

RULE 87

ENFORCEMENT OF JUDGMENTS AND ORDERS
RESPECTING POSSESSION OF SPECIFIC PROPERTY OR
REQUIRING OR FORBIDDING ACTS

A. Claim and delivery.

A.(1) 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 79.

A.(2) Delivery by sheriff under provisional process order.

The order of provisional process issued by the court as provided in Rule 79 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.

A.(3) Concealed property. If the property or any part thereof is concealed in a building or inclosure, the sheriff shall publicly demand its delivery. If it is not delivered, he shall cause the building or inclosure to be broken open, and take the property into his possession; and, if necessary, he may call to his aid the power of his county.

A.(4) Custody and delivery of property. Upon receipt of the order of provisional process issued by the court as provided in Rule 79, 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 necessary expenses for keeping the same. The court may waive the payment of such fees and expenses upon a showing of indigency.

A.(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.

B. Judgment for delivery of possession of property.

B.(1) At any time after a judgment requiring a party to deliver, or entitling a party to possession, of specific real or personal property has been docketed the clerk, on request, shall issue to the sheriff of the county in which the property is situated a writ of execution requiring the sheriff to deliver possession of the same, particularly describing it, to the party entitled.

B.(2) If such judgment also awards damages for withholding the property, or for the value of the property in case it cannot be delivered, that part of the judgment may be enforced under Rules 75-86.

C. Forcible entry and detainer. The manner of enforcing a judgment in a summary proceeding to recover possession of real property is provided in ORS 105.155.

D. Abating nuisance. The procedure for abating a nuisance is provided in ORS 105.505-.520.

E. Judgments in actions in equity.

E.(1) A judgment requiring a party to make a conveyance, transfer, release, acquittance, or other like act within a period therein specified shall, if such party does not comply therewith, be deemed to be equivalent thereto.

E.(2) The court or judge thereof may enforce an order or judgment in an equitable action by punishing the party refusing or neglecting to comply therewith, as for a contempt.

E.(3) Subsection (2) of this section does not apply to an order or judgment for the payment of money, except orders and judgments for the payment of suit money, alimony, and money for support, maintenance, nurture, education, or attorney's fees pendente lite, or by final decree, in:

E.(3)(a) Actions for dissolution of marriages.

E.(3)(b) Actions for separation from bed and board.

E.(3)(c) Proceedings under ORS 108.110 and 108.120.

E.(4) As an alternative to the independent proceeding contemplated by ORS 33.010-.150, when a contempt consists of disobedience of an injunction or other judgment or order of court in a civil action, citation for contempt may be by motion in the action in which such order was made and the determination respecting punishment made after a show cause hearing. Provided however:

E.(4)(a) Notice of the show cause hearing shall be served in the manner of a summons;

E.(4)(b) Punishment for contempt shall be limited as provided in ORS 33.020.

E.(4)(c) The party cited for contempt shall have right to counsel as provided in ORS 33.095.

COMMENT

Rule 87

Section A. is ORS 29.080-.095.

Section B. is derived from ORS 23.030, .040(3), and .050(4).

Subsections E.(1)-(3) are ORS 23.020; subsection E.(4) is new and provides for citation for contempt by motion "at the foot of the judgment" as an alternative to an independent "State ex rel." action. The motion procedure was the traditional chancery practice and is believed to be customary in some Oregon counties.

ORS sections superseded: 23.020, 23.030, 23.040(3), 23.040(5), 29.080-.095.