

N O T I C E

The next meeting of the OREGON COUNCIL ON COURT PROCEDURES
will be held:

Date and time: SATURDAY, DECEMBER 8, 1984
 9:30 a.m.

Place: HOOD RIVER INN
 HOOD RIVER, OREGON

(Please note that the meeting originally had been scheduled
to be held at Kah-nee-ta in Warm Springs.)

At that time, the Council will be taking final action on proposed
amendments to the Oregon Rules of Civil Procedure for submission
to the 1985 Legislature.

#

M E M O R A N D U M

TO: COUNCIL ON COURT PROCEDURES:

11/1/84

Joe D. Bailey	Edward L. Perkins
John H. Buttler	James E. Redman
J. R. Campbell	R. William Riggs
John M. Copenhaver	E. B. Sahlstrom
Jeffrey P. Foote	William F. Schroeder
Robert H. Grant	J. Michael Starr
John J. Higgins	Wendell H. Tompkins
John F. Hunnicutt	John J. Tyner
William L. Jackson	James W. Walton
Roy Kilpatrick	William W. Wells
Sam Kyle	Bill L. Williamson

FROM: DOUGLAS A. HALDANE, Executive Director

RE: DECEMBER 8, 1984 COUNCIL MEETING

PLACE: HOOD RIVER INN
HOOD RIVER, OREGON

TIME: 9:30 a.m.

PLEASE NOTE THAT THE NEXT COUNCIL MEETING WILL BE HELD ON SATURDAY, DECEMBER 8, 1984, IN HOOD RIVER. I erroneously reported the meeting date as December 5 at the last meeting; the meeting will be held on Saturday, DECEMBER 8.

Enclosed is information regarding room reservations at the Hood River Inn, as well as a reservation form to be submitted when you reserve your room.

Since the meeting on December 8 will be the last meeting of the Council for this biennium, it is **IMPERATIVE** that a quorum be present, as we will be taking final action on our submission to the 1985 Legislature.

PLEASE DETACH AND RETURN AS SOON AS POSSIBLE TO: Douglas A. Haldane, Executive Director, Oregon Council on Court Procedures, University of Oregon School of Law, Eugene, Oregon 97403:

-
1. I will be in attendance at the December 8 meeting of the Council in Hood River.
 2. It will be impossible for me to attend the meeting.

Signed _____

A G E N D A

COUNCIL ON COURT PROCEDURES

Meeting

9:30 a.m., Saturday, December 8, 1984

HOOD RIVER INN

Hood River, Oregon

1. Approval of minutes of October 13, 1984 meeting
2. Final action on proposed amendments to ORCP:

RULE 7 C.(2)	RULE 32 H.
RULE 16 B.	RULE 47 C.
RULE 17 A.	RULE 57 C.
RULE 21 E.	RULE 68 A.(2)
3. Proposed amendments to RULE 54 A. and RULE 69 B.(3)
4. NEW BUSINESS

#

COUNCIL ON COURT PROCEDURES

Minutes of Meeting Held December 8, 1984

Hood River Inn

Hood River, Oregon

Present:	Joe D. Bailey	James E. Redman
	John H. Buttler	R. William Riggs
	John M. Copenhaver	E. B. Sahlstrom
	Jeffrey P. Foote	J. Michael Starr
	Robert H. Grant	Wendell H. Tompkins
	William L. Jackson	John J. Tyner
	Roy Kilpatrick	James W. Walton
	Sam Kyle	William W. Wells
Absent:	J. R. Campbell	Edward L. Perkins
	John J. Higgins	William F. Schroeder
	John F. Hunnicutt	Bill L. Williamson

(Also present were: Douglas Haldane, Executive Director of the Council; The Hon. John Jelderks, Judge of the Circuit Court for Wasco County; Roger Stroup, liaison representative from Oregon State Bar Procedure and Practice Committee.)

The meeting was called to order at 9:30 a.m. by Chairman Roy Kilpatrick. Chairman Kilpatrick moved the adoption and approval of the minutes of the meeting of October 13. The minutes were approved unanimously.

The Council immediately proceeded to the consideration of proposed amendments to the Oregon Rules of Civil Procedure.

Rule 7 C.(2). The proposal to correct an incorrect reference in this rule was adopted. A copy of the approved rule as amended is attached to these minutes.

Rule 16 B. The proposals to require the use of Arabic numerals in pleadings and to rewrite the last sentence of Rule 16 B. was moved by Mr. Sahlstrom, with Judge Jackson's second. The proposal carried. A copy of the approved language as amended is attached to these minutes.

Rule 17 A. The amendment to Rule 17 to require all parties or their attorneys to sign pleadings was adopted. A copy of the approved language as amended is attached to these minutes.

Rule 21 E. The adoption of the proposal to amend Rule 21 E. by striking the language added during the 1983 Legislation Session was moved by Judge Tompkins, with Judge Buttler's second. The proposal was adopted. A copy of Rule 21 E. as amended is attached to these minutes.

Rule 32 H.(2). The proposal to amend Rule 32 H.(2) to require an attempt to make actual notice on a potential defendant in a class action on the basis of reasonable inquiry was moved by Judge Wells, seconded by Mr. Sahlstrom, and adopted. The rule as amended is attached to these minutes.

Rule 47 C. The Council considered three proposals regarding amendments to Rule 47 C.: the proposal adopted at the October 13 meeting by the Council; the proposal adopted by the Bar's Practice and Procedure Committee and approved by the membership of the bar at its general meeting, and a draft submitted by Mr. Haldane. It was pointed out that the amendment adopted at the October 13 meeting did not provide a deadline prior to a hearing on a motion for summary judgment by which responsive documents would have to be served and filed. The Bar's proposal did not provide a deadline prior to the trial date by which a motion for summary judgment must be filed and served. Attempts were made to achieve both of these purposes, with a variety of views being expressed.

Mr. Stroup expressed the Bar Committee's position that no good reason existed why a motion for summary judgment, if appropriate, could not be heard immediately pre-trial and, if well taken, avoid the time and expense of trial.

The view was expressed that late filings of motions for summary judgment sometimes cause difficulties for court docketing. A motion filed a short time before a trial might reflect nothing more than counsels' inadequate pre-trial preparation and could thus work a hardship on opposing counsel and the court.

A consensus was reached that, in an appropriate case, the court should have discretion to hear a motion for summary judgment immediately prior to trial but it should not be done as a matter of course.

Mr. Sahlstrom suggested that definite times be set by which actions in a motion for summary judgment should be taken and that the court should be provided with discretion to modify those times in appropriate cases. Judge Wells moved, with Mr. Grant's second, that Mr. Sahlstrom's proposal be approved. The motion carried. A copy of the approved language as amended is attached to these minutes.

Rule 57 C. It was moved by Mr. Bailey, with Mr. Sahlstrom's second, that the proposal (previously adopted at the October 13 meeting) to add the following sentence to the end of Rule 57 C. be adopted:

"The court shall regulate the examination in such a way as to avoid unnecessary delay."

The motion carried. The full text of Rule 57 C. as amended is attached to these minutes.

Rule 68 A.(2). The proposal to delete the necessary expenses of taking depositions from Rule 68 A.(2) and to explicitly state that the expense of taking depositions shall not be allowed had been approved at the October 13, 1984 meeting. Mr. Stroup, of the Bar Committee, pointed out that there were other rules which allowed reimbursement for expenses for taking depositions in situations other than those contemplated by Rule 68 A.(2). He suggested that, in order to avoid confusion, Rule 68 A.(2) provide an exception for those provisions. With those comments in mind, the Council added to Rule 68 A.(2) a final sentence which will read:

"The expense of taking depositions shall not be allowed, even though the depositions are used at trial, except as otherwise provided by rule or statute."

The entire text of Rule 68 A.(2) as amended is attached to the original of these minutes.

Rule 54 A. The Council had received from the Law Improvement Committee a copy of a Bill for an Act, which would amend Rule 54 A. by adding a subsection (3) to read:

"When an action is dismissed under this section, the judgment may include any costs and disbursements, including attorney fees, provided by rule or statute. Unless the circumstances indicate otherwise, the dismissed party shall be considered the prevailing party."

This proposed rule change was moved by Judge Wells, seconded by Judge Jackson, and adopted by the Council.

A proposal to amend 69 B.(3) regarding the filing of non-military affidavits in cases where they are not required under the Soldiers and Sailors Relief Act of 1940 was discussed. Judge Jelderks commented that he was not aware of any requirement in the federal law that such affidavits be filed. He further stated that if an incorrect or false affidavit were filed, due to the provisions of the federal law, the affidavit would have no effect and the default could be set aside. In a case where a person, in fact, is not a member of the military services, an affidavit simply represents an unnecessary step for parties to take. The Council recognized that further study might be required. Judge Riggs moved, with Mr. Walton's second, that Rule 69 B.(3) be amended to delete the requirement for the filing of a non-military affidavit, except in those cases where required by federal law. The motion was adopted. Mr. Bailey undertook the task of determining if the federal law, in fact, requires

affidavits and agreed to report back to Mr. Haldane in order that appropriate amending language might be drafted in time for submission with the Council's final report for the 1985 Legislative Session.

The work of the Council for the biennium having been concluded, Mr. Haldane was directed to draft its report to the 1985 Legislative Session. Mr. Haldane stated that the draft report will be submitted to all members of the Council prior to its submission. Chairman Kilpatrick appointed a committee composed of Mr. Sahlstrom and Mr. Walton to specifically review the draft report and communicate any discrepancies in that report and Council action to Mr. Haldane in order that corrections might be made prior to submission.

Mr. Haldane reported that the budget process for the Council is continuing. Although one budget document indicated an increase in the Council's budget of \$8,000.00 for the the next biennium, he had not requested nor was he seeking any increase in the Council budget. Without increases, the budget will remain at the approximate \$57,000.00 level for the biennium.

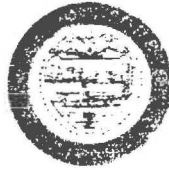
As requested, Mr. Haldane distributed the Council membership list (including term expiration dates) and explained that terms expire on June 30 of the year listed.

There being no further business before the Council, the meeting was adjourned at 11:30 a.m.

Respectfully submitted,

Douglas A. Haldane
Executive Director

DAH:gh



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

October 16, 1984

Professor Douglas Haldane
Council on Court Procedures
University of Oregon School of Law
Eugene, OR 97403

Dear Professor Haldane:

Pursuant to our telephone conversation, I am sending you a copy of the Law Improvement Committee case analysis of Precision Roof Trusses, Inc. v. Devitt, 59 Or. App. 4 (1982) and a proposed bill draft amending ORCP 54A.

The bill draft has been approved by a subcommittee of the Law Improvement Committee and we were directed to ask for comment from the Council. The final meeting of the full Law Improvement Committee, at which bill drafts will be approved for introduction, will probably be late November or early December. We would appreciate the Council's comments as soon as possible after your December 1 meeting.

Should the Law Improvement Committee meet in November rather than December, perhaps their final action on the enclosed bill draft can be taken conditionally -- subject to change if warranted by Council comment. Should the committee meet in December, I am sure they will consider any comments received from the Council.

Thank you for your help.

Very truly yours,

A handwritten signature in cursive script that reads "Joan H. Robinson".

Joan H. Robinson
Deputy Legislative Counsel

JHR:eg
Encl.

OFFICE OF THE LEGISLATIVE COUNSEL
S101 State Capitol
Salem, Oregon 97310-0630

LIC 5004
12/20/82 (ct)

CASE ANALYSIS

To: Law Improvement Committee

From: Legislative Counsel's Office

Subject: Precision Roof Trusses, Inc. v. Devitt,
59 Or. App. 4 (1982)

ISSUE: The issue is whether ORCP 54 allows an award of attorney fees and costs to a defendant who is voluntarily dismissed by a plaintiff. The Court of Appeals found that the language in ORCP 54D. to the effect that a court may order payment of unpaid costs and disbursements from a prior dismissed action when a plaintiff refiles the action indicates that costs and attorney fees may be allowed to a defendant who is voluntarily dismissed.

EVALUATION: As a matter of clarity, it would be helpful to include express language in ORCP 54A. permitting an award of costs and disbursements and attorney fees to a dismissed party.

First Proposed LC Draft
10/10/84

1 MEASURE SUMMARY

2 Clarifies provisions of Oregon Rules of Civil Procedure for
3 voluntary dismissal of actions. Permits allowance of costs and
4 disbursements to prevailing party upon judgment of dismissal.

5 A BILL FOR AN ACT

6 Relating to rules of civil procedure; amending ORCP 54A.

7 Be It Enacted by the People of the State of Oregon:

8 SECTION 1. ORCP 54A, is amended to read:

9 A. !mBR10!xVoluntary dismissal; effect thereof.**RF10**

10 A.(1) **BF10**By plaintiff; by stipulation.**RF10** Subject
11 to the provisions of Rule 32 D. and of any statute of this state,
12 an action may be dismissed by the plaintiff without order of
13 court (a) by filing a notice of dismissal with the court and
14 serving such notice on the defendant not less than five days
15 prior to the day of trial if no counterclaim has been pleaded, or
16 (b) by filing a stipulation of dismissal signed by all adverse
17 parties who have appeared in the action. Unless otherwise stated
18 in the notice of dismissal or stipulation, the dismissal is
19 without prejudice, except that a notice of dismissal operates as
20 an adjudication upon the merits when filed by a plaintiff who has
21 once dismissed in any court of the United States or of any state
22 an action against the same parties on or including the same claim
23 unless the court directs that the dismissal shall be without
24 prejudice. Upon notice of dismissal or stipulation under this
25 subsection, the court shall enter a judgment of dismissal.

1 A.(2) ****BF10****By order of court.****RF10**** Except as provided
2 in subsection (1) of this section, an action shall not be
3 dismissed at the plaintiff's instance save upon judgment of
4 dismissal ordered by the court and upon such terms and conditions
5 as the court deems proper. If a counterclaim has been pleaded by
6 a defendant prior to the service upon the defendant of the
7 plaintiff's motion to dismiss, the defendant may proceed with the
8 counterclaim. Unless otherwise specified in the judgment of
9 dismissal, a dismissal under this subsection is without
10 prejudice.

11 A.(3) ****BF10****Costs and disbursements.****RF10**** When an action
12 is dismissed under this section, the judgment may include any
13 costs and disbursements, including attorney fees, provided by
14 rule or statute. Unless the circumstances indicate otherwise,
15 the dismissed party shall be considered the prevailing party.

CASS, SCOTT, WOODS & SMITH

ATTORNEYS AT LAW
SOUTH PARK BUILDING, SUITE 200
101 EAST BROADWAY
EUGENE, OREGON 97401

OF COUNSEL
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PHIL CASS, JR.
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BRUCE E. SMITH
NICK E. RAUCH
DOUGLAS R. SCHULTZ
THOMAS J. MURPHY
FRANK C. GIBSON
ROGER M. SAYDACK
MICHAEL R. CHELLIS
JACQUELYN ROMM
DOUGLAS S. MITCHELL

December 3, 1984

TELEPHONE 687-1515
AREA CODE 503

Douglas Haldane
Executive Director
Council on Court Procedures
University of Oregon
School of Law
Eugene, OR 97403

HAND DELIVERED

Dear Doug:

The Oregon State Bar Procedure and Practice Committee met on December 1, 1984 and looked at the Council on Court Procedures' proposed amendments to the Oregon Rules of Civil Procedure. The Committee recommended the following:

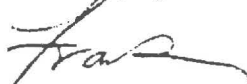
(1) That your proposed change to ORCP 47(C) not be adopted at this time. It has serious, potentially undesirable effects on summary judgment practice, and should be further considered by the Bar before you act.

(2) That the Council adopt the enclosed amendment to ORCP 47(C) which was proposed by last year's Procedure and Practice Committee and adopted by the Bar membership at the 1984 annual meeting. Unlike the enclosed amendment, the Council's proposed amendment does not deal with the problem of tardy service of responsive material.

(3) That if the Council decides to eliminate recovery of any deposition expenses as costs, the language should clearly specify that the court still has authority to order payment of deposition costs under ORCP 36(C), 39(E), 39(H) and 46.

If I can provide any further information on this, please contact me.

Sincerely yours,



Frank C. Gibson, Secretary
Oregon State Bar Procedure
and Practice Committee

FCG/ld
Enclosure

cc: Frank H. Lagesen, Chair
Fred Merrill, Member

AMENDMENT TO ORCP 47C
Recommended to OSB by
OSB Committee on Practice & Procedure
(Passed at 1984 Annual Meeting)

The motion, together with supporting affidavits, if any, shall be served at least 14 days prior to the time fixed for the hearing. The adverse party may serve opposing affidavits. Service of the motion and any affidavits shall be in the manner provided by Rule 9 of the Oregon Rules of Civil Procedure provided, however, that all affidavits must be actually received by the opposing counsel not less than 7 days prior to the date of the hearing. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A summary judgment interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

KILPATRICKS & POPE LAWYERS

BOX A

MT. VERNON, OREGON 97865

(503) 932-4435

December 28, 1984

ROY KILPATRICK
HOME PHONE: 932-4652

MIKE KILPATRICK
HOME PHONE: 932-4767

MILO POPE
HOME PHONE: 932-4683

KATHERINE J. EISMANN
CHARLOTTE BLANK
HELEN B. SAUNDERS
JODY BAGETT
Legal Assistants

Office of the President of the Senate
State Capitol
Salem, Oregon 97310

Office of the Speaker of the House
State Capitol
Salem, Oregon 97310

Gentlemen:


Enclosed herewith are amended Oregon Rules of Civil Procedure which were promulgated by the Council on Court Procedures on December 8, 1984. This action was taken pursuant to ORS 1.735, and the material is submitted to the Legislative Assembly pursuant thereto.

ORS 1.735 provides that these amendments will go into effect January 1, 1986 unless the Legislative Assembly, by statute, takes action to amend, repeal, or modify.

The Council has met regularly since the last legislative session. Tentative drafts of the proposed amendments have been released by the Council throughout the biennium. Summaries of the proposed amendments were published and made available to members of the public and bar. The Council conducted public hearings and received testimony and comments relating to its proposed amendments. This testimony and these comments were considered and evaluated by the Council.

In addition to the proposals contained herein, the Council, at the request of the Chief Justice of the Oregon Supreme Court, reviewed the proposed Uniform Trial Court Rules and submitted its comments regarding those rules to the Chief Justice. The Council has also maintained liaison with various Oregon State Bar committees, legislative committees, and the Commission on the Judicial Branch. Suggestions for proposed rule changes have been submitted from both the bench and the bar. The Council expresses its appreciation to all interested parties who have assisted the Council in its work during this biennium.

Very truly yours,



Roy Kilpatrick, Chairman
Council on Court Procedures

RK:gh
Enc.

PROPOSED AMENDMENTS
TO
OREGON RULES OF CIVIL PROCEDURE

ROUGH DRAFT

December 8, 1984

SUMMONS

RULE 7

C.(2) Time for response. If the summons is served by any manner other than publication, the defendant shall appear and defend within 30 days from the date of service. If the summons is served by publication pursuant to subsection D.←5→(6) of this rule, the defendant shall appear and defend within 30 days from a date stated in the summons. The date so stated in the summons shall be the date of the first publication.

FORM OF PLEADINGS

RULE 16

B. Concise and direct statement; paragraphs; separate statement of claims or defenses. Every pleading shall consist of plain and concise statements in [consecutively numbered paragraphs] paragraphs consecutively numbered throughout the pleading with Arabic numerals, the contents of which shall be limited as far as practicable to a statement of a single set of circumstances, and a paragraph may be referred to by number in all succeeding pleadings. [Separate claims] Each separate claim or defense shall be separately stated [and numbered].

SIGNATURE OF PLEADINGS

RULE 17

A. Signature by party or attorney; certificate. Every pleading shall be signed by [the] each party or by [a resident attorney of the state, except that if there are several parties united in interest and pleading together, the pleading may be signed by at least one of such parties or one resident attorney] that party's attorney who is an active member of the Oregon State Bar. If a party is represented by an attorney, every pleading of that party shall be signed by at least one attorney of record in such attorney's individual name. Verification of pleadings shall not be required unless otherwise required by rule or statute. The signature constitutes a certificate by the person signing: that such person has read the pleading; that to the best of the person's knowledge, information, and belief, there is a good ground to support it; and that it is not interposed for harassment or delay.

DEFENSES AND OBJECTIONS;
HOW PRESENTED; BY PLEADING OR MOTION;
MOTION FOR JUDGMENT ON THE PLEADINGS

RULE 21

E. Motion to strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 10 days after the service of the pleading upon such party or upon the court's own initiative at any time, the court may order stricken: (1) any sham, frivolous, or irrelevant pleading or defense or any pleading containing more than one claim or defense not separately stated; (2) any insufficient defense or any sham, frivolous, irrelevant, or redundant matter inserted in a pleading. [If on a motion under this section, the facts supporting the motion do not appear on the face of the pleading or defense and matters outside the pleading or defense, including affidavits and other evidence, are presented to the court, all parties shall be given a reasonable opportunity to present evidence and affidavits, and the court may determine the existence or nonexistence of the facts supporting such motion if such facts are not materially disputed or may defer such determination until further discovery or until the trial on the merits].

CLASS ACTIONS

RULE 32

H. Notice and demand required prior to commencement of action for damages.

H. (1) Thirty days or more prior to the commencement of an action for damages pursuant to the provisions of subsection (3) of section B. of this rule, the potential plaintiffs' class representative shall:

H. (1) (a) Notify the potential defendant of the particular alleged cause of action; and

H. (1) (b) Demand that such person correct or rectify the alleged wrong.

H. (2) Such notice shall be in writing and shall be sent by certified or registered mail, return receipt requested, to the place where the transaction occurred, such person's principal place of business within this state, or, ~~if neither will effect actual notice, the office of the Secretary of State~~ in the case of a corporation or limited partnership not authorized to transact business in this state, to the principal office or place of business of the corporation or limited partnership, and to any address the use of which the class representative knows, or on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice.

SUMMARY JUDGMENT

RULE 47

C. Motion and proceedings thereon. The motion and all supporting documents shall be served and filed at least [10] 45 days before the [time fixed] date set for [the hearing] trial. The adverse party[, prior to the day of the hearing, may serve opposing affidavits] shall have 20 days in which to serve and file opposing affidavits and supporting documents. The moving party shall have five days to reply. The court shall have discretion to modify these stated times. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

DISMISSAL OF ACTIONS;
COMPROMISE

RULE 54

A. Voluntary dismissal; effect thereof.

A.(1) By plaintiff; by stipulation. Subject to the provisions of Rule 32 C. and of any statute of this state, an action may be dismissed by the plaintiff without order of court (a) by filing a notice of dismissal with the court and serving such notice on the defendant not less than five days prior to the day of trial if no counterclaim has been pleaded, or (b) by filing a stipulation of dismissal signed by all adverse parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action against the same parties on or including the same claim unless the court directs that the dismissal shall be without prejudice. Upon notice of dismissal or stipulation under this subsection, the court shall enter a judgment of dismissal.

A.(2) By order of court. Except as provided in subsection (1) of this section, an action shall not be dismissed at the plaintiff's instance save upon judgment of dismissal ordered by the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the defendant may proceed with the counterclaim. Unless

otherwise specified in the judgment of dismissal, a dismissal under this subsection is without prejudice.

A.(3) Costs and disbursements. When an action is dismissed under this section, the judgment may include any costs and disbursements, including attorney fees, provided by rule or statute. Unless the circumstances indicate otherwise, the dismissed party shall be considered the prevailing party.

JURORS

RULE 57

C. Examination of jurors. The full number of jurors having been called upon shall thereupon be examined as to their qualifications. The court may examine the prospective jurors to the extent it deems appropriate, and thereupon the court shall permit the parties to examine each juror, first by the plaintiff, and then by the defendant. The court shall regulate the examination in such a way as to avoid unnecessary delay.

ALLOWANCE AND TAXATION
OF ATTORNEY FEES AND
COSTS AND
DISBURSEMENTS

RULE 68

A.(2) Costs and disbursements. "Costs and disbursements" are reasonable and necessary expenses incurred in the prosecution or defense of an action other than for legal services, and include the fees of officers and witnesses; [the necessary expenses of taking depositions]; the expense of publication of summonses or notices, and the postage where the same are served by mail; the compensation of referees; the necessary expense of copying of any public record, book, or document used as evidence on the trial; a reasonable sum paid a person for executing any bond, recognizance, undertaking, stipulation, or other obligation therein; and any other expense specifically allowed by agreement, by these rules, or by other rule or statute. The expense of taking depositions shall not be allowed, even though the depositions are used at trial, except as otherwise provided by rule or statute.

TEMPORARY RESTRAINING
ORDERS AND PRELIMINARY
INJUNCTIONS

RULE 79

B. Temporary restraining order.

B.(1) Notice. A temporary restraining order may be granted without written or oral notice to the adverse party or to such party's attorney only if:

B.(1)(a) It clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or the adverse party's attorney can be heard in opposition, and

B.(1)(b) The applicant or applicant's attorney submits an affidavit setting forth the efforts, if any, which have been made to notify defendant or defendant's attorney of the application, including attempts to provide notice by telephone, and the reasons supporting the claim that notice should not be required. The affidavit required in this paragraph shall not be required for orders granted by authority of ORS 107.095(1)[~~(c)~~, ~~(d)~~, ~~(e)~~, ~~(f)~~ or ~~(g)~~].

B.(2) Contents of order; duration. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance, shall be filed forthwith, shall define the injury and state why it is irreparable, and shall state why the order was granted without notice.

B.(2)(a) Every temporary restraining order shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record.

B.(2)(b) The 10-day limit of paragraph(a) of this subsection does not apply to orders granted by authority of ORS 107.095 (1) [~~(c)~~, ~~(d)~~, ~~(e)~~, ~~(f)~~ or ~~(g)~~].

NOTE: It has been proposed that the specific reference to only subsections (c), (d), (e), (f), or (g) be deleted. As amended, the reference will include all subsections of ORS 107.095(1).

107.095 Provisions court may make by order after commencement of suit and before decree. (1) After the commencement of a suit for annulment or dissolution of a marriage or for separation and before a decree therein, the court may provide as follows:

(a) That a party pay to the clerk of the court such amount of money as may be necessary to enable the other party to prosecute or defend the suit, including costs of expert witnesses, and also such amount of money to the Department of Human Resources or the county clerk, whichever is appropriate, as may be necessary to support and maintain the other party.

(b) For the care, custody, support and maintenance of the minor children of the marriage by one party or jointly and for the visitation rights of the parent or parents not having custody of such children.

(c) For the restraint of a party from in any manner molesting or interfering with the other or the minor children.

(d) That if minor children reside in the family home and the court considers it neces-

sary for their best interest to do so, the court may require either party to move out of the home for such period of time and under such conditions as the court may determine, whether the home is rented, owned or being purchased by one party or both parties.

(e) Restraining and enjoining either party or both from encumbering or disposing of any of their property, real or personal, except as ordered by the court.

(f) For the temporary use, possession and control of the real or personal property of the parties or either of them and the payment of instalment liens and encumbrances thereon.

(g) That even if no minor children reside in the family home, the court may require one party to move out of the home for such period of time and under such conditions as the court determines, whether the home is rented, owned or being purchased by one party or both parties if that party assaults or threatens to assault the other.

PROPOSED AMENDMENTS
TO
OREGON RULES OF CIVIL PROCEDURE

December 8, 1984

PROPOSED AMENDMENTS
TO
OREGON RULES OF CIVIL PROCEDURE

December 8, 1984

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SUMMONS

RULE 7

C.(2) Time for response. If the summons is served by any manner other than publication, the defendant shall appear and defend within 30 days from the date of service. If the summons is served by publication pursuant to subsection D.←5→(6) of this rule, the defendant shall appear and defend within 30 days from a date stated in the summons. The date so stated in the summons shall be the date of the first publication.

FORM OF PLEADINGS

RULE 16

B. Concise and direct statement; paragraphs; separate statement of claims or defenses. Every pleading shall consist of plain and concise statements in [consecutively numbered paragraphs] paragraphs consecutively numbered with Arabic numerals, the contents of which shall be limited as far as practicable to a statement of a single set of circumstances, and a paragraph may be referred to by number in all succeeding pleadings. [Separate claims] Each separate claim or defense shall be separately stated [and numbered].

SIGNATURE OF PLEADINGS

RULE 17

A. Signature by party or attorney; certificate. Every pleading shall be signed by [the] each party or by a resident attorney of the state [~~except that if there are several parties united in interest and pleading together, the pleading may be signed by at least one of such parties or one resident attorney~~]. If a party is represented by an attorney, every pleading of that party shall be signed by at least one attorney of record in such attorney's individual name. Verification of pleadings shall not be required unless otherwise required by rule or statute. The signature constitutes a certificate by the person signing: that such person has read the pleading; that to the best of the person's knowledge, information, and belief, there is a good ground to support it; and that it is not interposed for harassment or delay.

DEFENSES AND OBJECTIONS;
HOW PRESENTED; BY PLEADING OR MOTION;
MOTION FOR JUDGMENT ON THE PLEADINGS

RULE 21

E. Motion to strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 10 days after the service of the pleading upon such party or upon the court's own initiative at any time, the court may order stricken: (1) any sham, frivolous, or irrelevant pleading or defense or any pleading containing more than one claim or defense not separately stated; (2) any insufficient defense or any sham, frivolous, irrelevant, or redundant matter inserted in a pleading. [If, on a motion under this section, the facts supporting the motion do not appear on the face of the pleading or defense and matters outside the pleading or defense, including affidavits and other evidence, are presented to the court, all parties shall be given a reasonable opportunity to present evidence and affidavits, and the court may determine the existence or nonexistence of the facts supporting such motion if such facts are not materially disputed or may defer such determination until further discovery or until the trial on the merits].

CLASS ACTIONS

RULE 32

H. Notice and demand required prior to commencement of action for damages.

H.(1) Thirty days or more prior to the commencement of an action for damages pursuant to the provisions of subsection (3) of section B. of this rule, the potential plaintiffs' class representative shall:

H.(1)(a) Notify the potential defendant of the particular alleged cause of action; and

H.(1)(b) Demand that such person correct or rectify the alleged wrong.

H.(2) Such notice shall be in writing and shall be sent by certified or registered mail, return receipt requested, to the place where the transaction occurred, such person's principal place of business within this state, or, ~~[if neither will effect actual notice, the office of the Secretary of State]~~ in the case of a corporation or limited partnership not authorized to transact business in this state, to the principal office or place of business of the corporation or limited partnership, and to any address the use of which the class representative knows, or on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice.

SUMMARY JUDGMENT

RULE 47

C. Motion and proceedings thereon. The motion and all supporting documents shall be served and filed at least [10] 45 days before the [time fixed] date set for [the hearing] trial. The adverse party[, prior to the day of the hearing, may serve opposing affidavits] shall have not less than 20 days in which to serve and file supporting documents. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

JURORS

RULE 57

C. Examination of jurors. The full number of jurors having been called upon shall thereupon be examined as to their qualifications. The court may examine the prospective jurors to the extent it deems appropriate, and thereupon the court shall permit the parties to examine each juror, first by the plaintiff, and then by the defendant. The court shall regulate the examination in such a way as to avoid unnecessary delay.

ALLOWANCE AND TAXATION
OF ATTORNEY FEES AND
COSTS AND
DISBURSEMENTS

RULE 68

A.(2) Costs and disbursements. "Costs and disbursements" are reasonable and necessary expenses incurred in the prosecution or defense of an action other than for legal services, and include the fees of officers and witnesses; [~~the necessary expenses of taking depositions~~]; the expense of publication of summonses or notices, and the postage where the same are served by mail; the compensation of referees; the necessary expense of copying of any public record, book, or document used as evidence on the trial; a reasonable sum paid a person for executing any bond, recognizance, undertaking, stipulation, or other obligation therein; and any other expense specifically allowed by agreement, by these rules, or by other rule or statute. The expense of taking depositions shall not be allowed, even though the depositions are used at trial.

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H.(2) Such notice shall be in writing and shall be sent by certified or registered mail, return receipt requested, to the place where the transaction occurred, such person's principal place of business within this state, or, ~~[if-neither-will effect-actual notice, the office of-the-Secretary-of State]~~ in the case of a corporation or limited partnership not authorized to transact business in this state, to the principal office or place of business of the corporation or limited partnership, and to any address the use of which the class representative knows, or on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice.

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OF ATTORNEY FEES AND
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RULE 68

A.(2) Costs and disbursements. "Costs and disbursements" are reasonable and necessary expenses incurred in the prosecution or defense of an action other than for legal services, and include the fees of officers and witnesses; [~~the necessary expenses of taking depositions~~]; the expense of publication of summonses or notices, and the postage where the same are served by mail; the compensation of referees; the necessary expense of copying of any public record, book, or document used as evidence on the trial; a reasonable sum paid a person for executing any bond, recognizance, undertaking, stipulation, or other obligation therein; and any other expense specifically allowed by agreement, by these rules, or by other rule or statute. The expense of taking depositions shall not be allowed, even though the depositions are used at trial.

ADDITIONAL CHANGES MADE BY LEGISLATURE

1985 LEGISLATIVE SESSION

(ORCP 57 AND 78)

The changes below (new language is underlined and in bold and deletions are bracketed) were made by the legislature during the 1985 Legislative Session (HB 2545).

JURORS

RULE 57

A. Challenging compliance with selection procedures.

A.(1) Motion. Within 7 days after the moving party discovered or by the exercise of diligence could have discovered the grounds therefor, and in any event before the jury is sworn to try the case, a party may move to stay the proceedings or for other appropriate relief, on the ground of substantial failure to comply with [ORS 10.010 through 10.490] **the applicable provisions of ORS chapter 10** in selecting the jury.

A.(2) Stay of proceedings. Upon motion filed under subsection (1) of this section containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with [ORS 10.010 through 10.490] **the applicable provisions of ORS chapter 10 in selecting the jury**, the moving party is entitled to present in support of the motion: the testimony of the clerk or court administrator, any relevant records and papers not public or otherwise available used by the clerk or court administrator, and any other relevant evidence. If the court determines that in selecting the jury there has been a substantial failure to comply with [ORS 10.010 through 10.490] **the applicable provisions of ORS chapter 10**, the court shall stay the proceedings pending the selection of the jury in conformity with [ORS 10.010 through 10.490] **the applicable provisions of ORS chapter 10**, or grant other appropriate relief.

A.(3) Exclusive means of challenge. The procedures prescribed by this section are the exclusive means by which a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with [ORS 10.010 through 10.490] **the applicable provisions of ORS chapter 10**.

B. Jury; how drawn. When the action is called for trial the clerk shall draw [*from the trial jury box of the court, one by one, the ballots containing the names of the jurors until the jury is completed or the ballots are exhausted*] **names at random from the names of jurors in attendance upon the court until the jury is completed or the names of jurors in attendance are exhausted.** If the [*ballots*] **names of jurors in attendance** become exhausted before the jury is complete, the sheriff, under the direction of the court, shall summon from the bystanders, or the body of the county, so many qualified persons as may be necessary to complete the jury. Whenever the sheriff shall summon more than one person at a time from the bystanders or the body of the county, the sheriff shall return a list of the persons so summoned to the clerk. The clerk shall [*write the names of such persons upon separate ballots, and deposit the same in the trial jury box, and then draw such ballots therefrom, as in the case of the panel of trial jurors, for the term*] **draw names at random from the list until the jury is completed.**

C. Examination of jurors. The full number of jurors having been called shall thereupon be examined as to their qualifications. The court may examine the prospective jurors to the extent it deems appropriate, and thereupon the court shall permit the parties to examine each juror, first by the plaintiff, and then by the defendant. The court shall regulate the examination in such a way as to avoid unnecessary delay.

D. Challenges.

D.(1) Challenges for cause: grounds. Challenges for cause may be taken on any one or more of the following grounds:

D.(1)(a) The want of any qualifications prescribed by ORS 10.030 for a person [*competent*] eligible to act as a juror [*or improper summons under ORS 10.030(3)*].

D.(1)(b) The existence of a mental or physical defect which satisfies the court that the challenged person is incapable of performing the duties of a juror in the particular action without prejudice to the substantial rights of the challenging party.

D.(1)(c) Consanguinity or affinity within the fourth degree to any party.

D.(1)(d) Standing in the relation of guardian and ward, physician and patient, master and servant, landlord and tenant, or debtor and creditor, to the adverse party; or being a member of the family of, or a partner in business with, or in the employment for wages of, or being an attorney for or a client of, the adverse party; or being surety in the action called for trial, or otherwise, for the adverse party.

D.(1)(e) Having served as a juror on a previous trial in the same action, or in another action between the same parties for the same cause of action, upon substantially the same facts or transaction.

D.(1)(f) Interest on the part of the juror in the outcome of the action, or the principal question involved therein.

D.(1)(g) Actual bias, which is the existence of a state of mind on the part of the juror, in reference to the action, or to either party, which satisfies the court, in the exercise of a sound discretion, that the juror cannot try the issue impartially and without prejudice to the substantial rights of the party challenging. A challenge for actual bias may be taken for the cause mentioned in this paragraph, but on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon the merits of the cause from what the juror may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all the circumstances, that the juror cannot disregard such opinion and try the issue impartially.

D.(2) Peremptory challenges: number. A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude such juror. Either party shall be entitled to three peremptory challenges, and no more. Where there are multiple parties plaintiff or defendant in the case or where cases have been consolidated for trial, the parties plaintiff or defendant must join in the challenge and are limited to a total of three peremptory challenges, except the court, in its discretion and in the interest of justice, may allow any of the parties, single or multiple, additional peremptory challenges and permit them to be exercised separately or jointly.

D.(3) Conduct of peremptory challenges. After the full number of jurors have been passed for cause, peremptory challenges shall be conducted as follows: the plaintiff may challenge one and then the defendant may challenge one, and so alternating until the peremptory challenges shall be exhausted. After each challenge, the

panel shall be filled and the additional juror passed for cause before another peremptory challenge shall be exercised, and neither party is required to exercise a peremptory challenge unless the full number of jurors are in the jury box at the time. The refusal to challenge by either party in the [said] order of alternation shall not defeat the adverse party of such adverse party's full number of challenges, and such refusal by a party to exercise a challenge in proper turn shall conclude that party as to the jurors once accepted by that party, and if that party's right of peremptory challenge be not exhausted, that party's further challenges shall be confined, in that party's proper turn, to such additional jurors as may be called. The court may, for good cause shown, permit a challenge to be taken to any juror before the jury is completed and sworn, notwithstanding the juror challenged may have been theretofore accepted, but nothing in this subsection shall be construed to increase the number of peremptory challenges allowed.

E. Oath of jury. As soon as the number of the jury has been completed, an oath or affirmation shall be administered to the jurors, in substance that they and each of them will well and truly try the matter in issue between the plaintiff and defendant, and a true verdict give according to the law and evidence as given them on the trial.

F. Alternate jurors. The court may direct that not more than six jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retired to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged as the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by these rules or other rule or statute if one or two alternate jurors are to be impanelled, two peremptory challenges if three or four alternate jurors are to be impanelled, and three peremptory challenges if five or six alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by these rules or other rule or statute shall not be used against an alternate juror.

The changes below (new language is underlined and in bold and deletions are bracketed) were made by the legislature during the 1985 Legislative Session (SB 250).

ORDER OR JUDGMENT FOR
SPECIFIC ACTS
RULE 78

A. Judgment requiring performance considered equivalent thereto. 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 with the judgment, be deemed to be equivalent thereto.

B. Enforcement; contempt. The court or judge thereof may enforce an order or judgment directing a party to perform a specific act by punishing the party refusing or neglecting to comply therewith, as for a contempt as provided in ORS 33.010 through 33.150.

C. Application. Section B. of this rule does not apply to a 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 fees. in:

C.(1) Actions for [*dissolutions of marriages*] dissolution or annulment of marriage or separation from bed and board.

[*C.(2) Actions for separation from bed and board.*] .

[*C.(3) Proceedings under ORS 108.110 and 108.120.*]

C.(2) Proceedings upon support orders entered under ORS chapter 108, 109, 110 or 419 and ORS 416.400 to 416.470.

D. Contempt proceeding. As an alternative to the independent proceeding contemplated by ORS 33.010 through 33.150, 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:

D.(1) Notice of the show cause hearing shall be served personally upon the party required to show cause.

D.(2) Punishment for contempt shall be limited as provided in ORS 33.020.

D.(3) The party cited for contempt shall have right to counsel as provided in ORS 33.095.