

AMENDMENTS

TO ORCP 52

promulgated by

COUNCIL ON COURT PROCEDURES

1980 to 2016

RULE 52
POSTPONEMENT OF CASES

A. Postponement. When a cause is set and called for trial, it shall be tried or dismissed, unless good cause is shown for a postponement. The court may in a proper case, and upon terms, reset the same.

B. Absence of evidence. If a motion is made for postponement on the grounds of absence of evidence, the court may require the moving party to submit an affidavit stating the evidence which the moving party expects to obtain. If the adverse party admits that such evidence would be given and that it be considered as actually given at trial, or offered and overruled as improper, the trial shall not be postponed. However, the court may postpone the trial if, after the adverse party makes the admission described in this section, the moving party can show that such affidavit does not constitute an adequate substitute for the absent evidence. The court, when it allows the motion, may impose such conditions or terms upon the moving party as may be just.

COMMENT

Section 52 A. is new. Section B. generally preserves the procedure set forth in ORS 17.050.

RULE 52

POSTPONEMENT OF CASES

A. Postponement. When a cause is set and called for trial, it shall be tried or dismissed, unless good cause is shown for a postponement. [The court may in a proper case, and upon terms, reset the same.] At its discretion, the court may grant a postponement, with or without terms, including requiring the party securing the postponement to pay expenses incurred by an opposing party.

COMMENT

The last sentence of section 52 A. as originally promulgated suggested there had to be terms. The last clause is suggested by Spalding v. McCaige, 47 Or. App. 129 (1980).

**POSTPONEMENT OF CASES
RULE 52**

A Postponement. When a cause is set and called for trial, it shall be tried or dismissed, unless good cause is shown for a postponement. At its discretion, the court may grant a postponement, with or without terms, including requiring the party securing the postponement ~~any party whose conduct made the postponement necessary~~ to pay expenses incurred by an opposing party.

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COMMENT

Section A is amended to resolve the doubt noted, but not resolved, in *Gottenberg v. Westinghouse Electric Corp.*, 142 Or App 70, 74-5, 919 P2d 521, 524 (1996), whether the phrase "the party securing the postponement" refers to the party requesting it or the party whose conduct is the basis for the court granting it. The latter party is the intended reference.