

AMENDMENTS

TO ORCP 22

promulgated by

COUNCIL ON COURT PROCEDURES

1980 to 2024

RULE 22

COUNTERCLAIMS, CROSS-CLAIMS, AND
THIRD PARTY CLAIMS

A. Counterclaims. Each defendant may set forth as many counterclaims, both legal and equitable, as such defendant may have against a plaintiff.

B. Cross-claim against codefendant.

B.(1) In any action where two or more parties are joined as defendants, any defendant may in such defendant's answer allege a cross-claim against any other defendant. A cross-claim asserted against a codefendant must be one existing in favor of the defendant asserting the cross-claim and against another defendant, between whom a separate judgment might be had in the action and shall be: (a) one arising out of the occurrence or transaction set forth in the complaint; or (b) related to any property that is the subject matter of the action brought by plaintiff.

B.(2) A cross-claim may include a claim that the defendant against whom it is asserted is liable, or may be liable, to the defendant asserting the cross-claim for all or part of the claim asserted by the plaintiff.

B.(3) An answer containing a cross-claim shall be served upon the parties who have appeared.

C. Third party practice.

C.(1) At any time after commencement of the action, a defending party, as a third party plaintiff, may cause a summons

and complaint to be served upon a person not a party to the action who is or may be liable to the third party plaintiff for all or part of the plaintiff's claim against the third party plaintiff. The third party plaintiff need not obtain leave to make the service if the third party complaint is filed not later than 10 days after service of the third party plaintiff's original answer. Otherwise the third party plaintiff must obtain leave on motion upon notice to all parties to the action. Such leave shall not be given if it would substantially prejudice the rights of existing parties. The person served with the summons and third party complaint, hereinafter called the third party defendant, shall assert any defenses to the third party plaintiff's claim as provided in Rule 21 and counterclaims against the third party plaintiff and cross-claims against other third party defendants as provided in sections A. and B. of this rule. The third party defendant may assert against the plaintiff any defenses which the third party plaintiff has to the plaintiff's claim. The third party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third party plaintiff. The plaintiff may assert any claim against the third party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third party plaintiff, and the third party defendant

thereupon shall assert the third party defendant's defenses as provided in Rule 21 and the third party defendant's counter-claims and cross-claims as provided in this rule. Any party may move to strike the third party claim, or for its severance or separate trial. A third party may proceed under this section against any person not a party to the action who is or may be liable to the third party defendant for all or part of the claim made in the action against the third party defendant.

C.(2) A plaintiff against whom a counterclaim has been asserted may cause a third party to be brought in under circumstances which would entitle a defendant to do so under subsection C.(1) of this section.

D. Joinder of persons in contract actions.

D.(1) As used in this section of this rule:

D.(1)(a) "Maker" means the original party to the contract which is the subject of the action who is the predecessor in interest of the plaintiff under the contract; and

D.(1)(b) "Contract" includes any instrument or document evidencing a debt.

D.(2) The defendant may, in an action on a contract brought by an assignee of rights under that contract, join as a party to the action the maker of that contract if the defendant has a claim against the maker of the contract arising out of that contract.

D.(3) A defendant may, in an action on a contract brought by an assignee of rights under that contract, join as parties to

that action all or any persons liable for attorney fees under ORS 20.097.

D.(4) In any action against a party joined under this section of this rule, the party joined shall be treated as a defendant for purposes of service of summons and time to answer under Rule 7.

E. Separate trial. Upon motion of any party or on the court's own initiative, the court may order a separate trial of any counterclaim, cross-claim, or third party claim so alleged if to do so would: (1) be more convenient; (2) avoid prejudice; or (3) be more economical and expedite the matter.

COMMENT

This rule is almost identical to the provisions of existing ORS 13.180, 15.120, 16.305, 16.315, and 16.325. The Council added the fourth sentence of subsection 22 C.(1) to make clear that the trial judge should not give leave for a late impleader if this would prejudice existing parties. Section 22 E. was also changed slightly to allow a separate trial on the court's own initiative.

RULE 22

COUNTERCLAIMS, CROSS-CLAIMS, AND
THIRD PARTY CLAIMS

A. Counterclaims.

A.(1) Each defendant may set forth as many counterclaims, both legal and equitable, as such defendant may have against a plaintiff.

A.(2) A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

COMMENT

The new rules supersede ORS 18.100 as unnecessary in view of ORCP 22 A. This language is implicit in the existing rule but is taken from Federal Rule 13(c) to avoid any problem with elimination of ORS 18.100.

COUNTERCLAIMS,
CROSS-CLAIMS, AND THIRD
PARTY CLAIMS

RULE 22

C. Third party practice.

C.(1) [At any time after] After commencement of the action, a defending party, as a third party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third party plaintiff for all or part of the plaintiff's claim against the third party plaintiff as a matter of right not later than 90 days after service of the plaintiff's summons and complaint on the defending party. [The third party plaintiff need not obtain leave to make the service if the third party complaint is filed not later than 10 days after service of the third party plaintiff's original answer. Otherwise the third party plaintiff must obtain leave on motion upon notice to all parties to the action. Such leave shall not be given if it would substantially prejudice the rights of existing parties.] Otherwise the third party plaintiff must obtain agreement of parties who have appeared and leave of court. The person served with the summons and third party complaint, hereinafter called the third party defendant, shall assert any defenses to the third party plaintiff's claim

as provided in Rule 21 and counterclaims against the third party plaintiff and cross-claims against other third party defendants as provided in sections A. and B. of this rule. The third party defendant may assert against the plaintiff any defenses which the third party plaintiff has to the plaintiff's claim. The third party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third party plaintiff. The plaintiff may assert any claim against the third party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third party plaintiff, and the third party defendant thereupon shall assert the third party defendant's defenses as provided in Rule 21 and the third party defendant's counterclaims and cross-claims as provided in this rule. Any party may move to strike the third party claim, or for its severance or separate trial. A third party may proceed under this section against any person not a party to the action who is or may be liable to the third party defendant for all or part of the claim made in the action against the third party defendant.

C.(2) A plaintiff against whom a counterclaim has been asserted may cause a third party to be brought in under circumstances which would entitle a defendant to do so under

subsection C.(1) of this section.

COMMENT

The time for filing and serving a third party complaint will be changed from not later than 10 days after service of the third party plaintiff's original answer to not later than 90 days after service of the plaintiff's summons and complaint on the defending party. Within the 90 days, third parties may be pled in as a matter of right. After 90 days, third parties may only be pled in by agreement of the parties who have appeared and leave of court.

**COUNTERCLAIMS, CROSS-CLAIMS,
AND THIRD PARTY CLAIMS
RULE 22**

A. Counterclaims.

A(1) Each defendant may set forth as many counterclaims, both legal and equitable, as such defendant may have against a plaintiff.

A(2) A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

B. Cross-claim against codefendant.

B(1) In any action where two or more parties are joined as defendants, any defendant may in such defendant's answer allege a cross-claim against any other defendant. A cross-claim asserted against a codefendant must be one existing in favor of the defendant asserting the cross-claim and against another defendant, between whom a separate judgment might be had in the action and shall be: (a) one arising out of the occurrence or transaction set forth in the complaint; or (b) related to any property that is the subject matter of the action brought by plaintiff.

B(2) A cross-claim may include a claim that the defendant against whom it is asserted is liable, or may be liable, to the defendant asserting the cross-claim for all or part of the claim asserted by the plaintiff.

B(3) An answer containing a cross-claim shall be served

upon the parties who have appeared.

C. Third party practice.

C(1) After commencement of the action, a defending party, as a third party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third party plaintiff for all or part of the plaintiff's claim against the third party plaintiff as a matter of right not later than 90 days after service of the plaintiff's summons and complaint on the defending party. Otherwise the third party plaintiff must obtain agreement of parties who have appeared and leave of court. The person served with the summons and third party complaint, hereinafter called the third party defendant, shall assert any defenses to the third party plaintiff's claim as provided in Rule 21 and ~~may assert~~ counterclaims against the third party plaintiff and cross-claims against other third party defendants as provided in [~~sections A and B of~~] this rule. The third party defendant may assert against the plaintiff any defenses which the third party plaintiff has to the plaintiff's claim. The third party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third party plaintiff. The plaintiff may assert any claim against the third party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third party plaintiff, and the third party defendant thereupon shall assert

the third party defendant's defenses as provided in Rule 21 and **may assert** the third party defendant's counterclaims and cross-claims as provided in this rule. Any party may move to strike the third party claim, or for its severance or separate trial. A third party may proceed under this section against any person not a party to the action who is or may be liable to the third party defendant for all or part of the claim made in the action against the third party defendant.

C(2) A plaintiff against whom a counterclaim has been asserted may cause a third party to be brought in under circumstances which would entitle a defendant to do so under subsection C(1) of this section.

D. Joinder of additional parties.

D(1) Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 28 and 29.

D(2) A defendant may, in an action on a contract brought by an assignee of rights under that contract, join as parties to that action all or any persons liable for attorney fees under ORS 20.097. As used in this subsection "contract" includes any instrument or document evidencing a debt.

D(3) In any action against a party joined under this section of this rule, the party joined shall be treated as a defendant for purposes of service of summons and time to answer under Rule 7.

E. Separate trial. Upon motion of any party or on the

court's own initiative, the court may order a separate trial of any counterclaim, cross-claim, or third party claim so alleged if to do so would: (1) be more convenient; (2) avoid prejudice; or (3) be more economical and expedite the matter.

COMMENT

22 C(1) is amended to confirm the Council's intent regarding the meaning of the prior language. The amendment makes clear that, as with counterclaims and cross-claims generally under the ORCP, counterclaims by third-party defendants against plaintiffs or third-party plaintiffs, and cross-claims by third-party defendants against third-party co-defendants, are all permissive rather than compulsory.

1 **COUNTERCLAIMS, CROSS-CLAIMS, AND [THIRD PARTY] THIRD-PARTY CLAIMS**

2 **RULE 22**

3 **A Counterclaims.**

4 A(1) Each defendant may set forth as many counterclaims, both legal and equitable, as
5 [such] **that** defendant may have against a plaintiff.

6 A(2) A counterclaim may or may not diminish or defeat the recovery sought by the
7 opposing party. It may claim relief exceeding in amount or different in kind from that sought in
8 the pleading of the opposing party.

9 **B Cross-claim against codefendant.**

10 B(1) In any action where two or more parties are joined as defendants, any defendant
11 may in [such] **that** defendant's answer allege a cross-claim against any other defendant. A
12 cross-claim asserted against a codefendant must be one existing in favor of the defendant
13 asserting the cross-claim and against another defendant, between whom a separate judgment
14 might be had in the action, and shall be: (a) one arising out of the occurrence or transaction
15 set forth in the complaint[:] or [(b)] related to any property that is the subject matter of the
16 action brought by plaintiff.

17 B(2) A cross-claim may include a claim that the defendant against whom it is asserted is
18 liable, or may be liable, to the defendant asserting the cross-claim for all or part of the claim
19 asserted by the plaintiff.

20 B(3) An answer containing a cross-claim shall be served [upon] **on** the parties who have
21 appeared.

22 **C [Third party] Third-party practice.**

23 C(1) After commencement of the action, a defending party, as a [third party] **third-party**
24 plaintiff, may cause a summons and complaint to be served [upon] **on** a person not a party to
25 the action who is or may be liable to the [third party] **third-party** plaintiff for all or part of the
26 plaintiff's claim against the [third party] **third-party** plaintiff as a matter of right not later than

1 90 days after service of the plaintiff's summons and complaint on the defending party.
2 Otherwise the [third party] **third-party** plaintiff must obtain agreement of parties who have
3 appeared and leave of court. The person served with the summons and [third party] **third-**
4 **party** complaint, hereinafter called the [third party] **third-party** defendant, shall assert any
5 defenses to the [third party] **third-party** plaintiff's claim as provided in Rule 21 and may assert
6 counterclaims against the [third party] **third-party** plaintiff and cross-claims against other [third
7 party] **third-party** defendants as provided in this rule. The [third party] **third-party** defendant
8 may assert against the plaintiff any defenses [which] **that** the [third party] **third-party** plaintiff
9 has to the plaintiff's claim. The [third party] **third-party** defendant may also assert any claim
10 against the plaintiff arising out of the transaction or occurrence that is the subject matter of the
11 plaintiff's claim against the [third party] **third-party** plaintiff. [The plaintiff] **Any party** may
12 assert any claim against [the third party] **a third-party** defendant arising out of the transaction
13 or occurrence that is the subject matter of the plaintiff's claim against the [third party] **third-**
14 **party** plaintiff, and the [third party] **third-party** defendant thereupon shall assert the [third
15 party] **third-party** defendant's defenses as provided in Rule 21 and may assert the [third party]
16 **third-party** defendant's counterclaims and cross-claims as provided in this rule. Any party may
17 move to strike the [third party] **third-party** claim, or for its severance or separate trial. A [third
18 party] **third-party defendant** may proceed under this section against any person not a party to
19 the action who is or may be liable to the [third party] **third-party** defendant for all or part of the
20 claim made in the action against the [third party] **third-party** defendant.

21 C(2) A plaintiff against whom a counterclaim has been asserted may cause a [third
22 party] **third-party defendant** to be brought in under circumstances [which] **that** would entitle a
23 defendant to do so under subsection C(1) of this section.

24 **D Joinder of additional parties.**

25 D(1) Persons other than those made parties to the original action may be made parties
26 to a counterclaim or cross-claim in accordance with the provisions of [Rules 28 and 29] **Rule 28**

1 **and Rule 29.**

2 D(2) A defendant may, in an action on a contract brought by an assignee of rights under
3 that contract, join as parties to that action all or any persons liable for attorney fees under ORS
4 20.097. As used in this subsection “contract” includes any instrument or document evidencing a
5 debt.

6 D(3) In any action against a party joined under this section of this rule, the party joined
7 shall be treated as a defendant for purposes of service of summons and time to answer under
8 Rule 7.

9 **E Separate trial.** *[Upon]* **On the** motion of any party or on the court’s own initiative, the
10 court may order a separate trial of any counterclaim, cross-claim, or *[third party]* **third-party**
11 claim so alleged if to do so would[: *(1) be more convenient; (2) avoid prejudice; or (3)*] **be more**
12 **convenient, avoid prejudice, or** be more economical and expedite the matter.

1 **COUNTERCLAIMS, CROSS-CLAIMS, AND [THIRD PARTY] THIRD-PARTY CLAIMS**

2 **RULE 22**

3 **A Counterclaims.**

4 A(1) Each defendant may set forth as many counterclaims, both legal and equitable, as
5 [such] **that** defendant may have against a plaintiff.

6 A(2) A counterclaim may or may not diminish or defeat the recovery sought by the
7 opposing party. It may claim relief exceeding in amount or different in kind from that sought in
8 the pleading of the opposing party.

9 **B Cross-claim against codefendant.**

10 B(1) In any action where two or more parties are joined as defendants, any defendant
11 may in [such] **that** defendant's answer allege a cross-claim against any other defendant. A
12 cross-claim asserted against a codefendant must be one existing in favor of the defendant
13 asserting the cross-claim and against another defendant, between whom a separate judgment
14 might be had in the action, and shall be: (a) one arising out of the occurrence or transaction
15 set forth in the complaint[:]; or (b) related to any property that is the subject matter of the
16 action brought by plaintiff.

17 B(2) A cross-claim may include a claim that the defendant against whom it is asserted is
18 liable, or may be liable, to the defendant asserting the cross-claim for all or part of the claim
19 asserted by the plaintiff.

20 B(3) An answer containing a cross-claim shall be served [upon] **on** the parties who have
21 appeared.

22 **C [Third party] Third-party practice.**

23 C(1) After commencement of the action, a defending party, as a [third party] **third-party**
24 plaintiff, may cause a summons and complaint to be served [upon] **on** a person not a party to
25 the action who is or may be liable to the [third party] **third-party** plaintiff for all or part of the
26 plaintiff's claim against the [third party] **third-party** plaintiff as a matter of right not later than

1 90 days after service of the plaintiff's summons and complaint on the defending party.
2 Otherwise the [third party] **third-party** plaintiff must obtain agreement of parties who have
3 appeared and leave of court. The person served with the summons and [third party] **third-**
4 **party** complaint, hereinafter called the [third party] **third-party** defendant, shall assert any
5 defenses to the [third party] **third-party** plaintiff's claim as provided in Rule 21 and may assert
6 counterclaims against the [third party] **third-party** plaintiff and cross-claims against other [third
7 party] **third-party** defendants as provided in this rule. The [third party] **third-party** defendant
8 may assert against the plaintiff any defenses [which] **that** the [third party] **third-party** plaintiff
9 has to the plaintiff's claim. The [third party] **third-party** defendant may also assert any claim
10 against the plaintiff arising out of the transaction or occurrence that is the subject matter of the
11 plaintiff's claim against the [third party] **third-party** plaintiff. [The plaintiff] **Any party** may
12 assert any claim against [the third party] **a third-party** defendant arising out of the transaction
13 or occurrence that is the subject matter of the plaintiff's claim against the [third party] **third-**
14 **party** plaintiff, and the [third party] **third-party** defendant thereupon shall assert the [third
15 party] **third-party** defendant's defenses as provided in Rule 21 and may assert the [third party]
16 **third-party** defendant's counterclaims and cross-claims as provided in this rule. Any party may
17 move to strike the [third party] **third-party** claim, or for its severance or separate trial. A [third
18 party] **third-party defendant** may proceed under this section against any person not a party to
19 the action who is or may be liable to the [third party] **third-party** defendant for all or part of the
20 claim made in the action against the [third party] **third-party** defendant.

21 C(2) A plaintiff against whom a counterclaim has been asserted may cause a [third
22 party] **third-party defendant** to be brought in under circumstances [which] **that** would entitle a
23 defendant to do so under subsection C(1) of this section.

24 **D Joinder of additional parties.**

25 D(1) Persons other than those made parties to the original action may be made parties
26 to a counterclaim or cross-claim in accordance with the provisions of [Rules 28 and 29] **Rule 28**

1 **and Rule 29.**

2 D(2) A defendant may, in an action on a contract brought by an assignee of rights under
3 that contract, join as parties to that action all or any persons liable for attorney fees under ORS
4 20.097. As used in this subsection “contract” includes any instrument or document evidencing a
5 debt.

6 D(3) In any action against a party joined under this section of this rule, the party joined
7 shall be treated as a defendant for purposes of service of summons and time to answer under
8 Rule 7.

9 **E Separate trial.** *[Upon]* **On the** motion of any party or on the court’s own initiative, the
10 court may order a separate trial of any counterclaim, cross-claim, or *[third party]* **third-party**
11 claim so alleged if to do so would[: *(1) be more convenient; (2) avoid prejudice; or (3)*] **be more**
12 **convenient, avoid prejudice, or** be more economical and expedite the matter.

2015-2017 BIENNIUM STAFF COMMENT TO RULE 9

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 2015-2017 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.

The significant change to Rule 22 is opening up the right for “any party” to assert a claim against a third-party defendant who is brought into the action, so long as the claim arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. (See, subsection C(1)). The current rule specifies only that “the plaintiff” may assert a claim against such third-party defendants. Some trial courts have restricted the right to litigate such claims to plaintiffs; other courts have allowed other parties to also pursue such claims, likely in the interest of judicial economy.

The adjectival use of “third-party” is properly hyphenated in the title, the lead line of section C, 23 times in section C, and once in section E without the intention to effect a change in the rule's meaning or operation. The noun “third-party defendant” replaces the phrase “third party,” once in subsection C(1) and once in subsection C(2), for clarity and without the intention to effect a change in the rule's meaning or operation.

A number of other changes specified in this paragraph are made to improve clarity, consistency, or grammar without the intention to effect a change in the rule's meaning or operation. The word “such” is replaced with “that” in subsections A(1) and B(1) to modernize the language. A comma is added in subsection B(1). Internal lettered headings and accompanying punctuation are deleted in subsection B(1) as contrary to Council format that reserves such headings for sections, paragraphs, and parts. The word “upon” is replaced with “on” in subsection B(3) and in subsection C(1), and with “on the” in section E. The word “which” is replaced with “that” in subsections C(1) and C(2). In section D the language “Rules 28 and 29” is replaced with “Rule 28 and Rule 29” for consistency and to facilitate word searches. Internal numbered headings and accompanying punctuation are deleted in section E as contrary to Council format that reserves such headings for subsections, subparagraphs, and subparts.

1 **COUNTERCLAIMS, CROSS-CLAIMS,**
2 **AND THIRD-PARTY CLAIMS**

3 **RULE 22**

4 **A Counterclaims.**

5 A(1) Each defendant may set forth as many counterclaims, both legal and equitable,
6 as that defendant may have against a plaintiff.

7 A(2) A counterclaim may or may not diminish or defeat the recovery sought by the
8 opposing party. It may claim relief exceeding in amount or different in kind from that sought in
9 the pleading of the opposing party.

10 **B Cross-claim against codefendant.**

11 B(1) In any action where two or more parties are joined as defendants, any defendant
12 may in that defendant's answer allege a cross-claim against any other defendant. A cross-claim
13 asserted against a codefendant must be one existing in favor of the defendant asserting the
14 cross-claim and against another defendant, between whom a separate judgment might be had
15 in the action, and *[shall]* **must** be one arising out of the occurrence or transaction set forth in
16 the complaint or related to any property that is the subject matter of the action brought by
17 plaintiff.

18 B(2) A cross-claim may include a claim that the defendant against whom it is asserted is
19 liable, or may be liable, to the defendant asserting the cross-claim for all or part of the claim
20 asserted by the plaintiff.

21 B(3) An answer containing a cross-claim *[shall be served on the parties]* **must be served**
22 **on any party against whom relief is sought in the cross-claim and on all other parties** who
23 have appeared.

24 **C Third-party practice.**

25 C(1) After commencement of the action, a defending party, as a third-party plaintiff, may
26 cause a summons and complaint to be served on a person not a party to the action who is or

1 | may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the
2 | third-party plaintiff as a matter of right not later than 90 days after service of the plaintiff's
3 | summons and complaint on the defending party. Otherwise the third-party plaintiff must obtain
4 | agreement of parties who have appeared and leave of court. The person served with the
5 | summons and third-party complaint, hereinafter called the third-party defendant, [shall] **must**
6 | assert any defenses to the third-party plaintiff's claim as provided in Rule 21 and may assert
7 | counterclaims against the third-party plaintiff and cross-claims against other third-party
8 | defendants as provided in this rule. The third-party defendant may assert against the plaintiff
9 | any defenses that the third-party plaintiff has to the plaintiff's claim. The third-party defendant
10 | may also assert any claim against the plaintiff arising out of the transaction or occurrence that
11 | is the subject matter of the plaintiff's claim against the third-party plaintiff. Any party may
12 | assert any claim against a third-party defendant arising out of the transaction or occurrence
13 | that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the
14 | third-party defendant thereupon [shall] **must** assert the third-party defendant's defenses as
15 | provided in Rule 21 and may assert the third-party defendant's counterclaims and cross-claims
16 | as provided in this rule. Any party may move to strike the third-party claim, or for its severance
17 | or separate trial. A third-party defendant may proceed under this section against any person
18 | not a party to the action who is or may be liable to the third-party defendant for all or part of
19 | the claim made in the action against the third-party defendant.

20 | C(2) A plaintiff against whom a counterclaim has been asserted may cause a third-party
21 | defendant to be brought in under circumstances that would entitle a defendant to do so under
22 | subsection C(1) of this section.

23 | **D Joinder of additional parties.**

24 | D(1) Persons other than those made parties to the original action may be made parties to
25 | a counterclaim or cross-claim in accordance with the provisions of Rule 28 and Rule 29.

26 | D(2) A defendant may, in an action on a contract brought by an assignee of rights under

1 | that contract, join as parties to that action all or any persons liable for attorney fees under ORS
2 | 20.097. As used in this subsection “contract” includes any instrument or document evidencing a
3 | debt.

4 | D(3) In any action against a party joined under this section of this rule, the party joined
5 | [*shall*] **will** be treated as a defendant for purposes of service of summons and time to answer
6 | under Rule 7.

7 | **E Separate trial.** On the motion of any party or on the court’s own initiative, the court
8 | may order a separate trial of any counterclaim, cross-claim, or third-party claim so alleged if to
9 | do so would be more convenient, avoid prejudice, or be more economical and expedite the
10 | matter.

2017-2019 BIENNIUM STAFF COMMENT TO RULE 22

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.

One clarifying amendment was made to subsection 22 B(3). Council members observed that instances had occurred where a cross-claim seeking additional relief had been filed by a co-defendant but not served on the opposing defendant because the opposing defendant was in default. Such a failure to serve appears to be based on a misreading of ORCP 9 A: “[n]o service need be made on parties in default for failure to appear” Indeed, the balance of the sentence reads: “. . . except that pleadings asserting new or additional claims for relief against them shall be served . . . in the manner provided . . . in Rule 7.” The amendment to subsection 22 B(3) makes clear that, if a cross-claim seeks relief against another defendant, it must be served on that defendant, even though that party is in default for the party’s failure to appear and defend.

There are other amendments to Rule 22 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 “must” two times in section 22 B and two times in section 22 C, and “shall” is replaced with “will” in section 22 D, in keeping with current legislative drafting norms.