

AMENDMENTS

TO ORCP 45

promulgated by

COUNCIL ON COURT PROCEDURES

1980 to 2024

RULE 45

REQUESTS FOR ADMISSION

A. Request for admission. After commencement of an action, a party may serve upon any other party a request for the admission by the latter of the truth of relevant matters within the scope of Rule 36 B. specified in the request, including facts or opinions of fact, or the application of law to fact, or of the genuineness of any relevant documents or physical objects described in or exhibited with the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Each matter of which an admission is requested shall be separately set forth. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

B. Response. The request for admissions shall be preceded by the following statement printed in capital letters of the type size in which the request is printed: "FAILURE TO SERVE A WRITTEN ANSWER OR OBJECTION WITHIN THE TIME ALLOWED BY ORCP 45 B. WILL RESULT IN ADMISSION OF THE FOLLOWING REQUESTS." Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is

directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon such defendant. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the answering party states that reasonable inquiry has been made and that the information known or readily obtainable by the answering party is insufficient to enable the answering party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 46 C., deny the matter or set forth reasons why the party cannot admit or deny it.

C. Motion to determine sufficiency. The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a designated time prior to trial. The provisions of Rule 46 A.(4) apply to the award of expenses incurred in relation to the motion.

D. Effect of admission. Any matter admitted pursuant to this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. The court may permit withdrawal or amendment when the presentation of the merits of the case will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice such party in maintaining such party's case or such party's defense on the merits. Any admission made by a party pursuant to this rule is for the purpose of the pending action only, and neither constitutes an admission by such party for any other purpose nor may be used against such party in any other action.

E. Form of response. The request for admissions shall be so arranged that a blank space shall be provided after each

separately numbered request. The space shall be reasonably calculated to enable the answering party to insert the admissions, denials, or objections within the space. If sufficient space is not provided, the answering party may attach additional papers with the admissions, denials, or objections and refer to them in the space provided in the request.

F. Number. A party may serve more than one set of requested admissions upon an adverse party, but the total number of requests shall not exceed thirty, unless the court otherwise orders for good cause shown after the proposed additional requests have been filed. In determining what constitutes a request for admission for the purpose of applying this limitation in number, it is intended that each request be counted separately, whether or not it is subsidiary or incidental to or dependent upon or included in another request, and however the requests may be grouped, combined, or arranged.

COMMENT

This rule is a combination of ORS 41.626 and Federal Rule 36. The principal variations from the ORS section which were taken from the federal rule are: elimination of any restrictions on when requests for admissions may be served in section 46 A. and the additional time to respond for defendants served with requests; the specific language in section 46 A. allowing requests as to ". . .facts or opinions of fact, or the application of law to fact. . ."; and, the addition of a requirement in 46 B. that lack of information and belief may only be used as a response where ". . .the answering party states that reasonable inquiry has been made and that the information known or readily obtainable by the answering party is insufficient to enable the answering party to admit or deny."

The Council also added sections 46 E. and F. which appear neither in the ORS sections nor in the federal rule. Section 46 E. replaced ORS 41.626(3) and provides that space shall be left for responses in the admissions form, rather than requiring that the request be retyped on a separate response. It was felt this would minimize total typing time involved. Section 46 F. provides a number limitation on requests for admissions.

1 and qualify or deny the remainder. An answering party may not give lack of information or
2 knowledge as a reason for failure to admit or deny unless the answering party states that
3 reasonable inquiry has been made and that the information known or readily obtainable by the
4 answering party is insufficient to enable the answering party to admit or deny. A party who
5 considers that a matter of which an admission has been requested presents a genuine issue for
6 trial may not, on that ground alone, object to the request; the party may, subject to the
7 provisions of Rule 46 C, deny the matter or set forth reasons why the party cannot admit or
8 deny it.

9 **C Motion to determine sufficiency.** The party who has requested the admissions may
10 move to determine the sufficiency of the answers or objections. Unless the court determines
11 that an objection is justified, it shall order that an answer be served. If the court determines
12 that an answer does not comply with the requirements of this rule, it may order either that the
13 matter is admitted or that an amended answer be served. The court may, in lieu of these
14 orders, determine that final disposition of the request be made at a designated time prior to
15 trial. The provisions of Rule 46 A(4) apply to the award of expenses incurred in relation to the
16 motion.

17 **D Effect of admission.** Any matter admitted pursuant to this rule is conclusively
18 established unless the court on motion permits withdrawal or amendment of the admission.
19 The court may permit withdrawal or amendment when the presentation of the merits of the
20 case will be [*subserved thereby*] **furthered** and the party who obtained the admission fails to
21 satisfy the court that withdrawal or amendment will prejudice [*such*] **that** party in maintaining
22 [*such*] **that** party's case or [*such*] **that** party's defense on the merits. Any admission made by a
23 party pursuant to this rule is for the purpose of the pending action only, and neither constitutes
24 an admission by [*such*] **that** party for any other purpose nor may be used against [*such*] **that**
25 party in any other action.

26 **E Form of response.** The request for admissions shall be so arranged that a blank space

1 | shall be provided after each separately numbered request. The space shall be reasonably
2 | calculated to enable the answering party to insert the admissions, denials, or objections within
3 | the space. If sufficient space is not provided, the answering party may attach additional papers
4 | with the admissions, denials, or objections and refer to them in the space provided in the
5 | request.

6 | **F Number.**

7 | **F(1) Generally. Excluding requests identified in subsection F(2) of this rule, a [A] party**
8 | **may serve more than one set of requested admissions [upon] on an adverse party[,]** but the
9 | **total number of requests shall not exceed 30, unless the court otherwise orders for good cause**
10 | **shown after the proposed additional requests have been filed. In determining what constitutes**
11 | **a request for admission for the purpose of applying this limitation in number, it is intended that**
12 | **each request be counted separately, whether or not it is subsidiary or incidental to or**
13 | **dependent upon or included in another request, and however the requests may be grouped,**
14 | **combined, or arranged.**

15 | **F(2) Requests related to admissibility of business records. Notwithstanding subsection**
16 | **F(1) of this rule, and in addition to any requests made under that subsection, a party may**
17 | **serve a reasonable number of additional requests for admission to establish the authenticity**
18 | **and admissibility of documents under ORS 40.460(6) (Rule 803(6) of the Oregon Evidence**
19 | **Code).**

2015-2017 BIENNIUM STAFF COMMENT TO RULE 45

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 in Rule 45 is to reorganize section F to create an additional class of requests for admission that are not included in the current limitation of 30 such requests. Section F is organized into two subsections with lead lines. Subsection F(2) authorizes a “reasonable number” of additional requests for admission to establish the authenticity and admissibility of documents under Oregon Evidence Code Rule 803(6) [ORS 40.460(6)], often called the “business record exception to hearsay.” This amendment is expected to reduce the number of times the custodian of the records will be required to appear and testify at trial when a party fails or refuses to stipulate to the authenticity and admissibility of documents.

Other changes to Rule 45 include replacing the word “upon” with “on” four times in section A, twice in section B, and once in subsection F(1). “Type size” is replaced with “font size at least as large as that” in section A. The word “such” is replaced with “that” once in section B and five times in section D. “Subserved thereby” is replaced with “furthered” in section D. An unnecessary comma in subsection F(1) is deleted. The modifications specified in this paragraph are made to improve grammar and clarity and to modernize the language without the intention to effect a change in the rule’s meaning or operation.