

Memo to Council  
April 2, 1979  
Page 4

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 59

Instructions to Jury and Deliberation

Rule 59(D) concerning the subject of further instructions to the jury states that the court is given certain further instructions "either orally, or in writing." It would appear that the information should be given by the court orally, if the instructions were given orally; or in writing, if written instructions had been submitted to the jury.

X

RULE 59

INSTRUCTIONS TO JURY AND DELIBERATION

B. Charging the jury. In charging the jury, the court shall state to them all matters of law necessary for their information in giving their verdict. Whenever the knowledge of the court is by statute made evidence of a fact, the court shall declare such knowledge to the jury, who are bound to accept it as conclusive. If in the opinion of the court it is desirable, the charge shall be reduced to writing, and then read to the jury by the court. The jury shall take such written instructions with it while deliberating upon the verdict, and then return them to the clerk immediately upon conclusion of its deliberations. The clerk shall file the instructions in the court file of the case.

COMMENT: This rule changes existing ORS 17.255 in that it is now in the discretion of the court to reduce the instructions to writing. Whereas, in the past, either attorney had the right to request that written instructions be given to the court. This is a desirable feature of existing law and should be retained in the new rules by simply adding that either party has the right to request written instructions.

Rule 59

Instructions to Jury and Deliberation

Rule 59(D) concerning the subject of further instructions to the jury states that the court is given certain further instructions "either orally, or in writing." It would appear that the information should be given by the court orally, if the instructions were given orally; or in writing, if written instructions had been submitted to the jury.

Rule 59

Instructions to Jury and Deliberation

The subcommittee's suggestion is sensible, but hardly seems necessary.

Rule 59

B. Charging the jury. In charging the jury, the court shall state to them all matters of law necessary for their information in giving their verdict. Whenever the knowledge of the court is by statute made evidence of a fact, the court shall declare such knowledge to the jury, who are bound to accept it as conclusive. If either party requires it, and at commencement of the trial gave notice of that party's intention so to do, or [If] if in the opinion of the court it is desirable, the charge shall be reduced to writing, and then read to the jury by the court. The jury shall take such written instructions with it while deliberating upon the verdict, and then return them to the clerk immediately upon conclusion of its deliberations. The clerk shall file the instructions in the court file of the case.