

P. MISJOINDER AND NONJOINDER OF PARTIES

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any state of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

Q. REAL PARTY IN INTEREST

Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought: and when a statute of the state so provides, an action for the use or benefit of another shall be brought in the name of the state. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

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.

P. MISJOINDER AND NONJOINDER OF PARTIES

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any state of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

Q. REAL PARTY IN INTEREST

Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the state so provides, an action for the use or benefit of another shall be brought in the name of the state. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

Rule 30

Bochard rule.

~~Bochard~~ ms. contents suspended.

13.110., 13.260(4)

COMMENT:

This is based on Federal Rule 21. Misjoinder of parties under rule 28 is not a basis for dismissal ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

, formerly raised by demurrer,

Rule 31

Background Note

ms. sections suspended.

13.120.

COMMENT:

This rule is based upon Federal Rule 22. Adoption of this rule was recommended to the last legislature by the Oregon State Bar. Two forms of interpleader are covered by existing Oregon law, ORS 13.120 and Equitable interpleader. The effectiveness of the interpleader device in Oregon ~~XXXXXXXXXXXX~~ under the existing rules is hampered by the ~~XX~~ limited scope of the ~~XXXXXXXXXX~~ OrS 13.120 and the historic limitations on equitable interpleader. This rule is of general application and eliminates the equitable interpleader requirements that the same debt or duty be claimed by all the interpleaded parties, that the claimants' titles or claims be dependent ~~XX~~ on or derive from ~~XXX~~ a common source, that the stakeholder not have or claim any interest in the subject of the interpleader, and that the stakeholder not have incurred any ~~XX~~ independent liability to any one of the claimants.

RULE 30

MISJOINDER AND NONJOINDER OF PARTIES

Misjoinder of parties is not ground for dismissal of an action or proceeding. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any state of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

COMMENT

This is based on Federal Rule 21. Misjoinder or non-joinder are presently asserted by demurrer, motion to strike or pleading.

RULE 31

INTERPLEADER

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff alleges that plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provision<sup>s</sup> of this rule supplement and do not in any way limit the joinder of parties otherwise permitted by rule or statute.

Mollis  
10  
Add  
Procedure

RULE 30

MISJOINDER AND NONJOINDER OF PARTIES

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any state of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

BACKGROUND NOTE

ORS chapters superseded: 13.110, 13.260(4).

COMMENT

This is based on Federal Rule 21. Misjoinder of parties under Rule 28, ~~formally raised by demurrer, is not a basis for dismissal.~~

~~Formerly~~ ~~Formerly~~ was formerly raised by demurrer.

RULE 31

INTERPLEADER

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff <sup>alleges</sup> ~~avers~~ that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of crossclaim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties otherwise permitted by <sup>rule on</sup> statute.

## RULE 30

### MISJOINDER AND NONJOINDER OF PARTIES

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any state of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

#### COMMENT

This is based on Federal Rule 21. Misjoinder of parties under Rule 28 was formerly raised by demurrer.

## RULE 31

### INTERPLEADER

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff alleges that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of crossclaim or counterclaim. The provision of this rule supplement and do not in any way limit the joinder of parties otherwise permitted by rule or statute.

## RULE 30

### MISJOINDER AND NONJOINDER OF PARTIES

Misjoinder of parties is not ground for dismissal of an action or proceeding. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any state of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

#### COMMENT

This is based on Federal Rule 21. Misjoinder or nonjoinder are presently asserted by demurrer, motion to strike or pleading.

## RULE 31

### INTERPLEADER

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff alleges that plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provision of this rule supplement and do not in any way limit the joinder of parties otherwise permitted by rule or statute.



RULE 30

MISJOINDER AND NONJOINDER OF PARTIES

Misjoinder of parties is not ground for dismissal of an action or proceeding. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any state of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

COMMENT

This is based on Federal Rule 21. Misjoinder or non-joinder are presently asserted by demurrer, motion to strike or pleading.

RULE 30

MISJOINDER AND NONJOINDER OF PARTIES

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

COMMENT

This is based on Federal Rule 21. Misjoinder or nonjoinder are presently asserted by demurrer, motion to strike, or pleading.