

AMENDMENTS

TO ORCP 58

promulgated by

COUNCIL ON COURT PROCEDURES

1980 to 2024

RULE 58

TRIAL PROCEDURE

A. Order of proceedings on trial by the court. Trial by the court shall proceed in the order prescribed in subsections (1) through (4) of section B. of this rule, unless the court, for special reasons, otherwise directs.

B. Order of proceedings on jury trial. When the jury has been selected and sworn, the trial, unless the court for good and sufficient reason otherwise directs, shall proceed in the following order:

B.(1) The plaintiff shall concisely state plaintiff's case and the issues to be tried; the defendant then, in like manner, shall state defendant's case based upon any defense or counterclaim or both.

B.(2) The plaintiff then shall introduce the evidence on plaintiff's case in chief, and when plaintiff has concluded, the defendant shall do likewise.

B.(3) The parties respectively then may introduce rebutting evidence only, unless the court in furtherance of justice permits them to introduce evidence upon the original cause of action, defense, or counterclaim.

B.(4) When the evidence is concluded, unless the case is submitted by both sides to the jury without argument, the plaintiff shall commence and conclude the argument to the jury. The

plaintiff may waive the opening argument, and if the defendant then argues the case to the jury, the plaintiff shall have the right to reply to the argument of the defendant, but not otherwise.

B.(5) Not more than two counsel shall address the jury in behalf of the plaintiff or defendant; the whole time occupied in behalf of either shall not be limited to less than two hours.

B.(6) The court then shall charge the jury.

C. Separation of jury before submission of cause; admonition. The jurors may be kept together in charge of a proper officer, or may, in the discretion of the court, at any time before the submission of the cause to them, be permitted to separate; in either case they may be admonished by the court that it is their duty not to converse with any other person, or among themselves, on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to them.

D. Proceedings if juror becomes sick. If, after the formation of the jury, and before verdict, a juror becomes sick, so as to be unable to perform the duty of a juror, the court may order such juror to be discharged. In that case, unless an alternate juror, seated under Rule 57 F., is available to replace the discharged juror or unless the parties agree to proceed with the remaining jurors, a new juror may be sworn, and the trial begin

anew; or the jury may be discharged, and a new jury then or afterwards formed.

COMMENT

This rule is based upon ORS 17.205, 17.210, 17.220, and 17.225. ORS 17.215, 17.235, 17.240, and 17.245 (except the last sentence, which appears in ORCP 59) were eliminated as unnecessary. ORS 17.230 and 17.250 were deemed so closely related to evidentiary rules that they were left as statutes.

**TRIAL PROCEDURE
RULE 58**

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B. Order of proceedings on jury trial. When the jury has been selected and sworn, the trial, unless the court for good and sufficient reason otherwise directs, shall proceed in the following order:

B(1) The plaintiff shall concisely state plaintiff's case and the issues to be tried; the defendant then, in like manner, shall state defendant's case based upon any defense or counterclaim or both.

B(2) The plaintiff then shall introduce the evidence on plaintiff's case in chief, and when plaintiff has concluded, the defendant shall do likewise.

B(3) The parties respectively then may introduce rebutting evidence only, unless the court in furtherance of justice permits them to introduce evidence upon the original cause of action, defense, or counterclaim.

B(4) When the evidence is concluded, unless the case is submitted by both sides to the jury without argument, the plaintiff shall commence and conclude the argument to the jury. The plaintiff may waive the opening argument, and if the defendant then argues the case to the jury, the plaintiff shall

have the right to reply to the argument of the defendant, but not otherwise.

B(5) Not more than two counsel shall address the jury in behalf of the plaintiff or defendant; the whole time occupied in behalf of either shall not be limited to less than two hours.

B(6) The court then shall charge the jury.

C. Separation of jury before submission of cause; admonition. The jurors may be kept together in charge of a proper officer, or may, in the discretion of the court, at any time before the submission of the cause to them, be permitted to separate; in either case, they may be admonished by the court that it is their duty not to converse with any other person, or among themselves, on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to them.

D. Proceedings if juror becomes sick. If, after the formation of the jury, and before verdict, a juror becomes sick, so as to be unable to perform the duty of a juror, the court may order such juror to be discharged. In that case, unless an alternate juror, seated under Rule 57 F, is available to replace the discharged juror or unless the parties agree to proceed with the remaining jurors, a new juror may be sworn, and the trial begin anew; or the jury may be discharged, and a new jury then or afterwards formed.

E. Failure to appear for trial. When a party who has filed an appearance fails to appear for trial, the court may, in its

discretion, proceed to trial and judgment without further notice to the non-appearing party.

COMMENT

58 E is added to this rule by transfer from Rule 69, where it formerly appeared as section 69 C. The Council intends no change in meaning, but believes this section more appropriately belongs in this rule, since the latter deals with several aspects of trial procedure.

TRIAL PROCEDURE
RULE 58

A ~~[Order]~~ Manner of proceedings on trial by the court. Trial by the court shall proceed in the ~~[order]~~ manner prescribed in subsections ~~[(1)]~~ (3) through ~~[(4)]~~ (6) of section B of this rule, unless the court for ~~[special reasons]~~ good cause stated in the record, otherwise directs.

B ~~[Order]~~ Manner of proceedings on jury trial. ~~[When the jury has been selected and sworn, the trial, unless the court for good and sufficient reason otherwise directs, shall proceed in the following order]~~ Trial by a jury shall proceed in the following manner unless the court, for good cause stated in the record, otherwise directs:

B(1) The jury shall be selected and sworn. Prior to voir dire, each party may, with the court's consent, present a short statement of the facts to the entire jury panel.

B(2) After the jury is sworn, the court shall instruct the jury concerning its duties, its conduct, the order of proceedings, the procedure for submitting written questions to witnesses if permitted, and the legal principles that will govern the proceedings.

~~[B(1)]~~ B(3) The plaintiff shall concisely state plaintiff's case and the issues to be tried; the defendant then, in like manner, shall state defendant's case based upon any defense or counterclaim.

[B(2)] **B(4)** The plaintiff shall [then] introduce the evidence on plaintiff's case in chief, and when plaintiff has concluded, the defendant shall do likewise.

[B(3)] **B(5)** The parties respectively [then] may introduce rebutting evidence only, unless the court in furtherance of justice permits them to introduce evidence upon the original cause of action, defense or counterclaim.

[B(4)] **B(6)** When the evidence is concluded, unless the case is submitted by both sides to the jury without argument, the plaintiff shall commence and conclude the argument to the jury. The plaintiff may waive the opening argument, and if the defendant then argues the case to the jury, the plaintiff shall have the right to reply to the argument of the defendant, but not otherwise.

[B(5)] **B(7)** Not more than two counsel shall address the jury [in] on behalf of the plaintiff or defendant; the whole time occupied [in] on behalf of either shall not be limited to less than two hours.

[B(6) *The court then shall charge the jury.*]

B(8) After the evidence is concluded, the court shall instruct the jury. The court may instruct the jury before or after the closing arguments.

B(9) With the court's consent, jurors shall be permitted to submit to the court written questions directed to witnesses or to the court. The court shall afford the parties an opportunity to object to such

questions outside the presence of the jury.

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1 TRIAL PROCEDURE

2 RULE 58

3 **A Manner of proceedings on trial by the court.** Trial by the court shall proceed in the
4 manner prescribed in [subsections (3) through (6) of section B] **subsection B(3) through**
5 **subsection B(6)** of this rule, unless the court, for good cause stated in the record, otherwise
6 directs.

7 **B Manner of proceedings on jury trial.** Trial by a jury shall proceed in the following
8 manner unless the court, for good cause stated in the record, otherwise directs:

9 B(1) The jury [shall] **must** be selected and sworn. Prior to voir dire, each party may, with
10 the court's consent, present a short statement of the facts to the entire jury panel.

11 B(2) After the jury is sworn, the court [shall] **will** instruct the jury concerning its duties,
12 its conduct, the order of proceedings, the procedure for submitting written questions to
13 witnesses if permitted, and the legal principles that will govern the proceedings.

14 B(3) The plaintiff [shall] **may** concisely state plaintiff's case and the issues to be tried; the
15 defendant then, in like manner, [shall] **may** state defendant's case based upon any defense or
16 counterclaim or both.

17 B(4) The plaintiff [shall] **will** introduce the evidence on plaintiff's case in chief, and when
18 plaintiff has concluded, the defendant [shall] **may** do likewise.

19 B(5) The parties respectively may introduce rebutting evidence only[,] unless the court,
20 in furtherance of justice, permits them to introduce evidence [upon] **on** the original cause of
21 action, defense, or counterclaim.

22 B(6) When the evidence is concluded, unless the case is submitted by both sides to the
23 jury without argument, the plaintiff [shall] **may** commence and conclude the argument to the
24 jury. The plaintiff may **initially** waive [the opening] argument[,] and, if the defendant then
25 argues the case to the jury, the plaintiff [shall] **will** have the right to reply to the argument of
26 the defendant, but not otherwise.

1 B(7) Not more than two counsel [*shall*] **may** address the jury on behalf of the plaintiff or
2 defendant[; *the whole time occupied on behalf of either shall not be limited to less than two*
3 *hours.*] **Plaintiff and defendant shall each be afforded a minimum of two hours to address the**
4 **jury, irrespective of how that time is allocated among that side's counsel.**

5 B(8) After the evidence is concluded, the court [*shall*] **will** instruct the jury. The court
6 may instruct the jury before or after the closing arguments.

7 B(9) With the court's consent, jurors [*shall*] **may** be permitted to submit to the court
8 written questions directed to witnesses or to the court. [*The court shall afford the parties an*
9 *opportunity to object to such questions outside the presence of the jury.*] **The court must afford**
10 **the parties an opportunity, outside of the presence of the jury, to object to questions**
11 **submitted by jurors.**

12 **C Separation of jury before submission of cause; admonition.** The jurors may be kept
13 together in charge of a proper officer, or may, in the discretion of the court, at any time before
14 the submission of the cause to them, be permitted to separate; in either case, [*they*] **the jurors**
15 may be admonished by the court that it is their duty not to converse with any other person, or
16 among themselves, on any subject connected with the trial, or to express any opinion thereon,
17 until the case is finally submitted to them.

18 **D Proceedings if juror becomes sick.** If, after the formation of the jury, and before
19 verdict, a juror becomes sick, so as to be unable to perform the duty of a juror, the court may
20 order such juror to be discharged. In that case, unless an alternate juror, seated under Rule 57
21 F, is available to replace the discharged juror or unless the parties agree to proceed with the
22 remaining jurors, a new juror may be sworn, and the trial **may** begin anew; or the jury may be
23 discharged, and a new jury then or afterwards formed.

24 **E Failure to appear for trial.** When a party who has filed an appearance fails to appear
25 for trial, the court may, in its discretion, proceed to trial and judgment without further notice
26 to the non-appearing party.

1 **F Testimony by Remote Means**

2 **F(1) Subject to court approval, the parties may stipulate that testimony be taken by**
3 **remote means. The oath or affirmation may be administered to the witness either in the**
4 **presence of the person administering the oath, or by remote means, at the discretion of the**
5 **court.**

6 **F(2) "Remote means" is defined as any form of real-time electronic communication**
7 **that permits all participants to hear and speak with each other simultaneously.**

8 **F(3) Testimony by remote means must be recorded using the court's official recording**
9 **system, if suitable equipment is available; otherwise, such testimony must be recorded at the**
10 **expense of and by the party requesting the testimony. Any alternative method and manner**
11 **of recording is subject to the approval of the court.**

12 **F(4) A request for testimony by remote means must be made within the time allowed**
13 **by ORS 45.400(2).**