names of parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the register number of the cause and a designation as in Rule B(1). In the complaint the title of the action shall include the names of all the parties, but in such other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

E(2) Concise and direct statement; paragraphs; statement of claims or defenses. Every pleading shall consist of plain and concise statements in consecutively numbered paragraphs, the contents of which shall be limited as far as practicable to a statement of a single set of circumstances, and a paragraph may be referred to by number in all succeeding pleadings. Separate claims or defenses shall be separately stated and numbered.

E(3) Consistency in pleading alternative statements. Inconsistent claims or defenses are not objectionable, and when a party is in doubt as to which of two or more statements of fact is true, the party may allege them in the alternative. A party may also state as many separate claims or defenses as the party has, regardless of consistency and whether based upon legal or equitable grounds or upon both. All statements shall be made subject to the obligation set forth in Rule J.

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E(4) Adoption by reference; exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

F. SUBSCRIPTION OF PLEADINGS

F(1) Subscription by party or attorney, certificate. Every pleading shall be subscribed by the party or by a resident attorney of the state, except that if there are several parties united in interest and pleading together, the pleading must be subscribed by at least one of such parties or his resident attorney. When a corporation, including a public corporation, is a party, and if the attorney does not sign the pleading, the subscription may be made by any officer thereof upon whom service of a summons might be made; and when the state or any branch, department, agency, board or commission of the state or any officer thereof in its behalf is a party, the subscription, if not made by the attorney, may be made by any person to whom all the material allegations of the pleading are known. Verification of pleadings shall not be required. The subscription of a pleading constitutes a certificate by the person signing that such person has read the pleading, that to the best of the person's knowledge, information and belief there is a good ground to support it and that it is not interposed for delay.

F(2) Pleadings not subscribed. Any pleading not duly subscribed may, on motion of the adverse party, be stricken out of the case.

G. COMPLAINT, COUNTERCLAIM, CROSSCLAIM AND THIRD PARTY CLAIM

A pleading which asserts a claim for relief, whether an original claim, counterclaim, cross-claim or third party claim, shall contain: (1) a plain and concise statement of the ultimate facts constituting a claim for relief without unnecessary repetition; (2) a demand of the relief which the party claims; if

Enlarging time to plead or do other act. The court may, in its discretion, and upon such terms as may be just, allow an answer or reply to be made, or other act to be done after the time limited by the procedural rules, or by an order enlarge such time.

BACKGROUND NOTE

For provisions relating to amended pleadings and responding to amended pleadings, see Rule 23.

ORS sections superseded: 16.040, 16.050, 16.420.

COMMENT

This rule ~~attempt to~~ bring all time requirements for responding to pleadings together in one rule. Section 15 A. provides the same time for response to pleadings as ORS 16.040. Subsections 15 B. (1) and (2) are new; ~~subsection 15 B. (3)~~ was covered by ORS 16.420. Section 15 ~~D~~ is ORS 16.050. *section 15 C*

RULE 16

PLEADINGS - FORM

A. Captions, names of parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the register number of the cause and a designation in accordance with Rule ¹³ B. In the complaint the title of the action shall include the names of all the parties, but in ~~such~~ other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

B. Concise and direct statement; paragraphs; statement of claims or defenses. Every pleading shall consist of plain and concise statements

in consecutively numbered paragraphs, the contents of which shall be limited as far as practicable to a statement of a single set of circumstances, and a paragraph may be referred to by number in all succeeding pleadings. Separate claims or defenses shall be separately stated and numbered.

C. Consistency in pleading alternative statements. Inconsistent claims or defenses are not objectionable, and when a party is in doubt as to which of two or more statements of fact is true, the party may allege them in the alternative. A party may also state as many separate claims or defenses as the party has, regardless of consistency and whether based upon legal or equitable grounds or upon both. All statements shall be made subject to the obligation set forth in Rule 17.

D. Adoption by reference; exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading.

BACKGROUND NOTE

ORS sections superseded: 16.060, 16.090.

✓ 13.010

COMMENT

The Council intends to retain existing Oregon practice in sections 16 A., 16 B. and 16 D., including separate statements of claims and defenses required by ORS 16.040. Section 16 C. is intended to eliminate any objection based upon hypothetical, alternative and inconsistent pleading as such. Inconsistent statements of simple facts clearly within the knowledge of the pleader would, however, be improper, because of the obligation to plead truthfully under Rule 17A. ~~_____~~

stet

15C
~~D(5)~~ Enlarging time to plead or do other act. The court may, in its discretion, and upon such terms as may be just, allow an answer or reply to be made, or other act to be done after the time limited by the procedural rules, or by an order enlarge such time. 16

~~B~~ PLEADINGS - FORM

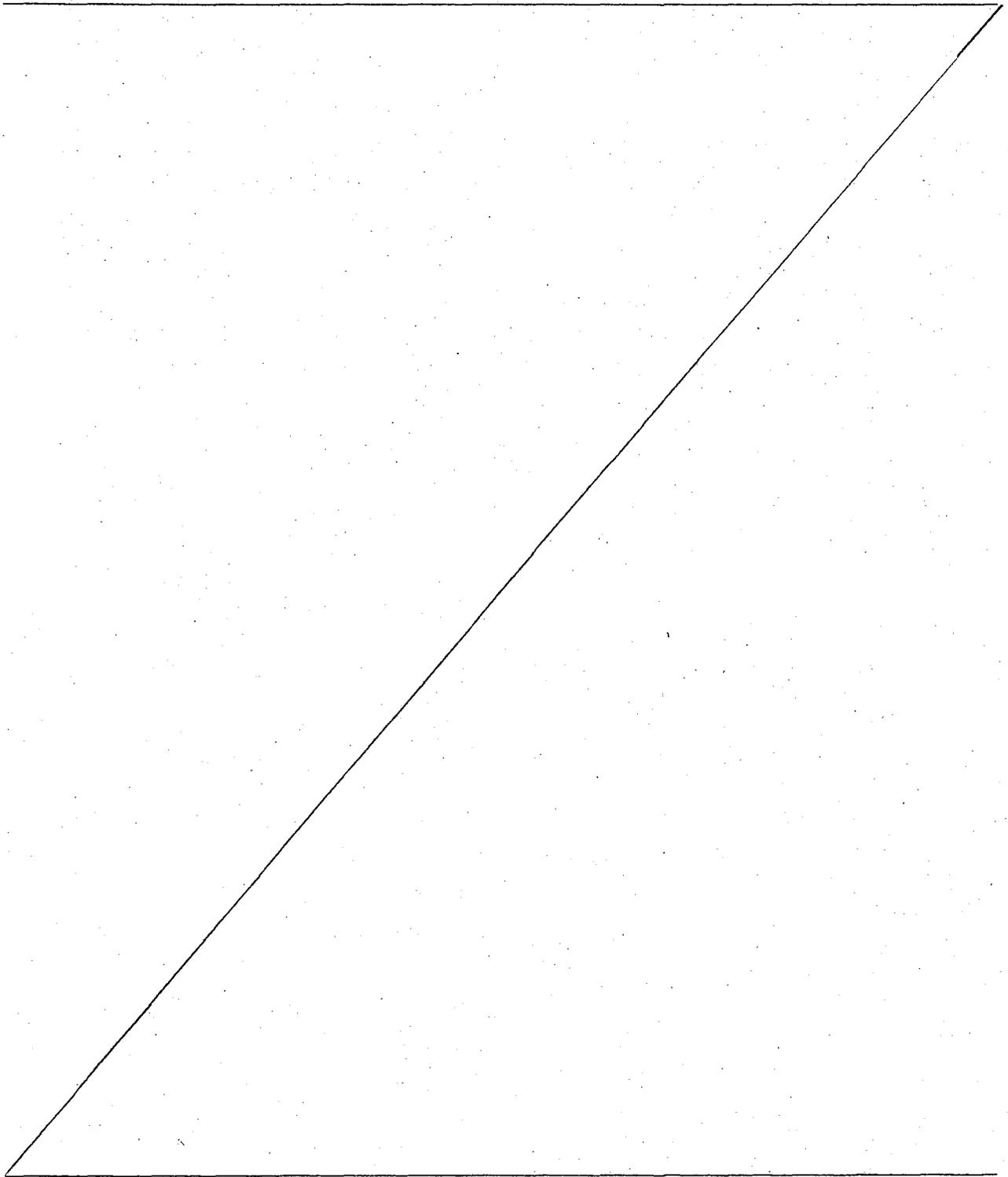
16A
~~E(1)~~ Captions, names of parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the register number of the cause and a designation in accordance with Rule ^{13B}~~E(2)~~. In the complaint the title of the action shall include the names of all the parties, but in such other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

16B
~~E(2)~~ Concise and direct statement; paragraphs; statement of claims or defenses. Every pleading shall consist of plain and concise statements in consecutively numbered paragraphs, the contents of which shall be limited as far as practicable to a statement of a single set of circumstances, and a paragraph may be referred to by number in all succeeding pleadings. Separate claims or defenses shall be separately stated and numbered.

16C
~~E(3)~~ Consistency in pleading alternative statements. Inconsistent claims or defenses are not objectionable, and when a party is in doubt as to which of two or more statements of fact is true, the party may allege them in the alternative. A party may also state as many separate claims or defenses as the party has, regardless of consistency and whether based upon legal or equitable grounds or upon both. All statements shall be made subject to the obligation set forth in Rule ~~E~~ 17.

16.D
~~16.C~~

Adoption by reference; exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading.



Rule 16

Form

Background note
sections
ORS ~~16.060~~ 16.090

16.060, 16.090

COMMENT:

of. E. ...

The council intends to retain existing Oregon practice in Sections 16A, 16B and 16D. Section 16C is intended to eliminate any objection based upon hypothetical, alternative and inconsistent pleading as such. Inconsistent statements of simple facts clearly within the knowledge of the pleader would, however, be improper, because of the obligation to plead truthfully of Rule 17.

Rule 17,

Subscription

Background
For subscription of Actus Brought in
the name of the state, see: 30.610.

ORS sections Supplemented
16.070, 16.080, 30.350.

COMMENT: This replaces the general verification requirements of ORS 16.070, 16.080 and 30.350 with a rule ~~governing subscription~~ requiring only signature. *But specifying that such signature certifies truthfulness and merit.* The approach is that suggested to the last legislature by the

Oregon State Bar. *If a court or entity pur to litigate without another the signature would be signed by one with a person Authority to Act for such corporation or entity.*

COMMENT

This rule brings all time requirements for responding to pleadings together in one rule. Section 15 A. provides the same time for response to pleadings as ORS 16.040. Subsections 15 B. (1) and (2) are new, Section 15 C. was covered by ORS 16.420. Section 15 D. is ORS 16.050.

*2 note
R do 9 A
Requires
service of
orders.*

RULE 16

PLEADINGS - FORM

A. Captions, names of parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action or proceeding, the register number of the cause, and a designation in accordance with Rule 13 B. In the complaint the title of the action or proceeding shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

B. Concise and direct statement; paragraphs; statement of claims or defenses. Every pleading shall consist of plain and concise statements in consecutively numbered paragraphs, the contents of which shall be limited as far as practicable to a statement of a single set of circumstances, and a paragraph may be referred to by number in all succeeding pleadings. Separate claims or defenses shall be separately stated and numbered.

C. Consistency in pleading alternative statements. Inconsistent claims or defenses are not objectionable, and when a party

D. Enlarging time to plead or do other act. The court may, in its discretion, and upon such terms as may be just, allow an answer or reply to be made, or other act to be done after the time limited by the procedural rules, or by an order enlarge such time.

BACKGROUND NOTE

For provisions relating to amended pleadings and responding to amended pleadings, see Rule 23.

ORS sections superseded: 16.040, 16.050, 16.420.

COMMENT

This rule brings all time requirements for responding to pleadings together in one rule. Section 15 A. provides the same time for response to pleadings as ORS 16.040. Subsections 15 B. (1) and (2) are new; section 15 C. was covered by ORS 16.420. Section 15 D. is ORS 16.050.

RULE 16
PLEADINGS-FORM

A. Captions, names of parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the register number of the cause and a designation in accordance with Rule 13 B. In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

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D. Adoption by reference; exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading.

BACKGROUND NOTE

ORS sections superseded: 13.010, 16.060, 16.090.

COMMENT

The Council intends to retain existing Oregon practice in sections 16 A., 16 B. and 16 D., including separate statements of claims and defenses required by ORS 16.040. Section 16 C. is intended to eliminate any objection based upon hypothetical, alternative and inconsistent pleading as such. Inconsistent statements of simple facts clearly within the knowledge of the pleader would, however, be improper, because of the obligation to plead truthfully under Rule 17A.

COMMENT

This rule brings all time requirements for responding to pleadings together in one rule. Section 15 A. provides the same time for response to pleadings as ORS 16.040. Subsections 15 B. (1) and (2) are new; section 15 C. was covered by ORS 16.420. Section 15 D. is ORS 16.050.

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D. Adoption by reference; exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading.

BACKGROUND NOTE

ORS sections superseded: 13.010, 16.060, 16.090.

COMMENT

The Council intends to retain existing Oregon practice in sections 16 A., 16 B. and 16 D., including separate statements of claims and defenses required by ORS 16.040. Section 16 C. is intended to eliminate any objection based upon hypothetical, alternative and inconsistent pleading as such. Inconsistent statements of simple facts clearly within the knowledge of the pleader would, however, be improper because of the obligation to plead truthfully under Rule 17 A.

RULE 17

SUBSCRIPTION OF PLEADINGS

A. Subscription by party or attorney, certificate. Every pleading shall be subscribed by the party or by a resident attorney of the state, except that if there are several parties united in interest and pleading together, the pleading may be subscribed by at least one of such parties or his resident attorney. If any party is represented by an attorney, every pleading shall be signed

D. Enlarging time to plead or do other act. The court may, in its discretion, and upon such terms as may be just, *allow any other pleading or* allow an answer or reply to be made, or ~~other act to be done~~ *MOTION* after the time limited by the procedural rules, or by an order enlarge such time.

COMMENT

For provisions relating to amended pleadings and responding to amended pleadings, see ORCP 23. For motion to make more definite and certain, see ORCP 21 D.

This rule brings all time requirements for responding to pleadings together in one rule. Section 15 A. provides the same time for response to pleadings as ORS 16.040. Subsections 15 B. (1) and (2) are new. Section 15 C. was covered by ORS 16.420. Section 15 D. is ORS 16.050.

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D. Adoption by reference ~~exhibits~~. Statements in a pleading may be adopted by reference in a different part of the same pleading, ~~or in another pleading.~~

COMMENT

The Council intends to retain existing Oregon practice in sections 16 A., 16 B. and 16 D., including separate statements of claims and defenses required by ORS 16.040. Section 16 C. is intended to eliminate any objection based upon hypothetical, alternative and inconsistent pleading as such. Inconsistent statements of simple facts clearly within the knowledge of the pleader would, however, be improper because of the obligation to plead truthfully under ORCP 17 A.

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D. Adoption by reference. Statements in a pleading may be adopted by reference in a different part of the same pleading.

COMMENT

The Council intends to retain existing Oregon practice in sections 16 A., 16 B., and 16 D., including separate statements of claims and defenses required by ORS 16.090. Section A. is based on ORS 16.060 and Federal Rule 10(a). Section B. is based on ORS 16.090 and Federal Rule 10(b). Section C. is based on Michigan General Court Rule 111.9. Section 16 C. is intended to eliminate any objection based upon hypothetical, alternative, and inconsistent pleading as such. Inconsistent statements of simple facts clearly within the knowledge of the pleader would, however, be improper because of the obligation to plead truthfully under ORCP 17 A.