

unless the party failing to act has applied for a protective order as provided by Rule 36 C.

BACKGROUND NOTE

For failure to furnish expert report when requested, see Rule 36 B.(4). For failure of person taking deposition or witness to appear at deposition, see 39 H. For failure to furnish medical reports when requested, see Rule 44 D. For failure to provide access to hospital records, see Rule 44 E.

ORS sections superseded: 41.617, 61.626(5), (6) and (7), 41.631(3), 45.190.

COMMENT

This rule is based upon Federal Rule 37 and incorporates most sanctions for failure to engage in discovery into one rule. The existing sanction provisions in Oregon are scattered through ORS Chapters 41 and 45 as part of the ORS sections relating to specific discovery devices and do not provide a clear procedure to be followed when a party or witness fails to comply with discovery requirements. The federal language was modified slightly to fit existing ORS sections and these rules. In subsection A.(2) a reference to failure to respond to a request for insurance policy under Oregon Rule 36 was included. In subsection A.(4) the court "may" award expenses, and in subsection B.(2) the court "shall" award expenses which conforms to ORS 41.617(2), 41.631, 41.626(5) and 41.617(4). Failure to advise a party seeking discovery under Rule 36 B. of the existence of a coverage question was added to section 46 D.

RULE 47 (RESERVED) — Add summary debts

RULE 48 (RESERVED)

RULE 49 (RESERVED)

RULE 50

JURY TRIAL OF RIGHT

The right of trial by jury as declared by the Oregon Constitution or as given by a statute shall be preserved to the parties inviolate.

BACKGROUND NOTE

ORS sections superseded: 17.033.

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COMMENT

The elimination of procedural distinctions between actions at law and suits in equity cannot affect the constitutional right to jury trial.

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RULE 51

ISSUES; TRIAL BY JURY OR BY THE COURT

A. Issues. Issues arise upon the pleadings when a fact or conclusion of law is maintained by one party and controverted by the other.

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*Moll's  
p 16*  
*Controlled  
draft  
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[initials]*

B. Issues of law; how tried. An issue of law shall be tried by the court.

C. Issues of fact; how tried. The trial of all issues of fact shall be by jury unless:

C.(1) The parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial without a jury, or

C.(2) The court, upon motion or <sup>of a party</sup> its own initiative, finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of this state.

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D. Advisory jury and trial by consent. In all actions or proceedings not triable by right <sup>to</sup> by a jury, the court, upon motion <sup>of a party</sup> or <sup>to</sup> of its own initiative, may try <sup>to</sup> an issue with an advisory jury, or it may, with the consent of all parties, order a trial <sup>to</sup> with a jury whose verdict <sup>shall have</sup> has the same effect as if trial <sup>to a</sup> by jury had been a matter of right.

RULE 50

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~~COMMENT: This is Committee Rule A.~~

Rule 47- Reserved

Rule 48. Reserved

Rule 49. Reserved.

Rule 50

Jury trial of Right

Background note

ORs sections superceded.

17.033

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COMMENT

The elimination of procedural distinctions between actions at law and suits in equity cannot affect the constitutional right to jury trial. The rule is equivalent to ORS 17.033.