

AMENDMENTS

TO ORCP 31

promulgated by

COUNCIL ON COURT PROCEDURES

1980 to 2024

RULE 31

INTERPLEADER

A. Parties. Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but adverse to and independent of one another, or that the plaintiff alleges that plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties otherwise permitted by rule or statute.

B. Procedure. Any property or amount involved as to which the plaintiff admits liability may, upon order of the court, be deposited with the court or otherwise preserved, or secured by bond in an amount sufficient to assure payment of the liability admitted. The court may thereafter enjoin all parties before it from commencing or prosecuting any other action regarding the subject matter of the interpleader action. Upon hearing, the court may order the plaintiff discharged from liability as to property deposited or secured before determining the rights of the claimants thereto.

COMMENT

Rule 31 A. is based upon Federal Rule 22. Adoption of this rule was recommended to the last legislature by the Oregon State Bar. Two forms of interpleader are covered by existing Oregon Law, ORS 13.120 and equitable interpleader. The effectiveness of the interpleader device in Oregon under the existing rules is hampered by the limited scope of ORS 13.120 and the historic limitations on equitable interpleader. This rule is of general application and eliminates the equitable interpleader requirements that the same debt or duty be claimed by all the interpleaded parties, that the claimant's titles or claims be dependent on or be derived from a common source, that the stakeholder not have or claim any interest in the subject of the interpleader, and that the stakeholder not have incurred any independent liability to any one of the claimants.

Section 31 B. was adapted from Michigan General Court Rule 210.2 to preserve the procedure of ORS 13.120 which allows the stakeholder to be dismissed from the action.

1 | **INTERPLEADER**2 | **RULE 31**

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4 | required to interplead when their claims are such that the plaintiff is or may be exposed to  
5 | double or multiple liability. It is not a ground for objection to the joinder that the claims of the  
6 | several claimants, or the titles on which their claims depend, do not have a common origin or  
7 | are not identical but are adverse to and independent of one another, or that the plaintiff  
8 | alleges that plaintiff is not liable in whole or in part to any or all of the claimants. A defendant  
9 | exposed to similar liability may obtain [*such*] interpleader by way of cross-claim or  
10 | counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of  
11 | parties otherwise permitted by rule or statute.

12 | **B Procedure.** Any property or amount involved as to which the plaintiff admits liability  
13 | may, upon order of the court, be deposited with the court or otherwise preserved, or secured  
14 | by bond in an amount sufficient to assure payment of the liability admitted. The court may  
15 | thereafter enjoin all parties before it from commencing or prosecuting any other action  
16 | regarding the subject matter of the interpleader action. Upon hearing, the court may order the  
17 | plaintiff discharged from liability as to property deposited or secured before determining the  
18 | rights of the claimants thereto.

19 | **C Attorney fees.** [*In any suit or action in interpleader filed pursuant to this rule by any*  
20 | *party other than a party who has been compensated for acting as a surety with respect to the*  
21 | *funds or property interpled, the party filing the suit or action in interpleader shall be awarded a*  
22 | *reasonable attorney fee in addition to costs and disbursements upon the court ordering that the*  
23 | *funds or property interpled be deposited with the court, secured or otherwise preserved and*  
24 | *that the party filing the suit or action in interpleader be discharged from liability as to the funds*  
25 | *or property. The attorney fees awarded shall be assessed against and paid from the funds or*  
26 | *property ordered interpled by the court.*]

1        C(1) Generally. In any action or for any cross-claim or counterclaim in interpleader filed  
2 pursuant to this rule, the party interpleading funds may be awarded a reasonable attorney  
3 fee in addition to costs and disbursements upon the court ordering that the funds or  
4 property interpled be deposited with the court, secured, or otherwise preserved. Further,  
5 the party interpleading funds will be discharged from liability as to the funds or property.  
6 The attorney fees awarded shall be assessed against and paid from the funds or property  
7 ordered interpled by the court. In determining whether to deny or to award in whole or in  
8 part a requested amount of attorney fees, the court must consider ORS 20.075 and the  
9 following additional factors:

10        C(1)(a) whether, as a matter of equity, the party interpleading funds is involved in the  
11 dispute in a way that it should not be awarded attorney fees as a result of the dispute;

12        C(1)(b) whether the party interpleading funds was subject to multiple litigation; and

13        C(1)(c) whether the interpleader was in the interests of justice and furthered resolution  
14 of the dispute.

15        C(2) Sureties. Section C of this rule does not apply to a party who has been  
16 compensated for acting as a surety with respect to the funds or property interpled.

## 2019-2021 BIENNIUM STAFF COMMENT TO RULE 31

*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 2019-2021 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](http://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](http://www.oregonlegislature.gov).*

### **ORCP 31**

Issues with Rule 31 were raised as to whether interpleader may be used by defendants in litigation as well as by a plaintiff seeking to resolve potentially conflicting claims that may be brought by multiple defendants. The rule does allow a complaint, a counterclaim, or a cross-claim to be filed in interpleader. However, section C appeared to authorize an award of attorney fees only to plaintiffs filing the suit or action in interpleader. Section C was completely rewritten and amended to make clear that a plaintiff, a counterclaimant, or a cross-claimant would be eligible for an award of attorney fees. However, an automatic award of attorney fees to a litigant filing a claim in interpleader appeared misplaced. In some cases, the party utilizing the interpleader device may be an innocent stakeholder. In other cases, the party filing an interpleader claim may be far from disinterested and far from blameless in the dispute. Since the award of attorney fees is paid from the property or funds ordered interpled, there is incentive for the competing parties to resolve their claims as expeditiously as possible. But, if the party filing an interpleader claim is responsible for the dispute, it is unclear why that party should profit from filing the claim while depleting the corpus available for distribution to the rightful owners. Therefore, the court is given discretion to utilize the ORS 20.075 factors as well as three additional factors noted in the literature of interpleader in determining whether to deny a claim for attorney fees in whole or in part. Those factors, identified in paragraphs C(1)(a) through C(1)(c), require to the court to inquire into issues of exposure, fault, and equity in determining whether fees should be awarded and the amount of fees to be awarded.

In section A the words "a" and "are" added as well as two commas to improve readability. A superfluous use of the word "such" is deleted. The amendments to section A are to improve clarity and consistency within the rules and are not meant to affect the meaning or operation of section A.