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1 A(1)(a)(vi)(A) that all subpoenas must be obeyed unless a judge orders otherwise; and

2 A(1)(a)(vi)(B) that disobedience of a subpoena is punishable by a fine or jail time.

3 A(2) **Originating court.** A subpoena must issue from the court where the action is
4 *[pending.]* **pending, or where a judgment has been entered.** If the action arises under Rule 38
5 C, a subpoena may be issued by the court in the county in which the witness is to be examined.

6 A(3) **Who may issue.**

7 A(3)(a) **Attorney of record.** An attorney of record for a party to the action may issue a
8 subpoena requiring a witness to appear on behalf of that party.

9 A(3)(b) **Clerk of court.** The clerk of the court in which the action is *[pending]* **pending, or**
10 **where a judgment has been entered,** may issue a subpoena to a party on request. Blank
11 subpoenas must be completed by the requesting party before being served. Subpoenas to
12 attend a deposition may be issued by the clerk only if the requesting party has served a notice
13 of deposition as provided in Rule 39 C or Rule 40 A; has served a notice of subpoena for
14 production of books, documents, electronically stored information, or tangible things; or
15 certifies that such a notice will be served contemporaneously with service of the subpoena.

16 A(3)(c) **Clerk of court for foreign depositions.** A subpoena to appear and testify in a
17 foreign deposition may be issued as specified in Rule 38 C(2) by the clerk of the court in the
18 county in which the witness is to be examined.

19 A(3)(d) **Judge, justice, or other authorized officer.**

20 A(3)(d)(i) When there is no clerk of the court, a judge or justice of the court may issue a
21 subpoena.

22 A(3)(d)(ii) A judge, a justice, or an authorized officer presiding over an administrative or
23 out-of-court proceeding may issue a subpoena to appear and testify in that proceeding.

24 A(4) **Who may serve.** A subpoena may be served by a party, the party's attorney, or any
25 other person who is 18 years of age or older.

26 A(5) **Proof of service.** Proving service of a subpoena is done in the same way as provided

1 in Rule 7 F(2)(a) for proving service of a summons, except that the server need not disavow
2 being a party in the action; an attorney for a party; or an officer, director, or employee of a
3 party.

4 **A(6) Recipient obligations.**

5 **A(6)(a) Length of witness attendance.** A command in a subpoena to appear and testify
6 requires that the witness remain for as many hours or days as are necessary to conclude the
7 testimony, unless the witness is sooner discharged.

8 **A(6)(b) Witness appearance contingent on fee payment.** Unless a witness expressly
9 declines payment of fees and mileage, the witness's obligation to appear is contingent on
10 payment of fees and mileage when the subpoena is served. At the end of each day's
11 attendance, a witness may demand payment of legal witness fees and mileage for the next
12 day. If the fees and mileage are not paid on demand, the witness is not obligated to return.

13 **A(6)(c) Deposition subpoena; place where witness can be required to attend or to**
14 **produce things.**

15 **A(6)(c)(i) Oregon residents.** A resident of this state who is not a party to the action is
16 required to attend a deposition or to produce things only in the county where the person
17 resides, is employed, or transacts business in person, or at another convenient place as
18 ordered by the court.

19 **A(6)(c)(ii) Nonresidents.** A nonresident of this state who is not a party to the action is
20 required to attend a deposition or to produce things only in the county where the person is
21 served with the subpoena, or at another convenient place as ordered by the court.

22 **A(6)(d) Obedience to subpoena.** A witness must obey a subpoena. Disobedience or a
23 refusal to be sworn or to answer as a witness may be punished as contempt by the [court or]
24 **court**, by the judge who issued the [subpoena or] **subpoena, or by the judge** before whom the
25 action is [pending] **pending, or where a judgment has been entered**. At a hearing or trial, if a
26 witness who is a party disobeys a subpoena, or refuses to be sworn or to answer as a witness,

1 that party's complaint, answer, or other pleading may be stricken.

2 **A(7) Motion to quash or modify.** A party or person that is subpoenaed may move to
3 quash or move to modify the subpoena. A motion to quash or to modify must be filed with the
4 court and served on the party that issued the subpoena before the date set for the recipient to
5 appear or produce, but not more than 14 days after the date that the subpoena was served.
6 The court may quash or modify the subpoena if the subpoena is unreasonable and oppressive,
7 or may require that the party that served the subpoena pay the reasonable costs of
8 compliance.

9 **A(8) Scope of discovery.** Notwithstanding any other provision, this rule does not expand
10 the scope of discovery beyond that provided in Rule 36 or Rule 44.

11 **B Subpoenas requiring appearance and testimony by individuals, organizations, law**
12 **enforcement agencies or officers, prisoners, and parties.**

13 **B(1) Permissible purposes of subpoena.** A subpoena may require appearance in court or
14 out of court, including:

15 **B(1)(a) Civil actions.** A subpoena may be issued to require attendance before a court, [or]
16 at the trial of an issue therein, [or on] at the taking of a deposition in an action pending
17 [therein;] therein, or at a proceeding to enforce a judgment entered therein.

18 **B(1)(b) Foreign depositions.** Any foreign deposition under Rule 38 C presided over by any
19 person authorized by Rule 38 C to take witness testimony, or by any officer empowered by the
20 laws of the United States to take testimony; or

21 **B(1)(c) Administrative and other proceedings.** Any administrative or other proceeding
22 presided over by a judge, justice, or other officer authorized to administer oaths or to take
23 testimony in any matter under the laws of this state.

24 **B(2) Service of subpoenas requiring the appearance or testimony of nonparty**
25 **individuals or nonparty organizations; payment of fees.** Unless otherwise provided in this rule,
26 a copy of the subpoena must be served sufficiently in advance to allow the witness a

1 reasonable time for preparation and travel to the place specified in the subpoena.

2 B(2)(a) **Service on an individual 14 years of age or older.** If the witness is 14 years of age
3 or older, the subpoena must be personally delivered to the witness, along with fees for one
4 day's attendance and the mileage as allowed by law unless the witness expressly declines
5 payment, whether personal attendance is required or not.

6 B(2)(b) **Service on an individual under 14 years of age.** If the witness is under 14 years of
7 age, the subpoena must be personally delivered to the witness's parent, guardian, or guardian
8 ad litem, along with fees for one day's attendance and the mileage as allowed by law unless
9 the witness expressly declines payment, whether personal attendance is required or not.

10 B(2)(c) **Service on individuals waiving personal service.** If the witness waives personal
11 service, the subpoena may be mailed or transmitted electronically to the witness, but such
12 service is valid only if all of the following circumstances exist:

13 B(2)(c)(i) **Witness agreement.** Contemporaneous with the return of service, the party's
14 attorney or attorney's agent certifies that:

15 B(2)(c)(i)(A) the witness agreed to appear and testify if subpoenaed by a specified date
16 using mail or electronic transmission to a designated e-mail, text message, facsimile, or other
17 electronic account that the witness confirmed is accurate;

18 B(2)(c)(i)(B) the specific date, time, and place for the witness to appear and testify was
19 coordinated with the witness and agreed on;

20 B(2)(c)(i)(C) the mail or electronic account used to deliver the subpoena contained no
21 typographical or other errors that would affect delivery, and a copy of the electronic
22 transmission is attached to the certification document;

23 B(2)(c)(i)(D) the mail or transmission was sent by the specific date agreed on;

24 B(2)(c)(i)(E) satisfactory arrangements were made with the witness to ensure the
25 payment of fees for one day's attendance and the mileage as allowed by law, or the witness
26 expressly declined payment; and

1 B(2)(c)(i)(F) the party has written, recorded, or electronic confirmation from the witness
2 that the witness received the subpoena.

3 B(2)(d) Service of a deposition subpoena on a nonparty organization pursuant to Rule 39
4 C(6). A subpoena naming a nonparty organization as a deponent must be delivered, along with
5 fees for one day's attendance and the mileage as allowed by law, in the same manner as
6 provided for service of summons in Rule 7 D(3)(b)(i), Rule 7 D(3)(c)(i), Rule 7 D(3)(d)(i), Rule 7
7 D(3)(e), Rule 7 D(3)(f), or Rule 7 D(3)(h).

8 **B(3) Service of a subpoena requiring appearance of a peace officer in a professional**
9 **capacity.**

10 B(3)(a) **Personal service on a peace officer.** A subpoena directed to a peace officer in a
11 professional capacity may be served by personal service of a copy, along with fees for one day's
12 attendance and the mileage as allowed by law, unless the peace officer expressly declines
13 payment.

14 B(3)(b) **Substitute service on a law enforcement agency.** A subpoena directed to a peace
15 officer in a professional capacity may be served by substitute service of a copy, along with fees
16 for one day's attendance and the mileage as allowed by law, on an individual designated by the
17 law enforcement agency that employs the peace officer or, if a designated individual is not
18 available, then on the person in charge at least 10 days before the date the peace officer is
19 required to attend, provided that the peace officer is currently employed by the law
20 enforcement agency and is present in this state at the time the agency is served.

21 B(3)(b)(i) **"Law enforcement agency" defined.** For purposes of this subsection, a law
22 enforcement agency means the Oregon State Police, a county sheriff's department, a city
23 police department, a municipal police department, the Marshal's Office of the Judicial
24 Department, an authorized tribal police department, a police department established by a
25 university pursuant to statute, the Criminal Justice Division of the Department of Justice, the
26 investigative office of a district attorney's office, or the investigative office of a humane society.

1 **B(3)(b)(ii) Law enforcement agency obligations.**

2 **B(3)(b)(ii)(A) Designating representative.** All law enforcement agencies must designate
3 one or more individuals to be available during normal business hours to receive service of
4 subpoenas.

5 **B(3)(b)(ii)(B) Ensuring actual notice or reporting otherwise.** When a peace officer is
6 subpoenaed by substitute service under paragraph B(3)(b) of this rule, the agency must make a
7 good faith effort to give the peace officer actual notice of the time, date, and location specified
8 in the subpoena for the appearance. If the law enforcement agency is unable to notify the
9 peace officer, then the agency must promptly report this inability to the court. The court may
10 postpone the matter to allow the peace officer to be personally served.

11 **B(4) Service of subpoena requiring the appearance and testimony of prisoner.** All of the
12 following are required to secure a prisoner's appearance and testimony:

13 **B(4)(a) Court preauthorization.** Leave of the court must be obtained before serving a
14 subpoena on a prisoner, and the court may prescribe terms and conditions when compelling a
15 prisoner's attendance;

16 **B(4)(b) Court determines location.** The court may order temporary removal and
17 production of the prisoner to a requested location, or may require that testimony be taken by
18 deposition at, or by remote location testimony from, the place of confinement; and

19 **B(4)(c) Whom to serve.** The subpoena and court order must be served on the custodian
20 of the prisoner.

21 **B(5) Service of subpoenas requiring the appearance or testimony of individuals who are**
22 **parties to the case or party organizations.** A subpoena directed to a party that has appeared in
23 the case, including an officer, director, or member of a party organization, may be served as
24 provided in Rule 9 B, without any payment of fees and mileage otherwise required by this rule.

25 **C Subpoenas requiring production of documents or things other than confidential**
26 **health information as defined in subsection D(1) of this rule.**

1 **C(1) Combining subpoena for production with subpoena to appear and testify.** A
2 subpoena for production may be joined with a subpoena to appear and testify or may be
3 issued separately.

4 **C(2) When mail service allowed.** A copy of a subpoena for production that does not
5 contain a command to appear and testify may be served by mail.

6 **C(3) Subpoenas to command inspection prior to deposition, hearing, or trial.** A copy of
7 a subpoena issued solely to command production or inspection prior to a deposition, hearing,
8 or trial must comply with the following:

9 **C(3)(a) Advance notice to parties.** The subpoena must be served on all parties to the
10 action that are not in default at least 7 days before service of the subpoena on the person or
11 organization's representative who is commanded to produce and permit inspection, unless the
12 court orders less time;

13 **C(3)(b) Time for production.** The subpoena must allow at least 14 days for production of
14 the required documents or things, unless the court orders less time; and

15 **C(3)(c) Originals or true copies.** The subpoena must specify whether originals or true
16 copies will satisfy the subpoena.

17 **D Subpoenas for documents and things containing confidential health information**
18 **("CHI").**

19 **D(1) Application of this section; "confidential health information" defined.** This section
20 creates protections for production of CHI, which includes both individually identifiable health
21 information as defined in ORS 192.556 (8) and protected health information as defined in ORS
22 192.556 (11)(a). For purposes of this section, CHI means information collected from a person
23 by a health care provider, health care facility, state health plan, health care clearinghouse,
24 health insurer, employer, or school or university that identifies the person or could be used to
25 identify the person and that includes records that:

26 D(1)(a) relate to the person's physical or mental health or condition; or

1 D(1)(b) relate to the cost or description of any health care services provided to the
2 person.

3 D(2) **Qualified protective orders.** A qualified protective order means a court order that
4 prohibits the parties from using or disclosing CHI for any purpose other than the litigation for
5 which the information is produced, and that, at the end of the litigation, requires the return of
6 all CHI to the original custodian, including all copies made, or the destruction of all CHI.

7 D(3) **Compliance with state and federal law.** A subpoena to command production of CHI
8 must comply with the requirements of this section, as well as with all other restrictions or
9 limitations imposed by state or federal law. If a subpoena does not comply, then the protected
10 CHI may not be disclosed in response to the subpoena until the requesting party has complied
11 with the appropriate law.

12 D(4) **Conditions on service of subpoena.**

13 D(4)(a) **Qualified protective order; declaration or affidavit; contents.** The party serving a
14 subpoena for CHI must serve the custodian or other record keeper with either a qualified
15 protective order or a declaration or affidavit together with supporting documentation that
16 demonstrates:

17 D(4)(a)(i) **Written notice.** The party made a good faith attempt to provide the person
18 whose CHI is sought, or the person's attorney, written notice that allowed 14 days after the
19 date of the notice to object;

20 D(4)(a)(ii) **Sufficiency.** The written notice included the subpoena and sufficient
21 information about the litigation underlying the subpoena to enable the person or the person's
22 attorney to meaningfully object;

23 D(4)(a)(iii) **Information regarding objections.** The party must certify that either no
24 written objection was made within 14 days, or objections made were resolved and the
25 command in the subpoena is consistent with that resolution; and

26 D(4)(a)(iv) **Inspection requests.** The party must certify that the person or the person's

1 representative was or will be permitted, promptly on request, to inspect and copy any CHI
2 received.

3 D(4)(b) **Objections.** Within 14 days from the date of a notice requesting CHI, the person
4 whose CHI is being sought, or the person's attorney objecting to the subpoena, must respond
5 in writing to the party issuing the notice, and state the reasons for each objection.

6 D(4)(c) **Statement to secure personal attendance and production.** The personal
7 attendance of a custodian of records and the production of original CHI is required if the
8 subpoena contains the following statement:

9 _____

10 This subpoena requires a custodian of confidential health information to personally
11 attend and produce original records. Lesser compliance otherwise allowed by Oregon Rule of
12 Civil Procedure 55 D(8) is insufficient for this subpoena.

13 _____

14 D(5) **Mandatory privacy procedures for all records produced.**

15 D(5)(a) **Enclosure in a sealed inner envelope; labeling.** The copy of the records must be
16 separately enclosed in a sealed envelope or wrapper on which the name of the court, case
17 name and number of the action, name of the witness, and date of the subpoena are clearly
18 inscribed.

19 D(5)(b) **Enclosure in a sealed outer envelope; properly addressed.** The sealed envelope
20 or wrapper must be enclosed in an outer envelope or wrapper and sealed. The outer envelope
21 or wrapper must be addressed as follows:

22 D(5)(b)(i) **Court.** If the subpoena directs attendance in court, to the clerk of the court, or
23 to a judge;

24 D(5)(b)(ii) **Deposition or similar hearing.** If the subpoena directs attendance at a
25 deposition or similar hearing, to the officer administering the oath for the deposition at the
26 place designated in the subpoena for the taking of the deposition or at the officer's place of

1 business;

2 D(5)(b)(iii) **Other hearings or miscellaneous proceedings.** If the subpoena directs
3 attendance at another hearing or another miscellaneous proceeding, to the officer or body
4 conducting the hearing or proceeding at the officer's or body's official place of business; or

5 D(5)(b)(iv) **If no hearing is scheduled.** If no hearing is scheduled, to the attorney or party
6 issuing the subpoena.

7 **D(6) Additional responsibilities of attorney or party receiving delivery of CHI.**

8 D(6)(a) **Service of a copy of subpoena on patient and all parties to the litigation.** If the
9 subpoena directs delivery of CHI to the attorney or party that issued the subpoena, then a copy
10 of the subpoena must be served on the person whose CHI is sought, and on all other parties to
11 the litigation that are not in default, not less than 14 days prior to service of the subpoena on
12 the custodian or keeper of the records.

13 D(6)(b) **Parties' right to inspect or obtain a copy of the CHI at own expense.** Any party to
14 the proceeding may inspect the CHI provided and may request a complete copy of the
15 information. On request, the CHI must be promptly provided by the party that served the
16 subpoena at the expense of the party that requested the copies.

17 **D(7) Inspection of CHI delivered to court or other proceeding.** After filing and after
18 giving reasonable notice in writing to all parties that have appeared of the time and place of
19 inspection, the copy of the CHI may be inspected by any party or by the attorney of record of a
20 party in the presence of the custodian of the court files, but otherwise the copy must remain
21 sealed and must be opened only at the time of trial, deposition, or other hearing at the
22 direction of the judge, officer, or body conducting the proceeding. The CHI must be opened in
23 the presence of all parties that have appeared in person or by counsel at the trial, deposition,
24 or hearing. CHI that is not introduced in evidence or required as part of the record must be
25 returned to the custodian who produced it.

26 **D(8) Compliance by delivery only when no personal attendance is required.**

1 D(8)(a) **Mail or delivery by a nonparty, along with declaration.** A custodian of CHI who is
2 not a party to the litigation connected to the subpoena, and who is not required to attend and
3 testify, may comply by mailing or otherwise delivering a true and correct copy of all CHI
4 subpoenaed within five days after the subpoena is received, along with a declaration that
5 complies with paragraph D(8)(b) of this rule.

6 D(8)(b) **Declaration of custodian of records when CHI produced.** CHI that is produced
7 when personal attendance of the custodian is not required must be accompanied by a
8 declaration of the custodian that certifies all of the following:

9 D(8)(b)(i) **Authority of declarant.** The declarant is a duly authorized custodian of the
10 records and has authority to certify records;

11 D(8)(b)(ii) **True and complete copy.** The copy produced is a true copy of all of the CHI
12 responsive to the subpoena; and

13 D(8)(b)(iii) **Proper preparation practices.** Preparation of the copy of the CHI being
14 produced was done:

15 D(8)(b)(iii)(A) by the declarant, or by qualified personnel acting under the control of the
16 entity subpoenaed or the declarant;

17 D(8)(b)(iii)(B) in the ordinary course of the entity's or the person's business; and

18 D(8)(b)(iii)(C) at or near the time of the act, condition, or event described or referred to
19 in the CHI.

20 D(8)(c) **Declaration of custodian of records when not all CHI produced.** When the
21 custodian of records produces no CHI, or less information than requested, the custodian of
22 records must specify this in the declaration. The custodian may only send CHI within the
23 custodian's custody.

24 D(8)(d) **Multiple declarations allowed when necessary.** When more than one person has
25 knowledge of the facts required to be stated in the declaration, more than one declaration
26 may be used.

1 **D(9) Designation of responsible party when multiple parties subpoena CHI.** If more than
2 one party subpoenas a custodian of records to personally attend under paragraph D(4)(c) of
3 this rule, the custodian of records will be deemed to be the witness of the party that first
4 served such a subpoena.

5 **D(10) Tender and payment of fees.** Nothing in this section requires the tender or
6 payment of more than one witness fee and mileage for one day unless there has been
7 agreement to the contrary.