

AMENDMENTS

TO ORCP 4

promulgated by

COUNCIL ON COURT PROCEDURES

1980 to 2024

RULE 4

PERSONAL JURISDICTION

A court of this state having jurisdiction of the subject matter has jurisdiction over a party served in an action pursuant to Rule 7 under any of the following circumstances:

A. Local presence or status. In any action, whether arising within or without this state, against a defendant who when the action is commenced:

A.(1) Is a natural person present within this state when served; or

A.(2) Is a natural person domiciled within this state; or

A.(3) Is a corporation created by or under the laws of this state; or

A.(4) Is engaged in substantial and not isolated activities within this state, whether such activities are wholly interstate, intrastate, or otherwise; or

A.(5) Has expressly consented to the exercise of personal jurisdiction over such defendant.

B. Special jurisdiction statutes. In any action which may be brought under statutes or rules of this state that specifically confer grounds for personal jurisdiction over the defendant.

C. Local act or omission. In any action claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant.

D. Local injury; foreign act. In any action claiming injury to person or property within this state arising out of an act or omission outside this state by the defendant, provided in addition that at the time of the injury, either:

D.(1) Solicitation or service activities were carried on within this state by or on behalf of the defendant; or

D.(2) Products, materials, or things distributed, processed, serviced, or manufactured by the defendant were used or consumed within this state in the ordinary course of trade.

E. Local services, goods, or contracts. In any action or proceeding which:

E.(1) Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to perform services within this state, to pay for services to be performed in this state by the plaintiff, or to guarantee payment for such services; or

E.(2) Arises out of services actually performed for the plaintiff by the defendant within this state or services actually performed for the defendant by the plaintiff within this state, if such performance within this state was authorized or ratified by the defendant or payment for such services was guaranteed by the defendant; or

E.(3) Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to deliver or receive within this state or to send from

this state goods, documents of title, or other things of value or to guarantee payment for such goods, documents, or things; or

E.(4) Relates to goods, documents of title, or other things of value sent from this state by the plaintiff to the defendant on the defendant's order or direction or sent to a third person when payment for such goods, documents, or things was guaranteed by defendant; or

E.(5) Relates to goods, documents of title, or other things of value actually received by the plaintiff in this state from the defendant without regard to where delivery to carrier occurred.

F. Local property. In any action which arises out of the ownership, use, or possession of real property situated in this state or the ownership, use, or possession of other tangible property, assets, or things of value which were within this state at the time of such ownership, use, or possession; including, but not limited to, actions to recover a deficiency judgment upon any mortgage, conditional sale contract, or other security agreement relating to such property, executed by the defendant or predecessor to whose obligation the defendant has succeeded.

G. Director or officer of a domestic corporation. In any action against a defendant who is or was an officer or director of a domestic corporation where the action arises out of the defendant's conduct as such officer or director or out of the activities of such corporation while the defendant held office as a director or officer.

H. Taxes or assessments. In any action for the collection of taxes or assessments levied, assessed, or otherwise imposed by a taxing authority of this state.

I. Insurance or insurers. In any action which arises out of a promise made anywhere to the plaintiff or some third party by the defendant to insure any person, property, or risk and in addition either:

I.(1) The person, property, or risk insured was located in this state at the time of the promise; or

I.(2) The person, property, or risk insured was located within this state when the event out of which the cause of action is claimed to arise occurred; or

I.(3) The event out of which the cause of action is claimed to arise occurred within this state, regardless of where the person, property, or risk insured was located.

J. Securities. In any action arising under the Oregon Securities Law, including an action brought by the Corporation Commissioner, against:

J.(1) An applicant for registration or registrant, and any person who offers or sells a security in this State, directly or indirectly, unless the security or the sale is exempt from ORS 59.055; or

J.(2) Any person, a resident or nonresident of this state, who has engaged in conduct prohibited or made actionable under the Oregon Securities Law.

K. Certain marital and domestic relations actions.

K.(1) In any action to determine a question of status instituted under ORS Chapter 106 or 107 when the plaintiff is a resident of or domiciled in this state; or

K.(2) In any action to enforce personal obligations arising under ORS Chapter 106 or 107, if the parties to a marriage have concurrently maintained the same or separate residences or domiciles within this state for a period of six months, notwithstanding departure from this state and acquisition of a residence or domicile in another state or country before filing of such action; but if an action to enforce personal obligations arising under ORS Chapter 106 or 107 is not commenced within one year following the date upon which the party who left the state acquired a residence or domicile in another state or country, no jurisdiction is conferred by this subsection in any such action.

K.(3) In a filiation proceeding under ORS Chapter 109, when the act or acts of sexual intercourse which resulted in the birth of the child are alleged to have taken place in this state and the child resides in this state.

L. Other actions. Notwithstanding a failure to satisfy the requirement of sections B. through K. of this rule, in any action where prosecution of the action against a defendant in this state is not inconsistent with the Constitution of this state or the Constitution of the United States.

M. Personal representative. In any action against a personal representative to enforce a claim against the deceased person represented where one or more of the grounds stated in sections B. through L. would have furnished a basis for jurisdiction over the deceased had the deceased been living. It is immaterial whether the action is commenced during the lifetime of the deceased.

N. Joinder of claims in the same action. In any action brought in reliance upon jurisdictional grounds stated in sections B. through L., there cannot be joined in the same action any other claim or cause against the defendant unless grounds exist under this rule, or other rule or statute, for personal jurisdiction over the defendant as to the claim or cause to be joined.

O. Defendant defined. For purposes of this rule and Rules 5 and 6, "defendant" includes any party subject to the jurisdiction of the court.

COMMENT

This rule is designed: (a) to incorporate most provisions for personal jurisdiction in one rule; (b) to extend the exercise of jurisdiction over persons by Oregon courts to the permissible limit under the United States and Oregon Constitutions; and (c) to give a comprehensive and useful description of generally accepted grounds for personal jurisdiction. The rule deals only with amenability to jurisdiction. Methods of service of process are found in ORCP 7. The basic form of the rule was drawn from Wisconsin Statutes § 801.05, modified to incorporate Oregon statutes and case law.

The Council recognizes that ultimately the permissible exercise of personal jurisdiction will be defined by court action interpreting constitutional limits. Where such limits presently are not well defined, persons relying upon bases of jurisdiction described specifically in the rule must always recognize the possibility of future court action defining the limits of personal jurisdiction. For example, where two nonresidents contracted outside the state under ORCP 4 E.(1) or (3) and no action took place in

the state, there is no controlling case deciding that a mere promise to act in Oregon is a sufficient minimum contact. As another example, future cases might limit the territorial bases of jurisdiction in ORCP 4 A. if the trend of Shaffer v. Heitner, 433 U.S. 186 (1977), continues. The intent of the Council was to extend personal jurisdiction to the extent permitted by the federal or state constitutions and not foreclose an attempt to exercise personal jurisdiction merely because no rule or procedure of the state authorized such jurisdiction.

4 A. This section includes the traditional territorial jurisdiction that creates general amenability to jurisdiction without any reference to the subject matter of the action. In slightly different language the grounds for jurisdiction are all covered under existing Oregon statutes. See ORS 14.010, 14.020, and 15.080(6). Subsection A.(4) covers a situation where a defendant engages in such substantial activities in this state, that it would be subject to jurisdiction in any action whether or not the action arose out of activities in the state. See Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952).

4 B. This section recognizes that some other statutes or rules provide grounds for jurisdiction beyond this rule, including the separate provision relating to child custody cases in ORS Chapters 109 and 110. For jurisdiction in child custody matters, see ORS 109.700 et seq. and 110.175. The rules do not provide for service of process on state officials, but, for the time being, the Council has not attempted to eliminate the separate statutes providing for service of process on state officials. The Council intends to study possible ways to integrate these bases of jurisdiction and service methods with ORCP 4 and 7. See: 57.075, 57.485, 57.630, 57.700, 57.721, 57.822, 59.155, 61.086, 61.471, 69.450, 69.500, 69.520, 91.578, 91.611, 92.375, 345.060, 486.521, 509.910, 648.061, 650.070, 650.075, 673.695, 696.250, 697.640, 703.120, 722.102, 731.324, 731.370, 731.434, 744.055, 746.320, 746.330, 746.340, 746.350, 746.360, 746.370, 767.495.

Sections 4 C. through L. all require that the cause of action arise out of a described contact with this state.

4 C. and D. These sections apply in all tort and contractual claims for injury when either the acts giving rise to the injury occurred in Oregon or the injury took place in Oregon. The limits of the application of section 4 D. are the generally accepted limit of due process in this area. See Hanson v. Denckla, 357 U.S. 235 (1958). These sections also eliminate any need for a separate Nonresident Motor Vehicle Act, ORS 15.190 and 15.200.

4 E. This section is designed to provide maximum flexibility for minimum contacts arising in situations of contractual activity and provision of goods and services.

4 F. This is based on ORS 14.035 (1)(c). Coverage is extended to actions arising out of ownership, use, or possession of personal property if the property was located in the state at the time the action arose. No provision is made for quasi in rem jurisdiction based solely upon seizure of property. See Shaffer v. Heitner, supra.

4 G. The situation described is that covered in Shaffer v. Heitner, supra. See ORS 722.102.

4 H. This was the situation covered in International Shoe Co. v. Washington, 326 U.S. 310 (1945).

4 I. This is an expanded version of ORS 14.035 (1)(d).

4 J. This section incorporates the provisions of ORS 59.155. Note, ORS 59.155 has not been superseded, and the method of service of process described in that section may still be used.

4 K. Subsection K.(1) should be read in conjunction with ORS 107.075. Subsection K.(2) is the same as ORS 14.035(2). Subsection K.(3) is not covered by existing statutes, but provides a basis for jurisdiction in the situation involved in State ex rel. Poole v. Dorroh, 271 Or 410 (1975), and State ex rel. McKenna v. Bennett, 28 Or App. 155 (1977).

4 L. This section is designed to extend jurisdiction in any case not covered in the specific sections, within the limits of due process.

4 M. If a basis for jurisdiction over a decedent exists under sections 4 B. through L., this also provides a basis for jurisdiction over the personal representative.

4 N. This is the equivalent of ORS 14.035 (4).

4 O. This makes clear that the rules for jurisdiction apply to any party where the court is seeking to exercise jurisdiction of such party, whatever formal designation is given to that party.

RULE 4

PERSONAL JURISDICTION

M. Personal representative. In any action against a personal representative to enforce a claim against the deceased person represented where one or more of the grounds stated in sections [B.] A. through L. would have furnished a basis for jurisdiction over the deceased had the deceased been living. It is immaterial whether the action is commenced during the lifetime of the deceased.

COMMENT

The situation covered by section M. could arise where jurisdiction is based upon section A. of this rule.

**JURISDICTION
(Personal)
RULE 4**

E. Local services, goods, or contracts. In any action or proceeding which:

E(1) Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to perform services within this state[,] or to pay for services to be performed in this state by the plaintiff [, or to guarantee payment for such services]; or

E(2) Arises out of services actually performed for the plaintiff by the defendant within this state or services actually performed for the defendant by the plaintiff within this state, if such performance within this state was authorized or ratified by the defendant [or payment for such services was guaranteed by the defendant]; or

E(3) Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to deliver or receive within this state or to send from this state goods, documents of title, or other things of value [or to guarantee payment for such goods, documents, or things]; or

E(4) Relates to goods, documents of title, or other things of value sent from this state by the [plaintiff] defendant to the [defendant] plaintiff or to a third person on the [defendant's] plaintiff's order or direction [or sent to a third person when

payment for such goods, documents, or things was guaranteed by defendant]; or

E(5) Relates to goods, documents of title, or other things of value actually received in this state by the plaintiff [in this state] from the defendant or by the defendant from the plaintiff, without regard to where delivery to carrier occurred.

COMMENT

The Council amended ORCP 4 E to make the language more consistent with constitutional limits in the area covered.

The Council amended subsections 4 E(1)-(4) to eliminate reference to jurisdiction based solely upon guarantee of payment. State ex rel Sweere v. Crookham, 289 Or. 3, 609 P.2d 361 (1980).

ORCP 4 E(4) was amended to eliminate jurisdiction based solely upon receipt of goods sent from the state by the seller to the defendant-purchaser, and to permit jurisdiction based upon a defendant-seller sending goods from Oregon to a plaintiff-buyer outside the state. The form of jurisdiction included is within constitutional limits but the form excluded is of doubtful constitutionality. Neptune Microfloc, Inc. v. First Florida Utilities, 262 Or. 494, 495 P.2d 263 (1972).

ORCP 4 E(5) was amended to provide that, if a defendant either sends goods, documents of title, or other things of value into the state or receives goods, documents of title, or other things of value sent into the state, there is a basis for jurisdiction over claims relating to these matters.