

AMENDMENTS

TO ORCP 67

promulgated by

COUNCIL ON COURT PROCEDURES

1980 to 2024

RULE 67

JUDGMENTS

A. Definitions. "Judgment" as used in these rules is the final determination of the rights of the parties in an action; judgment includes a decree and a final judgment entered pursuant to section B. or G. of this rule. "Order" as used in these rules is any other determination by a court or judge which is intermediate in nature.

B. Judgment for less than all claims or parties in action.

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

C. Demand for judgment. Every judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if such relief has not been demanded in the pleadings, except:

C.(1) Default. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. However, a default judgment granting equitable remedies may differ in kind from or exceed in amount that prayed for in the demand for judgment, provided that reasonable notice and opportunity to be heard are given to any party against whom the judgment is to be entered.

C.(2) Demand for money damages. Where a demand for judgment is for a stated amount of money as damages, any judgment for money damages shall not exceed that amount.

D. Judgment in action for recovery of personal property. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or the value of the property, in case a delivery cannot be had, and damages for the detention of the property. If the property has been delivered to the plaintiff and the defendant claims a return of the property, judgment for the defendant may be for a return of the property, or the value of the property, in case a return cannot be had, and damages for taking and withholding the same.

E. Judgment in action against partnership or unincorporated association; judgments in action against parties jointly indebted.

E.(1) Partnership and unincorporated association. Judgment in an action against a partnership or unincorporated association which is sued in any name which it has assumed or by which it is known may be entered against such partnership or association and shall bind the joint property of all of the partners or associates.

E.(2) Joint obligations; effect of judgment. In any action against parties jointly indebted upon a joint obligation, contract, or liability, judgment may be taken against less than all such parties and a default, dismissal, or judgment in favor of or against less than all of such parties in an action does not preclude a judgment in the same action in favor of or against the remaining parties.

F. Judgment by stipulation.

F.(1) Availability of judgment by stipulation. At any time after commencement of an action, a judgment may be given upon stipulation that a judgment for a specified amount or for a specific relief may be entered. The stipulation shall be of the party or parties against whom judgment is to be entered and the party or parties in whose favor judgment is to be entered. If the stipulation provides for attorney fees, costs, and disbursements, they may be entered as part of the judgment according to the stipulation.

F.(2) Filing; assent in open court. The stipulation for judgment may be in a writing signed by the parties, their attorneys, or their authorized representatives, which writing shall be filed in accordance with Rule 9. The stipulation may be subjoined or appended to, and part of, a proposed form of judgment. If not in writing, the stipulation shall be assented to by all parties thereto in open court.

G. Judgment on portion of claim exceeding counterclaim. The court may direct entry of a final judgment as to that portion of any claim which exceeds a counterclaim asserted by the party or parties against whom the judgment is entered, if such party or parties have admitted the claim and asserted a counterclaim amounting to less than the claim.

COMMENT

The definition of judgment in 67 A. is taken from ORS 18.010. Under ORCP 1 and 2 the reference to decree is probably unnecessary but is included here for clarity. The separate reference to special proceedings of ORS 18.010 is eliminated, as statutory proceedings are "actions" under ORCP 1. The definition of "order" comes from ORS 18.010(2). See ORCP 14 A. for a definition of "motion."

Section 67 B. is identical to ORS 18.125(1). ORS 18.125(2) becomes ORCP 72 D.

The procedural merger of law and equity creates the problem of whether the unified procedure follows the former equity or legal rule relating to limitation of relief by the prayer of the complaint. Section 67 C. preserves the essential elements of the prior Oregon practice without reference to law or equity. The general rule is that of equity, where the relief accorded is not limited by the prayer. Recovery on default is limited to the prayer (ORS 18.080(a) and (b)), except for cases seeking equitable remedies (Kerschner v. Smith, 121 Or. 469, 474, 236 P. 272, 256 P. 195 (1927)) if reasonable notice and opportunity to be heard are given (Leonard v. Bennett, 165 Or. 157, 174, 103 P.2d 732, 106 P.2d 542 (1940)). Note, the limit of relief to the prayer applies for every default, not just defaults for failure to

appear. In a case where money damages are claimed, the damages recoverable are limited to the prayer. Note that ORCP 18 B. requires a statement in the prayer of the amount of damages claimed.

Section 67 D. is ORS 18.110. See ORCP 61 D.

Section 67 E. addresses the problem of enforceability of judgments against assets held by a partnership or unincorporated association. Present Oregon rules address this problem through the device of a "joint debtor statute" (ORS 18.135). Partnerships and associations cannot be sued as entities, but suit must be brought against individual partners or members. At common law, for partnership or association assets to be subject to a judgment, the judgment had to be against all partners or association members. ORS 18.135 allows an action to recover for a joint debt even though not all joint debtors are served. A judgment enforceable against partnership assets can be secured by naming all partners but serving less than all.

This rule addresses the problem by the much simpler and more modern approach of making a partnership or unincorporated association suable in its own name and subject to entry of a judgment against the entity. To accomplish this, a new rule defining capacity of partnerships or associations to be sued is added to Rule 26 as section 8. and a new service of summons category is added to Rule 7. Section 67 E.(1) authorizes entry of a judgment against the entity which would bind the assets of the partnership or association. If a partner or member of an association is individually liable under the substantive law, an action against such individual could be joined with the action against the entity by naming the individual, as well as the entity, as a party and serving a separate summons and complaint directed to the individual. See ORCP 26 B. A judgment could then be entered against the individual parties so joined and served, as well as a judgment against the entity. Individual partners or members not so joined and served would not be subject to any individual judgment.

The entity approach has a number of advantages. The approach:

(a) avoids the necessity of difficult distinctions between joint and several obligations. The joint debtor statute did not apply to some joint partnership obligations because it was limited to actions based on contract. See ORS 68.270.

(b) simplifies naming of defendants and service of process for partnerships and unincorporated associations with large membership. In some cases a defendant would find it difficult, if not impossible, to ascertain the names and locations of thousands of members of a multi-state partnership or association. Although in most cases the members would be subject to service of summons under ORCP 4, the difficulty and expense of serving such large numbers of people could be prohibitive.

Litigation and judgment in the name of the partnership or association is more consistent with other treatment of such groups. If a partnership can own property and have bank accounts in its own name, it is simpler to have judgments entered against that partnership in its name.

ORS 18.135 referred to action against any joint obligors, not just partnerships or associations. This rule covers only the ability to create judgments enforceable against partnerships or associations. ORS 18.135 subjected a person, who was never actually served and perhaps not aware of a suit, to judgment because another joint obligor was served. From a due process standpoint, this is defensible for partnerships and associations because partners and association members can be viewed as agents for the partnership or association. That theory would usually not apply to other joint obligation situations.

Subsection 67 E.(2) addresses a problem not specifically covered under ORS 18.135. Under the common law theories of joint obligations, including those of partnerships and associations, there was a requirement that any judgment be against all persons jointly obligated. Therefore, any suit or recovery against less than all joint obligors extinguished the claim against the other joint obligors. See Ryckman v. Manerud, 68 Or. 350, 361, 136 P. 826 (1913); Wheatley v. Halvorson, 213 Or. 228, 249, 323 P.2d 49 (1958). The same reasoning could be extended to say a default or dismissal against less than all partners or joint debtors extinguished the obligation. This is inconsistent with modern concepts of joinder and judgments and could be an unnecessary procedural trap. The rule does not affect the substantive nature of the joint obligation but merely says there is no procedural rule that prohibits separate judgment. Note, 67 E.(2) is not limited to partnerships or joint ventures, but covers any joint obligation.

ORS 18.135 also covered whether joint debtors could be or should be joined. ORCP 28 and 29 governing permissive and compulsory joinder of parties already cover this and should be the applicable rules. The joinder aspects of ORS 18.135 are unnecessary and are eliminated.

Section F. provides the procedure for specific submission to a judgment formerly referred to as confession of judgment after suit. ORS 26.010 through 26.040. The procedure is basically stipulation to an agreed judgment. The attorney for a party may sign the stipulation. Confessions of judgment without action are covered by Rule 73.

Section 67 G. was previously included with default judgment provisions as ORS 18.080(2). The judgment involved is a form of special final judgment, not a default judgment. Note, under 67 A. this is defined as a final judgment.

~~asserted error to the trial court and made a notation of exception immediately after the court instructed the jury.~~

~~H(2) Exceptions must be specific and on the record. A party shall state with particularity any point of exception to the trial judge. A party shall make a notation of exception either orally on the record or in a writing filed with the court.~~

JUDGMENTS RULE 67

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C Demand for judgment. Every judgment shall grant the relief to which the party in whose favor it is rendered is entitled[, *even if such relief has not been demanded in the pleadings, except: C(1) **Default.** A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. However, a default judgment granting equitable remedies may differ in kind from or exceed in amount that prayed for in the demand for judgment, provided that reasonable notice and opportunity to be heard are given to any party against whom the judgment is to be entered. C(2) **Demand for money damages.** Where a demand for judgment is for a stated amount of money as damages, any judgment for money damages shall not exceed that amount.*]. A judgment for relief different in kind from or exceeding the amount prayed for in the pleadings may not be rendered unless reasonable notice and opportunity to be heard are given to any party against whom the judgment is to be entered.

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~~PROVISIONAL PROCESS~~

~~RULE 83~~

~~**A Requirements for issuance.** To obtain an order for issuance of provisional process the plaintiff shall cause to be filed with the clerk of the court from which such process is sought a sworn petition and any necessary supplementary affidavits or declarations requesting specific~~

JUDGMENTS

RULE 67

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B Judgment for less than all claims or parties in action. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third party claim, or when multiple parties are involved, the court may render a limited judgment as to one or more but fewer than all of the claims or parties. A judge may render a limited judgment under this section only if the judge determines that there is no just reason for delay.

[C *Demand for judgment.*] **C Relief granted.** Every judgment shall grant the relief to which the party in whose favor it is rendered is entitled. A judgment for relief different in kind from or exceeding the amount prayed for in the pleadings may not be rendered unless reasonable notice and opportunity to be heard are given to any party against whom the judgment is to be entered.

D Judgment in action for recovery of personal property. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession of the property, or for the value of the property[,] in case a delivery cannot be had, and for damages for the detention of the property. If the property has been delivered to the plaintiff and the defendant claims a return of the property, judgment for the defendant may be for a return of the property, or the value of the property in case a return cannot be had, and damages for taking and withholding the [*same*] property.

E Judgment in action against partnership, unincorporated association, or parties jointly indebted.

E(1) **Partnership and unincorporated association.** Judgment in an action against a partnership or unincorporated association [*which*] that is sued in any name [*which*] that it has assumed or by which it is known may be entered against [*such*] that partnership or association and

1 | shall bind the joint property of all of the partners or associates.

2 | E(2) **Joint obligations; effect of judgment.** In any action against parties jointly indebted
3 | upon a joint obligation, contract, or liability, judgment may be taken against less than all [*such*] **of**
4 | **those** parties and a default, dismissal, or judgment in favor of or against less than all of [*such*] **those**
5 | parties in an action does not preclude a judgment in the same action in favor of or against the
6 | remaining parties.

7 | **F Judgment by stipulation.**

8 | F(1) **Availability of judgment by stipulation.** At any time after commencement of an
9 | action, a judgment may be given upon stipulation that a judgment for a specified amount or for a
10 | specific relief may be entered. The stipulation shall be [*of*] **by** the party or parties against whom
11 | judgment is to be entered and the party or parties in whose favor judgment is to be entered. If the
12 | stipulation provides for attorney fees, costs, and disbursements, they may be entered as part of the
13 | judgment according to the stipulation.

14 | F(2) **Filing; assent in open court.** The stipulation for judgment may be in a writing signed
15 | by the parties, their attorneys, or their authorized representatives, [*which*] **That** writing shall be
16 | filed in accordance with Rule 9. The stipulation may be subjoined or appended to, and part of, a
17 | proposed form of judgment. If not in writing, the stipulation shall be assented to by all parties
18 | thereto in open court.

19 | **G Judgment on portion of claim exceeding counterclaim.** The court may direct entry
20 | of a limited judgment as to that portion of any claim [*which*] **that** exceeds a counterclaim asserted
21 | by the party or parties against whom the judgment is entered, if [*such*] **the** party or parties have
22 | admitted the claim and asserted a counterclaim amounting to less than the claim.

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2014-2015 BIENNIUM STAFF COMMENT TO RULE 67

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. If the Legislative Assembly amended a rule, the legislative history for the Legislature's amendment can be found at www.oregonlegislature.gov.

The lead line for section C is amended for clarity. In section D, one comma is deleted and one comma is added; six words are added; and the word "same" is deleted for clarity. The word "which" is amended to "that" twice and "such" is reworded three times in section E. In section F, "of" is replaced by "by," "which" is replaced by "that" twice, and "such" is replaced by "the." The first sentence in subsection F(2) is broken into two sentences.

The listed amendments 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.