

AMENDMENTS

TO ORCP 26

promulgated by

COUNCIL ON COURT PROCEDURES

1980 to 2016

## RULE 26

### REAL PARTY IN INTEREST

Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that party's own name without joining the party for whose benefit the action is brought; and when a statute of this state so provides, an action for the use or benefit of another shall be brought in the name of the state. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

#### COMMENT

This rule is based upon Federal Rule 17(a) but is generally the same as ORS 13.030. The rule specifically deals with guardians, bailees, and actions in the name of the state and provides a procedure for dealing with real party in interest objections. Note, a guardian has a choice of suing in the name of the minor under ORCP 27 or suing in the guardian's own name under this section. The lack of a real party in interest can be asserted by a motion to dismiss under ORCP 21 A.(6) and is waived as provided in ORCP 21 G.

RULE 26

REAL PARTY IN INTEREST; CAPACITY OF  
PARTNERSHIPS AND ASSOCIATIONS

A. Real party in interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, conservator, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that party's own name without joining the party for whose benefit the action is brought; and when a statute of this state so provides, an action for the use or benefit of another shall be brought in the name of the state. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

B. Partnerships and associations. Any partnership or other unincorporated association, whether organized for profit or not, may sue in any name which it has assumed and be sued in any name which it has assumed or by which it is known. Any member of the partnership or other unincorporated association may be joined as a party in an action against the partnership or unincorporated association.

COMMENT

The reference to conservator was added to section 26 A. for clarity.

Section 26 B. provides the basis for suit of a partnership in its own name. This provision was taken from Cal. Code of Civil Procedure § 388. See ORCP 67 E.