

AMENDMENTS

TO ORCP 27

promulgated by

COUNCIL ON COURT PROCEDURES

1980 to 2016

RULE 27

MINOR OR INCAPACITATED PARTIES

A. Appearance of minor parties by guardian or conservator.

When a minor, who has a conservator of such minor's estate or a guardian, is a party to any action, such minor shall appear by the conservator or guardian as may be appropriate or, if the court so orders, by a guardian ad litem appointed by the court in which the action is brought. If the minor does not have a conservator of such minor's estate or a guardian, the minor shall appear by a guardian ad litem appointed by the court. The court shall appoint some suitable person to act as guardian ad litem:

A.(1) When the minor is plaintiff, upon application of the minor, if the minor is 14 years of age or older, or upon application of a relative or friend of the minor if the minor is under 14 years of age.

A.(2) When the minor is defendant, upon application of the minor, if the minor is 14 years of age or older, filed within the period of time specified by law for appearance and answer after service of summons, or if the minor fails so to apply or is under 14 years of age, upon application of any other party or of a relative or friend of the minor.

B. Appearance of incapacitated person by conservator or guardian. When an incapacitated person, who has a conservator of such person's estate or a guardian, is a party to any action,

the incapacitated person shall appear by the conservator or guardian as may be appropriate or, if the court so orders, by a guardian ad litem appointed by the court in which the action is brought. If the incapacitated person does not have a conservator of such person's estate or a guardian, the incapacitated person shall appear by a guardian ad litem appointed by the court. The court shall appoint some suitable person to act as guardian ad litem:

B.(1) When the incapacitated person is plaintiff, upon application of a relative or friend of the incapacitated person.

B.(2) When the incapacitated person is defendant, upon application of a relative or friend of the incapacitated person filed within the period of time specified by law for appearance and answer after service of summons, or if the application is not so filed, upon application of any party other than the incapacitated person.

COMMENT

This rule is based on ORS 13.041 and 13.051.

**MINOR OR INCAPACITATED PERSONS
RULE 27**

* * * * *

B. Appearance of incapacitated person by conservator or guardian. When an incapacitated person as defined by ORS 126.003(4), who has a conservator of such person's estate or a guardian, is a party to any action, the incapacitated person shall appear by the conservator or guardian as may be appropriate or, if the court so orders, by a guardian ad litem appointed by the court in which the action is brought. If the incapacitated person does not have a conservator of such person's estate or a guardian, the incapacitated person shall appear by a guardian ad litem appointed by the court. The court shall appoint some suitable person to act as guardian ad litem:

B.(1) When the incapacitated person is plaintiff, upon application of a relative or friend of the incapacitated person.

B.(2) When the incapacitated person is defendant, upon application of a relative or friend of the incapacitated person filed within the period of time specified by these rules or other rule or statute for appearance and answer after service of summons, or if the application is not so filed, upon application of any party other than the incapacitated person.

COMMENT

The 1973 Legislature substituted the term "incapacitated person" for "incompetent person" in a number of sections of the Oregon Revised Statutes and supplied a definition of the new term which appears in ORS 126.003(4). Some of these former ORS sections are now in the Oregon Rules of Civil Procedure and the Council added a specific reference to the statutory definition to

make clear that the definition applies to the ORCP as well as
ORS sections.

1 **follows:** *[If the person does not have a conservator of such person's estate or a guardian, the*
2 *person shall appear by a guardian ad litem appointed by the court. The court shall appoint some*
3 *suitable person to act as guardian ad litem:]*

4 **B(1) when the plaintiff or petitioner is a minor:**

5 **B(1)(a) if the minor is 14 years of age or older, upon application of the minor;**

6 **or**

7 **B(1)(b) if the minor is under 14 years of age, upon application of a relative or**
8 **friend of the minor, or other interested person;**

9 **B(2) when the defendant or respondent is a minor:**

10 **B(2)(a) if the minor is 14 years of age or older, upon application of the minor**
11 **filed within the period of time specified by these rules or any other rule or statute for**
12 **appearance and answer after service of a summons; or**

13 **B(2)(b) if the minor fails so to apply or is under 14 years of age, upon**
14 **application of any other party or of a relative or friend of the minor, or other interested**
15 **person;**

16 [B(1)] **B(3)** [When] **when** the **plaintiff or petitioner is a** person who is incapacitated
17 or financially incapable, as **those terms are** defined in ORS 125.005, [*is plaintiff,*] upon
18 application of a relative or friend of the person, **or other interested person;**[.]

19 [B(2)] **B(4)** [When] **when** the **defendant or respondent is a** person [*is defendant*]
20 **who is incapacitated or is financially incapable, as those terms are defined in ORS 125.005,**
21 upon application of a relative or friend of the person, **or other interested person,** filed within
22 the period of time specified by these rules or **any** other rule or statute for appearance and
23 answer after service of **a** summons[,] or, if the application is not so filed, upon application of
24 any party other than the person.

25 **C Discretionary appointment of guardian ad litem for a party with a disability.**

26 **When a person with a disability, as defined in ORS 124.005, is a party to an action, the person**

1 may appear by a guardian ad litem appointed by the court in which the action is brought and
2 pursuant to this rule upon motion and one or more supporting affidavits or declarations
3 establishing that the appointment would assist the person in prosecuting or defending the
4 action.

5 D Method of seeking appointment of guardian ad litem. A person seeking
6 appointment of a guardian ad litem shall do so by filing a motion and seeking an order in the
7 proceeding in which the guardian ad litem is sought. The motion shall be supported by one or
8 more affidavits or declarations that contain facts sufficient to prove by a preponderance of
9 the evidence that the party on whose behalf the motion is filed is a minor, is incapacitated or
10 is financially incapable, as those terms are defined in ORS 125.005, or is a person with a
11 disability, as defined in ORS 124.005. The court may appoint a suitable person as a guardian
12 ad litem before notice is given pursuant to section E of this rule; however, the appointment
13 shall be reviewed by the court if an objection is received as specified in subsection F(2) or F(3)
14 of this rule.

15 E Notice of motion seeking appointment of guardian ad litem. Unless waived
16 under section H of this rule, no later than 7 days after filing the motion for appointment of a
17 guardian ad litem, the person filing the motion must provide notice as set forth in this
18 section, or as provided in a modification of the notice requirements as set forth in section H
19 of this rule. Notice shall be provided by mailing to the address of each person or entity listed
20 below, by first class mail, a true copy of the motion, any supporting affidavits or declarations,
21 and the form of notice prescribed in section F of this rule.

22 E(1) If the party is a minor, notice shall be provided to the minor if the minor is 14
23 years of age or older; to the parents of the minor; to the person or persons having custody of
24 the minor; to the person who has exercised principal responsibility for the care and custody
25 of the minor during the 60-day period before the filing of the motion; and, if the minor has no
26 living parents, to any person nominated to act as a fiduciary for the minor in a will or other

1 written instrument prepared by a parent of the minor.

2 E(2) If the party is 18 years of age or older, notice shall be given:

3 E(2)(a) to the person;

4 E(2)(b) to the spouse, parents, and adult children of the person;

5 E(2)(c) if the person does not have a spouse, parent, or adult child, to the person or
6 persons most closely related to the person;

7 E(2)(d) to any person who is cohabiting with the person and who is interested in the
8 affairs or welfare of the person;

9 E(2)(e) to any person who has been nominated as fiduciary or appointed to act as
10 fiduciary for the person by a court of any state, any trustee for a trust established by or for
11 the person, any person appointed as a health care representative under the provisions of ORS
12 127.505 to 127.660, and any person acting as attorney-in-fact for the person under a power of
13 attorney;

14 E(2)(f) if the person is receiving moneys paid or payable by the United States through
15 the Department of Veterans Affairs, to a representative of the United States Department of
16 Veterans Affairs regional office that has responsibility for the payments to the person;

17 E(2)(g) if the person is receiving moneys paid or payable for public assistance provided
18 under ORS chapter 411 by the State of Oregon through the Department of Human Services, to
19 a representative of the department;

20 E(2)(h) if the person is receiving moneys paid or payable for medical assistance
21 provided under ORS chapter 414 by the State of Oregon through the Oregon Health
22 Authority, to a representative of the authority;

23 E(2)(i) if the person is committed to the legal and physical custody of the Department
24 of Corrections, to the Attorney General and the superintendent or other officer in charge of
25 the facility in which the person is confined;

26 E(2)(j) if the person is a foreign national, to the consulate for the person's country;

1 and

2 E(2)(k) to any other person that the court requires.

3 F Contents of notice. The notice shall contain:

4 F(1) the name, address, and telephone number of the person making the motion,
5 and the relationship of the person making the motion to the person for whom a guardian ad
6 litem is sought;

7 F(2) a statement indicating that objections to the appointment of the guardian ad
8 litem must be filed in the proceeding no later than 14 days from the date of the notice; and

9 F(3) a statement indicating that the person for whom the guardian ad litem is
10 sought may object in writing to the clerk of the court in which the matter is pending and
11 stating the desire to object.

12 G Hearing. As soon as practicable after any objection is filed, the court shall hold
13 a hearing at which the court will determine the merits of the objection and make any order
14 that is appropriate.

15 H Waiver or modification of notice. For good cause shown, the court may waive
16 notice entirely or make any other order regarding notice that is just and proper in the
17 circumstances.

18 I Settlement. Except as permitted by ORS 126.725, in cases where settlement of
19 the action will result in the receipt of property or money by a party for whom a guardian ad
20 litem was appointed under section B of this rule, court approval of any settlement must be
21 sought and obtained by a conservator unless the court, for good cause shown and on any
22 terms that the court may require, expressly authorizes the guardian ad litem to enter into a
23 settlement agreement.

1 **MINOR OR INCAPACITATED PARTIES**

2 **RULE 27**

3 **A Appearance of parties by guardian or conservator.** When a person who has a
4 conservator of that person's estate or a guardian is a party to any action, the person shall
5 appear by the conservator or guardian as may be appropriate or, if the court so orders, by a
6 guardian ad litem appointed by the court in which the action is brought. The appointment of a
7 guardian ad litem shall be pursuant to this rule unless the appointment is made on the court's
8 motion or a statute provides for a procedure that varies from the procedure specified in this
9 rule.

10 **B Appointment of guardian ad litem for minors; incapacitated or financially incapable**
11 **parties.** When a minor or a person who is incapacitated or financially incapable, as those terms
12 are defined in ORS 125.005, is a party to an action and does not have a guardian or conservator,
13 the person shall appear by a guardian ad litem appointed by the court in which the action is
14 brought and pursuant to this rule, as follows:

15 B(1) when the plaintiff or petitioner is a minor:

16 B(1)(a) if the minor is 14 years of age or older, upon application of the minor; or

17 B(1)(b) if the minor is under 14 years of age, upon application of a relative or friend of
18 the minor, or other interested person;

19 B(2) when the defendant or respondent is a minor:

20 B(2)(a) if the minor is 14 years of age or older, upon application of the minor filed within
21 the period of time specified by these rules or any other rule or statute for appearance and
22 answer after service of a summons; or

23 B(2)(b) if the minor fails so to apply or is under 14 years of age, upon application of any
24 other party or of a relative or friend of the minor, or other interested person;

25 B(3) when the plaintiff or petitioner is a person who is incapacitated or financially
26 incapable, as those terms are defined in ORS 125.005, upon application of a relative or friend of

1 | the person, or other interested person; **or**

2 | B(4) when the defendant or respondent is a person who is incapacitated or is financially
3 | incapable, as those terms are defined in ORS 125.005, upon application of a relative or friend of
4 | the person, or other interested person, filed within the period of time specified by these rules
5 | or any other rule or statute for appearance and answer after service of a summons or, if the
6 | application is not so filed, upon application of any party other than the person.

7 | **C Discretionary appointment of guardian ad litem for a party with a disability.** When a
8 | person with a disability, as defined in ORS 124.005, is a party to an action, the person may
9 | appear by a guardian ad litem appointed by the court in which the action is brought and
10 | pursuant to this rule upon motion and one or more supporting affidavits or declarations
11 | establishing that the appointment would assist the person in prosecuting or defending the
12 | action.

13 | **D Method of seeking appointment of guardian ad litem.** A person seeking appointment
14 | of a guardian ad litem shall do so by filing a motion and seeking an order in the proceeding in
15 | which the guardian ad litem is sought. The motion shall be supported by one or more affidavits
16 | or declarations that contain facts sufficient to prove by a preponderance of the evidence that
17 | the party on whose behalf the motion is filed is a minor, is incapacitated or is financially
18 | incapable, as those terms are defined in ORS 125.005, or is a person with a disability, as defined
19 | in ORS 124.005. The court may appoint a suitable person as a guardian ad litem before notice is
20 | given pursuant to section E of this rule; however, the appointment shall be reviewed by the
21 | court if an objection is received as specified in subsection F(2) or F(3) of this rule.

22 | **E Notice of motion seeking appointment of guardian ad litem.** Unless waived under
23 | section H of this rule, no later than 7 days after filing the motion for appointment of a guardian
24 | ad litem, the person filing the motion must provide notice as set forth in this section, or as
25 | provided in a modification of the notice requirements as set forth in section H of this rule.
26 | Notice shall be provided by mailing to the address of each person or entity listed below, by first

1 class mail, a true copy of the motion, any supporting affidavits or declarations, and the form of
2 notice prescribed in section F of this rule.

3 E(1) If the party is a minor, notice shall be provided to the minor if the minor is 14 years
4 of age or older; to the parents of the minor; to the person or persons having custody of the
5 minor; to the person who has exercised principal responsibility for the care and custody of the
6 minor during the 60-day period before the filing of the motion; and, if the minor has no living
7 parents, to any person nominated to act as a fiduciary for the minor in a will or other written
8 instrument prepared by a parent of the minor.

9 E(2) If the party is 18 years of age or older, notice shall be given:

10 E(2)(a) to the person;

11 E(2)(b) to the spouse, parents, and adult children of the person;

12 E(2)(c) if the person does not have a spouse, parent, or adult child, to the person or
13 persons most closely related to the person;

14 E(2)(d) to any person who is cohabiting with the person and who is interested in the
15 affairs or welfare of the person;

16 E(2)(e) to any person who has been nominated as fiduciary or appointed to act as
17 fiduciary for the person by a court of any state, any trustee for a trust established by or for the
18 person, any person appointed as a health care representative under the provisions of ORS
19 127.505 to 127.660, and any person acting as attorney-in-fact for the person under a power of
20 attorney;

21 E(2)(f) if the person is receiving moneys paid or payable by the United States through
22 the Department of Veterans Affairs, to a representative of the United States Department of
23 Veterans Affairs regional office that has responsibility for the payments to the person;

24 E(2)(g) if the person is receiving moneys paid or payable for public assistance provided
25 under ORS chapter 411 by the State of Oregon through the Department of Human Services, to a
26 representative of the department;

1 E(2)(h) if the person is receiving moneys paid or payable for medical assistance provided
2 under ORS chapter 414 by the State of Oregon through the Oregon Health Authority, to a
3 representative of the authority;

4 E(2)(i) if the person is committed to the legal and physical custody of the Department of
5 Corrections, to the Attorney General and the superintendent or other officer in charge of the
6 facility in which the person is confined;

7 E(2)(j) if the person is a foreign national, to the consulate for the person's country; and

8 E(2)(k) to any other person that the court requires.

9 F Contents of notice. The notice shall contain:

10 F(1) the name, address, and telephone number of the person making the motion, and
11 the relationship of the person making the motion to the person for whom a guardian ad litem is
12 sought;

13 F(2) a statement indicating that objections to the appointment of the guardian ad litem
14 must be filed in the proceeding no later than 14 days from the date of the notice; and

15 F(3) a statement indicating that the person for whom the guardian ad litem is sought
16 may object in writing to the clerk of the court in which the matter is pending and stating the
17 desire to object.

18 **G Hearing.** As soon as practicable after any objection is filed, the court shall hold a
19 hearing at which the court will determine the merits of the objection and make any order that
20 is appropriate.

21 **H Waiver or modification of notice.** For good cause shown, the court may waive notice
22 entirely or make any other order regarding notice that is just and proper in the circumstances.

23 **I Settlement.** Except as permitted by ORS 126.725, in cases where settlement of the
24 action will result in the receipt of property or money by a party for whom a guardian ad litem
25 was appointed under section B of this rule, court approval of any settlement must be sought
26 and obtained by a conservator unless the court, for good cause shown and on any terms that

1 | the court may require, expressly authorizes the guardian ad litem to enter into a settlement
2 | agreement.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26