

## RULE 1

### SCOPE; CONSTRUCTION; APPLICATION; CITATION

A. Scope. These rules govern procedure and practice in all circuit and district courts of this state, except in the small claims department of district courts, for all civil actions and special proceedings whether cognizable as cases at law, in equity, or of statutory origin except where a different procedure is specified by statute or rule [.] of pleading, practice, and procedure established by ORS 1.745 or promulgated under ORS 1.735. These rules shall also govern practice and procedure in all civil actions and special proceedings, whether cognizable as cases at law, in equity, or of statutory origin, for the small claims department of district courts and for all other courts of this state to the extent they are made applicable to such courts by [rule or] statute[.] or rule of pleading, practice, and procedure established by ORS 1.745 or promulgated under ORS 1.735, 2.130, or 305.425. Reference in these rules to actions shall include all civil actions and special proceedings whether cognizable as cases at law, in equity, or of statutory origin.

B. Construction. These rules shall be construed to secure the just, speedy, and inexpensive determination of every action.

C. Application. These rules, and amendments thereto, shall apply to all actions pending at the time of or filed after their effective date[.], except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which

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,

## LEGISLATIVE CHANGES AS OF MARCH 29, 1979

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D. "Rule" defined and local rules. References to "these rules" shall include Oregon Rules of Civil Procedure numbered 1 through 64. General references to "rule" or "rules" shall mean only rule or rules of pleading, practice, and procedure established by ORS 1.745, or promulgated under ORS 1.735, 2.130, and 305.425, unless otherwise defined or limited. Except for the Oregon tax court, rules do not preclude a court in which they apply from regulating pleading, practice, and procedure in any manner not inconsistent with these rules.

[D.]E. 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).

M E M O R A N D U M

TO: Dennis Bromka and Jim McCandlish  
FROM: Fred Merrill  
RE: CONSIDERATION OF FURTHER SUGGESTED CHANGES  
DATE: February 23, 1979

A. Defining "rule".

After suggesting the changes to Rule 1 to clarify "rule", it has occurred to me that we have a number of references to "rule" elsewhere in the ORCP. For example, Rule 4 B., Rule 5, Rule 7 D.(1), and Rule 17. These were all included to mean other rules appearing in ORS sections and perhaps overriding supreme court or tax court rules. I suggest that instead of changing section 1 A., we leave it as it is, and make the new section 1 E. read as follows:

E. "Rule" defined and local rules. References to "these rules" shall include Oregon Rules of Civil Procedure numbered 1 through 64. General references to "rule" or "rules" shall mean only rule or rules of pleading, practice, procedure established by ORS 1.745, or promulgated under ORS 1.735, 2.130, and 305.425, unless otherwise defined or limited. 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.

B. Suggestions from Michael Hall.

1. Rule 12. I think his suggestion here is ridiculous. Rule 9 refers to whether a "clerk" has to accept a paper. This rule sets the basic standard for "court" interpretation of

pleadings. This suggested language would reverse liberality in interpreting pleading and return us to the common law approach.

2. Rule 16. Why does the language of 16 A. have to conform to 9 D.? Again, 9 D. refers to accepting for filing. Rule 16 A. describes captions for pleadings. Rule 9 says all papers must have an attorney's name on the front and does not deal with captions. He also seems to be slipping in a number of other requests, telephone number, Bar membership, etc., which are better left to local rules. If any change is necessary, the last sentence of 9 D. should go. I think the Council only left it in as it appears to have been put in by the court clerks for their benefit.

3. Rule 17. His first point here is the most sensible. Many lay people might be confused by subscription. Black's Law Dictionary defines "subscribe" as writing one's name at the bottom or under a writing. Although I thought subscription includes making a mark, it apparently only differs from signing in where the name ought to be put. The federal rule uses "signature", and I am therefore suggesting the change indicated in the attached statement.

The second suggestion does not make sense. This

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