

subject to review on appeal from final judgment in the cause.

L(6) How amendment made. When any pleading or proceeding is amended before trial, mere clerical errors excepted, it shall be done by filing a new pleading, to be called the amended complaint, or otherwise, as the case may be. Such amended pleading shall be complete in itself, without reference to the original or any preceding amended one.

L(7) Supplemental pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

#### M. JOINDER OF CAUSES OF ACTION

M(1) Permissive joinder. A plaintiff may join in a complaint, either as independent or as alternate claims, as many claims, legal or equitable, as the plaintiff has against an opposing party.

M(2) Forcible entry and detainer and rental. If an action of forcible entry and detainer and an action for rental due are joined, the defendant shall have the same time to appear as is now provided by law in actions for the recovery of rental due.

M(3) Separate statement. The claims united must be separately stated and must not require different places of trial.

#### N. JOINDER OF PARTIES

N(1) Permissive joinder as plaintiffs or defendants. All persons may join in one action as plaintiffs if they assert any right to relief jointly,

severally, or in the alternative in respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

N(2) Separate trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to unnecessary expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

O. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

O(1) Persons to be joined if feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (a) in that person's absence complete relief cannot be accorded among those already parties, or (b) that person claims an interest relating to the subject of the action and is so situated that the disposition of the action in that person's absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject

pleading after a successful motion for judgment on the pleadings was added to give the trial judge discretion where such motion is actually a late blooming motion to dismiss for failure to state a claim. If the motion is denied, the existing statute relating to demurrers gave the trial judge discretion to not allow further pleading. This rule automatically allows pleading over after an unsuccessful motion, absent bad faith.

(5) This is ORS 16.400(2) and covers a motion to strike a part of a pleading.

(6) This is existing ORS 16.410.

(7) The language is taken from Federal Rule 15(d). It does not change the existing rule under ORS 16.360 but the language is clearer.

#### RULE M

This is existing ORS 16.221. (The title should be JOINDER OF CLAIMS).

#### RULE N

This is existing ORS 13.161.

#### RULE O

This is Federal Rule 19. This is one of the best drafted federal rules and seems to be a clear and reasonable elaboration of ORS 13.110. The last section, (5), is ORS 13.190 covering a specific situation.

#### RULE P

This is Federal Rule 21 and replaces all other remedies for party joinder problems with the simple device of dropping or adding parties.

#### RULE Q

This is Federal Rule 17(a) and has the same effect as ORS 13.030, using clearer language. It also provides a procedure for dealing with real party in interest objections.

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Rule N should be Numbered as 28-

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statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

~~M~~ JOINDER OF CLAIMS <sup>24</sup>

<sup>24 A</sup>  
~~M(1)~~ Permissive joinder. A plaintiff may join in a complaint, either as independent or as alternate claims, as many claims, legal or equitable, as the plaintiff has against an opposing party.

<sup>24 B</sup>  
~~M(2)~~ Forcible entry and detainer and rental. If an action of forcible entry and detainer and an action for rental due are joined, the defendant shall have the same time to appear as is now provided by law in actions for the recovery of rental due.

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~~M~~ JOINDER OF PARTIES <sup>28</sup>

<sup>28 A</sup>  
~~M(1)~~ Permissive joinder as plaintiffs or defendants. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded.

Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

<sup>28B</sup>  
~~28A~~ Separate trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to unnecessary expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

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10. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

<sup>29A</sup>  
~~29A~~ Persons to be joined if feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in that person's absence complete relief cannot be accorded among those already parties, or (2) that person claims an interest relating to the subject of the action and is so situated that the disposition in that person's absence may (a) as a practical matter impair or impede the person's ability to protect that interest or (b) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of their claimed interest. If such person has not been so joined, the court shall order that such person be made a party. If the joined party objects to venue and the joinder would render the venue of the action improper, the joined party shall be dismissed from the action.

<sup>29B</sup>  
~~29B~~ Determination by court whenever joinder not feasible. If

~~if a person~~ <sup>plaintiff</sup> should join as a ~~party~~ but refuses to do so,

Such person shall be made a defendant, the reason being stated in the complaint.

orders, by a guardian ad litem appointed by the court in which the action or proceeding is brought. If the incapacitated person does not have a conservator of such person's estate or a guardian, the incapacitated person shall appear by a guardian ad litem appointed by the court. The court shall appoint some suitable person to act as guardian ad litem:

B.(1) When the incapacitated person is plaintiff, upon application of a relative or friend of the incapacitated person.

B.(2) When the incapacitated person is defendant, upon application of a relative or friend of the incapacitated person filed within the period of time specified by law for appearance and answer after service of summons, or if the application is not so filed, upon application of any party other than the incapacitated person.

BACKGROUND NOTE

ORS sections superseded: 13.041, 13.051.

COMMENT

This rule is based on the existing ORS sections.

RULE 28

JOINDER OF PARTIES

A. Permissive joinder as plaintiffs or defendants. All persons may join in one action or proceeding as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any

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question of law or fact common to all these persons will arise in the action. All persons may be joined in one action or proceeding as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

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How is  
p 9  
lost  
clause.

BACKGROUND NOTE

ORS sections superseded: 13.140, 13.150, 13.161.

COMMENT

This is based on existing ORS 13.161.

RULE 29

JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

A. Persons to be joined if feasible. A person who is subject to service of process and whose joinder will not deprive

28.

Joinder or Parties.

Background note  
ons sections succeeded.

13.140, 13.150, 13.161.

Comment:

This is the existing ~~ons~~ <sup>13.161</sup> ~~section~~ without  
change.

29.

Background note  
ons sections succeeded

For a specific Rule relating  
to joint obligations see  
ORS. 13.100

13.110, 13.170, 13.190

COMMENT:

This is based upon Federal Rule 19. The existing Oregon rules do <sup>not</sup>  
~~not have a comprehensive indispensable~~ party rule. This rule directs  
to court to look to the factors relevant to a decision whether X  
a party should be included and whether the case should proceed  
when joinder of an interested person is not feasible. Those factors  
are described in terms of particular consequences to the existing  
parties and the interested person and the ways by which these  
consequences might be ameliorated by shaping relief or other steps.  
The ~~labels necessary party and indispensable party~~ apply only as  
~~conclusions not rules of decision.~~ ~~and~~

contains on  
adequate  
indispensable

definitions

Section 29 Does not appear in the Federal Rule  
and was taken from ORS. 13.190

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