

Rule 53 is "substantially identical" to Federal Rule 42. [See: Vander Veer v. Toyota Motor Distributors, Inc., 282 Or 135, 577 P2d 1343 (1978); and Weiss & Auld v. Northwest Acceptance Corporation, 274 Or 343, 546 P2d 1065 (1976).] In Subsection A involving consolidations, there is a major difference: Federal Rule 42 allows the court to consolidate sua sponte, while Rule 53(A) requires the order to be entered "upon motion of any party."

Prior to the 1973 adoption of ORS 11.050 and ORS 11.060 (from which Rule 53 is derived), Oregon had only a statutory provision for consolidation. Orders for separate trial were possible in the absence of a statute [State, ex rel. Perry v. Sawyer, 262 Or 610, 614, 500 P2d 1052 (1972)], but only on a showing of "exceptional circumstances."

When ORS 11.050 and ORS 11.060 were adopted in 1973, the Oregon Supreme Court recognized that Oregon had essentially adopted the Federal Rule. In Vander Veer, supra, at 144, the court noted that the new statutes were "less opposed to bifurcation than our statements" in Perry, supra.