

COUNCIL ON COURT PROCEDURES

DRAFT HISTORY

OF ORCP 57

2011-2013 BIENNIUM

1 JURORS

2 RULE 57

3 **A Challenging compliance with selection procedures.**

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

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

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

21 **B Jury; how drawn.** When the action is called for trial, the clerk shall draw names at
22 random from the names of jurors in attendance upon the court until the jury is completed or
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24 exhausted before the jury is complete, the sheriff, under the direction of the court, shall
25 summon from the bystanders, or from the body of the county, so many qualified persons as
26 may be necessary to complete the jury. Whenever the sheriff shall summon more than one

1 person at a time from the bystanders, or **from** the body of the county, the sheriff shall return a
2 list of the persons so summoned to the clerk. The clerk shall draw names at random from the
3 list until the jury is completed.

4 **C Examination of jurors.** When the full number of jurors has been called, they shall be
5 examined as to their qualifications, first by the court, then by the plaintiff, and then by the
6 defendant. The court shall regulate the examination in such a way as to avoid unnecessary
7 delay.

8 **D Challenges.**

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

11 D(1)(a) The want of any qualification[s] prescribed by ORS 10.030 for a person eligible
12 to act as a juror.

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

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

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

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

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

1 D(1)(g) Actual bias on the part of a juror. Actual bias is the existence of a state of mind
2 on the part of a juror that satisfies the court, in the exercise of sound discretion, that the juror
3 cannot try the issue impartially and without prejudice to the substantial rights of the party
4 challenging the juror. Actual bias may be in reference to: [(i)] the action; [(ii)] either party to the
5 action; [(iii)] the sex of the party, the party's attorney, a victim, or a witness; or [(iv)] a racial or
6 ethnic group [that] **of which** the party, the party's attorney, a victim, or a witness is a member
7 [of], or is perceived to be a member [of]. A challenge for actual bias may be taken for the cause
8 mentioned in this paragraph, but on the trial of such challenge, although it should appear that
9 the juror challenged has formed or expressed an opinion upon the merits of the cause from
10 what the juror may have heard or read, such opinion shall not of itself be sufficient to sustain
11 the challenge, but the court must be satisfied, from all **of** the circumstances, that the juror
12 cannot disregard such opinion and try the issue impartially.

13 **D(2) Peremptory challenges; number.** A peremptory challenge is an objection to a juror
14 for which no reason need be given, but upon which the court shall exclude such juror. Either
15 party is entitled to no more than three peremptory challenges if the jury consists of more than
16 six jurors, and no more than two peremptory challenges if the jury consists of six jurors. Where
17 there are multiple parties plaintiff or defendant in the case, or where cases have been
18 consolidated for trial, the parties plaintiff or defendant must join in the challenge and are
19 limited to the number of peremptory challenges specified in this subsection[,] except the court,
20 in its discretion and in the interest of justice, may allow any of the parties, single or multiple,
21 additional peremptory challenges and permit them to be exercised separately or jointly.

22 **D(3) Conduct of peremptory challenges.** After the full number of jurors [have] **has** been
23 passed for cause, peremptory challenges shall be conducted by written ballot or outside **of** the
24 presence of the jury as follows: the plaintiff may challenge one and then the defendant may
25 challenge one, and so alternating until the peremptory challenges shall be exhausted. After
26 each challenge, the panel shall be filled and the additional juror passed for cause before

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

12 **D(4) Challenge of peremptory challenge exercised on basis of race, ethnicity, or sex.**

13 D(4)(a) A party may not exercise a peremptory challenge on the basis of race, ethnicity,
14 or sex. Courts shall presume that a peremptory challenge does not violate this paragraph, but
15 the presumption may be rebutted in the manner provided by this section.

16 D(4)(b) If a party believes that the adverse party is exercising a peremptory challenge
17 on a basis prohibited under paragraph (a) of this subsection, the party may object to the
18 exercise of the challenge. The objection must be made before the court excuses the juror. The
19 objection must be made outside of the presence of [potential] the jurors. The party making the
20 objection has the burden of establishing a prima facie case that the adverse party challenged
21 the [potential] juror on the basis of race, ethnicity, or sex.

22 D(4)(c) If the court finds that the party making the objection has established a prima
23 facie case that the adverse party challenged a prospective juror on the basis of race, ethnicity,
24 or sex, the burden shifts to the adverse party to show that the peremptory challenge was not
25 exercised on the basis of race, ethnicity, or sex. If the adverse party fails to meet the burden of
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1 justification as to the questioned challenge, the presumption that the challenge does not
2 violate paragraph (a) of this subsection is rebutted.

3 D(4)(d) If the court finds that the adverse party challenged a prospective juror on the
4 basis of race, ethnicity, or sex, the court shall disallow the peremptory challenge.

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

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

23 **F(1) Definition. Alternate jurors are prospective replacement jurors empanelled at the**
24 **court's discretion to serve in the event that the number of jurors required under Rule 56 is**
25 **decreased by illness, incapacitation, or disqualification of one or more jurors selected.**
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13 D(4)(a) A party may not exercise a peremptory challenge on the basis of race, ethnicity,
14 or sex. Courts shall presume that a peremptory challenge does not violate this paragraph, but
15 the presumption may be rebutted in the manner provided by this section.

16 D(4)(b) If a party believes that the adverse party is exercising a peremptory challenge
17 on a basis prohibited under paragraph (a) of this subsection, the party may object to the
18 exercise of the challenge. The objection must be made before the court excuses the juror. The
19 objection must be made outside of the presence of [potential] the jurors. The party making the
20 objection has the burden of establishing a prima facie case that the adverse party challenged
21 the [potential] juror on the basis of race, ethnicity, or sex.

22 D(4)(c) If the court finds that the party making the objection has established a prima
23 facie case that the adverse party challenged a prospective juror on the basis of race, ethnicity,
24 or sex, the burden shifts to the adverse party to show that the peremptory challenge was not
25 exercised on the basis of race, ethnicity, or sex. If the adverse party fails to meet the burden of
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1 justification as to the questioned challenge, the presumption that the challenge does not
2 violate paragraph (a) of this subsection is rebutted.

3 D(4)(d) If the court finds that the adverse party challenged a prospective juror on the
4 basis of race, ethnicity, or sex, the court shall disallow the peremptory challenge.

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

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

23 **F(1) Definition. Alternate jurors are prospective replacement jurors empanelled at the**
24 **court's discretion [to ensure] in the event that the number of [primary] jurors required under**
25 **[ORCP] Rule 56 [will not be irreversibly] is decreased by illness, incapacitation, or**
26 **disqualification of one or more [primary] jurors selected.**

1 F(2) Decision to allow alternate jurors. The court has sole discretion over whether
2 alternate jurors may be empanelled. If the court allows, not more than six alternate jurors
3 may be empanelled [in addition to the primary jury].

4 F(3) Peremptory challenges; number. In addition to challenges otherwise allowed by
5 these rules or any other rule or statute, each party is entitled to: (a) one peremptory
6 challenge if one or two alternate jurors are to be empanelled[,]; (b) two peremptory
7 challenges if three or four alternate jurors are to be empanelled[,]; and (c) three peremptory
8 challenges if five or six alternate jurors are to be empanelled. The [trial] court shall have
9 discretion as to when and how additional peremptory challenges may be used and how
10 alternate jurors are selected.

11 F(4) Duties and responsibilities. Alternate jurors shall be drawn in the same
12 manner[,]; shall have the same qualifications; shall be subject to the same examination and
13 challenge rules[,]; shall take the same oath[,]; and shall have the same functions, powers,
14 facilities, and privileges as [primary] the jurors throughout the trial, [up to the time] until the
15 case is submitted for deliberations. An alternate juror who does not replace a juror shall not
16 attend or otherwise participate in deliberations.

17 F(5) Installation and discharge. Alternate jurors shall be installed to replace any
18 [primary] jurors who become unable to perform their duties or are found to be disqualified
19 before the jury begins deliberations. Alternate jurors who do not replace jurors before the
20 beginning of deliberations and who have not been discharged may be installed to replace
21 jurors who become ill or otherwise are unable to complete deliberations. If an alternate juror
22 replaces a [primary] juror after deliberations have begun, the jury shall be instructed to begin
23 deliberations anew.

1 JURORS

2 RULE 57

3 **A Challenging compliance with selection procedures.**

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

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

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

21 **B Jury; how drawn.** When the action is called for trial, the clerk shall draw names at
22 random from the names of jurors in attendance upon the court until the jury is completed or
23 the names of jurors in attendance are exhausted. If the names of jurors in attendance become
24 exhausted before the jury is complete, the sheriff, under the direction of the court, shall
25 summon from the bystanders, or from the body of the county, so many qualified persons as
26 may be necessary to complete the jury. Whenever the sheriff shall summon more than one

1 person at a time from the bystanders or **from** the body of the county, the sheriff shall return a
2 list of the persons so summoned to the clerk. The clerk shall draw names at random from the
3 list until the jury is completed.

4 **C Examination of jurors.** When the full number of jurors has been called, they shall be
5 examined as to their qualifications, first by the court, then by the plaintiff, and then by the
6 defendant. The court shall regulate the examination in such a way as to avoid unnecessary
7 delay.

8 **D Challenges.**

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

11 D(1)(a) The want of any qualification[s] prescribed by ORS 10.030 for a person eligible
12 to act as a juror.

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

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

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

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

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

1 D(1)(g) Actual bias on the part of a juror. Actual bias is the existence of a state of mind
2 on the part of a juror that satisfies the court, in the exercise of sound discretion, that the juror
3 cannot try the issue impartially and without prejudice to the substantial rights of the party
4 challenging the juror. Actual bias may be in reference to: [(i)] the action; [(ii)] either party to the
5 action; [(iii)] the sex of the party, the party's attorney, a victim, or a witness; or [(iv)] a racial or
6 ethnic group [that] **of which** the party, the party's attorney, a victim, or a witness is a member[
7 of], or is perceived to be a member[of]. A challenge for actual bias may be taken for the cause
8 mentioned in this paragraph, but on the trial of such challenge, although it should appear that
9 the juror challenged has formed or expressed an opinion upon the merits of the cause from
10 what the juror may have heard or read, such opinion shall not of itself be sufficient to sustain
11 the challenge, but the court must be satisfied, from all the circumstances, that the juror cannot
12 disregard such opinion and try the issue impartially.

13 **D(2) Peremptory challenges; number.** A peremptory challenge is an objection to a juror
14 for which no reason need be given, but upon which the court shall exclude such juror. Either
15 party is entitled to no more than three peremptory challenges if the jury consists of more than
16 six jurors, and no more than two peremptory challenges if the jury consists of six jurors. Where
17 there are multiple parties plaintiff or defendant in the case, or where cases have been
18 consolidated for trial, the parties plaintiff or defendant must join in the challenge and are
19 limited to the number of peremptory challenges specified in this subsection[,] except the court,
20 in its discretion and in the interest of justice, may allow any of the parties, single or multiple,
21 additional peremptory challenges and permit them to be exercised separately or jointly.

22 **D(3) Conduct of peremptory challenges.** After the full number of jurors [have] **has** been
23 passed for cause, peremptory challenges shall be conducted by written ballot or outside **of** the
24 presence of the jury as follows: the plaintiff may challenge one and then the defendant may
25 challenge one, and so alternating until the peremptory challenges shall be exhausted. After
26 each challenge, the panel shall be filled and the additional juror passed for cause before

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

12 **D(4) Challenge of peremptory challenge exercised on basis of race, ethnicity, or sex.**

13 D(4)(a) A party may not exercise a peremptory challenge on the basis of race, ethnicity,
14 or sex. Courts shall presume that a peremptory challenge does not violate this paragraph, but
15 the presumption may be rebutted in the manner provided by this section.

16 D(4)(b) If a party believes that the adverse party is exercising a peremptory challenge
17 on a basis prohibited under paragraph (a) of this subsection, the party may object to the
18 exercise of the challenge. The objection must be made before the court excuses the juror. The
19 objection must be made outside of the presence of [potential] the jurors. The party making the
20 objection has the burden of establishing a prima facie case that the adverse party challenged
21 the [potential] juror on the basis of race, ethnicity, or sex.

22 D(4)(c) If the court finds that the party making the objection has established a prima
23 facie case that the adverse party challenged a prospective juror on the basis of race, ethnicity,
24 or sex, the burden shifts to the adverse party to show that the peremptory challenge was not
25 exercised on the basis of race, ethnicity, or sex. If the adverse party fails to meet the burden of
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1 justification as to the questioned challenge, the presumption that the challenge does not
2 violate paragraph (a) of this subsection is rebutted.

3 D(4)(d) If the court finds that the adverse party challenged a prospective juror on the
4 basis of race, ethnicity, or sex, the court shall disallow the peremptory challenge.

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

9 **F Alternate jurors.** The court may direct that not more than six **additional** jurors [*in*
10 *addition to the regular jury be called and*] **be** [*impanelled*] **empanelled** to sit as alternate jurors.
11 Alternate jurors [*in the order in which they are called*] shall replace jurors who [*prior to the*
12 *time the jury retired to consider its verdict,*] become or are found to be unable or disqualified to
13 perform their duties. Alternate jurors shall be drawn in the same manner[,] shall have the
14 same qualifications[,] shall be subject to the same examination and challenges[,] shall take the
15 same oath[,] and shall have the same functions, powers, facilities, and privileges as the
16 [*regular*] jurors. **An alternate juror who does not replace a juror shall not attend or otherwise**
17 **participate in deliberations.** An alternate juror who does not replace a [*regular*] juror shall be
18 discharged **by the court either** as the jury retires to consider its verdict **or after the jury has**
19 **reached a verdict or otherwise been discharged.** **Alternate jurors who do not replace jurors**
20 **before the beginning of deliberations and who have not been discharged may be appointed**
21 **to replace jurors who become ill or otherwise are unable to complete deliberations. If an**
22 **alternate juror replaces a juror after deliberations have begun, the jury shall be instructed to**
23 **begin deliberations anew.** Each side is entitled to one peremptory challenge in addition to
24 those otherwise allowed by these rules or **any** other rule or statute if one or two alternate
25 jurors are to be [*impanelled*] **empanelled**, two peremptory challenges if three or four alternate
26 jurors are to be [*impanelled*] **empanelled**, and three peremptory challenges if five or six

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1 JURORS

2 RULE 57

3 **A Challenging compliance with selection procedures.**

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

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22 random from the names of jurors in attendance upon the court until the jury is completed or
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24 exhausted before the jury is complete, the sheriff, under the direction of the court, shall
25 summon from the bystanders, or the body of the county, so many qualified persons as may be
26 necessary to complete the jury. Whenever the sheriff shall summon more than one person at a

1 time from the bystanders or the body of the county, the sheriff shall return a list of the persons
2 so summoned to the clerk. The clerk shall draw names at random from the list until the jury is
3 completed.

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5 examined as to their qualifications, first by the court, then by the plaintiff, and then by the
6 defendant. The court shall regulate the examination in such a way as to avoid unnecessary
7 delay.

8 **D Challenges.**

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

11 D(1)(a) The want of any qualification[s] prescribed by ORS 10.030 for a person eligible
12 to act as a juror.

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

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

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

2 RULE 57

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

1 D(1)(g) Actual bias on the part of a juror. Actual bias is the existence of a state of mind
2 on the part of a juror that satisfies the court, in the exercise of sound discretion, that the juror
3 cannot try the issue impartially and without prejudice to the substantial rights of the party
4 challenging the juror. Actual bias may be in reference to: [(i)] the action; [(ii)] either party to the
5 action; [(iii)] the sex of the party, the party's attorney, a victim, or a witness; or [(iv)] a racial or
6 ethnic group [that] **of which** the party, the party's attorney, a victim, or a witness is a member[
7 of], or is perceived to be a member[of]. A challenge for actual bias may be taken for the cause
8 mentioned in this paragraph, but on the trial of such challenge, although it should appear that
9 the juror challenged has formed or expressed an opinion upon the merits of the cause from
10 what the juror may have heard or read, such opinion shall not of itself be sufficient to sustain
11 the challenge, but the court must be satisfied, from all the circumstances, that the juror cannot
12 disregard such opinion and try the issue impartially.

13 **D(2) Peremptory challenges; number.** A peremptory challenge is an objection to a juror
14 for which no reason need be given, but upon which the court shall exclude such juror. Either
15 party is entitled to no more than three peremptory challenges if the jury consists of more than
16 six jurors, and no more than two peremptory challenges if the jury consists of six jurors. Where
17 there are multiple parties plaintiff or defendant in the case, or where cases have been
18 consolidated for trial, the parties plaintiff or defendant must join in the challenge and are
19 limited to the number of peremptory challenges specified in this subsection[,] except the court,
20 in its discretion and in the interest of justice, may allow any of the parties, single or multiple,
21 additional peremptory challenges and permit them to be exercised separately or jointly.

22 **D(3) Conduct of peremptory challenges.** After the full number of jurors [have] **has** been
23 passed for cause, peremptory challenges shall be conducted by written ballot or outside the
24 presence of the jury as follows: the plaintiff may challenge one and then the defendant may
25 challenge one, and so alternating until the peremptory challenges shall be exhausted. After
26 each challenge, the panel shall be filled and the additional juror passed for cause before

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

12 **D(4) Challenge of peremptory challenge exercised on basis of race, ethnicity, or sex.**

13 D(4)(a) A party may not exercise a peremptory challenge on the basis of race, ethnicity,
14 or sex. Courts shall presume that a peremptory challenge does not violate this paragraph, but
15 the presumption may be rebutted in the manner provided by this section.

16 D(4)(b) If a party believes that the adverse party is exercising a peremptory challenge
17 on a basis prohibited under paragraph (a) of this subsection, the party may object to the
18 exercise of the challenge. The objection must be made before the court excuses the juror. The
19 objection must be made outside of the presence of [potential] the jurors. The party making the
20 objection has the burden of establishing a prima facie case that the adverse party challenged
21 the [potential] juror on the basis of race, ethnicity, or sex.

22 D(4)(c) If the court finds that the party making the objection has established a prima
23 facie case that the adverse party challenged a prospective juror on the basis of race, ethnicity,
24 or sex, the burden shifts to the adverse party to show that the peremptory challenge was not
25 exercised on the basis of race, ethnicity, or sex. If the adverse party fails to meet the burden of
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1 justification as to the questioned challenge, the presumption that the challenge does not
2 violate paragraph (a) of this subsection is rebutted.

3 D(4)(d) If the court finds that the adverse party challenged a prospective juror on the
4 basis of race, ethnicity, or sex, the court shall disallow the peremptory challenge.

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

9 **F Alternate jurors.** The court may direct that not more than six jurors in addition to the
10 [regular] jury be called and [impanelled] **empanelled** to sit as alternate jurors. Alternate jurors,
11 in the order in which they are called, shall replace jurors who, [prior to the time] **before** the jury
12 [retired] **retires** to consider its verdict, become or are found to be unable or disqualified to
13 perform their duties. Alternate jurors shall be drawn in the same manner[,] shall have the
14 same qualifications[,] shall be subject to the same examination and challenges[,] shall take the
15 same oath[,] and shall have the same functions, powers, facilities, and privileges as the
16 [regular] jurors. An alternate juror who does not replace a [regular] juror shall be discharged **by**
17 **the court either** as the jury retires to consider its verdict **or after the jury has reached a verdict**
18 **or otherwise been discharged. Alternate jurors who do not replace jurors before the**
19 **beginning of deliberations and who have not been discharged may be appointed to replace**
20 **jurors who become ill or otherwise are unable to complete deliberations. If an alternate juror**
21 **replaces a juror after deliberations have begun, the jury shall be instructed to begin**
22 **deliberations anew.** Each side is entitled to one peremptory challenge in addition to those
23 otherwise allowed by these rules or other rule or statute if one or two alternate jurors are to be
24 [impanelled] **empanelled**, two peremptory challenges if three or four alternate jurors are to be
25 [impanelled] **empanelled**, and three peremptory challenges if five or six alternate jurors are to
26 be [impanelled] **empanelled**. [The additional peremptory challenges may be used against an

1 *alternate juror only, and the other peremptory challenges allowed by these rules or other rule or*
2 *statute shall not be used against an alternate juror.] The [trial] court shall have discretion as*
3 *to when and how additional peremptory challenges may be used and how alternate jurors*
4 *are selected.*

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1 JURORS

2 RULE 57

3 **A Challenging compliance with selection procedures.**

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

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

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

21 **B Jury; how drawn.** When the action is called for trial, the clerk shall draw names at
22 random from the names of jurors in attendance upon the court until the jury is completed or
23 the names of jurors in attendance are exhausted. If the names of jurors in attendance become
24 exhausted before the jury is complete, the sheriff, under the direction of the court, shall
25 summon from the bystanders, or the body of the county, so many qualified persons as may be
26 necessary to complete the jury. Whenever the sheriff shall summon more than one person at a

1 time from the bystanders or the body of the county, the sheriff shall return a list of the persons
2 so summoned to the clerk. The clerk shall draw names at random from the list until the jury is
3 completed.

4 **C Examination of jurors.** When the full number of jurors has been called, [*they*] **each**
5 shall be examined as to [their] **his or her** qualifications, first by the court, then by the plaintiff,
6 and then by the defendant. The court shall regulate the examination in such a way as to avoid
7 unnecessary delay.

8 **D Challenges.**

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

11 D(1)(a) The want of any qualification[s] prescribed by ORS 10.030 for a person eligible
12 to act as a juror.

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

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

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

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

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

1 D(1)(g) Actual bias on the part of a juror. Actual bias is the existence of a state of mind
2 on the part of a juror that satisfies the court, in the exercise of sound discretion, that the juror
3 cannot try the issue impartially and without prejudice to the substantial rights of the party
4 challenging the juror. Actual bias may be in reference to: [(i)] the action; [(ii)] either party to the
5 action; [(iii)] the sex of the party, the party's attorney, a victim, or a witness; or [(iv)] a racial or
6 ethnic group [that] **of which** the party, the party's attorney, a victim, or a witness is a member[
7 of], or is perceived to be a member[of]. A challenge for actual bias may be taken for the cause
8 mentioned in this paragraph, but on the trial of such challenge, although it should appear that
9 the juror challenged has formed or expressed an opinion upon the merits of the cause from
10 what the juror may have heard or read, such opinion shall not of itself be sufficient to sustain
11 the challenge, but the court must be satisfied, from all the circumstances, that the juror cannot
12 disregard such opinion and try the issue impartially.

13 **D(2) Peremptory challenges; number.** A peremptory challenge is an objection to a juror
14 for which no reason need be given, but upon which the court shall exclude such juror. Either
15 party is entitled to no more than three peremptory challenges if the jury consists of more than
16 six jurors, and no more than two peremptory challenges if the jury consists of six jurors. Where
17 there are multiple parties plaintiff or defendant in the case, or where cases have been
18 consolidated for trial, the parties plaintiff or defendant must join in the challenge and are
19 limited to the number of peremptory challenges specified in this subsection[,] except the court,
20 in its discretion and in the interest of justice, may allow any of the parties, single or multiple,
21 additional peremptory challenges and permit them to be exercised separately or jointly.

22 **D(3) Conduct of peremptory challenges.** After the full number of jurors [have] **has** been
23 passed for cause, peremptory challenges shall be conducted by written ballot or outside the
24 presence of the jury as follows: the plaintiff may challenge one and then the defendant may
25 challenge one, and so alternating until the peremptory challenges shall be exhausted. After
26 each challenge, the panel shall be filled and the additional juror passed for cause before

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

12 **D(4) Challenge of peremptory challenge exercised on basis of race, ethnicity, or sex.**

13 D(4)(a) A party may not exercise a peremptory challenge on the basis of race, ethnicity,
14 or sex. Courts shall presume that a peremptory challenge does not violate this paragraph, but
15 the presumption may be rebutted in the manner provided by this section.

16 D(4)(b) If a party believes that the adverse party is exercising a peremptory challenge
17 on a basis prohibited under paragraph (a) of this subsection, the party may object to the
18 exercise of the challenge. The objection must be made before the court excuses the juror. The
19 objection must be made outside of the presence of [potential] the jurors. The party making the
20 objection has the burden of establishing a prima facie case that the adverse party challenged
21 the [potential] juror on the basis of race, ethnicity, or sex.

22 D(4)(c) If the court finds that the party making the objection has established a prima
23 facie case that the adverse party challenged a prospective juror on the basis of race, ethnicity,
24 or sex, the burden shifts to the adverse party to show that the peremptory challenge was not
25 exercised on the basis of race, ethnicity, or sex. If the adverse party fails to meet the burden of
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1 justification as to the questioned challenge, the presumption that the challenge does not
2 violate paragraph (a) of this subsection is rebutted.

3 D(4)(d) If the court finds that the adverse party challenged a prospective juror on the
4 basis of race, ethnicity, or sex, the court shall disallow the peremptory challenge.

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

9 **F Alternate jurors.** The court may direct that not more than six jurors in addition to the
10 [regular] jury be called and [impanelled] **empanelled** to sit as alternate jurors. Alternate jurors,
11 in the order in which they are called, shall replace jurors who, [prior to the time] **before** the jury
12 [retired] **retires** to consider its verdict, become or are found to be unable or disqualified to
13 perform their duties. Alternate jurors shall be drawn in the same manner[,] shall have the
14 same qualifications[,] shall be subject to the same examination and challenges[,] shall take the
15 same oath[,] and shall have the same functions, powers, facilities, and privileges as the
16 [regular] jurors. An alternate juror who does not replace a [regular] juror shall be discharged **by**
17 **the court either as the jury retires to consider its verdict or after the jury has reached a verdict**
18 **or otherwise been discharged. Alternate jurors who do not replace jurors before the**
19 **beginning of deliberations and who have not been discharged may be appointed to replace**
20 **jurors who become ill or otherwise are unable to complete deliberations. If an alternate juror**
21 **replaces a juror after deliberations have begun, the jury shall be instructed to begin**
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23 otherwise allowed by these rules or other rule or statute if one or two alternate jurors are to be
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26 be [impanelled] **empanelled**. The additional peremptory challenges may be used against an

1 | alternate juror only, and the other peremptory challenges allowed by these rules or other rule
2 | or statute shall not be used against an alternate juror.

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1 time from the bystanders or the body of the county, the sheriff shall return a list of the persons
2 so summoned to the clerk. The clerk shall draw names at random from the list until the jury is
3 completed.

4 **C Examination of jurors.** When the full number of jurors has been called, they shall be
5 examined as to their qualifications, first by the court, then by the plaintiff, and then by the
6 defendant. The court shall regulate the examination in such a way as to avoid unnecessary
7 delay.

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10 more of the following grounds:

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12 act as a juror.

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

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

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

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

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

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3 cannot try the issue impartially and without prejudice to the substantial rights of the party
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10 juror may have heard or read, such opinion shall not of itself be sufficient to sustain the
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12 disregard such opinion and try the issue impartially.

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18 consolidated for trial, the parties plaintiff or defendant must join in the challenge and are
19 limited to the number of peremptory challenges specified in this subsection, except the court,
20 in its discretion and in the interest of justice, may allow any of the parties, single or multiple,
21 additional peremptory challenges and permit them to be exercised separately or jointly.

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25 challenge one, and so alternating until the peremptory challenges shall be exhausted. After
26 each challenge, the panel shall be filled and the additional juror passed for cause before

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2 peremptory challenge unless the full number of jurors are in the jury box at the time. The
3 refusal to challenge by either party in the order of alternation shall not defeat the adverse party
4 of such adverse party's full number of challenges, and such refusal by a party to exercise a
5 challenge in proper turn shall conclude that party as to the jurors once accepted by that party,
6 and if that party's right of peremptory challenge be not exhausted, that party's further
7 challenges shall be confined, in that party's proper turn, to such additional jurors as may be
8 called. The court may, for good cause shown, permit a challenge to be taken to any juror before
9 the jury is completed and sworn, notwithstanding the juror challenged may have been
10 theretofore accepted, but nothing in this subsection shall be construed to increase the number
11 of peremptory challenges allowed.

12 **D(4) Challenge of peremptory challenge exercised on basis of race, ethnicity or sex.**

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14 or sex. Courts shall presume that a peremptory challenge does not violate this paragraph, but
15 the presumption may be rebutted in the manner provided by this section.

16 D(4)(b) If a party believes that the adverse party is exercising a peremptory challenge
17 on a basis prohibited under paragraph (a) of this subsection, the party may object to the
18 exercise of the challenge. The objection must be made before the court excuses the juror. The
19 objection must be made outside of the presence of potential jurors. The party making the
20 objection has the burden of establishing a prima facie case that the adverse party challenged
21 the potential juror on the basis of race, ethnicity or sex.

22 D(4)(c) If the court finds that the party making the objection has established a prima
23 facie case that the adverse party challenged a prospective juror on the basis of race, ethnicity
24 or sex, the burden shifts to the adverse party to show that the peremptory challenge was not
25 exercised on the basis of race, ethnicity or sex. If the adverse party fails to meet the burden of
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1 justification as to the questioned challenge, the presumption that the challenge does not
2 violate paragraph (a) of this subsection is rebutted.

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4 basis of race, ethnicity or sex, the court shall disallow the peremptory challenge.

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6 affirmation shall be administered to the jurors, in substance that they and each of them will
7 well and truly try the matter in issue between the plaintiff and defendant, and a true verdict
8 give according to the law and evidence as given them on the trial.

9 **F Alternate jurors.** The court may direct that not more than six jurors in addition to the
10 regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in
11 which they are called shall replace jurors who, prior to the time the jury retired to consider its
12 verdict, become or are found to be unable or disqualified to perform their duties. Alternate
13 jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to
14 the same examination and challenges, shall take the same oath, and shall have the same
15 functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does
16 not replace a regular juror shall be discharged **by the court either** as the jury retires to consider
17 its verdict **or after the jury has reached a verdict or otherwise been discharged.** **Alternate**
18 **jurors who are not required to replace jurors before the beginning of deliberations and who**
19 **have not been discharged may be appointed to replace jurors who become ill or otherwise**
20 **are unable to complete deliberations. If an alternate juror is required to replace a juror after**
21 **deliberations have begun, the jury shall be instructed to begin deliberations anew.** Each side
22 is entitled to one peremptory challenge in addition to those otherwise allowed by these rules or
23 other rule or statute if one or two alternate jurors are to be impanelled, two peremptory
24 challenges if three or four alternate jurors are to be impanelled, and three peremptory
25 challenges if five or six alternate jurors are to be impanelled. The additional peremptory
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1 challenges may be used against an alternate juror only, and the other peremptory challenges
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