

AMENDMENTS

TO ORCP 78

promulgated by

COUNCIL ON COURT PROCEDURES

1980 to 2016

RULE 78

ORDER OR JUDGMENT FOR SPECIFIC ACTS

A. Judgment requiring performance considered equivalent thereto. A judgment requiring a party to make a conveyance, transfer, release, acquittance, or other like act within a period therein specified shall, if such party does not comply with the judgment, be deemed to be equivalent thereto.

B. Enforcement; contempt. The court or judge thereof may enforce an order or judgment directing a party to perform a specific act by punishing the party refusing or neglecting to comply therewith, as for a contempt as provided in ORS 33.010 through 33.150.

C. Application. Section B. of this rule does not apply to a judgment for the payment of money, except orders and judgments for the payment of suit money, alimony, and money for support, maintenance, nurture, education, or attorney fees, in:

C.(1) Actions for dissolutions of marriages.

C.(2) Actions for separation from bed and board.

C.(3) Proceedings under ORS 108.110 and 108.120.

D. Contempt proceeding. As an alternative to the independent proceeding contemplated by ORS 33.010 through 33.150, when a contempt consists of disobedience of an injunction or other judgment or order of court in a civil action, citation for contempt may be by motion in the action in which

such order was made and the determination respecting punishment made after a show cause hearing. Provided however:

D.(1) Notice of the show cause hearing shall be served personally upon the party required to show cause.

D.(2) Punishment for contempt shall be limited as provided in ORS 33.020.

D.(3) The party cited for contempt shall have right to counsel as provided in ORS 33.095.

COMMENT

This rule was generally taken from existing ORS sections. Section A. is ORS 23.020(1). Section B. is ORS 23.020(2) with the specific reference to ORS chapter 33 added.

Section C. was taken from ORS 23.020(3). The ORS language forbidding punishment by contempt for failure to obey a court "order" was eliminated. If taken literally, it would prohibit enforcement of any interlocutory order for payment of money by contempt, e.g., discovery sanctions under Rule 46 or orders under Rule 36 C. See ORCP 67 A. and 68 C.(1)(c).

Section D. is new and authorizes a motion procedure for contempt, as an alternative to an independent proceeding under ORS chapter 33. The motion practice was the traditional chancery procedure.

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C. Application. Section B. of this rule does not apply to [a] an order or judgment for the payment of money, except orders and judgments for the payment of [suit money, alimony,] sums ordered pursuant to ORS 107.095 and ORS 107.105(1)(i), and money for support, maintenance, nurture, education, or attorney fees, in:

C.(1) Actions for dissolution or annulment of marriage or separation from bed and board.

C.(2) Proceedings upon support orders entered under ORS chapter 108, 109, 110 or 419 and ORS 416.400 to 416.470.

D. Contempt proceeding. As an alternative to the independent proceeding contemplated by ORS 33.010 through 33.150, when a contempt consists of disobedience of an injunction or other judgment or order of court in a civil action, citation

for contempt may be by motion in the action in which such order was made and the determination respecting punishment made after a show cause hearing. Provided however:

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COMMENT

"Suit money" and "alimony" have no meaning in Oregon law. The sums ordered under ORS 107.095 and 107.105(1)(i) would seem to cover what is understood by the bench and bar as suit money or alimony, and the proposed amendment would clarify the rule.