

Rule 52

Postponement of Cases

Rule 52(A) is new. The "good cause" requirement, however, is clearly part of existing case law. [Rickenbach v. Flavel, 273 Or 398, 541 P2d 455 (1975); State v. Needham, 5 Or App 388, 391, 484 P2d 1123 (1971).]

Rule 52(B) generally tracks the procedure for postponement provided by ORS 17.050, with only minor changes.

Item 14, page 8, ORCP 36 A. The Council decided that the language from the federal rule should not be included in this section.

Item 15 and 16, page 8, ORCP 36 B.(3) and ORCP 46 A.(2). Judge Wells moved, seconded by Austin Crowe, that "and subsection B.(4) of this rule" should be deleted from the first sentence of 36 B.(3) and that "to furnish a written statement under 36 B.(4), or if a party fails" should be deleted from the first sentence of 46 A.(2). The motion passed unanimously.

Item 17, page 9, ORCP 46 D. Judge Wells moved, seconded by Austin Crowe, to delete the following language from 46 D.: ["or (3) to inform a party seeking discovery of the existence and limits of any liability insurance policy under Rule 36 that there is a question regarding the existence of coverage,"]. The motion passed unanimously.

Item 18, page 9, ORCP 52 A. Judge Sloper moved, seconded by Judge Wells, that the last sentence of section A. be changed to read as follows: "At its discretion, the court may grant a postponement, with or without terms." The motion passed unanimously.

Item 19, page 9, ORCP 55 D. On motion made by Judge Casciato, seconded by Judge Wells, the Council unanimously voted to change "over 18 years of age" to "18 years of age or older" in 55 D.(1) to conform to ORCP 7 E. and 7 F.(2) (a).

Item 20, page 9, ORCP 55 F.(2). The Council discussed the suggestion of adding "by subpoena" after "required" in both sentences of F.(2). It was pointed out that the section does not make any distinction between "parties" and "non-parties" and a suggestion was made to include the language "a resident of this state and not a party." The Council decided to defer action until consideration of a redraft of the section.

Item 21, page 10, ORCP 60. On motion made by Judge Sloper, seconded by Austin Crowe, the Council unanimously voted to change "defendant" to "party against whom the claim is asserted" in the last sentence of the rule.

Item 22, page 10, ORCP 62. The Executive Director was asked to prepare a draft of ORCP 62 which would not require findings of fact or conclusions of law for cases subject to de novo review upon appeal.

Judge Jackson stated that the judgments subcommittee would be meeting soon and would have a report at the next meeting.

Don McEwen stated that he had written a letter to all circuit court judges requesting their views and comments regarding any problems with third party practice.

The Council discussed the question of use of Rule 36 B. to authorize interrogatories relating to expert witnesses. It was pointed out that:

RULE 52

POSTPONEMENT OF CASES

A. Postponement. When a cause is set and called for trial, it shall be tried or dismissed, unless good cause is shown for a postponement. [The court may in a proper case, and upon terms, reset the same.] At its discretion, the court may grant a postponement, with or without terms, including requiring the party securing the postponement to pay expenses incurred by an opposing party.

COMMENT

The last sentence of section 52 A. as originally promulgated suggested there had to be terms. The last clause is suggested by Spalding v. McCaige, 47 Or. App. 129 (1980).

## RULE 52

### POSTPONEMENT OF CASES

A. Postponement. When a cause is set and called for trial, it shall be tried or dismissed, unless good cause is shown for a postponement. [The court may in a proper case, and upon terms, reset the same.] At its discretion, the court may grant a postponement, with or without terms, including requiring the party securing the postponement to pay expenses incurred by an opposing party.

#### COMMENT

The last sentence of section 52 A. as originally promulgated suggested there had to be terms. The last clause is suggested by Spalding v. McCaige, 47 Or. App. 129 (1980).

RULE 52

POSTPONEMENT OF CASES

A. Postponement. When a cause is set and called for trial, it shall be tried or dismissed, unless good cause is shown for a postponement. [The court may in a proper case, and upon terms, reset the same.] At its discretion, the court may grant a postponement, with or without terms, including requiring the party securing the postponement to pay expenses incurred by an opposing party.

COMMENT

The last sentence of section 52 A. as originally promulgated suggested there had to be terms. The last clause is suggested by Spalding v. McCaige, 47 Or. App. 129 (1980).