

AMENDMENTS

TO ORCP 16

promulgated by

COUNCIL ON COURT PROCEDURES

1980 to 2024

RULE 16
FORM OF PLEADINGS

A. Captions; names of parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the register number of the cause, and a designation in accordance with Rule 13 B. In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

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, 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 or defenses shall be separately stated and numbered.

C. Consistency in pleading alternative statements. Inconsistent claims or defenses are not objectionable, and when a party is in doubt as to which of two or more statements of fact is true, the party may allege them in the alternative. A party may also state as many separate claims or defenses as the party has, regardless of consistency and whether based upon legal or equitable grounds or upon both. All statements shall be made subject to the obligation set forth in Rule 17.

D. Adoption by reference. Statements in a pleading may be adopted by reference in a different part of the same pleading.

COMMENT

The Council intends to retain existing Oregon practice in sections 16 A., 16 B., and 16 D., including separate statements of claims and defenses required by ORS 16.090. Section A. is based on ORS 16.060 and Federal Rule 10(a). Section B. is based on ORS 16.090 and Federal Rule 10(b). Section C. is based on Michigan General Court Rule 111.9. Section 16 C. is intended to eliminate any objection based upon hypothetical, alternative, and inconsistent pleading as such. Inconsistent statements of simple facts clearly within the knowledge of the pleader would, however, be improper because of the obligation to plead truthfully under ORCP 17 A.

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 or defenses] Each separate claim or defense shall be separately stated [and numbered].

COMMENT

Section B. has been changed to require the numbering of paragraphs in Arabic numerals and to require that each separate claim or defense shall be separately stated, but that numbering of paragraphs shall continue consecutively throughout a pleading.

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A. **Captions; names of parties.** Every pleading shall contain a caption setting forth the name of the court, the title of the action, the register number of the cause, and a designation in accordance with Rule 13 B. In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

B. **Concise and direct statement; paragraphs; separate statement of claims or defenses.** Every pleading shall consist of plain and concise statements in 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. Each separate claim or defense shall be separately stated. Within each claim alternative theories of recovery shall be identified as separate counts.

C. **Consistency in pleading alternative statements.** Inconsistent claims or defenses are not objectionable, and when a party is in doubt as to which of two or more statements of fact is true, the party may allege them in the alternative. A party may also state as many separate claims or defenses as the party has, regardless of consistency and whether based upon legal or

equitable grounds or upon both. All statements shall be made subject to the obligation set forth in Rule 17.

D. Adoption by reference. Statements in a pleading may be adopted by reference in a different part of the same pleading.

COMMENT

Denominating alternative theories of recovery within a claim as "counts" is currently considered good pleading. The rule change to ORCP 16 B is designed to codify and make uniform what is widely practiced.

1 | **FORM OF PLEADINGS**

2 | **RULE 16**

3 | **A Captions; names of parties.** Every pleading [shall] **must** contain a caption setting forth the
4 | name of the court, the title of the action, the register number of the cause, and a designation in
5 | accordance with Rule 13 B. In the complaint the title of the action [shall] **must** include the names of
6 | all the parties, but in other pleadings it is sufficient to state the name of the first party on each side
7 | with an appropriate indication of other parties.

8 | **B Pseudonyms. Each party must be identified by the party's name except that a party may**
9 | **seek a court order permitting use of a pseudonym when otherwise permitted by law.**

10 | **[B] C Concise and direct statement; paragraphs; separate statement of claims or defenses.**
11 | Every pleading [shall] **must** consist of plain and concise statements in paragraphs consecutively
12 | numbered throughout the pleading with Arabic numerals, the contents of which [shall] **must** be
13 | limited as far as practicable to a statement of a single set of circumstances, and a paragraph may be
14 | referred to by number in all succeeding pleadings. Each separate claim or defense [shall] **must** be
15 | separately stated. Within each claim alternative theories of recovery [shall] **must** be identified as
16 | separate counts.

17 | **[C] D Consistency in pleading alternative statements.** Inconsistent claims or defenses are not
18 | objectionable[,] and, when a party is in doubt as to which of two or more statements of fact is true,
19 | the party may allege them in the alternative. A party may also state as many separate claims or
20 | defenses as the party has, regardless of consistency and whether based [upon] **on** legal or equitable
21 | grounds or [upon] both. All statements [shall] **must** be made subject to the obligation set forth in
22 | Rule 17.

23 | **[D] E Adoption by reference.** Statements in a pleading may be adopted by reference in a
24 | different part of the same pleading.

2017-2019 BIENNIUM STAFF COMMENT TO RULE 16

Note: This staff comment is provided as a convenience to those who read the Oregon Rules of Civil Procedure and have a general question as to the impetus for a particular amendment during the 2017-2019 biennium. Language in this comment was circulated to members of the Council on Court Procedures, but was not voted on or approved by the Council. This comment is neither legislative history for purposes of construction, as in statutory construction, to determine the intent of the Council in making any amendment, nor does it establish the meaning of any rule that has been amended. For the purpose of construing the Oregon Rules of Civil Procedure, the only authoritative legislative history is found in the Council's minutes of its deliberations. The Council's minutes can be found at www.counciloncourtprocedures.org. If the Legislative Assembly amended a rule, the legislative history for the Legislature's amendment can be found at www.oregonlegislature.gov.

An amendment was made to Rule 16, adding a new section B and re-designating the previous section 16 B, section 16 C, and section 16 D as section 16 C, section 16 D, and section 16 E, respectively. The amendment was in response to a comment from a judge noting that supplemental local rules in Multnomah County (SLR 2.035) and in Clackamas County (SLR 2.016) appeared to authorize known parties to engage in litigation under fictitious names. The comment noted that Rule 26 A appears to prohibit the practice: "Every action shall be prosecuted in the name of the real party in interest." The comment observed that Rule 16 A also appeared to require the use of the parties' names. (ORCP 20 H authorizes the use of fictitious names "[w]hen a party is ignorant of the name of an opposing party"; such parties are generally designated as "John Doe" or "Jane Doe.") Further, Article I, Section 10, of the Oregon Constitution seems to mandate open courts: "No court shall be secret, but justice shall be administered openly . . ." The judge's comment observed that, contrary to the rules, litigants are seemingly filing and litigating cases using identifiers other than their true names, particularly when the subject matter of the cases is of a personal or embarrassing nature.

The Multnomah and Clackamas counties' supplemental local rules, nearly identical, allow parties to litigate cases under fictitious names, but only on motion. Council members noted that, when parties file cases using a name other than their true name, they frequently simply file the case and serve the complaint.

The Council determined that, if litigants are filing civil actions using names other than the plaintiffs' true names, and if the practice is not clearly prohibited by Article 1, Section 10, of the Oregon Constitution, there should be a procedure for the practice. The Council, in part based on Appellate Rule 2.25(4), determined that the practice is not strictly barred by Article I, Section 10. (Also, ORCP 26 A appears to be directed more as a prohibition on the use of proxies in litigation.) Therefore, the Council addressed the issue as procedural. If a party wishes to commence and litigate a case under a name other than his or her true name, a motion seeking leave to proceed under a pseudonym is appropriate. (The Council elected to refer to the practice as the use of a pseudonym, not a fictitious name; fictitious names are for unknown parties.)

Presumably such a motion would be presented ex parte, contemporaneously with filing the action. Section 16 B creates a procedure for seeking leave to litigate using a pseudonym; it does not create a substantive right to litigate using a pseudonym. It will be the litigant's responsibility to establish in the motion and in any supporting affidavits or declarations a factual and a legal basis to be granted leave to proceed using a pseudonym. The amendment likewise is neutral as to whether a plaintiff is required under Rule 3.5(b) of the Oregon Rules of Professional Conduct and Rule 3.9(A) of the Oregon Code of Judicial Conduct to give notice to the opposing party prior to presenting a motion to proceed using a pseudonym.

There are other amendments to Rule 16 that are of a technical nature for the purposes identified below; these are not expected to affect the meaning or operation of the rule.

1. The word "shall" is replaced with "will" twice in section 16 A, four times in section 16 B, and once in section 16 D, in keeping with current legislative drafting norms.
2. A comma in section 16 D is relocated to improve clarity.