

Memo to Council
April 2, 1979
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Rule 58. The argument here is based on a misreading of the statute and the rule. Rule 58 B.(5) limits the court's inherent authority to restrict argument, not the ability to argue more than two hours.

Rule 59. Using the same mode of instruction for original and supplementary instructions makes sense and most courts would. Why make it a rigid rule?

Rule 64. The last sentence of ORS 17.630 is being prepared as a new section for ORS Chapter 19 and will be presented to the judiciary committees for action.

The question relating to new trials is covered by the letter to Judge Allen previously furnished to the Council. The rules do not diminish certainty of judgments in divorce cases and, in fact, increase it through specific time limits on motion and ruling.

Enclosures:

Trial Committee's Comments on Rules 55, 57, 58, 59, and 64

Legislative Changes as of March 29, 1979 (pages numbered 1 through 20)

Rule 58

Trial Procedure

Rule 58(B)(5), which was taken from ORS 17.210, absolutely limits final argument to no more than two hours on either side. In complex cases two hours may be insufficient. ORS 17.210(4) allowed the trial court discretion to extend such time beyond two hours. The discretionary power of the court to allow such an extension should be added to this rule. This very important right should not be taken away by omission, and this should be reviewed by the committee.

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Trial Procedure

The subcommittee is simply wrong in its reading of Rule 58 and ORS 17.210

Although Rule 58 B. (5) does delete the last clause from ORS 17.210

("and the court may extend such time beyond two hours") there is no change in the rule.

The only conceivable misconstruction which could be made is that once the judge sets a time limit for a party's final argument, it could not extend it when the attorney came up short. That would require a deliberate misreading of Rule 58 B. (5) which is only a limitation on the court's power, and not a grant. Perhaps a clarifying comment is in order, however.