

1 **DISMISSAL OF ACTIONS; COMPROMISE**

2 **RULE 54**

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4 **D Costs of previously dismissed action.**

5 **D(1) Previous action dismissed by plaintiffs.** If a plaintiff who has once dismissed an action
6 in any court commences an action based upon or including the same claim against the same
7 defendant, the court may make such order for the payment of any unpaid judgment for costs and
8 disbursements against plaintiff in the action previously dismissed as it may deem proper and may
9 stay the proceedings in the action until the plaintiff has complied with the order.

10 **D(2) Previous claim dismissed with prejudice.** If a party who previously asserted a claim,
11 counterclaim, cross-claim, or third party claim that was dismissed with prejudice subsequently files
12 the same claim, counterclaim, crossclaim, or third party claim against the same party, the court
13 shall enter a judgment dismissing the claim, counterclaim, cross-claim, or third party claim and may
14 enter a judgment requiring the payment of reasonable attorney fees incurred by the party in
15 obtaining the dismissal.

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1 **DISMISSAL OF ACTIONS; [*COMPROMISE*] OFFER TO ALLOW JUDGMENT**

2 **RULE 54**

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4 **E Offer to allow judgment; effect of acceptance or rejection.**

5 E(1) **Offer**. Except as provided in ORS 17.065 through 17.085, any party against whom a
6 claim is asserted may, at any time up to 14 days prior to trial, serve upon any other party asserting
7 the claim an offer to allow judgment to be entered against the party making the offer for the sum,
8 or the property, or to the effect therein specified. The offer shall not be filed with the court clerk or
9 provided to any assigned judge, except as set forth in subsections [*E(2) and E(3) below*] **E(2) and**
10 **E(3) of this rule**.

11 E(2) **Acceptance of offer**. If the party asserting the claim accepts the offer, the party
12 asserting the claim or [*such*] **the** party's attorney shall endorse [*such*] **the** acceptance thereon and
13 file the [*same*] **accepted offer** with the clerk before trial, and within seven days from the time the
14 offer was served upon [*such*] **the** party asserting the claim; and thereupon judgment shall be given
15 accordingly as a stipulated judgment. If the offer does not state that it includes costs and
16 disbursements or attorney fees, the party asserting the claim shall submit any claim for costs and
17 disbursements or attorney fees to the court as provided in Rule 68.

18 E(3) **Failure to accept offer**. If the offer is not accepted and filed within the time prescribed,
19 it shall be deemed withdrawn, and shall not be given in evidence at trial and may be filed with the
20 court only after the case has been adjudicated on the merits and only if the party asserting the
21 claim fails to obtain a judgment.

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1 **DISMISSAL OF ACTIONS; [COMPROMISE] OFFER TO ALLOW JUDGMENT**

2 **RULE 54**

3 **A Voluntary dismissal; effect thereof.**

4 A(1) **By plaintiff; by stipulation.** Subject to the provisions of Rule 32 D and of any statute
5 of this state, a plaintiff may dismiss an action in its entirety or as to one or more defendants
6 without order of court[: (a)] by filing a notice of dismissal with the court and serving [such] **the**
7 notice on all other parties not in default not less than [five] **5** days prior to the day of trial if no
8 counterclaim has been pleaded, or [(b)] by filing a stipulation of dismissal signed by all adverse
9 parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or
10 stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an
11 adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the
12 United States or of any state an action against the same parties on or including the same claim
13 unless the court directs that the dismissal shall be without prejudice. Upon notice of dismissal or
14 stipulation under this subsection, a party shall submit a form of judgment and the court shall enter
15 a judgment of dismissal.

16 A(2) **By order of court.** Except as provided in subsection [(1) of this section] **A(1) of this**
17 **rule**, an action shall not be dismissed at the plaintiff's instance save upon judgment of dismissal
18 ordered by the court and upon [such] **any** terms and conditions [as] **that** the court deems proper. If
19 a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the
20 plaintiff's motion to dismiss, the defendant may proceed with the counterclaim. Unless otherwise
21 specified in the judgment of dismissal, a dismissal under this subsection is without prejudice.

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

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1 **B Involuntary dismissal.**

2 B(1) **Failure to comply with rule or order.** For failure of the plaintiff to prosecute or to
3 comply with these rules or any order of court, a defendant may move for a judgment of dismissal of
4 an action or of any claim against [*such*] **that** defendant.

5 B(2) **Insufficiency of evidence.** After the plaintiff in an action tried by the court without a
6 jury has completed the presentation of plaintiff's evidence, the defendant, without waiving the
7 right to offer evidence in the event the motion is not granted, may move for a judgment of
8 dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief.
9 The court as trier of the facts may then determine them and render judgment of dismissal against
10 the plaintiff or may decline to render any judgment until the close of all the evidence. If the court
11 renders judgment of dismissal with prejudice against the plaintiff, the court shall make findings as
12 provided in Rule 62.

13 B(3) **Dismissal for want of prosecution; notice.** Not less than 60 days prior to the first
14 regular motion day in each calendar year, unless the court has sent an earlier notice on its own
15 initiative, the clerk of the court shall mail notice to the attorneys of record in each pending case in
16 which no action has been taken for one year immediately prior to the mailing of such notice that a
17 judgment of dismissal will be entered in each such case by the court for want of prosecution unless,
18 on or before such first regular motion day, application, either oral or written, is made to the court
19 and good cause shown why it should be continued as a pending case. If [*such*] **an** application is not
20 made or good cause **is not** shown, the court shall enter a judgment of dismissal in each such case.
21 Nothing contained in this subsection shall prevent the dismissal by the court at any time for want
22 of prosecution of any action upon motion of any party thereto.

23 B(4) **Effect of judgment of dismissal.** Unless the court in its judgment of dismissal
24 otherwise specifies, a dismissal under this section operates as an adjudication without prejudice.

25 **C Dismissal of counterclaim, cross-claim, or third party claim.** The provisions of this
26 rule apply to the dismissal of any counterclaim, cross-claim, or third party claim.

1 **D Costs of previously dismissed action.**

2 D(1) **Previous action dismissed by plaintiffs.** If a plaintiff who has once dismissed an
3 action in any court commences an action based upon or including the same claim against the same
4 defendant, the court may make [such] **any** order for the payment of any unpaid judgment for costs
5 and disbursements against plaintiff in the action previously dismissed [as] **that** it may deem proper
6 and may stay the proceedings in the action until the plaintiff has complied with the order.

7 D(2) **Previous claim dismissed with prejudice.** If a party who previously asserted a claim,
8 counterclaim, cross-claim, or third party claim that was dismissed with prejudice subsequently files
9 the same claim, counterclaim, crossclaim, or third party claim against the same party, the court
10 shall enter a judgment dismissing the claim, counterclaim, cross-claim, or third party claim and may
11 enter a judgment requiring the payment of reasonable attorney fees incurred by the party in
12 obtaining the dismissal.

13 **E Offer to allow judgment; effect of acceptance or rejection.**

14 E(1) **Offer.** Except as provided in ORS 17.065 through 17.085, any party against whom a
15 claim is asserted may, at any time up to 14 days prior to trial, serve upon any other party asserting
16 the claim an offer to allow judgment to be entered against the party making the offer for the sum,
17 or the property, or to the effect therein specified. The offer shall not be filed with the court clerk or
18 provided to any assigned judge, except as set forth in subsections [E(2) and E(3) below] **E(2) and**
19 **E(3) of this rule.**

20 E(2) **Acceptance of offer.** If the party asserting the claim accepts the offer, the party
21 asserting the claim or [such] **the** party's attorney shall endorse [such] **the** acceptance thereon and
22 file the [same] **accepted offer** with the clerk before trial, and within [seven] **7** days from the time
23 the offer was served upon [such] **the** party asserting the claim; and thereupon judgment shall be
24 given accordingly as a stipulated judgment. If the offer does not state that it includes costs and
25 disbursements or attorney fees, the party asserting the claim shall submit any claim for costs and
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1 E(3) **Failure to accept offer.** If the offer is not accepted and filed within the time
2 prescribed, it shall be deemed withdrawn, and shall not be given in evidence at trial and may be
3 filed with the court only after the case has been adjudicated on the merits and only if the party
4 asserting the claim fails to obtain a judgment more favorable than the offer to allow judgment. In
5 such a case, the party asserting the claim shall not recover costs, prevailing party fees,
6 disbursements, or attorney fees incurred after the date of the offer, but the party against whom
7 the claim was asserted shall recover [of] **from** the party asserting the claim costs and
8 disbursements, not including prevailing party fees, from the time of the service of the offer.

9 **F Settlement conferences.** A settlement conference may be ordered by the court at
10 any time at the request of any party or upon the court’s own motion. Unless otherwise stipulated
11 to by the parties, a judge other than the judge who will preside at trial shall conduct the settlement
12 conference.

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