

event the former procedure applies.

D. Citation. These rules may be referred to as ORCP and may be cited, for example, by citation of Rule 7, section D., subsection (3), paragraph (a), subparagraph (i), as ORCP 7 D. (3)(a)(i).

E. Local rules. These rules do not preclude a court in which they apply from regulating pleading, practice, and procedure in any manner not inconsistent with these rules.

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RULE 4

PERSONAL JURISDICTION

A court of this state having jurisdiction of the subject matter has jurisdiction over a party served in an action pursuant to Rule 7 under any of the following circumstances:

Sections A. through K.(2) unchanged.

K.(3) In a filiation proceeding under ORS Chapter 109, when the act [or acts] of sexual intercourse which resulted in the birth of the child are alleged to have taken place in this state and the child resides in this state.

Sections L. through O. unchanged.

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RULE 7

SUMMONS

Sections A. through D.(3)(d) unchanged.

D.(4) Particular actions involving motor vehicles.

D.(4)(a) Actions arising out of use of roads, highways, and streets -- service by mail. In any action arising out of any accident,

collision, or liability in which a motor vehicle may be involved while being operated upon the roads, highways, and streets of this state, any defendant who operated such motor vehicle, or caused such motor vehicle to be operated on the defendant's behalf, may be served with summons by mail except a defendant which is a foreign corporation maintaining an attorney in fact within this state. Service by mail shall be made by mailing to: (i) the address given by the defendant at the time of the accident or collision that is the subject of the action, and (ii) to the most recent address furnished by the defendant to the administrator of the Motor Vehicles Division, and (iii) to any other address of the defendant known to the plaintiff, which might result in actual notice.

D.(4)(b) Notification of change of address. Every motorist or user of the roads, highways, and streets of this state who, while operating a motor vehicle upon the roads, highway, or streets of this state, is involved in any accident, collision, or liability, shall forthwith notify the administrator of the Motor Vehicles Division of any change of such defendant's address within three years of such accident or collision.

D.(4)(c) Default. No default shall be entered against any defendant served by mail under this subsection who has not either received or rejected the registered or certified letter containing the copy of the summons and complaint, unless the plaintiff can show by affidavit that the defendant cannot be found residing at the address given by the defendant at the time of the accident, or residing at the most recent address furnished by the defendant to the administrator of the Motor Vehicles Division, or residing at any other address actually

known by the plaintiff to be defendant's residence address, if it appears from the affidavit that inquiry at such address or addresses was made within a reasonable time preceding the service of summons by mail.

(Numbering of sections D.(4), Service in foreign country, on Page 24, through D.(5)(g), Completion of service, on Page 27, renumbered D.(5) through D.(6)(g), inclusive).

* * * * *

ORS 1.735. The Council on Court Procedures shall promulgate rules governing pleading, practice and procedure, including rules regulating form and service of summons and process and personal and in rem jurisdiction, in all civil proceedings in all courts of the state which shall not abridge, enlarge, or modify the substantive rights of any litigant. The rules authorized by this section do not include rules of evidence and rules of appellate procedure. The rules thus adopted and any amendments which may be adopted from time to time, together with a list of statutory sections superseded thereby, shall be submitted to the Legislative Assembly at the beginning of each regular session and shall go into effect 90 days after the close of that session, unless the Legislative Assembly shall provide an earlier effective date. The Legislative Assembly may, by statute, amend, repeal or supplement any of the rules.

ORS 1.745. All provisions of law relating to pleading, practice and procedure in all civil proceedings in courts of this state, including rules regulating form and service of summons and process and personal and in rem jurisdiction, are deemed to be rules of court and remain in effect as such until and except to the extent they are modified, superseded or repealed by rules which become effective under section 3 of this Act.

RULE 7

SUMMONS

Sections A. through C.(2) unchanged.

C.(3) Notice to party served.

C.(3)(a) In general. All summonses other than a summons to join a party [pursuant to Rule 22 D.]to respond to a counterclaim under Rule 22 D.(1) and (2) shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form: (remainder of subsection unchanged)

C.(3)(b) Service [on maker of contract] for counterclaim. A summons to join a party to respond to a counterclaim pursuant to Rule 22 D.~~[(2)]~~(1) shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form: (remainder of subsection unchanged)

D.(3)(c) Service on persons liable for attorney fees. A summons to join a party pursuant to Rule 22 D.~~[(3)]~~(2) shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form: (remainder of subsection unchanged)

D. through D.(3)(d) unchanged.

SEE CHANGES DATED 2/15/79 FOR OTHER SECTIONS REVISED IN RULE 7.

* * * *

REDRAFTS SUGGESTED
AT MARCH 22, 1979, JOINT JUDICIARY
WORK SESSION

RULE 4

K.(3) [In any action involving paternity] In any proceeding for filiation or action for declaration of paternity, when the act of sexual intercourse which resulted in the birth of the child is alleged to have taken place in this state.

RULE 7

(7 D.(6) and 7 D.(6)(a) appear on Page 25 of printed rules as D.(5) and D.(a) -- renumbered because of addition of mail service in motor vehicle cases).

D.[(5)](6) [Service by publication or mailing to a post office address; other service by court order.] Court order for service; service by publication.

D.[(5)](6)(a) [Order for publication or mailing or other service.] Court order for service by other method. On motion upon a showing by affidavit that service cannot be made by any [other] method [more reasonably calculated to apprise the defendant of the existence and pendency of the action] specified in these rules or other rule or statute, the court, at its discretion, may order service by any method or combination of methods which under the circumstances is most reasonably calculated to apprise the defendant of the existence and pendency of the action, including but not limited to: [by publication; or at the discretion of the court,] publication of summons; [by] mailing without publication to a specified post office address of defendant, return receipt requested, deliver to addressee only; or [by any other method] posting at specified locations. If service is ordered by any manner other than publication, the court may order a time for response.

D.[(5)](6) Contents of published summons. In addition to the contents of a summons as described in section C. of this rule, a published summons shall also contain a summary statement of the object of the complaint and the demand for relief, and the notice required in subsection C.(3) shall state: "This paper must be given to the court clerk or administrator within 30 days of the date of first publication specified herein along with the required filing fee." The published summons shall also contain the date of the first publication of the summons.

M E M O R A N D M

TO: JOINT SENATE AND HOUSE JUDICIARY COMMITTEES
FROM: FRED MERRILL
RE: REDRAFTS SUGGESTED AT MARCH 22, 1979, JOINT JUDICIARY WORK SESSION
DATE: March 28, 1979

A. CHANGES SUGGESTED FOR MATERIAL PREVIOUSLY SUBMITTED

RULE 4

K.(2) [In a filiation proceeding under ORS Chapter 109] In any proceeding to establish paternity under ORS Chapters 109, 110, or 419, or in any action for declaration of paternity, when the act [or acts] of sexual intercourse which resulted in the birth of the child is alleged to have taken place in this state [and the child resides in this state].

RULE 7

(7 D.(6) and 7 D.(6)(a) appear on Page 25 of printed rules as D.(5) and D.(a) -- renumbered because of addition of mail service in motor vehicle cases).

D.[(5)](6) [Service by publication or mailing to a post office address; other service by court order.] Court order for service; service by publication.

D.[(5)](6)(a) [Order for publication or mailing or other service.] Court order for service by other method. On motion upon a showing by affidavit that service cannot be made by any [other] method [more reasonably calculated to apprise the defendant of the existence and pendency of the action] specified in these rules or other rule or statute, the court, at its discretion, may order

service by any method or combination of methods which under the circumstances is most reasonably calculated to apprise the defendant of the existence and pendency of the action, including but not limited to: [by publication; or at the discretion of the court,] publication of summons; [by] mailing without publication to a specified post office address of defendant, return receipt requested, deliver to addressee only; or [by any other method] posting at specified locations. If service is ordered by any manner other than publication, the court may order a time for response.

D. ~~(5)~~(c)(b) Contents of published summons. In addition to the contents of a summons as described in section C. of this rule, a published summons shall also contain a summary statement of the object of the complaint and the demand for relief, and the notice required in subsection C.(3) shall state: "This paper must be given to the court clerk or administrator within 30 days of the date of first publication specified herein along with the required filing fee." The published summons shall also contain the date of the first publication of the summons.

B. UNRESOLVED QUESTION RAISED BY BOB HARRIS

After further consultation with Mr. Harris and Mr. Peterson, the following is a suggested revision of the provisions of Rule 7 relating to service upon corporations:

RULE 7

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, limited partnership, or association[.] or by personal service upon any clerk on duty in the office of the registered agent.

D.(3)(b)(ii) Alternatives. If a registered agent, officer, director, general partner, or managing agent cannot be found [and does not have an office] 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, 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 [a registered agent, officer, director, general partner, or managing agent.] the last registered office of the corporation, limited partnership, or association, if any, as shown by the records on file in the office of the Corporation Commissioner or, if the corporation, limited partnership, or association is not authorized to transact business in this state at the time of the transaction, event, or occurrence upon which the action is based occurred, to the principal office or place of business of the corporation, limited partnership, or association, and, in any case to any address, the use of which the plaintiff knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice.

7 C.(3) Notice to party served.

7 C.(3)(a) In general. All summonses other than a summons to join a party pursuant to Rule 22 D. shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." [This paper] The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff.

If you have questions, you should see an attorney immediately.

C.(3)(b) Service on maker of contract for counterclaim. A summons to join a party pursuant to Rule 22 D.(2) shall contain a notice in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." [This paper] The "motion" or "reply" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant.

If you have questions, you should see an attorney immediately.

C.(3)(c) Service on persons liable for attorney fees. A summons to join a party pursuant to Rule 22 D.(3) shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You may be liable for attorney fees in this case. Should plaintiff in this case not prevail, a judgment for reasonable attorney fees will be entered against you, as provided by the agreement to which defendant alleges you are a party.

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion"

or "reply." [This paper] The "motion" or "reply" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant.

If you have questions, you should see an attorney immediately.

D.(2) Service methods.

D.(2)(a) Personal service. Personal service may be made by delivery of a [certified] true copy of the summons and a [certified] true copy of the complaint to the person to be served.

D.(2)(b) Substituted service. Substituted service may be made by delivering a [certified] true copy of the summons and complaint at the dwelling house or usual place of abode of the person to be served, to any person over 14 years of age residing in the dwelling house or usual place of abode of the person to be served. Where substituted service is used, the plaintiff [immediately] , as soon as reasonably possible, shall cause to be mailed a [certified] true copy of the summons and complaint to the defendant at defendant's dwelling house or usual place of abode, together with a statement of the date, time, and place at which substituted service was made. For the purpose of computing any period of time prescribed by these rules, substituted service shall be complete upon such mailing.

D.(2)(c) Office service. If the person to be served maintains an office for the conduct of business, office service may be made by leaving a [certified] true copy of the summons and complaint at such office during normal working hours with the person who is apparently in charge. Where office service is used, the plaintiff [immediately], as soon as reasonably possible, shall cause to be mailed a [certified] true copy of the summons and complaint to the defendant at the defendant's dwelling house or usual place of abode, together with a statement of the date, time, and place at which office

service was made. For the purpose of computing any period of time prescribed or allowed by these rules, office service shall be complete upon such mailing.

D.(2)d) Service by mail. Service by mail, when required or allowed by this rule, shall be made by mailing a [certified] true copy of the summons and a [certified] true copy of the complaint to the defendant by certified or registered mail, return receipt requested. For the purpose of computing any period of time allowed by these rules, service by mail shall be complete when the registered or certified mail is delivered and the return receipt signed or when acceptance is refused.

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, limited partnership, or association[.] or by personal service upon any clerk on duty in the office of the registered agent.

D.(3)(b)(ii) Alternatives. If a registered agent, officer, director, general partner, or managing agent cannot be found [and does not have an office] 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, 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 [a registered agent, officer, director, general partner, or managing agent.] the last registered office of the corporation, limited partnership, or association, if any, as shown by the records on file in the office of the Corporation Commissioner or, if the corporation, limited partnership, or association is not authorized to transact business in this state at the time of the transaction, event, or occurrence upon which the action is based occurred, to the principal office or place of business of the corporation, limited partnership, or association, and, in any case to any address, the use of which the plaintiff knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice.

D.(4) Particular actions involving motor vehicles.

D.(4)(a) Actions arising out of use of roads, highways, and streets -- service by mail. In any action arising out of any accident, collision, or liability in which a motor vehicle may be involved while being operated upon the roads, highways, and streets of this state, any defendant who operated such motor vehicle, or caused such motor vehicle to be operated on the defendant's behalf, may be served with summons by mail except a defendant which is a foreign corporation maintaining an attorney in fact within this state. Service by mail shall be made by mailing to: (i) the address given by the defendant at the time of the accident or collision that is the subject of the action, and (ii) to the most recent address furnished by the defendant to the administrator of the Motor Vehicles Division, and (iii) to any other address of the defendant known to the plaintiff, which might result in actual notice.

D.(4)(b) Notification of change of address. Every motorist or user of the roads, highways, and streets of this state who, while operating a motor vehicle upon the roads, highway, or streets of this state, is involved in any accident, collision, or liability, shall forthwith notify the administrator of the Motor Vehicles Division of any change of such defendant's address within three years of such accident or collision.

D.[(4)](5) Service in foreign country. When service is to be effected upon a party in a foreign country, it is also sufficient if service of summons is made in the manner prescribed by the law of the foreign country for service in that county in its courts of general jurisdiction, or as directed by the foreign authority in response to letters rogatory, or as directed by order of the court, provided, however, that in all cases such service shall be reasonably calculated

(7 D.(6) and 7 D.(6)(a) appear on Page 25 of printed rules as D.(5) and D.(a) -- renumbered because of addition of mail service in motor vehicle cases).

D.[(5)](6) [Service by publication or mailing to a post office address; other service by court order.] Court order for service; service by publication.

D.[(5)](6)(a) [Order for publication or mailing or other service.] Court order for service by other method. On motion upon a showing by affidavit that service cannot be made by any [other] method [more reasonably calculated to apprise the defendant of the existence and pendency of the action] specified in these rules or other rule or statute, the court, at its discretion, may order service by any method or combination of methods which under the circumstances is most reasonably calculated to apprise the defendant of the existence and pendency of the action, including but not limited to: [by publication; or at the discretion of the court,] publication of summons; [by] mailing without publication to a specified post office address of defendant, return receipt requested, deliver to addressee only; or [by any other method] posting at specified locations. If service is ordered by any manner other than publication, the court may order a time for response.

D.[(5)](6)(b) Contents of published summons. In addition to the contents of a summons as described in section C. of this rule, a published summons shall also contain a summary statement of the object of the complaint and the demand for relief, and the notice required in subsection C.(3) shall state: "This paper must be given to the court clerk or administrator within 30 days of the date of first publication specified herein along with the required filing fee." The published summons shall also contain the date of the first publication of the summons.

D.[(5)](6)(c) Where published. An order for publication shall direct publication to be made in a newspaper of general circulation in the county where the action is commenced or, if there is no such newspaper, then in a newspaper to be designated as most likely to give notice to the person to be served. Such publication shall be four times in successive calendar weeks.

D.[(5)](6)(d) Mailing summons and complaint. If service by publication is ordered and defendant's post office address is known or can with reasonable diligence be ascertained, the plaintiff shall mail a copy of the summons and complaint to the defendant. When the address of any defendant is not known or cannot be ascertained upon diligent inquiry, a copy of the summons and complaint shall be mailed to the defendant at defendant's last known address. If plaintiff does not know and cannot ascertain, upon diligent inquiry, the present or last known address of the defendant, mailing a copy of the summons and complaint is not required.

D.[(5)](6)(e) Unknown heirs or persons. If service cannot be made by another method described in this section because defendants are unknown heirs or persons as described in sections I. and J. of Rule 20, the action shall proceed against the unknown heirs or persons in the same manner as against named defendants served by publication and with like effect; and any such unknown heirs or persons who have or claim any right, estate, lien, or interest in the property in controversy, at the time of the commencement of the action, and served by publication, shall be bound and concluded by the judgment in the action, if the same is in favor of the plaintiff, as effectively as if the action was brought against such defendants by name.

D.[(5)](6)(f) [Defending after judgment]. Defending before or after judgment. The defendant against whom publication is ordered, or his representatives, on application and sufficient cause shown, at any time before judgment, shall be allowed to defend the action. A defendant against whom publication is ordered or such defendant's representatives may, upon good cause shown and upon such terms as may be proper, be allowed to defend after judgment and within one year after entry of judgment. If the defense is successful, and the judgment or any part thereof has been collected or otherwise enforced, restitution may be ordered by the court, but the title to property sold upon execution issued on such judgment, to a purchaser in good faith, shall not be affected thereby.

D.[(5)](6)(g) Completion of service. Service shall be complete at the date of the last publication.

F.(2)(a) Service other than publication. Service other than publication shall be proved by:

F.(2)(a)(i) [Affidavit of service.] Certificate of service when summons not served by sheriff or deputy. If the summons is not served by a sheriff or a sheriff's deputy, the [affidavit] certificate of the server indicating: the time, place, and manner of service; that the server is a competent person 18 years of age or older and a resident of the state of service or this state and is not a party to nor an officer, director, or employee of, nor attorney for any party, corporate or otherwise; and that the server knew that the person, firm, or corporation served is the identical one named in the action. If the defendant is not personally served, the server shall state in the affidavit when, where, and with whom a copy of the summons and complaint was left or describe in detail the manner and circumstances of service. If the summons and complaint were mailed, the affidavit shall state the circumstances of mailing and the return receipt shall be attached.

F.(2)(a)(ii) Certificate of service by sheriff or deputy. If the copy of the summons is served by [the] a sheriff, or a sheriff's deputy, [proof may be made by] the sheriff's or deputy's certificate of service indicating the time, place, and manner of service, and if defendant is not personally served, when, where, and with whom the copy of the summons and complaint was left or describing in detail the manner and circumstances of service. If the summons and complaint were mailed, the certificate shall state the circumstances of mailing and the return receipt shall be attached.

F.(2)(b) Publication. Service by publication shall be proved by an affidavit in substantially the following form:

Affidavit of Publication

State of Oregon)
 : ss.
County of)

I, _____, being first duly sworn, depose and say that I am the _____ (here set forth the title or job description of the person making the affidavit), of the _____, a newspaper of general circulation [as defined by ORS 193.010 and 193.020] published at _____ in the aforesaid county and state; that I know from my personal knowledge that the _____, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper four times in the following issues:

(here set forth dates of issues in which the same was published).

Subscribed and sworn to before me this ___ day of _____, 19 ___.

Notary Public for Oregon

My commission expires
___ day of _____, 19 ___.

Rule 7

C.(3) Notice to party served.

C.(3)(a) In general. All summonses other than a summons to join a party [pursuant to Rule 22 D.] to respond to a counterclaim under Rule 22 D.(1) and (2) shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." [This paper] The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff.

If you have questions, you should see an attorney immediately.

C.(3)(b) Service [on maker of contract] for counterclaim. A summons to join a party to respond to a counterclaim pursuant to Rule 22 D.[(2)](1) shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." [This paper] The "motion" or "reply" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant.

If you have questions, you should see an attorney immediately.

D.(3)(c) Service on persons liable for attorney fees. A summons to join a party pursuant to Rule 22 D.[(3)](2) shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You may be liable for attorney fees in this case. Should plaintiff in this case not prevail, a judgment for reasonable attorney fees will be entered against you, as provided by the agreement to which defendant alleges you are a party.

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." [This paper] The "motion" or "reply" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant.

If you have questions, you should see an attorney immediately.

REPORT OF OREGON STATE BAR COMMITTEE
ON PROCEDURE AND PRACTICE
ON PROPOSED OREGON RULES OF CIVIL PROCEDURE

The Committee on Procedure and Practice has reviewed the proposed Oregon Rules of Civil Procedure dated December 2, 1978, as promulgated by the Council on Court Procedures. Five subcommittees of the Committee on Procedure and Practice studied the proposed rules and reported to the Committee as a whole, which makes the following recommendations.

Jurisdiction and Process

Rule 7, Summons, should be expanded to incorporate by appropriate language the substance of ORS 15.190 which provides for service upon the Department of Motor Vehicles. ORS 15.190 provides a clearly defined standard of due diligence for substituted service upon non-resident motorists and resident motorists who depart from or cannot be found within the state. The statute is fair, workable and provides a certainty of adequate service that will not exist under the proposed rules.

Pleading

Rule 21F requires that all motions be made at the same time except those motions in subsection G(2). Rule 21F should be modified to provide that a motion challenging jurisdiction would not need to include all other available motions. Motions challenging jurisdictions should be handled separately to avoid unnecessary time and expense for counsel and courts in preparing and arguing all available motions. If the motion challenging jurisdiction is successful, all of their motions are moot and unnecessary.

Parties

Rule 33B, "Intervention of right," does not recognize any existing common law right of intervention. The rule should be modified to provide: "At any time before trial, any person shall be permitted to intervene in an action when a statute of this state, these rules, or the common law, confers an unconditional right to intervene.

Discovery

The Committee objects to that portion of Rule 44D which requires a party to either obtain a medical report from

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 the corporation[,] or limited partnership[, or association], if any, as shown by the records on file in the office of the Corporation Commissioner or, if the corporation[,] or

limited partnership[, or association] is not authorized to transact business in this state at the time of the transaction, event, or occurrence upon which the action is based occurred, to the principal office or place of business of the corporation[,] or limited partnership[, or association], and in any case to any address the use of which the plaintiff knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice.

* * *

D.(3)(e) General partnerships. Upon any general partnership by personal service upon a partner or any agent authorized by appointment or law to receive service of summons for the partnership.

D.(3)(f) Other unincorporated association subject to suit under a common name. Upon any other unincorporated association subject to suit under a common name by personal service upon an officer, managing agent, or agent authorized by appointment or law to receive service of summons for the unincorporated association.

[D.(6)(g) Completion of service. For the purpose of computing any period of time prescribed or allowed by these rules service by publication shall be complete at the date of the last publication.]

COMMENT

The changes in section 7 D.(3) are designed to specify a method of serving summons on a partnership consistent with ORCP 26 B. and 67 E.

Paragraph 7 D.(6)(g) was removed because of inconsistency with subsection C.(2) of this rule.

Rule 26

B. Partnerships and associations. Any partnership or other unincorporated association, whether organized for profit or not, may sue and be sued in the 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 unincorporated association.

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

the corporation[,] or limited partnership[, or association], if any, as shown by the records on file in the office of the Corporation Commissioner or, if the corporation[,] or limited partnership[, or association] is not authorized to transact business in this state at the time of the transaction, event, or occurrence upon which the action is based occurred, to the principal office or place of business of the corporation [,] or limited partnership[, or association], and in any case to any address the use of which the plaintiff knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice.

(The following would be new paragraphs under Rule 7.)

D.(3)(e) General partnerships. Upon any general partnership by personal service upon a general partner or any agent authorized by appointment or law to receive service of summons for the partnership.

D.(3)(f) Other unincorporated association subject to suit under a common name. Upon any other unincorporated association subject to suit under a common name by personal service upon an officer, managing agent, or agent authorized by appointment or law to receive service of summons for the unincorporated association.

Bob Morris
Redmont =

RULE 7

SUMMONS

A. Plaintiff and defendant defined. For purposes of this rule, "plaintiff" shall include any party issuing summons and "defendant" shall include any party upon whom service of summons is sought.

B. Issuance. Any time after the action is commenced, plaintiff or plaintiff's attorney may issue as many original summonses as either may elect and deliver such summonses to a person authorized to serve summons under section E. of this rule. A summons is issued when subscribed by plaintiff or a resident attorney of this state.

C.(1) Contents. The summons shall contain:

C.(1)(a) Title. The title of the cause, specifying the name of the court in which the complaint is filed and the names of the parties to the action.

C.(1)(b) Direction to defendant. A direction to the defendant requiring defendant to appear and defend within the time required by subsection (2) of this section and a notification to defendant that in case of failure to do so, the plaintiff will apply to the court for the relief demanded in the complaint.

C.(1)(c) Subscription; post office address. A subscription by the plaintiff or by a resident attorney of this state, with the addition of the post office address at which papers in the action may be served by mail.

C.(2) Time for response. If the summons is served in any manner, the defendant shall appear and defend within 20 days from the date of service.

(Eliminates Fine For Response to publication)

C.(3) Notice to party served.

C.(3)(a) In general. All summonses other than a summons to join a party pursuant to Rule 22 D. shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." This paper must be given to the court clerk or administrator within 20 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff.

If you have questions, you should see an attorney immediately.

C.(3)(b) Service on maker of contract for counterclaim.

A summons to join a party pursuant to Rule 22 D.(2) shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." This paper must be given to the court clerk or administrator within 20 days along with the required filing fee. It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant.

If you have questions, you should see an attorney immediately.

C.(3)(c) Service on persons liable for attorney fees.

A summons to join a party pursuant to Rule 22 D.(3) shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You may be liable for attorney fees in this case. Should

plaintiff in this case not prevail, a judgment for reasonable attorney fees will be entered against you, as provided by the agreement to which defendant alleges you are a party.

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." This paper must be given to the court clerk or administrator within 20 days along with the required filing fee. It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant. *dl.*

If you have questions, you should see an attorney immediately.

D. Manner of service.

D.(1) Notice required. Summons shall be served, either within or without this state, in any manner reasonably calculated, under all the circumstances, to apprise the defendant of the existence and pendency of the action and to afford a reasonable opportunity to appear and defend. Summons may be served in a manner specified in this rule or by statute on the defendant or upon an agent authorized by appointment or law to accept service of summons for the defendant. Service may be made, subject to the restrictions and requirements of this rule, by the following methods: personal service of summons upon defendant or an agent of defendant

authorized to receive process; substituted service by leaving a copy of summons and complaint at a person's dwelling house or usual place of abode; office service by leaving with a person who is apparently in charge of an office; service by mail; or, service by publication.

D.(2) Service methods.

D.(2)(a) Personal service. Personal service may be made by delivery of a certified true copy of the summons and complaint to the person served.

D.(2)(b) Substituted service. Substituted service may be made by delivering a certified true copy of the summons and complaint at the dwelling house or usual place of abode of the person to be served, to any person over 14 years of age at the dwelling house or usual place of abode of the person to be served. Where substituted service is used, the plaintiff shall cause to be mailed a certified true copy of the summons and complaint to the defendant at defendant's dwelling house or usual place of abode, together with a statement of the date, time and place at which substituted service was made. (Eliminates Reference to service complete on mailing)

D.(2)(c) Office service. The person to be served may be served by leaving a certified true copy of the summons and complaint at such office during normal working hours with the person (Eliminates Reference to person

maintaining an office for

the conduct of business

~~complete.~~

who is apparently in charge. Where office service is used, the plaintiff shall cause to be mailed a certified true copy of the summons and complaint to the defendant at the defendant's dwelling house or usual place of abode, together with a statement of the date, time, and place at which office service was made. *Eliminates reference to complete upon mailing*

D.(2)(d) Service by mail. Service by mail, ~~when required~~ *at =*

shall be made by mailing a certified true copy of the summons and complaint to the defendant as follows:

Eliminates reference to "when required" and description of type mail and when complete)

1. At the most recent address the Plaintiff has for the Defendant
2. At the most recent address the Department of Motor Vehicles has on record, if any.
3. If the defendant is a Corporation at the most recent address the Corporation Commissioner has on file, if any.

In reference to sub 2 & 3 a receipt from the Corporation Commissioner and the Department of Motor Vehicles shall be prima facia evidence of the most recent address of the defendant.

The Department of Motor Vehicles shall charge a fee of \$2.00 for this service and each branch office shall provide this service.

*from 4
with
rent
Address*

Service under this rule shall be by certified or registered mail, return receipt requested.

Service by mail shall be complete as far as the statute of limitation is concerned upon mailing but default time shall start to run when the registered or certified mail is delivered and the return receipt signed or when acceptance is refused.

Keep =

Service under this rule shall only be made when an affidavit
of not found is on file.

D.(3) Particular defendants. Service may be made upon
specified defendants as follows:

D.(3)(a) Individuals.

D.(3)(a)(i) Generally. Upon an individual defendant,
by personal service upon such defendant or an agent authorized
by appointment of law to receive service of summons or, if
defendant personally cannot be found at defendant's dwelling
house or usual place of abode, then by substituted service or
by office service upon such defendant or an agent authorized
by appointment or law to receive service of summons.

*state
defendants
Satisfies
state*

D.(3)(a)(ii) Minors. Upon a minor under the age of 14 years, by service in the manner specified in subparagraph (i) of this paragraph upon such minor, and also upon such minor's father, mother, conservator of the minor's estate, or guardian, or, if there be none, then upon any person having the care or control of the minor or with whom such minor resides, or in whose service such minor is employed, or upon a guardian ad litem appointed pursuant to Rule 27 A.(2).

D.(3)(a)(iii) Incapacitated persons. Upon an incapacitated person, by service in the manner specified in subparagraph (i) of this paragraph upon such person, and also upon the conservator of such person's estate or guardian, or, if there be none, upon a guardian ad litem appointed pursuant to Rule 27 B.(2).

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

D.(3)(b)(i) Primary service method.

- a. ~~To the registered agent of the corporation or to any clerk on duty in the office of the registered agent.~~
- b. ~~To any officer or any employee on duty at the office or place of business of the corporation.~~
- c. ~~In case none of the persons above identified can be served in their office the summons and complaint may be delivered to any clerk or agent of the corporation who may reside or be found in the State, service may be made upon any person over 14 years of age. However if sub-service is made at the home a copy of~~

summons and complaint shall be mailed stating date,
time and place of service.

D.(3)(c) State. Upon the state, by service upon the Attorney General or by leaving a copy of the summons and complaint at the Attorney General's office with a deputy, assistant, or clerk.

D.(3)(d) Public bodies. Upon any county, incorporated city, school district, or other public corporation, commission or board, by personal service or office service upon an officer, director, managing agent, clerk, or secretary thereof. When a county is a party to an action, in addition to the service of summons specified above, an additional copy of the summons and complaint shall also be served upon the District Attorney, office of the county in the same manner as required for service upon the county clerk.

D.(4) Service in foreign country. When service is to be effected upon a party in a foreign country, it is also sufficient if service of summons is made in the manner prescribed

by the law of the foreign country for service in that county in its courts of general jurisdiction, or as directed by the foreign authority in response to letters rogatory, or as directed by order of the court, provided, however, that in all cases such service shall be reasonably calculated to give actual notice.

D.(5) Service by mailing to a post office address;

D.(5)(a) Mailing service. On motion upon a showing by affidavit of service, that service cannot be made by any other method more reasonably calculated to apprise the defendant of the existence and pendency of the action, the court shall allow service: by publication; by mailing to a specified post office address of defendant, return receipt requested. *Elutes reference to description of county on 4 other mailed on Fine Pen Request.*

D.(5)(b) Contents of published summons. In addition to the contents of a summons as described in section C. of this rule, a published summons shall also contain a summary statement of the object of the complaint and the demand for relief, and the notice required in subsection C.(3) shall state: "This paper must be given to the court clerk or administrator within 20 days of the date of first publication specified herein along with the required filing fee." The published summons shall also contain the date of the first publication of the summons.

D.(5)(c) Where published. An order for publication shall direct publication to be made in a newspaper of general circulation in the county where the action is commenced or, if there is no such newspaper, then in a newspaper to be designated as most likely to give notice to the person to be served. Such publication shall be four times in successive calendar weeks.

D.(5)(d) Mailing summons and complaint. If service by publication is ordered and defendant's post office address is known or can with reasonable diligence be ascertained, the plaintiff shall mail a copy of the summons and complaint to the defendant. When the address of any defendant is not known or cannot be ascertained upon diligent inquiry, a copy of the summons and complaint shall be mailed to the defendant at defendant's last known address. If plaintiff does not know and cannot ascertain, upon diligent inquiry, the present or last known address of the defendant, mailing a copy of the summons and complaint is not required.

D.(5)(e) Unknown heirs or persons. If service cannot be made by another method described in this section because defendants are unknown heirs or persons as described in sections I. and J. of Rule 20, the action shall proceed against the unknown heirs or persons in the same manner as against named defendants served by publication and with like effect; and any such unknown heirs or persons who have or claim any right, estate, lien, or interest in the property in controversy, at the time of

the commencement of the action, and served by publication, shall be bound and concluded by the judgment in the action, if the same is in favor of the plaintiff, as effectively as if the action was brought against such defendants by name.

D.(5)(f) Defending after judgment. A defendant against whom publication is ordered or such defendant's representatives may, upon good cause shown and upon such terms as may be proper, be allowed to defend after judgment and within one year after entry of judgment. If the defense is successful, and the judgment or any part thereof has been collected or otherwise enforced, restitution may be ordered by the court, but the title to property sold upon execution issued on such judgment, to a purchaser in good faith, shall not be affected thereby.

D.(5)(g) Completion of service. Service shall be complete at the date of the last publication.

E. By whom served; compensation. A summons may be served by any competent person 18 years of age or older who is a resident of the state where service is made or of this state and is not a party to the action nor an officer, director, or employee of, nor attorney for, any party, corporate or otherwise. Compensation to a sheriff or a sheriff's deputy in this state who serves a summons shall be prescribed by statute or rule. If any other person serves the summons, a reasonable fee may be paid for service. This compensation shall be part of disbursements and shall be recovered as provided in ORS 20.020.

F. Return; proof of service.

F.(1) Return of summons. The summons shall be returned to the clerk with whom the complaint is filed with proof of service or mailing, or that defendant cannot be found.

(Eliminates Return on service by mail)

F.(2) Proof of service. Proof of service of summons or mailing may be made as follows:

F.(2)(a) Service other than publication. Service other than publication shall be proved by:

F.(2)(a)(i) Certificate of service. The Certificate of the private server indicating: the time, place, and manner of service; that the server is a competent person 18 years of age or older and a resident of this state and is not a party to nor an officer, director, or employee of, nor attorney for any party, corporate or otherwise. If the defendant is not personally served, the server shall state when, where, and with whom a copy of the summons and complaint was left. If the summons and complaint were mailed, state the date of mailing.

Eliminates required statement or knowledge of identity and "in detail circumstances" and Return Receipt.

F.(2)(a)(ii) Certificate of service. If the copy of the summons is served by the sheriff, or a sheriff's deputy, proof may be made by the sheriff's or deputy's certificate of service

indicating the time, place, and manner of service, and if defendant is not personally served, when, where, and with whom the copy of the summons and complaint was left. If the summons and complaint were mailed, the certificate shall state the date of mailing.

F.(2)(a)(iii) Form. An affidavit or certificate containing proof of service may be made upon the summons or as a separate document.

F.(2)(b) Publication. Service by publication shall be proved by an affidavit in substantially the following form:

Affidavit of Publication

State of Oregon)
 : ss.
County of)

I, _____, being first duly sworn, depose and say that I am the _____ (here set forth the title or job description of the person making the affidavit), of the _____, a newspaper of general circulation, as defined by ORS 193.010 and 193.020; published at _____ in the aforesaid county and state; that I know from my personal knowledge that the _____, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper four times in the following issues:

(here set forth dates of issues in which the same was published).

Subscribed and sworn to before me this ___ day of _____,
19 ____.

Notary Public for Oregon

My commission expires
____ day of _____, 19 ____.

F.(2)(c) Making and certifying affidavit. The affidavit of service may be made and certified before a notary public, or other official authorized to administer oaths and acting as such by authority of the United States, or any state or territory of the United States, or the District of Columbia, and the official seal, if any, of such person shall be affixed to the affidavit. The signature of such notary or other official, when so attested by the affixing of the official seal, if any, of such person, shall be prima facie evidence of authority to make and certify such affidavit.

F.(3) Written admission. In any case proof may be made by written admission of the defendant.

F.(4) Failure to make proof; validity of service. If summons has been properly served, failure to make or file a proper proof of service shall not affect the validity of the service.

G. Disregard of error; actual notice. Failure to comply with provisions of this rule relating to the form of summons,

issuance of summons, and the person who may serve summons shall not affect the validity of service of summons or the existence of jurisdiction over the person, if the court determines that the defendant received actual notice of the substance and pendency of the action. The court may allow amendment to a summons, or affidavit or certificate of service of summons, and shall disregard any error in the content of or service of summons that does not materially prejudice the substantive rights of the party against whom summons was issued.

H. Telegraphic transmission. A summons and complaint may be transmitted by telegraph as provided in Rule 8 D.

COMMENT

For process, see ORCP 8. For service of subpoenas, see ORCP 55.

This rule brings all general provisions for service of summons together in one place. The basic standards of adequacy of service of summons is set forth in the first sentence of ORCP 7 D.(1). Succeeding portions of the rule provide ways in which service may be made and how these ways may be used for particular defendants, including conditional preferences. The particular methods, however, are methods which may be used. The rule does not require them to be used. Compliance with the specific methods of service is presumed to be service reasonably calculated, under all the circumstances, to apprise the defendant of the pendency of the action and to afford a reasonable opportunity to appear and defend. Other methods of service might accomplish the same thing. Subsection 4 F.(4) and section 4 G. also make clear that any technical defects in the return, form of summons, issuance of summons, and persons serving do not invalidate service if the defendant received actual notice of the existence and pendency of the action. Note, however, that summons must be served and returned; mere knowledge of the pendency and nature of the action will not require the defendant to appear and defend.

COMMENT: Rule 7 (Lonnquist)

Rule 7 contains a substantial omission that should be corrected.

By dropping ORS 15.190, Rule 7 changes the present law by making it more difficult and expensive to obtain service of process in automobile cases involving nonresident defendants. ORS 15.190, as amended, was adopted following a series of Supreme Court decisions which demonstrated that it was nearly impossible to satisfy an undefined statutory requirement of "due diligence." (See, e.g., Terhar v. Backus, 259 Or 478 (1971); State ex rel Heiber, 256 Or 93 (1970).) Rule 7 D. (1) which reinstates a general statutory test for determining adequate service returns the law to that previous state of judicial uncertainty.

ORS 15.190 presently appoints the Administrator of the Department of Motor Vehicles as agent for service of process for nonresidents or foreign corporations involved in auto accidents in Oregon. Service also requires that plaintiff send by registered or certified mail a copy of the summons and affidavit of mailing. ORS 15.190(3). The statute also defines what is meant by "due diligence" to reduce unnecessary litigation over that issue. ORS 15.190(7).¹

1 The Supreme Court in Kintigh v. Elliott, 280 Or 265, 269-270, ftn. 2 (1977), discussed the prior litigious history involving this section. The discussion illustrates the time and expense that is borne by litigants in resolving in procedural rules lacking in clear definition.

The Department of Motor Vehicles is paid a nominal fee for the administrative handling of the service of process by statute.

The present law assures that Oregon citizens will not have their potential rights of action against nonresident defendants jeopardized by a potentially expensive² and uncertain process.

2 The cost of attempting to locate and serve an elusive or missing defendant, and the cost of litigating the issue of the adequacy of service are guaranteed to increase the present cost of service of process absent the language of ORS 15.190.

PROPOSED RULE 7 D. (3)(a)(iv)1

D.(3)(a)(iv)1 Non-residents in auto injury cases. Upon a non-resident or foreign corporation, or by anyone on his or its behalf, or by any person for his own use and benefit, who has operated on his own or its behalf a motor vehicle on roads, highways, or streets of this state, and an accident, collision or other liability in which the motor vehicle was involved while being operated upon the roads, highways, or streets, by service upon the Administrator of the Motor Vehicles Division of the Department of Transportation.

PROPOSED RULE 7 D.(3)(a)(iv)2

D.(3)(a)(iv)2 The operation shall be a signification of his or its agreement that any summons or process against him or it which is so served shall be of the same legal force and validity as if served on him or it personally within this state. (From the first sentence of ORS 15.190(2). Additional language not included.)

PROPOSED RULE 7 D.(2)(e)

D.(2)(e) Service upon Administrator of DMV. Service of such summons or process shall be made by leaving two copies of the summons or process with a fee of \$2 in the hands of the Administrator of the Motor Vehicles Division or in his office or at any office the administrator authorizes to accept summons or process and such service shall be sufficient and valid personal service upon said resident, nonresident or foreign corporation; provided, that notice of such service and a copy of the summons or process is forthwith sent by registered or certified mail by plaintiff to defendant, and the defendant's return receipt, or an indorsement by the proper postal authority showing that delivery of said letter was refused and the plaintiff's affidavit of compliance herewith are appended to the process and entered as a part of the return thereof. The Administrator of the Motor Vehicles Division shall forthwith send one of such copies by mail, postage prepaid, addressed to the defendant at his last-known address. However, personal service outside of the state in accordance with the statutes of Oregon relating to personal service of summons outside of the state shall relieve a plaintiff from mailing copies of the summons or process by registered or certified mail.

D.(2)(f) The fee of \$2 paid by the plaintiff to the Administrator of the Motor Vehicles Division shall be taxed as part of his cost if he prevails in the action. The Administrator of the Motor Vehicles Division shall keep a record of all such summonses and processes which shall show the day of service.

D.(2)(g) No default shall be entered against any defendant who has not either received or rejected the registered or certified letter containing the notice of such service and a copy of the summons or process, unless the plaintiff can show that the defendant after due diligence cannot be found within or without the state and that fact appears by affidavit to the satisfaction of the court or judge thereof or the judge described in subsection (3) of ORS 15.120. Due diligence is satisfied when it appears from such affidavit that the defendant cannot be found residing at the address given by the defendant at the time of the accident, or residing at the most recent address furnished by the defendant to the Administrator of the Motor Vehicles Division, if it appears from the affidavit that inquiry at such address or addresses was made within a reasonable time preceding the service of summons or process upon the Administrator of the Motor Vehicles Division. Where due diligence is proven to the court by such affidavit, the service upon the Administrator of the Motor Vehicles Division shall be sufficient valid personal service upon said resident, nonresident or foreign corporation, notwithstanding that he or it did not actually receive a notice of such service because of defendant's failure to notify the Administrator of the Motor Vehicles Division of a change of his or its address as required by subsection ____ of this section.

NOTE: The above paragraphs are from ORS 15.190 (3), (6) and (7). Subsections (4) and (5) have been deleted in this Rule.

COUNCIL ON COURT PROCEDURES

Minutes of Meeting Held May 10, 1980

Judge Dale's Courtroom

Multnomah County Courthouse

Portland, Oregon

Present:	Darst B. Atherly	Donald W. McEwen
	Anthony L. Casciato	Charles P.A. Paulson
	John M. Copenhaver	Val D. Sloper
	Austin W. Crowe, Jr.	James C. Tait
	William M. Dale, Jr.	Wendell H. Tompkins
	William L. Jackson	Lyle C. Velure
	Garr M. King	William W. Wells
	Harriet R. Krauss	David R. Vandenberg, Jr.
Absent:	Carl Burnham, Jr.	Berkeley Lent
	John Buttler	Frank H. Pozzi
	Wendell E. Gronso	Robert W. Redding
	Laird Kirkpatrick	

The meeting was called to order by Chairman Don McEwen at 9:50 a.m. in Judge Dale's Courtroom in the Multnomah County Courthouse, Portland, Oregon. Bruce C. Hamlin attended as a guest.

The minutes of the meeting held April 12, 1980, were unanimously approved.

The Council discussed and took the following action regarding the staff memorandum dated May 5, 1980, relating to ORCP 1-64 (attached).

Item 1, page 1, ORCP 4 E. The question presented was whether ORCP 4 E. should be amended in light of State ex rel. Sweere v. Crookham. After discussion it was decided that no Council action be taken until there is further case law.

Item 2, page 3, ORCP 4 M. A motion was made by Judge Wells, seconded by Judge Jackson, to change the words "sections B. through L." to "sections A. through L." in section 4 M. The motion passed unanimously.

Item 3, page 3. The Council discussed the inconsistency between ORCP 7 C.(2) and 7 D.(6)(b), which refer to the date of the first publication and allow 30 days for response from that date, and 7 D.(6)(g), which states that "service by publication shall be complete at the date of the last publication." A motion was made by Garr King, seconded by James Tait, that the inconsistency should be eliminated by removal of subsection 7 D.(6)(g). The motion passed unanimously.

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.

M E M O R A N D U M

TO: COUNCIL
FROM: Fred Merrill
RE: DRAFTS FOR CHANGES IN ORCP 1 - 64
REQUESTED AT MAY 10, 1980, MEETING

TO BE READ WITH
MINUTES OF 5/10/80
MEETING.

ORCP 7 D.(4)(a)

D.(4)(a) Actions arising out of use of roads, highways,
and streets; service by mail.

D.(4)(a)(i) In any action arising out of any accident, collision, or liability in which a motor vehicle may be involved while being operated upon the roads, highways, and streets of this state, any defendant who operated such motor vehicle, or caused such motor vehicle to be operated on the defendant's behalf, except a defendant which is a foreign corporation maintaining an attorney in fact within this state, may be served with summons by service upon the Department of Motor Vehicles and mailing a copy of the summons and complaint to the defendant.

D.(4)(a)(ii) Summons may be served by leaving one copy of the summons and complaint with a fee of \$2.00 in the hands of the Administrator of the Motor Vehicles Division or in the Administrator's office or at any office the Administrator authorizes to accept summons. The plaintiff shall, as soon as reasonably possible, cause to be mailed a true copy of the summons and complaint to the defendant at the address given by the defendant at the time of the accident or collision that is the subject of

6-16-80

the action, and the most recent address furnished by the defendant to the Administrator of the Motor Vehicles Division, and any other address of the defendant known to the plaintiff, which might result in actual notice. For purposes of computing any period of time prescribed or allowed under these rules, service under this paragraph shall be complete upon such mailing.

D.(4)(a)(iii) The fee of \$2.00 paid by the plaintiff to the Administrator of the Motor Vehicles Division shall be taxed as part of the costs if plaintiff prevails in the action. The Administrator of the Motor Vehicles Division shall keep a record of all such summonses which shall show the day of service.

COMMENT

This version reinstates service on the Motor Vehicles Division. I assume this would have the advantage of creating a record of service for insurance counsel to consult. I also assume this would benefit the plaintiff if serving the Motor Vehicles Division satisfied the statutes of limitations.

This version makes the entire mailing responsibility fall on the plaintiff. The pattern is identical to substituted service or office service under ORCP 7 D.(2)(b) and (c). The last sentence of the proposal follows the pattern of making service complete for the 30-day default period on mailing. As with substituted or office service, the date of service for limitations purposes is not and could not be covered by rules.

The provisions of D.(4)(a)(iii) relating to fees and duty to record may exceed Council rulemaking power, and we probably should ask the legislature to enact this rule section by statute if we want this rule.

I have not submitted this to the Motor Vehicles Division for comment. Perhaps this should be done when there is tentative approval of a draft. This version may raise less objection by the DMV as it does not require them to do anything except receive and record the summons.

Rule 7

A. [Plaintiff and defendant defined.] Definitions. For purposes of this rule, "plaintiff" shall include any party issuing summons and "defendant" shall include any party upon whom service of summons is sought. For purposes of this rule, a "true copy" of a summons and complaint means an exact and complete copy of the original summons and complaint with a certificate upon the copy signed by an attorney of record, or if there is no attorney, by a party which indicates that the copy is exact and complete.

C.(1) Contents. The summons shall contain:

C.(1)(a) Title. The title of the cause, specifying the name of the court in which the complaint is filed and the names of the parties to the action.

C.(1)(b) Direction to defendant. A direction to the defendant requiring defendant to appear and defend within the time required by subsection (2) of this section and a notification to defendant that in case of failure to do so, the plaintiff will apply to the court for the relief demanded in the complaint.

C.(1)(c) Subscription; post office address. A subscription by the plaintiff or by a resident attorney of this state, with the addition of the post office address at which papers in the action may be served by mail.

Rule 7

C.(2) Time for response. If the summons is served by any manner other than publication, the defendant shall appear and defend within 30 days from the date of service. If the summons is served by publication pursuant to subsection D.(5) of this rule, the defendant shall appear and defend within 30 days from a date stated in the summons. The date so stated in the summons shall be the date of the first publication.

Rule 7

C.(3) Notice to party served.

C.(3)(a) In general. All summonses other than a summons to join a party [pursuant to Rule 22 D.] to respond to a counterclaim under Rule 22 D.(1) and (2) shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." [This paper] The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff.

If you have questions, you should see an attorney immediately.

C.(3)(b) Service [on maker of contract] for counterclaim. A summons to join a party to respond to a counterclaim pursuant to Rule 22 D.[(2)](1) shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." [This paper] The "motion" or "reply" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant.

If you have questions, you should see an attorney immediately.

C.(3)(c) Service on persons liable for attorney fees. A summons to join a party pursuant to Rule 22 D.[(3)](2) shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:

READ THESE PAPERS

CAREFULLY!

You may be liable for attorney fees in this case. Should plaintiff in this case not prevail, a judgment for reasonable attorney fees will be entered against you, as provided by the agreement to which defendant alleges you are a party.

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." [This paper] The "motion" or "reply" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant.

If you have questions, you should see an attorney immediately.

Rule 7

D. Manner of service.

D.(1) Notice required. Summons shall be served, either within or without this state, in any manner reasonably calculated, under all the circumstances, to apprise the defendant of the existence and pendency of the action and to afford a reasonable opportunity to appear and defend. Summons may be served in a manner specified in this rule or by any other rule or statute on the defendant or upon an agent authorized by appointment or law to accept service of summons for the defendant. Service may be made, subject to the restrictions and requirements of this rule, by the following methods: personal service of summons upon defendant or an agent of defendant

authorized to receive process; substituted service by leaving a copy of summons and complaint at a person's dwelling house or usual place of abode; office service by leaving with a person who is apparently in charge of an office; service by mail; or, service by publication.

D.(2) Service methods.

D.(2)(a) Personal service. Personal service may be made by delivery of a [certified] true copy of the summons and a [certified] true copy of the complaint to the person to be served.

D.(2)(b) Substituted service. Substituted service may be made by delivering a [certified] true copy of the summons and complaint at the dwelling house or usual place of abode of the person to be served, to any person over 14 years of age residing in the dwelling house or usual place of abode of the person to be served. Where substituted service is used, the plaintiff [immediately] , as soon as reasonably possible, shall cause to be mailed a [certified] true copy of the summons and complaint to the defendant at defendant's dwelling house or usual place of abode, together with a statement of the date, time, and place at which substituted service was made. For the purpose of computing any period of time prescribed by these rules, substituted service shall be complete upon such mailing.

D.(2)(c) Office service. If the person to be served maintains an office for the conduct of business, office service may be made by leaving a [certified] true copy of the summons and complaint at such office during normal working hours with the person who is apparently in charge. Where office service is used, the plaintiff [immediately] , as soon as reasonably possible, shall cause to be mailed a [certified] true copy of the summons and complaint to the defendant at the defendant's dwelling house or usual place of abode, together with a statement of the date, time, and place at which office

service was made. For the purpose of computing any period of time prescribed or allowed by these rules, office service shall be complete upon such mailing.

D.(2)d) Service by mail. Service by mail, when required or allowed by this rule, shall be made by mailing a [certified] true copy of the summons and a [certified] true copy of the complaint to the defendant by certified or registered mail, return receipt requested. For the purpose of computing any period of time allowed by these rules, service by mail shall be complete when the registered or certified mail is delivered and the return receipt signed or when acceptance is refused.

D.(3) Particular defendants. Service may be made upon specified defendants as follows:

D.(3)(a) Individuals.

D.(3)(a)(i) Generally. Upon an individual defendant, by personal service upon such defendant or an agent authorized by appointment or law to receive service of summons or, if defendant personally cannot be found at defendant's dwelling house or usual place of abode, then by substituted service or by office service upon such defendant or an agent authorized by appointment or law to receive service of summons.

D.(3)(a)(ii) Minors. Upon a minor under the age of 14 years, by service in the manner specified in subparagraph (i) of this paragraph upon such minor, and also upon such minor's father, mother, conservator of the minor's estate, or guardian, or, if there be none, then upon any person having the care or control of the minor or with whom such minor resides, or in whose service such minor is employed, or upon a guardian ad litem appointed pursuant to Rule 27 A.(2).

D.(3)(a)(iii) Incapacitated persons. Upon an incapacitated person, by service in the manner specified in subparagraph (i) of this paragraph upon such person, and also upon the conservator of such person's estate or guardian, or, if there be none, upon a guardian ad litem appointed pursuant to Rule 27 B.(2).

D.(3)(b) Corporations; limited partnerships; unincorporated associations subject to suit under a common name. Upon a domestic or foreign corporation, 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, limited partnership, or association[.] or by personal service upon any clerk on duty in the office of the registered agent.

D.(3)(b)(ii) Alternatives. If a registered agent, officer, director, general partner, or managing agent cannot be found [and does not have an office] 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, 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 [a registered agent, officer, director, general partner, or managing agent.] the last registered office of the corporation, limited partnership, or association, if any, as shown by the records on file in the office of the Corporation Commissioner or, if the corporation, limited partnership, or association is not authorized to transact business in this state at the time of the transaction, event, or occurrence upon which the action is based occurred, to the principal office or place of business of the corporation, limited partnership, or association, and, in any case to any address, the use of which the plaintiff knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice.

Rule 7

D.(3)(c) State. Upon the state, by personal service upon the Attorney General or by leaving a copy of the summons and complaint at the Attorney General's office with a deputy, assistant, or clerk.

D.(3)(d) Public bodies. Upon any county, incorporated city, school district, or other public corporation, commission or board, by personal service or office service upon an officer, director, managing agent, clerk, or secretary thereof. When a county is a party to an action, in addition to the service of summons specified above, an additional copy of the summons and complaint shall also be served upon the District Attorney of the county in the same manner as required for service upon the county clerk.

D.(4) Particular actions involving motor vehicles.

D.(4)(a) Actions arising out of use of roads, highways, and streets -- service by mail. In any action arising out of any accident, collision, or liability in which a motor vehicle may be involved while being operated upon the roads, highways, and streets of this state, any defendant who operated such motor vehicle, or caused such motor vehicle to be operated on the defendant's behalf, may be served with summons by mail except a defendant which is a foreign corporation maintaining an attorney in fact within this state. Service by mail shall be made by mailing to: (i) the address given by the defendant at the time of the accident or collision that is the subject of the action, and (ii) to the most recent address furnished by the defendant to the administrator of the Motor Vehicles Division, and (iii) to any other address of the defendant known to the plaintiff, which might result in actual notice.

D.(4)(b) Notification of change of address. Every motorist or user of the roads, highways, and streets of this state who, while operating a motor vehicle upon the roads, highway, or streets of this state, is involved in any accident, collision, or liability, shall forthwith notify the administrator of the Motor Vehicles Division of any change of such defendant's address within three years of such accident or collision.

D.[(4)](5) Service in foreign country. When service is to be effected upon a party in a foreign country, it is also sufficient if service of summons is made in the manner prescribed by the law of the foreign country for service in that county in its courts of general jurisdiction, or as directed by the foreign authority in response to letters rogatory, or as directed by order of the court, provided, however, that in all cases such service shall be reasonably calculated

D.[(5)](6) [Service by publication or mailing to a post office address; other service by court order.] Court order for service; service by publication.

D.[(5)](6)(a) [Order for publication or mailing or other service.] Court order for service by other method. On motion upon a showing by affidavit that service cannot be made by any [other] method [more reasonably calculated to apprise the defendant of the existence and pendency of the action] specified in these rules or other rule or statute, the court, at its discretion, may order service by any method or combination of methods which under the circumstances is most reasonably calculated to apprise the defendant of the existence and pendency of the action, including but not limited to: [by publication; or at the discretion of the court,] publication of summons; [by] mailing without publication to a specified post office address of defendant, return receipt requested, deliver to addressee only; or [by any other method] posting at specified locations. If service is ordered by any manner other than publication, the court may order a time for response.

D.[(5)](6)(b) Contents of published summons. In addition to the contents of a summons as described in section C. of this rule, a published summons shall also contain a summary statement of the object of the complaint and the demand for relief, and the notice required in subsection C.(3) shall state: "This paper must be given to the court clerk or administrator within 30 days of the date of first publication specified herein along with the required filing fee." The published summons shall also contain the date of the first publication of the summons.

D.[(5)](6)(c) Where published. An order for publication shall direct publication to be made in a newspaper of general circulation in the county where the action is commenced or, if there is no such newspaper, then in a newspaper to be designated as most likely to give notice to the person to be served. Such publication shall be four times in successive calendar weeks.

D.[(5)](6)(d) Mailing summons and complaint. If service by publication is ordered and defendant's post office address is known or can with reasonable diligence be ascertained, the plaintiff shall mail a copy of the summons and complaint to the defendant. When the address of any defendant is not known or cannot be ascertained upon diligent inquiry, a copy of the summons and complaint shall be mailed to the defendant at defendant's last known address. If plaintiff does not know and cannot ascertain, upon diligent inquiry, the present or last known address of the defendant, mailing a copy of the summons and complaint is not required.

D.[(5)](6)(e) Unknown heirs or persons. If service cannot be made by another method described in this section because defendants are unknown heirs or persons as described in sections I. and J. of Rule 20, the action shall proceed against the unknown heirs or persons in the same manner as against named defendants served by publication and with like effect; and any such unknown heirs or persons who have or claim any right, estate, lien, or interest in the property in controversy, at the time of the commencement of the action, and served by publication, shall be bound and concluded by the judgment in the action, if the same is in favor of the plaintiff, as effectively as if the action was brought against such defendants by name.

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* D.[(5)](6)(f) [Defending after judgment]. Defending before or after judgment. The defendant against whom publication is ordered, or his representatives, on application and sufficient cause shown, at any time before judgment, shall be allowed to defend the action. A defendant against whom publication is ordered or such defendant's representatives may, upon good cause shown and upon such terms as may be proper, be allowed to defend after judgment and within one year after entry of judgment. If the defense is successful, and the judgment or any part thereof has been collected or otherwise enforced, restitution may be ordered by the court, but the title to property sold upon execution issued on such judgment, to a purchaser in good faith, shall not be affected thereby.

D.[(5)](6)(g) Completion of service. Service shall be complete at the date of the last publication.

Rule 7

F. Return; proof of service.

F.(1) Return of summons. The summons shall be promptly returned to the clerk with whom the complaint is filed with proof of service or mailing, or that defendant cannot be found. The summons may be returned by mail.

F.(2) Proof of service. Proof of service of summons or mailing may be made as follows:

F.(2)(a) Service other than publication. Service other than publication shall be proved by:

F.(2)(a)(i) [Affidavit of service.] Certificate of service when summons not served by sheriff or deputy. If the summons is not served by a sheriff or a sheriff's deputy, [The affidavit] the certificate of the server indicating: the time, place, and manner of service; that the server is a competent person 18 years of age or older and a resident of the state of service or this state and is not a party to nor an officer, director, or employee of, nor attorney for any party, corporate or otherwise; and that the server knew that the person, firm, or corporation served is the identical one named in the action. If the defendant is not personally served, the server shall state in the [affidavit] certificate when, where, and with whom a copy of the summons and complaint was left or describe in detail the manner and circumstances of service. If the summons and complaint were mailed, the [affidavit] certificate shall state the circumstances of mailing and the return receipt shall be attached.

Rule 7

F.(2)(a)(ii) [Certificate of service.] Certificate of service by sheriff or deputy. If the copy of the summons is served by [the] a sheriff, or a sheriff's deputy, [proof may be made by] the sheriff's or deputy's certificate of service indicating the time, place, and manner of service, and if defendant is not personally served, when, where, and with whom the copy of the summons and complaint was left or describing in detail the manner and circumstances of service. If the summons and complaint were mailed, the certificate shall state the circumstances of mailing and the return receipt shall be attached.

F.(2)(a)(iii) Form. An affidavit or certificate containing proof of service may be made upon the summons or as a separate document attached to the summons.

F.(2)(b) Publication. Service by publication shall be proved by an affidavit in substantially the following form:

Affidavit of Publication

State of Oregon)
 : ss.
County of)

I, _____, being first duly sworn, depose and say that I am the _____ (here set forth the title or job description of the person making the affidavit), of the _____, a newspaper of general circulation [as defined by ORS 193.010 and 193.020] published at _____ in the

Rule 7 F.(2)(b)

aforesaid county and state; that I know from my personal knowledge that the _____, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper four times in the following issues:

(here set forth dates of issues in which the same was published).

Subscribed and sworn to before me this ___ day of _____,
19 ___.

Notary Public for Oregon

My commission expires
___ day of _____, 19 ___.

F.(2)(c) Making and certifying affidavit. The affidavit of service may be made and certified before a notary public, or other official authorized to administer oaths and acting as such by authority of the United States, or any state or territory of the United States, or the District of Columbia, and the official seal, if any, of such person shall be affixed to the affidavit. The signature of such notary or other official, when so attested by the affixing of the official seal, if any, of such person, shall be prima facie evidence of authority to make and certify such affidavit.

F.(3) Written admission. In any case proof may be made by written admission of the defendant.

Rule 7

F.(4) Failure to make proof; validity of service. If summons has been properly served, failure to make or file a proper proof of service shall not affect the validity of the service.

Rule 84 F. The Council unanimously decided to delete the provisions relating to release of liens, F.(2)(a) through F.(2)(e), in their entirety. The Council also unanimously agreed to delete the last sentence of F.(1)(a): "Delivery of property under this section does not affect the attaching plaintiff's lien."

Rule 81 B. Judge Sloper moved, seconded by Darst Atherly, that paragraphs B.(2)(b) through B.(2)(d) be deleted from the notice of exemption section. The motion carried unanimously. It was suggested by Frank Pozzi that some simple and clear language relating to possible exemptions be added to the notice. The Executive Director was asked to draft language and submit it for approval to the subcommittee.

Rule 83 G.(1). The Council decided that the following sentence should be added at the end of G.(1): "If the plaintiff so requests, the hearing date may be set at some date later than the seventh day."

Rule 83 A. Upon motion by Laird Kirkpatrick, seconded by Don McEwen, the Executive Director was asked to redraft the first paragraph of this rule to allow the required showing to be made by affidavits submitted in support of plaintiff's petition. Judge Dale opposed the motion.

Upon motion by Carl Burnham, seconded by Judge Sloper, the Council unanimously approved release of the tentative draft of Rules 78-85, dated August 29, 1980, as modified by the actions taken by the Council.

Class Actions. Austin Crowe moved, seconded by Charles Paulson, that Rule 32 be amended to incorporate the revisions submitted on July 21, 1980, by the class action subcommittee. The motion carried, with Carl Burnham, Darst Atherly Garr King, Judge Buttler, and Don McEwen opposing it.

The Council had no further objections to or suggestions regarding the draft of Rules 65-72 and amendments to ORCP 1-64 dated August 27, 1980, which had been approved for release at the last meeting.

The Council discussed the suggested changes in ORCP 7 set out in Frank Pozzi's letter dated August 4, 1980, and in the staff memorandum dated June 16, 1980.

A motion was made by Austin Crowe, seconded by Don McEwen, to adopt the change in 7 D.(4)(a) set out in the June 16, 1980, memorandum reinstating service on the Department of Motor Vehicles, with the substitution of "registered agent" for "attorney in fact" in paragraph (i). The motion passed unanimously.

A motion was made by Frank Pozzi, seconded by Charles Paulson, to adopt the change in D.(4)(c) on Page 2 of the August 4th letter.

The motion failed. Voting for the motion were: Berkeley Lent, David Vandenberg, Lyle Velure, Charles P.A. Paulson, Wendell Gronso, Frank Pozzi, Harriet Krauss, Val Sloper, and Don McEwen.

A motion was made by Frank Pozzi, seconded by Charles Paulson, that ORCP 7 D.(2)(d) be changed to provide that time should begin to run three days after mailing, if mailed within the State of Oregon, and seven days after mailing if mailed outside the state. The motion passed, with Darst Atherly and Don McEwen opposing it.

A motion was made by Frank Pozzi, seconded by Charles Paulson, that a new paragraph be added to subsection D.(3) of ORCP 7 providing service upon vessel owners and charterers. The motion passed unanimously.

The Executive Director stated that the approved tentative rules would be mailed to bar committees, the OADC, ATLA, law libraries, local bar associations, and to those persons who testified at the hearings or submitted comments. A summary of all of the changes would be sent to all members of the bar, all newspapers, and the Bar Bulletin, and copies of the rules would be available upon request.

The next meeting of the Council is scheduled for Saturday, September 27, 1980, at 9:30 a.m., at the RED LION INN/LLOYD CENTER, Parkman Room, 1000 N.E. Multnomah, Portland, Oregon.

The meeting adjourned at 11:55 a.m.

Respectfully submitted,

Fredric R. Merrill
Executive Director

FRM:gh

RULE 7
SUMMONS

D.(2)(d) Service by mail. Service by mail, when required or allowed by this rule, shall be made by mailing a true copy of the summons and a true copy of the complaint to the defendant by certified or registered mail, return receipt requested. For the purpose of computing any period of time prescribed or allowed by these rules, service by mail shall be complete [when the registered or certified mail is delivered and the return receipt signed or when acceptance is refused] three days after such mailing if the address to which it was mailed is within this state and seven days after mailing if the address to which it is mailed is outside this state.

D.(3)(b) [Corporations; limited partnerships; unincorporated associations subject to suit under common name] Corporations and limited partnerships. 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 the corporation[,] or limited partnership[, or association], if any, as shown by the records on file in the office of the Corporation Commissioner or, if the corporation[,] or limited partnership[, or association] is not authorized to transact business in this state at the time of the transaction, event, or occurrence upon which the action is based occurred, to the principal office or place of business of the corporation[,] or limited partnership[, or association], and in any case to any address the use of which the plaintiff knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice.

D.(3)(e) General partnerships. Upon any general partnership by personal service upon a partner or any agent authorized by appointment or law to receive service of summons for the partnership.

D.(3)(f) Other unincorporated association subject to suit under a common name. Upon any other unincorporated association subject to suit under a common name by personal service upon an officer, managing agent, or agent authorized by appointment or law to receive service of summons for the unincorporated association.

D.(3)(g) Vessel owners and charterers. Upon any foreign steamship company or steamship charterer, by personal service upon any agent authorized by such company or charterer to solicit cargo or passengers for transportation to or from ports in the State of Oregon or ports in the State of Washington on that portion of the Columbia River forming a common boundary with Oregon.

D.(4)(a) Actions arising out of use of roads, highways, and streets; service by mail.

D.(4)(a)(i) In any action arising out of any accident, collision, or liability in which a motor vehicle may be involved while being operated upon the roads, highways, and streets of this state, any defendant who operated such motor vehicle, or caused such motor vehicle to be operated on the defendant's behalf, [may be served with summons by mail, except a defendant which is a foreign corporation maintaining an attorney in fact within this state. Service by mail shall be made by mailing to: (i) the address given by the defendant at the time of the accident or collision that is the subject of the action, and (ii) the most recent address furnished by the defendant to the Administrator of the Motor Vehicles Division, and (iii) any other address of the defendant known to the plaintiff, which might result in actual notice] except a defendant which is a foreign corporation maintaining a registered agent within this state, may be served with summons by service upon the Department of

Motor Vehicles and mailing a copy of the summons and complaint to the defendant.

D.(4)(a)(ii) Summons may be served by leaving one copy of the summons and complaint with a fee of \$2.00 in the hands of the Administrator of the Motor Vehicles Division or in the Administrator's office or at any office the Administrator authorizes to accept summons. The plaintiff shall, as soon as reasonably possible, cause to be mailed a true copy of the summons and complaint to the defendant at the address given by the defendant at the time of the accident or collision that is the subject of the action, and the most recent address furnished by the defendant to the Administrator of the Motor Vehicles Division, and any other address of the defendant known to the plaintiff, which might result in actual notice. For purposes of computing any period of time prescribed or allowed under these rules, service under this paragraph shall be complete upon such mailing.

D.(4)(a)(iii) The fee of \$2.00 paid by the plaintiff to the Administrator of the Motor Vehicles Division shall be taxed as part of the costs if plaintiff prevails in the action. The Administrator of the Motor Vehicles Division shall keep a record of all such summonses which shall show the day of service.

[D.(6)(g) Completion of service. For the purpose of computing any period of time prescribed or allowed by these rules service by publication shall be complete at the date of the last publication.]

COMMENT

The amendment to 7 D.(2)(d) clarifies when the period for default begins to run after service of summons by mail.

The new provisions of 7 D.(3)(e) and (f) are designed to specify a method of serving summons on a partnership or association consistent with 26 B. and 67 E. The new 7 D.(3)(g) provides a special agency service for defendants engaged in maritime commerce.

The amendment to 7 D.(4)(a) reinstates service on the Department of Motor Vehicles. It will provide a record of service and clarify when the time for default begins to run. The amendment makes the entire mailing responsibility fall on the plaintiff. The pattern is identical to substituted service or office service under ORCP 7 D.(2)(b) and (c). The last sentence of the amendment follows the pattern of making service complete for the 30-day default period on mailing. As with substituted or office service, the date of service for limitations purposes is not and could not be covered by rules.

Paragraph 7 D.(6)(g) was removed because of inconsistency with subsection C.

RULE 7

SUMMONS

D.(2)(c) Office service. If the person to be served maintains an office for the conduct of business, office service may be made by leaving a true copy of the summons and complaint at such office during normal working hours with the person who is apparently in charge. Where office service is used, the plaintiff, as soon as reasonably possible, shall cause to be mailed a true copy of the summons and complaint to the defendant at the defendant's dwelling house or usual place of abode or defendant's place of business or such other place under the circumstances that is most reasonably calculated to apprise the defendant of the existence and pendency of the action, together with a statement of the date, time, and place at which office service was made. For the purpose of computing any period of time prescribed or allowed by these rules, office service shall be complete upon such mailing.

D.(2)(d) Service by mail. Service by mail, when required or allowed by this rule, shall be made by mailing a true copy of the summons and a true copy of the complaint to the defendant by certified or registered mail, return receipt requested. For the purpose of computing any period of time prescribed or allowed by these rules, service by mail shall be complete [when the registered or certified mail is delivered and the return receipt signed or when acceptance is refused] three days after such mailing if the address to which it was mailed is within this state and seven days after mailing if the address to which it is mailed is outside this state.

D.(3)(b) [Corporations; limited partnerships; unincorporated associations subject to suit under common name] Corporations and limited partnerships. 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 office of the registered agent or to the last registered office of the corporation[,] or limited partnership[, or association], if any, as shown by the records on file in the office of the Corporation Commissioner or, if the corporation[,] or limited partnership[, or association] is not authorized to transact business in this state at the time of the transaction, event, or occurrence upon which the action is based occurred, to

the principal office or place of business of the corporation[,] or
limited partnership[, or association], and in any case to any
address the use of which the plaintiff knows or, on the basis of
reasonable inquiry, has reason to believe is most likely to result
in actual notice.

D.(3)(e) General partnerships. Upon any general part-
nership by personal service upon a partner or any agent author-
ized by appointment or law to receive service of summons for the
partnership.

D.(3)(f) Other unincorporated association subject to
suit under a common name. Upon any other unincorporated associa-
tion subject to suit under a common name by personal service
upon an officer, managing agent, or agent authorized by appoint-
ment or law to receive service of summons for the unincorporated
association.

D.(3)(g) Vessel owners and charterers. Upon any foreign
steamship owner or steamship charterer by personal service upon a
vessel master in such owner's or charterer's employment or any
agent authorized by such owner or charterer to provide services to
a vessel calling at a port in the State of Oregon, or a port in
the State of Washington on that portion of the Columbia River form-
ing a common boundary with Oregon.

[D.(6)(g) Completion of service. For the purpose of
computing any period of time prescribed or allowed by these rules
service by publication shall be complete at the date of the last
publication.]

COMMENT

The amendment to ORCP 7 D.(2)(c) provides more flexibility for mailing of summons after office service. Office service may be used when defendant's home address cannot be determined.

The amendment to ORCP 7 D.(2)(d) clarifies when the period for default begins to run after service of summons by mail.

ORCP 7 D.(3)(b)(ii) is amended to provide more flexibility for mail service.

The new provisions of ORCP 7 D.(3)(e) and (f) are designed to specify a method of serving summons on a partnership or association consistent with ORCP 26 B. and 67 E. The new ORCP 7 D.(3)(g) provides a special agency service for defendants engaged in maritime commerce.

The Council has also recommended that the legislature act to amend ORCP 7 D.(4)(a). See recommended Bill in Section IV of this report. The amendment to ORCP 7 D.(4)(a) reinstates service on the Department of Motor Vehicles. The amendment would provide a record of service and clarify when the time for default begins to run. The Council did not itself promulgate the amendment because of uncertainty whether Council rulemaking power was sufficient to require that the Department of Motor Vehicles accept service of summonses and keep the necessary records. The amendment makes the entire mailing responsibility fall on the plaintiff. The pattern is identical to substituted service or office service under ORCP 7 D.(2)(b) and (c). The last sentence of the amendment follows the pattern of making service complete for the 30-day default period on mailing. As with substituted or office service, the date of service for limitations purposes is not and could not be covered by rules.

Paragraph ORCP 7 D.(6)(g) was removed because of inconsistency with subsection C.(2).