

AMENDMENTS

TO ORCP 35

promulgated by

COUNCIL ON COURT PROCEDURES

2024 -

ABUSIVE LITIGANTS

RULE 35

A Abusive litigants. The presiding judge of any judicial district may, with due process, issue an order designating a party as an abusive litigant, restricting ongoing abusive filings, and requiring the posting of a security deposit, as provided in this rule.

B Definitions.

B(1) For purposes of this rule, "abusive litigant" means a person who is a party to a civil action or proceeding who in bad faith, through court filings, harasses, coerces, intimidates, discriminates against, or abuses another party to litigation.

B(2) For purposes of this rule, "designation order" means a presiding judge order that is independent of any case within which it may have originated, and that continues in effect after the conclusion of any case in which it may have originated.

B(3) For purposes of this rule, "security" means an undertaking by an abusive litigant to ensure payment to an opposing party in an amount deemed sufficient to cover the opposing party's anticipated reasonable expenses of litigation, including attorney fees and costs.

B(4) For purposes of this rule, "presiding judge" means either the presiding judge appointed by the Supreme Court Chief Justice, the judicial officer designated to fulfill presiding judge duties in the absence of the appointed presiding judge, or the judicial officer designated by the appointed presiding judge to oversee proceedings brought under this rule.

C Factors the court may consider. To determine whether a party is an abusive litigant as set forth in subsection B(1) of this rule, in addition to any other indicia of bad faith, the court may consider:

C(1) if the litigant is represented by counsel;

C(2) if the litigant has a good faith expectation of prevailing;

C(3) if the litigant is attempting to relitigate a resolved claim against the same party that prevailed, without first having diligently pursued appeal;

1 C(4) if the litigant has a good faith motive in pursuing the litigation;

2 C(5) if the litigant has caused unnecessary expense to opposing parties or placed a
3 needless burden on the courts;

4 C(6) if the litigant is filing frivolous motions, pleadings, or other documents without
5 any apparent basis in fact or law;

6 C(7) if the litigant has been restrained from contact with the opposing party by a court
7 order that is active at the time of the new court filings;

8 C(8) if the litigant has a history of abusive litigation;

9 C(9) if the litigant has previously been declared a vexatious or abusive litigant in
10 another jurisdiction; or

11 C(10) if there are any other considerations that shed light on the circumstances of the
12 litigation.

13 D Designation and security hearing.

14 D(1) In any case pending in any court of this state, including a case filed in the small
15 claims department, the presiding judge may, on the court's own motion, set a hearing to
16 determine whether a litigant has engaged in abusive litigation. At the hearing on the motion,
17 the court may request and consider any evidence, written or oral, by witness or affidavit or
18 declaration, or through judicial notice, that may be relevant to the motion.

19 D(2) If, after considering all of the evidence, the court designates a party as an abusive
20 litigant, the court must state its reasons on the record or in its written order. The court's
21 order must be narrowly tailored to protect only the parties, persons, or category of people
22 targeted by the abusive litigation, and to restrict only the disallowed topic or issues.

23 D(3) The court may require the abusive litigant to post security in an amount and
24 within such time as the court deems appropriate in order for the litigation to continue. If the
25 abusive litigant fails to post security in the time required by the court, the court must
26 promptly issue a judgment by default with prejudice against the abusive litigant.

1 D(4) A determination made by the court in such a hearing is not admissible on the
2 merits of the action or claim, nor deemed to be a decision on any issue in the action or claim.

3 D(5) A designation order will include a pre-filing requirement prohibiting an abusive
4 litigant from commencing any new action or claim in the courts of that judicial district that
5 falls within the scope of the designation made under subsection D(2) of this rule without first
6 obtaining leave of the presiding judge.

7 D(6) On entry, a copy of the designation order must be sent by the court to: the person
8 designated to be an abusive litigant at the last known address listed in court records, that
9 person's attorney of record, if any, and the opposing parties, if any. Disobedience of such an
10 order may be punished as a contempt of court, in addition to any other remedy in this rule.

11 D(7) A designation order does not prohibit an abusive litigant from filing responsive
12 pleadings to any new action or claim commenced against them by another person.

13 D(8) A designation order is a presiding judge order, whether or not it is entered in the
14 context of an active case proceeding. As a presiding judge order, a designation order is not
15 subject to Rule 71 A, 71 B, or 71 D.

16 E Requesting exception to designation order.

17 E(1) Procedure. An abusive litigant or their attorney representative may request to
18 initiate new litigation that would otherwise violate the court's designation order only by
19 petition to the presiding judge, which may be made ex parte if no action is pending. The
20 petition must be accompanied by an affidavit or a declaration and must include a copy of the
21 document that the litigant proposes to file as an exhibit. The petition will only be granted on
22 a showing that:

23 E(1)(a) the filing is made in good faith and not for the purpose of harassment, coercion,
24 intimidation, discrimination, or abuse of another; or

25 E(1)(b) a statute of limitations or ultimate repose deadline is so close at hand that
26 denial of the request to commence the new action could foreclose the litigant's right to bring

1 a potentially valid claim.

2 E(2) Deposit of security. The presiding judge may condition the filing of the proposed
3 action or claim on a deposit of security as provided in this rule.

4 E(3) Relation back. If the presiding judge issues an order allowing the filing of the
5 action, then the filing date of the complaint or other case-initiating document relates back to
6 the date of filing of the petition requesting leave to file. On request to the presiding judge, in
7 any proposed action with an imminent risk of obsolescence under a statute of limitations,
8 the filing party may be permitted to serve a complete copy of the petition, affidavit, or
9 declaration, and proposed pleading, on any party for whom expedited service is necessary to
10 perfect jurisdiction under ORS 12.020.

11 F Setting a hearing stays pleading or response deadline. A court decision to set a
12 hearing to designate a party as an abusive litigant stays pleading or response deadlines. After
13 the presiding judge makes a determination on the merits of the motion, deadlines are set at
14 the longest of the following, unless the court directs otherwise: their original date, within 10
15 days of service of the order, or within 10 days of the deposit of security.

16 G Cases filed without leave of the presiding judge. If an abusive litigant initiates new
17 litigation that falls within the parameters of the designation order entered under subsection
18 D(2) of this rule without first obtaining leave of the presiding judge, then any party to the
19 action or claim, or the court on its own motion, may file a notice stating that the abusive
20 litigant is subject to a designation order. The notice must be served on the litigant and all
21 parties at the most current address entered in court records. The filing of such a notice stays
22 the litigation against all opposing parties. The presiding judge must dismiss the action or
23 claim unless the abusive litigant files a motion for leave to proceed within 10 days of service
24 of the notice. If the presiding judge issues an order allowing the action to proceed, then the
25 abusive litigant must serve a copy of that order on all other parties. Each party must plead or
26 otherwise respond to the action or claim within the time remaining for response to the

1 original pleading or within 10 days after service of that order, whichever period is longer,
2 unless the court otherwise directs.

3 H Application to vacate designation order and set aside designation.

4 H(1) Procedure. An abusive litigant may file an application to vacate the designation
5 order and set aside the "abusive litigant" designation. The application must be filed in the
6 court that entered the designation order, either in the action in which the designation order
7 was entered, or contemporaneously with a request to the presiding judge to file new
8 litigation under section E of this rule. The application must be accompanied by evidence in
9 the form of declarations or exhibits that support the premise that there has been a material
10 change in the facts on which the order was granted and that justice would be served by
11 vacating the order.

12 H(2) A court may vacate a designation order and set aside the abusive litigant
13 designation on a showing of material change in the facts on which the order was granted and
14 that justice would be served by vacating the order. An evidentiary hearing on an application
15 under this section may be set at the court's discretion.

16 H(3) An abusive litigant whose application to vacate a designation order and set aside
17 the designation is denied will not be permitted to file another similar application for one
18 year after the date of denial of the previous application. An application to vacate under this
19 subsection does not require an exception to a designation order under subsection E(1) of this
20 rule.