

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 right to 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 without unnecessary repetition;

(2) A demand of the relief which the plaintiff claims. If recovery of money or damages is demanded, the amount thereof shall be stated. Relief in the alternative or of several different types may be demanded.

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

4

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.

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3

recovery of money or damages is demanded, the amount thereof shall be stated; relief in the alternative or of several different types may be demanded; (3) a statement specifying whether the party asserts that the claim, or any part thereof, is triable of right by a jury.

H. RESPONSIVE PLEADINGS

H(1) Defenses; form of denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the allegations upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an allegation, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. When a pleader intends in good faith to deny only a part or a qualification of an allegation, the pleader shall admit so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the allegations of the preceding pleading, the denials may be made as specific denials of designated allegations or paragraphs, or the pleader may generally deny all the allegations except such designated allegations or paragraphs as he expressly admits; but, when the pleader does so intend to controvert all its allegations, the pleader may do so by general denial subject to the obligations set forth in Rule F.

H(2) Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, comparative or contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, unconstitutionality, waiver, and any other matter constituting an

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~~ 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 company 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.*

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: ~~substantives~~. 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 ^a party is represented by an attorney, every pleading shall be signed

Handwritten note: "Hoff's p 7 same, adding"

Handwritten note: "P 4 new 3 (same) sanction"

Handwritten note: "Allen letter Winston"

Handwritten note: "If that party"

Not found

by at least one attorney in such attorney's individual name. Verification of pleadings shall not be required unless otherwise required by rule or statute. 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 harassment or delay.

B. Pleadings not subscribed. Any pleading not duly subscribed may, on motion of the adverse party, be stricken out of the case.

BACKGROUND NOTE

For subscription of actions brought in the name of the state, see: 30.610.

ORS sections superseded: 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 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 corporation or entity were litigating without an attorney, the pleading would be signed by a person with authority to act for such corporation or entity.

RULE 18

COMPLAINT, COUNTERCLAIM, CROSS-CLAIM
THIRD PARTY CLAIM

A pleading which asserts a claim for relief, whether an original claim, counterclaim, cross-claim, or third party claim, shall contain:

A. A plain and concise statement of the ultimate facts constituting a claim for relief without unnecessary repetition;

B. A demand of the relief which the party claims; if recovery of money or damages is demanded, the amount thereof shall

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