

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

REASON. The Bar Committee pointed out that in some cases an attorney feels he or she has a good basis for dismissal for lack of personal jurisdiction. If that is sustained the case is dismissed without any necessity for detailed investigation of the rest of the case. Allowing the attorney one motion to raise personal jurisdiction without preclusion will avoid time and expense to investigate the entire case.

B. Rule 33

B. Intervention of right. At any time before trial, any person shall be permitted to intervene in an action when a statute of this state, [or] these rules, or the common law, confers an unconditional right to intervene.

REASON. This clarifies Council intent relating to intervention.

C. Rule 55

A. Defined; form. A subpoena is a writ or order directed to a person and requires the attendance of such person at a particular time and place to testify as a witness on behalf of a particular party therein mentioned. It also requires that the witness remain till the testimony is closed unless sooner discharged, but at the end of each day's attendance a witness may demand of the party, or the party's attorney, the payment of legal witness fees for the next following day and if not then paid, he is not obliged to remain longer in attendance.

Every subpoena shall state the name of the court and the title of the action.

REASON. This appears in the existing statute and was deleted as unnecessary. After discussion with Committee representatives, it appears there may be some disagreement about the continuing obligation of a witness to attend, and the sentence should be added.

Rule 33

B. Intervention of right. At any time before trial, any person shall be permitted to intervene in an action when a statute of this state, [or] these rules, or the common law, confers an unconditional right to intervene.