

## RULE 70

### FORM AND ENTRY OF JUDGMENT

A. Form. Every judgment shall be in writing and set forth in a separate document. No particular form of words is required but every judgment shall specify clearly the party or parties in whose favor it is given and against whom it is given and the relief granted or other determination of the action. The judgment shall be signed or approved by the court or judge rendering such judgment, or in the case of judgment entered pursuant to ORCP 69 B.(2) by the clerk or person performing the duties of that office.

B. Filing; entry; notice.

B.(1) All judgments shall be filed and shall be entered in the journal by the clerk or the person performing the duties of that office. The clerk or person performing the duties of that office shall, on the date judgment is entered, mail a copy of the judgment and notice of the date of entry of the judgment to each party who is not in default for failure to appear. The clerk also shall make a note in the judgment docket of the mailing. In the entry of all judgments, except a judgment by default under Rule 69 B.(2), the clerk shall be subject to the direction of the court. Entry of judgment shall not be delayed for taxing of costs, disbursements, and attorney fees under Rule 69.

B.(2) Notwithstanding ORS 3.070 or any other rule or statute, for purposes of these rules, a judgment is effective only when entered as provided in this rule.

B.(3) The clerk, or person exercising the duties of that office, shall enter the judgment within 24 hours, excluding Saturdays and legal holidays, of the time the judgment is filed. When the clerk is unable to or omits to enter judgment within the time presented in this subsection, it may be entered any time thereafter.

C. Submission of forms of judgment. Attorneys shall submit forms of judgment upon the direction of the court or judge rendering the judgment. Any form of judgment submitted shall be served in accordance with ORCP 9 B. and proof of service made in accordance with ORCP 9 C.

COMMENT

Rule 70

This rule attempts to deal with the "old, old question of when is a judgment a judgment." Cedar Creek Oil and Gas Co. v. Fidelity Gas Co., 238 F.2d 298 (9th Cir., 1956). The question is of crucial importance for (a) post trial motions, (b) availability of execution, and (c) appeal.

Section A. deals with one aspect of the problem and would modify Oregon practice. The separate judgment requirement is taken from Federal Rule 58 and is designed to prevent confusion as to whether a form of decision filed is really a judgment or just an opinion or something else. This approach, of course, involves a risk that parties will be appealing or attempting to execute based upon something that does not qualify as a judgment. The loss involved is not terribly serious--at most a remand for entry of a valid judgment. The loss, when judgment is mistaken for simply an opinion or order, involves loss of post trial motions and appeal. The reference to specificity of parties and relief is taken from ORS 18.030. The reference to "form of words" conforms to Oregon case law. Esselstyn v. Casteel, 205 Or. 344, 286 P.2d 665, 228 P.2d 214 (1955). The question is one of intent of the judge. The requirement of a separate document presumably denominated a judgment would be helpful in ascertaining such intent. Note, however, the label is not controlling in the sense that a separate document denominated a judgment which is not a judgment, within the definition of 67 A., would not be a judgment. Leavy v. Leavy, 208 Or. 659, 303 P.2d 952 (1956).

The direction of the court could include direction of entry of judgment following motion to dismiss or to strike or for a judgment on the

pleadings when no leave to plead over is granted. The separate provision in ORS 18.090 is not necessary and is eliminated. Also note that questions as to conformance to verdict, findings, referee reports or opinions are not specifically covered. Presumably these limit the trial judge in rendition of judgment but they are not needed in this rule.

The requirement of a writing clarifies another persistent problem. The oral pronouncement of a court is technically rendition of judgment or direction of entry of judgment but not actually a judgment. It is only when a formal judgment is entered that the consequences incident to a judgment attach. Barone v. Barone, 207 Or. 26, 294 P.2d 609 (1956). Parker v. Parker, 407 P.2d 855 (1965).

The requirement that the document be signed or approved by the judge is consistent with the approach of having the judgment prepared by the judge rather than the clerk. There is one Oregon case saying good practice requires the judge to sign the judgment but "signed or approved" was used because it was more flexible. Neal v. Haight, 187 Or. 13, 27, 206 P.2d 1197 (1949).

At the present time, the only provision requiring a writing and filing is that covering orders in vacation. ORS 18.060. That provision does not make any reference to signing. The vacation provision apparently was necessary because of some question of the ability to vacate a judgment after term or enter a judgment in vacation. Under ORCP 10 B., providing the expiration of a term does not affect the power of a court to take any steps in a civil action pending before it, and the amendment to ORS 1.055(2) (saying "Notwithstanding that an act is authorized or required to be done before, during or after the expiration of a term of court, it may be done within a reasonable period of time."). ORS 18.060 seems useless and would be repealed.

Subsection 70 B.(1) raises another dimension of defining a judgment, i.e., at what point is the judgment effective for various purposes. The law in this state is somewhat confusing. The statutes direct that the clerk maintain a register where apparently a note of all papers filed and all rulings and actions are entered prior to entry of final judgment and a journal where the clerk "shall enter the proceedings of the court during term time, and such proceedings in vacation as the statutes specially direct." There also is a judgment docket related to judgment liens. ORS 7.030 and 18.320. Judgments are docketed immediately after entry. Presumably these records may not exist in the form of separate and discrete elements but may be consolidated under ORS 7.015. Even so, the entry under 18.040, and this rule, is to the journal and is a separate step from rendition, filing, or docketing of the judgment. Rendering the judgment is the act of the judge in deciding the case (which would also include signing a judgment) and filing is leaving the judgment with the clerk with the intention that it be entered into the court files. Under this rule the requirement of having a separate written document would mean that the judgment would be filed in this form. See HIGHWAY COMMISSION v. FISCH-OR, INC ., 241 Or. 412, 399 P.2d 1011, 400 P.2d 539 (1965).

Most of the effective dates in the statutes are keyed to entry. This is the date for purposes of appeal (ORS 19.026) and availability of execution (ORS 23.030). Most of the statutes referring to judgments speak of entry, e.g., default (ORS 18.080), multiple judgments (ORS 18.510), and costs (ORS 202.10). Two exceptions are the motions to vacate under ORS 18.160, which is keyed to notice of judgment and availability of supplementary proceedings in enforcement of judgment which contains a reference to "after judgment."

The time limit for post trial motions for new trial and for judgment notwithstanding the verdict, however, was keyed to the filing of the judgment. See ORS 17.615, 17.630, and 18.140(4). These statutes all said that the post trial motions could be filed up to 10 days after filing of judgment, but they also said that the motions would have to be ruled on within 55 days after the entry of judgment. In Charco, Inc. v. Cohn, 242 Or. 566, 411 P.2d 264 (1966), the court said not only that filing was actually the key date for availability of the motions but that also it was the key date for the 55-day limit on ruling upon the motions. In other words, the court said that under those statutes the use of the word "entry" meant "filing." The court relied upon ORS 3.070 to reach this decision. ORS 3.070 says all "orders, findings, judgments, and decrees" not filed in open court "shall become effective from the date of filing." The Charco case is most confusing. In an earlier case, Clark v. Auto Wholesale Company, 237 Or. 456, 391 P.2d 754 (1964), there was a timely filing of a motion for judgment notwithstanding the verdict and the judge ruled and signed an order granting the judgment NOV within 55 days. The order was not entered until 58 days after judgment. Apparently, the clerk neglected to make a timely entry. The court reversed the entry of the order granting the judgment NOV on the grounds that it had been entered more than 55 days after judgment and was automatically denied under the statute. The defendant then paid the judgment and sued the clerk to recover for the loss on the

theory that failure to enter the judgment was the proximate cause of the loss. The suit to recover from the clerk was the Charco case. In the Charco case evidence was presented that the order had actually been filed within the 55-day period. The court said that the prior decision in the Clark case had been based on the assumption that the order had been filed at the same time that it was entered because the only thing reflected in the record before the appellate court was the entry. The court then in the Charco case upheld a judgment against the clerk under the rather novel proximate cause theory that had the clerk carried out his duty to enter immediately, the supreme court would have correctly decided the Clark case.

The confusing thing about the Charco case is why the court got into the meaning of "entry" in the new trial statute. The court relied upon dicta in the prior case of HIGHWAY COMMISSION v. FISCH-OR, INC. (dealing with when the motion must be filed), supra, to come to the conclusion that entry means filing, but such a decision is absolutely unnecessary to the Charco case. It is unnecessary because the reference in the new trial statute to "entry" is to "entry of the judgment." In the Charco case there was no dispute relating to the date of entry of judgment. The entire dispute turned upon when the order granting judgment notwithstanding the verdict was effective. All ORS 17.615 says in this regard is that the judgment shall be "heard and determined" within 55 days of entry and to decide that under ORS 3.070 "heard and determined" means the date on which an order is filed requires no interpretation of the word "entry" in the statute. It is true that the time limit upon filing the motion began upon "filing" of judgment, but that also was not included in the Charco case.

In any case the court did suggest that "entry" meant "filing" and in reliance upon the case the Council changed the word "entry" to "filing" in ORCP 63 and 64.

For present purposes the main point demonstrated by the Clark case is the needless confusion that can arise from having a judgment effective at one point in time for some purposes and at another point in time for other purposes. Whatever else the Council does, there should be some uniformity.

The period of uniformity could be either "filing" or "entry." The Washington Rules, Rule 58(b), state:

(b) Effective Time. Judgments shall be deemed entered for all procedural purposes from the time of delivery to the clerk for filing, unless the judge earlier permits the judgment to be filed with him as authorized by Rule 5(e).

I would, however, suggest that the approach should be to make the uniform date "entry" rather than filing. The reason behind this approach would be as follows:

1. Even if we had changed the effective date date to "filing" for all purposes under the rules, the appeal statute, ORS 19.026, still keys the effective date for the running of the time to appeal to "entry." Although the Charco case says "entry" means "filing", given the nature of the case, this does not seem to be strong authority for a change in the appeal statute, and it probably still remains actually "entry." But cf. State v. Delker, 26 Or. App. 497, 503, 552 P.2d 1313 (1976).

2. Entry is a more certain point. Although ORCP 9 requires endorsement of date and time on papers when they are filed, there is no official record when the key date is entered. Ascertainment of the actual date requires looking at the file rather than an official record and availability of the paper in the file for these purposes may be less than certain. Note the problem in the Charco case with the record on appeal not reflecting the actual filing. Also, since filing is "delivery to a clerk", not the actual placing of the papers in the court's official files, confusion may arise when the judge's clerk or secretary is also a deputy clerk. For example, in Vandermeer v. Pacific Northwest Development, 274 Or. 221, 223-224, 545 P.2d 868 (1976), it is almost literally impossible to tell exactly when the motion was filed under these circumstances.

3. The most crucial factor is that there is no certainty of notice as to filing as opposed to entry. ORCP 9 A., relating to service of papers, does not absolutely state that a judgment must be served. Even if a judgment is a "similar paper" under ORCP 9 A. and must be served, it in theory is prepared by the judge, and who is then responsible for the service? In any case, it is the filing--not the service--that is the key date, and the filing comes after service; therefore, the additional step of checking the file periodically to ascertain the actual filing date is required.

"Entry" not only is an ascertainable date, but the notice provisions are very specific in the existing statute and identify the responsibility for notice as the actual entry.

4. The entire statutory (and now rule) judgment and enforcement of judgment scheme is built around the entry of the judgment.

To change to "filing" could be accomplished by the Washington provision but would require a number of other changes and might have some unanticipated result.

5. The failure to enter in a timely fashion also is subject to correction by a nunc pro tunc entry directed by the court. White v. East Side Mill, 84 Or. 224, 161 P.2d 969, 164 P. 736 (1919). There is no way to have a nunc pro tunc filing.

This, however, leaves the problem in ORCP 63 and 64 where the time to file a motion for new trial and judgment NOV and the time to rule upon such motions is keyed to filing of the original judgment. The answer would be to simply change the word "filing" in ORCP 63 D. and F. and 64 F. and G. to "entry." In the Charco and FISCH-OR cases the court said using "filing" was desirable because otherwise effectiveness of the judgment was dependent upon the whim of the clerk--not the intent of the judge. In the same opinions, however, the courts point out that there is a logical presumption that the clerk will carry out his or her duty, and in most cases there is no problem. Certainly, after the Charco case decision any party harmed by a failure to carry out the duty has a perfectly effective remedy in a suit against the clerk.

The use of filing for post trial motions also seems to be not based upon any logical approach but an accident. Such motions were keyed to "entry" in the Deady Code and successive revisions until a 1933 revision of the new trial statute which increased the time for filing of a motion for new trial and judgment NOV. See Oregon Laws, 1933, Chapter 233. Since this revision used "entry" in one place

and "filing" in another, referring to the same judgment, it looks suspiciously like a drafting mistake. We should go back and change ORCP 63 and 64.

Taking this approach, Rule 70 B.(1) retains the present "entry" practice. Aside from the limited default situation, the clerk has no authority to prepare and file a judgment or enter a judgment without a direction from the court. Under the federal practice, in some circumstances the clerk may enter a judgment without involvement of the judge.

The notice requirement of entry of judgment was retained. One aspect of this which may require some further investigation is the reality of the mailing of the notice by the clerks in the state. In the 1979 Legislature the Court Clerks organization submitted a bill which would have eliminated all notice involved here (and in 63 E.). There was some representation made to the legislature that because of expenses, notices were not, in fact, being mailed of entry of judgment filing by the clerks' offices in the state. SEE ATTACHMENT 1.

Rule 70 B.(2) is designed to carry out the idea of having "entry" the uniform effective date. With the continued existence of ORS 3.070, which has a reference to judgments, there still could be some argument that "entry" means "filing." Putting in a provision that overrides that seems easier than trying to change ORS 3.070. ORS 3.070 deals with the problem of effective date of actions taken by judges outside of court and rather sensibly limits effectiveness until a public disclosure. This rule does not derogate from that, but has an additional qualification that a judgment is not effective until the formal disclosure is in the form of entry in the records of the court.

Rule 70 B.(3) makes the clerk's duty to enter the judgment certain as to time. For some judgments ORS 18.040 contained the same requirement ("within the day" has been held to mean 24 hours; see Casker v. Hoskins, 64 Or. 254, 128 P. 841 (1913)). Since the rules now require a separate document signed by the judge and entry only by a direction of the court, the carrying out of the duty should be relatively easy and the requirement of entry clear. One ambiguity might be the clerk's default judgment but that still would have to be in a separate document signed by the clerk under Rule 78. Filing would still be necessary. The setting up of a separate time limit rather than referring to ORCP 10 is necessary because ORCP 10 is keyed more to time limits of days rather than hours, i.e., the first day is excluded. The last sentence of subsection 70 B.(3) is ORS 18.040.

Federal Rule 58 states the following:

Attorneys shall not submit forms of judgment except upon direction of the court, and these directions shall not be given as a matter of course.

The argument for discouraging the preparation of judgments by the parties is:

- (a) To avoid delay, and
- (b) To emphasize that the responsibility to prepare the judgment rests with the court and not with the prevailing party.

The approach used in section 70 C., however, is more in line with actual practice in Oregon. It is based on an assumption that there is a substantial value and saving of court time in having participation of the parties and that the trial judge is in the best position to make the determination whether or not they should be involved in the process of preparing the judgment.

Finally, if a form of judgment is being submitted, a special requirement of service of that paper is required here because Rule 9 would not clearly cover such a document. The reason for requiring service of a submitted proposed form of judgment is to avoid problems before the judgment is entered rather than having them come up after the entry of judgment. Some jurisdictions set a fixed time period (two days or five days after service) before judgment can be submitted. Such a time period seems too rigid and has a built-in delay. This rule simply says "before submission."

ATTACHMENT 1

From "Judicial Notices"  
September 24, 1979

**TRIAL COURT CLERKS PLEASE NOTE**

The State Court Administrator wishes to remind court clerks and administrative staff of circuit and district courts of ORS 18.030 which provides, along with other things, that the clerks "shall, on the date the judgment is entered, mail a copy of the judgment and notice of the date of entry of the judgment to each party who is not in default."

This statute is not being complied with in many cases in both district and circuit courts. Attorneys need to have an official copy of the judgment and, if they intend to appeal, they must have the date of entry of the judgment. The judgment itself, including traffic orders, must contain, in a conspicuous place, the date of entry. The date of entry is not always (although it should be) the date the judge signed the judgment order. Compliance with ORS 18.030 and careful recording and labeling on the judgment of the official date of its "entry" will be of great service to the trial bar and the appellate courts.

Also, Circuit and District court clerks are reminded that, pursuant to Rule 6.25, Rules of Appellate Procedure, they are to promptly send to the appellate court a certified copy of each trial court order made after filing of Notice of Appeal. Information contained in these orders is often very important to appellate courts, such as orders appointing counsel, orders dismissing appeals, etc.

###

Rule 68 C.(5)

This section should be changed to provide an automatic stay of the costs and attorney fees portion of the judgment upon filing of objections.

Rule 69 A.

The words "or court" should be added between "clerk" and "shall" in last line.

Rule 69 B.(1)

A further qualification upon the power of the clerk to enter judgment should be added as section B.(1)(g) as follows:

"Summons was personally served within the State of Oregon upon the party against whom judgment is sought pursuant to Rule 7 D.(3)(a)(i) or 7 D.(3)(b)(i)."

Rule 69 B.(2)

The necessity for appearance by a general guardian should be eliminated. The reference to three days in line 9 should be changed to "10 days, unless shortened by the court," and specific reference to authority of the court to use affidavits should be added. The requirement for mandatory jury trial in unliquidated damage cases should be omitted.

Rule 69 C.

The Executive Director was asked to redraft this section to avoid differing standards for vacating default judgments and other judgments.

Rule 69 E.

This section relating to publication default should be eliminated.

Rule 70 A.

Add the words "plainly labelled as a judgment" between the words "writing" and "and" in the first line. The words "or approved" should be eliminated from line 6.

Rule 70 B.

Eliminate words "in the journal" in lines 1 and 2 of this section.

Rule 70 C.

This section should be redrafted to provide for service a fixed number of days prior to submission.

RULE 70  
FORM AND ENTRY OF JUDGMENT

A. Form. Every judgment shall be in writing plainly labelled as a judgment and set forth in a separate document. No particular form of words is required but every judgment shall specify clearly the party or parties in whose favor it is given and against whom it is given and the relief granted or other determination of the action. The judgment shall be signed by the court or judge rendering such judgment, or in the case of judgment entered pursuant to ORCP 69 B.(2) by the clerk or person performing the duties of that office.

B. Filing; entry; notice.

B.(1) All judgments shall be filed and shall be entered by the clerk or the person performing the duties of that office. The clerk or person performing the duties of that office shall, on the date judgment is entered, mail a copy of the judgment and notice of the date of entry of the judgment to each party who is not in default for failure to appear. The clerk also shall make a note in the judgment docket of the mailing. In the entry of all judgments, except a judgment by default under Rule 69 B.(2), the clerk shall be subject to the direction of the court. Entry of judgment shall not be delayed for taxing of costs, disbursements, and attorney fees under Rule 69.

B.(2) Notwithstanding ORS 3.070 or any other rule or statute, for purposes of these rules, a judgment is effective only when entered as provided in this rule.

B.(3) The clerk, or person exercising the duties of that office, shall enter the judgment within 24 hours, excluding Saturdays and legal holidays, of the time the judgment is filed. When the clerk is unable to or omits to enter judgment within the time presented in this subsection, it may be entered any time thereafter.

C. Submission of forms of judgment. Attorneys shall submit proposed forms for judgment at the direction of the court rendering the judgment. Unless otherwise ordered by the court, any proposed form of judgment shall be served in accordance with Rule 9 B. five days prior to the submission of judgment and proof of service made in accordance with Rule 9 C.

RULE 63

JUDGMENT NOTWITHSTANDING THE VERDICT

D. Time for motion and ruling. A motion for judgment notwithstanding the verdict shall be filed not later than 10 days after the [filing] entry of the judgment sought to be set aside, or such further time as the court may allow. The motion shall be heard and determined by the court within 55 days of the time of the [filing] entry of the judgment, and not thereafter, and if not so heard and determined within said time, the motion shall conclusively be deemed denied.

RULE 64

NEW TRIALS

F. Time of motion; counteraffidavits; hearing and determination. A motion to set aside a judgment and for a new trial, with the affidavits, if any, in support thereof, shall be filed not later than 10 days after the [filing] entry of the judgment sought to be set aside, or such further time as the court may allow. When the adverse party is entitled to oppose the motion by counteraffidavits, such party shall file the same within 10 days after the filing of the motion, or such further time as the court may allow. The motion shall be heard and determined by the court within 55 days from the time of the [filing] entry of the judgment, and not thereafter, and if not so heard and determined within said time, the motion shall conclusively be deemed denied.

G. New trial on court's own initiative. If a new trial is granted by the court on its own initiative, the order shall so state and shall be made within 30 days after the [filing] entry of the judgment. Such order shall contain a statement setting forth fully the grounds upon which the order was made, which statement shall be a part of the record in the case.

COMMENT

Rule 70

The word changes requiring labelling of judgments and eliminating reference to approval by the judge and the journal were made in sections A. and B.

Rule 70 C. was changed to require service five days prior to submission to the court. The reference to the court ordering otherwise would take care of any emergency or prority problem.

RULE 70

DEFINITIONS; NOTICE OF LEVY; SERVICE

A. Definitions. As used in Rules 70-75, unless the context otherwise requires:

A.(1) Attachment. "Attachment" is the procedure by which an unsecured plaintiff obtains a judicial lien on defendant's property.

A.(2) Bank. "Bank" includes commercial and savings banks, trust companies, savings and loan associations, and credit unions.

A.(3) Clerk. "Clerk" means clerk of the court or any person performing the duties of that office.

A.(4) Consumer goods. "Consumer goods" means consumer goods as defined in ORS 79.1090.

A.(5) Consumer transaction. "Consumer transaction" means a transaction in which the defendant obligates himself to pay for goods sold or leased, services rendered or monies loaned, primarily for purposes of the defendant's personal, family, or household use.

A.(6) Garnishment. "Garnishment" is a method of attachment as specified in Rule 73.

A.(7) Issuing officer. "Issuing officer" means any person who on behalf of the court is authorized to issue provisional process.

A.(8) Levy. "Levy" means to create a lien upon property under any judicial writ or process or by any of the procedures provided by Rules 70 - 75.

A.(9) Plaintiff and defendant. "Plaintiff" includes any party asserting a claim for relief whether by way of claim, third party claim, cross claim or counterclaim, and "defendant" includes any person against whom such claim is asserted.

A.(10) Provisional process. "Provisional process" means attachment under Rule 72, garnishment under Rule 73, claim and delivery under Rule 74, temporary restraining orders, preliminary injunctions, receiverships, or any other legal or equitable judicial process or remedy which before final judgment enables a plaintiff, or the court on behalf of the plaintiff, to take possession or control of, or to restrain use or disposition of, or fix a lien on property in which the defendant claims an interest. Provisional process does not include any temporary restraining orders or preliminary injunctions issued under Rule 75.

A.(11) Restricted mail. "Restricted mail" means mail which carries on its face the endorsements "return receipt requested showing address where delivered" and "deliver to addressee only"; provided that on mail on which the addressee is not a natural person the endorsement "deliver to addressee only" may be omitted.

A.(12) Sheriff. "Sheriff" includes constable where Rules 75-87 apply to district court proceedings in counties having such an officer.

A.(13) Writ. A "writ" is an order by a court to a sheriff or other official to aid a creditor in attachment.

B. Notice to defendant following levy.

B.(1) Whenever a plaintiff levies on property of a defendant, other than garnishment of an employer, the plaintiff must promptly serve on the defendant a notice in substantially the following form:

\_\_\_\_\_  
IN THE \_\_\_\_\_ COURT OF THE STATE OF OREGON FOR \_\_\_\_\_ COUNTY  
\_\_\_\_\_  
Plaintiff )  
v. ) No. \_\_\_\_\_  
\_\_\_\_\_  
Defendant ) Notice of Levy

TO: (Defendant) IMPORTANT NOTICE. READ CAREFULLY. IT CONCERNS YOUR PROPERTY.

1. Action was commenced against you on \_\_\_\_\_ for \$ \_\_\_\_\_.
2. To secure payment the following has been levied on:  
(E.g.: 1979 Wombat, License #ABC 123  
Savings account in Fiduciary Trust & Sav-  
ings Co.  
Etc.)
3. This property will (be held by the court) (remain subject to a lien) while the action is pending and may be taken from you permanently if judgment is entered against you (for attachment only).
4. You may release the property from the levy by delivering a bond to the clerk of the court.

5. If you have any questions about this matter, you should consult an attorney.

IF YOU DO NOTHING ABOUT THIS, YOU MAY LOSE THIS PROPERTY PERMANENTLY.

---

Name and address of plaintiff or  
plaintiff's attorney

---

B.(2) If the defendant is a natural person, the notice served shall also contain the following:

B.(2)(a) A statement that a defendant may be entitled to claim that the property levied on is exempt from the claims of the plaintiff;

B.(2)(b) A list of all property and funds declared exempt under state or federal law;

B.(2)(c) An explanation of the procedure by which the defendant may claim an exemption; and

B.(2)(d) A statement that the forms necessary to claim an exemption are available at the county courthouse at no cost to the defendant.

B.(3) When a levy is made by garnishing a bank, the notices required by subsections (1) and (2) shall be delivered to the bank with the Notice of Garnishment. If the bank has property of, or is obligated to, the defendant, the bank shall promptly forward the notices to the defendant.

C. Service of notices; proof of service.

C.(1) Save where some other method is expressly required or permitted, any notice required to be served by Rules 70-75 may be sent by restricted mail or served in the manner of a summons.

C.(2) Before making any order that will materially affect a person's interests, the court must be satisfied that the person actually received any notice required to be given, or that the creditor has made a good faith effort and employed the best available means under the circumstances to give actual notice.

D. Adverse claimants. A person other than the defendant claiming to be the actual owner of property levied on may move the court for an order establishing the claimant's title, enjoining transfer, dissolving the creditor's lien, or other appropriate relief. After hearing, the court may:

D.(1) In a case where summary judgment would be allowed by Rule 47, make an order conclusive on the parties as to the ownership of the property.

D.(2) Summarily order that the property may be transferred. Such order protects the sheriff and a third person transferee but is not an adjudication between the claimant and the plaintiff.

D.(3) Enjoin transfer until the dispute is formally adjudicated.

appear under a separate rule (Rule 91). Rule 90 is the portion of Lacy Rule 87 which related to enforcement of equitable judgments. The rule is equivalent to Federal Rule 70.

## II. RULE 70 - DEFINITIONS

Rule 70 A. combines the definitions of Lacy's Rule 79 A. and those of Lacy's Rule 79 C. which seemed appropriate to provisional remedies. The most important definition is "provisional process" in 70 A.(10), which has been changed to specifically include provisional restraining orders, injunctions, and receiverships and to exclude temporary restraining orders and preliminary injunctions under Rule 75.

Definitions A.(3), A.(6), and A.(9) are also new. Since these rules refer to provisional remedies against a party who is not yet a "judgment debtor," the words "plaintiffs" and "defendants" are used.

Rule 70 B. was taken from Lacy's Rule 77 A.(1), (2) and (3). Wage garnishment is the only exception to the notice. Levy on real property would require notice. This is consistent with ORS 29.178, but not with the Lacy rule.

Rule 70 C. was taken from Lacy's Rule 77 C.

Rule 70 D. was taken from Lacy's Rule 77 B.(5).

COUNCIL ON COURT PROCEDURES

Minutes of Meeting Held September 27, 1980

RED LION INN/LLOYD CENTER, Parkman Room

Portland, Oregon

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

Vice Chairman William M. Dale called the meeting to order at 9:35 a.m. The following guests were in attendance:

Gary M. Berne, Portland  
Jack G. Collins, Portland  
Derrick E. McGavic, Eugene  
Richard A. Wyman, Portland

Derrick McGavic stated that he disapproved of elimination of confession of judgment without filing because it was a very valuable shortcut for the uncontested case. He stated that a confession of judgment based upon a freely negotiated agreement, after the transaction giving rise to the judgment had been completed, would be constitutional.

Mr. McGavic also stated that the requirement in proposed Rule 70 B.(1) of the clerk mailing a notice of entry of judgment to each party be eliminated. If the mailing requirement is retained, he asked that the rule require the clerk to include, in the docket margin, the names and addresses of all parties to whom copies of a judgment are sent. Mr. McGavic also suggested that the criteria for attorney fees in the amended class action rule should be simplified. The Council discussed Mr. McGavic's suggestions and decided that they be referred to Judge Jackson's subcommittee for possible redrafting.

The Council discussed the proposed budget for the 1981-83 biennium. It was the consensus of the Council that staff support for the Council should not be substantially reduced nor be included in the budget of the supreme court during the 1981-83 biennium. A motion

RULE 70

FORM AND ENTRY OF JUDGMENT

A. Form. Every judgment shall be in writing plainly labelled as a judgment and set forth in a separate document, except judgments need not be set forth in a separate document if the local rules of a court so provide. No particular form of words is required, but every judgment shall specify clearly the party or parties in whose favor it is given and against whom it is given and the relief granted or other determination of the action. The judgment shall be signed by the court or judge rendering such judgment, or in the case of judgment entered pursuant to ORCP 69 B.(1) by the clerk.

B. Entry of judgments.

B.(1) Filing; entry; notice. All judgments shall be filed and shall be entered by the clerk. The clerk shall, on the date judgment is entered, mail a copy of the judgment and notice of the date of entry of the judgment to each party who is not in default for failure to appear. The clerk also shall make a note in the judgment docket of the mailing. In the entry of all judgments, except a judgment by default under Rule 69 B.(1), the clerk shall be subject to the direction of the court. Entry of judgment shall not be delayed for taxing of costs, disbursements, and attorney fees under Rule 68.

B.(2) Judgment effective upon entry. Notwithstanding ORS 3.070 or any other rule or statute, for purposes of these

rules, a judgment is effective only when entered as provided in this rule.

B.(3) Time for entry. The clerk shall enter the judgment within 24 hours, excluding Saturdays and legal holidays, of the time the judgment is filed. When the clerk is unable to or omits to enter judgment within the time presented in this subsection, it may be entered any time thereafter.

C. Submission of forms of judgment. Attorneys shall submit proposed forms for judgment at the direction of the court rendering the judgment. Unless otherwise ordered by the court, any proposed form of judgment shall be served five days prior to the submission of judgment in accordance with Rule 9 B. The proposed form of judgment shall be filed and proof of service made in accordance with Rule 9 C.

D. "Clerk" defined. Reference to "clerk" in this rule shall include the clerk of court or any person performing the duties of that office.

#### COMMENT

This rule deals with several aspects of the crucial question of identification of a judgment and its effective date. Rule 70 A. defines "judgment" as a written document signed by the judge, or in the limited default area under 69 B.(1), by the clerk. The rule also directs, as a general rule, that the judgment document be separate and plainly labelled as such. This is the approach of Federal Rule 58 and is designed to avoid any question whether a written opinion or order of a court is or is not a judgment. The specificity of parties and relief language comes from ORS 18.030 and the statement that no particular form of words is required conforms to Oregon case law. Esselstyn v. Casteel, 205 Or. 344, 286 P.2d

665, 288 P.2d 214, 288 P.2d 215 (1955).

Under section 70 B. the important question addressed is exactly when the judgment becomes effective. Practically, the choice is between entry (which is a formal entry in the court records by the clerk, ORS 7.030) and filing (which is "delivery of the document to the clerk of the court with the intent that it be filed."). Charco, Inc. v. Cohn, 242 Or. 566, 571, 411 P.2d 264 (1966). See Washington Rules, 58 (b). There has been some confusion in the past over the effective date of a judgment. Most provisions in ORS refer to entry, e.g., ORS 23.030, 18.080, 18.510, and 20.210. On several occasions, however, the Oregon Supreme Court has interpreted "entry" to mean filing. Charco, Inc. v. Cohn, supra; Highway Commission v. Fisch-Or, Inc., 241 Or. 412, 399 P.2d 1011, 406 P.2d 539 (1965). Because of this, the Council used "filing" as the point when the time limit for filing or acting upon motion for new trial or judgment notwithstanding the verdict begins to run. ORCP 63 D.; 64 F. and G.

The Council felt that it was extremely important that the effective date of a judgment be the same for all purposes. The Council believed that entry was a better choice for several reasons:

(1) The time for appeal begins to run at entry. ORS 19.026. Change of the appeal statute would be beyond Council rulemaking authority.

(2) Entry is a far more certain point. The entry is part of an official record, whereas filing is not itself a record. If the date of filing is not stamped on the document, the filing date may be difficult to determine. There can be considerable confusion when filing takes place. See Vandermeer v. Pacific Northwest Development, 274 Or. 221, 223-224, 543 P.2d 868 (1976).

(3) There is a notice provision for entry. ORS 18.030 requires notice by the clerk to all parties not in default of the entry; that is retained in this rule as subsection B.(1). There is no requirement of notice of the exact date of filing a judgment.

Therefore, subsection 70 B.(2) states generally that a judgment is only effective when entered. Note, the entry approach will require the modification of ORCP 63 D. and 64 F. and G. from filing to entry. The reference to ORS 3.070 is necessary because the Charco, Inc. v. Cohn opinion refers to that statute as a basis for interpreting "entry" to mean "filing."

Subsection 70 B.(3) is based on ORS 18.040 and 18.050. ORS 18.040 referred to entry "within the day," which was interpreted to mean 24 hours. Casner v. Hoskins, 64 Or. 254, 281, 128 P. 841, 130 P. 55 (1913).

Section 70 C. is new but reflects existing practice. It was felt that submission of a form of judgment should be up to the court. However, if an attorney submits a form of judgment, it should be served on the other parties.

## RULE 70

### FORM AND ENTRY OF JUDGMENT

A. Form. Every judgment shall be in writing plainly labelled as a judgment and set forth in a separate document, except judgments need not be set forth in a separate document if the local rules of a court so provide. No particular form of words is required, but every judgment shall specify clearly the party or parties in whose favor it is given and against whom it is given and the relief granted or other determination of the action. The judgment shall be signed by the court or judge rendering such judgment, or in the case of judgment entered pursuant to ORCP 69 B.(1) by the clerk.

B. Entry of judgments.

B.(1) Filing; entry; notice. All judgments shall be filed and shall be entered by the clerk. The clerk shall, on the date judgment is entered, mail a copy of the judgment and notice of the date of entry of the judgment to each party who is not in default for failure to appear. The clerk also shall make a note in the judgment docket of the mailing. In the entry of all judgments, except a judgment by default under Rule 69 B.(1), the clerk shall be subject to the direction of the court. Entry of judgment shall not be delayed for taxing of costs, disbursements, and attorney fees under Rule 68.

B.(2) Judgment effective upon entry. Notwithstanding ORS 3.070 or any other rule or statute, for purposes of these

rules, a judgment is effective only when entered as provided in this rule.

B.(3) Time for entry. The clerk shall enter the judgment within 24 hours, excluding Saturdays and legal holidays, of the time the judgment is filed. When the clerk is unable to or omits to enter judgment within the time prescribed in this subsection, it may be entered any time thereafter.

C. Submission of forms of judgment. Attorneys shall submit proposed forms for judgment at the direction of the court rendering the judgment. Unless otherwise ordered by the court, any proposed form of judgment shall be served, five days prior to the submission of judgment, in accordance with Rule 9 B. The proposed form of judgment shall be filed and proof of service made in accordance with Rule 9 C.

D. "Clerk" defined. Reference to "clerk" in this rule shall include the clerk of court or any person performing the duties of that office.

#### COMMENT

This rule deals with several aspects of the crucial question of identification of a judgment and its effective date. Rule 70 A. defines "judgment" as a written document signed by the judge, or in the limited default area under 69 B.(1), by the clerk. The rule also directs, as a general rule, that the judgment document be separate and plainly labelled as such. This is the approach of Federal Rule 58 and is designed to avoid any question whether a written opinion or order of a court is or is not a judgment. The specificity of parties and relief language comes from ORS 18.030 and the statement that no particular form of words is required conforms to Oregon case law. Esselstyn v. Casteel, 205 Or. 344, 286 P.2d

665, 288 P.2d 214, 288 P.2d 215 (1955).

Under section 70 B. the important question addressed is exactly when the judgment becomes effective. Practically, the choice is between entry (which is a formal entry in the court records by the clerk, ORS 7.030) and filing (which is "delivery of the document to the clerk of the court with the intent that it be filed."). Charco, Inc. v. Cohn, 242 Or. 566, 571, 411 P.2d 264 (1966). See Washington Rules, 58 (b). There has been some confusion in the past over the effective date of a judgment. Most provisions in ORS refer to entry, e.g., ORS 23.030, 18.080, 18.510, and 20.210. On several occasions, however, the Oregon Supreme Court has interpreted "entry" to mean filing. Charco, Inc. v. Cohn, supra; Highway Commission v. Fisch-Or, Inc., 241 Or. 412, 399 P.2d 1011, 406 P.2d 539 (1965). Because of this, the Council used "filing" as the point when the time limit for filing or acting upon motion for new trial or judgment notwithstanding the verdict begins to run. ORCP 63 D.; 64 F. and G.

The Council felt that it was extremely important that the effective date of a judgment be the same for all purposes. The Council believed that entry was a better choice for several reasons:

(1) The time for appeal begins to run at entry. ORS 19.026. Change of the appeal statute would be beyond Council rulemaking authority.

(2) Entry is a far more certain point. The entry is part of an official record, whereas filing is not itself a record. If the date of filing is not stamped on the document, the filing date may be difficult to determine. There can be considerable confusion when filing takes place. See Vandermeer v. Pacific Northwest Development, 274 Or. 221, 223-224, 543 P.2d 868 (1976).

(3) There is a notice provision for entry. ORS 18.030 requires notice by the clerk to all parties not in default of the entry; that is retained in this rule as subsection B.(1). There is no requirement of notice of the exact date of filing a judgment.

Therefore, subsection 70 B.(2) states generally that a judgment is only effective when entered. Note, the entry approach will require the modification of ORCP 63 D. and 64 F. and G. to change filing to entry. The reference to ORS 3.070 is necessary because the Charco, Inc. v. Cohn opinion refers to that statute as a basis for interpreting "entry" to mean "filing."

Subsection 70 B.(3) is based on ORS 18.040 and 18.050. ORS 18.040 referred to entry "within the day," which was interpreted to mean 24 hours. Casner v. Hoskins, 64 Or. 254, 281, 128 P. 841, 130 P. 55 (1913).

Section 70 C. is new but reflects existing practice. It was felt that submission of a form of judgment should be up to the court. However, if an attorney submits a form of judgment, it should be served on the other parties.

RULE 70

DEFINITIONS; NOTICE OF LEVY; SERVICE

A. Definitions. As used in Rules 70-75, unless the context otherwise requires:

A.(1) Attachment. "Attachment" is the procedure by which an unsecured plaintiff obtains a judicial lien on defendant's property.

A.(2) Bank. "Bank" includes commercial and savings banks, trust companies, savings and loan associations, and credit unions.

A.(3) Clerk. "Clerk" means clerk of the court or any person performing the duties of that office.

A.(4) Consumer goods. "Consumer goods" means consumer goods as defined in ORS 79.1090.

A.(5) Consumer transaction. "Consumer transaction" means a transaction in which the defendant obligates himself to pay for goods sold or leased, services rendered or monies loaned, primarily for purposes of the defendant's personal, family, or household use.

A.(6) Garnishment. "Garnishment" is a method of attachment as specified in Rule 73.

A.(7) Issuing officer. "Issuing officer" means any person who on behalf of the court is authorized to issue provisional process.

A.(13) Writ. A "writ" is an order by a court to a sheriff or other official to aid a creditor in attachment.

B. Notice to defendant following levy.

B.(1) Whenever a plaintiff levies on property of a defendant, other than garnishment of an employer, the plaintiff must promptly serve on the defendant a notice in substantially the following form:

\_\_\_\_\_  
IN THE \_\_\_\_\_ COURT OF THE STATE OF OREGON FOR \_\_\_\_\_ COUNTY  
\_\_\_\_\_  
Plaintiff )  
v. ) No. \_\_\_\_\_  
\_\_\_\_\_  
Defendant )  
Notice of Levy

TO: (Defendant) IMPORTANT NOTICE. READ CAREFULLY. IT CONCERNS YOUR PROPERTY.

1. Action was commenced against you on \_\_\_\_\_ for \$ \_\_\_\_\_.
2. To secure payment the following has been levied on:  
(E.g.: 1979 Wombat, License #ABC 123  
Savings account in Fiduciary Trust & Sav-  
ings Co.  
Etc.)
3. This property will (be held by the court) (remain subject to a lien) while the action is pending and may be taken from you permanently if judgment is entered against you (for attachment only).
4. You may release the property from the levy by delivering a bond to the clerk of the court.

C. Service of notices; proof of service.

C.(1) Save where some other method is expressly required or permitted, any notice required to be served by Rules 70-75 may be sent by restricted mail or served in the manner of a summons.

C.(2) Before making any order that will materially affect a person's interests, the court must be satisfied that the person actually received any notice required to be given, or that the creditor has made a good faith effort and employed the best available means under the circumstances to give actual notice.

D. Adverse claimants. A person other than the defendant claiming to be the actual owner of property levied on may move the court for an order establishing the claimant's title, enjoining transfer, dissolving the creditor's lien, or other appropriate relief. After hearing, the court may:

D.(1) In a case where summary judgment would be allowed by Rule 47, make an order conclusive on the parties as to the ownership of the property.

D.(2) Summarily order that the property may be transferred. Such order protects the sheriff and a third person transferee but is not an adjudication between the claimant and the plaintiff.

D.(3) Enjoin transfer until the dispute is formally adjudicated.

A.(7) Whether the claimed property has been taken by public authority for a tax, assessment, or fine;

A.(8) Whether the claimed property is held under execution, garnishment, or other legal or equitable process or, if it is so held, either that the plaintiff has a superior right to provisional process in the property or that the property is exempt from such execution, garnishment, or process.

A.(9) If the plaintiff claims that the defendant has waived his right to be heard, a copy of the writing evidencing such waiver and a statement of when and in what manner the waiver occurred;

A.(10) If provisional process is based on notice of a bulk transfer under ORS chapter 76 or a similar statute or provision of law, a copy of the notice;

A.(11) Facts, if any, which tend to establish that there is a substantial danger that the defendant or another person is engaging in, or is about to engage in, conduct which would place the claimed property in danger of destruction, serious harm, concealment, removal from this state, or transfer to an innocent purchaser.

A.(12) Facts, if any, which tend to establish that without restraint immediate and irreparable injury, damage, or loss will occur;

C.(2) If from the affidavit or petition or other evidence, if any, the court finds that a complaint on the underlying claim has been filed and that there is probable cause for sustaining the validity of the underlying claim, the court shall consider whether it shall order issuance of provisional process, a restraining order, or a show cause order. The finding under this subsection is subject to dissolution upon hearing.

D. Effect of notice of bulk transfer. Subject to section B., if the court finds that with respect to property of the defendant notice of bulk transfer under ORS chapter 76 or a similar statute or provision of law has been given and that the time for possession by the transferee has not passed, the court shall order issuance of provisional process.

E. Effect of waiver of right to notice and hearing. Subject to section B., the court finds:

E.(1) That the defendant, by conspicuous words in a writing executed by or on behalf of the defendant before filing of the affidavit or petition under section B. or by handwriting of the defendant or the defendant's agent executed before filing of the affidavit or petition under section A. has declared substantially that he is aware of his right to notice and hearing on the question of the probable validity of the underlying claim before he can be deprived of his property in his possession or control or in the possession or con-

G. Retraining order to protect property. Subject to section B., where hearing on a show cause order is pending or where the court finds that because of impending injury, destruction, transfer, removal, or concealment of the property in which provisional process is sought there is probable cause to believe that immediate and irreparable injury, damage, or loss to the plaintiff is imminent, if an undertaking has been filed by the plaintiff in accordance with ORS chapter 32, the court, in its discretion, may issue a temporary order directed to the defendant and each other person in possession or control of the claimed property restraining the defendant and each such other person from injuring, destroying, transferring, removing, or otherwise disposing of property and requiring the defendant and each such other person to appear at a time and place fixed by the court and show cause why such restraint should not continue during pendency of the proceeding on the underlying claim.

H. Appearance; hearing; service of show cause order; content; effect of service on person in possession of property.

H.(1) Subject to section B., the court shall issue an order directed to the defendant and each person having possession or control of the claimed property requiring the defendant and each such other person to appear for hearing at a place fixed by the court and at a fixed time after the third day after service of the order and before the seventh day after service of the order to show cause why provisional process should not issue.

J. Authority of court on sustaining validity of underlying claim.

J.(1) Subject to section B., if the court on hearing on a show cause order issued under section H. finds that there is probable cause for sustaining the validity of the underlying claim, the court shall order issuance of provisional process.

J.(2) Subject to section B., if the court on hearing on a show cause order issued under section H. finds that there is probable cause for sustaining the validity of the underlying claim but that the provisional process sought cannot properly be ordered, the court in its discretion may continue or issue a restraining order.

K. Provisional receivership.

K.(1) Actions in which provisional receivership allowed.

Subject to section B., a circuit court may appoint a receiver provisionally, before judgment, in the following cases:

K.(1)(a) On the application of either party, when his right to the property, which is the subject of the action, and which is in the possession of an adverse party, is probable, and the property or its rents or profits are in danger of being lost or materially injured or impaired.

K.(1)(b) In an action brought by a creditor to set aside a transfer, mortgage, or conveyance of property on the ground of fraud or to subject property or a fund to the payment of a debt.

RULE 70

FORM AND ENTRY OF JUDGMENT

A. Form. Every judgment shall be in writing plainly labeled as a judgment and set forth in a separate document. A default or stipulated judgment may have appended or subjoined thereto such affidavits, certificates, motions, stipulations, and exhibits as may be necessary or proper in support of the entry thereof. No particular form of words is required, but every judgment shall specify clearly the party or parties in whose favor it is given and against whom it is given and the relief granted or other determination of the action. The judgment shall be signed by the court or judge rendering such judgment or, in the case of judgment entered pursuant to Rule 69 B.(1), by the clerk.

B. Entry of judgments.

B.(1) Filing; entry; notice. All judgments shall be filed and shall be entered by the clerk. The clerk shall, on the date judgment is entered, mail a notice of the date of entry of the judgment to the attorneys of record, if any, of each party who is not in default for failure to appear. If a party who is not in default for failure to appear does not have an attorney of record, such notice shall be mailed to the party. The clerk also shall make a note in the judgment docket of the mailing. In the entry of all judgments, except a judgment by default under Rule 69 B.(1), the clerk shall be subject to the direction of the court. Entry of judgment shall not be delayed for taxing of costs, disbursements, and attorney fees under Rule 68.

8.(2) Judgment effective upon entry. Notwithstanding ORS 3.070 or any other rule or statute, for purposes of these rules, a judgment is effective only when entered as provided in this rule.

8.(3) Time for entry. The clerk shall enter the judgment within 24 hours, excluding Saturdays and legal holidays, of the time the judgment is filed. When the clerk is unable to or omits to enter judgment within the time prescribed in this subsection, it may be entered any time thereafter.

C. Submission of forms of judgment. Attorneys shall submit proposed forms for judgment at the direction of the court rendering the judgment. Unless otherwise ordered by the court, any proposed form of judgment shall be served five days prior to the submission of judgment in accordance with Rule 9 B. The proposed form of judgment shall be filed and proof of service made in accordance with Rule 9 C.

D. "Clerk" defined. Reference to "clerk" in this rule shall include the clerk of court or any person performing the duties of that office.

#### COMMENT

This rule deals with several aspects of the crucial question of identification of a judgment and its effective date. Section 70 A. defines "judgment" as a written document signed by the judge, or in the limited default area under 69 B.(1), by the clerk. The rule also directs, as a general rule, that the judgment document be separate and plainly labelled as such. This is the approach of Federal Rule 58 and is designed to avoid any question whether a written opinion or order of a court is or is not a judgment. This rule differs from the federal rule for default or stipulated judgments because supporting motions, affidavits, or stipulations may be combined with the judgment. The specificity of parties and relief language

comes from ORS 18.030 and the statement that no particular form of words is required conforms to Oregon case law. Esselstyn v. Casteel, 205 Or. 344, 286 P.2d 665, 288 P.2d 214, 288 P.2d 215 (1955).

Under section 70 B. the important question addressed is exactly when the judgment becomes effective. Practically, the choice is between entry (which is a formal entry in the court records by the clerk, ORS 7.030) and filing (which is "delivery of the document to the clerk of the court with the intent that it be filed."). Charco, Inc. v. Cohn, 242 Or. 566, 571, 411 P.2d 264 (1966). See Washington Rules, 58 (b). There has been some confusion in the past over the effective date of a judgment. Most provisions in ORS refer to entry, e.g., ORS 23.030, 18.080, 18.510, and 20.210. On several occasions, however, the Oregon Supreme Court has interpreted "entry" to mean filing. Charco, Inc. v. Cohn, supra, at 570; Highway Commission v. Fisch-Or, Inc., 241 Or. 412, 415, 399 P.2d 1011, 406 P.2d 539 (1965). Because of this, the Council used "filing" as the point when the time limit for filing or acting upon motion for new trial or judgment notwithstanding the verdict begins to run. ORCP 63 D.; 64 F. and G.

The Council felt that it was extremely important that the effective date of a judgment be the same for all purposes. The Council believed that entry was a better choice for several reasons:

(1) The time for appeal begins to run at entry. ORS 19.026. Change of the appeal statute would be beyond Council rulemaking authority.

(2) Entry is a far more certain point. The entry is part of an official record, whereas filing is not itself a record. If the date of filing is not stamped on the document, the filing date may be difficult to determine. There can be considerable confusion when filing takes place. See Vandermeer v. Pacific Northwest Development, 274 Or. 221, 223-224, 543 P.2d 868 (1976).

(3) There is a notice provision for entry. ORS 18.030 requires mailing of a copy of the judgment by the clerk to all parties not in default. This requirement has presented substantial practical difficulty for clerks. This rule requires only notice of the date of entry to the attorney of record, or if there is no attorney, to the party.

Therefore, subsection 70 B.(2) states generally that a judgment is only effective when entered. Note, the entry approach will require the modification of ORCP 63 D. and 64 F. and G. to change filing to entry. The reference to ORS 3.070 is necessary because the opinion in Charco, Inc. v. Cohn, supra, at 569, refers to that statute as a basis for interpreting "entry" to mean "filing."

Subsection 70 B.(3) is based on ORS 18.040 and 18.050. ORS 18.040, referred to entry "within the day," which was interpreted to mean 24 hours. Casner v. Hoskins, 64 Or. 254, 281, 128 P. 841, 130 P. 55 (1913).

Section 70 C. is new but reflects existing practice. It was felt that submission of a form of judgment should be up to the court. However, if an attorney submits a form of judgment, it should be served on the other parties.