

AMENDMENTS

TO ORCP 55

promulgated by

COUNCIL ON COURT PROCEDURES

1980 to 2024

RULE 55

SUBPOENA

A. Defined; form. A subpoena is a writ or order directed to a person and requires the attendance of such person at a particular time and place to testify as a witness on behalf of a particular party therein mentioned. Every subpoena shall state the name of the court and the title of the action.

B. For production of documentary evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

C. Issuance.

C.(1) By whom issued. A subpoena is issued as follows:  
(a) to require attendance before a court, or at the trial of an issue therein, or upon the taking of a deposition in an action pending therein: (i) it may be issued by the clerk of the court in which the action is pending, or if there is no clerk, then by a judge or justice of such court; or (ii) it may be issued by an

attorney of record of the party to the action in whose behalf the witness is required to appear, subscribed by the signature of such attorney; (b) to require attendance before any person authorized to take the testimony of a witness in this state under Rule 38 C., or before any officer empowered by the laws of the United States to take testimony, it may be issued by the clerk of a circuit or district court in the county in which the witness is to be examined; (c) to require attendance out of court in cases not provided for in paragraph (a) of this subsection, before a judge, justice, or other officer authorized to administer oaths or take testimony in any matter under the laws of this state, it may be issued by the judge, justice, or other officer before whom the attendance is required.

C.(2) By clerk in blank. Upon request of a party or attorney, any subpoena issued by a clerk of court shall be issued in blank and delivered to the party or attorney requesting it, who shall fill it in before service.

D. Service; service on law enforcement agency; proof of service.

D.(1) Service. Except as provided in subsection (2) of this section, a subpoena may be served by the party or any other person over 18 years of age. The service shall be made by delivering a copy to the witness personally and giving or offering to the witness at the same time the fees to which the witness is entitled for travel to and from the place designated and for one

day's attendance. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance.

D.(2) Service on law enforcement agency.

D.(2) Every law enforcement agency shall designate an individual or individuals upon whom service of subpoena may be made. At least one of the designated individuals shall be available during normal business hours. In the absence of the designated individuals, service of subpoena pursuant to paragraph (b) of this subsection may be made upon the officer in charge of the law enforcement agency.

D.(2)(b) If a peace officer's attendance at trial is required as a result of employment as a peace officer, a subpoena may be served on such officer by delivering a copy personally to the officer or to one of the individuals designated by the agency which employs the officer not later than 10 days prior to the date attendance is sought. A subpoena may be served in this manner only if the officer is currently employed as a peace officer and is present within the state at the time of service.

D.(2)(c) When a subpoena has been served as provided in paragraph (b) of this subsection, the law enforcement agency shall make a good faith effort to give actual notice to the officer whose attendance is sought of the date, time, and location of the court appearance. If the officer cannot be notified, the law enforcement agency shall promptly notify the court and a postponement or continuance may be granted to allow the officer to be personally served.

D.(2)(d) As used in this subsection, "law enforcement agency" means the Oregon State Police, a county sheriff's department, or a municipal police department.

D.(3) Proof of service. Proof of service of a subpoena is made in the same manner as proof of service of a summons.

E. Subpoena for hearing or trial; obligation of witness to attend; prisoners.

E.(1) Obligation to attend; fees. A witness is not obliged to attend for trial or hearing at a place outside the county in which the witness resides or is served with subpoena unless the residence of the witness is within 100 miles of such place, or, if the residence of the witness is not within 100 miles of such place, unless there is paid or tendered to the witness upon service of the subpoena: (a) double attendance fee, if the residence of the witness is not more than 200 miles from the place of examination; or (b) triple attendance fee, if the residence of the witness is more than 200 miles and not more than 300 miles from such place; or (c) quadruple attendance fee, if the residence of the witness is more than 300 miles from such place; and (d) single mileage to and from such place.

E.(2) Witness confined to prison or jail. If the witness is confined in a prison or jail in this state, a subpoena may be served on such person only upon leave of court, and attendance of the witness may be compelled only upon such terms as the court prescribes. The court may order temporary removal and production

of the prisoner for the purpose of giving testimony or may order that testimony only be taken upon deposition at the place of confinement. The subpoena and court order shall be served upon the custodian of the prisoner.

F. Subpoena for taking depositions; place of examination.

F.(1) Subpoena for taking deposition. Proof of service of a notice to take a deposition as provided in Rules 39 C. and 40 A., or a certificate that such notice will be served if the subpoena can be served, constitutes a sufficient authorization for the issuance by a clerk of court of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 36 B., but in that event the subpoena will be subject to the provisions of Rule 36 C. and section B. of this rule.

F.(2) Place of examination. A resident of this state may be required to attend an examination only in the county wherein such person resides, is employed or transacts business in person, or at such other convenient place as is fixed by an order of court. A nonresident of this state may be required to attend only in the county wherein such person is served with a subpoena, or at such other convenient place as is fixed by an order of court.

G. Disobedience of subpoena; refusal to be sworn or answer as a witness. Disobedience to a subpoena or a refusal to be sworn or answer as a witness may be punished as contempt by a court before whom the action is pending or by the judge or justice issuing the subpoena. Upon hearing or trial, if the witness is a party and disobeys a subpoena or refuses to be sworn or answer as a witness, such party's complaint, answer, or reply may be stricken.

H. Hospital records.

H.(1) Hospital. As used in this section, unless the context requires otherwise, "hospital" means a hospital licensed under ORS 441.015 through 441.087, 441.525 through 441.595, 441.810 through 441.820, 441.990, 442.300, 442.320, 442.330, and 442.340 through 442.450.

H.(2) Mode of compliance with subpoena of hospital records.

H.(2) (a) Except as provided in subsection (4) of this section, when a subpoena duces tecum is served upon a custodian of hospital records in an action in which the hospital is not a party, and the subpoena requires the production of all or part of the records of the hospital relating to the care or treatment of a patient at the hospital, it is sufficient compliance therewith if a custodian delivers by mail or otherwise a true and correct copy of all the records described in the subpoena within

five days after receipt thereof. Delivery shall be accompanied by the affidavit described in subsection (3) of this section. The copy may be photographic or microphotographic reproduction.

H.(2)(b) The copy of the records shall be separately enclosed in a sealed envelope or wrapper on which the title and number of the action, name of the witness, and the date of the subpoena are clearly inscribed. The sealed envelope or wrapper shall be enclosed in an outer envelope or wrapper and sealed. The outer envelope or wrapper shall be addressed as follows: (i) if the subpoena directs attendance in court, to the clerk of the court, or to the judge thereof if there is no clerk; (ii) if the subpoena directs attendance at a deposition or other hearing, to the officer administering the oath for the deposition, at the place designated in the subpoena for the taking of the deposition or at the officer's place of business; (iii) in other cases, to the officer or body conducting the hearing at the official place of business.

H.(2)(c) After filing, the copy of the records may be inspected by any party or the attorney of record of a party in the presence of the custodian of the court files, but otherwise shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing, at the direction of the judge, officer, or body conducting the proceeding. The records shall be opened in the presence of all parties who have appeared in person or by counsel at the trial, deposition, or hearing. Records which are not introduced in evidence or required as part

of the record shall be returned to the custodian of hospital records who submitted them.

H.(3) Affidavit of custodian of records.

H.(3)(a) The records described in subsection (2) of this section shall be accompanied by the affidavit of a custodian of the hospital records, stating in substance each of the following: (i) that the affiant is a duly authorized custodian of the records and has authority to certify records; (ii) that the copy is a true copy of all the records described in the subpoena; (iii) the records were prepared by the personnel of the hospital, staff physicians, or persons acting under the control of either, in the ordinary course of hospital business, at or near the time of the act, condition, or event described or referred to herein.

H.(3)(b) If the hospital has none of the records described in the subpoena, or only part thereof, the affiant shall so state in the affidavit, and shall send only those records of which the affiant has custody.

H.(3)(c) When more than one person has knowledge of the facts required to be stated in the affidavit, more than one affidavit may be made.

H.(4) Personal attendance of custodian of records may be required.

H.(4)(a) The personal attendance of a custodian of hospital records and the production of original hospital records is required if the subpoena duces tecum contains the following statement:

---

The personal attendance of a custodian of hospital records and the production of original records is required by this subpoena. The procedure authorized pursuant to Oregon Rule of Civil Procedure 55 H.(2) shall not be deemed sufficient compliance with this subpoena.

---

H.(4)(b) If more than one subpoena duces tecum is served on a custodian of hospital records and personal attendance is required under each pursuant to paragraph (a) of this subsection, the custodian shall be deemed to be the witness of the party serving the first such subpoena.

H.(5) Tender and payment of fees. Nothing in this rule requires the tender or payment of more than one witness and mileage fee or other charge unless there has been agreement to the contrary.

#### COMMENT

This rule is a combination of existing ORS provisions and Federal Rule 45. The existing ORS provisions contain some archaic language and do not clearly cover deposition subpoenas.

Section 55 A. is based upon ORS 44.110. Section 55 B. comes from the federal rule. Note, under ORCP 39 C.(6) a deposition subpoena may be directed to an organization rather than individual.

Section 55 C. retains the basic procedure of ORS 44.120 and 44.130, but the language of the ORS section is awkward and was modified, relying upon California Civil Procedure Code, Sec. 1986.

Section 55 D. is based on ORS 44.140 and 44.160. ORS 44.150 is left as a statute.

Subsection 55 E.(1) is based upon ORS 44.171 but applies only to trial subpoenas. Subsection E.(2) replaces ORS 44.230. It leaves the question of production of a prison inmate to the discretion of the court. The existing ORS section allows production only if trial is in the county where the inmate is held or when the inmate is a party. ORS 44.240 is left as a statute.

Section 55 F. is based upon Federal Rule 45 (d). It provides that a clerk may issue a subpoena upon proof of service of a notice of deposition or upon a certificate that a notice of deposition will be served; this would allow a party to see if the subpoena can be served before service of a notice of deposition. It limits the place where a deposition may be taken rather than the approach of ORS 44.171 which allows a party to serve a subpoena for a deposition anywhere, with enhanced witness fees if the witness has to travel a long distance. Choice of place of trial is relatively limited but this is not true for depositions. The second paragraph of Federal Rule 45 (d)(1) was intentionally omitted, and a witness who objects to a subpoena must seek a protective order under ORCP 36 C.

Section 55 G. is based upon ORS 44.190 with some modifications because of provisions already incorporated in the discovery rules. ORS 44.180 and 44.200 through 44.220 are eliminated as unnecessary.

Section 55 H. is based upon ORS 41.915 through 41.940. ORS 41.930 is left as a statute because it is a rule of evidence. To the extent ORS 41.945 applies beyond courts, it would remain as a statute. The only change from the existing language is in paragraph 55 H.(2)(c) which allows inspection of the sealed documents by parties or attorneys prior to the trial or deposition.

RULE 55

SUBPOENA

D.(1) Service. Except as provided in subsection (2) of this section, a subpoena may be served by the party or any other person [over 18 years of age] 18 years of age or older. The service shall be made by delivering a copy to the witness personally and giving or offering to the witness at the same time the fees to which the witness is entitled for travel to and from the place designated and for one day's attendance. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. A subpoena for taking of a deposition, served upon an organization as provided in Rule 39 C.(6), shall be served in the same manner as provided for service of summons in Rule 7 D.(3)(b)(i), D.(3)(d), D.(3)(e), or D.(3)(f).

F.(2) Place of examination. A resident of this state who is not a party to the action may be required by subpoena to attend an examination only in the county wherein such person resides, is employed, or transacts business in person, or at such other convenient place as is fixed by an order of court. A nonresident of this state who is not a party to the action may be required by subpoena to attend only in the county wherein such person is served with a subpoena, or at such other convenient place as is fixed by an order of court.

COMMENT

The language changes in 55 D.(1) were made to conform to ORCP 7 E. and 7 F.(2) and to clarify how subpoenas for ORCP 39 C.(6) depositions should be served.

The reference to place of examination in 55 F.(2) is only for non-party witnesses subpoenaed to attend. Under ORCP 46, a party receiving a notice of deposition would have to attend wherever the deposition is set, unless a protective order was secured under ORCP 36.

SUBPOENA

RULE 55

D. Service; service on law enforcement agency; service by mail; proof of service.

D.(1) Service. Except as provided in subsection (2) of this section, a subpoena may be served by the party or any other person 18 years of age or older. The service shall be made by delivering a copy to the witness personally and giving or offering to the witness at the same time the fees to which the witness is entitled for travel to and from the place designated and for one day's attendance. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. A subpoena for taking of a deposition, served upon an organization as provided in Rule 39 C.(6), shall be served in the same manner as provided for service of summons in Rule 7 D.(3)(b)(i), D.(3)(d), D.(3)(e), or D.(3)(f).

D.(2) Service on law enforcement agency.

D.(2)(a) Every law enforcement agency shall designate individual or individuals upon whom service of subpoena may be made. At least one of the designated individuals shall be available during normal business hours. In the absence of the designated individuals, service of subpoena pursuant to paragraph (b) of this subsection may be made upon the officer in charge of the law

enforcement agency.

D.(2)(b) If a peace officer's attendance at trial is required as a result of employment as a peace officer, a subpoena may be served on such officer by delivering a copy personally to the officer or to one of the individuals designated by the agency which employs the officer not later than 10 days prior to the date attendance is sought. A subpoena may be served in this manner only if the officer is currently employed as a peace officer and is present within the state at the time of service.

D.(2)(c) When a subpoena has been served as provided in paragraph (b) of this subsection, the law enforcement agency shall make a good faith effort to give actual notice to the officer whose attendance is sought of the date, time, and location of the court appearance. If the officer cannot be notified, the law enforcement agency shall promptly notify the court and a postponement or continuance may be granted to allow the officer to be personally served.

D.(2)(d) As used in this subsection, "law enforcement agency" means the Oregon State Police, a county sheriff's department, or a municipal police department.

D.(3) Service by mail.

Under the following circumstances, service of a subpoena to a witness by mail shall be of the same legal force and effect as personal service otherwise authorized by this section:

D.(3)(a) The attorney certifies in connection with or upon the return of service that the attorney, or his/her agent, has had personal or telephone contact with the witness, and the witness indicated a willingness to appear at trial if subpoenaed;

D.(3)(b) The attorney, or his/her agent, made arrangements for payment to the witness of fees and mileage satisfactory to the witness and the attorney has satisfied the agreement with respect thereto; and

D.(3)(c) The subpoena was mailed to the witness more than ten days before trial by certified mail or some other designation of mail that provides a receipt for the mail signed by the recipient, and the attorney received a return receipt signed by the witness more than three days prior to trial.

D.[3](4) Proof of service. Proof of service of a subpoena is made in the same manner as proof of service of a summons.

COMMENT

Service of a subpoena by mail when certain conditions are met has been provided under new subsection D.(3). Proof of service, formerly subsection D.(3), is now subsection D.(4).

SUBPOENA  
RULE 55

\* \* \*

**H.(2) Mode of compliance with subpoena of hospital records.**

H.(2)(a) Except as provided in subsection (4) of this section, when a subpoena duces tecum is served upon a custodian of hospital records in an action in which the hospital is not a party, and the subpoena requires the production of all or part of the records of the hospital relating to the care or treatment of a patient at the hospital, it is sufficient compliance therewith if a custodian delivers by mail or otherwise a true and correct copy of all the records described in the subpoena within five days after receipt thereof. Delivery shall be accompanied by the affidavit described in subsection (3) of this section. The copy may be photographic or microphotographic reproduction.

H.(2)(b) The copy of the records shall be separately enclosed in a sealed envelope or wrapper on which the title and number of the action, name of the witness, and the date of the subpoena are clearly inscribed. The sealed envelope or wrapper shall be enclosed in an outer envelope or wrapper and sealed. The outer envelope or wrapper shall be addressed as follows:  
(i) if the subpoena directs attendance in court, to the clerk of the court, or to the judge thereof if there is no clerk; (ii) if the subpoena directs attendance at a deposition or other hearing, to the officer administering the oath for the deposition, at the place designated in the subpoena for the taking of the deposition

or at the officer's place of business; (iii) in other cases, to the officer or body conducting the hearing at the official place of business.

H.(2)(c) After filing and after giving reasonable notice in writing to all parties who have appeared of the time and place of inspection, the copy of the records may be inspected by any party or the attorney of record of a party in the presence of the custodian of the court files, but otherwise shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing, at the direction of the judge, officer, or body conducting the proceeding. The records shall be opened in the presence of all parties who have appeared in person or by counsel at the trial, deposition, or hearing. Records which are not introduced in evidence or required as part of the record shall be returned to the custodian of hospital records who submitted them.

\* \* \*

#### COMMENT

The procedure established in ORCP 55 for subpoenaing hospital records allowed the inspection of those records prior to the trial, hearing, or deposition.

The amendment requires giving written notice within a reasonable period of time before inspection takes place.

ORCP 44 E requires that notice be given prior to seeking access to hospital records. This amendment requires an additional notice prior to inspection when access is gained through subpoena.

**SUBPOENA  
RULE 55**

\* \* \* \*

**H. Hospital records.**

\* \* \* \*

H(2) **Mode of compliance [with subpoena of hospital records]. Hospital records may be obtained by subpoena duces tecum as provided in this section; if disclosure of such records is restricted by law, the requirements of such law must be met.**

\* \* \* \*

H(2)(b) The copy of the records shall be separately enclosed in a sealed envelope or wrapper on which the title and number of the action, name of the witness, and the date of the subpoena are clearly inscribed. The sealed envelope or wrapper shall be enclosed in an outer envelope or wrapper and sealed. The outer envelope or wrapper shall be addressed as follows: (i) if the subpoena directs attendance in court, to the clerk of the court, or to the judge thereof if there is no clerk; (ii) if the subpoena direct attendance at a deposition or other hearing, to the officer administering the oath for the deposition, at the place designated in the subpoena for the taking of the deposition or at the officer's place of business; (iii) involving a hearing, to the officer or body conducting the hearing at the official place of business; (iv) if no hearing is scheduled, to the attorney or party issuing the subpoena. If the subpoena directs delivery of the records in accordance with this subparagraph, then a copy of the subpoena shall be served on the

injured party not less than ten days prior to service of the subpoena on the hospital.

H(2)(c) After filing and after giving reasonable notice in writing to all parties who have appeared of the time and place of inspection, the copy of the records may be inspected by any party or the attorney of record of a party in the presence of the custodian of the court files, but otherwise shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing, at the direction of the judge, officer, or body conducting the proceeding. The records shall be opened in the presence of all parties who have appeared in person or by counsel at the trial, deposition, or hearing. Records which are not introduced in evidence or required as part of the record shall be returned to the custodian of hospital records who submitted them.

H(2)(d) For purposes of this section, the subpoena duces tecum to the custodian of the records may be served by first class mail. Service of subpoena by mail under this section shall not be subject to the requirements of subsection (3) of section D of this rule.

**COMMENT**

An increasing number of hospital records are subject to special nondisclosure rules under both state and federal law. See, e.g., ORS 433.045; OAR 333-12-260; 42 U.S.C. 290dd-3; 42 U.S.C. 290ee-3. In some cases, a subpoena is insufficient to permit disclosure. See 42 CFR 2.1, et seq. Therefore, the Council amended 55 H(2) to make it clear that where special criteria, such as a court order with specific findings, are prerequisites to disclosure, those criteria must be satisfied. For records for which there are no special disclosure requirements, the traditional subpoena duces tecum is permitted.

The Council also amended ORCP 44 E to require that all hospital records be obtained by subpoena (in the absence of the patient's consent). Since a subpoena will now be required, it becomes necessary to specify to whom the records are to be delivered. If a trial, deposition or hearing is scheduled, the procedure for delivery is already specified. Since the subpoena will also now be used as a discovery device, it was necessary to provide for delivery to the party seeking the records. Otherwise, the scheduling of a deposition would be required merely to obtain the records. The requirement of 10 days notice to the plaintiff before seeking access to hospital records was retained.

The Council also added a new subsection 55 H(2)(d), allowing service by mail of a subpoena duces tecum seeking hospital records. The ability to sanction a hospital which does not comply with a mail subpoena may be limited by the last sentence of ORCP 9 B.

**SUBPOENA  
RULE 55**

A. **Defined; form.** A subpoena is a writ or order directed to a person and may require[s] the attendance of such person at a particular time and place to testify as a witness on behalf of a particular party therein mentioned or may require such person to produce books, papers, documents, or tangible things and permit inspection thereof at a particular time and place. [It also] A subpoena requiring attendance to testify as a witness requires that the witness remain [till] until the testimony is closed unless sooner discharged, but at the end of each day's attendance a witness may demand of the party, or the party's attorney, the payment of legal witness fees for the next following day and if not then paid, the witness is not obliged to remain longer in attendance. Every subpoena shall state the name of the court and the title of the action.

B. **For production of [documentary evidence] books, papers, documents, or tangible things and to permit inspection.** A subpoena may [also] command the person to whom it is directed to produce and permit inspection and copying of designated [the] books, papers, documents, or tangible things [designated therein; but] in the possession, custody or control of that person at the time and place specified therein. A command to produce books, papers, documents, or tangible things and permit inspection thereof may be joined with a command to appear at trial or hearing or at deposition or, before trial, may be issued separately. A person commanded to produce and permit inspection

and copying of designated books, papers, documents or tangible things but not commanded to also appear for deposition, hearing or trial may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court in whose name the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move for an order at any time to compel production. In any case, where a subpoena commands production of books, papers, documents or tangible things the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

**C. Issuance.**

C.(1) **By whom issued.** A subpoena is issued as follows:  
(a) to require attendance before a court, or at the trial of an issue therein, or upon the taking of a deposition in an action pending therein or, if separate from a subpoena commanding the

attendance of a person, to produce books, papers, documents or tangible things and to permit inspection thereof: (i) it may be issued in blank by the clerk of the court in which the action is pending, or if there is no clerk, then by a judge or justice of such court; or (ii) it may be issued by an attorney of record of the party to the action in whose behalf the witness is required to appear, subscribed by the signature of such attorney; (b) to require attendance before any person authorized to take the testimony of a witness in this state under Rule 38 C., or before any officer empowered by the laws of the United States to take testimony, it may be issued by the clerk of a circuit or district court in the county in which the witness is to be examined; (c) to require attendance out of court in cases not provided for in paragraph (a) of this subsection, before a judge, justice, or other officer authorized to administer oaths or take testimony in any matter under the laws of this state, it may be issued by the judge, justice, or other officer before whom the attendance is required.

C.(2) **By clerk in blank.** Upon request of a party or attorney, any subpoena issued by a clerk of court shall be issued in blank and delivered to the party or attorney requesting it, who shall fill it in before service.

**D. Service; service on law enforcement agency; service by mail; proof of service.**

D.(1) **Service.** Except as provided in subsection (2) of this section, a subpoena may be served by the party or any other

person 18 years of age or older. The service shall be made by delivering a copy to the witness personally and giving or offering to the witness at the same time the fees to which the witness is entitled for travel to and from the place designated and for one day's attendance. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. A subpoena for taking of a deposition, served upon an organization as provided in Rule 39 C.(6), shall be served in the same manner as provided for service of summons in Rule 7 D.(3)(b)(i), D.(3)(d), D.(3)(e), or D.(3)(f). Copies of each subpoena commanding production of books, papers, documents or tangible things and inspection thereof before trial, not accompanied by command to appear at trial or hearing or at deposition, shall be served on each party at least seven days before the subpoena is served on the person required to produce and permit inspection, unless the court orders a shorter period. In addition, a subpoena shall not require production less than 14 days from the date of service upon the person required to produce and permit inspection, unless the court orders a shorter period.

D.(2) Service on law enforcement agency.

D.(2)(a) Every law enforcement agency shall designate individual or individuals upon whom service of subpoena may be made. At least one of the designated individuals shall be available during normal business hours. In the absence of the designated individuals, service of subpoena pursuant to paragraph (b) of this subsection may be made upon the officer in charge of

the law enforcement agency.

D.(2)(b) If a peace officer's attendance at trial is required as a result of employment as a peace officer, a subpoena may be served on such officer by delivering a copy personally to the officer or to one of the individuals designated by the agency which employs the officer not later than 10 days prior to the date attendance is sought. A subpoena may be served in this manner only if the officer is currently employed as a peace officer and is present within the state at the time of service.

D.(2)(c) When a subpoena has been served as provided in paragraph (b) of this subsection, the law enforcement agency shall make a good faith effort to give actual notice to the officer whose attendance is sought of the date, time, and location of the court appearance. If the officer cannot be notified, the law enforcement agency shall promptly notify the court and a postponement or continuance may be granted to allow the officer to be personally served.

D.(2)(d) As used in this subsection, "law enforcement agency" means the Oregon State Police, a county sheriff's department, or a municipal police department.

**D.(3) Service by mail.**

Under the following circumstances, service of a subpoena to a witness by mail shall be the same legal force and effect as personal service otherwise authorized by this section:

D.(3)(a) The attorney certifies in connection with or upon the return of service that the attorney, or the attorney's agent,

has had personal or telephone contact with the witness, and the witness indicated a willingness to appear at trial if subpoenaed;

D.(3)(b) The attorney, or the attorney's agent, made arrangements for payment to the witness of fees and mileage satisfactory to the witness; and

D.(3)(c) The subpoena was mailed to the witness more than 10 days before trial by certified mail or some other designation of mail that provides a receipt for the mail signed by the recipient, and the attorney received a return receipt signed by the witness more than three days prior to trial.

**D.(3)(d) Service of subpoena by mail may not be used for a subpoena commanding production of books, papers, documents, or tangible things, not accompanied by a command to appear at trial or hearing or at deposition.**

D.(4) **Proof of service.** Proof of service of a subpoena is made in the same manner as proof of service of a summons.

**E. Subpoena for hearing or trial; prisoners.** If the witness is confined in a prison or jail in this state, a subpoena may be served on such person only upon leave of court, and attendance of the witness may be compelled only upon such terms as the court prescribes. The court may order temporary removal and production of the prisoner for the purpose of giving testimony or may order that testimony only be taken upon deposition at the place of confinement. The subpoena and court order shall be served upon the custodian of the prisoner.

**F. Subpoena for taking depositions or requiring production**

of books, papers, documents, or tangible things; place of production and examination.

F.(1) **Subpoena for taking deposition.** Proof of service of a notice to take a deposition as provided in Rules 39 C. and 40 A., or of notice of subpoena to command production of books, papers, documents, or tangible things before trial as provided in subsection D.(1) of this rule or a certificate that such notice will be served if the subpoena can be served, constitutes a sufficient authorization for the issuance by a clerk of court of subpoenas for the persons named or described therein. [The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 36 B., but in that event the subpoena will be subject to the provisions of Rule 36 C. and section B. of this rule.]

F.(2) **Place of examination.** A resident of this state who is not a party to the action may be required by subpoena to attend an examination or to produce books, papers, documents, or tangible things only in the county wherein such person resides, is employed or transacts business in person, or at such other convenient place as is fixed by an order of court. A nonresident of this state who is not a party to the action may be required by subpoena to attend or to produce books, papers, documents or tangible things only in the county wherein such person is served with a subpoena, or at such other convenient place as is fixed by

an order of court.

**G. Disobedience of subpoena; refusal to be sworn or answer as a witness.** Disobedience to a subpoena or a refusal to be sworn or answer as a witness may be punished as contempt by a court before whom the action is pending or by the judge or justice issuing the subpoena. Upon hearing or trial, if the witness is a party and disobeys a subpoena or refuses to be sworn or answer as a witness, such party's complaint, answer, or reply may be stricken.

**H. Hospital records.**

H.(1) **Hospital.** As used in this section, unless the context requires otherwise, "hospital" means a [hospital] health care facility defined in ORS 442.015(13)(a) through (d) and licensed under ORS 441.015 through [441.087, 441.525 through 441.595, 441.815, 441.820, 441.990, and 442.342 through 442.450] 441.097 and community health programs established under ORS 430.610 through 430.700.

H.(2) **Mode of compliance.** Hospital records may be obtained by subpoena duces tecum as provided in this section; if disclosure of such records is restricted by law, the requirements of such law must be met.

H.(2)(a) Except as provided in subsection (4) of this section, when a subpoena duces tecum is served upon a custodian of hospital records in an action in which the hospital is not a party, and the subpoena requires the production of all or part of the records of the hospital relating to the care or treatment of

a patient at the hospital, it is sufficient compliance therewith if a custodian delivers by mail or otherwise a true and correct copy of all the records described in the subpoena within five days after receipt thereof. Delivery shall be accompanied by the affidavit described in subsection (3) of this section. The copy may be photographic or microphotographic reproduction.

H.(2)(b) The copy of the records shall be separately enclosed in a sealed envelope or wrapper on which the title and number of the action, name of the witness, and the date of the subpoena are clearly inscribed. The sealed envelope or wrapper shall be enclosed in an outer envelope or wrapper and sealed. The outer envelope or wrapper shall be addressed as follows: (i) if the subpoena directs attendance in court, to the clerk of the court, or to the judge thereof if there is no clerk; (ii) if the subpoena directs attendance at a deposition or other hearing, to the officer administering the oath for the deposition, at the place designated in the subpoena for the taking of the deposition or at the officer's place of business; (iii) in other cases involving a hearing, to the officer or body conducting the hearing at the official place of business; (iv) if no hearing is scheduled, to the attorney or party issuing the subpoena. If the subpoena directs delivery of the records in accordance with this subparagraph, then a copy of the subpoena shall be served on the injured party not less than [ten] 14 days prior to service of the subpoena on the hospital.

H.(2)(c) After filing and after giving reasonable notice in

writing to all parties who have appeared of the time and place of inspection, the copy of the records may be inspected by any party or the attorney of record of a party in the presence of the custodian of the court files, but otherwise shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing, at the direction of the judge, officer, or body conducting the proceeding. The records shall be opened in the presence of all parties who have appeared in person or by counsel at the trial, deposition, or hearing. Records which are not introduced in evidence or required as part of the record shall be returned to the custodian of hospital records who submitted them.

H.(2)(d) For purposes of this section, the subpoena duces tecum to the custodian of the records may be served by first class mail. Service of subpoena by mail under this section shall not be subject to the requirements of subsection (3) of section D. of this rule.

**H.(3) Affidavit of custodian of records.**

H.(3)(a) The records described in subsection (2) of this section shall be accompanied by the affidavit of a custodian of the hospital records, stating in substance each of the following: (i) that the affiant is a duly authorized custodian of the records and has authority to certify records; (ii) that the copy is a true copy of all the records described in the subpoena; (iii) the records were prepared by the personnel of the hospital, staff physicians, or persons acting under the control of either, in the ordinary course of hospital business, at or near the time

of the act, condition, or event described or referred to therein.

H.(3)(b) If the hospital has none of the records described in the subpoena, or only part thereof, the affiant shall so state in the affidavit, and shall send only those records of which the affiant has custody.

H.(3)(c) When more than one person has knowledge of the facts required to be stated in the affidavit, more than one affidavit may be made.

**H.(4) Personal attendance of custodian of records may be required.**

H.(4)(a) The personal attendance of a custodian of hospital records and the production of original hospital records is required if the subpoena duces tecum contains the following statement:

---

The personal attendance of a custodian of hospital records and the production of original records is required by this subpoena. The procedure authorized pursuant to Oregon Rule of Civil Procedure 55 H.(2) shall not be deemed sufficient compliance with this subpoena.

---

H.(4)(b) If more than one subpoena duces tecum is served on a custodian of hospital records and personal attendance is required under each pursuant to paragraph (a) of this subsection, the custodian shall be deemed to be the witness of the party serving the first such subpoena.

H.(5) **Tender and payment of fees.** Nothing in this section requires the tender or payment of more than one witness and mileage fee or other charge unless there has been agreement to the contrary.

**COMMENT**

The Council revised ORCP 55 and 43 to provide for use of a subpoena to require a non-party to produce books, papers, documents or tangible things and permit inspection thereof without scheduling a deposition. In Vaughan v. Taylor, 79 Or App 359 (1986), the Court of Appeals held that production of documents in the hands of a non-party could only be accomplished by scheduling a deposition. Under the new procedure, a subpoena for production may be used without scheduling a deposition.

The non-deposition subpoena for production and inspection must be served on each party seven days before the subpoena can be served upon the person required to produce the material. The person required to produce material must be given 14 days to respond. Both periods may be shortened by court order. The non-party subject to such subpoena may either secure a court order to control production or simply file objections to the requested production. If objections to production are filed, the party seeking production is required to secure a court order before any production is allowed.

Service by mail would not be allowed for a non-deposition subpoena for production. A non-deposition subpoena also cannot be used to force a non-party to allow entry upon land.

The Council decided that the existing definition of "hospital" in ORCP 55 H(1) was incorrect. The corrected definition includes traditional hospitals which treat the mentally or physically ill, rehabilitation centers, college infirmaries, chiropractic facilities, facilities for the treatment of alcoholism or drug abuse, and any other facilities which the Health Division determines are classified as "hospitals". Also included are: hospital-associated ambulatory surgery centers, which are surgery centers operated by hospitals but independently from the hospital campus; long-term care facilities, including both skilled nursing facilities and intermediate care nursing facilities; free-standing ambulatory surgery centers, such as those operated by many physicians groups; and, county mental health clinics. All of these, except county mental health clinics, were included in the prior definition. The new definition excludes some organizations that were covered by the prior definition, including free standing birthing centers, health maintenance organizations, and hospital

facility authorities. The definition is limited to a "licensed health care facility." It does not include the records of doctors' or chiropractors' offices. Discovery of doctors' or chiropractors' records is covered under ORCP 44.

**SUBPOENA  
RULE 55**

**A. Defined; form.** A subpoena is a writ or order directed to a person and may require the attendance of such person at a particular time and place to testify as a witness on behalf of a particular party therein mentioned or may require such person to produce books, papers, documents, or tangible things and permit inspection thereof at a particular time and place. A subpoena requiring attendance to testify as a witness requires that the witness remain until the testimony is closed unless sooner discharged, but at the end of each day's attendance a witness may demand of the party, or the party's attorney, the payment of legal witness fees for the next following day and if not then paid, the witness is not obliged to remain longer in attendance. Every subpoena shall state the name of the court and the title of the action.

**B. For production of books, papers, documents, or tangible things and to permit inspection.** A subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things in the possession, custody, or control of that person at the time and place specified therein. A command to produce books, papers, documents, or tangible things and permit inspection thereof may be joined with a command to appear at trial or hearing or at deposition or, before trial, may be issued separately. A person commanded to produce and permit inspection

and copying of designated books, papers, documents, or tangible things but not commanded to also appear for deposition, hearing, or trial may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court in whose name the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move for an order at any time to compel production. In any case, where a subpoena commands production of books, papers, documents, or tangible things, the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is reasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

**C. Issuance.**

C(1) **By whom issued.** A subpoena is issued as follows: (a) to require attendance before a court, or at the trial of an issue therein, or upon the taking of a deposition in an action pending therein or, if separate from a subpoena commanding the attendance

of a person, to produce books, papers, documents, or tangible things and to permit inspection thereof: (i) it may be issued in blank by the clerk of the court in which the action is pending, or if there is no clerk, then by a judge or justice of such court; or (ii) it may be issued by an attorney of record of the party to the action in whose behalf the witness is required to appear, subscribed by the signature of such attorney; (b) to require attendance before any person authorized to take the testimony of a witness in this state under Rule 38 C, or before any officer empowered by the laws of the United States to take testimony, it may be issued by the clerk of a circuit or district court in the county in which the witness is to be examined; (c) to require attendance out of court in cases not provided for in paragraph (a) of this subsection, before a judge, justice, or other officer authorized to administer oaths or take testimony in any matter under the laws of this state, it may be issued by the judge, justice, or other officer before whom the attendance is required.

**C(2) By clerk in blank.** Upon request of a party or attorney, any subpoena issued by a clerk of court shall be issued in blank and delivered to the party or attorney requesting it, who shall fill it in before service.

**D. Service; service on law enforcement agency; service by mail; proof of service.**

**D(1) Service.** Except as provided in subsection (2) of this section, a subpoena may be served by the party or any other

person 18 years of age or older. The service shall be made by delivering a copy to the witness personally and giving or offering to the witness at the same time the fees to which the witness is entitled for travel to and from the place designated and, whether or not personal attendance is required, for one day's attendance fees. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. A subpoena for taking of a deposition, served upon an organization as provided in Rule 39 C(6), shall be served in the same manner as provided for service of summons in Rule 7 D(3)(b)(i), D(3)(d), D(3)(e), or D(3)(f). Copies of each subpoena commanding production of books, papers, documents, or tangible things and inspection thereof before trial, not accompanied by command to appear at trial or hearing or at deposition, whether the subpoena is served personally or by mail, shall be served on each party at least seven days before the subpoena is served on the person required to produce and permit inspection, unless the court orders a shorter period. In addition, a subpoena shall not require production less than 14 days from the date of service upon the person required to produce and permit inspection, unless the court orders a shorter period.

**D(2) Service on law enforcement agency.**

D(2)(a) Every law enforcement agency shall designate individual or individuals upon whom service of subpoena may be made. At least one of the designated individuals shall be available during normal business hours. In the absence of the

designated individuals, service of subpoena pursuant to paragraph (b) of this subsection may be made upon the officer in charge of the law enforcement agency.

D(2)(b) If a peace officer's attendance at trial is required as a result of employment as a peace officer, a subpoena may be served on such officer by delivering a copy personally to the officer or to one of the individuals designated by the agency which employs the officer not later than 10 days prior to the date attendance is sought. A subpoena may be served in this manner only if the officer is currently employed as a peace officer and is present within the state at the time of service.

D(2)(c) When a subpoena has been served as provided in paragraph (b) of this subsection, the law enforcement agency shall make a good faith effort to give actual notice to the officer whose attendance is sought of the date, time, and location of the court appearance. If the officer cannot be notified, the law enforcement agency shall promptly notify the court and a postponement or continuance may be granted to allow the officer to be personally served.

D(2)(d) As used in this subsection, "law enforcement agency" means the Oregon State Police, a county sheriff's department, or a municipal police department.

**D(3) Service by mail.**

**D(3)(a)** Under the following circumstances, service of a subpoena to a witness by mail shall be the same legal force and effect as personal service otherwise authorized by this section:

D(3) (a) (i) The attorney certifies in connection with or upon the return of service that the attorney, or the attorney's agent, has had personal or telephone contact with the witness, and the witness [7] indicated a willingness to appear at trial if subpoenaed;

D(3) [(b)] (a) (ii) The attorney, or the attorney's agent, made arrangements for payment to the witness of fees and mileage satisfactory to the witness; and

D(3) [(e)] (a) (iii) The subpoena was mailed to the witness more than 10 days before trial by certified mail or some other designation of mail that provides a receipt for the mail signed by the recipient, and the attorney received a return receipt signed by the witness more than three days prior to trial.

D(3) [(d)] (b) Service of subpoena by mail may [not] be used for a subpoena commanding production of books, papers, documents, or tangible things, not accompanied by a command to appear at trial or hearing or at deposition.

D(4) **Proof of service.** Proof of service of a subpoena is made in the same manner as proof of service of a summons.

**E. Subpoena for hearing or trial; prisoners.** If the witness is confined in a prison or jail in this state, a subpoena may be served on such person only upon leave of court, and attendance of the witness may be compelled only upon such terms as the court prescribes. The court may order temporary removal and production of the prisoner for the purpose of giving testimony or may order that testimony only be taken upon

deposition at the place of confinement. The subpoena and court order shall be served upon the custodian of the prisoner.

**F. Subpoena for taking depositions or requiring production of books, papers, documents, or tangible things; place of production and examination.**

**F(1) Subpoena for taking deposition.** Proof of service of a notice to take a deposition as provided in Rules 39 C and 40 A, or of notice of subpoena to command production of books, papers, documents, or tangible things before trial as provided in subsection D(1) of this rule or a certificate that such notice will be served if the subpoena can be served, constitutes a sufficient authorization for the issuance by a clerk of court of subpoenas for the persons named or described therein.

**F(2) Place of examination.** A resident of this state who is not a party to the action may be required by subpoena to attend an examination or to produce books, papers, documents, or tangible things only in the county wherein such person resides, is employed, or transacts business in person, or at such other convenient place as is fixed by an order of court. A nonresident of this state who is not a party to the action may be required by subpoena to attend an examination or to produce books, papers, documents, or tangible things only in the county wherein such person is served with a subpoena, or at such other convenient place as is fixed by an order of court.

**F(3) Production without examination or deposition.** A party who issues a subpoena may command the person to whom it is

issued, other than a hospital, to produce books, papers, documents, or tangible things by mail or otherwise, at a time and place specified in the subpoena, without commanding inspection of the originals or a deposition. In such instances, the person to whom the subpoena is directed complies if the person produces copies of the specified items in the specified manner and certifies that the copies are true copies of all the items responsive to the subpoena or, if all items are not included, why they are not.

**G. Disobedience of subpoena; refusal to be sworn or answer as a witness.** Disobedience to a subpoena or a refusal to be sworn or answer as a witness may be punished as contempt by a court before whom the action is pending or by the judge or justice issuing the subpoena. Upon hearing or trial, if the witness is a party and disobeys a subpoena or refuses to be sworn or answer as a witness, such party's complaint, answer, or reply may be stricken.

**H. Hospital records.**

H(1) **Hospital.** As used in this [section] rule, unless the context requires otherwise, "hospital" means a health care facility defined in ORS 442.015(14)(a) through (d) and licensed under ORS 441.015 through 441.097 and community health programs established under ORS 430.610 through 430.700.

H(2) **Mode of compliance.** Hospital records may be obtained by subpoena [~~duces tecum~~] only as provided in this section[+]. However, if disclosure of [such] any requested records is

restricted [by] or otherwise limited by state or federal law [the requirements of such law must be met.], then the protected records shall not be disclosed in response to the subpoena unless the requirements of the pertinent law have been complied with and such compliance is evidenced through an appropriate court order or through execution of an appropriate consent. Absent such consent or court order, production of the requested records not so protected shall be considered production of the records responsive to the subpoena. If an appropriate consent or court order does accompany the subpoena, then production of all records requested shall be considered production of the records responsive to the subpoena.

H(2)(a) Except as provided in subsection (4) of this section, when a subpoena [~~duces-teeum~~] is served upon a custodian of hospital records in an action in which the hospital is not a party, and the subpoena requires the production of all or part of the records of the hospital relating to the care or treatment of a patient at the hospital, it is sufficient compliance therewith if a custodian delivers by mail or otherwise a true and correct copy of all the records [~~described in~~] responsive to the subpoena within five days after receipt thereof. Delivery shall be accompanied by the affidavit described in subsection (3) of this section. The copy may be photographic or microphotographic reproduction.

H(2)(b) The copy of the records shall be separately enclosed in a sealed envelope or wrapper on which the title and

number of the action, name of the witness, and date of the subpoena are clearly inscribed. The sealed envelope or wrapper shall be enclosed in an outer envelope or wrapper and sealed. The outer envelope or wrapper shall be addressed as follows: (i) if the subpoena directs attendance in court, to the clerk of the court, or to the judge thereof if there is no clerk; (ii) if the subpoena directs attendance at a deposition or other hearing, to the officer administering the oath for the deposition, at the place designated in the subpoena for the taking of the deposition or at the officer's place of business; (iii) in other cases involving a hearing, to the officer or body conducting the hearing at the official place of business; (iv) if no hearing is scheduled, to the attorney or party issuing the subpoena. If the subpoena directs delivery of the records in accordance with [this] subparagraph H(2)(b)(iv), then a copy of the subpoena shall be served on the [injured party] person whose records are sought and on all other parties to the litigation, not less than 14 days prior to service of the subpoena on the hospital.

H(2)(c) After filing and after giving reasonable notice in writing to all parties who have appeared of the time and place of inspection, the copy of the records may be inspected by any party or the attorney of record of a party in the presence of the custodian of the court files, but otherwise shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing, at the direction of the judge, officer, or body conducting the proceeding. The records shall be opened in the

presence of all parties who have appeared in person or by counsel at the trial, deposition, or hearing. Records which are not introduced in evidence or required as part of the record shall be returned to the custodian of hospital records who submitted them.

H(2)(d) For purposes of this section, the subpoena duces tecum to the custodian of the records may be served by first class mail. Service of subpoena by mail under this section shall not be subject to the requirements of subsection (3) of section D of this rule.

**H(3) Affidavit of custodian of records.**

H(3)(a) The records described in subsection (2) of this section shall be accompanied by the affidavit of a custodian of the hospital records, stating in substance each of the following: (i) that the affiant is a duly authorized custodian of the records and has authority to certify records; (ii) that the copy is a true copy of all the records [~~described in~~ responsive to the subpoena; (iii) that the records were prepared by the personnel of the hospital, staff physicians, or persons acting under the control of either, in the ordinary course of hospital business, at or near the time of the act, condition, or event described or referred to therein.

H(3)(b) If the hospital has none of the records described in the subpoena, or only part thereof, the affiant shall so state in the affidavit, and shall send only those records of which the affiant has custody.

H(3)(c) When more than one person has knowledge of the

facts required to be stated in the affidavit, more than one affidavit may be made.

**H(4) Personal attendance of custodian of records may be required.**

H(4)(a) The personal attendance of a custodian of hospital records and the production of original hospital records is required if the subpoena duces tecum contains the following statement:

---

The personal attendance of a custodian of hospital records and the production of original records is required by this subpoena. The procedure authorized pursuant to Oregon Rule of Civil Procedure 55 H(2) shall not be deemed sufficient compliance with this subpoena.

---

H(4)(b) If more than one subpoena duces tecum is served on a custodian of hospital records and personal attendance is required under each pursuant to paragraph (a) of this subsection, the custodian shall be deemed to be the witness of the party serving the first such subpoena.

**H(5) Tender and payment of fees.** Nothing in this section requires the tender or payment of more than one witness and mileage fee or other charge, unless there has been agreement to the contrary.

COMMENT TO RULE 55

55 D(1) is amended at the suggestion of the OSB Procedure and Practice Committee to provide that service of a subpoena, even though not commanding personal appearance at a trial, hearing or deposition, be accompanied by payment of one day's attendance fee. The purpose of this amendment is to provide some compensation to persons or organization for their time and effort in complying with subpoenas to produce books, papers, documents or tangible things by permitting inspection and copying of originals or by mailing certified copies to the address specified in the subpoena.

This subsection is also amended to make clear that copies of subpoenas commanding production of books, documents, papers or tangible things before trial must be served upon all other parties within the prescribed time, whether such subpoenas are served personally or, as permitted by renumbered subsection 55 D(3), by mail.

55 D(3) is renumbered.

55 D(3)(b) is amended to provide that subpoenas commanding production of books, paper, documents or tangible things may be served by mail. Service by personal delivery remains permissible at the option of the party issuing the subpoena.

55 F(2) is amended at the suggestion of the OSB Procedure and Practice Committee by adding the words "an examination" to the second sentence regarding nonresidents, so that the wording parallels that of the first sentence regarding residents. No change of meaning is intended.

55 F(3) is added to provide that a subpoena commanding production of books, papers, documents or tangible things without a personal appearance by the person subpoenaed may, at the option of the party issuing the subpoena, specify that production shall be either by permitting inspection and copying of originals or by mailing certified true copies of the requested items to the address shown in the subpoena. The purpose of this amendment is to save the time and expense often entailed by traveling to the subpoenaed person's county of residence or place of business for inspection and copying of originals when the party issuing the subpoena believes that mailing of certified copies will suffice. The Council's intent is that the place from which copies are mailed be deemed the place where they are produced for purposes of subsection F(2) of this rule.

55 H(1) is amended to substitute "rule" for "section" to make clear that the definition of "hospital" in this subsection applies wherever the word "hospital" appears throughout this rule, such as in new subsection F(3).

**55 H(2)** is amended with the intent to minimize some difficulties encountered in subpoenaing of hospital records. The term "duces tecum" is deleted because it is not accurate as applied to subpoenas commanding production of hospital records without personal appearance by their custodian. Such appearance continues to be obtainable pursuant to subsection 55 H(4) when that is deemed necessary. Also, the word "only" is added to emphasize that hospital records may be subpoenaed exclusively by compliance with this section.

The amended language of the second, third and fourth sentence of this subsection is intended to accomplish two purposes. The first is more fully to alert parties subpoenaing hospital records that some of them are prohibited by federal or state privacy regulations from being disclosed absent an appropriate consent or court order. When necessary and obtainable, such consent or court order should accompany service of the subpoena. Unless a consent or court order accompanies service, a hospital will frequently be prohibited by state or federal regulations, not only from producing copies of requested records, but from even disclosing the existence of such records or that they are in its custody.

The second purpose of the amended language is to provide clear direction to hospitals on how to comply with subpoenas that command production of records, some of which are protected by privacy regulations and others of which are not. Unless a subpoena is accompanied by an appropriate consent or court order, only records not protected should be produced. When a subpoena commands production of records all of which are protected, and no appropriate consent or court order is provided, the hospital records custodian should notify the party issuing the subpoena, or his or her counsel, that there are no records responsive to the subpoena.

**55 H(2) (a)** is amended to delete "duces tecum" for the reason stated in the Staff Comment to subsection H(2) above, and to substitute "responsive to" for "described in" for consistency of usage with that subsection as amended.

**55 H(2) (b)** is amended to clarify which subparagraph is referenced in the fourth sentence, and to provide that copies of hospital records subpoenas must be served upon all parties, as well as upon the person who is the subject of the records, who might not be an "injured party" as so described in the prior language of this paragraph.

**55 H(3) (a)** is amended to substitute "responsive to" for "described in" for consistency with subsection H(2) as amended.

ervation Act of 1966, as amended (16 U.S.C. §470 et seq.).

(2) No permit for the demolition or modification of property removed from consideration for historic property designation under subsection (1) of this section shall be issued during the 120-day period following the date of the property owner's refusal to consent.

(3) A local government shall allow a property owner to remove from the property a historic property designation that was imposed on the property by the local government.

**SECTION 22.** The State Historic Preservation Officer shall report the implementation of, and the effects of, this Act upon the historic property special assessment program. The report shall be made to the interim committee functioning after adjournment sine die of the Sixty-ninth Legislative Assembly to which revenue matters are assigned. The report shall be made no later than September 30, 1998.

**SECTION 23.** Section 22 of this Act is repealed on December 31, 1998.

Approved by the Governor July 19, 1995  
 Filed in the office of Secretary of State July 20, 1995  
 Effective date September 9, 1995

**CHAPTER 694**

AN ACT

SB 597

Relating to subpoenas; creating new provisions; and amending ORCP 55.

Be It Enacted by the People of the State of Oregon:

**SECTION 1.** ORCP 55, as amended by the Council on Court Procedures by promulgation dated December 10, 1994, is further amended by adding a new section I to read:

**I. Medical records.**

**I(1) Service on patient or health care recipient required.** Except as provided in subsection (3) of this section, a subpoena duces tecum for medical records served on a custodian or other keeper of medical records is not valid unless proof of service of a copy of the subpoena on the patient or health care recipient, or upon the attorney for the patient or health care recipient, made in the same manner as proof of service of a summons, is attached to the subpoena served on the custodian or other keeper of medical records.

**I(2) Manner of service.** If a patient or health care recipient is represented by an attorney, a true copy of a subpoena duces tecum for medical records of a patient or health care recipient must be served on the attorney for the patient or health care recipient at least 24 hours before the subpoena is served on a custodian or other

keeper of medical records. Service on the attorney for a patient or health care recipient under this section may be made in the manner provided by ORCP 9 B. If the patient or health care recipient is not represented by an attorney, service of a true copy of the subpoena must be made on the patient or health care recipient at least 24 hours before the subpoena is served on the custodian or other keeper of medical records. Service on a patient or health care recipient under this section must be made in the manner specified by ORCP 7 D(3)(a) for service on individuals.

**I(3) Affidavit of attorney.** If a true copy of a subpoena duces tecum for medical records of a patient or health care recipient cannot be served on the patient or health care recipient in the manner required by subsection (2) of this section, and the patient or health care recipient is not represented by counsel, a subpoena duces tecum for medical records served on a custodian or other keeper of medical records is valid if the attorney for the person serving the subpoena attaches to the subpoena the affidavit of the attorney attesting to the following: (a) That reasonable efforts were made to serve the copy of the subpoena on the patient or health care recipient, but that the patient or health care recipient could not be served; (b) That the party subpoenaing the records is unaware of any attorney who is representing the patient or health care recipient; and (c) That to the best knowledge of the party subpoenaing the records, the patient or health care recipient does not know that the records are being subpoenaed.

**I(4) Application.** The requirements of this section apply only to subpoenas duces tecum for patient care and health care records kept by a licensed, registered or certified health practitioner as described in ORS 18.550, a health care service contractor as defined in ORS 750.005, a home health agency licensed under ORS chapter 443 or a hospice program licensed, certified or accredited under ORS chapter 443.

**SECTION 2.** The amendments to ORCP 55 by section 1 of this Act apply only to subpoenas served on or after the effective date of this Act.

Approved by the Governor July 19, 1995  
 Filed in the office of Secretary of State July 20, 1995  
 Effective date September 9, 1995

**CHAPTER 695**

AN ACT

SB 598

Relating to physicians.  
 Be It Enacted by the People of the State of Oregon:

**SECTION 1.** (1) If a physician is required to be responsible for the care of a patient of an-

**SUBPOENA  
RULE 55**

**I Medical records.**

\* \* \* \* \*

I(2) **Manner of service.** If a patient or health care recipient is represented by an attorney, a true copy of a subpoena duces tecum for medical records of a patient or health care recipient must be served on the attorney for the patient or health care recipient at least ~~24 hours~~ **15 days** before the subpoena is served on a custodian or other keeper of medical records. ~~Upon a showing of good cause, the court may shorten or lengthen the 15-day period.~~ Service on the attorney for a patient or health care recipient under this section may be made in the manner provided by ~~ORCP~~ **Rule** 9 B. If the patient or health care recipient is not represented by an attorney, service of a true copy of the subpoena must be made on the patient or health care recipient at least ~~24 hours~~ **15 days** before the subpoena is served on the custodian or other keeper of medical records. ~~Upon a showing of good cause, the court may shorten or lengthen the 15-day period.~~ Service on a patient or health care recipient under this section must be made in the manner specified by ~~ORCP~~ **Rule** 7 D(3)(a) for service on individuals.

\* \* \* \* \*

**COMMENT TO RULE 55**

Subsection I(2) is amended to change from 24 hours to 15 days the minimum advance period a copy of a medical records subpoena must be served on the patient, health care recipient, or his or her attorney, before such subpoena is served on the custodian or other keeper of such records. This amendment is prompted by concern that requiring only 24 hours advance notice to the patient, etc., could often afford an inadequate opportunity for objection to a medical records subpoena, in the absence of which waiver of the patient-physician privilege might inappropriately be inferred. This subsection is not intended to modify or affect the patient-privilege provided for in the Oregon Rules of Evidence 504, 504-1, 504-2, 504-4, and 507.

Because, under some circumstances, a party issuing a medical records subpoena might be unduly delayed by having to wait a full 15 days for production, courts are given discretionary authority to shorten the waiting period for good cause shown.

SUBPOENA  
RULE 55

\* \* \* \*

**I Medical records.**

\* \* \*

I(2) **Manner of service.** If a patient or health care recipient is represented by an attorney, a true copy of a subpoena duces tecum for medical records of a patient or health care recipient must be served on the attorney for the patient or health care recipient [at least 15] not less than 14 days before the subpoena is served on a custodian or other keeper of medical records. Upon a showing of good cause, the court may shorten or lengthen the [15-day] 14-day period. Service on the attorney for a patient or health care recipient under this section may be made in the manner provided by Rule 9 B. If the patient or health care recipient is not represented by an attorney, service of a true copy of the subpoena must be made on the patient or health care recipient [at least 15] not less than 14 days before the subpoena is served on the custodian or other keeper of medical records. Upon a showing of good cause, the court may shorten or lengthen the [15-day] 14-day period. Service on a patient or health care recipient under this section must be made in the manner specified by Rule 7 D(3)(a) for service on individuals.

\* \* \* \*

Council on Court Procedures, Staff Comment, 1998

Subsection 55 I(2) is amended to change from 15 to 14 the minimum number of days before being served on the records custodian a medical records subpoena must be served on the

patient or health care recipient to whom the records pertain, or on his or her attorney. This amendment makes this subsection consistent with the 14 days required for hospital records subpoenas by paragraph H(2)(b) of this rule.

SUBPOENA  
RULE 55

\* \* \* \* \*

[H Hospital records.

H(1) Hospital. As used in this rule, unless the context requires otherwise, "hospital" means a hospital, as defined in ORS 442.015(19), or a long term care facility or an ambulatory surgical center, as those terms are defined in ORS 442.015, that is licensed under ORS 441.015 through 441.097 and community health programs established under ORS 430.610 through 430.695.]

H Individually identifiable health information.

H(1) Definitions. As used in this rule, the terms "individually identifiable health information" and "qualified protective order" are defined as follows:

H(1)(a) "Individually identifiable health information" means information which identifies an individual or which could be used to identify an individual; which has been collected from an individual and created or received by a health care provider, health plan, employer, or health care clearinghouse; and which relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

H(1)(b) "Qualified protective order" means an order of the court, by stipulation of the parties to the litigation or otherwise, that prohibits the parties from using or disclosing

individually identifiable health information for any purpose other than the litigation for which such information was requested and which requires the return to the original custodian of such information or destruction of the individually identifiable health information (including all copies made) at the end of the litigation.

[H(2) Mode of compliance. Hospital records may be obtained by subpoena only as provided in this section. However, if disclosure of any requested records is restricted or otherwise limited by state or federal law, then the protected records shall not be disclosed in response to the subpoena unless the requirements of the pertinent law have been complied with and such compliance is evidenced through an appropriate court order or through execution of an appropriate consent. Absent such consent or court order, production of the requested records not so protected shall be considered production of the records responsive to the subpoena. If an appropriate consent or court order does accompany the subpoena, then production of all records requested shall be considered production of the records responsive to the subpoena.]

H(2) Mode of Compliance. Individually identifiable health information may be obtained by subpoena only as provided in this section. However, if disclosure of any requested records is restricted or otherwise limited by state or federal law, then the protected records shall not be disclosed in response to the

subpoena unless the requesting party has complied with the applicable law.

H(2)(a) The attorney for the party issuing a subpoena requesting production of individually identifiable health information must serve the custodian or other keeper of such information either with a qualified protective order or with an affidavit or declaration together with attached supporting documentation demonstrating that: (i) the party has made a good faith attempt to provide written notice to the individual or the individual's attorney that the individual or the attorney had 14 days from the date of the notice to object; (ii) the notice included the proposed subpoena and sufficient information about the litigation in which the individually identifiable health information was being requested to permit the individual or the individual's attorney to object; (iii) the individual did not object within the 14 days or, if objections were made, they were resolved and the information being sought is consistent with such resolution. The party issuing a subpoena must also certify that he or she will, promptly upon request, permit the patient or the patient's representative to inspect and copy the records received.

[H(2)(a)] H(2)(b) Except as provided in subsection (4) of this section, when a subpoena is served upon a custodian of [hospital records] individually identifiable health information in an action in which the [hospital] entity or person is not a party, and the subpoena requires the production of all or part of the records of the [hospital] entity or person relating to the care or

treatment of [a patient] an individual [at the hospital], it is sufficient compliance therewith if a custodian delivers by mail or otherwise a true and correct copy of all the records responsive to the subpoena within five days after receipt thereof. Delivery shall be accompanied by the affidavit described in subsection (3) of this section. [The copy may be photographic or microphotographic reproduction.]

[H(2)(b)] H(2)(c) The copy of the records shall be separately enclosed in a sealed envelope or wrapper on which the title and number of the action, name of the witness, and date of the subpoena are clearly inscribed. The sealed envelope or wrapper shall be enclosed in an outer envelope or wrapper and sealed. The outer envelope or wrapper shall be addressed as follows: (i) if the subpoena directs attendance in court, to the clerk of the court, or to the judge thereof if there is no clerk; (ii) if the subpoena directs attendance at a deposition or other hearing, to the officer administering the oath for the deposition, at the place designated in the subpoena for the taking of the deposition or at the officer's place of business; (iii) in other cases involving a hearing, to the officer or body conducting the hearing at the official place of business; (iv) if no hearing is scheduled, to the attorney or party issuing the subpoena. If the subpoena directs delivery of the records in accordance with subparagraph [H(2)(b)(iv)] H(2)(c)(iv), then a copy of the proposed subpoena shall be served on the person whose records are sought and on all other parties to the litigation, not less than

14 days prior to service of the subpoena on the [hospital] entity or person. Any party to the proceeding may inspect the records provided and/or request a complete copy of the records. Upon request, the records must be promptly provided by the party who issued the subpoena at the requesting party's expense.

[H(2)(c)] H(2)(d) After filing and after giving reasonable notice in writing to all parties who have appeared of the time and place of inspection, the copy of the records may be inspected by any party or the attorney of record of a party in the presence of the custodian of the court files, but otherwise shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing, at the direction of the judge, officer, or body conducting the proceeding. The records shall be opened in the presence of all parties who have appeared in person or by counsel at the trial, deposition, or hearing. Records which are not introduced in evidence or required as part of the record shall be returned to the custodian of hospital records who submitted them.

[H(2)(d)] H(2)(e) For purposes of this section, the subpoena duces tecum to the custodian of the records may be served by first class mail. Service of subpoena by mail under this section shall not be subject to the requirements of [section D(3) of this rule] subsection (3) of section D.

H(3) Affidavit or declaration of custodian of records.

H(3)(a) The records described in subsection (2) of this section shall be accompanied by the affidavit or declaration of a custodian of the [hospital] records, stating in substance each of

the following: (i) that the affiant or declarant is a duly authorized custodian of the records and has authority to certify records; (ii) that the copy is a true copy of all the records responsive to the subpoena; (iii) that the records were prepared by the personnel of the [hospital, staff physicians, or] entity or person[s] acting under the control of either, in the ordinary course of [hospital] the entity's or person's business, at or near the time of the act, condition, or event described or referred to therein.

H(3)(b) If the [hospital] entity or person has none of the records described in the subpoena, or only a part thereof, the affiant or declarant shall so state in the affidavit or declaration[,] and shall send only those records of which the affiant or declarant has custody.

H(3)(c) When more than one person has knowledge of the facts required to be stated in the affidavit or declaration, more than one affidavit or declaration may be [made] used.

H(4) Personal attendance of custodian of records may be required.

H(4)(a) The personal attendance of a custodian of [hospital] records and the production of original [hospital] records is required if the subpoena duces tecum contains the following statement:

---

The personal attendance of a custodian of [hospital] records and the production of original records is required by this subpoena. The procedure authorized pursuant to Oregon Rule of

Civil Procedure 55 H(2) shall not be deemed sufficient compliance with this subpoena.

---

H(4) (b) If more than one subpoena duces tecum is served on a custodian of [hospital] records and personal attendance is required under each pursuant to paragraph (a) of this subsection, the custodian shall be deemed to be the witness of the party serving the first such subpoena.

H(5) **Tender and payment of fees.** Nothing in this section requires the tender or payment of more than one witness and mileage fee or other charge unless there has been agreement to the contrary.

H(6) **Scope of discovery.** Notwithstanding any other provision, this rule does not expand the scope of discovery beyond that provided in Rule 36 or Rule 44.

**[I Medical records.]**

I(1) **Service on patient or health care recipient required.** Except as provided in subsection (3) of this section, a subpoena duces tecum for medical records served on a custodian or other keeper of medical records is not valid unless proof of service of a copy of the subpoena on the patient or health care recipient, or upon the attorney for the patient or health care recipient, made in the same manner as proof of service of a summons, is attached to the subpoena served on the custodian or other keeper of medical records.

I(2) **Manner of service.** If a patient or health care recipient is represented by an attorney, a true copy of a subpoena duces tecum for medical records of a patient or health care recipient must be served on the attorney for the patient or health care recipient not less than 14 days before the subpoena is served on a custodian or other keeper of medical records. Upon a showing of good cause, the court may shorten or lengthen the 14-day period. Service on the attorney for a patient or health care recipient under this section may be made in the manner provided by Rule 9 B. If the patient or health care recipient is not represented by an attorney, service of a true copy of the subpoena must be made on

the patient or health care recipient not less than 14 days before the subpoena is served on the custodian or other keeper of medical records. Upon a showing of good cause, the court may shorten or lengthen the 14-day period. Service on a patient or health care recipient under this section must be made in the manner specified by Rule 7 D(3) (a) for service on individuals.

I(3) **Affidavit of attorney.** If a true copy of a subpoena duces tecum for medical records of a patient or health care recipient cannot be served on the patient or health care recipient in the manner required by subsection (2) of this section, and the patient or health care recipient is not represented by counsel, a subpoena duces tecum for medical records served on a custodian or other keeper of medical records is valid if the attorney for the person serving the subpoena attaches to the subpoena the affidavit of the attorney attesting to the following: (a) That reasonable efforts were made to serve the copy of the subpoena on the patient or health care recipient, but that the patient or health care recipient could not be served; (b) That the party subpoenaing the records is unaware of any attorney who is representing the patient or health care recipient; and (c) That to the best knowledge of the party subpoenaing the records, the patient or health care recipient does not know that the records are being subpoenaed.

I(4) **Application.** The requirements of this section apply only to subpoenas duces tecum for patient care and health care records kept by a licensed, registered or certified health practitioner as described in ORS 18.550, a health care service contractor as defined in ORS 750.005, a home health agency licensed under ORS chapter 443 or a hospice program licensed, certified or accredited under ORS chapter 443.]

~~INSTRUCTIONS TO JURY  
AND DELIBERATION  
RULE 59~~

~~\* \* \* \* \*~~

~~B Charging the jury. In charging the jury, the court shall state to them all matters of law necessary for their information in giving their verdict. Whenever the knowledge of the court is by statute made evidence of a fact, the court shall declare such~~

**SUBPOENA**

**RULE 55**

\* \* \* \* \*

F(3) **Production without examination or deposition.** A party who issues a subpoena may command the person to whom it is issued[, *other than a hospital,*] to produce books, papers, documents, or tangible things, **other than individually identifiable health information as described in section H,** by mail or otherwise, at a time and place specified in the subpoena, without commanding inspection of the originals or a deposition. In such instances, the person to whom the subpoena is directed complies if the person produces copies of the specified items in the specified manner and certifies that the copies are true copies of all the items responsive to the subpoena or, if all items are not included, why they are not.

\* \* \* \* \*

**SUBPOENA**

**RULE 55**

\* \* \* \* \*

**D Service; service on law enforcement agency; service by mail; proof of service.**

**D(1) Service.** Except as provided in subsection (2) of this section, a subpoena may be served by the party or any other person 18 years of age or older. The service shall be made by delivering a copy to the witness personally and giving or offering to the witness at the same time the fees to which the witness is entitled for travel to and from the place designated and, whether or not personal attendance is required, one day’s attendance fees. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. A subpoena for taking of a deposition, served upon an organization as provided in Rule 39 C(6), shall be served in the same manner as provided for service of summons in Rule 7 D(3)(b)(i), **D(3)(c)(i)**, **D(3)(d)(i)**, D(3)(e), [*or*] D(3)(f), **or D(3)(h)**. Copies of each subpoena commanding production of books, papers, documents or tangible things and inspection thereof before trial, not accompanied by command to appear at trial or hearing or at deposition, whether the subpoena is served personally or by mail, shall be served on each party at least seven days before the subpoena is served on the person required to produce and permit inspection, unless the court orders a shorter period. In addition, a subpoena shall not require production less than 14 days from the date of service upon the person required to produce and permit inspection, unless the court orders a shorter period.

\* \* \* \* \*



1 the individual's attorney that the individual or the attorney had 14 days from the date of the notice to  
2 object;

3 **H(2)(a)(ii)** the notice included the proposed subpoena and sufficient information about the  
4 litigation in which the individually identifiable health information was being requested to permit the  
5 individual or the individual's attorney to object; **and**

6 **H(2)(a)(iii)** the individual did not object within the 14 days or, if objections were made, they  
7 were resolved and the information being sought is consistent with such resolution. The party issuing a  
8 subpoena must also certify that he or she will, promptly upon request, permit the patient or the  
9 patient's representative to inspect and copy the records received.

10 **H(2)(b) Within 14 days from the date of a notice requesting individually identifiable health**  
11 **information, the individual or the individual's attorney objecting to the subpoena shall respond in**  
12 **writing to the party issuing the notice, stating the reason for each objection.**

13 H(2)[(b)](c) Except as provided in subsection (4) of this section, when a subpoena is served upon  
14 a custodian of individually identifiable health information in an action in which the entity or person is  
15 not a party, and the subpoena requires the production of all or part of the records of the entity or  
16 person relating to the care or treatment of an individual, it is sufficient compliance therewith if a  
17 custodian delivers by mail or otherwise a true and correct copy of all **of** the records responsive to the  
18 subpoena within five days after receipt thereof. Delivery shall be accompanied by an affidavit or a  
19 declaration as described in subsection (3) of this section.

20 H(2)[(c)](d) The copy of the records shall be separately enclosed in a sealed envelope or wrapper  
21 on which the title and number of the action, name of the witness, and date of the subpoena are clearly  
22 inscribed. The sealed envelope or wrapper shall be enclosed in an outer envelope or wrapper and  
23 sealed. The outer envelope or wrapper shall be addressed as follows: [(i)] if the subpoena directs  
24 attendance in court, to the clerk of the court, or to the judge thereof if there is no clerk; [(ii)] if the  
25 subpoena directs attendance at a deposition or other hearing, to the officer administering the oath for  
26 the deposition, at the place designated in the subpoena for the taking of the deposition or at the

1 officer's place of business; [(iii)] in other cases involving a hearing, to the officer or body conducting the  
2 hearing at the official place of business; [(iv)] if no hearing is scheduled, to the attorney or party issuing  
3 the subpoena. If the subpoena directs delivery of the records [*in accordance with subparagraph*  
4 *H(2)(c)(iv)*] **to the attorney or party issuing the subpoena**, then a copy of the proposed subpoena shall  
5 be served on the person whose records are sought, and on all other parties to the litigation, not less  
6 than 14 days prior to service of the subpoena on the entity or person. Any party to the proceeding may  
7 inspect the records provided and/or request a complete copy of the records. Upon request, the records  
8 must be promptly provided by the party who issued the subpoena at the requesting party's expense.

9 H(2)[(d)](e) After filing and after giving reasonable notice in writing to all parties who have  
10 appeared of the time and place of inspection, the copy of the records may be inspected by any party or  
11 **by** the attorney of record of a party in the presence of the custodian of the court files, but otherwise  
12 shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing[,] at the  
13 direction of the judge, officer, or body conducting the proceeding. The records shall be opened in the  
14 presence of all parties who have appeared in person or by counsel at the trial, deposition, or hearing.  
15 Records which are not introduced in evidence or required as part of the record shall be returned to the  
16 custodian [*of hospital records*] who [*submitted*] **produced** them.

17 H(2)[(e)](f) For purposes of this section, the subpoena duces tecum to the custodian of the  
18 records may be served by first class mail. Service of subpoena by mail under this section shall not be  
19 subject to the requirements of subsection (3) of section D.

20 **H(3) Affidavit or declaration of custodian of records.**

21 H(3)(a) The records described in subsection (2) of this section shall be accompanied by the  
22 affidavit or declaration of a custodian of the records, stating in substance each of the following:

23 **H(3)(a)(i)** that the affiant or declarant is a duly authorized custodian of the records and has  
24 authority to certify records;

25 **H(3)(a)(ii)** that the copy is a true copy of all the records responsive to the subpoena; **and**

26 **H(3)(a)(iii)** that the records were prepared by the personnel of the entity or person acting under

1 the control of either, in the ordinary course of the entity's or person's business, at or near the time of  
2 the act, condition, or event described or referred to therein.

3 H(3)(b) If the entity or person has none of the records described in the subpoena, or only a part  
4 thereof, the affiant or declarant shall so state in the affidavit or declaration and shall send only those  
5 records of which the affiant or declarant has custody.

6 H(3)(c) When more than one person has knowledge of the facts required to be stated in the  
7 affidavit or declaration, more than one affidavit or declaration may be used.

8 **H(4) Personal attendance of custodian of records may be required.**

9 H(4)(a) The personal attendance of a custodian of records and the production of original records  
10 is required if the subpoena duces tecum contains the following statement:

11 \_\_\_\_\_  
12 The personal attendance of a custodian of records and the production of original records is  
13 required by this subpoena. The procedure authorized pursuant to Oregon Rule of Civil Procedure 55  
14 H(2) shall not be deemed sufficient compliance with this subpoena.

15 \_\_\_\_\_  
16 H(4)(b) If more than one subpoena duces tecum is served on a custodian of records and  
17 personal attendance is required under each pursuant to paragraph (a) of this subsection, the custodian  
18 shall be deemed to be the witness of the party serving the first such subpoena.

19 **H(5) Tender and payment of fees.** Nothing in this section requires the tender or payment of  
20 more than one witness and mileage fee or other charge unless there has been agreement to the  
21 contrary.

22 **H(6) Scope of discovery.** Notwithstanding any other provision, this rule does not expand the  
23 scope of discovery beyond that provided in Rule 36 or Rule 44.



1 notice to the person commanded to produce, move for an order at any time to compel production.  
2 In any case, where a subpoena commands production of books, papers, documents, or tangible  
3 things the court, upon motion made promptly and, in any event, at or before the time specified in  
4 the subpoena for compliance therewith, may [(1)] quash or modify the subpoena if it is  
5 unreasonable and oppressive or [(2)] condition denial of the motion upon the advancement by the  
6 person in whose behalf the subpoena is issued of the reasonable cost of producing the books,  
7 papers, documents, or tangible things.

8 **[C Issuance.]**

9 **[C(1) By whom issued.** *A subpoena is issued as follows: (a) to require attendance before a*  
10 *court, or at the trial of an issue therein, or upon the taking of a deposition in an action pending*  
11 *therein or, if separate from a subpoena commanding the attendance of a person, to produce books,*  
12 *papers, documents or tangible things and to permit inspection thereof: (i) it may be issued in blank*  
13 *by the clerk of the court in which the action is pending, or if there is no clerk, then by a judge or*  
14 *justice of such court; or (ii) it may be issued by an attorney of record of the party to the action in*  
15 *whose behalf the witness is required to appear, subscribed by the signature of such attorney; (b) to*  
16 *require attendance before any person authorized to take the testimony of a witness in this state*  
17 *under Rule 38 C, or before any officer empowered by the laws of the United States to take*  
18 *testimony, it may be issued by the clerk of a circuit court in the county in which the witness is to be*  
19 *examined; (c) to require attendance out of court in cases not provided for in paragraph (a) of this*  
20 *subsection, before a judge, justice, or other officer authorized to administer oaths or take testimony*  
21 *in any matter under the laws of this state, it may be issued by the judge, justice, or other officer*  
22 *before whom the attendance is required.]*

23 **[C(2) By clerk in blank.** *Upon request of a party or attorney, any subpoena issued by a*  
24 *clerk of court shall be issued in blank and delivered to the party or attorney requesting it, who shall*  
25 *fill it in before service.]*

26 **C Purpose; issuance.**

1 C(1) Purpose.

2 C(1)(a) Civil actions. A subpoena may be issued to require attendance before a court, or at  
3 the trial of an issue therein, or upon the taking of a deposition in an action pending therein or, if  
4 separate from a subpoena commanding the attendance of a person, to produce books, papers,  
5 documents, or tangible things and to permit inspection thereof.

6 C(1)(b) Foreign depositions. A subpoena may be issued to require attendance  
7 before any person authorized to take the testimony of a witness in this state under Rule 38 C, or  
8 before any officer empowered by the laws of the United States to take testimony.

9 C(1)(c) Other uses. A subpoena may be issued to require attendance out of court in cases  
10 not provided for in paragraph C(1)(a) or C(1)(b) of this rule, before a judge, justice, or other  
11 officer authorized to administer oaths or to take testimony in any matter under the laws of this  
12 state.

13 C(2) By whom issued.

14 C(2)(a) By the clerk of the court, or a judge or justice of the court for civil actions. A  
15 subpoena may be issued in blank by the clerk of the court in which the action is pending or, if  
16 there is no clerk, by a judge or justice of that court.

17 C(2)(a)(i) Requirements for subpoenas issued in blank. Upon request of a party or  
18 attorney, any subpoena issued by a clerk of the court may be issued in blank and delivered to the  
19 party or attorney requesting it, who shall before service include on the subpoena the name of  
20 the person commanded to appear; or the books, papers, documents, or tangible things to be  
21 produced or inspected; and the particular time and location for the attendance of the person or  
22 the production or the inspection, as applicable.

23 C(2)(b) By the clerk of the court for foreign depositions. A subpoena for a foreign  
24 deposition may be issued as specified in Rule 38 C(2) by the clerk of a circuit court in the county  
25 in which the witness is to be examined.

26 C(2)(c) By a judge, justice, or other officer. A subpoena to require attendance out of court

1 in cases not provided for in paragraph C(1)(a) or C(1)(b) of this rule may be issued by the judge,  
2 justice, or other officer before whom the attendance is required.

3 C(2)(d) By an attorney. A subpoena may be issued by an attorney of record of the  
4 party to the action on whose behalf the witness is required to appear, subscribed by the  
5 attorney.

6 D **Service; service on law enforcement agency; service by mail; proof of service.**

7 D(1) **Service.** Except as provided in [subsection (2) of this section] **subsection D(2) of this**  
8 **rule**, a subpoena may be served by the party or any other person 18 years of age or older. The  
9 service shall be made by delivering a copy to the witness personally and giving or offering to the  
10 witness at the same time the fees to which the witness is entitled for travel to and from the place  
11 designated and, whether or not personal attendance is required, one day's attendance fees. If the  
12 witness is under 14 years of age, the subpoena may be served by delivering a copy to the witness  
13 or to the witness's parent, guardian, or guardian ad litem. The service must be made so as to allow  
14 the witness a reasonable time for preparation and travel to the place of attendance. A subpoena  
15 for **the** taking of a deposition, served upon an organization as provided in Rule 39 C(6), shall be  
16 served in the same manner as provided for service of summons in Rule 7 D(3)(b)(i), D(3)(c)(i),  
17 D(3)(d)(i), D(3)(e), D(3)(f), or D(3)(h). [Copies] **A copy** of each subpoena commanding production of  
18 books, papers, documents, or tangible things and inspection thereof before trial[,] **that is** not  
19 accompanied by **a** command to appear at trial or hearing or at deposition, whether the subpoena is  
20 served personally or by mail, shall be served on each party at least [seven] **7** days before the  
21 subpoena is served on the person required to produce and permit inspection, unless the court  
22 orders a shorter period. In addition, a subpoena shall not require production less than 14 days from  
23 the date of service upon the person required to produce and permit inspection, unless the court  
24 orders a shorter period.

25 D(2) **Service on law enforcement agency.**

26 D(2)(a) **Designated individuals.** Every law enforcement agency shall designate **an**

1 individual or individuals upon whom service of a subpoena may be made. At least one of the  
2 designated individuals shall be available during normal business hours. In the absence of the  
3 designated individuals, service of a subpoena pursuant to paragraph [(b) of this subsection] **D(2)(b)**  
4 **of this rule** may be made upon the officer in charge of the law enforcement agency.

5 D(2)(b) **Time limitation.** If a peace officer's attendance at trial is required as a result  
6 of **the officer's** employment as a peace officer, a subpoena may be served on [such] **the** officer by  
7 delivering a copy personally to the officer or to one of the individuals designated by the agency that  
8 employs the officer. A subpoena may be served by delivery to one of the individuals designated by  
9 the agency that employs the officer only if the subpoena is delivered at least 10 days before the  
10 date the officer's attendance is required, the officer is currently employed as a peace officer by the  
11 agency, and the officer is present within the state at the time of service.

12 D(2)(c) **Notice to officer.** When a subpoena has been served as provided in [paragraph (b)  
13 of this subsection] **paragraph D(2)(b) of this rule**, the law enforcement agency shall make a good  
14 faith effort to give actual notice to the officer whose attendance is sought of the date, time, and  
15 location of the court appearance. If the officer cannot be notified, the law enforcement agency  
16 shall promptly notify the court and a postponement or continuance may be granted to allow the  
17 officer to be personally served.

18 D(2)(d) **"Law enforcement agency" defined.** As used in this subsection, "law  
19 enforcement agency" means the Oregon State Police, a county sheriff's department, or a municipal  
20 police department.

21 [D(3) *Service by mail.*]

22 **D(3) Service by mail.** Under the following circumstances, service of a subpoena to a  
23 witness by mail shall be of the same legal force and effect as personal service otherwise authorized  
24 by this section:

25 D(3)(a) **Contact with willing witness.** The attorney certifies in connection with or  
26 upon the return of service that the attorney, or the attorney's agent, has had personal or

1 telephone contact with the witness[,] and the witness indicated a willingness to appear at trial if  
2 subpoenaed;

3 D(3)(b) **Payment to witness of fees and mileage.** The attorney, or the attorney's  
4 agent, made arrangements for payment to the witness of fees and mileage satisfactory to the  
5 witness; and

6 D(3)(c) **Time limitations.** The subpoena was mailed to the witness more than 10 days before  
7 trial by certified mail or some other [*designation*] **form** of mail that provides a receipt for the mail  
8 **that is** signed by the recipient[,] and the attorney received a return receipt signed by the witness  
9 more than [*three*] **3** days prior to trial.

10 D(4) **Service by mail[; exception] of subpoena not accompanied by command to appear.**  
11 Service of **a** subpoena by mail may be used for a subpoena commanding production of books,  
12 papers, documents, or tangible things, not accompanied by a command to appear at trial or  
13 hearing or at deposition.

14 D(5) **Proof of service; qualifications.** Proof of service of a subpoena is made in the same  
15 manner as proof of service of a summons except that the server need not certify that the server is  
16 not a party in the action[;] an attorney for a party in the action; or an officer, director, or employee  
17 of a party in the action.

18 **E Subpoena for hearing or trial; prisoners.** If the witness is confined in a prison or jail  
19 in this state, a subpoena may be served on [*such*] **that** person only upon leave of court[,] and  
20 attendance of the witness may be compelled only upon [*such*] **the** terms [*as*] **that** the court  
21 prescribes. The court may order temporary removal and production of the prisoner for the purpose  
22 of giving testimony or may order that testimony only be taken upon deposition at the place of  
23 confinement. The subpoena and court order shall be served upon the custodian of the prisoner.

24 **F Subpoena for taking depositions or requiring production of books, papers,**  
25 **documents, or tangible things; place of production and examination.**

26 F(1) **Subpoena for taking deposition.** Proof of service of a notice to take a deposition as

1 provided in [Rules] **Rule** 39 C and **Rule** 40 A, or of notice of subpoena to command production of  
2 books, papers, documents, or tangible things before trial as provided in subsection D(1) of this rule  
3 or a certificate that [such] notice will be served if the subpoena can be served, constitutes a  
4 sufficient authorization for the issuance by a clerk of court of subpoenas for the persons named or  
5 described therein.

6 **F(2) Place of examination.** A resident of this state who is not a party to the action may  
7 be required by subpoena to attend an examination or to produce books, papers, documents, or  
8 tangible things only in the county wherein [such] **the** person resides, is employed, or transacts  
9 business in person, or at [such] **any** other convenient place [as] **that** is fixed by an order of **the**  
10 court. A nonresident of this state who is not a party to the action may be required by subpoena to  
11 attend an examination or to produce books, papers, documents, or tangible things only in the  
12 county wherein [such] **the** person is served with a subpoena, or at [such] **any** other convenient  
13 place [as] **that** is fixed by an order of **the** court.

14 **F(3) Production without examination or deposition.** A party who issues a subpoena may  
15 command the person to whom it is issued to produce books, papers, documents, or tangible things,  
16 other than individually identifiable health information as described in section H **of this rule**, by mail  
17 or otherwise, at a time and place specified in the subpoena, without commanding inspection of the  
18 originals or a deposition. In such instances, the person to whom the subpoena is directed complies  
19 if the person produces copies of the specified items in the specified manner and certifies that the  
20 copies are true copies of all **of** the items responsive to the subpoena or, if [all] **any** items are not  
21 included, why they are not.

22 **G Disobedience of subpoena; refusal to be sworn or to answer as a witness.**  
23 Disobedience to a subpoena or a refusal to be sworn or **to** answer as a witness may be punished as  
24 contempt by a court before whom the action is pending or by the judge or justice issuing the  
25 subpoena. Upon hearing or trial, if the witness is a party and disobeys a subpoena or refuses to be  
26 sworn or **to** answer as a witness, [such] **that** party's complaint, answer, or reply may be stricken.

1           **H     Individually identifiable health information.**

2           H(1)   **Definitions.** As used in this rule, the terms “individually identifiable health  
3 information” and “qualified protective order” are defined as follows:

4           H(1)(a)       “Individually identifiable health information.” “Individually identifiable  
5 health information” means information [*which*] **that** identifies an individual or [*which*] **that** could  
6 be used to identify an individual; [*which*] **that** has been collected from an individual and created or  
7 received by a health care provider, health plan, employer, or health care clearinghouse; and  
8 [*which*] **that** relates to the past, present, or future physical or mental health or condition of an  
9 individual; the provision of health care to an individual; or the past, present, or future payment for  
10 the provision of health care to an individual.

11          H(1)(b)       “Qualified protective order.” “Qualified protective order” means an order of  
12 the court, by stipulation of the parties to the litigation[,], or otherwise, that prohibits the parties  
13 from using or disclosing individually identifiable health information for any purpose other than the  
14 litigation for which [*such*] **the** information was requested and [*which*] **that** requires the return to  
15 the original custodian of [*such*] **the** information or the destruction of the individually identifiable  
16 health information (including all copies made) at the end of the litigation.

17          H(2)   **[Mode of Compliance.] Procedure.** Individually identifiable health information may  
18 be obtained by subpoena only as provided in this section. However, if disclosure of any requested  
19 records is restricted or otherwise limited by state or federal law, then the protected records shall  
20 not be disclosed in response to the subpoena unless the requesting party has complied with the  
21 applicable law.

22          H(2)(a)       Supporting documentation. The attorney for the party issuing a subpoena  
23 requesting production of individually identifiable health information must serve the custodian or  
24 other keeper of [*such*] **that** information either with a qualified protective order or with an affidavit  
25 or declaration together with attached supporting documentation demonstrating that:

26          H(2)(a)(i)     the party has made a good faith attempt to provide written notice to the

1 individual or to the individual's attorney that the individual or the attorney had 14 days from the  
2 date of the notice to object;

3 H(2)(a)(ii) the notice included the proposed subpoena and sufficient information about  
4 the litigation in which the individually identifiable health information was being requested to  
5 permit the individual or the individual's attorney to object; *[and]*

6 H(2)(a)(iii) the individual did not object within the 14 days or, if objections were made,  
7 they were resolved and the information being sought is consistent with *[such]* **that** resolution[.];

8 **and**

9 **H(2)(a)(iv)** *[The]* **the** party issuing a subpoena *[must also certify]* **certifies** that he or she  
10 will, promptly upon request, permit the patient or the patient's representative to inspect and copy  
11 the records received.

12 H(2)(b) **Objection.** Within 14 days from the date of a notice requesting individually  
13 identifiable health information, the individual or the individual's attorney objecting to the  
14 subpoena shall respond in writing to the party issuing the notice, stating the reason for each  
15 objection.

16 H(2)(c) **Time for compliance.** Except as provided in subsection *[(4) of this section]* **H(4) of**  
17 **this rule**, when a subpoena is served upon a custodian of individually identifiable health  
18 information in an action in which the entity or person is not a party, and the subpoena requires the  
19 production of all or part of the records of the entity or person relating to the care or treatment of  
20 an individual, it is sufficient compliance *[therewith]* **with the subpoena** if a custodian delivers by  
21 mail or otherwise a true and correct copy of all of the records responsive to the subpoena within  
22 *[five]* **5** days after receipt thereof. Delivery shall be accompanied by an affidavit or a declaration as  
23 described in subsection *[(3) of this section]* **H(3) of this rule.**

24 H(2)(d) **Method of compliance.** The copy of the records shall be separately enclosed  
25 in a sealed envelope or wrapper on which the *[title]* **name of the court, case name** and number of  
26 the action, name of the witness, and date of the subpoena are clearly inscribed. The sealed

1 envelope or wrapper shall be enclosed in an outer envelope or wrapper and sealed. The outer  
2 envelope or wrapper shall be addressed as follows: if the subpoena directs attendance in court, to  
3 the clerk of the court, or to the judge thereof if there is no clerk; if the subpoena directs  
4 attendance at a deposition or other hearing, to the officer administering the oath for the  
5 deposition[,] at the place designated in the subpoena for the taking of the deposition or at the  
6 officer's place of business; in other cases involving a hearing, to the officer or body conducting the  
7 hearing at the official place of business; if no hearing is scheduled, to the attorney or party issuing  
8 the subpoena. If the subpoena directs delivery of the records to the attorney or party issuing the  
9 subpoena, then a copy of the proposed subpoena shall be served on the person whose records are  
10 sought, and on all other parties to the litigation, not less than 14 days prior to service of the  
11 subpoena on the entity or person. Any party to the proceeding may inspect the records provided  
12 and/or request a complete copy of the records. Upon request, the records must be promptly  
13 provided by the party who issued the subpoena at the requesting party's expense.

14 H(2)(e) **Inspection of records.** After filing and after giving reasonable notice in  
15 writing to all parties who have appeared of the time and place of inspection, the copy of the  
16 records may be inspected by any party or by the attorney of record of a party in the presence of  
17 the custodian of the court files, but otherwise shall remain sealed and shall be opened only at the  
18 time of trial, deposition, or other hearing at the direction of the judge, officer, or body conducting  
19 the proceeding. The records shall be opened in the presence of all parties who have appeared in  
20 person or by counsel at the trial, deposition, or hearing. Records [*which*] **that** are not introduced in  
21 evidence or required as part of the record shall be returned to the custodian who produced them.

22 H(2)(f) **Service of subpoena.** For purposes of this section, the subpoena duces tecum to the  
23 custodian of the records may be served by first class mail. Service of subpoena by mail under this  
24 section shall not be subject to the requirements of subsection [(3) of section D] **D(3) of this rule.**

25 H(3) **Affidavit or declaration of custodian of records.**

26 H(3)(a) **Content.** The records described in subsection [(2) of this section] **H(2) of this**

1 **rule** shall be accompanied by the affidavit or declaration of a custodian of the records, stating in  
2 substance each of the following:

3 H(3)(a)(i) that the affiant or declarant is a duly authorized custodian of the records and  
4 has authority to certify records;

5 H(3)(a)(ii) that the copy is a true copy of all the records responsive to the subpoena;  
6 and

7 H(3)(a)(iii) that the records were; prepared by the personnel of the entity or **the** person,  
8 acting under the control of either[,]; **prepared** in the ordinary course of the entity's or **the** person's  
9 business[,]; **and prepared** at or near the time of the act, condition, or event described or referred  
10 to therein.

11 H(3)(b) **When custodian has no records or fewer records than requested.** If the  
12 entity or person has none of the records described in the subpoena, or only a part thereof, the  
13 affiant or declarant shall so state in the affidavit or declaration and shall send only those records of  
14 which the affiant or declarant has custody.

15 H(3)(c) **Multiple affidavits or declarations.** When more than one person has knowledge of  
16 the facts required to be stated in the affidavit or declaration, more than one affidavit or declaration  
17 may be used.

18 H(4) **Personal attendance of custodian of records may be required.**

19 H(4)(a) **Required statement.** The personal attendance of a custodian of records and  
20 the production of original records is required if the subpoena duces tecum contains the following  
21 statement:

22 \_\_\_\_\_  
23 The personal attendance of a custodian of records and the production of original records is  
24 required by this subpoena. The procedure authorized pursuant to Oregon Rule of Civil Procedure  
25 55 H(2) shall not be deemed sufficient compliance with this subpoena.  
26 \_\_\_\_\_

1 H(4)(b) **Multiple subpoenas.** If more than one subpoena duces tecum is served on a  
2 custodian of records and personal attendance is required under each pursuant to paragraph [(a) of  
3 *this subsection*] **H(4)(a) of this rule**, the custodian shall be deemed to be the witness of the party  
4 serving the first such subpoena.

5 H(5) **Tender and payment of fees.** Nothing in this section requires the tender or payment  
6 of more than one witness and mileage fee or other charge unless there has been agreement to the  
7 contrary.

8 H(6) **Scope of discovery.** Notwithstanding any other provision, this rule does not expand  
9 the scope of discovery beyond that provided in Rule 36 or Rule 44.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

## 2014-2015 BIENNIUM STAFF COMMENT TO RULE 55

*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 2014-2015 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).*

Rule 55 is amended for improved clarity. In section A, two archaic uses of “such” are reworded, one comma is deleted, and three commas are added. The phrase, “title of the action” is amended to read “the case name, and the case number” to improve accuracy. The listed amendments are made for the purpose of improved clarity and consistency and are not meant to effect a change in the section’s meaning or operation.

In section B, one archaic use of the word “such” is reworded. Four commas are added. An existing numerical sub-listing is deleted as inconsistent with the rules’ format. The listed amendments are made for the purpose of improved clarity and consistency and are not meant to effect a change in the section’s meaning or operation.

Section C is reorganized for clarity. Lead lines are amended and expanded. An amended paragraph C(1)(a) now identifies the purposes for which subpoenas may be issued, provisions that were found in the former subsection C(1). New paragraph C(1)(a) describes how subpoenas require attendance of persons or production of things in civil actions. New paragraph C(1)(b) refers to foreign depositions. New paragraph C(1)(c) describes subpoenas requiring attendance out of court. Subsection C(2) specifies who has authority to issue subpoenas, provisions that were found in the former subsection C(1). New paragraph C(2)(a) authorizes issuance of a subpoena by the clerk of the court or by judges, justices, and attorneys, and was moved from the former subsection C(1). Subparagraph C(2)(a)(i) restates (from former subsection C(2)) that subpoenas may be issued in blank but now includes a better defined requirement that the attorney or party requesting the subpoena must, before service, include the name of the person to appear or the things to be produced and the time and the location for the appearance or production. Subparagraphs C(2)(b) through C(2)(d) authorize clerks, judges, justices, and attorneys to issue subpoenas in specified categories of proceedings: foreign depositions, out-of-court, and in civil actions. The listed amendments are not meant to effect a change to the section’s meaning or operation, but now specify what is required of an attorney or party to “fill in” a blank subpoena.

In subsection D(1), an internal reference to the rule is amended to be consistent with the rules’ format. Two commas are added and another comma is deleted. The articles “the” and “a” are added. “Copies” is made singular to be in agreement with the verb. The phrase

“that is” is added. The word “seven” is replaced with the Arabic numeral “7” to achieve consistency.

Lead lines are added or amended in subsections D(2) through D(5). The articles “an” and “a” are added three times in paragraph D(2)(a) and an internal reference to the rule is amended to be consistent with the rules’ format. In paragraph D(2)(b), the phrase “the officer’s” is added for clarity and an archaic use of “such” is reworded. An internal reference to the rule in paragraph D(2)(c) is made consistent with the rules’ format. Two commas are deleted from subsection D(3). “Designation” is changed to “form,” “that is” is added, and “three” is replaced with the Arabic numeral “3” in paragraph D(3)(c).

In subsection D(4), the article “a” is added and in subsection D(5), two semicolons and a comma are added and a comma is deleted. The listed amendments in section D are made for the purpose of improved clarity and consistency and are not meant to effect a change in the section’s meaning or operation.

In section E, a comma is added and two archaic uses of “such” are reworded without the intention to change the section’s meaning or operation.

An internal reference to this rule and references to Rule 39 C and Rule 40 C are amended in section F to be consistent with the rules’ format. Five archaic uses of “such” are deleted or reworded. “As” is replaced with “that” twice. The article “the” is added as is the preposition “of.” “The word “all” is replace by “any.” The listed amendments are made for the purpose of improved clarity and consistency and are not meant to effect a change in the section’s meaning or operation.

In section G, the word “to” is deleted from the lead line. The word “to” is added twice and one archaic use of “such” is reworded without the intention to change to the section’s meaning or operation.

Lead lines are added in section H. In subsection H(1), “which” is amended to “that” five times. One comma is deleted and one comma is added. Two archaic uses of “such” are reworded. In subsection H(2), two archaic uses of the word “such” are reworded and the word “to” is added. The word “and” is moved, a period is deleted, and a semicolon is added to reflect a reorganization of subparagraphs H(2)(a)(i) to H(2)(a)(iii) within the subsection, and moving a formerly unattached sentence to subparagraph H(2)(a)(iv). Subparagraph H(2)(a)(iv) is reworded to flow with the immediately preceding subparagraphs. In paragraph H(2)(c), two internal references to the rule are amended to be consistent with the rules’ format. The archaic “therewith” is reworded. The word “five” is replaced with “5” to be consistent with the rules’ format.

In paragraph H(2)(d), the word “title” is amended to specify the “name of the court, case name” and an extraneous comma is deleted. In paragraph H(2)(e), “which” is replaced with “that.” In paragraph H(2)(f), an internal reference to the rule is amended to be consistent

with the rules' format. Another internal reference to the rule in paragraph H(3)(a) is amended for consistency with the rules' format. A colon, a comma, and two semicolons are added and two commas are deleted; the article "the" is added twice; and the word "prepared" is repeated in subparagraph H(3)(a)(iii.)

In paragraph H(4)(b), an internal reference to the rule is amended to be consistent with the rules' format. The listed amendments to section H are made for the purpose of improved clarity and consistency and are not meant to effect a change in the rule's meaning or operation.



1 | *order at any time to compel production. In any case, where a subpoena commands production*  
2 | *of books, papers, documents, or tangible things the court, upon motion made promptly and, in*  
3 | *any event, at or before the time specified in the subpoena for compliance therewith, may quash*  
4 | *or modify the subpoena if it is unreasonable and oppressive or condition denial of the motion*  
5 | *upon the advancement by the person in whose behalf the subpoena is issued of the reasonable*  
6 | *cost of producing the books, papers, documents, or tangible things.*

7 | **C Purpose; issuance.**

8 | **C(1) Purpose.**

9 | **C(1)(a) Civil actions.** *A subpoena may be issued to require attendance before a court, or*  
10 | *at the trial of an issue therein, or upon the taking of a deposition in an action pending therein*  
11 | *or, if separate from a subpoena commanding the attendance of a person, to produce books,*  
12 | *papers, documents, or tangible things and to permit inspection thereof.*

13 | **C(1)(b) Foreign depositions.** *A subpoena may be issued to require attendance before any*  
14 | *person authorized to take the testimony of a witness in this state under Rule 38 C, or before any*  
15 | *officer empowered by the laws of the United States to take testimony.*

16 | **C(1)(c) Other uses.** *A subpoena may be issued to require attendance out of court in cases*  
17 | *not provided for in paragraph C(1)(a) or C(1)(b) of this rule, before a judge, justice, or other*  
18 | *officer authorized to administer oaths or to take testimony in any matter under the laws of this*  
19 | *state.*

20 | **C(2) By whom issued.**

21 | **C(2)(a) By the clerk of the court, or a judge or justice of the court for civil actions.** *A*  
22 | *subpoena may be issued in blank by the clerk of the court in which the action is pending or, if*  
23 | *there is no clerk, by a judge or justice of that court.*

24 | **C(2)(a)(i) Requirements for subpoenas issued in blank.** *Upon request of a party or*  
25 | *attorney, any subpoena issued by a clerk of the court may be issued in blank and delivered to*  
26 | *the party or attorney requesting it, who shall before service include on the subpoena the name*

1 of the person commanded to appear; or the books, papers, documents, or tangible things to be  
2 produced or inspected; and the particular time and location for the attendance of the person or  
3 the production or the inspection, as applicable.

4 **C(2)(b) By the clerk of the court for foreign depositions.** A subpoena for a foreign  
5 deposition may be issued as specified in Rule 38 C(2) by the clerk of a circuit court in the county  
6 in which the witness is to be examined.

7 **C(2)(c) By a judge, justice, or other officer.** A subpoena to require attendance out of court  
8 in cases not provided for in paragraph C(1)(a) or C(1)(b) of this rule may be issued by the judge,  
9 justice, or other officer before whom the attendance is required.

10 **C(2)(d) By an attorney.** A subpoena may be issued by an attorney of record of the party to  
11 the action on whose behalf the witness is required to appear, subscribed by the attorney.

12 **D Service; service on law enforcement agency; service by mail; proof of service.**

13 **D(1) Service.** Except as provided in subsection D(2) of this rule, a subpoena may be served  
14 by the party or any other person 18 years of age or older. The service shall be made by  
15 delivering a copy to the witness personally and giving or offering to the witness at the same  
16 time the fees to which the witness is entitled for travel to and from the place designated and,  
17 whether or not personal attendance is required, one day's attendance fees. If the witness is  
18 under 14 years of age, the subpoena may be served by delivering a copy to the witness or to the  
19 witness's parent, guardian, or guardian ad litem. The service must be made so as to allow the  
20 witness a reasonable time for preparation and travel to the place of attendance. A subpoena for  
21 the taking of a deposition, served upon an organization as provided in Rule 39 C(6), shall be  
22 served in the same manner as provided for service of summons in Rule 7 D(3)(b)(i), D(3)(c)(i),  
23 D(3)(d)(i), D(3)(e), D(3)(f), or D(3)(h). A copy of each subpoena commanding production of  
24 books, papers, documents, or tangible things and inspection thereof before trial that is not  
25 accompanied by a command to appear at trial or hearing or at deposition, whether the  
26 subpoena is served personally or by mail, shall be served on each party at least 7 days before

1 | *the subpoena is served on the person required to produce and permit inspection, unless the*  
2 | *court orders a shorter period. In addition, a subpoena shall not require production less than 14*  
3 | *days from the date of service upon the person required to produce and permit inspection, unless*  
4 | *the court orders a shorter period.*

5 |       **D(2) Service on law enforcement agency.**

6 |       **D(2)(a) Designated individuals.** *Every law enforcement agency shall designate an*  
7 | *individual or individuals upon whom service of a subpoena may be made. At least one of the*  
8 | *designated individuals shall be available during normal business hours. In the absence of the*  
9 | *designated individuals, service of a subpoena pursuant to paragraph D(2)(b) of this rule may be*  
10 | *made upon the officer in charge of the law enforcement agency.*

11 |       **D(2)(b) Time limitation.** *If a peace officer's attendance at trial is required as a result of*  
12 | *the officer's employment as a peace officer, a subpoena may be served on the officer by*  
13 | *delivering a copy personally to the officer or to one of the individuals designated by the agency*  
14 | *that employs the officer. A subpoena may be served by delivery to one of the individuals*  
15 | *designated by the agency that employs the officer only if the subpoena is delivered at least 10*  
16 | *days before the date the officer's attendance is required, the officer is currently employed as a*  
17 | *peace officer by the agency, and the officer is present within the state at the time of service.*

18 |       **D(2)(c) Notice to officer.** *When a subpoena has been served as provided in paragraph*  
19 | *D(2)(b) of this rule, the law enforcement agency shall make a good faith effort to give actual*  
20 | *notice to the officer whose attendance is sought of the date, time, and location of the court*  
21 | *appearance. If the officer cannot be notified, the law enforcement agency shall promptly notify*  
22 | *the court and a postponement or continuance may be granted to allow the officer to be*  
23 | *personally served.*

24 |       **D(2)(d) "Law enforcement agency" defined.** *As used in this subsection, "law enforcement*  
25 | *agency" means the Oregon State Police, a county sheriff's department, or a municipal police*  
26 | *department.*

1        **D(3) Service by mail.** Under the following circumstances, service of a subpoena to a  
2 witness by mail shall be of the same legal force and effect as personal service otherwise  
3 authorized by this section:

4        **D(3)(a) Contact with willing witness.** The attorney certifies in connection with or upon the  
5 return of service that the attorney, or the attorney's agent, has had personal or telephone  
6 contact with the witness and the witness indicated a willingness to appear at trial if  
7 subpoenaed;

8        **D(3)(b) Payment to witness of fees and mileage.** The attorney, or the attorney's agent,  
9 made arrangements for payment to the witness of fees and mileage satisfactory to the witness;  
10 and

11        **D(3)(c) Time limitations.** The subpoena was mailed to the witness more than 10 days  
12 before trial by certified mail or some other form of mail that provides a receipt for the mail that  
13 is signed by the recipient and the attorney received a return receipt signed by the witness more  
14 than 3 days prior to trial.

15        **D(4) Service by mail of subpoena not accompanied by command to appear.** Service of a  
16 subpoena by mail may be used for a subpoena commanding production of books, papers,  
17 documents, or tangible things, not accompanied by a command to appear at trial or hearing or  
18 at deposition.

19        **D(5) Proof of service; qualifications.** Proof of service of a subpoena is made in the same  
20 manner as proof of service of a summons except that the server need not certify that the server  
21 is not a party in the action; an attorney for a party in the action; or an officer, director, or  
22 employee of a party in the action.

23        **E Subpoena for hearing or trial; prisoners.** If the witness is confined in a prison or jail in  
24 this state, a subpoena may be served on that person only upon leave of court and attendance of  
25 the witness may be compelled only upon the terms that the court prescribes. The court may  
26 order temporary removal and production of the prisoner for the purpose of giving testimony or

1 | *may order that testimony only be taken upon deposition at the place of confinement. The*  
2 | *subpoena and court order shall be served upon the custodian of the prisoner.*

3 |       ***F Subpoena for taking depositions or requiring production of books, papers, documents,***  
4 | ***or tangible things; place of production and examination.***

5 |       ***F(1) Subpoena for taking deposition.*** *Proof of service of a notice to take a deposition as*  
6 | *provided in Rule 39 C and Rule 40 A, or of notice of subpoena to command production of books,*  
7 | *papers, documents, or tangible things before trial as provided in subsection D(1) of this rule or a*  
8 | *certificate that notice will be served if the subpoena can be served, constitutes a sufficient*  
9 | *authorization for the issuance by a clerk of court of subpoenas for the persons named or*  
10 | *described therein.*

11 |       ***F(2) Place of examination.*** *A resident of this state who is not a party to the action may be*  
12 | *required by subpoena to attend an examination or to produce books, papers, documents, or*  
13 | *tangible things only in the county wherein the person resides, is employed, or transacts business*  
14 | *in person, or at any other convenient place that is fixed by an order of the court. A nonresident*  
15 | *of this state who is not a party to the action may be required by subpoena to attend an*  
16 | *examination or to produce books, papers, documents, or tangible things only in the county*  
17 | *wherein the person is served with a subpoena, or at any other convenient place that is fixed by*  
18 | *an order of the court.*

19 |       ***F(3) Production without examination or deposition.*** *A party who issues a subpoena may*  
20 | *command the person to whom it is issued to produce books, papers, documents, or tangible*  
21 | *things, other than individually identifiable health information as described in section H of this*  
22 | *rule, by mail or otherwise, at a time and place specified in the subpoena, without commanding*  
23 | *inspection of the originals or a deposition. In such instances, the person to whom the subpoena*  
24 | *is directed complies if the person produces copies of the specified items in the specified manner*  
25 | *and certifies that the copies are true copies of all of the items responsive to the subpoena or, if*  
26 | *any items are not included, why they are not.*

1        **G Disobedience of subpoena; refusal to be sworn or to answer as a witness.**

2        *Disobedience to a subpoena or a refusal to be sworn or to answer as a witness may be punished*  
3        *as contempt by a court before whom the action is pending or by the judge or justice issuing the*  
4        *subpoena. Upon hearing or trial, if the witness is a party and disobeys a subpoena or refuses to*  
5        *be sworn or to answer as a witness, that party's complaint, answer, or reply may be stricken.*

6        **H Individually identifiable health information.**

7        **H(1) Definitions.** *As used in this rule, the terms "individually identifiable health*  
8        *information" and "qualified protective order" are defined as follows:*

9        **H(1)(a) "Individually identifiable health information."** *"Individually identifiable health*  
10        *information" means information that identifies an individual or that could be used to identify an*  
11        *individual; that has been collected from an individual and created or received by a health care*  
12        *provider, health plan, employer, or health care clearinghouse; and that relates to the past,*  
13        *present, or future physical or mental health or condition of an individual; the provision of health*  
14        *care to an individual; or the past, present, or future payment for the provision of health care to*  
15        *an individual.*

16        **H(1)(b) "Qualified protective order."** *"Qualified protective order" means an order of the*  
17        *court, by stipulation of the parties to the litigation or otherwise, that prohibits the parties from*  
18        *using or disclosing individually identifiable health information for any purpose other than the*  
19        *litigation for which the information was requested and that requires the return to the original*  
20        *custodian of the information or the destruction of the individually identifiable health*  
21        *information (including all copies made) at the end of the litigation.*

22        **H(2) Procedure.** *Individually identifiable health information may be obtained by subpoena*  
23        *only as provided in this section. However, if disclosure of any requested records is restricted or*  
24        *otherwise limited by state or federal law, then the protected records shall not be disclosed in*  
25        *response to the subpoena unless the requesting party has complied with the applicable law.*

26        **H(2)(a) Supporting documentation.** *The attorney for the party issuing a subpoena*

1 | *requesting production of individually identifiable health information must serve the custodian or*  
2 | *other keeper of that information either with a qualified protective order or with an affidavit or*  
3 | *declaration together with attached supporting documentation demonstrating that:*

4 |       *H(2)(a)(i) the party has made a good faith attempt to provide written notice to the*  
5 | *individual or to the individual's attorney that the individual or the attorney had 14 days from the*  
6 | *date of the notice to object;*

7 |       *H(2)(a)(ii) the notice included the proposed subpoena and sufficient information about*  
8 | *the litigation in which the individually identifiable health information was being requested to*  
9 | *permit the individual or the individual's attorney to object;*

10 |       *H(2)(a)(iii) the individual did not object within the 14 days or, if objections were made,*  
11 | *they were resolved and the information being sought is consistent with that resolution; and*

12 |       *H(2)(a)(iv) the party issuing a subpoena certifies that he or she will, promptly upon*  
13 | *request, permit the patient or the patient's representative to inspect and copy the records*  
14 | *received.*

15 |       *H(2)(b) **Objection.** Within 14 days from the date of a notice requesting individually*  
16 | *identifiable health information, the individual or the individual's attorney objecting to the*  
17 | *subpoena shall respond in writing to the party issuing the notice, stating the reason for each*  
18 | *objection.*

19 |       *H(2)(c) **Time for compliance.** Except as provided in subsection H(4) of this rule, when a*  
20 | *subpoena is served upon a custodian of individually identifiable health information in an action*  
21 | *in which the entity or person is not a party, and the subpoena requires the production of all or*  
22 | *part of the records of the entity or person relating to the care or treatment of an individual, it is*  
23 | *sufficient compliance with the subpoena if a custodian delivers by mail or otherwise a true and*  
24 | *correct copy of all of the records responsive to the subpoena within 5 days after receipt thereof.*  
25 | *Delivery shall be accompanied by an affidavit or a declaration as described in subsection H(3) of*  
26 | *this rule.*

1            **H(2)(d) Method of compliance.** *The copy of the records shall be separately enclosed in a*  
2 *sealed envelope or wrapper on which the name of the court, case name and number of the*  
3 *action, name of the witness, and date of the subpoena are clearly inscribed. The sealed*  
4 *envelope or wrapper shall be enclosed in an outer envelope or wrapper and sealed. The outer*  
5 *envelope or wrapper shall be addressed as follows: if the subpoena directs attendance in court,*  
6 *to the clerk of the court, or to the judge thereof if there is no clerk; if the subpoena directs*  
7 *attendance at a deposition or other hearing, to the officer administering the oath for the*  
8 *deposition at the place designated in the subpoena for the taking of the deposition or at the*  
9 *officer's place of business; in other cases involving a hearing, to the officer or body conducting*  
10 *the hearing at the official place of business; if no hearing is scheduled, to the attorney or party*  
11 *issuing the subpoena. If the subpoena directs delivery of the records to the attorney or party*  
12 *issuing the subpoena, then a copy of the proposed subpoena shall be served on the person*  
13 *whose records are sought, and on all other parties to the litigation, not less than 14 days prior*  
14 *to service of the subpoena on the entity or person. Any party to the proceeding may inspect the*  
15 *records provided and/or request a complete copy of the records. Upon request, the records must*  
16 *be promptly provided by the party who issued the subpoena at the requesting party's expense.*

17            **H(2)(e) Inspection of records.** *After filing and after giving reasonable notice in writing to*  
18 *all parties who have appeared of the time and place of inspection, the copy of the records may*  
19 *be inspected by any party or by the attorney of record of a party in the presence of the*  
20 *custodian of the court files, but otherwise shall remain sealed and shall be opened only at the*  
21 *time of trial, deposition, or other hearing at the direction of the judge, officer, or body*  
22 *conducting the proceeding. The records shall be opened in the presence of all parties who have*  
23 *appeared in person or by counsel at the trial, deposition, or hearing. Records that are not*  
24 *introduced in evidence or required as part of the record shall be returned to the custodian who*  
25 *produced them.*

26            **H(2)(f) Service of subpoena.** *For purposes of this section, the subpoena duces tecum to*

1 | *the custodian of the records may be served by first class mail. Service of subpoena by mail under*  
2 | *this section shall not be subject to the requirements of subsection D(3) of this rule.*

3 |       ***H(3) Affidavit or declaration of custodian of records.***

4 |       *H(3)(a) Content. The records described in subsection H(2) of this rule shall be*  
5 | *accompanied by the affidavit or declaration of a custodian of the records, stating in substance*  
6 | *each of the following:*

7 |           *H(3)(a)(i) that the affiant or declarant is a duly authorized custodian of the records and*  
8 | *has authority to certify records;*

9 |           *H(3)(a)(ii) that the copy is a true copy of all the records responsive to the subpoena; and*

10 |           *H(3)(a)(iii) that the records were: prepared by the personnel of the entity or the person,*  
11 | *acting under the control of either; prepared in the ordinary course of the entity's or the person's*  
12 | *business; and prepared at or near the time of the act, condition, or event described or referred*  
13 | *to therein.*

14 |       *H(3)(b) When custodian has no records or fewer records than requested. If the entity or*  
15 | *person has none of the records described in the subpoena, or only a part thereof, the affiant or*  
16 | *declarant shall so state in the affidavit or declaration and shall send only those records of which*  
17 | *the affiant or declarant has custody.*

18 |       *H(3)(c) Multiple affidavits or declarations. When more than one person has knowledge of*  
19 | *the facts required to be stated in the affidavit or declaration, more than one affidavit or*  
20 | *declaration may be used.*

21 |       ***H(4) Personal attendance of custodian of records may be required.***

22 |       *H(4)(a) Required statement. The personal attendance of a custodian of records and the*  
23 | *production of original records is required if the subpoena duces tecum contains the following*  
24 | *statement:*

25 | \_\_\_\_\_  
26 |       *The personal attendance of a custodian of records and the production of original records*

1 *is required by this subpoena. The procedure authorized pursuant to Oregon Rule of Civil*  
2 *Procedure 55 H(2) shall not be deemed sufficient compliance with this subpoena.*

3  
4 *H(4)(b) **Multiple subpoenas.** If more than one subpoena duces tecum is served on a*  
5 *custodian of records and personal attendance is required under each pursuant to paragraph*  
6 *H(4)(a) of this rule, the custodian shall be deemed to be the witness of the party serving the first*  
7 *such subpoena.*

8 *H(5) **Tender and payment of fees.** Nothing in this section requires the tender or payment*  
9 *of more than one witness and mileage fee or other charge unless there has been agreement to*  
10 *the contrary.*

11 *H(6) **Scope of discovery.** Notwithstanding any other provision, this rule does not expand*  
12 *the scope of discovery beyond that provided in Rule 36 or Rule 44.]*

13 **A Generally: form and contents; originating court; who may issue; who may serve;**  
14 **proof of service. Provisions of this section apply to all subpoenas except as expressly**  
15 **indicated.**

16 **A(1) Form and contents.**

17 **A(1)(a) General requirements. A subpoena is a writ or order that must:**

18 **A(1)(a)(i) originate in the court where the action is pending ,except as provided in Rule**  
19 **38 C;**

20 **A(1)(a)(ii) state the name of the court where the action is pending;**

21 **A(1)(a)(iii) state the title of the action and the case number; and**

22 **A(1)(a)(iv) command the person to whom the subpoena is directed to do one or more**  
23 **of the following things at a specified time and place:**

24 **A(1)(a)(iv)(A) appear and testify in a deposition, hearing, trial, or administrative or**  
25 **other out-of-court proceeding as provided in section B of this rule;**

26 **A(1)(a)(iv)(B) produce items for inspection and copying, such as specified books,**

1 documents, electronically stored information, or tangible things in the person's possession,  
2 custody, or control as provided in section C of this rule, except confidential health  
3 information as defined in subsection D(1) of this rule; or

4 A(1)(a)(iv)(C) produce records of confidential health information for inspection and  
5 copying as provided in section D of this rule.

6 A(2) Originating court. A subpoena must issue from the court where the action is  
7 pending. If the action arises under Rule 38 C, a subpoena may be issued by the court in the  
8 county in which the witness is to be examined.

9 A(3) Who may issue.

10 A(3)(a) Attorney of record. An attorney of record for a party to the action may issue a  
11 subpoena requiring a witness to appear on behalf of that party.

12 A(3)(b) Clerk of court. The clerk of the court in which the action is pending may issue a  
13 subpoena to a party on request. Blank subpoenas must be completed by the requesting party  
14 before being served. Subpoenas to attend a deposition may be issued by the clerk only if the  
15 requesting party has served a notice of deposition as provided in Rule 39 C or Rule 40 A; has  
16 served a notice of subpoena for production of books, documents, electronically stored  
17 information, or tangible things; or certifies that such a notice will be served  
18 contemporaneously with service of the subpoena.

19 A(3)(c) Clerk of court for foreign depositions. A subpoena to appear and testify in a  
20 foreign deposition may be issued as specified in Rule 38 C(2) by the clerk of the court in the  
21 county in which the witness is to be examined.

22 A(3)(d) Judge, justice, or other authorized officer.

23 A(3)(d)(i) When there is no clerk of the court, a judge or justice of the court may issue a  
24 subpoena.

25 A(3)(d)(ii) A judge, a justice, or an authorized officer presiding over an administrative or  
26 out-of-court proceeding may issue a subpoena to appear and testify in that proceeding.

1 A(4) Who may serve. A subpoena may be served by a party, the party's attorney, or any  
2 other person who is 18 years of age or older.

3 A(5) Proof of service. Proving service of a subpoena is done in the same way as  
4 provided in Rule 7 F(2)(a) for proving service of a summons, except that the server need not  
5 disavow being a party in the action; an attorney for a party; or an officer, director, or  
6 employee of a party.

7 A(6) Recipient obligations.

8 A(6)(a) Length of witness attendance. A command in a subpoena to appear and testify  
9 requires that the witness remain for as many hours or days as are necessary to conclude the  
10 testimony, unless the witness is sooner discharged.

11 A(6)(b) Witness appearance contingent on fee payment. Unless a witness expressly  
12 declines payment of fees and mileage, the witness's obligation to appear is contingent on  
13 payment of fees and mileage when the subpoena is served. At the end of each day's  
14 attendance, a witness may demand payment of legal witness fees and mileage for the next  
15 day. If the fees and mileage are not paid on demand, the witness is not obligated to return.

16 A(6)(c) Deposition subpoena; place where witness can be required to attend or to  
17 produce things.

18 A(6)(c)(i) Oregon residents. A resident of this state who is not a party to the action is  
19 required to attend a deposition or to produce things only in the county where the person  
20 resides, is employed, or transacts business in person, or at another convenient place as  
21 ordered by the court.

22 A(6)(c)(ii) Nonresidents. A nonresident of this state who is not a party to the action is  
23 required to attend a deposition or to produce things only in the county where the person is  
24 served with the subpoena, or at another convenient place as ordered by the court.

25 A(6)(d) Obedience to subpoena. A witness must obey a subpoena. Disobedience or a  
26 refusal to be sworn or to answer as a witness may be punished as contempt by the court or

1 by the judge who issued the subpoena or before whom the action is pending. At a hearing or  
2 trial, if a witness who is a party disobeys a subpoena, or refuses to be sworn or to answer as a  
3 witness, that party's complaint, answer, or other pleading may be stricken.

4 A(7) Recipient's option to object, to move to quash, or to move to modify subpoena for  
5 production. A person who is not subpoenaed to appear, but who is commanded to produce  
6 and permit inspection and copying of documents or things, including records of confidential  
7 health information as defined in subsection D(1) of this rule, may object, or move to quash or  
8 move to modify the subpoena, as provided as follows.

9 A(7)(a) Written objection; timing. A written objection may be served on the party who  
10 issued the subpoena before the deadline set for production, but not later than 14 days after  
11 service on the objecting person.

12 A(7)(a)(i) Scope. The written objection may be to all or to only part of the command to  
13 produce.

14 A(7)(a)(ii) Objection suspends obligation to produce. Serving a written objection  
15 suspends the time to produce the documents or things sought to be inspected and copied.  
16 However, the party who served the subpoena may move for a court order to compel  
17 production at any time. A copy of the motion to compel must be served on the objecting  
18 person.

19 A(7)(b) Motion to quash or to modify. A motion to quash or to modify the command for  
20 production must be served and filed with the court no later than the deadline set for  
21 production. The court may quash or modify the subpoena if the subpoena is unreasonable  
22 and oppressive or may require that the party who served the subpoena pay the reasonable  
23 costs of production.

24 A(8) Scope of discovery. Notwithstanding any other provision, this rule does not expand  
25 the scope of discovery beyond that provided in Rule 36 or Rule 44.

26 B Subpoenas requiring appearance and testimony by individuals, organizations, law

1 enforcement agencies or officers, and prisoners.

2 B(1) Permissible purposes of subpoena. A subpoena may require appearance in court or  
3 out of court, including:

4 B(1)(a) Civil actions. A subpoena may be issued to require attendance before a court, or  
5 at the trial of an issue therein, or upon the taking of a deposition in an action pending  
6 therein.

7 B(1)(b) Foreign depositions. Any foreign deposition under Rule 38 C presided over by  
8 any person authorized by Rule 38 C to take witness testimony, or by any officer empowered  
9 by the laws of the United States to take testimony; or

10 B(1)(c) Administrative and other proceedings. Any administrative or other proceeding  
11 presided over by a judge, justice, or other officer authorized to administer oaths or to take  
12 testimony in any matter under the laws of this state.

13 B(2) Service of subpoenas requiring the appearance or testimony of individuals or  
14 non-party organizations; payment of fees. Unless otherwise provided in this rule, a copy of  
15 the subpoena must be served sufficiently in advance to allow the witness a reasonable time  
16 for preparation and travel to the place required.

17 B(2)(a) Service on an individual 14 years of age or older. If the witness is 14 years of age  
18 or older, the subpoena must be personally delivered to the witness, along with fees for one  
19 day's attendance and the mileage allowed by law unless the witness expressly declines  
20 payment, whether personal attendance is required or not.

21 B(2)(b) Service on an individual under 14 years of age. If the witness is under 14 years of  
22 age, the subpoena must be personally delivered to the witness's parent, guardian, or  
23 guardian ad litem, along with fees for one day's attendance and the mileage allowed by law  
24 unless the witness expressly declines payment, whether personal attendance is required or  
25 not.

26 B(2)(c) Service on individuals waiving personal service. If the witness waives personal

1 service, the subpoena may be mailed to the witness, but mail service is valid only if all of the  
2 following circumstances exist:

3 B(2)(c)(i) Witness agreement. Contemporaneous with the return of service, the party's  
4 attorney or attorney's agent certifies that the witness agreed to appear and testify if  
5 subpoenaed;

6 B(2)(c)(ii) Fee arrangements. The party's attorney or attorney's agent made satisfactory  
7 arrangements with the witness to ensure the payment of fees and mileage. or the witness  
8 expressly declined payment; and

9 B(2)(c)(iii) Signed mail receipt. The subpoena was mailed more than 10 days before the  
10 date to appear and testify in a manner that provided a signed receipt on delivery, and the  
11 witness or, if applicable, the witness's parent, guardian, or guardian ad litem, signed the  
12 receipt more than 3 days before the date to appear and testify.

13 B(2)(d) Service of a deposition subpoena on a nonparty organization pursuant to Rule  
14 39 C(6). A subpoena naming a nonparty organization as a deponent must be delivered in the  
15 same manner as provided for service of summons in Rule 7 D(3)(b)(i), Rule 7 D(3)(c)(i), Rule 7  
16 D(3)(d)(i), Rule 7 D(3)(e), Rule 7 D(3)(f), or Rule 7 D(3)(h).

17 B(3) Service of a subpoena requiring appearance of a peace officer in a professional  
18 capacity.

19 B(3)(a) Personal service on a peace officer. A subpoena directed to a peace officer in a  
20 professional capacity may be served by personal service of a copy, along with one day's  
21 attendance fee and mileage as allowed by law, unless the peace officer expressly declines  
22 payment.

23 B(3)(b) Substitute service on a law enforcement agency. A subpoena directed to a  
24 peace officer in a professional capacity may be served by substitute service of a copy, along  
25 with one day's attendance fee and mileage as allowed by law, on an individual designated by  
26 the law enforcement agency that employs the peace officer or, if a designated individual is

1 not available, then on the person in charge at least 10 days before the date the peace officer  
2 is required to attend, provided that the peace officer is currently employed by the law  
3 enforcement agency and is present in this state at the time the agency is served.

4 B(3)(b)(i) "Law enforcement agency" defined. For purposes of this subsection, a law  
5 enforcement agency means the Oregon State Police, a county sheriff's department, a city  
6 police department, or a municipal police department.

7 B(3)(b)(ii) Law enforcement agency obligations.

8 B(3)(b)(ii)(A) Designating representative. All law enforcement agencies must designate  
9 one or more individuals to be available during normal business hours to receive service of  
10 subpoenas.

11 B(3)(b)(ii)(B) Ensuring actual notice or reporting otherwise. When a peace officer is  
12 subpoenaed by substitute service under paragraph B(3)(b) of this rule, the agency must make  
13 a good faith effort to give the peace officer actual notice of the time, date, and location  
14 identified in the subpoena for the appearance. If the law enforcement agency is unable to  
15 notify the peace officer, then the agency must promptly report this inability to the court. The  
16 court may postpone the matter to allow the peace officer to be personally served.

17 B(4) Service of subpoena requiring the appearance and testimony of prisoner. All of  
18 the following are required to secure a prisoner's appearance and testimony:

19 B(4)(a) Court preauthorization. Leave of the court must be obtained before serving a  
20 subpoena on a prisoner, and the court may prescribe terms and conditions when compelling  
21 a prisoner's attendance;

22 B(4)(b) Court determines location. The court may order temporary removal and  
23 production of the prisoner to a requested location, or may require that testimony be taken by  
24 deposition at, or by remote location testimony from, the place of confinement; and

25 B(4)(c) Whom to serve. The subpoena and court order must be served on the  
26 custodian of the prisoner.

1 C Subpoenas requiring production of documents or things other than confidential  
2 health information as defined in subsection D(1) of this rule.

3 C(1) Combining subpoena for production with subpoena to appear and testify. A  
4 subpoena for production may be joined with a subpoena to appear and testify or may be  
5 issued separately.

6 C(2) When mail service allowed. A copy of a subpoena for production that does not  
7 contain a command to appear and testify may be served by mail.

8 C(3) Subpoenas to command inspection prior to deposition, hearing, or trial. A copy of  
9 a subpoena issued solely to command production or inspection prior to a deposition, hearing,  
10 or trial must do the following:

11 C(3)(a) Advance notice to parties. The subpoena must be served on all parties to the  
12 action who are not in default at least 7 days before service of the subpoena on the person or  
13 organization's representative who is commanded to produce and permit inspection, unless  
14 the court orders less time;

15 C(3)(b) Time for production. The subpoena must allow at least 14 days for production  
16 of the required documents or things, unless the court orders less time; and

17 C(3)(c) Originals or true copies. The subpoena must specify whether originals or true  
18 copies will satisfy the subpoena.

19 D Subpoenas for documents and things containing confidential health information  
20 ("CHI").

21 D(1) Application of this section; "confidential health information" defined. This section  
22 creates protections for production of CHI, which includes both individually identifiable health  
23 information as defined in ORS 192.556 (8) and protected health information as defined in ORS  
24 192.556 (11)(a). For purposes of this section, CHI means information collected from a person  
25 by a health care provider, health care facility, state health plan, health care clearinghouse,  
26 health insurer, employer, or school or university that identifies the person or could be used to

1 identify the person and that includes records that:

2 D(1)(a) relate to the person's physical or mental health or condition; or

3 D(1)(b) relate to the cost or description of any health care services provided to the  
4 person.

5 D(2) Qualified protective orders. A qualified protective order means a court order that  
6 prohibits the parties from using or disclosing CHI for any purpose other than the litigation for  
7 which the information is produced, and that, at the end of the litigation, requires the return  
8 of all CHI to the original custodian, including all copies made, or the destruction of all CHI.

9 D(3) Compliance with state and federal law. A subpoena to command production of  
10 CHI must comply with the requirements of this section, as well as with all other restrictions or  
11 limitations imposed by state or federal law. If a subpoena does not comply, then the  
12 protected CHI may not be disclosed in response to the subpoena until the requesting party  
13 has complied with the appropriate law.

14 D(4) Conditions on service of subpoena.

15 D(4)(a) Qualified protective order; declaration or affidavit; contents. The party serving  
16 a subpoena for CHI must serve the custodian or other record keeper with either a qualified  
17 protective order or a declaration or affidavit together with supporting documentation that  
18 demonstrates:

19 D(4)(a)(i) Written notice. The party made a good faith attempt to provide the person  
20 whose CHI is sought, or the person's attorney, written notice that allowed 14 days after the  
21 date of the notice to object;

22 D(4)(a)(ii) Sufficiency. The written notice included the subpoena and sufficient  
23 information about the litigation underlying the subpoena to enable the person or the  
24 person's attorney to meaningfully object;

25 D(4)(a)(iii) Information regarding objections. The party must certify that either no  
26 written objection was made within the 14 days, or objections made were resolved and the

1 command in the subpoena is consistent with that resolution; and

2 D(4)(a)(iv) Inspection requests. The party must certify that the person or the person's  
3 representative was or will be permitted, promptly on request, to inspect and copy any CHI  
4 received.

5 D(4)(b) Objections. Within 14 days from the date of a notice requesting CHI, the  
6 person whose CHI is being sought, or the person's attorney objecting to the subpoena, must  
7 respond in writing to the party issuing the notice, and state the reasons for each objection.

8 D(4)(c) Statement to secure personal attendance and production. The personal  
9 attendance of a custodian of records and the production of original CHI is required if the  
10 subpoena contains the following statement:

11 \_\_\_\_\_  
12 This subpoena requires a custodian of confidential health information to personally  
13 attend and produce original records. Lesser compliance otherwise allowed by Oregon Rule of  
14 Civil Procedure 55 D(8) is insufficient for this subpoena.

15 \_\_\_\_\_  
16 D(5) Mandatory privacy procedures for all records produced.

17 D(5)(a) Enclosure in a sealed inner envelope; labeling. The copy of the records must be  
18 separately enclosed in a sealed envelope or wrapper on which the name of the court, case  
19 name and number of the action, name of the witness, and date of the subpoena are clearly  
20 inscribed.

21 D(5)(b) Enclosure in a sealed outer envelope; properly addressed. The sealed envelope  
22 or wrapper must be enclosed in an outer envelope or wrapper and sealed. The outer  
23 envelope or wrapper must be addressed as follows:

24 D(5)(b)(i) Court. If the subpoena directs attendance in court, to the clerk of the court,  
25 or to a judge;

26 D(5)(b)(ii) Deposition or similar hearing. If the subpoena directs attendance at a

1 deposition or similar hearing, to the officer administering the oath for the deposition at the  
2 place designated in the subpoena for the taking of the deposition or at the officer's place of  
3 business;

4 D(5)(b)(iii) Other hearings or miscellaneous proceedings. If the subpoena directs  
5 attendance at another hearing or another miscellaneous proceeding, to the officer or body  
6 conducting the hearing or proceeding at the officer's or body's official place of business; or

7 D(5)(b)(iv) If no hearing is scheduled. If no hearing is scheduled, to the attorney or  
8 party issuing the subpoena.

9 D(6) Additional responsibilities of attorney or party receiving delivery of CHI.

10 D(6)(a) Service of a copy of subpoena on patient and all parties to the litigation. If the  
11 subpoena directs delivery of CHI to the attorney or party who issued the subpoena, then a  
12 copy of the subpoena must be served on the person whose CHI is sought, and on all other  
13 parties to the litigation who are not in default, not less than 14 days prior to service of the  
14 subpoena on the custodian or keeper of the records.

15 D(6)(b) Parties' right to inspect or obtain a copy of the CHI at own expense. Any party  
16 to the proceeding may inspect the CHI provided and may request a complete copy of the  
17 information. On request, the CHI must be promptly provided by the party who served the  
18 subpoena at the expense of the party who requested the copies.

19 D(7) Inspection of CHI delivered to court or other proceeding. After filing and after  
20 giving reasonable notice in writing to all parties who have appeared of the time and place of  
21 inspection, the copy of the CHI may be inspected by any party or by the attorney of record of  
22 a party in the presence of the custodian of the court files, but otherwise the copy must  
23 remain sealed and must be opened only at the time of trial, deposition, or other hearing at  
24 the direction of the judge, officer, or body conducting the proceeding. The CHI must be  
25 opened in the presence of all parties who have appeared in person or by counsel at the trial,  
26 deposition, or hearing. CHI that is not introduced in evidence or required as part of the record

1 must be returned to the custodian who produced it.

2 D(8) Compliance by delivery only when no personal attendance is required.

3 D(8)(a) Mail or delivery by a nonparty, along with declaration. A custodian of CHI who  
4 is not a party to the litigation connected to the subpoena, and who is not required to attend  
5 and testify, may comply by mailing or otherwise delivering a true and correct copy of all CHI  
6 subpoenaed within five days after the subpoena is received, along with a declaration that  
7 complies with paragraph D(8)(b) of this rule.

8 D(8)(b) Declaration of custodian of records when CHI produced. CHI that is produced  
9 when personal attendance of the custodian is not required must be accompanied by a  
10 declaration of the custodian that certifies all of the following:

11 D(8)(b)(i) Authority of declarant. The declarant is a duly authorized custodian of the  
12 records and has authority to certify records;

13 D(8)(b)(ii) True and complete copy. The copy produced is a true copy of all of the CHI  
14 responsive to the subpoena; and

15 D(8)(b)(iii) Proper preparation practices. Preparation of the copy of the CHI being  
16 produced was done:

17 D(8)(b)(iii)(A) by the declarant, or by qualified personnel acting under the control of  
18 the entity subpoenaed or the declarant;

19 D(8)(b)(iii)(B) in the ordinary course of the entity's or the person's business; and

20 D(8)(b)(iii)(C) at or near the time of the act, condition, or event described or referred  
21 to in the CHI.

22 D(8)(c) Declaration of custodian of records when not all CHI produced. When the  
23 custodian of records produces no CHI, or less information than requested, the custodian of  
24 records must specify this in the declaration. The custodian may only send CHI within the  
25 custodian's custody.

26 D(8)(d) Multiple declarations allowed when necessary. When more than one person

1 has knowledge of the facts required to be stated in the declaration, more than one  
2 declaration may be used.

3 D(9) Designation of responsible party when multiple parties subpoena CHI. If more  
4 than one party subpoenas a custodian of records to personally attend under paragraph  
5 D(4)(c) of this rule, the custodian of records will be deemed to be the witness of the party  
6 who first served such a subpoena.

7 D(10) Tender and payment of fees. Nothing in this section requires the tender or  
8 payment of more than one witness fee and mileage for one day unless there has been  
9 agreement to the contrary.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

## 2017-2019 BIENNIUM STAFF COMMENT TO RULE 55

*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 2017-2019 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).*

Rule 55 has been the subject of criticism as being overly long, organizationally deficient, and lacking in clarity. Rule 55 is completely rewritten in an effort to remedy its flaws while maintaining, to the degree possible, its operation and meaning.

The previous version of the rule was made up of eight sections; the new rule contains four. Section 55 A is an introductory guide to the basics of all subpoenas: 1) the form and contents of a subpoena; 2) from what court a subpoena may be issued; 3) who may issue a subpoena; 4) who may serve a subpoena; 5) how proof of service is made; and 6) the duties of a recipient of a subpoena.

Section 55 B governs subpoenas that require an appearance and testimony. Subsection 55 B(1) describes the kinds of proceedings to which a witness may be subpoenaed to provide testimony. Subsection B(2) specifies particular requirements for service on individuals and organizations as well as offering or tendering a witness fee. Subsections 55 B(3) and 55 B(4) specify requirements for subpoenaing peace officers and prisoners.

Section C specifies timing and service requirements for subpoenas that require only the production of records (other than confidential health information) and things. Section 55 D replaces section 55 H of the previous rule and details the particularized requirements when confidential health information is the subject of a subpoena.

The Council endeavored to redraft Rule 55 in a manner that would not change the rights, obligations, and procedures contained in the previous version of the rule. It was thought that a change to those rights, obligations, or procedures might adversely impact successfully promulgating a much-improved rendering of those rights, obligations, and procedures. However, with the improved organization, some inconsistencies became apparent. At least one correction was made in paragraph 55 C(3)(a) and paragraph 55 D(6)(a) to make clear that, in accord with ORCP 9 A, copies of subpoenas need not be served on parties who are in default.

**ORCP 55**  
**Cross-Reference Chart**

<b>Promulgated Amendment 12/8/18</b>	<b>Existing Rule 55 Section Reference</b>
A(1)(a)	A
A(1)(a)(i)	C(2)(a)
A(1)(a)(ii)	A
A(1)(a)(iv)(A)	A
A(1)(a)(iv)(B)	A
A(1)(a)(iv)(C)	H(2)
A(2)	C(2)(a) C(2)(b)
A(3)(a)	C(2)(d)
A(3)(b)	C(2)(a) and C(2)(a)(i) F(1)
A(3)(c)	C(2)(b)
A(3)(d)	C(2)(c)
A(3)(d)(i)	C(2)(a)
A(3)(d)(ii)	C(2)(c)
A(4)	D(1)
A(5)	D(5)
A(6)(a)	A
A(6)(b)	A
A(6)(c)(i)	F(2)
A(6)(c)(ii)	F(2)
A(6)(d)	G
A(7)(a) through A(7)(b)	B
A(8)	H(6)
B(1)(a)	C(1)(a)
B(1)(b)	C(1)(b)
B(1)(c)	C(1)(c)
B(2)(a)	D(1)
B(2)(b)	D(1)
B(2)(c)	D(3)
B(2)(c)(i)	D(3)(a)
B(2)(c)(ii)	D(3)(b)
B(2)(c)(iii)	D(3)(c)
B(2)(d)	D(1)

**ORCP 55**  
**Cross-Reference Chart**

<b>Promulgated Amendment 12/8/18</b>	<b>Existing Rule 55 Section Reference</b>
B(3)	D(1)
B(3)(a)	D(2)(b)
B(3)(b)	D(2)(a) D(2)(b)
B(3)(b)(i)	D(2)(d)
B(3)(b)(ii)(A)	D(2)(a)
B(3)(b)(ii)(B)	D(2)(c)
B(4)(a) through B(4)(c)	E
B2	D(1)
C	B H(2)
C(1)	B
C(2)	D(4)
C(3) through C(3)(b)	D(1)
C(3)(c)	F(3)
D through D(2)	H through H(1)
D(10)	H(5)
D(3)	H(2)
D(4)(a)(i)	H(2)(a)(i)
D(4)(a)(ii)	H(2)(a)(ii)
D(4)(a)(iii)	H(2)(a)(iii)
D(4)(a)(iv)	H(2)(a)(iv)
D(4)(b)	H(2)(b)
D(4)(c)	H(4) through H(4)(a)
D(5)(a)	H(2)(d)
D(5)(b) through D(5)(b)(iv)	H(2)(d)
D(6)(a) through D(7)	H(2)(d)
D(8) through D(8)(a)	H(2)(c) H(2)(f)
D(8)(b) through D(8)d)	H(3)
D(9)	H(4)(b)
D4(a)	H(2)(a)



1       **A(3)(a) Attorney of record.** An attorney of record for a party to the action may issue a  
2 subpoena requiring a witness to appear on behalf of that party.

3       **A(3)(b) Clerk of court.** The clerk of the court in which the action is pending may issue a  
4 subpoena to a party on request. Blank subpoenas must be completed by the requesting party  
5 before being served. Subpoenas to attend a deposition may be issued by the clerk only if the  
6 requesting party has served a notice of deposition as provided in Rule 39 C or Rule 40 A; has  
7 served a notice of subpoena for production of books, documents, electronically stored  
8 information, or tangible things; or certifies that such a notice will be served contemporaneously  
9 with service of the subpoena.

10       **A(3)(c) Clerk of court for foreign depositions.** A subpoena to appear and testify in a  
11 foreign deposition may be issued as specified in Rule 38 C(2) by the clerk of the court in the  
12 county in which the witness is to be examined.

13       **A(3)(d) Judge, justice, or other authorized officer.**

14       A(3)(d)(i) When there is no clerk of the court, a judge or justice of the court may issue a  
15 subpoena.

16       A(3)(d)(ii) A judge, a justice, or an authorized officer presiding over an administrative or  
17 out-of-court proceeding may issue a subpoena to appear and testify in that proceeding.

18       **A(4) Who may serve.** A subpoena may be served by a party, the party's attorney, or any  
19 other person who is 18 years of age or older.

20       **A(5) Proof of service.** Proving service of a subpoena is done in the same way as provided  
21 in Rule 7 F(2)(a) for proving service of a summons, except that the server need not disavow  
22 being a party in the action; an attorney for a party; or an officer, director, or employee of a  
23 party.

24       **A(6) Recipient obligations.**

25       **A(6)(a) Length of witness attendance.** A command in a subpoena to appear and testify  
26 requires that the witness remain for as many hours or days as are necessary to conclude the

1 testimony, unless the witness is sooner discharged.

2 **A(6)(b) Witness appearance contingent on fee payment.** Unless a witness expressly  
3 declines payment of fees and mileage, the witness's obligation to appear is contingent on  
4 payment of fees and mileage when the subpoena is served. At the end of each day's  
5 attendance, a witness may demand payment of legal witness fees and mileage for the next day.  
6 If the fees and mileage are not paid on demand, the witness is not obligated to return.

7 **A(6)(c) Deposition subpoena; place where witness can be required to attend or to**  
8 **produce things.**

9 **A(6)(c)(i) Oregon residents.** A resident of this state who is not a party to the action is  
10 required to attend a deposition or to produce things only in the county where the person  
11 resides, is employed, or transacts business in person, or at another convenient place as ordered  
12 by the court.

13 **A(6)(c)(ii) Nonresidents.** A nonresident of this state who is not a party to the action is  
14 required to attend a deposition or to produce things only in the county where the person is  
15 served with the subpoena, or at another convenient place as ordered by the court.

16 **A(6)(d) Obedience to subpoena.** A witness must obey a subpoena. Disobedience or a  
17 refusal to be sworn or to answer as a witness may be punished as contempt by the court or by  
18 the judge who issued the subpoena or before whom the action is pending. At a hearing or trial,  
19 if a witness who is a party disobeys a subpoena, or refuses to be sworn or to answer as a  
20 witness, that party's complaint, answer, or other pleading may be stricken.

21 **A(7) Recipient's option to object, to move to quash, or to move to modify subpoena for**  
22 **production.** A person who is not subpoenaed to appear, but who is commanded to produce  
23 and permit inspection and copying of documents or things, including records of confidential  
24 health information as defined in subsection D(1) of this rule, may object, or move to quash or  
25 move to modify the subpoena, [*as provided*] as follows.

26 **A(7)(a) Written objection; timing.** A written objection may be served on the party who

1 issued the subpoena before the deadline set for production, but not later than 14 days after  
2 service on the objecting person.

3 **A(7)(a)(i) Scope.** The written objection may be to all or to only part of the command to  
4 produce.

5 **A(7)(a)(ii) Objection suspends obligation to produce.** Serving a written objection  
6 suspends the time to produce the documents or things sought to be inspected and copied.  
7 However, the party who served the subpoena may move for a court order to compel  
8 production at any time. A copy of the motion to compel must be served on the objecting  
9 person.

10 **A(7)(b) Motion to quash or to modify.** A motion to quash or to modify the command for  
11 production must be served and filed with the court no later than the deadline set for  
12 production. The court may quash or modify the subpoena if the subpoena is unreasonable and  
13 oppressive or may require that the party who served the subpoena pay the reasonable costs of  
14 production.

15 **A(8) Scope of discovery.** Notwithstanding any other provision, this rule does not expand  
16 the scope of discovery beyond that provided in Rule 36 or Rule 44.

17 **B Subpoenas requiring appearance and testimony by individuals, organizations, law**  
18 **enforcement agencies or officers, [and prisoners.] prisoners, and parties.**

19 **B(1) Permissible purposes of subpoena.** A subpoena may require appearance in court or  
20 out of court, including:

21 **B(1)(a) Civil actions.** A subpoena may be issued to require attendance before a court, or  
22 at the trial of an issue therein, or upon the taking of a deposition in an action pending therein.

23 **B(1)(b) Foreign depositions.** Any foreign deposition under Rule 38 C presided over by any  
24 person authorized by Rule 38 C to take witness testimony, or by any officer empowered by the  
25 laws of the United States to take testimony; or

26 **B(1)(c) Administrative and other proceedings.** Any administrative or other proceeding

1 | presided over by a judge, justice or other officer authorized to administer oaths or to take  
2 | testimony in any matter under the laws of this state.

3 |       **B(2) Service of subpoenas requiring the appearance or testimony of nonparty**  
4 | **individuals or nonparty organizations; payment of fees.** Unless otherwise provided in this rule,  
5 | a copy of the subpoena must be served sufficiently in advance to allow the witness a  
6 | reasonable time for preparation and travel to the place [*required.*] **specified in the subpoena.**

7 |       **B(2)(a) Service on an individual 14 years of age or older.** If the witness is 14 years of age  
8 | or older, the subpoena must be personally delivered to the witness, along with fees for one  
9 | day's attendance and the mileage allowed by law unless the witness expressly declines  
10 | payment, whether personal attendance is required or not.

11 |       **B(2)(b) Service on an individual under 14 years of age.** If the witness is under 14 years of  
12 | age, the subpoena must be personally delivered to the witness's parent, guardian, or guardian  
13 | ad litem, along with fees for one day's attendance and the mileage allowed by law unless the  
14 | witness expressly declines payment, whether personal attendance is required or not.

15 |       **B(2)(c) Service on individuals waiving personal service.** If the witness waives personal  
16 | service, the subpoena may be mailed to the witness, but mail service is valid only if all of the  
17 | following circumstances exist:

18 |       **B(2)(c)(i) Witness agreement.** Contemporaneous with the return of service, the party's  
19 | attorney or attorney's agent certifies that the witness agreed to appear and testify if  
20 | subpoenaed;

21 |       **B(2)(c)(ii) Fee arrangements.** The party's attorney or attorney's agent made satisfactory  
22 | arrangements with the witness to ensure the payment of fees and mileage, or the witness  
23 | expressly declined payment; and

24 |       **B(2)(c)(iii) Signed mail receipt.** The subpoena was mailed more [*the*] **than** 10 days before  
25 | the date to appear and testify in a manner that provided a signed receipt on delivery, and the  
26 | witness or, if applicable, the witness's parent, guardian, or guardian ad litem, signed the receipt

1 more than 3 days before the date to appear and testify.

2 **B(2)(d) Service of a deposition subpoena on a nonparty organization pursuant to Rule**  
3 **39 C(6).** A subpoena naming a nonparty organization as a deponent must be *[delivered]*  
4 **delivered, along with fees for one day's attendance and mileage,** in the same manner as  
5 provided for service of summons in Rule 7 D(3)(b)(i), Rule 7 D(3)(c)(i), Rule 7 D(3)(d)(i), Rule 7  
6 D(3)(e), Rule 7 D(3)(f), or Rule 7 D(3)(h).

7 **B(3) Service of a subpoena requiring appearance of a peace officer in a professional**  
8 **capacity.**

9 **B(3)(a) Personal service on a peace officer.** A subpoena directed to a peace officer in a  
10 professional capacity may be served by personal service of a copy, along with **fees for** one day's  
11 attendance *[fee]* and mileage as allowed by law, unless the peace officer expressly declines  
12 payment.

13 **B(3)(b) Substitute service on a law enforcement agency.** A subpoena directed to a peace  
14 officer in a professional capacity may be served by substitute service of a copy, along with **fees**  
15 **for** one day's attendance *[fee]* and mileage as allowed by law, on an individual designated by  
16 the law enforcement agency that employs the peace officer or, if a designated individual is not  
17 available, then on the person in charge at least 10 days before the date the peace officer is  
18 required to attend, provided that the peace officer is currently employed by the law  
19 enforcement agency and is present in this state at the time the agency is served.

20 **B(3)(b)(i) "Law enforcement agency" defined.** For purposes of this subsection, a law  
21 enforcement agency means the Oregon State Police, a county sheriff's department, a city police  
22 department, or a municipal police department.

23 **B(3)(b)(ii) Law enforcement agency obligations.**

24 **B(3)(b)(ii)(A) Designating representative.** All law enforcement agencies must designate  
25 one or more individuals to be available during normal business hours to receive service of  
26 subpoenas.

1           **B(3)(b)(ii)(B) Ensuring actual notice or reporting otherwise.** When a peace officer is  
2 subpoenaed by substitute service under paragraph B(3)(b) of this rule, the agency must make a  
3 good faith effort to give the peace officer actual notice of the time, date, and location  
4 *[identified]* **specified** in the subpoena for the appearance. If the law enforcement agency is  
5 unable to notify the peace officer, then the agency must promptly report this inability to the  
6 court. The court may postpone the matter to allow the peace officer to be personally served.

7           **B(4) Service of subpoena requiring the appearance and testimony of prisoner.** All of the  
8 following are required to secure a prisoner's appearance and testimony:

9           **B(4)(a) Court preauthorization.** Leave of the court must be obtained before serving a  
10 subpoena on a prisoner, and the court may prescribe terms and conditions when compelling a  
11 prisoner's attendance;

12           **B(4)(b) Court determines location.** The court may order temporary removal and  
13 production of the prisoner to a requested location, or may require that testimony be taken by  
14 deposition at, or by remote location testimony from, the place of confinement; and

15           **B(4)(c) Whom to serve.** The subpoena and court order must be served on the custodian  
16 of the prisoner.

17           **B(5) Service of subpoenas requiring the appearance or testimony of individuals who are**  
18 **parties to the case or party organizations. A subpoena directed to a party who has appeared**  
19 **in the case, including an officer, director, or member of a party organization, may be served**  
20 **as provided in Rule 9 B, without any payment of fees and mileage otherwise required by this**  
21 **rule.**

22           **C Subpoenas requiring production of documents or things other than confidential**  
23 **health information as defined in subsection D(1) of this rule.**

24           **C(1) Combining subpoena for production with subpoena to appear and testify.** A  
25 subpoena for production may be joined with a subpoena to appear and testify or may be issued  
26 separately.

1       **C(2) When mail service allowed.** A copy of a subpoena for production that does not  
2 contain a command to appear and testify may be served by mail.

3       **C(3) Subpoenas to command inspection prior to deposition, hearing, or trial.** A copy of a  
4 subpoena issued solely to command production or inspection prior to a deposition, hearing, or  
5 trial must *[do]* **comply with** the following:

6       **C(3)(a) Advance notice to parties.** The subpoena must be served on all parties to the  
7 action who are not in default at least 7 days before service of the subpoena on the person or  
8 organization's representative who is commanded to produce and permit inspection, unless the  
9 court orders less time;

10       **C(3)(b) Time for production.** The subpoena must allow at least 14 days for production of  
11 the required documents or things, unless the court orders less time; and

12       **C(3)(c) Originals or true copies.** The subpoena must specify whether originals or true  
13 copies will satisfy the subpoena.

14       **D Subpoenas for documents and things containing confidential health information**  
15 **("CHI").**

16       **D(1) Application of this section; "confidential health information" defined.** This section  
17 creates protections for production of CHI, which includes both individually identifiable health  
18 information as defined in ORS 192.556 (8) and protected health information as defined in ORS  
19 192.556 (11)(a). For purposes of this section, CHI means information collected from a person by  
20 a health care provider, health care facility, state health plan, health care clearinghouse, health  
21 insurer, employer, or school or university that identifies the person or could be used to identify  
22 the person and that includes records that:

23       D(1)(a) relate to the person's physical or mental health or condition; or

24       D(1)(b) relate to the cost or description of any health care services provided to the  
25 person.

26       **D(2) Qualified protective orders.** A qualified protective order means a court order that

1 prohibits the parties from using or disclosing CHI for any purpose other than the litigation for  
2 which the information is produced, and that, at the end of the litigation, requires the return of  
3 all CHI to the original custodian, including all copies made, or the destruction of all CHI.

4 **D(3) Compliance with state and federal law.** A subpoena to command production of CHI  
5 must comply with the requirements of this section, as well as with all other restrictions or  
6 limitations imposed by state or federal law. If a subpoena does not comply, then the protected  
7 CHI may not be disclosed in response to the subpoena until the requesting party has complied  
8 with the appropriate law.

9 **D(4) Conditions on service of subpoena.**

10 **D(4)(a) Qualified protective order; declaration or affidavit; contents.** The party serving a  
11 subpoena for CHI must serve the custodian or other record keeper with either a qualified  
12 protective order or a declaration or affidavit together with supporting documentation that  
13 demonstrates:

14 **D(4)(a)(i) Written notice.** The party made a good faith attempt to provide the person  
15 whose CHI is sought, or the person's attorney, written notice that allowed 14 days after the  
16 date of the notice to object;

17 **D(4)(a)(ii) Sufficiency.** The written notice included the subpoena and sufficient  
18 information about the litigation underlying the subpoena to enable the person or the person's  
19 attorney to meaningfully object;

20 **D(4)(a)(iii) Information regarding objections.** The party must certify that either no  
21 written objection was made within 14 days, or objections made were resolved and the  
22 command in the subpoena is consistent with that resolution; and

23 **D(4)(a)(iv) Inspection requests.** The party must certify that the person or the person's  
24 representative was or will be permitted, promptly on request, to inspect and copy any CHI  
25 received.

26 **D(4)(b) Objections.** Within 14 days from the date of a notice requesting CHI, the person

1 | whose CHI is being sought, or the person's attorney objecting to the subpoena, must respond in  
2 | writing to the party issuing the notice, and state the reasons for each objection.

3 |       **D(4)(c) Statement to secure personal attendance and production.** The personal  
4 | attendance of a custodian of records and the production of original CHI is required if the  
5 | subpoena contains the following statement:

---

7 |       This subpoena requires a custodian of confidential health information to personally  
8 | attend and produce original records. Lesser compliance otherwise allowed by Oregon Rule of  
9 | Civil Procedure 55 D(8) is insufficient for this subpoena.

---

11 |       **D(5) Mandatory privacy procedures for all records produced.**

12 |       **D(5)(a) Enclosure in a sealed inner envelope; labeling.** The copy of the records must be  
13 | separately enclosed in a sealed envelope or wrapper on which the name of the court, case  
14 | name and number of the action, name of the witness, and date of the subpoena are clearly  
15 | inscribed.

16 |       **D(5)(b) Enclosure in a sealed outer envelope; properly addressed.** The sealed envelope  
17 | or wrapper must be enclosed in an outer envelope or wrapper and sealed. The outer envelope  
18 | or wrapper must be addressed as follows:

19 |       **D(5)(b)(i) Court.** If the subpoena directs attendance in court, to the clerk of the court, or  
20 | to a judge;

21 |       **D(5)(b)(ii) Deposition or similar hearing.** If the subpoena directs attendance at a  
22 | deposition or similar hearing, to the officer administering the oath for the deposition at the  
23 | place designated in the subpoena for the taking of the deposition or at the officer's place of  
24 | business;

25 |       **D(5)(b)(iii) Other hearings or miscellaneous proceedings.** If the subpoena directs  
26 | attendance at another hearing or another miscellaneous proceeding, to the officer or body

1 conducting the hearing or proceeding at the officer's or body's official place of business; or

2 **D(5)(b)(iv) If no hearing is scheduled.** If no hearing is scheduled, to the attorney or party  
3 issuing the subpoena.

4 **D(6) Additional responsibilities of attorney or party receiving delivery of CHI.**

5 **D(6)(a) Service of a copy of subpoena on patient and all parties to the litigation.** If the  
6 subpoena directs delivery of CHI to the attorney or party who issued the subpoena, then a copy  
7 of the subpoena must be served on the person whose CHI is sought, and on all other parties to  
8 the litigation who are not in default, not less than 14 days prior to service of the subpoena on  
9 the custodian or keeper of the records.

10 **D(6)(b) Parties' right to inspect or obtain a copy of the CHI at own expense.** Any party to  
11 the proceeding may inspect the CHI provided and may request a complete copy of the  
12 information. On request, the CHI must be promptly provided by the party who served the  
13 subpoena at the expense of the party who requested the copies.

14 **D(7) Inspection of CHI delivered to court or other proceeding.** After filing and after  
15 giving reasonable notice in writing to all parties who have appeared of the time and place of  
16 inspection, the copy of the CHI may be inspected by any party or by the attorney of record of a  
17 party in the presence of the custodian of the court files, but otherwise the copy must remain  
18 sealed and must be opened only at the time of trial, deposition, or other hearing at the  
19 direction of the judge, officer, or body conducting the proceeding. The CHI must be opened in  
20 the presence of all parties who have appeared in person or by counsel at the trial, deposition,  
21 or hearing. CHI that is not introduced in evidence or required as part of the record must be  
22 returned to the custodian who produced it.

23 **D(8) Compliance by delivery only when no personal attendance is required.**

24 **D(8)(a) Mail or delivery by a nonparty, along with declaration.** A custodian of CHI who is  
25 not a party to the litigation connected to the subpoena, and who is not required to attend and  
26 testify, may comply by mailing or otherwise delivering a true and correct copy of all CHI

1 subpoenaed within five days after the subpoena is received, along with a declaration that  
2 complies with paragraph D(8)(b) of this rule.

3 **D(8)(b) Declaration of custodian of records when CHI produced.** CHI that is produced  
4 when personal attendance of the custodian is not required must be accompanied by a  
5 declaration of the custodian that certifies all of the following:

6 **D(8)(b)(i) Authority of declarant.** The declarant is a duly authorized custodian of the  
7 records and has authority to certify records;

8 **D(8)(b)(ii) True and complete copy.** The copy produced is a true copy of all of the CHI  
9 responsive to the subpoena; and

10 **D(8)(b)(iii) Proper preparation practices.** Preparation of the copy of the CHI being  
11 produced was done:

12 D(8)(b)(iii)(A) by the declarant, or by qualified personnel acting under the control of the  
13 entity subpoenaed or the declarant;

14 D(8)(b)(iii)(B) in the ordinary course of the entity's or the person's business; and

15 D(8)(b)(iii)(C) at or near the time of the act, condition, or event described or referred to in  
16 the CHI.

17 **D(8)(c) Declaration of custodian of records when not all CHI produced.** When the  
18 custodian of records produces no CHI, or less information than requested, the custodian of  
19 records must specify this in the declaration. The custodian may only send CHI within the  
20 custodian's custody.

21 **D(8)(d) Multiple declarations allowed when necessary.** When more than one person has  
22 knowledge of the facts required to be stated in the declaration, more than one declaration may  
23 be used.

24 **D(9) Designation of responsible party when multiple parties subpoena CHI.** If more than  
25 one party subpoenas a custodian of records to personally attend under paragraph D(4)(c) of  
26 this rule, the custodian of records will be deemed to be the witness of the party who first

1 | served such a subpoena.

2 |         **D(10) Tender and payment of fees.** Nothing in this section requires the tender or  
3 | payment of more than one witness fee and mileage for one day unless there has been  
4 | agreement to the contrary.

5 |

6 |

7 |

8 |

9 |

10 |

11 |

12 |

13 |

14 |

15 |

16 |

17 |

18 |

19 |

20 |

21 |

22 |

23 |

24 |

25 |

26 |



1       **A(3) Who may issue.**

2       **A(3)(a) Attorney of record.** An attorney of record for a party to the action may issue a  
3 subpoena requiring a witness to appear on behalf of that party.

4       **A(3)(b) Clerk of court.** The clerk of the court in which the action is pending may issue a  
5 subpoena to a party on request. Blank subpoenas must be completed by the requesting party  
6 before being served. Subpoenas to attend a deposition may be issued by the clerk only if the  
7 requesting party has served a notice of deposition as provided in Rule 39 C or Rule 40 A; has  
8 served a notice of subpoena for production of books, documents, electronically stored  
9 information, or tangible things; or certifies that such a notice will be served  
10 contemporaneously with service of the subpoena.

11       **A(3)(c) Clerk of court for foreign depositions.** A subpoena to appear and testify in a  
12 foreign deposition may be issued as specified in Rule 38 C(2) by the clerk of the court in the  
13 county in which the witness is to be examined.

14       **A(3)(d) Judge, justice, or other authorized officer.**

15       A(3)(d)(i) When there is no clerk of the court, a judge or justice of the court may issue a  
16 subpoena.

17       A(3)(d)(ii) A judge, a justice, or an authorized officer presiding over an administrative or  
18 out-of-court proceeding may issue a subpoena to appear and testify in that proceeding.

19       **A(4) Who may serve.** A subpoena may be served by a party, the party's attorney, or any  
20 other person who is 18 years of age or older.

21       **A(5) Proof of service.** Proving service of a subpoena is done in the same way as provided  
22 in Rule 7 F(2)(a) for proving service of a summons, except that the server need not disavow  
23 being a party in the action; an attorney for a party; or an officer, director, or employee of a  
24 party.

25       **A(6) Recipient obligations.**

26       **A(6)(a) Length of witness attendance.** A command in a subpoena to appear and testify

1 requires that the witness remain for as many hours or days as are necessary to conclude the  
2 testimony, unless the witness is sooner discharged.

3 **A(6)(b) Witness appearance contingent on fee payment.** Unless a witness expressly  
4 declines payment of fees and mileage, the witness's obligation to appear is contingent on  
5 payment of fees and mileage when the subpoena is served. At the end of each day's  
6 attendance, a witness may demand payment of legal witness fees and mileage for the next  
7 day. If the fees and mileage are not paid on demand, the witness is not obligated to return.

8 **A(6)(c) Deposition subpoena; place where witness can be required to attend or to  
9 produce things.**

10 **A(6)(c)(i) Oregon residents.** A resident of this state who is not a party to the action is  
11 required to attend a deposition or to produce things only in the county where the person  
12 resides, is employed, or transacts business in person, or at another convenient place as  
13 ordered by the court.

14 **A(6)(c)(ii) Nonresidents.** A nonresident of this state who is not a party to the action is  
15 required to attend a deposition or to produce things only in the county where the person is  
16 served with the subpoena, or at another convenient place as ordered by the court.

17 **A(6)(d) Obedience to subpoena.** A witness must obey a subpoena. Disobedience or a  
18 refusal to be sworn or to answer as a witness may be punished as contempt by the court or by  
19 the judge who issued the subpoena or before whom the action is pending. At a hearing or trial,  
20 if a witness who is a party disobeys a subpoena, or refuses to be sworn or to answer as a  
21 witness, that party's complaint, answer, or other pleading may be stricken.

22 **A(7) Recipient's option to object, to move to quash, or to move to modify subpoena for  
23 production.** A person who is not subpoenaed to appear, but who is commanded to produce  
24 and permit inspection and copying of documents or things, including records of confidential  
25 health information as defined in subsection D(1) of this rule, may object, or move to quash or  
26 move to modify the subpoena, as follows.

1       **A(7)(a) Written objection; timing.** A written objection may be served on the party who  
2 issued the subpoena before the deadline set for production, but not later than 14 days after  
3 service on the objecting person.

4       **A(7)(a)(i) Scope.** The written objection may be to all or to only part of the command to  
5 produce.

6       **A(7)(a)(ii) Objection suspends obligation to produce.** Serving a written objection  
7 suspends the time to produce the documents or things sought to be inspected and copied.  
8 However, the party who served the subpoena may move for a court order to compel  
9 production at any time. A copy of the motion to compel must be served on the objecting  
10 person.

11       **A(7)(b) Motion to quash or to modify.** A motion to quash or to modify the command for  
12 production must be served and filed with the court no later than the deadline set for  
13 production. The court may quash or modify the subpoena if the subpoena is unreasonable and  
14 oppressive or may require that the party who served the subpoena pay the reasonable costs of  
15 production.

16       **A(8) Scope of discovery.** Notwithstanding any other provision, this rule does not expand  
17 the scope of discovery beyond that provided in Rule 36 or Rule 44.

18       **B Subpoenas requiring appearance and testimony by individuals, organizations, law  
19 enforcement agencies or officers, prisoners, and parties.**

20       **B(1) Permissible purposes of subpoena.** A subpoena may require appearance in court or  
21 out of court, including:

22       **B(1)(a) Civil actions.** A subpoena may be issued to require attendance before a court, or  
23 at the trial of an issue therein, or [upon] on the taking of a deposition in an action pending  
24 therein.

25       **B(1)(b) Foreign depositions.** Any foreign deposition under Rule 38 C presided over by  
26 any person authorized by Rule 38 C to take witness testimony, or by any officer empowered by

1 | the laws of the United States to take testimony; or

2 |       **B(1)(c) Administrative and other proceedings.** Any administrative or other proceeding  
3 | presided over by a judge, justice or other officer authorized to administer oaths or to take  
4 | testimony in any matter under the laws of this state.

5 |       **B(2) Service of subpoenas requiring the appearance or testimony of nonparty**  
6 | **individuals or nonparty organizations; payment of fees.** Unless otherwise provided in this rule,  
7 | a copy of the subpoena must be served sufficiently in advance to allow the witness a  
8 | reasonable time for preparation and travel to the place specified in the subpoena.

9 |       **B(2)(a) Service on an individual 14 years of age or older.** If the witness is 14 years of age  
10 | or older, the subpoena must be personally delivered to the witness, along with fees for one  
11 | day's attendance and the mileage allowed by law unless the witness expressly declines  
12 | payment, whether personal attendance is required or not.

13 |       **B(2)(b) Service on an individual under 14 years of age.** If the witness is under 14 years of  
14 | age, the subpoena must be personally delivered to the witness's parent, guardian, or guardian  
15 | ad litem, along with fees for one day's attendance and the mileage allowed by law unless the  
16 | witness expressly declines payment, whether personal attendance is required or not.

17 |       **B(2)(c) Service on individuals waiving personal service.** If the witness waives personal  
18 | service, the subpoena may be mailed to the witness, but mail service is valid only if all of the  
19 | following circumstances exist:

20 |       **B(2)(c)(i) Witness agreement.** Contemporaneous with the return of service, the party's  
21 | attorney or attorney's agent certifies that the witness agreed to appear and testify if  
22 | subpoenaed;

23 |       **B(2)(c)(ii) Fee arrangements.** The party's attorney or attorney's agent made satisfactory  
24 | arrangements with the witness to ensure the payment of fees and mileage, or the witness  
25 | expressly declined payment; and

26 |       **B(2)(c)(iii) Signed mail receipt.** The subpoena was mailed more than 10 days before the

1 | date to appear and testify in a manner that provided a signed receipt on delivery, and the  
2 | witness or, if applicable, the witness's parent, guardian, or guardian ad litem, signed the  
3 | receipt more than 3 days before the date to appear and testify.

4 |       **B(2)(d) Service of a deposition subpoena on a nonparty organization pursuant to Rule**  
5 | **39 C(6).** A subpoena naming a nonparty organization as a deponent must be delivered, along  
6 | with fees for one day's attendance and mileage, in the same manner as provided for service of  
7 | summons in Rule 7 D(3)(b)(i), Rule 7 D(3)(c)(i), Rule 7 D(3)(d)(i), Rule 7 D(3)(e), Rule 7 D(3)(f), or  
8 | Rule 7 D(3)(h).

9 |       **B(3) Service of a subpoena requiring appearance of a peace officer in a professional**  
10 | **capacity.**

11 |       **B(3)(a) Personal service on a peace officer.** A subpoena directed to a peace officer in a  
12 | professional capacity may be served by personal service of a copy, along with fees for one day's  
13 | attendance and mileage as allowed by law, unless the peace officer expressly declines  
14 | payment.

15 |       **B(3)(b) Substitute service on a law enforcement agency.** A subpoena directed to a peace  
16 | officer in a professional capacity may be served by substitute service of a copy, along with fees  
17 | for one day's attendance and mileage as allowed by law, on an individual designated by the law  
18 | enforcement agency that employs the peace officer or, if a designated individual is not  
19 | available, then on the person in charge at least 10 days before the date the peace officer is  
20 | required to attend, provided that the peace officer is currently employed by the law  
21 | enforcement agency and is present in this state at the time the agency is served.

22 |       **B(3)(b)(i) "Law enforcement agency" defined.** For purposes of this subsection, a law  
23 | enforcement agency means the Oregon State Police, a county sheriff's department, a city  
24 | police department, or a municipal police department.

25 |       **B(3)(b)(ii) Law enforcement agency obligations.**

26 |       **B(3)(b)(ii)(A) Designating representative.** All law enforcement agencies must designate

1 | one or more individuals to be available during normal business hours to receive service of  
2 | subpoenas.

3 |       **B(3)(b)(ii)(B) Ensuring actual notice or reporting otherwise.** When a peace officer is  
4 | subpoenaed by substitute service under paragraph B(3)(b) of this rule, the agency must make a  
5 | good faith effort to give the peace officer actual notice of the time, date, and location specified  
6 | in the subpoena for the appearance. If the law enforcement agency is unable to notify the  
7 | peace officer, then the agency must promptly report this inability to the court. The court may  
8 | postpone the matter to allow the peace officer to be personally served.

9 |       **B(4) Service of subpoena requiring the appearance and testimony of prisoner.** All of the  
10 | following are required to secure a prisoner’s appearance and testimony:

11 |       **B(4)(a) Court preauthorization.** Leave of the court must be obtained before serving a  
12 | subpoena on a prisoner, and the court may prescribe terms and conditions when compelling a  
13 | prisoner’s attendance;

14 |       **B(4)(b) Court determines location.** The court may order temporary removal and  
15 | production of the prisoner to a requested location, or may require that testimony be taken by  
16 | deposition at, or by remote location testimony from, the place of confinement; and

17 |       **B(4)(c) Whom to serve.** The subpoena and court order must be served on the custodian  
18 | of the prisoner.

19 |       **B(5) Service of subpoenas requiring the appearance or testimony of individuals who**  
20 | **are parties to the case or party organizations.** A subpoena directed to a party who has  
21 | appeared in the case, including an officer, director, or member of a party organization, may be  
22 | served as provided in Rule 9 B, without any payment of fees and mileage otherwise required by  
23 | this rule.

24 |       **C Subpoenas requiring production of documents or things other than confidential**  
25 | **health information as defined in subsection D(1) of this rule.**

26 |       **C(1) Combining subpoena for production with subpoena to appear and testify. A**

1 subpoena for production may be joined with a subpoena to appear and testify or may be  
2 issued separately.

3 **C(2) When mail service allowed.** A copy of a subpoena for production that does not  
4 contain a command to appear and testify may be served by mail.

5 **C(3) Subpoenas to command inspection prior to deposition, hearing, or trial.** A copy of  
6 a subpoena issued solely to command production or inspection prior to a deposition, hearing,  
7 or trial must comply with the following:

8 **C(3)(a) Advance notice to parties.** The subpoena must be served on all parties to the  
9 action who are not in default at least 7 days before service of the subpoena on the person or  
10 organization's representative who is commanded to produce and permit inspection, unless the  
11 court orders less time;

12 **C(3)(b) Time for production.** The subpoena must allow at least 14 days for production of  
13 the required documents or things, unless the court orders less time; and

14 **C(3)(c) Originals or true copies.** The subpoena must specify whether originals or true  
15 copies will satisfy the subpoena.

16 **D Subpoenas for documents and things containing confidential health information**  
17 **("CHI").**

18 **D(1) Application of this section; "confidential health information" defined.** This section  
19 creates protections for production of CHI, which includes both individually identifiable health  
20 information as defined in ORS 192.556 (8) and protected health information as defined in ORS  
21 192.556 (11)(a). For purposes of this section, CHI means information collected from a person  
22 by a health care provider, health care facility, state health plan, health care clearinghouse,  
23 health insurer, employer, or school or university that identifies the person or could be used to  
24 identify the person and that includes records that:

25 D(1)(a) relate to the person's physical or mental health or condition; or

26 D(1)(b) relate to the cost or description of any health care services provided to the

1 person.

2 **D(2) Qualified protective orders.** A qualified protective order means a court order that  
3 prohibits the parties from using or disclosing CHI for any purpose other than the litigation for  
4 which the information is produced, and that, at the end of the litigation, requires the return of  
5 all CHI to the original custodian, including all copies made, or the destruction of all CHI.

6 **D(3) Compliance with state and federal law.** A subpoena to command production of CHI  
7 must comply with the requirements of this section, as well as with all other restrictions or  
8 limitations imposed by state or federal law. If a subpoena does not comply, then the protected  
9 CHI may not be disclosed in response to the subpoena until the requesting party has complied  
10 with the appropriate law.

11 **D(4) Conditions on service of subpoena.**

12 **D(4)(a) Qualified protective order; declaration or affidavit; contents.** The party serving a  
13 subpoena for CHI must serve the custodian or other record keeper with either a qualified  
14 protective order or a declaration or affidavit together with supporting documentation that  
15 demonstrates:

16 **D(4)(a)(i) Written notice.** The party made a good faith attempt to provide the person  
17 whose CHI is sought, or the person's attorney, written notice that allowed 14 days after the  
18 date of the notice to object;

19 **D(4)(a)(ii) Sufficiency.** The written notice included the subpoena and sufficient  
20 information about the litigation underlying the subpoena to enable the person or the person's  
21 attorney to meaningfully object;

22 **D(4)(a)(iii) Information regarding objections.** The party must certify that either no  
23 written objection was made within 14 days, or objections made were resolved and the  
24 command in the subpoena is consistent with that resolution; and

25 **D(4)(a)(iv) Inspection requests.** The party must certify that the person or the person's  
26 representative was or will be permitted, promptly on request, to inspect and copy any CHI

1 received.

2 **D(4)(b) Objections.** Within 14 days from the date of a notice requesting CHI, the person  
3 whose CHI is being sought, or the person's attorney objecting to the subpoena, must respond  
4 in writing to the party issuing the notice, and state the reasons for each objection.

5 **D(4)(c) Statement to secure personal attendance and production.** The personal  
6 attendance of a custodian of records and the production of original CHI is required if the  
7 subpoena contains the following statement:

8 \_\_\_\_\_

9 This subpoena requires a custodian of confidential health information to personally attend and  
10 produce original records. Lesser compliance otherwise allowed by Oregon Rule of Civil  
11 Procedure 55 D(8) is insufficient for this subpoena.

12 \_\_\_\_\_

13 **D(5) Mandatory privacy procedures for all records produced.**

14 **D(5)(a) Enclosure in a sealed inner envelope; labeling.** The copy of the records must be  
15 separately enclosed in a sealed envelope or wrapper on which the name of the court, case  
16 name and number of the action, name of the witness, and date of the subpoena are clearly  
17 inscribed.

18 **D(5)(b) Enclosure in a sealed outer envelope; properly addressed.** The sealed envelope  
19 or wrapper must be enclosed in an outer envelope or wrapper and sealed. The outer envelope  
20 or wrapper must be addressed as follows:

21 **D(5)(b)(i) Court.** If the subpoena directs attendance in court, to the clerk of the court, or  
22 to a judge;

23 **D(5)(b)(ii) Deposition or similar hearing.** If the subpoena directs attendance at a  
24 deposition or similar hearing, to the officer administering the oath for the deposition at the  
25 place designated in the subpoena for the taking of the deposition or at the officer's place of  
26 business;

1       **D(5)(b)(iii) Other hearings or miscellaneous proceedings.** If the subpoena directs  
2 attendance at another hearing or another miscellaneous proceeding, to the officer or body  
3 conducting the hearing or proceeding at the officer's or body's official place of business; or

4       **D(5)(b)(iv) If no hearing is scheduled.** If no hearing is scheduled, to the attorney or party  
5 issuing the subpoena.

6       **D(6) Additional responsibilities of attorney or party receiving delivery of CHI.**

7       **D(6)(a) Service of a copy of subpoena on patient and all parties to the litigation.** If the  
8 subpoena directs delivery of CHI to the attorney or party who issued the subpoena, then a  
9 copy of the subpoena must be served on the person whose CHI is sought, and on all other  
10 parties to the litigation who are not in default, not less than 14 days prior to service of the  
11 subpoena on the custodian or keeper of the records.

12       **D(6)(b) Parties' right to inspect or obtain a copy of the CHI at own expense.** Any party  
13 to the proceeding may inspect the CHI provided and may request a complete copy of the  
14 information. On request, the CHI must be promptly provided by the party who served the  
15 subpoena at the expense of the party who requested the copies.

16       **D(7) Inspection of CHI delivered to court or other proceeding.** After filing and after  
17 giving reasonable notice in writing to all parties who have appeared of the time and place of  
18 inspection, the copy of the CHI may be inspected by any party or by the attorney of record of a  
19 party in the presence of the custodian of the court files, but otherwise the copy must remain  
20 sealed and must be opened only at the time of trial, deposition, or other hearing at the  
21 direction of the judge, officer, or body conducting the proceeding. The CHI must be opened in  
22 the presence of all parties who have appeared in person or by counsel at the trial, deposition,  
23 or hearing. CHI that is not introduced in evidence or required as part of the record must be  
24 returned to the custodian who produced it.

25       **D(8) Compliance by delivery only when no personal attendance is required.**

26       **D(8)(a) Mail or delivery by a nonparty, along with declaration.** A custodian of CHI who is

1 | not a party to the litigation connected to the subpoena, and who is not required to attend and  
2 | testify, may comply by mailing or otherwise delivering a true and correct copy of all CHI  
3 | subpoenaed within five days after the subpoena is received, along with a declaration that  
4 | complies with paragraph D(8)(b) of this rule.

5 |       **D(8)(b) Declaration of custodian of records when CHI produced.** CHI that is produced  
6 | when personal attendance of the custodian is not required must be accompanied by a  
7 | declaration of the custodian that certifies all of the following:

8 |       **D(8)(b)(i) Authority of declarant.** The declarant is a duly authorized custodian of the  
9 | records and has authority to certify records;

10 |       **D(8)(b)(ii) True and complete copy.** The copy produced is a true copy of all of the CHI  
11 | responsive to the subpoena; and

12 |       **D(8)(b)(iii) Proper preparation practices.** Preparation of the copy of the CHI being  
13 | produced was done:

14 |       D(8)(b)(iii)(A) by the declarant, or by qualified personnel acting under the control of the  
15 | entity subpoenaed or the declarant;

16 |       D(8)(b)(iii)(B) in the ordinary course of the entity's or the person's business; and

17 |       D(8)(b)(iii)(C) at or near the time of the act, condition, or event described or referred to  
18 | in the CHI.

19 |       **D(8)(c) Declaration of custodian of records when not all CHI produced.** When the  
20 | custodian of records produces no CHI, or less information than requested, the custodian of  
21 | records must specify this in the declaration. The custodian may only send CHI within the  
22 | custodian's custody.

23 |       **D(8)(d) Multiple declarations allowed when necessary.** When more than one person has  
24 | knowledge of the facts required to be stated in the declaration, more than one declaration  
25 | may be used.

26 |       **D(9) Designation of responsible party when multiple parties subpoena CHI.** If more than

1 | one party subpoenas a custodian of records to personally attend under paragraph D(4)(c) of  
2 | this rule, the custodian of records will be deemed to be the witness of the party who first  
3 | served such a subpoena.

4 |       **D(10) Tender and payment of fees.** Nothing in this section requires the tender or  
5 | payment of more than one witness fee and mileage for one day unless there has been  
6 | agreement to the contrary.

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

## 2019-2021 BIENNIUM STAFF COMMENT TO RULE 55

*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).*

A complete re-write of Rule 55 was undertaken in the 2017-2019 biennium. In order to explain the Rule 55 amendments promulgated this biennium, some recent history from the 2017-2019 biennium is helpful. Rule 55 was overly long, and a series of amendments over time had resulted in a rule that had little organizational flow and contained redundancies. In an attempt to successfully replace the former rule, a conscious effort was made to maintain all of the elements of that prior rule and to avoid changing what parties and their attorneys relied on in Rule 55, even if they could not readily locate that portion of the rule that authorized their reliance on it. Certain opportunities for improving practice under Rule 55 were noted and deferred until the re-written rule successfully made it through the promulgation process and became effective.

This biennium two small but noteworthy improvements were approved. One issue was addressed with an amendment concerning witness fees and mileage that is found in a new subparagraph A(1)(a)(v). A subpoenaed witness is not required to obey the subpoena and appear to testify or to produce documents unless a witness fee and mileage are tendered when the subpoena is served. The witness may be an occurrence witness having no interest in the litigation, and with no lawyer with whom to consult. Such a witness would likely be unaware that compliance with the subpoena is contingent on the tender of a witness fee and mileage. There have been examples of self-represented litigants arguably abusing the use of subpoenas to seemingly compel attendance of witnesses without the tender of fees. Subparagraph A(1)(a)(v) requires the form of the subpoena to alert the person served that attendance is contingent on payment of those fees.

The other improvement, found in subsection B(5), relates to serving an opposing party with a subpoena. If a party has already appeared in a case (clearly the plaintiff, but also a defendant who has already been served with summons or who has entered an appearance), Rule 7-type service and the tender of the witness fee and mileage are no longer required. Efficiency and economy are served by eliminating the need to locate a party to effect service of a subpoena and to tender the witness fee and mileage when that party is already subject to the jurisdiction of the court. Service of such witnesses can be effected as provided in Rule 9. The amendment is based in part on Illinois Supreme Court Rule 237(b) and Washington State Superior Court Civil Rule 43.

Various technical amendments were also made. In subsection A(7), a redundancy from the previous re-write is addressed by deleting the words "as provided." The lead line for section B is amended to add "parties" to account for the new procedure to subpoena parties as provided in the new subsection B(5). The word "nonparty" is added to the lead line for subsection B(2) for the same reason. Also, in subsection B(2), "required" is replaced with "specified in the subpoena" for clarity in referring to the location of the deposition. In subparagraph B(2)(c)(iii), "the" is replaced with "than" to correct a drafting error from the previous amendment. In paragraph B(2)(d), a potential inconsistency was remedied by making clear that subpoenas directed to nonparty organizations must be accompanied with the appropriate witness fee and milage. In subsections B(3)(a) and B(3)(b), the statement of fees and milage is modified to be consistent throughout the rule and to eliminate any concern that a different meaning should be attributed between the various provisions of the rule because of minor differences in the phrasing of the requirement to tender fees and milage. In part B(3)(b)(ii)(8), "identified" is replaced with "specified," as in subsection B(2). In subsection C(3), "do" is replaced with "comply with" for clarity. The foregoing technical amendments are not meant to affect the meaning or operation of the rule.