

COUNCIL ON COURT PROCEDURES

DRAFT HISTORY

OF ORCP 19

2011-2013 BIENNIUM

1 **RESPONSIVE PLEADINGS**

2 **RULE 19**

3 **A Defenses; form of denials.** A party shall state in short and plain terms the party's defenses to each
4 claim asserted and shall admit or deny the allegations upon which the adverse party relies. If the party is
5 without knowledge or information sufficient to form a belief as to the truth of an allegation, the party shall so
6 state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied.
7 When a pleader intends in good faith to deny only a part or a qualification of an allegation, the pleader shall
8 admit so much of *[it]* **the allegation** as is true and material and shall deny only the remainder. Unless the
9 pleader intends in good faith to controvert all **of** the allegations of the preceding pleading, the denials may be
10 made as specific denials of designated allegations or paragraphs, or the pleader may generally deny all **of** the
11 allegations except such designated allegations or paragraphs as the pleader expressly admits; but, when the
12 pleader does so intend to controvert all of the allegations of the preceding pleading, the pleader may do so
13 by general denial of all allegations of the preceding pleading subject to the obligations set forth in Rule 17.

14 **B Affirmative defenses.** In pleading to a preceding pleading, a party shall set forth affirmatively:
15 accord and satisfaction[,]; arbitration and award[,]; assumption of risk[,]; **claim preclusion**; comparative or
16 contributory negligence[,]; discharge in bankruptcy[,]; duress[,]; estoppel[,]; failure of consideration[,];
17 fraud[,]; illegality[,]; injury by fellow servant[,]; **issue preclusion**; laches[,]; license[,]; payment[,];
18 release[,]; *[res judicata,]* statute of frauds[,]; statute of limitations[,]; unconstitutionality[,];
19 waiver[,]; and any other matter constituting an avoidance or affirmative defense. When a party has
20 mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on
21 terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

22 **C Effect of failure to deny.** Allegations in a pleading to which a responsive pleading is
23 required, other than those as to the amount of damages, are admitted when not denied in the
24 responsive pleading. Allegations in a pleading to which no responsive pleading is required or
25 permitted *[shall be]* **are** taken as denied or avoided.

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