

AMENDMENTS

TO ORCP 70

promulgated by

COUNCIL ON COURT PROCEDURES

1980 to 2016

RULE 70

FORM AND ENTRY OF JUDGMENT

A. Form. Every judgment shall be in writing plainly labeled as a judgment and set forth in a separate document. A default or stipulated judgment may have appended or subjoined thereto such affidavits, certificates, motions, stipulations, and exhibits as may be necessary or proper in support of the entry thereof. No particular form of words is required, but every judgment shall specify clearly the party or parties in whose favor it is given and against whom it is given and the relief granted or other determination of the action. The judgment shall be signed by the court or judge rendering such judgment or, in the case of judgment entered pursuant to Rule 69 B.(1), by the clerk.

B. Entry of judgments.

B.(1) Filing; entry; notice. All judgments shall be filed and shall be entered by the clerk. The clerk shall, on the date judgment is entered, mail a notice of the date of entry of the judgment to the attorneys of record, if any, of each party who is not in default for failure to appear. If a party who is not in default for failure to appear does not have an attorney of record, such notice shall be mailed to the party. The clerk also shall make a note in the judgment docket of the mailing. In the entry of all judgments, except a judgment by default under Rule 69 B.(1), the clerk shall be subject to the direction of the court. Entry of judgment shall not be delayed for taxing of costs, disbursements, and attorney fees under Rule 68.

8.(2) Judgment effective upon entry. Notwithstanding ORS 3.070 or any other rule or statute, for purposes of these rules, a judgment is effective only when entered as provided in this rule.

8.(3) Time for entry. The clerk shall enter the judgment within 24 hours, excluding Saturdays and legal holidays, of the time the judgment is filed. When the clerk is unable to or omits to enter judgment within the time prescribed in this subsection, it may be entered any time thereafter.

C. Submission of forms of judgment. Attorneys shall submit proposed forms for judgment at the direction of the court rendering the judgment. Unless otherwise ordered by the court, any proposed form of judgment shall be served five days prior to the submission of judgment in accordance with Rule 9 B. The proposed form of judgment shall be filed and proof of service made in accordance with Rule 9 C.

D. "Clerk" defined. Reference to "clerk" in this rule shall include the clerk of court or any person performing the duties of that office.

COMMENT

This rule deals with several aspects of the crucial question of identification of a judgment and its effective date. Section 70 A. defines "judgment" as a written document signed by the judge, or in the limited default area under 69 8.(1), by the clerk. The rule also directs, as a general rule, that the judgment document be separate and plainly labelled as such. This is the approach of Federal Rule 58 and is designed to avoid any question whether a written opinion or order of a court is or is not a judgment. This rule differs from the federal rule for default or stipulated judgments because supporting motions, affidavits, or stipulations may be combined with the judgment. The specificity of parties and relief language

comes from ORS 18.030 and the statement that no particular form of words is required conforms to Oregon case law. Esselstyn v. Casteel, 205 Or. 344, 286 P.2d 665, 288 P.2d 214, 288 P.2d 215 (1955).

Under section 70 B. the important question addressed is exactly when the judgment becomes effective. Practically, the choice is between entry (which is a formal entry in the court records by the clerk, ORS 7.030) and filing (which is "delivery of the document to the clerk of the court with the intent that it be filed."). Charco, Inc. v. Cohn, 242 Or. 566, 571, 411 P.2d 264 (1966). See Washington Rules, 58 (b). There has been some confusion in the past over the effective date of a judgment. Most provisions in ORS refer to entry, e.g., ORS 23.030, 18.080, 18.510, and 20.210. On several occasions, however, the Oregon Supreme Court has interpreted "entry" to mean filing. Charco, Inc. v. Cohn, supra, at 570; Highway Commission v. Fisch-Or, Inc., 241 Or. 412, 415, 399 P.2d 1011, 406 P.2d 539 (1965). Because of this, the Council used "filing" as the point when the time limit for filing or acting upon motion for new trial or judgment notwithstanding the verdict begins to run. ORCP 63 D.; 64 F. and G.

The Council felt that it was extremely important that the effective date of a judgment be the same for all purposes. The Council believed that entry was a better choice for several reasons:

(1) The time for appeal begins to run at entry. ORS 19.026. Change of the appeal statute would be beyond Council rulemaking authority.

(2) Entry is a far more certain point. The entry is part of an official record, whereas filing is not itself a record. If the date of filing is not stamped on the document, the filing date may be difficult to determine. There can be considerable confusion when filing takes place. See Vandermeer v. Pacific Northwest Development, 274 Or. 221, 223-224, 543 P.2d 868 (1976).

(3) There is a notice provision for entry. ORS 18.030 requires mailing of a copy of the judgment by the clerk to all parties not in default. This requirement has presented substantial practical difficulty for clerks. This rule requires only notice of the date of entry to the attorney of record, or if there is no attorney, to the party.

Therefore, subsection 70 B.(2) states generally that a judgment is only effective when entered. Note, the entry approach will require the modification of ORCP 63 D. and 64 F. and G. to change filing to entry. The reference to ORS 3.070 is necessary because the opinion in Charco, Inc. v. Cohn, supra, at 569, refers to that statute as a basis for interpreting "entry" to mean "filing."

Subsection 70 B.(3) is based on ORS 18.040 and 18.050. ORS 18.040 referred to entry "within the day," which was interpreted to mean 24 hours. Casner v. Hoskins, 64 Or. 254, 281, 128 P. 841, 130 P. 55 (1913).

Section 70 C. is new but reflects existing practice. It was felt that submission of a form of judgment should be up to the court. However, if an attorney submits a form of judgment, it should be served on the other parties.

**FORM AND ENTRY OF JUDGMENT
RULE 70**

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C. Submission of forms of judgment. Attorneys shall submit proposed forms for judgment at the direction of the court rendering the judgment. The proposed form must comply with section A. of this rule. [When so ordered by the court, the proposed form of judgment shall be served five days prior to the submission of judgment in accordance with Rule 9 B. The proposed form of judgment shall be filed and proof of service made in accordance with Rule 9 C.]

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COMMENT

The Council decided that the existing language in ORCP 70 C relating to service of proposed forms of judgment by the parties was unclear. It decided to leave the question of the conditions relating to the submission of judgment to direction of the court in the particular case. The court in directing submission of proposed judgment forms has ample authority to direct the circumstances of such submission. The Council eliminated the last two sentences of ORCP 70 C.