

Rule 62

Findings of Fact

As noted by the Council, Rule 62, except sub F, is taken directly from ORS 17.431 and subdivision F is taken from ORS 17.441. The only new concept is the last sentence of sub A, which states: "If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact or conclusions of law appear therein." This language was taken directly from the 1948 amendment to Rule 52(a) FRCP. This change is minor and may be of assistance to the trial courts, as well as the litigants.

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:

(a) Rule 36 B. does not create interrogatories or any other discovery device but merely defines scope of discovery for these devices authorized elsewhere in the rules and that there is no rule authorizing interrogatories in the ORCP; and, (b) the matter of discovery of experts is not covered by ORCP 36. Rule 36 therefore does not need to be amended.

James Tait reported that under the Family Abuse Prevention Act it appears possible to obtain restraining orders for up to one year without a hearing. It was suggested that this be amended in connection with draft Rule 90, which authorizes injunctions.

The next meeting of the Council will be combined with the public hearing on class actions to be held June 28, 1980, commencing at 9:30 a.m., County Commissioners' Meeting Room, Rm. 602, Multnomah County Courthouse, Portland, Oregon.

The meeting adjourned at 11:45 a.m.

Respectfully submitted,

Fredric R. Merrill  
Executive Director

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55 F.(2) CONTINUED

A nonresident of this state who is not a party to the action may be required by subpoena to attend only in the county wherein such person is served with a subpoena, or at such other convenient place as is fixed by an order of court.

COMMENT

This should make clear that the reference to place of examination is only for non-party witnesses subpoenaed to attend. Under ORCP 46, a party receiving a notice of deposition would have to attend wherever the deposition is set unless a protective order was secured under ORCP 36.

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ORCP 62 A.

A. Necessity. Whenever any party appearing in a civil action tried by the court so demands prior to the commencement of the trial, the court shall make special findings of fact, and shall state separately its conclusions of law thereon. In the absence of such a demand for special findings, the court may make either general or special findings. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact or conclusions of law appear therein. No findings of fact shall be required in cases which are tried anew upon the record upon an appeal.

COMMENT TO ORCP 62 A.

The language in the last sentence was taken from ORS 19.125  
(3).