

RULE 26

REAL PARTY IN INTEREST;
CAPACITY OF PARTNERSHIPS AND
ASSOCIATIONS

A. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, conservator, 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 that party's own name without joining the party for whose benefit the action is brought; and when a statute of this 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.

B. Partnerships and associations. Any partnership or other unincorporated association, whether organized for profit or not, may sue in any name which it has assumed and be sued in any name which it has assumed or by which it is known. Any member of the partnership or other unincorporated association may be joined as a party in an action against the partnership or unincorporated association.

COMMENT

The reference to conservator was added to section 26 A. for clarity.

Section 26 B. provides the basis for suit of a partnership in its own name. This provision was taken from Cal. Code of Civil Procedure § 388. See ORCP 67 E.

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RULE 7

SUMMONS

D.(3)(b) Corporations[;] and limited partnerships. [unincorporated associations subject to suit under a common name.] Upon a domestic or foreign corporation[,], or limited partnership [, or other unincorporated association which is subject to suit under a common name]:

D.(3)(b)(i) Primary service method. By personal service or office service upon a registered agent, officer, director, general partner, or managing agent of the corporation[,], or limited partnership, [or association] or by personal service upon any clerk on duty in the office of a registered agent.

D.(3)(b)(ii) Alternatives. If a registered agent, officer, director, general partner, or managing agent cannot be found in the county where the action is filed, the summons may be served: by substituted service upon such registered agent, officer, director, general partner, or managing agent; or by personal service on any clerk or agent of the corporation[,], or limited partnership[, or association] who may be found in the county where the action is filed; or by mailing a copy of the summons and complaint to the last registered office of

Item 4, page 3, 7 D.(2)(d), ORCP D.(4)(c). The Council discussed the questions of when 30 days begin to run for default purposes under ORCP D.(4)(c) in a motor vehicle case and when service is complete under ORCP 7 D.(2)(d). The Council generally discussed the desirability of service upon the Department of Motor Vehicles as a service method in motor vehicle cases, and the Executive Director was asked to prepare a draft of a rule providing such service for discussion at the next meeting.

Item 5, page 5, ORCP 9 B. On motion made by Charles Paulson, seconded by Lyle Velure, the Council unanimously voted to add the following language to section 9 B.: Service of any notice or other paper to bring a party into contempt may only be upon such party personally.

Item 6, page 5, ORCP 10 C. On motion made by Judge Dale, seconded by Austin Crowe, the Council unanimously voted that section 10 C. should be prefaced by "Except for service of summons, . . .".

Item 7, page 5, ORCP 21 A.(7), 21 G.(3), and ORCP 30; and Item 8, page 6, ORCP 21 A. The Council discussed the problems raised under these sections and suggested any confusion might be alleviated by official commentary to the rules rather than by making any changes at this time.

Item 9, page 6, ORCP 21 F. It was unanimously decided that the cross reference to G.(2) should be changed to G.(3).

Item 10, page 6, ORS 57.779. The Council discussed the language of ORS 57.779(2) set out in the staff memorandum and its inconsistency with ORCP 13 C., 21 A., C., F., and G. Don McEwen made a motion, seconded by Judge Jackson, that a letter be written to the Corporation Commissioner suggesting an amendment to ORS 57.779(2). The motion passed unanimously.

Item 11, page 7, 23 D. and E. A motion was made by Charles Paulson, seconded by David Vandenberg, to add the following sentence to 23 D. and E.: If the motion is denied, the objection or defense asserted by such motion shall not be deemed waived by filing a responsive pleading. A discussion followed. Council members indicated they favored the concept. It was, however, suggested that this language might be combined with the existing last sentence of 23 D. and E. The Executive Director was asked to try a redraft of those sections. It was decided to defer action until further consideration of a redraft.

Item 12, page 8, ORCP 26 A. Judge Wells moved, seconded by Judge Jackson, that "conservator" should be included after "guardian" in the second sentence of section A. The motion passed unanimously.

Item 13, page 8, ORCP 31 B. The Council decided that "thereafter" should not be removed from this section and that the rule should not be changed.

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