

RULE 85

ENFORCEMENT OF JUDGMENTS AGAINST PUBLIC
CORPORATIONS; PROPERTY IN CUSTODY OF PUBLIC
OFFICERS

A. Enforcement of judgment against public corporation.

If judgment is given for the recovery of money or damages against a public corporation mentioned in ORS 30.310, no execution shall issue thereon for the collection of such money or damages, but the judgment shall be satisfied as follows:

A.(1) The party in whose favor the judgment is given may, at any time thereafter, when an execution might issue on a like judgment against a private person, present a certified transcript of the docket thereof, to the officer of the public corporation who is authorized to draw orders on the treasurer thereof.

A.(2) On the presentation of the transcript, the officer shall draw an order on the treasurer for the amount of the judgment, in favor of the party for whom the judgment was given. Thereafter, the order shall be presented for payment, and paid, with like effect and in like manner as other orders upon the treasurer of the public corporation.

A.(3) The certified transcript provided for in subsection (1) of this section shall not be furnished by the clerk, unless at the time an execution might issue on the judgment if the same

was against a private person, nor until satisfaction of the judgment in respect to such money or damages is acknowledged as in ordinary cases. The clerk shall include in the transcript a memorandum of such acknowledgment of satisfaction and the entry thereof. Unless the transcript contains such a memorandum, no order upon the treasurer shall issue thereon.

B. Levy on debtor's assets in custody of public officer.

Any salary, wages, credits, or other personal property in the possession or under the control of the state or of any county, city, school district, or other political subdivision therein, or any board, institution, commission, or officer of the same, belonging or owed to any person, firm, or corporation, shall be subject to levy under Rules 83 A. or 82 G. in the same manner and with the same effect as property in the possession of individuals. However, the notices required by those Rules may be served only on the board, department, institution, commission, agency, or officer charged with the duty of approving a voucher or claim for such salary, wages, credits, or other property. No clerk or officer of any court shall be required to answer as garnishee or bailee as to any moneys or property in that clerk's or officer's possession in the custody of the law.

COMMENT

Rule 85

Section A. is ORS 30.390.

Section B. is ORS 23.190 modified to apply to attachment as well as execution and to adjust to the coverage of bailees in Rule 82 and garnishees in Rule 83.

ORS sections superseded: 23.190, 30.390.

RULE 85

CLAIM AND DELIVERY

A. Claim and delivery. In an action to recover the possession of personal property, the plaintiff, at any time after the action is commenced and before judgment, may claim the immediate delivery of such property, as provided in Rule 83.

B. Delivery by sheriff under provisional process order. The order of provisional process issued by the court as provided in Rule 83 may require the sheriff of the county where the property claimed may be to take the property from the defendant or another person and deliver it to the plaintiff.

C. Custody and delivery of property. Upon receipt of the order of provisional process issued by the court as provided in Rule 83, the sheriff shall forthwith take the property described in the order, if it be in the possession of the defendant or another person, and retain it in the sheriff's custody. The sheriff shall keep it in a secure place, and deliver it to the party entitled thereto upon receiving the lawful fees for taking, and the necessary expenses for keeping the same. The court may waive the payment of such fees and expenses upon a showing of indigency.

D. Filing of order by sheriff. The sheriff shall file the order, with the sheriff's proceedings thereon, including an inventory of the property taken, with the clerk

of the court in which the action is pending, within 10 days after taking the property; or, if the clerk resides in another county, shall mail or forward the same within that time.

E. Dismissal prohibited. If property is taken by the sheriff pursuant to this rule, the plaintiff shall not dismiss the action under ORCP 54 A.(1) until 30 days after such taking.

COMMENT

Sections A. through D. are almost identical to existing ORS 29.080-.095.

The requirement of a bond before taking is covered in Rule 82. ORS 29.087 is substantive and would remain as a statute.

Section E. is new. After securing the property by claim and delivery, if the plaintiff immediately dismisses the action, the defendant must go to the expense of filing a separate action to recover possession even though defendant has a right to possession. Prohibiting dismissal gives the defendant sufficient time to secure an attorney and appear in the action.

RULE 74
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A. Claim and delivery. In an action to recover the possession of personal property, the plaintiff, at any time after the action is commenced and before judgment, may claim the immediate delivery of such property, as provided in Rule 71.

B. Delivery by sheriff under provisional process order. The order of provisional process issued by the court as provided in Rule 71 may require the sheriff of the county where the property claimed may be to take the property from the defendant or another person and deliver it to the plaintiff.

C. Bond required. Before any property may be taken from defendant, the plaintiff must file with the clerk a surety bond in a sum not less than \$100, and equal to the value of the property, and to the effect the plaintiff will pay all amounts to be adjudged to the defendant and all damages which the defendant may sustain by reason of the attachment if the same be wrongful or without sufficient cause, not exceeding the amount specified in the bond.

D. Custody and delivery of property. Upon receipt of the order of provisional process issued by the court as provided in Rule 71, the sheriff shall forthwith take the property described in the order, if it be in the possession of the defendant or another person, and retain it in his custody. He shall keep it in a secure place, and deliver it to to the party entitled thereto upon receiving his lawful fees for taking, and his neces-

sary expenses for keeping the same. The court may waive the payment of such fees and expenses upon a showing of indigency.

E.(5) Filing of order by sheriff. The sheriff shall file the order, with the sheriff's proceedings thereon, including an inventory of the property taken, with the clerk of the court in which the action is pending, within 10 days after taking the property; or, if the clerk resides in another county, shall mail or forward the same within that time.

F. Indemnity bond. The sheriff may require an indemnity bond as provided in Rule 72 G.

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Section E. is new. After securing the property by claim and delivery, if the plaintiff immediately dismisses the action, the defendant must go to the expense of filing a separate action to recover possession even though defendant has a right to possession. Prohibiting dismissal gives the defendant sufficient time to secure an attorney and appear in the action.

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