

1 **ORCP 38**

2 **PERSONS WHO MAY ADMINISTER OATHS FOR DEPOSITIONS; FOREIGN**
3 **DEPOSITIONS**

4 **A Within Oregon.**

5 A(1) Within this state, depositions shall be preceded by an oath or affirmation
6 administered to the deponent by an officer authorized to administer oaths by the laws of this state
7 or by a person specially appointed by the court in which the action is pending. A person so
8 appointed has the power to administer oaths for the purpose of the deposition.

9 A(2) For purposes of this rule, a deposition taken pursuant to Rule 39 C(7) is taken
10 within this state if either the deponent or the person administering the oath is located in this state.

11 **B Outside the state.** Within another state, or within a territory or insular possession
12 subject to the dominion of the United States, or in a foreign country, depositions may be taken
13 (1) on notice before a person authorized to administer oaths in the place in which the
14 examination is held, either by the law thereof or by the law of the United States, or (2) before a
15 person appointed or commissioned by the court in which the action is pending, and such a person
16 shall have the power by virtue of such person's appointment or commission to administer any
17 necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or letter
18 rogatory shall be issued on application and notice and on terms that are just and appropriate. It is
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20 in any other manner is impracticable or inconvenient; and both a commission and a letter
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22 whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be
23 addressed "To the Appropriate Authority in (here name the state, territory, or country)."
24 Evidence obtained in a foreign country in response to a letter rogatory need not be excluded
25 merely for the reason that it is not a verbatim transcript or that the testimony was not taken under
26 oath or for any similar departure from the requirements for depositions taken within the United

1 States under these rules.

2 **C Foreign depositions.**

3 *[C(1) Whenever any mandate, writ, or commission is issued out of any court of record in*
4 *any other state, territory, district, or foreign jurisdiction, or whenever upon notice or agreement*
5 *it is required to take the testimony of a witness or witnesses in this state, witnesses may be*
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7 *may be employed for the purpose of taking testimony in proceedings pending in this state.*

8 *C(2) This section shall be so interpreted and construed as to effectuate its general*
9 *purposes to make uniform the laws of those states which have similar rules or statutes.]*

10 **C(1) Definitions. For the purpose of this rule:**

11 **C(1)(a) “Foreign subpoena” means a subpoena issued under authority of a court of**
12 **record of any state other than Oregon.**

13 **C(1)(b) “State” means a state of the United States, the District of Columbia, Puerto**
14 **Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory**
15 **or insular possession subject to the jurisdiction of the United States.**

16 **(C)(2) Issuance of Subpoena.**

17 **(C)(2)(a) To request issuance of a subpoena under this rule, a party must submit a**
18 **foreign subpoena to a clerk of court in the county in which discovery is sought to be**
19 **conducted in this state.**

20 **(C)(2)(b) When a party submits a foreign subpoena to a clerk of court in this state**
21 **and pays the appropriate filing fee, the clerk, in accordance with that court’s procedure**
22 **and requirements, must assign a case number and promptly issue a subpoena for service**
23 **upon the person to which the foreign subpoena is directed.**

24 **(C)(2)(c) A subpoena under subsection (2) must:**

25 **(i) conform to the requirements of the Oregon Rules of Civil Procedure, including**
26 **Rule 55, and conform substantially to the form provided in Rule 55A but may otherwise**

1 incorporate the terms used in the foreign subpoena as long ast they conform to the Oregon

2 Rules of Civil Procedure; and

3 (ii) contain or be accompanied by the names, addresses, and telephone numbers
4 of all counsel of record in the proceeding to which the subpoena relates and of any party
5 not represented by counsel.

6 (C)(3) Service of Subpoena. A subpoena issued by a clerk of court
7 under subsection (2) of this rule must be served in compliance with ORCP 55].

8 (C)(4) Effects of Request for Subpoena. A request for issuance of a subpoena under
9 this rule does not constitute an appearance in the court. A request does confer jurisdiction
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11 violation of the Oregon Rules of Civil Procedure.

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NOTE: WHEN DRAFTS OF
AMENDMENTS TO ORCP 38 WERE
BEING NUMBERED, #4 WAS
INADVERTENTLY SKIPPED. THE
ORDER OF DRAFTS IS THUS:
1, 2, 3, 5, 6, 7, 8, 9, 10.

ALL DRAFTS ARE INCLUDED IN
THESE MATERIALS.

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26 *////*

1 C(2)(c) A subpoena under subsection (2) shall:

2 (i) conform to the requirements of the Oregon Rules of Civil Procedure, including
3 Rule 55, and conform substantially to the form provided in Rule 55A but may otherwise
4 incorporate the terms used in the foreign subpoena as long as they conform to the Oregon
5 Rules of Civil Procedure; and

6 (ii) contain or be accompanied by the names, addresses, and telephone numbers
7 of all counsel of record in the proceeding to which the subpoena relates and of any party
8 not represented by counsel.

9 C(3) Service of Subpoena. A subpoena issued by a clerk of court
10 under subsection (2) of this rule shall be served in compliance with ORCP 55.

11 C(4) Effects of Request for Subpoena. A request for issuance of a subpoena under
12 this rule does not constitute an appearance in the court. A request does confer jurisdiction
13 on the court to impose sanctions for any action in connection with the subpoena that is a
14 violation of the Oregon Rules of Civil Procedure.

15 C(5) Motion to Court. A motion to the court, or a response thereto, for a protective
16 order or to enforce, quash, or modify a subpoena issued by a clerk of court pursuant to this
17 rule is an appearance before the court and shall comply with the rules and statutes of this
18 state. The motion shall be submitted to the court in the county in which discovery is to be
19 conducted.

20 C(6) Uniformity of Application and Construction. In applying and construing this
21 rule, consideration shall be given to the need to promote the uniformity of the law with
22 respect to its subject matter among states that enact it.

1 **ORCP 38**

2 **PERSONS WHO MAY ADMINISTER OATHS FOR DEPOSITIONS; FOREIGN**
3 **DEPOSITIONS**

4 **A Within Oregon.**

5 A(1) Within this state, depositions shall be preceded by an oath or affirmation
6 administered to the deponent by an officer authorized to administer oaths by the laws of this state
7 or by a person specially appointed by the court in which the action is pending. A person so
8 appointed has the power to administer oaths for the purpose of the deposition.

9 A(2) For purposes of this rule, a deposition taken pursuant to Rule 39 C(7) is taken
10 within this state if either the deponent or the person administering the oath is located in this state.

11 **B Outside the state.** Within another state, or within a territory or insular possession
12 subject to the dominion of the United States, or in a foreign country, depositions may be taken:
13 (1) on notice before a person authorized to administer oaths in the place in which the
14 examination is held, either by the law thereof or by the law of the United States[.]; [or] (2)
15 before a person appointed or commissioned by the court in which the action is pending, and such
16 a person shall have the power by virtue of such person's appointment or commission to
17 administer any necessary oath and take testimony[.]; or (3) pursuant to a letter rogatory. A
18 commission or letter rogatory shall be issued on application and notice and on terms that are just
19 and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the
20 taking of the deposition in any other manner is impracticable or inconvenient; and both a
21 commission and a letter rogatory may be issued in proper cases. A notice or commission may
22 designate the person before whom the deposition is to be taken either by name or descriptive
23 title. A letter rogatory may be addressed "To the Appropriate Authority in (here name the state,
24 territory, or country)." Evidence obtained in a foreign country in response to a letter rogatory
25 need not be excluded merely for the reason that it is not a verbatim transcript or that the
26 testimony was not taken under oath or for any similar departure from the requirements for

1 depositions taken within the United States under these rules.

2 **C Foreign depositions.**

3 *[C(1) Whenever any mandate, writ, or commission is issued out of any court of record in*
4 *any other state, territory, district, or foreign jurisdiction, or whenever upon notice or agreement*
5 *it is required to take the testimony of a witness or witnesses in this state, witnesses may be*
6 *compelled to appear and testify in the same manner and by the same process and proceeding as*
7 *may be employed for the purpose of taking testimony in proceedings pending in this state.*

8 *C(2) This section shall be so interpreted and construed as to effectuate its general*
9 *purposes to make uniform the laws of those states which have similar rules or statutes.]*

10 **C(1) Definitions. For the purpose of this rule:**

11 **C(1)(a) “Foreign subpoena” means a subpoena issued under authority of a court of**
12 **record of any state other than Oregon.**

13 **C(1)(b) “State” means a state of the United States, the District of Columbia, Puerto**
14 **Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory**
15 **or insular possession subject to the jurisdiction of the United States.**

16 **C(2) Issuance of Subpoena.**

17 **C(2)(a) To request issuance of a subpoena under this rule, a party or attorney shall**
18 **submit a foreign subpoena to a clerk of court in the county in which discovery is sought to**
19 **be conducted in this state.**

20 **C(2)(b) When a party or attorney submits a foreign subpoena to a clerk of court in**
21 **this state, the clerk, in accordance with that court’s procedure and requirements, shall**
22 **assign a case number and promptly issue a subpoena for service upon the person to whom**
23 **the foreign subpoena is directed. If a party to an out-of-state proceeding retains an**
24 **attorney licensed to practice in this state, that attorney may assist the clerk in drafting the**
25 **subpoena.**

26 *////*

1 C(2)(c) A subpoena under subsection (2) shall:

2 (i) conform to the requirements of the Oregon Rules of Civil Procedure, including
3 Rule 55, and conform substantially to the form provided in Rule 55A but may otherwise
4 incorporate the terms used in the foreign subpoena as long as they conform to the Oregon
5 Rules of Civil Procedure; and

6 (ii) contain or be accompanied by the names, addresses, and telephone numbers
7 of all counsel of record in the proceeding to which the subpoena relates and of any party
8 not represented by counsel.

9 C(3) Service of Subpoena. A subpoena issued by a clerk of court
10 under subsection (2) of this rule shall be served in compliance with ORCP 55.

11 C(4) Effects of Request for Subpoena. A request for issuance of a subpoena under
12 this rule does not constitute an appearance in the court. A request does confer jurisdiction
13 on the court to impose sanctions for any action in connection with the subpoena that is a
14 violation of the Oregon Rules of Civil Procedure.

15 C(5) Motion to Court. A motion to the court, or a response thereto, for a protective
16 order or to enforce, quash, or modify a subpoena issued by a clerk of court pursuant to this
17 rule is an appearance before the court and shall comply with the rules and statutes of this
18 state. The motion shall be submitted to the court in the county in which discovery is to be
19 conducted.

20 C(6) Uniformity of Application and Construction. In applying and construing this
21 rule, consideration shall be given to the need to promote the uniformity of the law with
22 respect to its subject matter among states that enact it.

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2 **PERSONS WHO MAY ADMINISTER OATHS FOR DEPOSITIONS; FOREIGN**
3 **DEPOSITIONS**

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5 A(1) Within this state, depositions shall be preceded by an oath or affirmation
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8 appointed has the power to administer oaths for the purpose of the deposition.

9 A(2) For purposes of this rule, a deposition taken pursuant to Rule 39 C(7) is taken
10 within this state if either the deponent or the person administering the oath is located in this state.

11 **B Outside the state.** Within another state, or within a territory or insular possession
12 subject to the dominion of the United States, or in a foreign country, depositions may be taken:
13 (1) on notice before a person authorized to administer oaths in the place in which the
14 examination is held, either by the law thereof or by the law of the United States[.]; [or] (2)
15 before a person appointed or commissioned by the court in which the action is pending, and such
16 a person shall have the power by virtue of such person's appointment or commission to
17 administer any necessary oath and take testimony[.]; or (3) pursuant to a letter rogatory. A
18 commission or letter rogatory shall be issued on application and notice and on terms that are just
19 and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the
20 taking of the deposition in any other manner is impracticable or inconvenient; and both a
21 commission and a letter rogatory may be issued in proper cases. A notice or commission may
22 designate the person before whom the deposition is to be taken either by name or descriptive
23 title. A letter rogatory may be addressed "To the Appropriate Authority in (here name the state,
24 territory, or country)." Evidence obtained in a foreign country in response to a letter rogatory
25 need not be excluded merely for the reason that it is not a verbatim transcript or that the
26 testimony was not taken under oath or for any similar departure from the requirements for

1 depositions taken within the United States under these rules.

2 **C Foreign depositions and subpoenas.**

3 *[C(1) Whenever any mandate, writ, or commission is issued out of any court of record in*
4 *any other state, territory, district, or foreign jurisdiction, or whenever upon notice or agreement*
5 *it is required to take the testimony of a witness or witnesses in this state, witnesses may be*
6 *compelled to appear and testify in the same manner and by the same process and proceeding as*
7 *may be employed for the purpose of taking testimony in proceedings pending in this state.*

8 *C(2) This section shall be so interpreted and construed as to effectuate its general*
9 *purposes to make uniform the laws of those states which have similar rules or statutes.]*

10 **C(1) Definitions. For the purpose of this rule:**

11 **C(1)(a) “Foreign subpoena” means a subpoena issued under authority of a court of**
12 **record of any state other than Oregon.**

13 **C(1)(b) “State” means a state of the United States, the District of Columbia, Puerto**
14 **Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory**
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16 **C(2) Issuance of Subpoena.**

17 **C(2)(a) To request issuance of a subpoena under this rule, a party or attorney shall**
18 **submit a foreign subpoena to a clerk of court in the county in which discovery is sought to**
19 **be conducted in this state.**

20 **C(2)(b) When a party or attorney submits a foreign subpoena to a clerk of court in**
21 **this state, the clerk, in accordance with that court’s procedure and requirements, shall**
22 **assign a case number and promptly issue a subpoena for service upon the person to whom**
23 **the foreign subpoena is directed. If a party to an out-of-state proceeding retains an**
24 **attorney licensed to practice in this state, that attorney may assist the clerk in drafting the**
25 **subpoena.**

26 *////*

1 C(2)(c) A subpoena under subsection (2) shall:

2 (i) conform to the requirements of the Oregon Rules of Civil Procedure, including
3 Rule 55, and conform substantially to the form provided in Rule 55A but may otherwise
4 incorporate the terms used in the foreign subpoena as long as they conform to the Oregon
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8 not represented by counsel.

9 C(3) Service of Subpoena. A subpoena issued by a clerk of court
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11 C(4) Effects of Request for Subpoena. A request for issuance of a subpoena under
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13 impose sanctions for any action in connection with the subpoena that is a violation of
14 applicable law.

15 C(5) Motion to Court. A motion to the court, or a response thereto, for a protective
16 order or to enforce, quash, or modify a subpoena issued by a clerk of court pursuant to this
17 rule is an appearance before the court and shall comply with the rules and statutes of this
18 state. The motion shall be submitted to the court in the county in which discovery is to be
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20 C(6) Uniformity of Application and Construction. In applying and construing this
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23 **the foreign subpoena is directed. If a party to an out-of-state proceeding retains an**
24 **attorney licensed to practice in this state, that attorney may assist the clerk in drafting the**
25 **subpoena.**

26 *////*

1 C(2)(c) A subpoena under subsection (2) shall:

2 (i) conform to the requirements of these Oregon Rules of Civil Procedure, including
3 Rule 55, and conform substantially to the form provided in Rule 55A but may otherwise
4 incorporate the terms used in the foreign subpoena as long those terms conform to these
5 rules; and

6 (ii) contain or be accompanied by the names, addresses, and telephone numbers
7 of all counsel of record in the proceeding to which the subpoena relates and of any party
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15 C(5) Motions. A motion to the court, or a response thereto, for a protective order or
16 to enforce, quash, or modify a subpoena issued by a clerk of court pursuant to this rule is
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