COUNCIL ON COURT PROCEDURES

ANNOTATED AGENDA & MEETING PACKET

Saturday, April 11, 2026, 9:30 a.m.

Zoom Platform: See Footer for Contact Information

I. Call to Order (Mr. Goehler)

II. Approval of March 14, 2026, Minutes (Mr. Goehler) **(ATTACHMENT A)**

III. Administrative Matters (Mr. Goehler)

- A. Staff Comments (Judge Peterson)

IV. Old Business (Mr. Goehler)

- A. Committee Reports
  1. Declaration of Expert Opinion/Rule 47 E (Mr. Joh) **(ATTACHMENT B)**
  2. Joinder/Rule 24 (Judge Oden-Orr) **(ATTACHMENT C)**
  3. Judgments/Rule 67 (Mr. Kekel)
  4. Out-of-State Depositions/Rule 38 C (Ms. Wilson) **(ATTACHMENT D)**
  5. Post-Judgment Subpoenas/Rule 55 (Mr. Whitman) **(ATTACHMENT E)**
  6. Service/Rules 7, 9 & 10 (Judge Raschio) **(ATTACHMENT F)**
  7. Third Party Practice/Rule 22 (Ms. Dahab)
- B. Rule 37 (Judge Peterson) **(ATTACHMENT G)**

V. New Business (Mr. Goehler)

- A. Address Confidentiality Program and Service **(ATTACHMENT H)**

VI. Adjournment (Mr. Goehler)

Attachments not included with initial meeting packet will be added to the website as soon as they are available. If it is very close to the meeting date, late materials may be e-mailed to ensure their receipt.

Teleconference/Videoconference Information

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- Click on this link:
  - https://us06web.zoom.us/j/82377203749?pwd=NrzKPpbkaJvbos2b8xcEqAF0BkarQa.1
  - Meeting ID: 823 7720 3749
  - Passcode: 193329
  - Dial-in audio option: 1-253-215-8782

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Problems?

Shari's cell phone number: 315-454-1280
Mark's cell phone number: 503-544-7022

<u>DRAFT</u> MINUTES OF MEETING
COUNCIL ON COURT PROCEDURES
Saturday, March 14, 2026, 9:30 a.m.
Zoom Meeting Platform

<u>ATTENDANCE</u>

<u>Members Present</u>:

Hon. Benjamin M. Bloom
Nadia Dahab
Hon. Andrew Erwin
Hon. Christopher L. Garrett
Barry J. Goehler
Hon. Jonathan R. Hill
Melissa Hopkins
Ryan Jennings
YoungWoo Joh
Lara Johnson
Eric Kekel
Derek Larwick
Julian Marrs
Hon. Thomas A. McHill
Hon. Melvin Oden-Orr
Hon. Robert Raschio
Michael Shin
Hon. Scott Shorr
Tom Spooner

<u>Members Absent</u>:

Hon. Michelle McIver
Hon. Todd Van Rysselberghe
Bryce Whitman Passadore
Alicia Wilson

<u>Guests</u>:

Matt Shields, Oregon State Bar
Rachel Trickett, Oregon Judicial Department

<u>Council Staff</u>:

Shari C. Nilsson, Executive Assistant
Hon. Mark A. Peterson, Executive Director

ORCP/Topics Discussed this Meeting	ORCP/Topics Discussed & Not Acted on this Biennium			ORCP Amendments Promulgated this Biennium	ORCP/Topics to be Reexamined Next Biennium
• ORCP 7 • ORCP 9 • ORCP 24 • ORCP 36 • ORCP 37 • ORCP 38 • ORCP 47 • ORCP 67	• ORCP 60 • Abusive Litigants in Probate Proceedings • Arbitration • Clarity • Civil Motion Practice • Contempt • Default Orders/Judgments • Depositions • Disclosures • Discovery • Ex Parte	• Federalization • Guardians Ad Litem • "How To" Guides • Offers of Judgment • Pleadings • Receiverships • Remote Appearance • Security Bonds • Self-Represented Litigants • Subpoenas • Summary Judgment	• Timelines • Trial Practice • Uniform Collaborative Law Act • UTCR		

I. Call to Order

Mr. Goehler called the meeting to order at 9:30 a.m.

II. Approval of February 7, 2026, Minutes

Mr. Goehler called the Council's attention to the draft minutes from the February 7, 2026, meeting (Appendix A) and asked whether there were any suggestions for corrections. Hearing none, he asked for a motion to approve the minutes. Judge Raschio made such a motion, Ms. Dahab seconded, and the motion was approved by voice vote.

III. Administrative Matters

A. Staff Comments

This topic was carried over to the April agenda.

IV. Old Business

A. Committee Reports

1. Declaration of Expert Opinion/Rule 47 E

Mr. Joh reported that the committee had not met since the February Council meeting. He reminded the Council that Judge Odin-Orr had drafted a survey with the intent of having the Council consider it and, at the last Council meeting, some Council members had suggested having the Council approve any survey with the intent of distributing it to judges at the Oregon Circuit Court Judges Association April conference. There was also a suggestion that the committee spend more time considering Judge Dahlin's concerns before even proposing a survey. Mr. Joh stated that he expects that the committee will discuss those issues at the next meeting and, with that in mind, it may be that there will not be a survey to propose to the Council at the April meeting. Mr. Goehler stated that it is important to make sure to be deliberate in what we are doing. He opined that it is more important to get things right than to have a survey ready in time for the judges' conference. The Council agreed.

2. Joinder/Rule 24

Judge Peterson stated that the Council had previously voted to put a draft amendment to Rule 24 on the September publication agenda, but that there had subsequently been feedback by Judge Susie Norby, who had originally suggested changes, so a revised amendment (Appendix B) had been approved for the September agenda. He explained that Council staff wanted to keep the draft on the agenda so that the Council could again review it to ensure that the changes do no unintended harm.

Mr. Goehler reminded new Council members that each draft that is approved for the September agenda will be essentially in final form and will be part of the September meeting packet to be voted on for publication.

3. Judgments/Rule 67

Mr. Kekel reported that the committee had met. He reminded the Council that the committee had originally provided two alternative draft amendments to Rule 67 that would require including in a judgment any previous judgments that had been entered in the case. During the last committee meeting, the committee agreed that the language in Appendix C was preferable, and that is the language being recommended to the Council for feedback.

Mr. Kekel acknowledged some concern with trust and estate cases. He stated that he had checked with his partners who practice in that area and, at the end of the day, those practitioners do not necessarily follow Rule 67 because the probate statutes have their own requirements when it is time to close an estate. He noted that there may be an issue with respect to protective proceedings and that is probably something that the committee needs to look at a little further.

Mr. Goehler asked whether there are other concerns that need to be addressed, aside from the potential burden of needing to list a large number of prior judgments. Judge Peterson stated that he had contacted former Council chair Brooks Cooper, who specializes in probate. Mr. Cooper checked with his law partner, and they expressed no concern with regard to probate. There was some concern that Oregon Revised Statute (ORS) 111.200(2) and 111.200(3) make certain of the ORCP explicitly applicable or inapplicable to probate practice, so some follow up may need to be done by the committee with regard to that. There is also the question of whether the proposed change would be burdensome in family law cases.

Mr. Goehler asked whether there are a lot of judgments in protective proceedings or whether things are mostly handled by orders. Judge Bloom replied that guardianship cases are resolved by judgment. He stated that there may be many judgments in the domestic relations area; however, he thinks that this would be a good change to Rule 67. Too many times, a judge is looking at a supplemental judgment that just changes a couple of things and, inherent in that silent language, is the fact that the other judgments remain in effect to the extent they have not been altered. There is no way of knowing without searching the entire docket. Of course, the length of the case will dictate how many judgments there are, but he opined that the amendment is appropriate.

Judge Hill stated that he does have some concerns about the draft amendment in both domestic relations cases and guardianship cases, but he also thinks that the change would make things easier for judges. He stated that, in his opinion, the Council should approve the draft and send it out for comment. Overall, he thinks that it would be a positive change, but there could be a workload impact in domestic relations cases. Mr. Goehler asked whether Judge Hill was referring to practitioner or court workload. Judge Hill stated that he was referring to practitioner workload, as he believes that the change would make things easier for judges.

Mr. Joh wondered whether there is a danger of parties arguing that reciting the previous judgment supersedes the previous judgment. If there is an inconsistency in the recitation of the previous judgment entered, which wording controls? Mr. Joh asked whether some wording could be added to the draft language to clarify this. Ms. Hopkins agreed with Mr. Joh. She stated that she had something like this happen to her in a civil case in which many limited judgments had been entered along the way. She made an attempt to include past judgments to keep the court apprised and to track how the case was moving along, and it was an actual battle with defense counsel to include them, even though she used the exact language on the prior partial judgments. Mr. Goehler agreed that the language in the draft, “recite any previous judgment,” might be a little vague. He wondered whether that means a verbatim recital or just the date entered.

Judge Bloom noted that the Oregon Judicial Department (OJD) provides judgment forms for self-represented litigants. The form includes a space for judgments, and he thinks that all that is required is the number and the date. He stated that this is enough to help the court figure out what limited judgments have been entered. He stated that he thinks that the language in the draft requires that only the date of entry of the judgment and each judgment entered thereafter needs to be recited. He recognized what Ms. Hopkins said about disputes, but pointed out that there is no rule now. If Rule 67 is amended, it should alleviate that problem and hopefully make things easier.

Mr. Kekel stated that any judgment needs to be ultimately approved by both parties, if they can agree. If not, then competing judgments are submitted and the court decides which one is most appropriate. He thinks it is a fair point that the language “recite any previous judgment,” probably does need to be more specific. He asked if it would be helpful to change the language to, “recite the date and effect of any previous judgment.” Judge Bloom disagreed with that language. Mr. Goehler stated that the word “effect” might lead more to the fear that Mr. Joh expressed about changing the substance of a judgment. Judge Bloom stated that he thinks that the current language in the draft is simple and easy to understand. It is designed to provide notice and prevent the problem of shuffling through the case file to figure out what provisions remain in effect.

Mr. Goehler noted that the last sentence of the proposed language provides specifics for a supplemental judgment. He wondered what the scope of the recital is and whether it should be broader, considering that there could be both limited and general judgments. He also wondered why the last sentence is limited to supplemental judgments. Judge Hill also wondered why the last sentence is limited to supplemental judgments.

Judge Peterson stated that, frequently, a supplemental judgment is for costs and attorney fees. In his mind, any general judgment that is recited in the document ratifies that the general judgment remains in effect, except to the extent, if any, that this particular judgment form changes it. His thought was that, with supplemental judgments, rather than go back to year one, we could just go back to the general judgment, which theoretically resolved all claims as to all parties. It was just a thought to make it a little easier to do supplemental judgments in situations such as costs and fees.

Ms. Nilsson noted that it is unclear in the first sentence of the draft language whether the intent is to have the *language* of any previous judgment recited, or just the date. Mr. Goehler pointed out that it is specified what a recital is for a supplemental judgment, but stated that there is a potential ambiguity for anything that is not a supplemental judgment. He stated that this would be good thing to nail that down for a final draft. Mr. Kekel agreed with Ms. Nilsson that the language is unclear. Judge Bloom pointed out that including limited judgments in the supplemental judgment would be burdensome and not really necessary or helpful. However, in the context where general judgments come into play, either in civil or domestic relations cases, it is helpful to know. This is why he thinks that the existing draft language requiring date of entry is sufficient.

Mr. Joh pointed out that there is ambiguity because there is a difference in the wording of the first sentence and the second sentence. Unlike the second sentence, the first sentence suggests that to recite the previous judgment is something different than reciting the date of entry of each judgment. He suggested that making the language parallel to the supplemental judgment wording might help with clarifying that. Judge Bloom agreed. Ms. Nilsson suggested the following language:

> "The first paragraph of any form of judgment submitted by a party must recite the type and date of entry of any previous judgment entered in the action that has not been vacated and the date of entry of each such judgment."

Judge Bloom stated that this language looked good and that consistency is important.

Judge Peterson asked the Council about another issue the committee had discussed. He noted that it may be helpful in some courts to include in the rule a requirement to identify the judge who is to sign the judgment. He stated that Multnomah County has a Supplemental Local Rule [SLR 5.035(3)] requiring the name of the specific judge to be included in the caption; however, that SLR is apparently not very often followed. He had a cursory look, but did not find a similar SLR in other counties. Judge Hill stated opined that this is an issue that is better handled in SLR. Judge Erwin agreed. He stated that Washington County does not have this problem because all cases are individually assigned.

Mr. Goehler also pointed out a typographical error in the last sentence of the proposed language: the word judgment has an extra "e." Ms. Nilsson stated that she would correct the error.

4. Out-of-State Depositions/Rule 38 C

Judge Peterson reminded the Council that, at the February meeting, he had suggested that a simple change to Rule 38 C could make it a bit clearer that a party must do a little bit of looking to find out whether they can use the streamlined procedure for those states that have signed on to the Uniform Interstate Discovery and Depositions Act (UIDDA) or the slightly different procedure provided for cases filed in the outliers, such as Missouri. He referred the Council to an amendment he drafted (Appendix D). He noted that Council staff had also made some stylistic changes not intended to affect the operation of the rule.

Judge McHill stated that the committee had not met, but that this sounds like a reasonable clarification. Mr. Goehler asked whether the Council would like to vote on the draft now or whether the matter should be carried over to the April meeting. Judge Peterson suggested that, since Ms. Wilson was not present at the meeting, the matter be carried over to April to give her a chance to review the draft amendment. The Council agreed.

5. Post-Judgment Subpoenas/Rule 55

Judge Peterson reported that the committee had not met since the February Council meeting. He stated that, after reading the minutes from that meeting, he realized that the change that the committee had proposed to Rule 36 could be further improved. He referred the Council to a new draft (Appendix E).

Judge Peterson stated that he thinks that the Council generally agreed on making clear that post-judgment discovery is available. However, the person who raised this issue in the Council survey pointed out that Rule 36 and Rule 55 could conceivably be, and have been, read to not permit it, although there is a statute that permits such discovery. At the February Council meeting, Judge

Shorr raised the issue of bonded appeals. Judge Peterson stated that it does seem that discovery probably should not be obtained if execution on the judgment has been stayed. In that case, it may not make a lot of sense to allow non-parties to be hailed in for discovery. There is an attempt to address that concern in the new draft, which may or may not have been successful.

Judge Peterson noted that Mr. Joh had suggested that there are two kinds of relief, monetary and injunctive, and had wondered whether this kind of discovery can be used in post-judgment enforcement in an injunctive relief case. Judge Peterson also wondered whether the lead line "Discovery in aid of judgment," which was taken directly from the federal rule, could be a little more clear. He stated that those are the remaining issues on which he would like to have input from the Council.

Mr. Goehler stated that, if that federal language is being borrowed, it would be nice to know what the scope is. Are we basically adopting federal case law, or do we want to define it differently? He stated that the scope may be fine, but the Council needs to know what that scope is in order to make that determination.

Judge Peterson also raised another issue. The new draft language indicates that discovery may be obtained "as provided in these rules." The person who raised the concern in the biennial survey mentioned that Rule 55 could also be read not to permit post-judgment subpoenas. He observed that the draft language should perhaps also include language about obtaining a subpoena. Mr. Goehler asked whether there is any discovery that would not apply. He stated that we could spell out the rules that apply if there are some that we want to leave out, or include a "notwithstanding" clause, rather than making any changes to Rule 55.

Judge Peterson stated that the committee would meet again to consider these issues and report back to the Council at the April meeting.

6. Service/Rules 7, 9, & 10

Judge Raschio referred the Council to Appendix F and focused on the proposed changes to the summons in Rule 7. He stated that he had worked with Council staff to come up with some cleaner and more succinct language for the summons and to ensure that, even with the change from a minimum 8-point font to a minimum 12-point font, it still can fit on one page. He noted that this was a concern at the February Council meeting. Judge Peterson stated that Ms. Nilsson had prepared a summons with the proposed draft language in both 8-point and 12-point font so that the Council could see the difference. Mr. Goehler stated that the difference is so stark that he wondered why 12-point font was not required before.

Mr. Spooner stated that he agrees with requiring 12-point font. He pointed out that his firm and many other firms have historically prepared summonses in a two-column format, with the required Rule 7 language in 8-point font in one column and other information in a larger font in the other column. That is perhaps a more historical context of why 8-point font was used. Judge Peterson stated that he and Ms. Nilsson had formatted the summons to comply with the UTCR 2.010 standards for pleadings, although UTCR 2.010(4) does not require the same things of documents other than pleadings and motions. It was an exercise to see if a summons could still fit on one page with a 2-inch top margin and a large caption and with double spacing on pleading paper, which it could.

Judge Peterson stated that staff also looked through Rule 7 and found some other suggested changes, many of which had to do with replacing the word "shall" with other appropriate words. He asked that Council members take a close look at the draft amendment to make sure that all of the suggested changes do not do harm or alter how the rule is intended to be used. He stated that the committee would benefit from having another meeting to look at any Council feedback.

Mr. Spooner stated that the proposed changes of the word "shall" to the word "will" in subsection F(4) and section G caught his attention. He stated that there are a number of appellate cases on how trial courts are to deal with actual notice, and noted that "shall" is a fairly clear word, for the most part, with lawyers. With that appellate history, he had concerns about whether using the word "will" would open up a new round of appellate cases about what a trial court should do when there is not perfect service. Judge Peterson noted that the word "shall" has been interpreted as "may" in some cases, which is a bit of a shock, and that is one of the reasons that it has been disfavored in legislative drafting. He pointed out that the deliberations of the Council and the staff comments on any rule changes would make clear that the changes would be to clarify the existing practice and not to change anything in terms of how the rule is applied. Ms. Nilsson asked if changing "shall" to "does" would make more sense in some instances. Mr. Goehler and Mr. Spooner agreed. Mr. Goehler did suggest that the committee take a closer look at the instances of "shall" in the rule during its upcoming meeting. Ms. Hopkins stated that she currently has a case in front of the Court of Appeals that addresses the word "shall." She was unsure when oral argument would be scheduled and when an opinion would be rendered; perhaps next year. Ms. Nilsson asked that the Council take a look at all drafts where the word "shall" was replaced with another word to make sure that they were appropriately changed.

Judge Peterson pivoted to a discussion of the "three-day rule." Although the committee had reached the consensus not to remove the three-day extension from Rule 10 B, he stated that one of the significant complaints about that extension is that, whereas email service usually is serviceable, there are sometimes disputes over whether a request for production of documents has been received by email. He stated that he had made a suggestion at the last Council meeting to which the Council did not seem opposed, so he had drafted a proposed amendment to Rule 9. Currently, notices of deposition, as well as Rule 43 requests and responses to such requests, are not to be filed with the court. (The reason for excluding Rule 43 from the requirement to file was concern, back in the paper documents era, over filing space for responses.) Judge Peterson pointed out that the storage space required for requests for production under Rule 43 is typically pretty minimal. He stated that he had asked the court processing staff in Multnomah County whether it would cause difficulty for Rule 43 requests to be filed with the court. His thought is that, if Rule 43 requests for production are filed with the court, parties cannot complain that this is the one email that they did not receive. He stated that this would address the concern that was raised by one of the attorneys who addressed the Council in the September and October meetings about how the 3-day extension and email communication causes disputes and additional litigation expense.

Mr. Goehler pointed out that everything that gets filed in the Odyssey court filing system has to be clerk approved, so that would be an extra touch point for court staff. He stated that this is a consideration when making such a rule change. Judge Raschio stated that the committee can discuss this at its next meeting. He posited that, instead of the entire filing, perhaps there could be a requirement that a notice be filed with the court that a request for discovery has been filed and that there has been a response to discovery, as opposed to having those massive documents filed within the case.

7. Third Party Practice/Rule 22

Mr. Goehler thanked the Rule 22 committee for the compressive materials it provided to the Council (Appendix G) which include a history of the rule. He stated that this information changed his view on what the Council should do this biennium. Ms. Dahab stated that the committee had met once since the last Council meeting. She noted that the suggestions presented by the committee in its materials are a work in progress and that the committee is not ready for a full Council vote at this point. The committee was hoping to get some feedback on where the Council might be leaning.

Ms. Dahab explained that the first document in Appendix G is a history of Rule 22, particularly Rule 22 C on third-party practice, as it has existed over the years. She stated that the committee wanted the Council to see the number and type of reviews and amendments the Council has undertaken, specifically with regard to the consent requirement. She stated that the committee had learned a few things, one being that the committee's cross-jurisdictional research made clear that the consent requirement in ORCP 22 C is unique to Oregon. Another thing learned is that there is very little Oregon case law about the consent requirement. One case from the Court of Appeals touches on the right that the plaintiff has as "master of the complaint," which is sort of at the heart of the consent requirement that Rule 22 C reflects. The consent requirement has been reviewed by the Council a few times over the years, most recently in 2018 when the Council undertook a review and published an amendment that would have eliminated the requirement. The published amendment did not receive a supermajority vote of the Council for promulgation. Prior to that, committees were convened a few times to look at the rule, but never got as far as a published amendment.

Ms. Dahab called the Council's attention to the second document in Appendix G, which is a series of potential options for actions the Council might consider taking with regard to Rule 22 C. One option is making no change at all. The other options are various iterations of potential changes that the committee has discussed. The committee has not reached any consensus about a recommendation, and is currently split about whether the rule should be changed at all, and is hoping for feedback from the Council to help narrow the options to come to a recommendation.

Mr. Joh asked whether the committee had considered the fact that the defendant who is trying to bring in a third party would still have a claim, even if it is not within that case. Ms. Dahab agreed that there would still be a claim and that the defendant can file a separate case, which can sometimes be consolidated, sometimes not, depending on the status of the case and the decision of the court. Mr. Goehler stated that, many times, this might take the form of a standalone indemnity or contribution claim.

Judge Peterson congratulated the committee on ferreting out so many possible permutations and sub-permutations of a change. Including the costs and benefits of a separate action and consolidation might be a good addition, but otherwise the document is a marvelous trip through history and a recount of what options might be available. Ms. Dahab thanked Ms. Johnson for combing through the Council's history, looking through every biennium on the website. Ms. Nilsson stated that a future goal is to better link all materials on each rule on the website so that research is easier.

Ms. Johnson stated that her research had found that, many years ago, the Oregon State Bar had a Practice and Procedure Committee (PPC) that sent out a pretty extensive survey to trial court judges. The PPC wrote an extensive memo after sending out the survey, and something like 73% of trial court judges at the time wanted to get rid of third-party practice. That number was pretty astonishing to her, and a strange concept to contemplate. As a result, there was some back and forth in the PPC about the rights of existing parties, and they suggested the language that is in proposal number 2 of Appendix G to help set some guardrails as to when trial courts should allow late third-party practice.

Mr. Goehler reiterated that his personal view had changed after reading through the materials. He had previously thought that a change to require either consent of the parties or leave of court would be advisable. However, reading through the history and discussion by former Council members, he thinks that the issue has been pretty well reviewed and compromises have been made, and he is currently leaning toward the view that no change is needed. Ms. Hopkins seconded this view. As a practitioner, she could only foresee problems if a change were made. She opined that the current rule works.

Judge Peterson recalled that, when he first became Executive Director of the Council, outgoing Executive Director Maury Holland was helping with his transition. A change to Rule 22 C was proposed and Mr. Holland had opined that it was a rock too heavy to lift. The suggestion did not get much traction at that time, but it has gotten traction since. While Judge Peterson does not think that the Council should publish draft amendments simply to have them consigned to the trash can of history, he noted that sometimes publishing a controversial draft amendment receives sufficient pushback that the issue does not get raised again for a while.

Mr. Joh asked for a refresher on the impetus for considering a change to the rule. Ms. Johnson recalled that it was one of Mr. Kekel's partners who raised the issue. Mr. Kekel agreed, and stated that not only people in his firm, but many people in the defense bar agree that they have run into issues with needing consent of the plaintiff as required in Rule 22 C. He thanked Ms. Johnson and Ms. Dahab for their work in putting the materials together, as well as Mr. Shin, who helped come up with various alternatives based on what some of the other states have done. He noted that Mr. Shin also has some opinions with respect to the rule and asked him to speak on those.

Mr. Shin stated that he agrees that there is a history and that the rule has been looked at a number of times. Part of his concern is that the rule should be looked at further in the context of some of the changes to the contributory versus comparative negligence scheme. Mr. Shin stated that many of times that the Council considered Rule 22 were prior to *Eclectic Inv., LLC v. Patterson* [357 Or 25 (2015)] and *Lasley v. Combined Transport* [351 Or 1 (2011)], which substantially changed how comparative fault claims are brought into a case and can be considered. In his opinion, the rule served a different purpose prior to that time. A third-party claim that was separately brought as an indemnity or a contribution claim prior to the comparative fault scheme as it stands today may have been acceptable, and one could either consolidate or not consolidate. He noted that, the last time this issue was considered, former Council member Jay Beattie had brought up the scenario of a defendant who is primarily at fault in a case but who does not have much money. A plaintiff could decide late in the case, after the 90-day period has passed, to dismiss this defendant. The remaining defendant would then have no way to bring a third-party claim and, on the comparative fault verdict form, there would be no consideration of that now-dismissed party. Mr. Shin noted that this is a bit of a gaming situation that may be so far from reality that it is not an issue. However, he pointed out that there are certainly instances in complex cases where an additional defendant is discovered after 90 days and there is currently no way to bring them into the case unless the plaintiff agrees, and there are many circumstances where the plaintiff would not do so. He noted that no other jurisdiction has a similar rule. While there were historical reasons for it, given some of these counterbalances and pitfalls for defendants, he thinks that there is some reason to again consider it. He also mentioned that the committee has provided some alternatives that past Councils have not considered.

Judge Bloom stated that there are concerns from both the defense and the plaintiff perspective to making a change to Rule 22 C. There are also concerns from the court's perspective in wanting to keep control of dockets. He stated, however, that he thinks that those concerns should be left to the sound discretion of the trial court. He noted that there is no other rule like this that puts a stop on something because one party has not consented. He did not think that expanding the 90-day timeline would remedy the situation. In his opinion, it should still be handled by motion. In their response, the party opposed to the third-party practice can raise the reasons why the motion should not be granted. Judge Bloom noted that there may be substantial reasons, in some cases, to add a third party, and the party who wants to bring in that third party should be able to provide those reasons and it should be left to the court's discretion. The "gotcha" part of the rule, which no other jurisdiction has, seems wrong in light of the changes in comparative fault, and forcing people to file separate actions and argue about consolidation seems unnecessary. That issue can be addressed in the motion, and the courts can decide by balancing issues, like it always does. He opined that the hard and fast 90-day "gotcha" is inappropriate and is not serving the interest of justice in all cases.

Mr. Spooner stated that he is now somewhat removed from regular third-party practice but, from his experience in his defense practice, when there were multiple defendants in a case and he was representing a defendant that was pointing the finger at other defendants, he could and would file cross-claims for contribution indemnity. That would prevent a plaintiff from unilaterally settling and dismissing that person from the case and would still deal with division of liability as the case progresses. He stated that there were still times where, for a variety of reasons, he filed a separate action for contribution indemnity against a responsible party that was not known early on. He pointed out that, even if other defendants are known early on, a third-party complaint can be filed for contribution and indemnity. As far as the nature of the claims that he used to deal with, he did not see a need for a procedural change.

Ms. Johnson responded to Mr. Shin's comment about the rule not having been considered prior to changes in the law regarding joint and several liability. She pointed out that a 2000 committee that included then-lawyer (and current Council member) Judge Bloom and lawyer William Gaylord specifically looked at the issue of how comparative fault and joint and several liability affected the rule. She stated that one possible change that was not included on the committee's list of possible changes is allowing a late addition by plaintiffs of parties who would be liable or responsible to them.

Mr. Joh stated that it seems like there are good arguments for leaving the rule in its current form. At the same time, he shared Judge Bloom's and Mr. Shin's concerns that, in the case of late-discovered tortfeasors, the 90-day limitation can serve to really constrain the discretion of the court in making sure that the case is fairly presented. It seems to him that, given those considerations, the second option presented by the committee is the least harmful proposal in terms of giving the court a valve for appropriate situations while also respecting the considered deliberation of former Council members.

Mr. Goehler stated that, in his practice, when he is outside of the 90-day time frame and he wants to add a third party, he usually picks up the telephone and talks with opposing counsel. He thinks that the rule in its current form promotes that. Most of the time, for a plaintiff that is looking for a monetary recovery, it is good to have additional pots of money, so bringing more people to the party is sometimes beneficial. Having to get consent drives the conversation and potentially leads to more collaboration, which is generally a good thing.

Ms. Dahab thanked the Council for the valuable discussion and perspectives. She stated that the committee would meet again with the aim of narrowing down the options, in the hope of a Council vote at the April meeting.

B. Jury Trials in FED Cases

Judge Peterson referred the Council to a memorandum he had written regarding the issue of jurors in forcible entry and detainer (FED) trials (Appendix H). He recalled that, during the last Council meeting, there did not seem to be a lot of momentum to amend Rule 56 B to include information regarding the number of jurors that should be impaneled in such cases. Based on the Council's input, Judge Peterson thought that this information might be better placed in a statute. He stated that he is a member of an OJD committee that is making recommendations on FED practice, including substantial changes to ORS Chapter 105. He noted that a change could be made to ORS 105.130, as proposed on page 3 of his memo, to make it clear that parties in an FED trial are entitled to a six-person jury.

Judge Peterson opined that it should be written down somewhere that there is a right to a jury trial in FED cases. He pointed out that there should be virtually no jury trials in these cases, as most of the cases would be taken away from the jury because there are legal issues that do not go to a jury. Some cases also have equitable issues, but most eviction cases are decided basically on whether the tenancy has been terminated, and the judge is frequently going to decide that issue on undisputed facts. He stated that he does not anticipate an increase in jury trials if this statutory change were to be made.

Judge Peterson stated that people commonly think that a party has to demand a jury trial, when they are entitled to one, in the party's first pleading; however, in Oregon state court, that formal demand is not required. The advantage of his proposed statutory language would be that a party, typically a defendant, would need to make the demand for a jury known at the time the case is set for trial, rather than in an answer that comes later. Often, these cases will be assigned to a judge and receive a time and date of trial at that point, although every county probably does it differently. A demand for a jury after the trial is set would cause administrative issues in many courts.

Judge Oden-Orr pointed out that the ORCP do not talk about the right to a jury trial. Judge Peterson agreed that this is a substantive right and that one would expect to have the right to a jury trial on a claim at law but not on an equitable claim. That right goes back a long way. In certain cases, statutes can change that. Judge Oden-Orr and Ms. Dahab stated that they liked the idea of any change being in the statutes, and there was general agreement by the Council. Judge Peterson stated that he was glad that he had correctly interpreted the Council's sentiments at the last meeting. Mr. Goehler asked whether this is an issue for the Council to raise with the Legislature or perhaps a suggestion to make to the landlord-tenant section of the Bar. Judge Peterson noted that the Council does not need to make any recommendations, as the suggestion outlined in the memorandum has already gone to the OJD's general counsel. If approved, it will be part of the OJD's legislative package for changes to Chapter 105 of the ORS.

C. Recommendation to Legislature re: ORS 46.415

Judge Peterson noted that, as mentioned at the last Council meeting, if the Council wants to suggest to the Legislature an amendment to ORS 46.415 so that Rule 35 applies to small claims cases, it would be wise to ask the Bar to include this suggestion in its law improvement package. The suggestion that the Council made to the Legislature last biennium (Appendix I) was not picked up by the Legislature.

Mr. Goehler asked whether the Council would like to resubmit that proposal. Judge Peterson noted that the Bar has a deadline of April 1, 2026, for inclusions in its law improvement package. He pointed out that there is a fair amount of mischief that goes on in the small claims department and that someone was recently indicted for filing a large number of cases in that department that had no merit whatsoever.

Mr. Shields stated that he thought that, if the Bar included the suggestion in its law reform package, it would be likely to succeed. He noted that the Bar would probably check with OJD just to make sure they do not want to make the suggestion themselves. He recalled that, last biennium, the suggestion did not make it in front of the Board of Governors (BOG) in time to be included in the Bar's package, and they did not find a bill to amend it into during the last long legislative session. He stated that, if the Council votes to approve the suggestion today, the Bar can get it on the calendar for the BOG meeting next month.

Judge Hill made a motion to ask the Bar to include the suggestion in its law reform package to the Legislature. Mr. Joh seconded the motion. The motion carried by voice vote with one opposing vote and one abstention.

D. Rule 37

Judge Peterson reminded the Council that the post-judgment discovery committee had considered inserting language into either Rule 36 or Rule 37. Although the committee had decided on Rule 36, Council staff had taken a look at Rule 37 and decided that it had some room for improvement in terms of style. At the last Council meeting, the Council agreed that staff could make a proposal for stylistic changes to the rule, and that proposal is contained in Appendix J. The intent is to make Rule 37 conform with the rest of Council's rules, including proper subparagraphs, parts, subparts, and lead lines. Ms. Nilsson suggested that the proposal be left on the agenda for the April meeting so that Council members can take a close look to ensure that the changes do not do any unintentional damage. The Council agreed that this is a good idea.

V. Adjournment

Mr. Goehler adjourned the meeting at 11:02 a.m.

Respectfully submitted,

Mark A. Peterson

Hon. Mark A. Peterson
Executive Director

Council on Court Procedures
Rule 47 E Committee
Amended Report for Meeting on March 23, 2026

The committee met at noon on March 23, 2026, via Zoom.

Agenda:

- Whether to recommend a survey
- If so, whether survey should begin with bench or also include practitioners
- Potential impacts of a rule change on professionalism

Attending:

- YoungWoo Joh – Defense side trial
- Nada Dahab – Plaintiff-side trial & appellate
- Lara Johnson – Plaintiff-side personal injury and products liability
- Judge Oden-Orr
- Ryan Jennings – Plaintiff-side personal injury
- Melissa Hopkins – Plaintiff-side trial & appellate; medmal and similar

Summary:

At the outset, LJ raised concerns that a rule change could encourage accusations against opposing counsel. LJ further pointed out that ORCP 47 G already provides a mechanism for enforcement against bad-faith ORCP 47 E declarations.

ND raised a concern with consistency in approaching potential rule changes. ND pointed out that Judge Dahlin's concerns were not raised to the Council via the biennial survey, and that the Council typically approaches potential rule changes by deciding whether to consider specific issues raised in that survey. ND stated that any work by the committee may be looking for a problem rather than addressing a specific problem raised to the Council.

MH agreed noting that Judge Dahlin's concerns were from an individual judge. LJ agreed and was concerned that the committee's work may lead to an expansion of work beyond the scope of the original task. Judge OO noted that the Council does sometimes consider issues brought to the Council's attention through Chair Peterson reaching out to a set of practitioners.

MH stated that if ORCP 47 E was a widespread problem, the Council would have heard about it in the biennial survey or through, for example, the defense bar. YJ stated that the fact that the complaint has not been made more broadly by the defense bar does not necessarily mean that there aren't problems, and that a survey would provide an opportunity for the committee and Council to obtain that information.

LJ called a vote on recommending that the Council dissolve the committee, and to recommend that the Council instead wait until the biennial survey to decide whether to take the issue up again. Four voted in favor, with two against:

- Ayes: ND, RJ, LJ, MH
- Nays: Judge OO, YJ

YJ circulated a draft committee report on April 4. After reviewing the draft report, two members provided the following comments by shared document or email:

- Ryan Jennings provided the following summary of the substantive comments he raised at the March 23 meeting: "RJ expressed the opinion that there likely is no problem that isn't already addressed by the rule, as well as the observation that he had never actually seen a problem in the context of the nursing home and medical malpractice cases he has handled. RJ pointed out that 47 E states that motions under the rule are not designed to be discovery devices, and expressed a concern that changing the rule will lead to that. The misuse of the rule as a discovery device would increase costs / and burden on plaintiff's and disproportionately favor the defense. Also, 47 E requires good faith declarations, and 47 G addresses what happens in the event the court is satisfied there may be bad faith – so any rule changes were viewed by RJ as a solution in search of a problem. So for the substantive reasons and not procedural reasons, RJ voted to not take any action."

- Julian Marrs stated, "I don't truly understand why we would not consider Judge Dahlin's concerns before deciding to take action or not, so I would vote 'no' on dissolving the committee. It seems to me that we haven't really run those issues to ground in a substantive way. I know that I missed the committee meeting, so maybe I also missed that discussion."

Additionally, Melissa Hopkins and Ryan Jennings requested that RJ's comments be included in the body of the draft report. YoungWoo Joh responded that he had difficulty seeing how to work the RJ's summary into the main summary, due to the different level of detail in the summary as compared to the initial draft report. YJ offered to orally report on MH's and RJ's request at the Saturday Council meeting.

MH additionally requested that Julian Marrs's comments be omitted from the report, on the basis that the notes are supposed to be a report from the meeting, which JM did not attend. As an additional reason, MH noted that she did not receive JM's comments. YJ explained that he had mistakenly assumed that JM had included the other committee members on the email, and YJ provided a copy of the email to the committee.

MH submitted the following edits to the prior version of the draft report:

Summary:

~~This committee meeting largely focused on a broader question of whether the committee should be dissolved in favor of allowing the issue to be raised in what several members understood to be the normal~~

~~course, namely, the biennial end-of-year survey. Four members voted in favor of dissolution, and two voted nay.~~

~~At the outset,~~ LJ raised concerns that a rule change could encourage accusations against opposing counsel. LJ further pointed out that ORCP 47 G already provides a mechanism for enforcement against bad-faith ORCP 47 E declarations.

ND raised a concern with consistency in approaching potential rule changes. ND pointed out that Judge Dahlin's concerns were not raised to the Council via the biennial survey, and that the Council typically approaches potential rule changes by deciding whether to consider specific issues raised in that survey. ND stated that any work by the committee may be looking for a problem rather than addressing a specific problem raised to the Council.

MH agreed noting that Judge Dahlin's concerns were from an individual judge. LJ agreed and was concerned that the committee's work may lead to an expansion of work beyond the scope of the original task. Judge OO noted that the Council does sometimes consider issues brought to the Council's attention through Chair Peterson reaching out to a set of practitioners.

MH stated that if ORCP 47 E was a widespread problem, the Council would have heard about it in the biennial survey or through, for example, the defense bar. YJ stated that the fact that the complaint has not been made more broadly by the defense bar does not necessarily mean that there aren't problems, and that a survey would provide an opportunity for the committee and Council to obtain that information.

LJ called a vote on recommending that the Council dissolve the committee, and to recommend that the Council instead wait until the biennial survey to decide whether to take the issue up again.

RJ expressed the opinion that there likely is no problem that isn't already addressed by the rule, as well as the observation that he had never actually seen a problem in the context of the nursing home and medical malpractice cases he has handled. RJ pointed out that 47 E states that motions under the rule are not designed to be discovery devices, and expressed a concern that changing the rule will lead to that. The misuse of the rule as a discovery device would increase costs / and burden on plaintiff's and disproportionately favor the defense. Also, 47 E requires good faith declarations, and 47 G addresses what happens in the event the court is satisfied there may be bad faith – so any rule changes were viewed by RJ as a solution in search of a problem. So for the substantive reasons and not procedural reasons, RJ voted to not take any action.

Four members voted in favor of waiting until the biennial survey to decide whether to take the issue up again, with two members against that plan:

- Ayes: ND, RJ, LJ, MH
- Nays: Judge OO, YJ

~~YJ circulated a draft committee report on April 4. After reviewing the draft report, two members provided the following comments by shared document or email:~~

- ~~Ryan Jennings expressed the opinion that there likely is no problem that isn't already addressed by the rule, as well as the observation that he had never actually seen a problem in the context of the nursing home and medical malpractice cases he has handled. RJ pointed out that 47 E states that motions under the rule are not designed to be discovery devices, and expressed a concern that changing the rule will lead to that. The misuse of the rule as a discovery device would increase costs / and burden on plaintiff's and disproportionately favor the defense. Also, 47 E requires good faith declarations, and 47 G addresses what happens in the event the court is satisfied there may be bad faith – so any rule changes were viewed by RJ as a solution in search of a problem. So for the substantive reasons and not procedural reasons, RJ voted to not take any action.~~

- ~~Julian Marrs stated, "I don't truly understand why we would not consider Judge Dahlin's concerns before deciding to take action or not, so I would vote 'no' on dissolving the committee. It seems to me that we haven't really run those issues to ground in a substantive way. I know that I missed the committee meeting, so maybe I also missed that discussion."~~

JOINDER OF CLAIMS

RULE 24

A Permissive joinder. A plaintiff may join in a complaint, either as independent or as alternate claims, as many claims, legal or equitable, as the plaintiff has against an opposing party.

B Forcible entry and detainer [*and rental due.*] actions. If **a plaintiff joins** a claim of forcible entry and detainer [*and a claim for rental due are joined*] **with any other claim for legal or equitable relief,** the defendant [*shall*] **will** have the same time to appear as is provided by rule or statute in **civil** actions [*for the recovery of rental due.*] **and the action will not be governed by the provisions of ORS 105.100 et seq.**

C Separate statement. The claims joined must be separately stated and must not require different places of trial.

PERSONS WHO MAY ADMINISTER

OATHS FOR DEPOSITIONS;

FOREIGN DEPOSITIONS

RULE 38

A Within Oregon.

A(1) Within this state, depositions [*shall*] **must** be preceded by an oath or affirmation administered to the deponent by an officer authorized to administer oaths by the laws of this state or by a person specially appointed by the court in which the action is pending. A person so appointed has the power to administer oaths for the purpose of the deposition.

A(2) For purposes of this rule, a deposition taken pursuant to Rule 39 C(7) is taken within this state if either the deponent or the person administering the oath is located in this state.

B Outside the state. Within another state, or within a territory or insular possession subject to the dominion of the United States, or in a foreign country, depositions may be taken:

B(1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States;

B(2) before a person appointed or commissioned by the court in which the action is pending, and [*such a*] **that** person [*shall have*] **has** the power by virtue of [*such person's*] **the** appointment or commission to administer any necessary oath and take testimony; or

B(3) pursuant to a letter rogatory. A commission or letter rogatory [*shall*] **will** be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in (here name the state, territory, or country)."

Evidence obtained in a foreign country in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules.

C Foreign depositions and subpoenas.

C(1) **Definitions**. For the purpose of this section:

C(1)(a) "Foreign subpoena" means a subpoena issued under authority of a court of record of any state other than Oregon.

C(1)(b) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United [*States.*] **States that has enacted the Uniform Interstate Depositions and Discovery Act.**

C(2) **Issuance of subpoena**.

C(2)(a) To request issuance of a subpoena under this section, a party or attorney [*shall*] **must** submit a foreign subpoena to a clerk of court in the county in which discovery is sought to be conducted in this state.

C(2)(b) When a party or attorney submits a foreign subpoena to a clerk of court in this state, the clerk, in accordance with that court's procedure and requirements, [*shall*] **will** assign a case number and promptly issue a subpoena for service [*upon*] **on** the person to whom the foreign subpoena is directed. If a party to an out-of-state proceeding retains an attorney licensed to practice in this state, that attorney may assist the clerk in drafting the subpoena.

C(2)(c) A subpoena under this subsection [*shall:*] **must:**

C(2)(c)(i) Conform to the requirements of these Oregon Rules of Civil Procedure, including Rule 55, and conform substantially to the form provided in Rule 55 A(1) but may otherwise incorporate the terms used in the foreign subpoena as long as those terms conform to these rules; and

C(2)(c)(ii) Contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

C(3) **Service of subpoena**. A subpoena issued by a clerk of court under subsection (2) of this section [*shall*] **<u>must</u>** be served in compliance with Rule 55.

C(4) **Effects of request for subpoena**. A request for issuance of a subpoena under this section does not constitute an appearance in the court. A request does allow the court to impose sanctions for any action in connection with the subpoena that is a violation of applicable law.

C(5) **Motions**. A motion to the court, or a response thereto, for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court pursuant to this section is an appearance before the court and [*shall*] **<u>must</u>** comply with the rules and statutes of this state. The motion [*shall*] **<u>must</u>** be submitted to the court in the county in which discovery is to be conducted.

C(6) **Uniformity of application and construction**. In applying and construing this section, consideration [*shall*] **<u>will</u>** be given to the need to promote the uniformity of the law with respect to its subject matter among states that enact it.

TO: Council on Court Procedures

FR: Hon. Mark Peterson

DT: 3/31/2026

RE: POST-JUDGMENT DISCOVERY COMMITTEE MEETING SUMMARY

The Rule 36/ Rule 55 (post-judgment discovery) committee met on March 31 via videoconference. Whitman Passadore (chair), Erwin, Larwick, Marrs, and Peterson attended; Hill was absent.

The committee reviewed the 03/21/26 draft of Rule 36, without specific suggestions for changes to the proposed subsection B(4). General questions were raised. First, are all judgments immediately enforceable unless a supersedeas undertaking has been posted (other than by a stipulation of the parties)? ORCP 72 A would seem to indicate that execution on a judgment is immediate, absent a court's discretionary stay. Second, from Mr. Joh's question at a prior Council meeting, would the need for and tools of post judgment discovery be different if the action is for injunctive relief only, as opposed to an action for money damages? Finally, if there are multiple judgment debtors and less than all judgment debtors have posted adequate security, can or should post judgment discovery be available against nonparties since the undertaking was posted by some but not all of the judgment debtors? Should such discovery be on motion with good cause? Peterson noted that the lead line no longer copies the FRCP rule as a nod to plain language and to reflect that this amendment is not an adoption of the federal rule but will reflect the collective experience and wisdom of the Council.

The committee briefly reviewed the 03/21/26 draft of Rule 55. Peterson had a concern that an amendment to Rule 36 may possibly leave open an argument that the discovery rules do not, in themselves, resolve the "action is pending" language in Rule 55 and may be argued to not permit the use of subpoenas in post judgment enforcement. The Council had discussed the "action is pending" language in Rule 55 and it seemed that there was general agreement that "pending" would include post judgment matters—entry of a general judgment does not equate to a not pending status. There was some concern within the committee as to whether "action" is the right word, and specifically whether "action" encompasses all court cases and proceedings, e.g., probate matters.

SUMMONS

RULE 7

A Definitions. For purposes of this rule, "plaintiff" [*shall include*] **includes** any party issuing **a** summons and "defendant" [*shall include*] **includes** any party on whom service of **a** summons is sought. For purposes of this rule, a "true copy" of a summons and complaint means an exact and complete copy of the original summons and complaint.

B Issuance. Any time after the action is commenced, **the** plaintiff or **the** plaintiff's attorney may issue as many original summonses as either may elect and deliver such summonses to a person authorized to serve summonses under section E of this rule. A summons is issued when subscribed by **the** plaintiff or an active licensee of the Oregon State Bar.

C Contents, time for response, and required notices.

C(1) **Contents**. The summons [*shall*] **must** contain:

C(1)(a) **Title**. The title of the cause, specifying the name of the court in which the complaint is filed and the names of the parties to the action.

C(1)(b) **Direction to defendant**. A direction to the defendant requiring **the** defendant to appear and defend within the time required by subsection C(2) of this rule and a notification to **the** defendant that, in case of failure to do so, the plaintiff will apply to the court for the relief demanded in the complaint.

C(1)(c) **Subscription; post office address**. A subscription by the plaintiff or by an active licensee of the Oregon State Bar, with the addition of the post office address at which papers in the action may be served by mail.

C(2) **Time for response**. If the summons is served by any manner other than publication, the defendant [*shall*] **must** appear and defend within 30 days from the date of service. If the summons is served by publication pursuant to subparagraph D(6)(a)(i) of this rule, the defendant [*shall*] **must** appear and defend within 30 days from the date stated in the summons. The date so stated in the summons [*shall be*] **__is__** the date of the first publication.

C(3) **Notice to party served**.

C(3)(a) In general. All summonses, other than a summons referred to in paragraph C(3)(b) or C(3)(c) of this rule, [*shall*] **__must__** contain a notice printed in type size equal to at least [*8-point type*] **__12-point type__** that may be substantially in the following form:

____

NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY!

You must "appear" in this case or the [*other side*] **__plaintiff or petitioner__** will win automatically. To [*"appear"*] **__appear__** you must file [*with the court*] a legal document called a [*"motion" or "answer."*] **__"motion," "answer," or "response" within 30 days of the date you receive this summons.__** [*The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee.*] **__To file, you must give your legal document to the clerk of the court that appears at the top of this summons. You may need to pay a filing fee.__** [*It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff.*] **__Your legal document must be in proper form as required by the Oregon Rules of Civil Procedure (ORCP) and the Uniform Trial Court Rules. You must serve your legal document, as required by ORCP 7 D, on the attorney for the plaintiff or petitioner, or on the plaintiff or petitioner if they do not have an attorney. You must also file "proof of service." Proof of service is a signed statement describing when and how your legal document was served.__**

If you have questions, [*you should see*] **__contact__** an attorney immediately. If you need help [*in*] finding an attorney, you may contact the Oregon State Bar's Lawyer Referral [*Service online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636.*] **__Service:__**

__www.oregonstatebar.org / (800) 452-7636__

__For more information you may find helpful in understanding this case, visit:__

courts.oregon.gov OR www.oregonlawhelp.org

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C(3)(b) **Service for counterclaim or cross-claim**. A summons to join a party to respond to a counterclaim or a cross-claim pursuant to Rule 22 D(1) [*shall*] **must** contain a notice printed in type size equal to at least [*8-point type*] **12-point type** that may be substantially in the following form:

____

NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY!

You must "appear" to protect your rights in this matter. To [*"appear"*] **appear** you must file with the court a legal document called a "motion," a "reply" to a counterclaim, or an "answer" to a cross-claim. [*The "motion," "reply," or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee.*] **To file, you must give your legal document to the clerk of the court that appears at the top of this summons. You may need to pay a filing fee.** [*It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant.*] **Your legal document must be in proper form as required by the Oregon Rules of Civil Procedure (ORCP) and the Uniform Trial Court Rules. You must serve your legal document, as required by ORCP 7 D, on the attorney for the party that signed the summons, or on that party if they do not have an attorney. You must also file "proof of service." Proof of service is a signed statement describing when and how your legal document was served.**

If you have questions, [*you should see*] **contact** an attorney immediately. If you need help [*in*] finding an attorney, you may contact the Oregon State Bar's Lawyer Referral [*Service online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636.*] **Service:**

www.oregonstatebar.org / (800) 452-7636

For more information you may find helpful in understanding this case, visit:

<u>**www.oregonlawhelp.org**</u>

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C(3)(c) **Service on persons liable for attorney fees**. A summons to join a party pursuant to Rule 22 D(2) [*shall*] <u>**must**</u> contain a notice printed in type size equal to at least [*8-point type*] <u>**12-point type**</u> that may be substantially in the following form:

____

NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY!

You may be liable for attorney fees in this case. Should plaintiff in this case not prevail, a judgment for reasonable attorney fees may be entered against you, as provided by the agreement to which defendant alleges you are a party.

You must "appear" to protect your rights in this matter. To [*"appear"*] <u>**appear**</u> you must file with the court a legal document called a "motion" or "reply." [*The "motion" or "reply" must be given to the court clerk or administrator within 30 days along with the required filing fee.*] <u>**To file, you must give your legal document to the clerk of the court that appears at the top of this summons. You may need to pay a filing fee.**</u> [*It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant.*] <u>**Your legal document must be in proper form as required by the Oregon Rules of Civil Procedure (ORCP) and the Uniform Trial Court Rules. You must serve your legal document, as required by ORCP 7 D, on the attorney for the party that signed the summons, or on that party if they do not have an attorney. You must also file "proof of service." Proof of service is a signed statement describing when and how your legal document was served.**</u>

If you have questions, [*you should see*] <u>**contact**</u> an attorney immediately. If you need help [*in*] finding an attorney, you may contact the Oregon State Bar's Lawyer Referral [*Service online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636.*] <u>**Service:**</u>

<u>www.oregonstatebar.org / (800) 452-7636</u>

<u>For more information you may find helpful in understanding this case, visit:</u>

<u>www.oregonlawhelp.org</u>

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D Manner of service.

D(1) **Notice required**. Summons [*shall*] **<u>must</u>** be served, either within or without this state, in any manner reasonably calculated, under all the circumstances, to apprise the defendant of the existence and pendency of the action and to afford a reasonable opportunity to appear and defend. Summons may be served in a manner specified in this rule or by any other rule or statute on the defendant or on an agent authorized by appointment or law to accept service of summons for the defendant. Service may be made, subject to the restrictions and requirements of this rule, by the following methods: personal service of true copies of the summons and the complaint on defendant or an agent of defendant authorized to receive process; substituted service by leaving true copies of the summons and the complaint at a person's dwelling house or usual place of abode; office service by leaving true copies of the summons and the complaint with a person who is apparently in charge of an office; service by mail; or service by publication.

D(2) **Service methods**.

D(2)(a) **Personal service**. Personal service may be made by delivery of a true copy of the summons and a true copy of the complaint to the person to be served.

D(2)(b) **Substituted service**. Substituted service may be made by delivering true copies of the summons and the complaint at the dwelling house or usual place of abode of the person to be served to any person 14 years of age or older residing in the dwelling house or usual place of abode of the person to be served. Where substituted service is used, the plaintiff, as soon as reasonably possible, [*shall*] **<u>must</u>** cause to be mailed by first class mail true copies of the summons and the complaint to the defendant at defendant's dwelling house or usual place of abode, together with a statement of the date, time, and place at which substituted service was made. For the purpose of computing any period of time prescribed or allowed by these rules or by statute, substituted service [*shall be*] **__is__** complete on the mailing.

D(2)(c) **Office service**. If the person to be served maintains an office for the conduct of business, office service may be made by leaving true copies of the summons and the complaint at that office during normal working hours with the person who is apparently in charge. Where office service is used, the plaintiff, as soon as reasonably possible, [*shall*] **__must__** cause to be mailed by first class mail true copies of the summons and the complaint to the defendant at defendant's dwelling house or usual place of abode or defendant's place of business or any other place under the circumstances that is most reasonably calculated to apprise the defendant of the existence and pendency of the action, together with a statement of the date, time, and place at which office service was made. For the purpose of computing any period of time prescribed or allowed by these rules or by statute, office service [*shall be*] **__is__** complete on the mailing.

D(2)(d) **Service by mail**.

D(2)(d)(i) **Generally**. When service by mail is required or allowed by this rule or by statute, except as otherwise permitted, service by mail [*shall*] **__must__** be made by mailing true copies of the summons and the complaint to the defendant by first class mail [*and*] **__as well as__** by any of the following: certified, registered, or express mail with return receipt requested. For purposes of this paragraph, "first class mail" does not include certified, registered, or express mail, return receipt requested, or any other form of mail that may delay or hinder actual delivery of mail to the addressee.

D(2)(d)(ii) **Calculation of time**. For the purpose of computing any period of time provided by these rules or by statute, service by mail, except as otherwise provided, [*shall be*] **__is__** complete on the day the defendant, or other person authorized by appointment or law, signs a receipt for the mailing, or 3 days after the mailing if mailed to an address within the state, or 7 days after the mailing if mailed to an address outside the state, whichever first occurs.

D(3) **Particular defendants**. Service may be made on specified defendants as follows:

D(3)(a) **Individuals**.

D(3)(a)(i) **Generally**. On an individual defendant, by personal delivery of true copies of the summons and the complaint to the defendant or other person authorized by appointment or law to receive service of summons on behalf of the defendant, by substituted service, or by office service. Service may also be made on an individual defendant or other person authorized to receive service to whom neither subparagraph D(3)(a)(ii) nor D(3)(a)(iii) of this rule applies by a mailing made in accordance with paragraph D(2)(d) of this rule provided the defendant or other person authorized to receive service signs a receipt for the certified, registered, or express mailing, in which case service [*shall be*] **is** complete on the date on which the defendant signs a receipt for the mailing.

D(3)(a)(ii) **Minors**. On a minor under 14 years of age, by service in the manner specified in subparagraph D(3)(a)(i) of this rule on the minor; and additionally on the minor's father, mother, conservator of the minor's estate, or guardian, or, if there be none, then on any person having the care or control of the minor, or with whom the minor resides, or in whose service the minor is employed, or on a guardian ad litem appointed pursuant to Rule 27 B.

D(3)(a)(iii) **Incapacitated persons**. On a person who is incapacitated or is financially incapable, as both terms are defined by ORS 125.005, by service in the manner specified in subparagraph D(3)(a)(i) of this rule on the person and, also, on the conservator of the person's estate or guardian or, if there be none, on a guardian ad litem appointed pursuant to Rule 27 B.

D(3)(a)(iv) **Tenant of a mail agent**. On an individual defendant who is a "tenant" of a "mail agent" within the meaning of ORS 646A.340, by delivering true copies of the summons and the complaint to any person apparently in charge of the place where the mail agent receives mail for the tenant, provided that:

D(3)(a)(iv)(A) the plaintiff makes a diligent inquiry but cannot find the defendant; and

D(3)(a)(iv)(B) the plaintiff, as soon as reasonably possible after delivery, causes true copies of the summons and the complaint to be mailed by first class mail to the defendant at the address at which the mail agent receives mail for the defendant and to any other mailing address of the defendant then known to the plaintiff, together with a statement of the date, time, and place at which the plaintiff delivered the copies of the summons and the complaint. Service [*shall be*] **<u>is</u>** complete on the latest date resulting from the application of subparagraph D(2)(d)(ii) of this rule to all mailings required by this subparagraph unless the defendant signs a receipt for the mailing, in which case service is complete on the day the defendant signs the receipt.

D(3)(b) **Corporations including, but not limited to, professional corporations and cooperatives**. On a domestic or foreign corporation:

D(3)(b)(i) **Primary service method**. By personal service or office service on a registered agent, officer, or director of the corporation; or by personal service on any clerk on duty in the office of a registered agent.

D(3)(b)(ii) **Alternatives**. True copies of the summons and the complaint may be served:

D(3)(b)(ii)(A) by substituted service on the registered agent, officer, or director;

D(3)(b)(ii)(B) by personal service on any clerk or agent of the corporation;

D(3)(b)(ii)(C) by mailing in the manner specified in paragraph D(2)(d) of this rule true copies of the summons and the complaint to: the office of the registered agent or to the last registered office of the corporation, if any, as shown by the records on file in the office of the Secretary of State; or, if the corporation is not authorized to transact business in this state at the time of the transaction, event, or occurrence on which the action is based occurred, to the principal office or place of business of the corporation; and, in any case, to any address the use of which the plaintiff knows or has reason to believe is most likely to result in actual notice; or

D(3)(b)(ii)(D) on the Secretary of State in the manner provided in ORS 60.121 or 60.731.

D(3)(c) **Limited liability companies**. On a limited liability company:

D(3)(c)(i) **Primary service method**. By personal service or office service on a registered agent, manager, or (for a member-managed limited liability company) member of a limited liability company; or by personal service on any clerk on duty in the office of a registered agent.

D(3)(c)(ii) **Alternatives**. True copies of the summons and the complaint may be served:

D(3)(c)(ii)(A) by substituted service on the registered agent, manager, or (for a member-managed limited liability company) member of a limited liability company;

D(3)(c)(ii)(B) by personal service on any clerk or agent of the limited liability company;

D(3)(c)(ii)(C) by mailing in the manner specified in paragraph D(2)(d) of this rule true copies of the summons and the complaint to: the office of the registered agent or to the last registered office of the limited liability company, if any, as shown by the records on file in the office of the Secretary of State; or, if the limited liability company is not authorized to transact business in this state at the time of the transaction, event, or occurrence on which the action is based occurred, to the principal office or place of business of the limited liability company; and, in any case, to any address the use of which the plaintiff knows or has reason to believe is most likely to result in actual notice; or

D(3)(c)(ii)(D) on the Secretary of State in the manner provided in ORS 63.121.

D(3)(d) **Limited partnerships**. On a domestic or foreign limited partnership:

D(3)(d)(i) Primary service **method**. By personal service or office service on a registered agent or a general partner of a limited partnership; or by personal service on any clerk on duty in the office of a registered agent.

D(3)(d)(ii) **Alternatives**. True copies of the summons and the complaint may be served:

D(3)(d)(ii)(A) by substituted service on the registered agent or general partner of a limited partnership;

D(3)(d)(ii)(B) by mailing in the manner specified in paragraph D(2)(d) of this rule true copies of the summons and the complaint to: the office of the registered agent or to the last registered office of the limited partnership, if any, as shown by the records on file in the office of the Secretary of State; or, if the limited partnership is not authorized to transact business in this state at the time of the transaction, event, or occurrence on which the action is based occurred, to the principal office or place of business of the limited partnership; and, in any case, to any address the use of which the plaintiff knows or has reason to believe is most likely to result in actual notice; or

D(3)(d)(ii)(C) on the Secretary of State in the manner provided in ORS 70.040 or 70.045.

D(3)(e) **General partnerships and limited liability partnerships**. On any general partnership or limited liability partnership by personal service on a partner or any agent authorized by appointment or law to receive service of summons for the partnership or limited liability partnership.

D(3)(f) **Other unincorporated associations subject to suit under a common name**. On any other unincorporated association subject to suit under a common name by personal service on an officer, managing agent, or agent authorized by appointment or law to receive service of summons for the unincorporated association.

D(3)(g) **State**. On the state, by personal service on the Attorney General or by leaving true copies of the summons and the complaint at the Attorney General's office with a deputy, assistant, or clerk.

D(3)(h) **Public bodies**. On any county; incorporated city; school district; or other public corporation, commission, board, or agency by personal service or office service on an officer, director, managing agent, or attorney thereof.

D(3)(i) **Vessel owners and charterers**. On any foreign steamship owner or steamship charterer by personal service on a vessel master in the owner's or charterer's employment or any agent authorized by the owner or charterer to provide services to a vessel calling at a port in the State of Oregon, or a port in the State of Washington on that portion of the Columbia River forming a common boundary with Oregon.

D(4) **Particular actions involving motor vehicles**.

D(4)(a) **Actions arising out of use of roads, highways, streets, or premises open to the public; service by mail.**

D(4)(a)(i) In any action arising out of any accident, collision, or other event giving rise to liability in which a motor vehicle may be involved while being operated on the roads, highways, streets, or premises open to the public as defined by law of this state if the plaintiff makes at least one attempt to serve a defendant who operated such motor vehicle, or caused it to be operated on the defendant's behalf, by a method authorized by subsection D(3) of this rule except service by mail pursuant to subparagraph D(3)(a)(i) of this rule and, as shown by its return, did not effect service, the plaintiff may then serve that defendant by mailings made in accordance with paragraph D(2)(d) of this rule addressed to that defendant at:

D(4)(a)(i)(A) any residence address provided by that defendant at the scene of the accident;

D(4)(a)(i)(B) the current residence address, if any, of that defendant shown in the driver records of the Department of Transportation; and

D(4)(a)(i)(C) any other address of that defendant known to the plaintiff at the time of making the mailings required by parts D(4)(a)(i)(A) and D(4)(a)(i)(B) of this rule that reasonably might result in actual notice to that defendant. Sufficient service pursuant to this subparagraph may be shown if the proof of service includes a true copy of the envelope in which each of the certified, registered, or express mailings required by parts D(4)(a)(i)(A), D(4)(a)(i)(B), and D(4)(a)(i)(C) of this rule was made showing that it was returned to sender as undeliverable or that the defendant did not sign the receipt. For the purpose of computing any period of time prescribed or allowed by these rules or by statute, service under this subparagraph [*shall be*] **is** complete on the latest date on which any of the mailings required by parts D(4)(a)(i)(A), D(4)(a)(i)(B), and D(4)(a)(i)(C) of this rule is made. If the mailing required by part D(4)(a)(i)(C) of this rule is omitted because the plaintiff did not know of any address other than those specified in parts D(4)(a)(i)(A) and D(4)(a)(i)(B) of this rule, the proof of service [*shall*] **<u>must</u>** so certify.

D(4)(a)(ii) Any fee charged by the Department of Transportation for providing address information concerning a party served pursuant to subparagraph D(4)(a)(i) of this rule may be recovered as provided in Rule 68.

D(4)(a)(iii) The requirements for obtaining an order of default against a defendant served pursuant to subparagraph D(4)(a)(i) of this rule are as provided in Rule 69 E.

D(4)(b) **Notification of change of address**. Any person who; while operating a motor vehicle on the roads, highways, streets, or premises open to the public as defined by law of this state; is involved in any accident, collision, or other event giving rise to liability [*shall*] **<u>must</u>** forthwith notify the Department of Transportation of any change of the person's address occurring within 3 years after the accident, collision, or event.

D(5) **Service in foreign country**. When service is to be effected on a party in a foreign country, it is also sufficient if service of true copies of the summons and the complaint is made in the manner prescribed by the law of the foreign country for service in that country in its courts of general jurisdiction, or as directed by the foreign authority in response to letters rogatory, or as directed by order of the court. However, in all cases service [*shall*] **<u>must</u>** be reasonably calculated to give actual notice.

D(6) **Court order for service by other method**. When it appears that service is not possible under any method otherwise specified in these rules or other rule or statute, then a motion supported by affidavit or declaration may be filed to request a discretionary court order to allow alternative service by any method or combination of methods that, under the circumstances, is most reasonably calculated to apprise the defendant of the existence and pendency of the action. If the court orders alternative service and the plaintiff knows or with reasonable diligence can ascertain the defendant's current address, the plaintiff must mail true copies of the summons and the complaint to the defendant at that address by first class mail and any of the following: certified, registered, or express mail, return receipt requested. If the plaintiff does not know, and with reasonable diligence cannot ascertain, the current address of any defendant, the plaintiff must mail true copies of the summons and the complaint by the methods specified above to the defendant at the defendant's last known address. If the plaintiff does not know, and with reasonable diligence cannot ascertain, the defendant's current and last known addresses, a mailing of copies of the summons and the complaint is not required.

D(6)(a) **Non-electronic alternative service**. Non-electronic forms of alternative service may include, but are not limited to, publication of summons; mailing without publication to a specified post office address of the defendant by first class mail as well as either by certified, registered, or express mail with return receipt requested; or posting at specified locations. The court may specify a response time in accordance with subsection C(2) of this rule.

D(6)(a)(i) **Alternative service by publication**. In addition to the contents of a summons as described in section C of this rule, a published summons must also contain a summary statement of the object of the complaint and the demand for relief, and the notice required in subsection C(3) of this rule must state: "The motion or answer or reply must be given to the court clerk or administrator within 30 days of the date of first publication specified herein along with the required filing fee." The published summons must also contain the date of the first publication of the summons.

D(6)(a)(i)(A) **Where published**. An order for publication must direct publication to be made in a newspaper of general circulation in the county where the action is commenced or, if there is no such newspaper, then in a newspaper to be designated as most likely to give notice to the person to be served. The summons must be published four times in successive calendar weeks. If the plaintiff knows of a specific location other than the county in which the action is commenced where publication might reasonably result in actual notice to the defendant, the plaintiff must so state in the affidavit or declaration required by paragraph D(6) of this rule, and the court may order publication in a comparable manner at that location in addition to, or in lieu of, publication in the county in which the action is commenced.

D(6)(a)(ii) **Alternative service by posting**. The court may order service by posting true copies of the summons and complaint at a designated location in the courthouse where the action is commenced and at any other location that the affidavit or declaration required by subsection D(6) of this rule indicates that the posting might reasonably result in actual notice to the defendant.

D(6)(b) **Electronic alternative service**. Electronic forms of alternative service may include, but are not limited to: e-mail; text message; facsimile transmission as defined in Rule 9 F; or posting to a social media account. The affidavit or declaration filed with a motion for electronic alternative service must include: verification that diligent inquiry revealed that the defendant's residence address, mailing address, and place of employment are unlikely to accomplish service; the reason that plaintiff believes the defendant has recently sent and received transmissions from the specific e-mail address or telephone or facsimile number, or maintains an active social media account on the specific platform the plaintiff asks to use; and facts that indicate the intended recipient is likely to personally receive the electronic transmission. The certificate of service must verify compliance with subparagraph D(6)(b)(i) and subparagraph D(6)(b)(ii) of this rule. An amended certificate of service must be filed if it later becomes evident that the intended recipient did not personally receive the electronic transmission.

D(6)(b)(i) **Content of electronic transmissions**. If the court allows service by a specific electronic method, the case name, case number, and name of the court in which the action is pending must be prominently positioned where it is most likely to be read first. For e-mail service, those details must appear in the subject line. For text message service, they must appear in the first line of the first text. For facsimile service, they must appear at the top of the first page. For posting to a social media account, they must appear in the top lines of the posting.

D(6)(b)(ii) **Format of electronic transmissions**. If the court allows alternative service by an electronic method, the summons, complaint, and any other documents must be attached in a file format that is capable of showing a true copy of the original document. When an electronic method is incapable of transferring transmissions that exceed a certain size, the plaintiff must not exceed those express size limitations. If the size of the attachments exceeds the limitations of any electronic method allowed, then multiple sequential transmissions may be sent immediately after the initial transmission to complete service.

D(6)(c) **Unknown heirs or persons**. If service cannot be made by another method described in this section because defendants are unknown heirs or persons as described in Rule 20 I and J, the action will proceed against the unknown heirs or persons in the same manner as against named defendants served by publication and with like effect; and any unknown heirs or persons who have or claim any right, estate, lien, or interest in the property in controversy at the time of the commencement of the action, and who are served by publication, will be bound and concluded by the judgment in the action, if the same is in favor of the plaintiff, as effectively as if the action had been brought against those defendants by name.

D(6)(d) **Defending before or after judgment**. A defendant against whom service pursuant to this subsection is ordered or that defendant's representatives, on application and sufficient cause shown, at any time before judgment will be allowed to defend the action. A defendant against whom service pursuant to this subsection is ordered or that defendant's representatives may, on good cause shown and on any terms that may be proper, be allowed to defend after judgment and within one year after entry of judgment. If the defense is successful, and the judgment or any part thereof has been collected or otherwise enforced, restitution may be ordered by the court, but the title to property sold on execution issued on that judgment, to a purchaser in good faith, will not be affected thereby.

D(6)(e) **Defendant who cannot be served**. Within the meaning of this subsection, a defendant cannot be served with summons by any method authorized by subsection D(3) of this rule if service pursuant to subparagraph D(4)(a)(i) of this rule is not applicable, the plaintiff attempted service of summons by all of the methods authorized by subsection D(3) of this rule, and the plaintiff was unable to complete service; or if the plaintiff knew that service by these methods could not be accomplished.

E **By whom served; compensation**. A summons may be served by any competent person 18 years of age or older who is a resident of the state where service is made or of this state and is neither a party to the action, corporate or otherwise, nor any party's officer, director, employee, or attorney, except as provided in ORS 180.260. However, service pursuant to subparagraph D(2)(d)(i), as well as the mailings specified in paragraphs D(2)(b) and D(2)(c) and part D(3)(a)(iv)(B) of this rule, may be made by an attorney for any party. Compensation to a sheriff or a sheriff's deputy in this state who serves a summons [*shall be*] **<u>is</u>** prescribed by statute or rule. If any other person serves the summons, a reasonable fee may be paid for service. This compensation [*shall be*] **<u>is</u>** part of disbursements and [*shall be*] **<u>is</u>** recovered as provided in Rule 68.

F **Return; proof of service**.

F(1) **Return of summons**. The summons [*shall*] **<u>must</u>** be promptly returned to the clerk with whom the complaint is filed with proof of service or mailing, or that defendant cannot be found. The summons may be returned by first class mail.

F(2) **Proof of service**. Proof of service of summons or mailing may be made as follows:

F(2)(a) **Service other than publication**. Service other than publication [*shall*] **<u>must</u>** be proved by:

F(2)(a)(i) **Certificate of service when summons not served by sheriff or deputy**. If the summons is not served by a sheriff or a sheriff's deputy, the certificate of the server indicating: the specific documents that were served; the time, place, and manner of service; that the server is a competent person 18 years of age or older and a resident of the state of service or this state and is not a party to nor an officer, director, or employee of, nor attorney for any party, corporate or otherwise; and that the server knew that the person, firm, or corporation served is the identical one named in the action. If the defendant is not personally served, the server [*shall*] **must** state in the certificate when, where, and with whom true copies of the summons and the complaint were left or describe in detail the manner and circumstances of service. If true copies of the summons and the complaint were mailed, the certificate may be made by the person completing the mailing or the attorney for any party and [*shall*] **must** state the circumstances of mailing and the return receipt, if any, [*shall*] **must** be attached.

F(2)(a)(ii) **Certificate of service by sheriff or deputy**. If the summons is served by a sheriff or a sheriff's deputy, the sheriff's or deputy's certificate of service indicating: the specific documents that were served; the time, place, and manner of service; and, if defendant is not personally served, when, where, and with whom true copies of the summons and the complaint were left or describing in detail the manner and circumstances of service. If true copies of the summons and the complaint were mailed, the certificate [*shall*] **must** state the circumstances of mailing and the return receipt, if any, [*shall*] **must** be attached.

F(2)(b) **Publication**. Service by publication [*shall*] **must** be proved by an affidavit or by a declaration.

F(2)(b)(i) A publication by affidavit [*shall*] **must** be in substantially the following form:

____

Affidavit of Publication

State of Oregon)

) ss.

County of)

I, ______, being first duly sworn, depose and say that I am the ______ (here set forth the title or job description of the person making the affidavit), of the ______, a newspaper of general circulation published at ______ in the aforesaid county and state; that I know from my personal knowledge that the ______, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper four times in the following issues: (here set forth dates of issues in which the same was published).

Subscribed and sworn to before me this ______ day of _____, 2______.

____

Notary Public for Oregon

My commission expires

____ day of ____, 2____.

____

F(2)(b)(ii) A publication by declaration [*shall*] **must** be in substantially the following form:

____

Declaration of Publication

State of Oregon)

) ss.

County of)

I, ______, say that I am the ______ (here set forth the title or job description of the person making the declaration), of the ______, a newspaper of general circulation published at ______ in the aforesaid county and state; that I know from my personal knowledge that the ______, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper four times in the following issues: (here set forth dates of issues in which the same was published).

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

____

___ day of _____, 2____

____

F(2)(c) **Making and certifying affidavit**. The affidavit of service may be made and certified before a notary public, or other official authorized to administer oaths and acting in that capacity by authority of the United States, or any state or territory of the United States, or the District of Columbia, and the official seal, if any, of that person [*shall*] <u>**must**</u> be affixed to the affidavit. The signature of the notary or other official, when so attested by the affixing of the official seal, if any, of that person, [*shall be*] <u>**is**</u> prima facie evidence of authority to make and certify the affidavit.

F(2)(d) **Form of certificate, affidavit, or declaration**. A certificate, affidavit, or declaration containing proof of service may be made on the summons or as a separate document attached to the summons.

F(3) **Written admission**. In any case proof may be made by written admission of the defendant.

F(4) **Failure to make proof; validity of service**. If summons has been properly served, failure to make or file a proper proof of service [*shall*] <u>**does**</u> not affect the validity of the service.

G **Disregard of error; actual notice**. Failure to comply with provisions of this rule relating to the form of a summons, issuance of a summons, or who may serve a summons [*shall*] <u>**does**</u> not affect the validity of service of that summons or the existence of jurisdiction over the person if the court determines that the defendant received actual notice of the substance and pendency of the action. The court may allow amendment to a summons, affidavit, declaration, or certificate of service of summons. The court [*shall*] <u>**will**</u> disregard any error in the content of a summons that does not materially prejudice the substantive rights of the party against whom the summons was issued. If service is made in any manner complying with subsection D(1) of this rule, the court [*shall*] <u>**will**</u> also disregard any error in the service of a summons that does not violate the due process rights of the party against whom the summons was issued.

IN THE DISTRICT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

PATTY PLAINTIFF,	)	
	)	
Plaintiff,	)	CASE NO 123-4567
	)	
v.	)	SUMMONS
	)	**C(3)(a)**
DOUG DEFENDANT,	)	
	)	
Defendant.	)	

To: Doug Defendant
123 SE Smith Lane
Portland OR 97204

NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY!

You must "appear" in this case or the plaintiff or petitioner will win automatically. To appear you must file a legal document called a "motion," "answer," or "response" within 30 days of the date you receive this summons. To file, you must give your legal document to the clerk of the court that appears at the top of this summons. You may need to pay a filing fee. Your legal document must be in proper form as required by the Oregon Rules of Civil Procedure (ORCP) and the Uniform Trial Court Rules. You must serve your legal document, as required by ORCP 7 D, on the attorney for the plaintiff or petitioner, or on the plaintiff or petitioner if they do not have an attorney. You must also file "proof of service." Proof of service is a signed statement describing when and how your legal document was served.

If you have questions, contact an attorney immediately. If you need help finding an attorney, you may contact the Oregon State Bar's Lawyer Referral Service:

www.oregonstatebar.org / (800) 452-7636

For more information you may find helpful in understanding this case, visit:

courts.oregon.gov OR www.oregonlawhelp.org

____

Larry Lawyer, OSB No. 99xxxx
620 SW 5th Ave, Suite 1225
Portland OR 97204
(503) 999-9999
larry@lawyer.com

IN THE DISTRICT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

PATTY PLAINTIFF,	)	
	)	
Plaintiff,	)	CASE NO 123-4567
	)	
v.	)	SUMMONS
	)	**C(3)(b)**
DOUG DEFENDANT,	)	
	)	
Defendant.	)	

To: Patty Plaintiff
123 SE Jones Lane
Portland OR 97206

NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY!

You must "appear" to protect your rights in this matter. To appear you must file with the court a legal document called a "motion," a "reply" to a counterclaim, or an "answer" to a cross-claim. To file, you must give your legal document to the clerk of the court that appears at the top of this summons. You may need to pay a filing fee. Your legal document must be in proper form as required by the Oregon Rules of Civil Procedure (ORCP) and the Uniform Trial Court Rules. You must serve your legal document, as required by ORCP 7 D, on the attorney for the party that signed the summons, or on that party if they do not have an attorney. You must also file “proof of service.” Proof of service is a signed statement describing when and how your legal document was served.

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For more information you may find helpful in understanding this case, visit:

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larry@lawyer.com

IN THE DISTRICT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

PATTY PLAINTIFF,	)	
	)	
Plaintiff,	)	CASE NO 123-4567
	)	
v.	)	SUMMONS
	)	**C(3)(c)**
DOUG DEFENDANT,	)	
	)	
Defendant.	)	

To: Josh Wilson
123 SE Peters Lane
Portland OR 97212

NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY!

You may be liable for attorney fees in this case. Should plaintiff in this case not prevail, a judgment for reasonable attorney fees may be entered against you, as provided by the agreement to which defendant alleges you are a party.

You must "appear" to protect your rights in this matter. To appear you must file with the court a legal document called a "motion" or "reply." To file, you must give your legal document to the clerk of the court that appears at the top of this summons. You may need to pay a filing fee. Your legal document must be in proper form as required by the Oregon Rules of Civil Procedure (ORCP) and the Uniform Trial Court Rules. You must serve your legal document, as required by ORCP 7 D, on the attorney for the party that signed the summons, or on that party if they do not have an attorney. You must also file “proof of service.” Proof of service is a signed statement describing when and how your legal document was served.

If you have questions, contact an attorney immediately. If you need help finding an attorney, you may contact the Oregon State Bar’s Lawyer Referral Service:

www.oregonstatebar.org / (800) 452-7636

For more information you may find helpful in understanding this case, visit:

courts.oregon.gov OR www.oregonlawhelp.org

____

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620 SW 5th Ave, Suite 1225
Portland OR 97204
(503) 999-9999
larry@lawyer.com

SERVICE AND FILING OF PLEADINGS

AND OTHER DOCUMENTS

RULE 9

A Service; when required. Except as otherwise provided in these rules, every order; every pleading subsequent to the original complaint; every written motion other than one that may be heard ex parte; and every written request, notice, appearance, demand, offer to allow judgment, designation of record on appeal, and similar document [*shall*] **<u>must</u>** be served on each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against [*them shall*] **<u>parties in default must</u>** be served on [*them*] **<u>those parties</u>** in the manner provided for service of summons in Rule 7.

B Service; how made. Except as otherwise provided in Rule 7 or Rule 8, whenever under these rules service is required or permitted to be made on a party, and that party is represented by an attorney, the service [*shall*] **<u>must</u>** be made on the [*attorney*] **<u>attorney,</u>** unless otherwise ordered by the court. Service on the attorney or on a party [*shall*] **<u>must</u>** be made by delivering a copy to that attorney or party; by mailing [*it*] **<u>the copy</u>** to the attorney's or party's last known address; by e-mail as provided in section G of this rule; by electronic service as provided in section H of this rule; or, if the party is represented by an attorney, by facsimile communication as provided in section F of this rule. Delivery of a copy within this rule means: handing [*it*] **<u>the copy</u>** to the person to be served; or leaving [*it*] **<u>the copy</u>** at the person's office with the person who is apparently in charge; or, if there is no one in charge, leaving the copy in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving the copy at the person's dwelling house or usual place of abode with some person 14 years of age or older then residing therein. A party who has appeared without providing an appropriate address for service may be served by filing the pleading or other document with the court. Service by mail is complete on mailing. Service of any notice or other document to bring a party into contempt [*may be only on that party personally.*] **must be by personal service on that party.**

C Filing; proof of service.

C(1) **Generally**. Except as provided by section D of this rule, all documents required to be served on a party by section A of this rule [*shall*] **must** be filed with the court within a reasonable time after service. Except as otherwise provided in Rule 7 [*and*] **or** Rule 8, proof of service of all documents required or permitted to be served may be by written acknowledgment of service, by affidavit or declaration of the person making service, or by certificate of an attorney. Proof of service may be made on the document served or as a separate document attached thereto.

C(2) **Proof of service by facsimile communication**. If service is made by facsimile communication under section F of this rule, proof of service [*shall*] **must** be made by affidavit or by declaration of the person making service, or by certificate of an [*attorney*] **attorney,** and the person making service [*shall*] **must** attach to the affidavit, declaration, or certificate printed confirmation of receipt of the message generated by the transmitting technology.

C(3) **Proof of service by e-mail**. If service is made by e-mail under section G of this rule, proof of service [*shall*] **must** be made by affidavit or by declaration of the person making service, or by certificate of an attorney, stating either that the other party has consented to service by e-mail or that [*he or she*] **the sender** received confirmation that the message and **any** attachment were received by the designated recipient and specifying the method by which the sender received confirmation. An automatically generated message indicating that the recipient is out of the office or is otherwise unavailable cannot support the required certification, nor can an automatically generated e-mail delivery status notification.

C(4) **Proof of service by electronic service**. If service is made by electronic service under section H of this rule, proof of service [*shall*] **must** be made by affidavit or by declaration of the person making service, or by certificate of an attorney, specifying that service was completed by electronic service.

C(5) **Proof of service on a party without a service address**. Service on a party who has appeared without providing an appropriate address for service [*shall*] **must** be by affidavit or by declaration of the person filing the document, or by certificate of an attorney, that service by filing as provided in section B of this rule is appropriate.

[*D When filing not required.*] **D Documents not to be filed.** Notices of deposition, requests made pursuant to Rule 43, and answers and responses thereto [*shall not be*] **are not to be** filed with the court. This rule [*shall*] **does** not preclude their use as exhibits or as evidence on a motion or at trial. Offers to allow judgment made pursuant to Rule 54 E [*shall not be*] **are not to be** filed with the court except as provided in Rule 54 E(3).

E Filing with the court defined. The filing of pleadings and other documents with the court as required by these rules [*shall*] **must** be made by filing them with the clerk of the court or the person exercising the duties of that office. The clerk or the person exercising the duties of that office [*shall*] **will** endorse on the pleading or document the time of day, the day of the month, the month, and the year. The clerk or person exercising the duties of that office is not required to receive for filing any document unless a caption that includes the name of the court; the case number of the action, if one has been assigned; the title of the document; and the names of the parties [*are*] **is** legibly displayed on the front of the document, nor unless the contents of the document are legible. Further, the clerk is not required to receive for filing any document that does not include the name, address, and telephone number of the **filing** party or the attorney for the party, if the **filing** party is represented.

F Service by facsimile communication. Whenever under these rules service is required or permitted to be made on a party, and that party is represented by an attorney, the service may be made on the attorney by means of facsimile communication if the attorney has such technology available and said technology is operating at the time service is made. Service in this manner [*shall be*] **is** subject to Rule 10 B. Facsimile communication includes: a telephonic facsimile communication device; a facsimile server or other computerized system capable of receiving and storing incoming facsimile communications electronically and then routing them to users on paper or via e-mail; or an internet facsimile service that allows users to send and receive facsimiles from their personal computers using an existing e-mail account.

G Service by e-mail. Whenever under these rules service is required or permitted to be made on a party, unless the party or the party's attorney is exempted from service by e-mail by an order of the court, the service may be made by means of e-mail. Service is complete under this rule on confirmation of receipt of the e-mail or, if the receiving party has consented to service by e-mail, on transmission of the e-mail. Any party or any party's attorney must provide the name and e-mail address of that party or that attorney and that attorney's designee, if any, on any document served by e-mail. Any party or attorney who has communicated by e-mail or by electronic service must notify the other parties in writing of any changes to that party's or that attorney's e-mail address. Service in this manner [*shall be*] **is** subject to Rule 10 B.

H Service by electronic service. As used in these rules, "electronic service" means using an electronic filing system provided by the Oregon Judicial Department and in the manner prescribed in rules adopted by the Chief Justice of the Oregon Supreme Court.

PERPETUATION OF TESTIMONY OR EVIDENCE

BEFORE ACTION OR PENDING APPEAL

RULE 37

[***A Before action.***

A(1) ***Petition****.*] <u>**A Before Action.**</u> A person who desires to perpetuate testimony or to obtain discovery to perpetuate evidence under Rule 43 or Rule 44 regarding any matter that may be cognizable in any court of this state may file a petition in the circuit court in the county of such person's residence or the residence of any expected adverse party. [*The petition shall be entitled in the name of the petitioner and shall show: (a) that the petitioner, or the petitioner's personal representatives, heirs, beneficiaries, successors, or assigns are likely to be a party to an action cognizable in a court of this state and are presently unable to bring such an action or defend it, or that the petitioner has an interest in real property or some easement or franchise therein, about which a controversy may arise, which would be the subject of such action; (b) the subject matter of the expected action and petitioner's interest therein and a copy, attached to the petition, of any written instrument the validity or construction of which may be called into question or which is connected with the subject matter of the expected action; (c) the facts which petitioner desires to establish by the proposed testimony or other discovery and petitioner's reasons for desiring to perpetuate; (d) the names or a description of the persons petitioner expects will be adverse parties and their addresses so far as one is known; and, (e) the names and addresses of the parties to be examined or from whom discovery is sought and the substance of the testimony or other discovery which petitioner expects to elicit and obtain from each. The petition shall name persons to be examined and ask for an order authorizing the petitioner to take their depositions for the purpose of perpetuating their testimony, or shall name persons in the petition from whom discovery is sought and shall ask for an order allowing discovery under Rule 43 or Rule 44 from such persons for the purpose of preserving evidence.*]

<u>**A(1) Contents of Petition. The petition must be entitled in the name of the petitioner**</u>

and must show:

A(1)(a) that the petitioner, or the petitioner's personal representatives, heirs, beneficiaries, successors, or assigns are likely to be a party to an action cognizable in a court of this state and are presently unable to bring such an action or defend it, or that the petitioner has an interest in real property or some easement or franchise therein, about which a controversy may arise, that would be the subject of such action;

A(1)(b) the subject matter of the expected action and petitioner's interest therein and a copy, attached to the petition, of any written instrument the validity or construction of which may be called into question or that is connected with the subject matter of the expected action;

A(1)(c) the facts that petitioner desires to establish by the proposed testimony or other discovery and petitioner's reasons for desiring to perpetuate;

A(1)(d) the names or a description of the persons petitioner expects will be adverse parties and their addresses so far as one is known;

A(1)(e) the names and addresses of the parties to be examined or from whom discovery is sought and the substance of the testimony or other discovery that petitioner expects to elicit and obtain from each; and,

A(1)(f) a request for an order:

A(1)(f)(i) authorizing the petitioner to take the depositions of the parties to be examined for the purpose of perpetuating their testimony; or

A(1)(f)(ii) allowing discovery under Rule 43 or Rule 44 from the persons from whom discovery is sought for the purpose of preserving evidence.

A(2) **Notice and service**. The petitioner [*shall*] **must** thereafter serve a notice [*upon*] **on** each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court at a time and place named therein, for the order described in the petition. The notice [*shall*] **must** be served either within or without the state in the manner provided for service of summons in Rule **7.** [*7, but if*] **If** such service cannot with due diligence be made [*upon*] **on** any expected adverse party named in the petition, the court may make such order as is just for service by publication or [*otherwise, and shall*] **otherwise. The court must** appoint, for persons not served with summons in the manner provided in Rule 7, an attorney [*who shall*] **to** represent [*them and*] **them,** whose services [*shall*] **must** be paid for by petitioner in an amount fixed by the court, [*and, in case they are not otherwise represented, shall*] **to** cross examine the deponent. Testimony and evidence perpetuated under this rule [*shall*] **will** be admissible against expected adverse parties not served with notice only in accordance with the applicable rules of evidence. If any expected adverse party is a minor or incompetent, the provisions of Rule 27 apply.

A(3) **Order and examination**. If the court is satisfied that the perpetuation of the testimony or other discovery to perpetuate evidence may prevent a failure or delay of justice, [*it shall make an order designating or describing*] **discovery may be had in accordance with these rules on the court's order, which must:**

A(3)(a) designate or describe the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions [*shall*] **will** be taken [*upon*] **on** oral examination or written questions; [*or shall make an order designating or describing*]

A(3)(b) designate or describe the persons from whom discovery may be sought under Rule 43 specifying the objects of such discovery; or [*shall make an order*]

A(3)(c) set [*for*] a physical or mental examination as provided in Rule 44.

A(4) Applicable discovery rules. For the purpose of applying these rules to discovery before action, each reference therein to the court in which the action is pending [*shall*] **will** be deemed to refer to the court in which the petition for such discovery was filed.

B **Pending appeal**. If an appeal has been taken from a judgment of a court to which these rules apply or before the taking of an appeal if the time therefor has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony or may allow discovery under Rule 43 or Rule 44 for use in the event of further proceedings in such court. In such case the party who desires to perpetuate the testimony or obtain the discovery may make a motion in the court therefor [*upon*] **on** the same notice and service thereof as if the action was pending in the circuit court. [*The motion shall show: (1) the names and addresses of the persons to be examined or from whom other discovery is sought and the substance of the testimony or other discovery which the party expects to elicit from each; and (2) the reasons for perpetuating their testimony or seeking such other discovery. If the court finds that the perpetuation of the testimony or other discovery is proper to avoid a failure or delay of justice, it may make an order as provided in subsection (3) of section A of this rule and thereupon discovery may be had and used in the same manner and under the same conditions as are prescribed in these rules for discovery in actions pending in the circuit court.*]

B(1) Contents of motion. The motion must show:

B(1)(a) the names and addresses of the persons to be examined or from whom other discovery is sought and the substance of the testimony or other discovery which the party expects to elicit from each; and

B(1)(b) the reasons for perpetuating their testimony or seeking such other discovery.

B(2) Order of the court. If the court finds that the perpetuation of the testimony or other discovery is proper to avoid a failure or delay of justice, it may make an order as provided in subsection A(3) of this rule. Thereupon, discovery may be had and used in the same manner and under the same conditions as are prescribed in these rules for discovery in actions pending in the circuit court.

C Perpetuation by action. This rule does not limit the power of a court to entertain an action to perpetuate testimony.

D Filing of depositions. Depositions taken under this rule [*shall*] **must** be filed with the court in which the petition is filed or the motion is made.

March 31, 2026

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Subject: PUBLIC SUGGESTION FOR THE 2025–2027 BIENNIUM: CLARIFYING ORCP 7, 9, 10, AND 12 REGARDING SERVICE ON ADDRESS CONFIDENTIALITY PROGRAM PARTICIPANTS

Dear Mr. Peterson and Members of the Council:

I am writing to submit a public suggestion for the Council's consideration during the 2025–2027 biennium. My suggestion concerns a structural gap across at least four Oregon Rules of Civil Procedure—ORCP 7, 9, 10, and 12—that has created significant confusion in circuit court practice regarding service on participants in Oregon's Address Confidentiality Program (ACP), established under ORS 192.820–192.868.

I raise this issue from direct experience as a certified ACP participant and a current pro se litigant in Yamhill County Circuit Court. However, this problem is not unique to Yamhill County. I have encountered similar judicial conclusions—often described as "unpersuasive"—that the ACP Program is not integrated into the Oregon Rules of Civil Procedure, and that the "as otherwise provided by law" language in the ORCP does not apply to ACP participants in civil litigation. These interpretations appear to conflict with ORS 174.010's prohibition on inserting limitations into statutes or administrative rules that the Legislature did not enact. The result has been repeated violations of my rights and safety due to private attorneys' refusal to comply with ACP service or protection requirements (e.g., disclosing actual physical addresses without segregating protected information under UTCR 2.100).

Yesterday, during oral argument, I presented what I believe was a well-supported analysis of statutory authority, case law, and federal interpretation of state ACP programs. The ACP's service-of-process framework—including the Attorney General's designation as statutory agent for all legal process under ORS 192.822(2)—is incorporated into the ORCP through ORCP 7 D(1)'s reference to an "agent authorized by law," and, independently, overrides conflicting procedural rules by express legislative directive. See ORS 1.745. However, the court struck my defenses to a motion to compel, finding it had jurisdiction despite the defense's failure to provide legal service of process under the ACP statutes.

Defense counsel successfully argued that ORCP 9 G authorizes email as the default method of post-complaint service; that my objection to email service constituted proof of receipt; and that requiring compliance with the ACP's statutory service framework would constitute an "alternative method of service" requiring a court order. The court adopted this position. I was reprimanded[1] for insisting that service be made in accordance with the ACP statutes and administrative rules. No authority was cited for the proposition that ORCP 9 G displaces a statutory service-agent designation, because none exists. Defense also ignored UTCR 2.080, which requires that written communications to the court be simultaneously mailed or delivered to opposing parties—treating ORCP 9 G email service as satisfying that delivery requirement.

The practical effect is that a statute enacted to protect survivors of domestic violence, sexual assault, stalking, and human trafficking was subordinated to a procedural rule. A certified ACP participant was told, in open court, that the program's protections do not apply to post-complaint service. The implication is that an ACP participant must either obtain a court order for substitute service or be forced into email-only service with no verifiable paper service at the statutory agent's address.

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[1] In the interest of full disclosure: defense counsel alleged without basis that I used artificial intelligence to fabricate legal authority and generate pleadings and mislead the court. The Court struck all my defenses without verification that defense had miscited case law holdings itself.

I am not writing to relitigate the court's finding that substantive due process rights were "non-existent," nor the court's acceptance of the defense's argument that I was raising service objections merely to force the defense to respond, thereby increasing their litigation costs. I am writing because the ORCP's silence on this issue made the defense's argument possible, and the same argument will inevitably be raised in other courts against other ACP participants. In my view, the ruling issued in Yamhill County is detrimental to all ACP participants statewide.

The gap lies in the rules, and this Council is the body empowered to address it. A clarifying amendment—whether in ORCP 7, 9, 10, 12, or a cross-reference provision—would ensure that ACP service requirements are uniformly recognized and enforced, consistent with legislative intent and the program's purpose.

I. THE STATUTORY FRAMEWORK

ORS 192.822(2) provides that the Attorney General "shall designate a substitute address for a program participant and act as the agent of the program participant for purposes of service of all legal process in this state." The Department of Justice has promulgated implementing rules at OAR 137-079-0210(2) that personal service may be delivered to the Department of Justice at 1162 Court Street NE, Salem, and the Program shall track and forward personal service, in sum, as the authorized agent.

ORS 192.856 adds five days to any response period of ten days or less when service is effected properly by mail through the ACP—a provision that would be surplusage if the Legislature did not intend legal process to flow through the ACP system.

II. THE PROBLEM ACROSS FOUR RULES

In active circuit court litigation, the following arguments have been raised successfully to circumvent the ACP statutory service framework:

1. **ORCP 7.** Rule 7 D(1) provides that service may be made "by any other rule or statute on the defendant or upon an agent authorized by appointment or law to

accept service of summons for the defendant." This language accommodates the ACP's statutory agent designation, but only for initial service of summons on a Defendant. The rule does not expressly state that ORS 192.822(2)'s designation of the Attorney General as agent for "all legal process"—which is broader than summons—carries forward into post-complaint service under Rule 9, which captures service on a Plaintiff or a Defendant.

2. **ORCP 9.** Rule 9 G provides that email service is available "unless the party or the party's attorney is exempted from service by e-mail by an order of the court." Defense counsel argued that this makes email the default and exclusive method for post-complaint service, and that requiring service through the Attorney General under ORS 192.822(2) constitutes an "alternative method" that requires a court order to activate. This argument treats the ORCP as superior to the ACP statute, inverting the hierarchy established by ORS 1.745. Rule 9 A opens with the qualifier "Except as otherwise provided in these rules," but contains no cross-reference to statutory service-agent designations. For the court to accept the defense's proposition, it allows ORCP 9 G to defeat state legislative intent under OAR 137-079-0170 (Responsibility of Public Bodies to Use Substitute Address) and OAR 137-079-0110 (Authority and Purpose), which provides for "the responsibility of public agencies to use the substitute address provided by the Address Confidentiality Program… service of process on a participant."

3. **ORCP 10.** Rule 10 B adds three days to response periods when service is by mail, email, facsimile, or electronic service. ORS 192.856 adds a separate five days to response periods of ten days or less when service is by mail through the ACP. The current ORCP text does not acknowledge this statutory overlay or clarify how the two provisions interact. A court that permits email service on an ACP participant bypasses ORS 192.856 entirely, eliminating a timing protection the Legislature specifically enacted. In my case the court not only allowed the defense to file an ORCP 79 B(4) motion to hail me into court 200 miles away with less than 18 hours' notice when procedure required 48 hours' notice or a court order to shorten, but the procedural violation was a substantive one under ORS 192.856.

4. **ORCP 12 B.** Rule 12 B provides that defects in service not affecting the substantial rights of adverse parties shall be disregarded. This has been disregarded in entirety because defense argued ORCP 9 G defeated the ACP Program. Thus, defense made no error in failing—despite actual notice—to use the 1162 Court Street address. However, the Oregon Supreme Court in *Jordan v. Wiser*, 302 Or. 50 (1986), held that unauthorized service is not a defect—it is no service—and that actual notice does not cure it. The ORCP text does not clarify whether bypassing a statutory service-agent designation constitutes a "defect" under Rule 12 B or a nullity under *Jordan*. The court in *Murray v. Meyer*, 81 Or. App. 432 (1986), confirmed that ORCP 9 B specifies a manner of service that is impervious to collateral attack and had to reconcile ORCP 9 B with ORCP 12 B; the court determined the rules are not inconsistent. Failure to follow statutory legal process, and indeed the contractual agreement between the DOJ and an ACP participant to designate the State AG as agent for "all legal process," is a substantive right.

III. THE PRACTICAL CONSEQUENCES

ACP participants have an unambiguous program to make legal service easy and affordable for the serving party. When a court permits email service in lieu of paper service through the statutory agent, it:

- Increases the financial burden on the ACP participant to print pleadings and exhibits;
- Undermines the legislative intent;
- Disregards Department of Justice rules;
- Disregards the public policy expressed by the Legislature in ORS 192.820 through 192.868;
- Renders ORS 192.856's timing protections a nullity;
- Places the court in the position of appearing to choose between a procedural rule and a statute—a conflict that does not actually exist in the legal hierarchy, but that the current ORCP text does nothing to prevent.

The ORCP's silence on this issue creates an environment in which an incorrect but confident procedural argument will prevail over a correct but unfamiliar statutory one—particularly when the party raising the statutory argument is unrepresented.

IV. ARGUMENT DISREGARDED BY YAMHILL COUNTY CIRCUIT COURT

i. Oregon Was a Founding Member of the National Association of Address Confidentiality Programs

Of the multiple states that have enacted ACP statutes, few have had to address this precise question. Where jurisdictions have, the question has been raised upon a parallel, if not uniform, ACP statute and has reached the same conclusion urged here.

Oregon and California are founding members of the National Association of Confidential Address Programs (NACAP), making California's construction of its parallel statute uniquely persuasive.

Grewal v. Martin, No. B193640 (Cal. Ct. App. Mar. 3, 2008): The court held that service of discovery on an ACP participant required delivery to the Secretary of State at the designated physical address; mailing to the ACP PO Box was necessary but not sufficient. Unpublished; cited as persuasive authority on a question of first impression in Oregon. No published decision in any jurisdiction has directly addressed post-complaint service on an ACP participant under a materially parallel statute.

ii. State Case Law

Under *Ann Sacks Tile & Stone, Inc. v. Dept. of Revenue*, 352 Or. 380, 392 (2012), service in the prescribed manner is jurisdictional. ORS 192.822(2) is unambiguous: the Attorney General shall act as agent for service of all legal process. OAR 137-079-0210(2) specifies the mechanism: deliver to the Oregon Department of Justice, 1162 Court Street NE, Salem, Oregon. *Perlenfein and Perlenfein*, 316 Or. 16 (1993)—statutory construction applies to OARs; omitted terms cannot be added. Neither the ORS nor the

OAR permits an exception to authorized service. To the extent that a court order would be contemplated under ORCP 9 G, it would be to allow alternative service on an attorney in lieu of the State AG, as the ORS and OAR are silent on allowing a participant's attorney to receive service on their behalf.

Under *Hobbs v. McLean*, 117 U.S. 567, 582 (1886): "When a provision is left out of a statute, either by design or mistake of the legislature, the courts have no power to supply it. To do so would be to legislate and not to construe." The Oregon Supreme Court held in *State v. Wolf*, 17 Or. 119, 129 (1888), that courts cannot extend statutory language beyond what the legislature enacted. *State ex rel. Everding v. Simon*, 20 Or. 365, 373–74 (1891), quoting *Hobbs v. McLean*, reiterated that courts cannot supply omitted provisions.

Jordan v. Wiser remains good law[2], having been cited approvingly in *Murphy v. Price*, 131 Or. App. 693, 699 (1994), and reaffirmed in *Davis Wright Tremaine v. Menken*, 181 Or. App. 332, 339 (2002). The U.S. Supreme Court has held that waiver of statutory rights—particularly those enacted to protect the public interest—is inappropriate when "inconsistent with the provision creating the right sought to be secured." *New York v. Hill*, 528 U.S. 110, 116 (2000). Forcing an ACP participant into waiver of substantive due process rights is unconstitutional. Defense counsel argued that they were not required, as officers of the court, to provide mail service at the address the participant provided for legal service. Further counsel inserted a public body limitation from one ACP statute into a separate one to allege no compliance requirement.

iii. Federal Implementation of State ACP Programs

The ACP service framework is also recognized at the federal level. In FIN-2009-R003 (2009), the Financial Crimes Enforcement Network held under the Bank Secrecy Act that ACP participants "shall be treated as not having a residential or business street address" and that institutions must use "the street address of the ACP sponsoring

[2] Defense alleged *Jordan* was overturned by Baker v. Foy, 310 Or. 221 (1990). However, the Supreme Court clarified in *Murphy* that *Baker* did not overturn the service holding in *Jordan*.

agency" for compliance purposes. Federal regulators recognize the State ACP agent's physical address as the only lawful channel for official contact. Defendants' position that was accepted by Yamhill County Circuit Court—that email service overrides the ACP framework—has no support in Oregon law, in any appellate authority from any jurisdiction, or in federal regulatory interpretation.

V. SUGGESTED CLARIFICATIONS

I respectfully suggest the Council consider the following clarifications. They use the ORCP's existing internal framework to close the gap with the ACP statutes and administrative rules.

ORCP 1 (Scope; Construction; Application):

> *"Service on a certified participant in the Address Confidentiality Program shall be made in the manner prescribed by Rule 7 D(3)(g). No other method of service provided by these rules supersedes this requirement. When service is made in accordance with Rule 7 D(3)(g), additional response time may be prescribed by statute. See ORS 192.856."*

ORCP 7 D(3)(g). Add a new subpart:

> *"Upon a certified participant in the Address Confidentiality Program, by personal service upon the Attorney General or by leaving true copies at the Attorney General's office with a deputy, assistant, or clerk."*

ORCP 9. Add to section B or as a new subsection:

> *"Service of documents subsequent to the original summons and complaint on a certified participant in the Address Confidentiality Program shall be made in the manner provided by Rule 7 D(3)(g)."*

ORCP 10. Add to section B or as a new provision:

"When service on a certified participant in the Address Confidentiality Program is made in accordance with Rule 7 D(3)(g), additional response time may be prescribed by statute. See ORS 192.856."

- THIS PROVISION SERVES AS THE TIMING FLAG FOR THE ACP OVERLAY. THE COUNCIL MAY DETERMINE IT APPROPRIATE TO REPEAT THIS REFERENCE AT SPECIFIC SHORT-DEADLINE PROVISIONS THROUGHOUT THE ORCP, SUCH AS RULE 79 B(4), WHERE THE STATUTORY ADDITIONAL RESPONSE TIME WOULD APPLY. DUE TO PRACTICAL REALITIES OF EMERGENT PROCEEDINGS, A NON-WAIVER OF RIGHTS IS INCLUDED IN ORCP 12 BELOW.

ORCP 12. Add to section B or as a new provision:

"Failure to serve a certified participant in the Address Confidentiality Program in the manner prescribed by Rule 7 D(3)(g) is not a defect subject to disregard under this section. A certified participant who responds to, appears for, or otherwise engages with a document or proceeding initiated by service not in compliance with Rule 7 D(3)(g) or ORS 192.856 does not thereby waive the right to require service in accordance with that rule, and such response or appearance does not constitute consent to service by any other method."

VI. SUPPORTING MATERIALS

1. The National Association of Confidential Address Programs (NACAP) www.nacap.org

2. By-Laws of States who have joined the NACAP.

3. *Grewal v. Martin*, No. B193640 (Cal. Ct. App. Mar. 3, 2008) (unpublished) California Appellate Case addressing ACP service under equivalent of ORCP 9.

4. FIN-2009-R003 (2009) covers federal implementation of State ACP Programs and related CFR's.

VII. CONCLUSION

The suggested amendments do not alter the ACP statute or administrative rules, nor do they fundamentally alter the Oregon Rules of Civil Procedure. They clarify what "as otherwise provided for by law" means in the context of the Address Confidentiality Program. Such clarification will clarify related provisions in the Uniform Trial Court Rules. The recommended revisions would clarify the ORCP's relationship to existing law to make the matter unambiguous in the civil context, thereby reducing confusion for litigants, attorneys, and courts. The gap is not in the law—the hierarchy under ORS 1.745 is clear—but in the ORCP's silence, the quiet has permitted arguments that procedural rules override substantive due process protections. This conflicts with Oregon's express legislative policy to provide an Agent for all legal process and the separation of powers between the Legislature and the Judiciary.

Thank you for your consideration. The Council's work maintaining the ORCP is invaluable, and I appreciate the opportunity to contribute to that process.

/s/ Kelly A Barnett

Kelly A Barnett

BYLAWS OF
NATIONAL ASSOCIATION OF CONFIDENTIAL ADDRESS PROGRAMS
(NACAP)

ARTICLE I
NAME AND PURPOSE

Section I – Name

The name of this organization shall be the National Association of Confidential Address Programs (NACAP) (herein known as the "Association").

Section II – Mission Statement

Our mission is to collaborate, strengthen, educate, and advocate for the interests of state and territory confidential address programs and therefore the people they serve.

Section III – Goals

Our goals are to strengthen and support confidential address programs by:

A. Creating greater accessibility and visibility;
B. Building foundations of a common identity while respecting states' and territories' individual needs;
C. Being the common voice on emerging issues impacting programs;
   Providing education and awareness; and
D. Identifying and communicating best practices.

ARTICLE II
DEFINITIONS

A. A confidential address program is a state or territory program whose core services include providing a substitute address and mail forwarding services to victims of crime and protected persons.
B. A state is defined as one of the recognized 50 states of the United States of America and the District of Columbia.
C. A territory is defined as a territory of the United States of America.

ARTICLE III
MEMBERSHIP

Section I – Membership Categories

All membership categories shall be subject to the provisions of the Association's bylaws where applicable. All entities seeking to become a member under any category may be subject to review and verification by the Board of Directors prior to membership being granted.

A. Associate – Associate membership is available to all states and territories with a confidential address program as defined in Article II of these bylaws. Associate membership applies to the confidential address program and not to an individual of the program.
    1. Associate members shall pay an annual fee of an amount determined by the Executive Committee.
    2. Each Associate member shall be eligible to appoint one voting representative to cast the Associate member's vote in Association elections.
    3. Associate members shall have full rights and privileges as described in these bylaws and in accordance with their membership benefits.
    4. Associate members shall strive to participate in issues, discussions, on-boarding mentorship, trainings, and events presented by the Association.

B. Affiliate – Affiliate membership is available to any state, territory, or government entity working to establish a confidential address program as defined in Article II of these bylaws.
    1. Affiliate members shall pay an annual fee of an amount determined by the Executive Committee.
    2. Affiliate members shall not have a vote in any Association matters or be eligible to hold any office on the Board.
    3. Affiliate members shall have a limited presence in accordance with their membership benefits.

C. Ally – Ally membership is available to any non-profit or government entity with a vested interest in services provided to victims of crime and protected persons. This includes, but is not limited to, domestic and sexual violence coalitions, local programs that provide victim services, and law enforcement agencies.
    1. Ally members shall pay an annual fee of an amount determined by the Executive Committee.
    2. Ally members shall not have a vote in any Association matters or be eligible to hold any office on the Board.
    3. Ally members shall have a limited presence in accordance with their membership benefits.

Section II – Annual Dues

A. The annual dues for members of the Association shall be as determined by the Executive Committee. Dues cover the calendar year January 1 – December 31.

B. New Associate members and new Affiliate members who join the Association after July 1st shall have their initial membership dues pro-rated.

C. Monetary and Gift donations may be accepted by the Association. The use of the donation will be determined by the Board unless the donation is for use at the Annual Conference.

D. The Association will not accept pledges or gift agreements.

Section III – Non-voting Membership

The Board shall have the authority to establish and define non-voting categories of membership.

Section IV – Membership Principles

A. A member shall support and uphold the mission and vision of the Association.
B. A member shall reflect a positive image of the Association.
C. A member cannot independently enter into contracts on behalf of the Association without approval from the Board.
D. A member shall respect the differences in each state's and each territory's program.
E. A member shall not, without prior discussion and approval of the Board of Directors, independently purport to administer a best practice of a confidential address program in a manner that represents the Association's interest, nationwide best practices, or any other confidential address program.

ARTICLE IV
BOARD OF DIRECTORS

Section I – Board of Directors

A. Board of Directors shall consist of a President, Vice President, Treasurer, Secretary and three At-Large Members, all of whom shall be an administrator, manager, director of a confidential address program, or a program approved designee who is involved in the day-to-day operations and decisions.
B. A Secretary of State, Deputy Secretary of State, Chief of Staff, Attorney General or likewise elected or high-ranking official of any state or territory office is not eligible to be a Board Member unless that person is directly involved in the daily implementation and operations of that state's address confidentiality program functions.

Section II – Duties of the Board

A. President – The President shall convene regularly scheduled meetings, shall preside or arrange for other members of the Executive Committee to preside at each meeting in the following order: Vice-President, Secretary, Treasurer. The President is the Chair of the Executive Committee that has general management and control of the business and direction of Association. In addition to serving on the Executive Committee, the President shall serve on at least one committee that is not ad hoc. The President shall report annually to the members on the activities of the Association.
B. Vice President – The Vice President shall assume the duties of the President in the event of absence, incapacity, resignation, or removal of the President, and shall be responsible for the filing of the annual report to renew the of articles of incorporation. The Vice President shall ensure historical documents, such as monthly Board minutes, the Annual Report, Conference session documents, etc, for the calendar year are submitted for digital archiving and chair at least one committee.

C. Secretary – The Secretary shall keep the minutes of the Association, Board of Directors, and Executive Committee meetings, support/assist the President with preparing the annual report, and in addition to serving on the Executive Committee, shall serve on at least one committee that is not ad hoc. The Secretary will communicate at least quarterly with the Membership Committee regarding Association membership if the Secretary is not serving on the Membership Committee.
D. Treasurer – The Treasurer shall be responsible for the safekeeping of Association funds, for maintaining adequate financial records, and for depositing all monies with a reliable banking company in the name of the Association. The Treasurer will collect dues, shall create and submit to the Board an annual budget report based on the calendar year, and shall be responsible for the annual tax filing.
E. At-Large Members – The At-Large Member serves as a member of the Board and provides guidance and expertise to the Board and serves to represent the interests of the larger Association. The At-Large Member shall serve on at least one committee that is not ad hoc.

Section III – Term of Office

A. All officers and the At-Large Members shall be elected for a two-year term. All officers and At-Large Members are eligible for reelection for a consecutive full term.
B. When a Board member fills a vacancy, that period does not count toward the two-year term limit.

Section IV – Board of Directors Code of Conduct

A. Members of the Board of Directors are held to the standards of membership principles as stated in Article III, Section IV.
B. Board Members are expected to exercise duties and responsibilities with integrity and care. This includes:
    1. Making attendance at all meetings of the Board and Committee meetings a high priority and attending at least nine of the twelve meetings during each year of service.
    2. Being prepared to discuss the issues and business on the agenda.
    3. Cooperating with and respecting the opinions of fellow Board Members.
    4. Supporting actions of the Board even when the Board Member personally did not support the action taken.
    5. Putting the interests of the Association above personal interests.
    6. Striving to ensure that procedures are consistent with Association policy.
    7. Maintaining lines of communication and assisting in requests for information.

Section V – Elections and Board Vacancies

A. Officers and At-Large Members shall be elected at the annual conference by Associate members of the Association. Elections shall be by ballot cast at the conference or by absentee ballot received by the Chair of the Elections Committee one week prior to the conference start date. A majority of the votes cast shall elect.
B. The President, Secretary, and one At-Large Member shall be elected in odd-numbered calendar years.
C. The Vice President, Treasurer, and two At-Large Members shall be elected in even-

numbered calendar years.

D. When a vacancy of the Executive Committee occurs, natural succession will take place, if practicable, until a vote for the replacement at the next election. If natural succession is not practicable, the vacancy may be filled by the prior successor, if possible, or may be filled by the affirmative majority vote of the Board of Directors from nominees selected by the Executive Committee until a vote for the replacement at the next election.
E. The position of Treasurer may be excluded from the general order of natural succession.
F. When an At-Large vacancy on the Board exists mid-term, the Secretary or designee must receive nominations for new members from present Board Members two weeks in advance of the regular meeting. Vacancy nominations shall be sent out to Associate members with the next meeting announcement, to be voted upon at the next regular meeting. Vacancies will be filled only to the end of the Board Members' term.

Section VI – Board Resignations, Absences, and Removal

A. Resignation from the Board must be in writing and received by the Secretary or designee.
B. A Board Member may be terminated from the Board due to more than three absences from Board meetings during one year of service.
C. A Board Member may be removed for reasons other than absences by a three-fourths vote of the remaining officers/directors.
D. Any violations of the Board of Directors code of conduct may be reported to the President, or any officer in order of succession as needed or applicable. Any criminal activity will be reported immediately to the authorities. Any Association violations shall be presented to the remaining Board Members with a possibility of a vote for removal.
    1. Accused Board Members shall be given an opportunity to defend themselves.
    2. Discussion, attempts, and terms for a positive resolution may be made prior to a vote for removal.
    3. Record of the accusation, discussion and any resulting vote will be made in the meeting minutes.
    4. A copy of the meeting minutes shall be available upon request to the Secretary or designee.

ARTICLE V
MEETINGS AND ANNUAL CONFERENCE

Section I – Membership Meetings

A. Business meetings of Associate members shall be held at a minimum of once a year, at a time to be designated by the President. Business meetings may be held via web meeting portal, teleconference or in person.
B. Special meetings may be called by the President, the Executive Committee, or a simple majority of the Board.
C. Notice of meetings shall be provided to each voting member electronically not less than two weeks prior to the scheduled meeting.
D. All issues to be voted on shall be decided by a simple majority of those present at the meeting in which the vote takes place.

Section II – Board Meetings

A. Regular Board meetings shall be held at a time to be designated by the Board. Meetings may be held via web meeting portal, teleconference, or in person.
B. Notice of regular board meetings shall be provided to each Board member electronically not less than two weeks prior to the scheduled meeting.
C. Special meetings may be called by the President, the Executive Committee, or a simple majority of the Board.

Section III – Annual Conference

A conference shall take place annually. The specific time, date, and location of which will be designated by the Board of Directors. At the annual conference, the annual Association election shall take place.

ARTICLE VI
VOTING

Section I - Voting and quorum requirements shall be determined by category.

A. Membership votes – Each Associate member is eligible to cast a vote in Association elections for members of the Board of Directors or issues as presented and appropriate. A quorum shall be a simple majority of members responding by voting in person, by teleconference, by video conference or absentee ballot. No response from an Associate member indicates forfeiting a vote in that election.
B. Board of Directors votes – The Board of Directors shall vote on items properly noticed and placed on the meeting agenda, not relating to removing an officer, bylaw changes or an emergency circumstance. A quorum shall be a simple majority of Board Members participating in person, by teleconference or by video conference. An absentee ballot may be accepted.
C. Vote to remove a Board Member – For this vote to take place, every Board Member eligible to vote must participate. A three-fourths majority vote is required to remove a Board Member.
D. Amendment to the bylaws vote – This requires a two-thirds majority vote of the Board.
E. Emergency votes – An emergency vote request shall be sent to an Executive Committee member. A determination shall be made. In the event of an emergency vote, members shall be notified and given a deadline for the return of their vote. Action may be taken at the time of the deadline with a simple majority vote of those responding. The issue and action shall be reviewed at the next meeting as is reasonable.
F. Other votes – The Board of Directors shall have the authority to establish a new voting category as needed for the good of the Association.

ARTICLE VII
COMMITTEES

Section I – Committees

A. The Executive Committee, the Budget Committee, the Communications Committee, the Conference Planning Committee, the Data Committee, and the Membership Committee shall be standing committees.

B. At a minimum, standing committees shall meet quarterly.
C. The Chair, or other designee in the Chair's absence, of each standing committee and each special committee shall submit a report of the committee's work, goals, and accomplishments for each Board meeting.
D. Ad hoc committees can be established during the calendar year by either the Executive Committee or the Board of Directors.
E. Subcommittees are ad hoc committees and are not subject to the quarterly meeting requirements of standing committees and special committees.
F. The majority of a committee shall be comprised of Associate Members. Other members may sit on a committee but cannot chair or vote on committee issues.
G. The goals and projects of a committee shall be considered when a non-Associate member requests to join a committee.

Section II – Executive Committee

The President, Vice President, Treasurer and Secretary serve as the members of the Executive Committee. The President is the Chair of the Executive Committee. Except for the power to amend the Articles of Incorporation and bylaws, the Executive Committee shall have the powers and authority of the Board in the intervals between meetings of the Board and is subject to the direction and control of the full Board. The Executive Committee may approve expenditures of funds in accordance with the Financial Manual and shall appoint members to committees.

Section III – Budget Committee

The Treasurer is the Chair of the Budget Committee, which shall include a minimum of two additional Associate Members, one of whom shall be a Board Member. The Budget Committee is responsible for developing and reviewing fiscal procedures, creating, and managing the annual budget, and any fundraising opportunities for the Association.

Section IV- Communications Committee

The Communications Committee is responsible for developing, maintaining, and reviewing communications with members and non-members.

Section V- Conference Planning Committee

The Conference Planning Committee is responsible for planning and implementing the annual Conference with a goal of obtaining at least one monetary donation.

Section VI – Data Committee

The Data Committee is responsible for collecting and maintaining statistics from member programs.

Section VII – Membership Committee

The Membership Committee is responsible for member outreach and engagement, new member applications, membership renewals, and maintaining a list of members.

Section VIII – Special Committee

A. By December 31st of each calendar year, one or more special committees for the following calendar year shall be determined by a majority vote of the Board, if deemed necessary to accomplish the Association's objectives and goals.

B. At minimum, a special committee shall meet quarterly.

ARTICLE VIII
AMENDMENTS AND POLICIES

Section I – Adoption of Rules and Amendments

Bylaws and member benefits shall be reviewed by the Board of Directors at least once annually. The bylaws and member benefits may be amended when necessary, by two-thirds majority of the Board. Proposed amendments must be submitted to the Secretary to be sent out with regular Board announcements.

Section II – Policies

Policies of the Association can be adopted by a two-thirds majority vote of the Board.

1. Proposed policies may be submitted to the Board by the membership.
2. Adopted policies will be maintained with official records of the Association.
3. Adopted policies must be made available to all members.
4. Amendments to policies are subject to the provisions of this section.

Ruling

FIN-2009-R003
Issued: November 3, 2009
Subject: Customer Identification Program Rule – Address Confidentiality Programs

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I am responding to your letter dated January 16, 2009, to the Financial Crimes Enforcement Network (FinCEN), in which you seek guidance on customer identification (CIP) requirements as they relate to customers who are issued a post office box address as part of their participation in the [name of state] program, an address confidentiality program (ACP).[1]

In the situation you have described, [name of state ACP] participants who use [your institution] are having difficulty establishing accounts or changing their address to the post office box that has been assigned to them by [name of state ACP]. [Name of state ACP] is administered by the secretary of state, which maintains a post office box through which program participants receive mail. [2] Under [name of state] law "when a program participant presents the address designated by the secretary of state to any person, that address must be accepted as the address of the program participant" and a program participant may use the designated address as their business address.[3]

The rules implementing the Bank Secrecy Act require a [financial institution] to implement a CIP that includes, at a minimum, risk-based policies and procedures that enable the [financial institution] to form a reasonable belief that it knows the true identity of its customers.[4] The rules also require that a [financial institution] obtain from an individual customer a residential or business street address.[5] If the individual customer does not have a residential or

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[1] ACPs are offered by 31 States; these programs provide a substitute address for victims of domestic violence, sexual assault and stalking and help a participant keep his/her physical address confidential. Substitute addresses are accepted by state and local agencies. See, e.g., Washington Secretary of State Additional Information About ACP http://www.secstate.wa.gov/acp/aboutus.aspx (last visited Oct. 13, 2009).
[2] See, e.g., Oklahoma Secretary of the State Address Confidentiality Program http://www.sos.state.ok.us/acp/acp_welcome.htm (last visited Oct. 13, 2009). For example, in the State of Oklahoma ("State"), the State issues the same post office box number to all participants in its ACP. Under the ACP, mail received at the substitute address is forwarded by first-class mail to the customer's actual address by the State and the secretary of state serves as the customer's agent for service of process and for receipt of mail.
[3] See, e.g., Minn. Stat. §5B.05 (a) and (b) (2008).
[4] See 31 C.F.R. §§ 103.121 – 103.123 and 103.131.
[5] See 31 C.F.R. § 103.121(b)(2)(i)(3)(i), §103.122(b)(2)(i)(A)(3)(i), §103.123(b)(2)(i)(A)(3)(i) and §103.131(b)(2)(i)(A)(3)(i). See also Customer Identification Programs, 68 Fed. Reg. 25090 (May 9, 2003) (Treasury determined that law enforcement should be able to contact an individual customer at a physical location, rather than solely through the mail).

business street address, then the rules permit the individual customer to provide a "residential or business street address of next of kin or of *another contact individual*."[6]

A [financial institution] would not be in compliance with the rules if it accepts the [name of state ACP] post office box address to fulfill CIP requirements. However, FinCEN understands the need to protect victim anonymity. Under the terms of 31 U.S.C. § 5318(a)(5) and 31 CFR § 103.55, FinCEN has the authority to provide exceptive relief from the requirements of 31 CFR part 103. Such exceptions may be conditional or unconditional and may apply to particular persons or classes of persons, but only to the extent that it is expressly stated in the order of authorization.[7] Moreover, exceptions may be revoked at FinCEN's discretion.[8]

Accordingly, in an effort to support [name of state ACP] requirements, as well as similar requirements that may arise in other states that have established an ACP, under 31 U.S.C. § 5318(a)(5) and 31 C.F.R. § 103.55(a), FinCEN authorizes the following exception to the requirement that a [financial institution] obtain a customer's residential or business street address: a customer who participates in a state-created ACP shall be treated as not having a residential or business street address and a secretary of state, or other state entity serving as a designated agent of the customer consistent with the terms of the ACP, will act as *another contact individual* for the purpose of complying with FinCEN's rules. Therefore, a [financial institution] should collect the street address of the ACP sponsoring agency for purposes of meeting its CIP address requirement.

We have relied upon the accuracy and completeness of the representations made in your letter. Nothing precludes FinCEN from taking other action should circumstances change, or if any of the information you have provided proves inaccurate or incomplete. We reserve the right, after redacting your name and address to publish this letter as guidance in accordance with our regulations. Please inform us within fourteen (14) days from the date of this letter of any other information that you believe should be redacted from this letter and the legal basis for redaction.

If you have questions regarding this letter, please contact [FinCEN's regulatory helpline at (800) 949-2732.]

Sincerely,

//signed//

Jamal El-Hindi
Associate Director
Regulatory Policy and Programs Division

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[6] See 31 C.F.R. §103.121(b)(2)(i)(3)(ii), §103.122(b)(2)(i)(A)(3)(ii), §103.123(b)(2)(i)(A)(3)(ii) and§103.131(b)(2)(i)(A)(3)(ii) (Emphasis added).
[7] 31 CFR § 103.55(a).
[8] *Id*.

Grewal v. Martin

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03:07:2008

Grewal v. Martin

Filed 3/3/08 Grewal v. Martin CA2/3

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California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ANTOINETTE GREWAL, B193640

Plaintiff and Appellant, (Los Angeles County

v. Super. Ct. No. BC282804)

W. JOHN MARTIN et al.,

Defendants and Respondents.

APPEAL from a judgment of the Superior Court of Los Angeles County, James R. Dunn, Judge. Affirmed.

Chance E. Gordon for Plaintiff and Appellant.

Carroll, Kelly, Trotter, Franzen & McKenna, Richard D. Carroll and David P. Pruett for Defendants and Respondents W. John Martin and W. John Martin, a Medical Corporation.

DAntony, Doyle & Moore, Geoffrey T. Moore and Marisa L. Terrill for Defendant and Respondent University of Southern California.

INTRODUCTION

Plaintiff Antoinette Grewal appeals a judgment entered after the trial court granted the motion for judgment on the pleadings of defendants W. John Martin, W. John Martin, a Medical Corporation, and the University of Southern California (USC). We find that defendants request for admissions and defendants motion for an order deeming the request for admissions admitted, and the notice of the trial courts order granting the motion for an order deeming the request for admissions admitted, were validly served on plaintiff. Consequently, we reject plaintiffs claim that she was not legally required to respond to defendants request for admissions, that defendants improperly filed the motion to have request for admissions deemed admitted, and that the trial courts order granting that motion was invalid. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

On October 4, 2002, plaintiff Antoinette Grewal filed a verified complaint for personal injury, alleging multiple causes of action for fraud, negligence, and intentional infliction of emotional distress against W. John Martin, W. John Martin, a Medical Corporation, the Center for Complex Infectious Diseases, and the University of Southern California. Grewal filed an amended verified complaint on November 12, 2002, and a first amended complaint on April 25, 2003, alleging causes of action for fraud, negligence, and violation of Business and Professions Code section 17200. Defendants filed a motion for summary judgment, which the trial court granted, with judgment filed on February 2, 2004. Grewal appealed that judgment, and in its decision filed on March 30, 2005, the court reversed the judgment and remanded the matter to the trial court for further proceedings. On September 23, 2005, the trial court granted Grewals motion for leave to file a third amended complaint, and ordered that third amended complaint deemed filed.

The third amended complaint alleged causes of action for fraud and for violation of Business and Professions Code sections 17200 and 17500. These causes of action were based on allegations that Martin, a USC Medical School professor, fraudulently represented to Grewal that she had contracted a contagious, fatal virus called Martin Stealth Virus, which did not exist; falsely stated that Epione, a drug that supposedly cured the Martin Stealth Virus, was close to the New Drug Application stage of FDA approval; and that in justifiable reliance on these representations, Grewal was induced to work, fundraise, promote, engage in project development, and contribute money to what the defendants called the Epione research project.

On March 7, 2006, defendant Martin served a request for admissions (set one) and interrogatories on Grewal by overnight/express mail and by first class mail at P. O. Box 1198, Sacramento, California. This was the address on Grewals complaint and verified amended complaint.

On April 21, 2006, Martins attorney left a voicemail giving notice to Grewal that Martin would appear ex parte on April 24, 2006, for an order that the request for admissions (set one) be deemed admitted and for an order shortening time for hearing on that motion. On April 24, 2006, Martin filed an ex parte application for an order compelling request for admissions (set one) be deemed admitted, based on Grewals failure to respond to the request for admissions, and for an order shortening time for hearing on that motion.

Also on April 24, 2006, defendant Martin filed a notice of motion that on May 2, 2006, Martin would move to have request for admissions (set one) served on Grewal be deemed admitted. On April 24, 2006, this motion was served on Grewal at the Office of the Secretary of State, 1500 11th Street, 4th Floor, Suite 460, Sacramento, California by hand delivery/personal service, and was served by overnight/express mail on Grewal at P.O. Box 1198, Sacramento, California and at 532 W. Oliver Street, San Pedro, California.[1]

Grewal appeared at the April 24, 2006, hearing, at which the trial court granted Martins ex parte application, in part, by shortening time to hear the motion to have the request for admissions be deemed admitted on May 2, 2006, and ordered: All motions are to be filed and served this date in court upon plaintiff, who is present in court this date.

On May 2, 2006, the trial court granted defendant Martins motion and ordered Martins request for admissions (set one) deemed admitted.

On May 8, 2006, defendant Martin filed an ex parte application for a motion for judgment on the pleadings, based on Grewals admissions that refuted the causes of action in her Third Amended Complaint.[2] On May 23, 2006, USC filed a motion to have the request for admissions deemed admitted. The trial court granted defendants motion for judgment on the pleadings on June 19, 2006.

Judgments in favor of W. John Martin and W. John Martin, a Medical Corporation, and in favor of USC were filed on July 26, 2006.

Grewal filed a timely notice of appeal from the judgments.

ISSUE

Grewal claims on appeal that defendants service of the request for admissions, motion for an order deeming request for admissions admitted, and the order granting that motion did not comply with service requirements of Government Code section 6206, subdivision (a)(5)(A), which made the orders deeming the request for admissions admitted and granting judgment on the pleadings invalid.

DISCUSSION

Grewal asserts her membership in the Confidential Address Program. A person who is a victim of domestic violence, sexual assault, or stalking who fears for his or her safety may apply to the Secretary of State to have an address designated by the Secretary of State serve as the persons address[.] (Gov. Code, 6206, subd. (a).) An applicant for this program designates the Secretary of State as agent for service of process and receipt of mail. (*Id*. at subd. (a)(5).) Service on the Secretary of State of any summons, writ, notice, demand, or process shall be made by delivering to the address confidentiality program personnel of the Office of the Secretary of State two copies of the summons, writ, notice, demand, or process. (*Id*. at subd. (a)(5)(A).) When a summons, writ, notice, demand, or process is served on the Secretary of State, the Secretary of State forwards a copy to the program participant. (*Id*. at subd. (a)(5)(B).

Grewal claims that defendants request for admissions and motion for an order deeming the request for admissions admitted, and the order granting the motion for an order deeming the request for admissions admitted, were not served in compliance with Government Code section 6206, subdivision (a)(5)(A).

a. *The Request for Admissions (Set One) Was Validly Served on Grewal*

With regard to the request for admissions (set one), the proof of service shows that on March 7, 2006, this document was served on Grewal at P.O. Box 1198, Sacramento, California (1) by first class mail and (2) by overnight/express mail. Defendant argues that this is a post office box managed by the California Secretary of State; there is evidence that documents served on USCs counsel and on the trial court showed Grewals address of record was P. O. Box 1198, Sacramento, California 95812. Grewals verified complaint and verified amended complaint also used P. O. box 1198, Sacramento, California as Grewals address. Moreover, Grewal appeared at the April 24, 2006, hearing on defendants ex parte motion for an order shortening time to hear the motion to have the request for admissions deemed admitted; a copy of the request for admissions was handed to Grewal in court. On April 25, 2006, two sets of documents (including the request for admissions (set one)), were served on Grewal at the Office of the Secretary of State, 1500 11th Street, 4th Floor, Suite 460, Sacramento California.

Thus Grewal received two copies of the request for admissions (set one) at a post office box managed by the California Secretary of State, and two copies at the Office of the Secretary of State. This satisfied the requirement of Government Code section 6206, subdivision (a)(5)(A). Moreover, because Grewal received one copy of the request for admissions (set one) by personal delivery in court on April 24, 2006, Grewal had actual notice, which supports the trial courts finding of valid service of the request for admissions (set one) on Grewal. [I]n deciding whether service was valid, the statutory provisions regarding service of process should be liberally construed to effectuate service and uphold the jurisdiction of the court if actual notice has been received by the defendant. (*Gibble v. Car-Lene Research, Inc*. (1998) 67 Cal.App.4th 295, 313.)

b. *The Motion for an Order Deeming the Request for Admissions Admitted Was*

Validly Served on Grewal

With regard to the motion for an order deeming the request for admissions admitted, this document was served on April 24, 2006, by hand delivery to Grewal at the Office of the Secretary of State, 1500 11th Street, 4th Floor, Suite 460, in Sacramento California, and by overnight/express mail on Grewal at P. O. Box 1198, Sacramento, California and at 532 W. Oliver Street, San Pedro, California. This document was also personally served on Grewal in court at the April 24, 2006, hearing. On April 25, 2006, two sets of documents (including the motion to have request for admissions deemed admitted) were served on Antoinette Grewal at the office of the Secretary of State, 1500 11th Street, 4th Floor, Suite 460, Sacramento California.

Thus Grewal received one copy of the motion at a post office box managed by the California Secretary of State, and two copies at the Office of the Secretary of State. This satisfied the requirement of Government Code section 6206, subdivision (a)(5)(A). Grewal also received one copy of the motion by personal delivery in court on April 24, 2006. Thus Grewal had actual notice, which supports the trial courts finding of valid service on Grewal of the motion for an order deeming the request for admissions admitted. (*Gibble v. Car-Lene Research, Inc., supra,* 67 Cal.App.4th at p. 313.)

c. *The Notice of Ruling of the Order Granting the Motion for an Order Deeming*

the Request for Admissions Admitted Was Validly Served on Grewal

With regard to the May 2, 2006, order granting the motion for an order deeming the request for admissions admitted, Martins counsel filed a notice of ruling on discovery motions (reflecting, inter alia, the trial courts granting of the motion to have request for admissions deemed admitted) on May 2, 2006. This notice of ruling on discovery motions was served on Grewal at P. O. Box 1198, Sacramento, California, and at 532 W. Oliver Street in San Pedro, California. On May 2, 2006, two copies of this notice of ruling were served on Grewal by delivery to Tom Lease, Safe at Home Program Specialist, Office of the Secretary of State, 1500 11th Street, Room 460, Sacramento California.

Thus Grewal received one copy of the notice of ruling at a post office box managed by the California Secretary of State, and two copies at the Office of the Secretary of State. This satisfied requirements of Government Code section 6206, subdivision (a)(5)(A), and supports the trial courts finding of valid service on Grewal of the notice of ruling of the order granting the motion for an order deeming the request for admissions admitted.

d. *Conclusion*

Valid service of the request for admissions (set one), the motion for an order deeming the request for admissions admitted, and the notice of ruling of the order granting the motion for an order deeming the request for admissions admitted means that we reject Grewals claim that she was not legally required to respond to defendants March 7, 2006, request for admissions. We find that the April 24, 2006, motion to have the request for admissions deemed admitted was properly filed, and that the trial courts May 2, 2006, order was valid. We affirm the judgment.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to defendants University of Southern California, W. John Martin, and W. John Martin, a Medical Corporation.

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KITCHING, J.

We concur:

KLEIN, P. J.

ALDRICH, J.

Publication Courtesy of California free legal resources.

Analysis and review provided by Spring Valley Property line attorney.

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[1] On April 25, 2006, two sets of this motion (and other documents) were personally delivered to the Secretary of State, 1500 11th Street, 4th Floor, Suite 460, Sacramento, California. The Secretary of States record indicated that mail received, described as service of process, was forwarded to Grewal by certified mail on April 25, 2006, and a signed receipt was received.

[2] Defendant USC served a copy of this motion on Grewal at P. O. Box 280586, Northridge, California, and at 532 West Oliver Street, San Pedro, California, and served two copies of this motion on Grewal c/o State of California Confidential Address Program, P. O. Box 1198, Sacramento, California.

Description	Plaintiff Antoinette Grewal appeals a judgment entered after the trial court granted the motion for judgment on the pleadings of defendants W. John Martin, W. John Martin, a Medical Corporation, and the University of Southern California (USC). We find that defendants request for admissions and defendants motion for an order deeming the request for admissions admitted, and the notice of the trial courts order granting the motion for an order deeming the request for admissions admitted, were validly served on plaintiff. Consequently, Court reject plaintiffs claim that she was not legally required to respond to defendants request for admissions, that defendants improperly filed the motion to have request for admissions deemed admitted, and that the trial courts order granting that motion was invalid. Court affirm the judgment.
Rating	0/5 based on 0 votes.

NACAP

NATIONAL ASSOCIATION OF CONFIDENTIAL ADDRESS PROGRAMS

History

In 1991, the state of Washington created the first address confidentiality program. This unique and innovative program provided victims and survivors of domestic violence an opportunity to keep their home address protected from public records. Twenty-two years later, over 30 programs have assisted victims of domestic violence, sexual offenses, stalking and other crimes. In 2013, ten states (AZ, CA, CO, ME, MN, MO, OK, OR, PA and WA) came together to create an organization that could enhance all of the programs in the country. Its mission was simple: to collaborate, educate, and provide awareness about these amazing programs.

Founding Members

In 2016, the National Association of Confidential Address Programs was launched as a formal membership organization with the following states joining as Founding Members:

- Arizona Secretary of State
- California Secretary of State
- Colorado Department of Personnel & Administration
- Florida Secretary of State
- Iowa Secretary of State
- Kentucky Secretary of State
- Maine Secretary of State
- Maryland Secretary of State
- Minnesota Secretary of State
- Missouri Secretary of State
- North Carolina Department of Justice
- Oregon Department of Justice
- Texas Attorney General
- Vermont Secretary of State
- Virginia Attorney General
- Washington Secretary of State
- West Virginia Secretary of State
- Wisconsin Department of Justice

Bylaws

NACAP Bylaws amended 8/20/2024

FAQs

What is NACAP?
The National Association of Confidential Address Programs (NACAP) is a membership organization with the mission to collaborate, strengthen, educate, and advocate for the interests of state and territory confidential address programs and, therefore, the people they serve.

What is an ACP?
An address confidentiality program (ACP) is a government-administered program designed for victims of crime and other statutorily protected persons by providing a designated substitute address that participants can use in place of their actual physical address. They also provide a mail-forwarding service and serve as legal agent to receive service of process for program participants.

Are ACPs the same as witness protection?
No, ACPs are not witness protection programs. They are programs that assign substitute addresses, provide mail-forwarding, and serve as a legal agent for service of process. They do not provide relocation or other protection services.

Does NACAP provide direct services to survivors?
No. NACAP is a membership organization to support address confidentiality programs that do provide direct services.

Where can I find information about specific member states?
Contact information for NACAP member programs can be found on the membership page.

Where can I find information about other ACPs?
Information can be found on the Address Confidentiality Programs by State resource list.

National Association of Confidential Address Programs
PO Box 6009
Phoenix, AZ 85005-6009
info@nacap.org

JUDGMENTS

RULE 67

A Definitions. "Judgment" as used in these rules has the meaning given that term in ORS 18.005. "Order" as used in these rules means any other determination by a court or judge that 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 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.

<u>**C Recitation of prior judgments. The first paragraph of any form of judgment submitted by a party must recite the date of entry of any previous judgment entered in the action that has not been vacated. A supplemental judgment must recite only the date of entry of the general judgment and any judgment entered in the action thereafter.**</u>

[*C Relief granted.*] <u>**D Relief Granted.**</u> Every judgment [*shall*] <u>**will**</u> 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.*] <u>**E Judgment in action for recovery of personal property.**</u> 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 <u>**for**</u> the value of the property in case a return cannot be had, and <u>**for**</u> damages for taking and withholding the property.

[*E Judgment in action against partnership, unincorporated association, or parties jointly indebted.*] <u>F Judgment in action against partnership, unincorporated association, or parties jointly indebted.</u>

[*E(1)* ***Partnership and unincorporated association.***] **<u>F(1) Partnership and unincorporated association.</u>** Judgment in an action against a partnership or unincorporated association that is sued in any name that it has assumed or by which it is known may be entered against that partnership or association and [*shall bind*] **<u>binds</u>** the joint property of all of the partners or associates.

[*E(2)* ***Joint obligations; effect of judgment.***] **<u>F(2) Joint obligations; effect of judgment.</u>** In any action against parties jointly indebted [*upon*] **<u>on</u>** a joint obligation, contract, or liability, judgment may be taken against less than all of those parties and a default, dismissal, or judgment in favor of or against less than all of those 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.*] <u>G Judgment by stipulation.</u>

[*F(1)* ***Availability of judgment by stipulation.***] **<u>G(1) Availability of judgment by stipulation.</u>** At any time after commencement of an action, a judgment may be given [*upon*] **<u>on the</u>** stipulation that a judgment for a specified amount or for a specific relief may be entered. The stipulation [*shall*] **<u>must</u>** be by 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.***] **<u>G(2) Filing; assent in open court.</u>** The stipulation for judgment may be in a writing signed by the parties, their attorneys, or their authorized representatives. That writing [*shall*] **<u>must</u>** 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*] **must** be assented to by all parties thereto in open court.

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