

COUNCIL ON COURT PROCEDURES
ANNOTATED AGENDA & MEETING PACKET

Saturday, June 6, 2026, 9:30 a.m.

Zoom Platform: See Footer for Contact Information

- I. Call to Order (Mr. Goehler)
- II. Approval of May 9, 2026, Minutes (Mr. Goehler) (**ATTACHMENT G**)
- 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)
 - 2. Post-Judgment Discovery/Rule 36 & Rule 55 (Mr. Passadoré) (**ATTACHMENT H, ATTACHMENT I**)
 - 3. Service/Rules 7, 9 & 10 (Judge Raschio) (**ATTACHMENT J**)
 - 4. Third Party Practice/Rule 22 (Ms. Dahab) (**ATTACHMENT L, ATTACHMENT M**)
 - B. Rule 37 (Judge Peterson) (**ATTACHMENT A**)
 - C. Address Confidentiality Program and Service (Ms. Wilson)
 - D. Review of Draft Amendments Previously Approved for Publication Agenda (Judge Peterson)
 - 1. ORCP 24 (**ATTACHMENT B**)
 - 2. ORCP 38 (**ATTACHMENT C**)
 - 3. ORCP 67 (**ATTACHMENT D**)
- V. New Business (Mr. Goehler)
 - A. Suggestion to Add Language to ORCP 7 Summons Form re: ORS 9.320 Requirement (Judge Peterson) (**ATTACHMENT E**)
 - B. Suggestion to Modify ORCP 47 re: Requiring a Party to Cite Specifically to the Record in Supporting or Opposing Summary Judgment (**ATTACHMENT F**)
 - C. Possible Amendment to Rule 17 Regarding Certifications Specifically Addressing Misuse of Artificial Intelligence (Judge Peterson) (**ATTACHMENT K**)
- 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

From your PC/laptop, for a videoconference:

- 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

From your smartphone, using the Zoom app to videoconference:

- Download the app (search for Zoom Meetings" in the iOS, Google Play Store, or Amazon Appstore
- Open the app and click on "Join Meeting"
- Enter the meeting ID: 823 7720 3749
- Passcode: 193329

Problems?

From your phone, like a regular teleconference:

- 1-253-215-8782 / Meeting ID: 823 7720 3749/ Passcode: 193329

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

1 without the state in the manner provided for service of summons in Rule 7, [7, but if] **if** such
2 service cannot with due diligence be made [upon] **on** any expected adverse party named in the
3 petition, the court may make such order as is just for service by publication or [otherwise, and
4 shall] **otherwise. The court must** appoint, for persons not served with summons in the manner
5 provided in Rule 7, an attorney [who shall] **to** represent [them and] **them**, whose services
6 [shall] **must** be paid for by petitioner in an amount fixed by the court, [and, in case they are not
7 otherwise represented, shall] **to** cross examine the deponent. Testimony and evidence
8 perpetuated under this rule [shall] **will** be admissible against expected adverse parties not
9 served with notice only in accordance with the applicable rules of evidence. If any expected
10 adverse party is a minor or incompetent, the provisions of Rule 27 apply.

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

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

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

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

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

25 **B Pending appeal.** If an appeal has been taken from a judgment of a court to which these
26 rules apply or before the taking of an appeal if the time therefor has not expired, the court in

1 without the state in the manner provided for service of summons in Rule 7, [7, but if] **if** such
2 service cannot with due diligence be made [upon] **on** any expected adverse party named in the
3 petition, the court may make such order as is just for service by **publication or otherwise. The**
4 **court must appoint an attorney to represent persons not served in the manner provided in**
5 **Rule 7 and, if the unserved person is not otherwise represented, to cross examine the**
6 **deponent. The services of any appointed attorney must be paid for by the petitioner in an**
7 **amount fixed by the court.** [publication or otherwise, and shall appoint, for persons not served
8 with summons in the manner provided in Rule 7, an attorney who shall represent them and
9 whose services shall be paid for by petitioner in an amount fixed by the court, and, in case they
10 are not otherwise represented, shall cross examine the deponent.] Testimony and evidence
11 perpetuated under this rule [shall] **will** be admissible against expected adverse parties not
12 served with notice only in accordance with the applicable rules of evidence. If any expected
13 adverse party is a minor or incompetent, the provisions of Rule 27 apply.

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

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20 **will** be taken [upon] **on** oral examination or written questions; or [shall make an order
21 designating or describing]

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

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

25 **A(4) Applicable discovery rules.** For the purpose of applying these rules to discovery
26 before action, each reference therein to the court in which the action is pending [shall] **will** be

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1 and must show:

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

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

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

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

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

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

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

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

23 A(2) **Notice and service.** The petitioner [shall] **must** thereafter serve a notice [upon] **on**
24 each person named in the petition as an expected adverse party, together with a copy of the
25 petition, stating that the petitioner will apply to the court at a time and place named therein,
26 for the order described in the petition. The notice [shall] **must** be served either within or

1 without the state in the manner provided for service of summons in Rule 7. [7, but if] **if** such
2 service cannot with due diligence be made [upon] **on** any expected adverse party named in the
3 petition, the court may make such order as is just for service by **publication or otherwise. The**
4 **court must appoint an attorney to represent persons not served in the manner provided in**
5 **Rule 7 and, if the unserved person is not otherwise represented, to cross examine the**
6 **deponent. The services of any appointed attorney must be paid for by the petitioner in an**
7 **amount fixed by the court.** [publication or otherwise, and shall appoint, for persons not served
8 with summons in the manner provided in Rule 7, an attorney who shall represent them and
9 whose services shall be paid for by petitioner in an amount fixed by the court, and, in case they
10 are not otherwise represented, shall cross examine the deponent.] Testimony and evidence
11 perpetuated under this rule [shall] **will** be admissible against expected adverse parties not
12 served with notice only in accordance with the applicable rules of evidence. If any expected
13 adverse party is a minor or incompetent, the provisions of Rule 27 apply.

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

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

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

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

25 **A(4) Applicable discovery rules.** For the purpose of applying these rules to discovery
26 before action, each reference therein to the court in which the action is pending [shall] **will** be

1 deemed to refer to the court in which the petition for such discovery was filed.

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

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

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

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

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

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

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

1 JOINDER OF CLAIMS

2 RULE 24

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

6 **B Forcible entry and detainer [*and rental due.*] actions.** If a plaintiff joins a claim of
7 forcible entry and detainer [*and a claim for rental due are joined*] with any other claim for legal
8 or equitable relief, the defendant [*shall*] will have the same time to appear as is provided by
9 rule or statute in civil actions [*for the recovery of rental due.*] and the action will not be
10 governed by the provisions of ORS 105.137.

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

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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

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

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

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

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

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

1 JUDGMENTS

2 RULE 67

3 **A Definitions.** "Judgment" as used in these rules has the meaning given that term in ORS
4 18.005. "Order" as used in these rules means any other determination by a court or judge that
5 is intermediate in nature.

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

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

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

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

1 property.

2 ***[E Judgment in action against partnership, unincorporated association, or parties***
3 ***jointly indebted.] F Judgment in action against partnership, unincorporated association, or***
4 ***parties jointly indebted.***

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

10 ***[E(2) Joint obligations; effect of judgment.] F(2) Joint obligations; effect of judgment.*** In
11 any action against parties jointly indebted *[upon]* ***on*** a joint obligation, contract, or liability,
12 judgment may be taken against less than all of those parties and a default, dismissal, or
13 judgment in favor of or against less than all of those parties in an action does not preclude a
14 judgment in the same action in favor of or against the remaining parties.

15 ***[F Judgment by stipulation.] G Judgment by stipulation.***

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

23 ***[F(2) Filing; assent in open court.] G(2) Filing; assent in open court.*** The stipulation for
24 judgment may be in a writing signed by the parties, their attorneys, or their authorized
25 representatives. That writing *[shall]* ***must*** be filed in accordance with Rule 9. The stipulation
26 may be subjoined or appended to, and part of, a proposed form of judgment. If not in writing,

1 the stipulation [shall] **must** be assented to by all parties thereto in open court.

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



Shari Nilsson <nilsson@lclark.edu>

Oregon Rules of Civil Procedure Recommendation

Jacob Crosby <jncrosby90@gmail.com>
To: ccp@lclark.edu

Wed, May 20, 2026 at 8:59 PM

Hello,

I hope this email finds you well.

I wanted to suggest an addition/revision to the Oregon Rules of Civil Procedure.

ORCP 7(C) outlines the contents required in a summons.

I wanted to recommend adding a section regarding the requirement of an Oregon business to be represented by counsel, as required under ORS 9.320.

The rule already has proposed language for multiple other scenarios, and this addition would remove any potential delay in the judicial process when a business attempts to represent itself and additional notices are required.

I would be happy to respond to any questions or concerns you may have.

Thank you for your consideration.

Jacob Crosby



Shari Nilsson <nilsson@lclark.edu>

RE:

Mark A. Peterson <Mark.A.Peterson@ojd.state.or.us>
To: "Leslie G. Bottomly" <Leslie.G.Bottomly@ojd.state.or.us>
Cc: Shari Nilsson <nilsson@lclark.edu>, Mark Peterson <mpeterso@lclark.edu>

Thu, May 21, 2026 at 11:15 PM

Thanks Leslie. This suggestion (requiring a party to cite specifically to the record in supporting or opposing summary judgment) coming from retired Justice Nakamoto at today's civil roundtable meeting will not be added to the ORCP this biennium, if ever, as we are one working meeting before the publication meeting in September. However, if this purely (to me) procedural change would expedite summary judgment rulings and make the orders based on a better record, it would appear to be less contentious than many Rule 47 discussions. I will raise it with the Council, and I assume that the Council will give the proposal full consideration next biennium. It was a good discussion. Thanks again. The Council rarely adopts a rule from another jurisdiction but appreciates reviewing rules that exist in other jurisdictions and, where possible, improving on them.

Mark

From: Leslie G. Bottomly <Leslie.G.Bottomly@ojd.state.or.us>
Sent: Thursday, May 21, 2026 12:38 PM
To: Mark A. Peterson <Mark.A.Peterson@ojd.state.or.us>
Subject: Fw:

Get [Outlook for iOS](#)

From: Leslie <bottomlyadr@gmail.com>
Sent: Thursday, May 21, 2026 12:37:04 PM
To: Leslie G. Bottomly <leslie.g.bottomly@ojd.state.or.us>
Subject:

WARNING: This email is from outside of the Oregon Judicial Department. If links or files in this email are unexpected, even if from an email address you trust, please call the sender on the phone and verify them before you click.

3. Each statement of material fact by a movant in a Local Rule 56(a)1 Statement or by an opponent in a Local Rule 56(a)2 Statement, and each denial in an opponent's Local Rule 56(a)2 Statement, must be followed by a specific citation to (1) the affidavit of a witness competent to testify as to the facts at trial and/or (2) evidence that would be admissible at trial. The affidavits, deposition testimony, responses to discovery requests, or other documents containing such evidence shall be filed and served with the Local Rule 56(a)1 and 2 Statements in conformity with Fed. R. Civ. P. 56(e). The "specific citation" obligation of this Local Rule requires counsel and pro se parties to cite to specific paragraphs when citing affidavits or responses to discovery requests and to cite to specific pages when citing to deposition or other transcripts or to documents longer than a single page in length. Counsel and pro se parties are hereby notified that failure to provide specific citations to evidence in the record as required by this Local Rule may result in the Court deeming certain facts that are supported by the evidence admitted in accordance with Rule 56(a)1 or in the Court imposing sanctions, including, when the movant fails to comply, an order denying the motion for summary judgment, and, when the opponent fails to comply, an order granting the motion if the undisputed facts show that the movant is entitled to judgment as a matter of law.

DRAFT MINUTES OF MEETING
COUNCIL ON COURT PROCEDURES
 Saturday, May 9, 2026, 9:30 a.m.
 Zoom Meeting Platform

ATTENDANCE

Members Present:

Hon. Benjamin M. Bloom
 Nadia Dahab
 Hon. Andrew Erwin
 Barry J. Goehler
 Hon. Jonathan R. Hill
 Melissa Hopkins
 Ryan Jennings
 Lara Johnson
 Derek Larwick
 Julian Marrs
 Hon. Thomas A. McHill
 Hon. Michelle McIver
 Hon. Melvin Oden-Orr
 Hon. Robert Raschio
 Michael Shin
 Hon. Scott Shorr
 Tom Spooner
 Hon. Todd Van Rysselberghe

Members Absent:

Hon. Christopher L. Garrett
 YoungWoo Joh
 Eric Kekel
 Bryce Whitman Passadore
 Alicia Wilson

Guests:

Council Staff:

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 22 • ORCP 36 • ORCP 37 • ORCP 55	• 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 March 14, 2026, Minutes

Mr. Goehler called the Council's attention to the draft minutes from the April 11, 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 June agenda.

B. September Council Meeting

Judge Peterson explained that Rosh Hashanah falls on the currently scheduled date of the September Council meeting, September 12, 2026. In terms of rescheduling, September 5 is during Labor Day weekend, and staff is not available on September 12. That leaves two options: moving the meeting to an earlier date of August 29 or moving it to the last weekend of the month, on September 26. Both dates would allow the Council to meet its statutory deadline for publishing its draft amendments to the bench and bar 30 days prior to the promulgation meeting.

After some discussion, the Council decided to tentatively set the meeting for September 26, 2026, barring any strong objections by Council members who were not present at today's meeting. Mr. Goehler also mentioned that, while the Council traditionally does not meet during the months of July and August during even-numbered years, it is possible to schedule a meeting during those months if work still needs to be done prior to the publication meeting.

C. Council Website

Judge Peterson reported that, since the Council is a state agency, it is required to make its materials compliant with the Americans with Disabilities Act (ADA). Ms. Nilsson explained that there was a deadline for making websites accessible by the end of April, 2026; however, that deadline had been extended to April, 2027. She stated that she had reached out to a web developer that she has worked with at Campaign for Equal Justice to get a quote for making the Council's website ADA compliant. It would cost over \$15,000 to make every PDF document on the site accessible. The developer's recommendation is to make the site itself and the most regularly accessed documents accessible, to train staff on how to make future PDFs accessible, and to include a

disclaimer on the site to let people know that they can reach out to the Council for accessible versions of any documents that they require. The quote for this is approximately \$1,600.

Judge Hill recommended moving forward with the less extensive quote for now and asking the Legislature during the next session for a one-time expenditure to make the site fully compliant, as this is an important goal. Since it is an unanticipated expense, he thought that the Legislature might be willing to allocate funds for it. The Council agreed that this is a good idea. Judge Hill made a motion to move forward with the \$1,600 proposal and to make a request for additional funding next biennium. Judge Raschio seconded the motion, which was approved unanimously by voice vote.

IV. Old Business

A. Committee Reports

1. Declaration of Expert Opinion/Rule 47 E

Mr. Goehler explained that Mr. Joh was not present at the meeting and that he had asked that discussion on Rule 47 be deferred until the June meeting.

2. Post-Judgment Subpoenas/Rule 55

Judge Peterson stated that the full committee was not able to meet but that he, Mr. Larwick, and Mr. Marrs did have a meeting and discussed changes to Rule 36 (Appendix B). He reminded the Council that the proposed changes were in response to a concern raised in the biennial survey that some judgment debtors have used language in Rule 36 and in Rule 55 to argue that discovery is not available post-judgment. He explained that the committee had borrowed language from the federal rule, FRCP 69(a)(2), and inserted it into Rule 36. At the committee meeting there was a suggestion that the last sentence of the new subsection was too long or was confusing. The sentence was therefore broken in two. The language has also been modified to state the general rule first, that discovery is available from the judgment debtor or others. The exception is then stated second.

Judge Peterson noted that, at the last Council meeting, Judge Shorr had raised the question of whether post-judgment discovery should be allowed if the judgment has been secured with an adequate undertaking, and the Council's sense was that it should not be. After the committee meeting, staff tweaked the second sentence a little bit to indicate that, if the court has stayed enforcement of a judgment as a result of a satisfactory undertaking or for any other reason, authority to issue a subpoena or to obtain discovery is available only pursuant to a court order. At the last Council meeting, it was also raised that, with joint and several liability, any one judgment debtor's undertaking should secure the

judgment adequately. However, if it is apportioned liability, a minor judgment debtor having an adequate undertaking does not protect the judgment creditor. The new language states that, if some part of the judgment is not secure, the judgment creditor can pursue post-judgment discovery. It would also permit, if a creditor has a good faith belief that the undertaking is no longer adequate for any number of reasons, to ask the court for an order permitting discovery. There is not a bar to obtaining post-judgment discovery but, rather, a constraint if there is an undertaking.

Mr. Goehler wondered whether the language “for a satisfactory undertaking” was necessary when the “for any other reason” language is already included in the last sentence. He stated that it seems redundant. He wondered whether the language could be simplified. Judge Peterson thanked him for the suggestion and noted that this is why putting drafts before the entire Council is helpful.

Judge Peterson observed that the general consensus of the Council seemed to be that the change to Rule 36 meant that Rule 55 did not need to be changed. The committee tended to agree with that assessment; however, Judge Peterson stated that he likes to see a draft of a potential change before making a final decision about it. He stated that the problem with Rule 55 seems to be the phrase “where an action is pending.” Pending is a troublesome word because some people think that an action is no longer pending once a judgment has been entered. The Council’s thought was that an action is still pending because there are judgment creditor remedies and the case remains subject to collection. The draft before the Council (Appendix B) changes the word “pending” to “was commenced,” which would eliminate this issue. He asked the Council whether this would be a worthwhile change to help prevent the occasional situation where a judgment debtor makes post-judgment discovery more difficult and more expensive.

Mr. Spooner pointed out that this language might cause some downstream problems. He stated that it does not happen frequently but, from time to time, there is a change of venue in a case. This could cause confusion with practitioners and self-represented litigants as to where a subpoena should be issued. Judge Peterson stated that he had considered this while preparing the latest draft, but that he thought that the venue statute would take care of it. However, he appreciates that confusion could arise where an action was commenced in one court but is now properly in a different court. Mr. Goehler agreed. Judge Peterson stated that the previous draft used the words, “where the action is pending or where there is a judgment,” but he felt that language was awkward.

Judge Peterson stated that the real question is whether a change actually needs to be made to Rule 55 if a specific change mentioning subpoenas is made to Rule 36. Mr. Goehler opined that the word “pending” in Rule 55 would not

trump Rule 36 if Rule 36 specifically provides for post-judgment subpoenas or discovery in general. Judge Hill suggested carrying over the topic to next month to allow the Council to deliberate further. Judge Peterson stated that he would bring the drafts back to the committee for further consideration and bring any new drafts back to the Council in June. He noted that he has no particular interest in changing Rule 55 yet again this biennium, and he thinks that the consensus seems to be that a change to Rule 36 will be sufficient. Mr. Goehler summarized that, at the June meeting, the Council will look at a final draft of Rule 36 and get input from the committee on whether Rule 55 needs to be amended.

3. Service/Rules 7, 9, & 10

Judge Raschio referred the Council to Appendix C, new drafts of Rule 7 and Rule 9, as well as drafts of the summons forms with the proposed new language. He noted that the committee did not meet but, rather, voted by email to approve the the new drafts by Council staff.

Judge Peterson reminded the Council that he had previously proposed a change to Rule 9 that the committee decided was not a good idea; however, during that process, a few issues with the rule were noted and those are the changes in the draft before the Council now. One change is to the language in the last sentence of section B to more clearly state that service of a notice to bring a party into contempt must be by personal service on the party. Other changes are to the lead line in section D and to the language in that section to clarify what documents are not to be filed with the court. The remaining changes are grammatical and are not intended to affect the operation of the rule. Judge Peterson asked whether anyone noticed any unintended consequences or issues from these changes. Mr. Goehler recommended including the draft on the June agenda to give the Council more time to review it before approving it for the publication agenda. He wondered whether the phrase “are not to be filed” in section D could be better worded, as that language is a bit different from what is used in other rules.

Judge Peterson noted that, just prior to today’s Council meeting, the person who had recommended changes to the summons language in Rule 7 had emailed him with further suggestions, some of which might help with the conciseness of the language. Ms. Nilsson shared those suggestions with the Council. Judge Peterson noted that one suggestion was to use bullet points to help emphasize the steps to be taken. However, he pointed out that there is no other ORCP that includes bullet points and stated that he was reluctant to introduce that formatting here.

Judge Hill asked whether Judge Peterson was suggesting that the committee meet again to consider these new suggestions. Judge Raschio noted that it has been hard to assemble all committee members for a meeting, but that he understands the importance of getting the rule and the format correct. Judge Peterson suggested that Council staff could provide committee members with a new draft for review and that a poll could be held by email as to whether the changes are acceptable or whether the committee needs to meet again. Judge Raschio agreed with this suggestion.

Mr. Goehler suggested that it would be helpful for the committee and for the Council as a whole to see a side-by-side comparison between the current and next versions where it is easy to see the differences between the two. Ms. Nilsson stated that she can provide this.

4. Third Party Practice/Rule 22

Ms. Dahab referred the Council to the latest material from the Rule 22 committee (Appendix D). She noted that the material included the historical summary previously circulated to the Council as well as a slightly revised summary of options for changes, or no changes, to Rule 22. A change was made to option number two, consent with judicial override. She noted that the committee made this change based on feedback from the last Council meeting about the difficulty with “notwithstanding clauses,” so the goal was to more clearly rewrite the language to eliminate potential confusion down the road. The new language reads:

If a party objects to such service, the court may nonetheless grant leave upon an express finding that: (a) the basis for the third-party claim could not have been discovered through reasonable diligence within the 90-day period; (b) the motion was filed promptly after the basis for the claim was or should have been discovered; and (c) granting leave will not prejudice any appearing party or unreasonably delay the trial.

Ms. Dahab stated that the other options provided have not changed, and that the committee has still not reached consensus on any particular recommendation about what to do, if anything, with Rule 22. Part of the committee would vote to leave it as is and part of the committee would vote to change it, with no particular consensus on the nature of the change. She noted that the committee would like broader Council discussion on the issue, but she was not sure of the best method to get this input. Mr. Goehler suggested asking for comments first and then taking an informal poll on the threshold issue of whether there is a majority of Council members wanting to make a change.

Judge Bloom pointed out that this part of Rule 22 is unique within the ORCP. There is no other rule that gives one party veto power over whether any motion can be allowed. He opined that the workaround to this veto power is a nonsensical process under Rule 53, where the defendant who wants to file a third-party complaint is forced to file a separate action against the person who, in effect, becomes the third-party defendant, and then files a motion to consolidate those actions. He pointed out that the only issue to be decided in the hearing on the motion for consolidation is what would be considered in allowing a third-party complaint if the “90-day rule” did not exist. His suggestion would be to get rid of that extra step and leave the issue to the discretion of the court after hearing the arguments of both parties. He opined that this will get to the correct result and make the rule substantially the same as similar rules in every other jurisdiction in the country.

Judge Bloom stated that he respects the well-presented arguments and the hard work by all of the members of the committee, and noted that everyone's involvement has been critical. He acknowledged that this is and has been a contentious issue on the Council. He stated that he had opinions as a litigator, but that he now has opinions as a judge managing these dockets and these issues. Judges want to get the issues resolved, but not at the cost of having the plaintiff's action be continued because of a late filing. He noted that these are issues that the court can consider, and that he is very much against including reasons to limit the court's discretion, as that would cause more litigation and more work on the appellate level. Judge Bloom reiterated that his solution would be leaving it to the discretion of the court, because that is already being done with the motion to consolidate as a workaround, which is a more time consuming and intensive procedure.

Judge Peterson thanked the committee for doing what committees should do, which is really digging in, going through the history, and then presenting a range of proposals. He stated that he was not sure that any of the proposals for a change would get a majority or a supermajority vote, but suggested that it might be a good idea to try to coalesce around a particular proposal. He stated that the Council has heard from the plaintiffs' attorneys that they do not want their cases hijacked, and from the defense attorneys that they have concerns about discovering the real culprit only after the 90 days has passed. He opined that the only suggestion that might be a bad one is the federal one of starting the time from when the answer is filed, because Oregon has a practice rooted in professionalism of letting parties file their answers late. If the time to implead a new party is tied to when the answer is filed, that professionalism is gone because it has a negative consequence for the client.

Mr. Shin echoed Judge Bloom's comments, and added that the committee did a good job of looking at the history of the rule and figuring out why the existing language was adopted and whether it should remain. His opinion is that the “90-

day rule” is largely a historical artifact, and that the landscape has changed since the circumstances and discussions at the time the language was added to the rule. The current rule really just does not fit with, in particular, comparative negligence law, among other potential issues. He stated that the committee had some really good discussions, and the main concern from plaintiffs’ attorneys seemed to be the timing issue where, very late in the game, someone is trying to bring in a third party close to trial in a way that is going to prejudice a plaintiff, either by gaming the system or just by circumstance. He agreed that, of course, the plaintiff should be able to bring the case the way they want to; however, he emphasized the importance of all necessary parties being included. He pointed out that this issue arises in other contexts, such as an ORCP 23 A motion for leave to amend a complaint, and it is left to the discretion of the judge to figure out whether it is too late and how it should be handled. Looking at the federal rule, or any other jurisdiction besides Oregon, problems are not arising. He stated that he did a pretty extensive case law search to see what other jurisdictions do, and did not find issues arising.

Ms. Hopkins stated that, as a plaintiffs’ attorney, her experience is that defendants control the bulk of discovery, so there are no surprises to defendants. She does not understand that argument. Her vote would be for no change. She pointed out that Oregon is unique in many ways when it comes to state court trials and, just because other states do things differently than Oregon, that is not necessarily a reason to change.

Ms. Johnson noted that the Council had reconsidered Rule 22 after comparative fault was adopted and after joint and several liability was addressed, so there has been a great deal of continuity about the rule for many, many years. She stated that plaintiffs rely on defendants to provide discovery. Oftentimes, key information is solely within the hands of a defendant. She opined that allowing an extension for discovery to determine whether the defendant knew or should have known of the existence of a third party, separate from the existing consolidation route, is problematic. She presented an example of a medical malpractice case where the only party that really knows what the defendant knew or should have known would be the defendant. She wondered how it would be determined what other medical providers the defendant knew about that could have contributed to an injury or a death. She stated that, for example, very extensive, expensive, and time-consuming discovery may be required in shared hospital computer systems to determine whether the defendant knew or should have known about the existence of a third party, if that is an element that would overcome a plaintiff’s opposition to adding the new party. Ms. Johnson opined that a change to Rule 22 would reduce the number of claims that can be brought, because expense is a factor that plaintiffs use when determining the risks and benefits of bringing a claim. She expressed strong concerns about any change that extends the discovery requirement, because it would increase discovery and the burden on the courts and make

litigation more expensive. She stated that she is in favor of no change because there is an existing workaround: consolidation. If the defendant can demonstrate that consolidation works for the economy of the courts and judicial efficiency, but without prejudice to the parties and without an unreasonable delay of trial, consolidation will be granted. That is the case law in Oregon.

Mr. Spooner stated that he wanted to give some input based on his former practice on the defense side in the construction world. He stated that there is an inherent tension in the type of proposal before the Council because of the relationship between the defense attorney and the defendant. He noted that the ORCP reads as though the defense attorney and the defendant are working in unison, when in reality there is always a back-and-forth between defense counsel and the defendant behind the scenes. A number of times he has had the experience of having to continually prod his defendant client to provide him with the information he required to prepare the defense. The client either had it and did not want to provide it, or was being ignorant or lazy about communicating it. It is the defendant that controls the information, and they are sometimes not getting it to the attorney in a timely manner. He opined that this should not be rewarded and allowed to negatively impact the plaintiff's side of the case.

Judge Hill stated that he was not sure how the Council could move forward if the committee did not have a consensus, and he was also not hearing much consensus from the Council. Mr. Goehler stated that Ms. Nilsson had proposed to him in the chat that she conduct a Zoom poll to check in on the Council's thoughts on whether to proceed with this issue. Judge Raschio asked whether the Council might be willing to set over this issue until the next biennium, because it seems like there has not been enough progress made to craft any meaningful draft, if that is the direction the Council decides to go in. He stated that the committee had worked very hard and that there is a lot of information to absorb, and that he would like to have time to think things through. Judge Peterson suggested taking the Zoom poll now to see how the Council is feeling about the matter overall, but also suggested that the committee try to narrow the proposals for change to just one or two solutions for the Council to consider. Ms. Dahab stated that the committee would be happy to reconvene before the June meeting to do that if the Council would like them to.

Ms. Nilsson conducted a Zoom poll. With 18 members voting, 10 were in favor of the committee continuing to work on the issue and 8 were opposed. The committee agreed to meet again and report back at the June Council meeting.

B. Rule 37

Judge Peterson reminded the Council that the cleanup of Rule 37 (Appendix E) only occurred because the post-judgment discovery committee had previously considered inserting language into Rule 37. The main impetus for change was internal citations that are inconsistent with Council drafting standards and also inconsistent within their sections (letters in one section and numbers in the next). There was one sentence that was also one of the longest in the entire ORCP that is now broken into several sentences for ease of comprehension. Lead lines have also been added and, unlike in statutes, lead lines are part of the rule. There is no intent to change the substance of the rule, just to clean it up.

Mr. Goehler stated that one part of subsection A(2) of the existing rule was difficult for him to read due to internal sub-clauses, despite the staff's attempt to clean it up:

The court must appoint an attorney to represent persons not served in the manner provided in Rule 7 and, if the unserved person is not otherwise represented, to cross examine the deponent. The services of any appointed attorney must be paid for by the petitioner in an amount fixed by the court.

He suggested the following language:

For persons not served with summons in the manner provided in Rule 7, the court will appoint an attorney to represent them and cross examine the deponent. The services of such attorney must be paid for by petitioner in an amount fixed by the court.

Judge Peterson agreed that language like this would make the rule more understandable. Mr. Goehler asked Council staff to make another draft and provide it to the Council prior to the June meeting.

C. Address Confidentiality Program and Service

Mr. Goehler noted that Ms. Wilson was not present at the meeting and that she was going to do some research on the issue. He stated that, since it is so late in the biennium, the Council will obviously not have a final resolution by December, but that it is good to think about the issue. He stated that he had spoken to a colleague who had encountered this issue in Washington who had to do a motion to seal to get the personal information out of the public record. While there is a process, it is not a very efficient one, so it would be nice to have something cleaner.

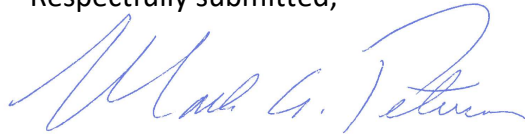
V. New Business

No new business was raised.

VI. Adjournment

Mr. Goehler adjourned the meeting at 10:52 a.m.

Respectfully submitted,



Hon. Mark A. Peterson
Executive Director

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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.

1 person or party requesting the statement may move for a court order. The provisions of Rule
2 46 A(4) apply to the award of expenses incurred in relation to the motion. For purposes of this
3 subsection, a statement previously made is either: a written statement signed or otherwise
4 adopted or approved by the person making it; or a stenographic, mechanical, electrical, or
5 other [recording,] **recording**; or a transcription that is a substantially verbatim recital of an oral
6 statement by the person making it and contemporaneously recorded.

7 **B(4) Discovery to enforce judgment. A judgment creditor, or a successor in interest**
8 **whose interest appears of record, may issue a subpoena as provided in Rule 55 and may**
9 **obtain discovery as provided in these rules or by applicable statute from any person,**
10 **including the judgment debtor, for the purpose of collection or enforcement of a judgment.**
11 **However, if the court has stayed enforcement of a judgment as a result of a satisfactory**
12 **undertaking securing the judgment on the part of any judgment debtor, or for any other**
13 **reason, authority to issue a subpoena or to obtain discovery is only available pursuant to**
14 **court order.**

15 **C Court order limiting extent of disclosure.**

16 **C(1) Relief available; grounds for limitation.** On motion by a party or by the person from
17 whom discovery is sought, and for good cause shown, the court in which the action is pending
18 may make any order that justice requires to protect a party or person from annoyance,
19 embarrassment, oppression, or undue burden or expense, including one or more of the
20 following: that the discovery not be had; that the discovery may be had only on specified terms
21 and conditions, including a designation of the time or place; that the discovery may be had
22 only by a method of discovery other than that selected by the party seeking discovery; that
23 certain matters not be inquired into, or that the scope of the discovery be limited to certain
24 matters; that discovery be conducted with no one present except persons designated by the
25 court; that a deposition after being sealed be opened only by order of the court; that a trade
26 secret or other confidential research, development, or commercial information not be

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20 only by a method of discovery other than that selected by the party seeking discovery; that
21 certain matters not be inquired into, or that the scope of the discovery be limited to certain
22 matters; that discovery be conducted with no one present except persons designated by the
23 court; that a deposition after being sealed be opened only by order of the court; that a trade
24 secret or other confidential research, development, or commercial information not be
25 disclosed or be disclosed only in a designated way; that the parties simultaneously file specified
26 documents or information enclosed in sealed envelopes to be opened as directed by the court;

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1 B(2)(b) **Procedure for disclosure.** The obligation to disclose under this subsection [*shall*]
2 **must** be performed as soon as practicable following the filing of the complaint and the request
3 to disclose. The court may supervise the exercise of disclosure to the extent necessary to
4 ensure that it proceeds properly and expeditiously. However, the court may limit the extent of
5 disclosure under this subsection as provided in section C of this rule.

6 B(2)(c) **Admissibility; applications for insurance.** Information concerning the insurance
7 agreement or policy is not by reason of disclosure admissible in evidence at trial. For purposes
8 of this subsection, an application for insurance [*shall not be*] **is not** treated as part of an
9 insurance agreement or policy.

10 B(2)(d) **Definition.** As used in this subsection, "disclose" means to afford the adverse
11 party an opportunity to inspect or copy the insurance agreement or policy.

12 B(3) **Trial preparation materials.**

13 B(3)(a) **Materials subject to a showing of substantial need.** Subject to the provisions of
14 Rule 44, a party may obtain discovery of documents and tangible things otherwise discoverable
15 under subsection B(1) of this rule and prepared in anticipation of litigation or for trial by or for
16 another party or by or for that other party's representative (including an attorney, consultant,
17 surety, indemnitor, insurer, or agent) only on a showing that the party seeking discovery has
18 substantial need of the materials in the preparation of such party's case and is unable without
19 undue hardship to obtain the substantial equivalent of the materials by other means. In
20 ordering discovery of such materials when the required showing has been made, the court
21 [*shall*] **will** protect against disclosure of the mental impressions, conclusions, opinions, or legal
22 theories of an attorney or other representative of a party concerning the litigation.

23 B(3)(b) **Prior statements.** A party may obtain, without the required showing, a statement
24 concerning the action or its subject matter previously made by that party. On request, a person
25 who is not a party may obtain, without the required showing, a statement concerning the
26 action or its subject matter previously made by that person. If the request is refused, the

1 person or party requesting the statement may move for a court order. The provisions of Rule
2 46 A(4) apply to the award of expenses incurred in relation to the motion. For purposes of this
3 subsection, a statement previously made is either: a written statement signed or otherwise
4 adopted or approved by the person making it; or a stenographic, mechanical, electrical, or
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10 **including the judgment debtor, for the purpose of collection or enforcement of a judgment.**
11 **However, if the court has stayed enforcement of a judgment, authority to issue a subpoena**
12 **or to obtain discovery is only available pursuant to court order.**

13 **C Court order limiting extent of disclosure.**

14 **C(1) Relief available; grounds for limitation.** On motion by a party or by the person from
15 whom discovery is sought, and for good cause shown, the court in which the action is pending
16 may make any order that justice requires to protect a party or person from annoyance,
17 embarrassment, oppression, or undue burden or expense, including one or more of the
18 following: that the discovery not be had; that the discovery may be had only on specified terms
19 and conditions, including a designation of the time or place; that the discovery may be had
20 only by a method of discovery other than that selected by the party seeking discovery; that
21 certain matters not be inquired into, or that the scope of the discovery be limited to certain
22 matters; that discovery be conducted with no one present except persons designated by the
23 court; that a deposition after being sealed be opened only by order of the court; that a trade
24 secret or other confidential research, development, or commercial information not be
25 disclosed or be disclosed only in a designated way; that the parties simultaneously file specified
26 documents or information enclosed in sealed envelopes to be opened as directed by the court;

1 or that to prevent hardship the party requesting discovery pay to the other party reasonable
2 expenses incurred in attending the deposition or otherwise responding to the request for
3 discovery.

4 C(2) **Denial of motion.** If the motion for a protective order is denied in whole or in part,
5 the court may, on such terms and conditions as are just, order that any party or person provide
6 or permit discovery. The provisions of Rule 46 A(4) apply to the award of expenses incurred in
7 relation to the motion.

IN THE CIRCUIT 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: READ THESE PAPERS CAREFULLY!

You must “appear” in this case or the plaintiff or petitioner will win automatically. To appear you must, within 30 days of the date you receive this summons, file a legal document called a “motion,” “answer,” or “response.” 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 CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

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larry@lawyer.com

1 **SUMMONS**

2 **RULE 7**

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

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

12 **C Contents, time for response, and required notices.**

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

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

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

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

23 **C(2) Time for response.** If the summons is served by any manner other than publication,
24 the defendant *[shall]* **must** appear and defend within 30 days from the date of service. If the
25 summons is served by publication pursuant to subparagraph D(6)(a)(i) of this rule, the
26 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!]

NOTICE: READ THESE PAPERS CAREFULLY!

You must “appear” in this case or the *[other side]* **plaintiff or petitioner** will win automatically. To *[“appear you must file with the court”]* **appear you must file** 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]* **For** 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

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

2 courts.oregon.gov OR www.oregonlawhelp.org

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

8
9 **[NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY!]**

10 **NOTICE: READ THESE PAPERS CAREFULLY!**

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

24 If you have questions, [*you should see*] **contact** an attorney immediately. [*If you need*]
25 **For** help [*in*] finding an attorney, you may contact the Oregon State Bar's Lawyer Referral
26 [*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

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courts.oregon.gov OR www.oregonlawhelp.org

C(3)(c) **Service on persons liable for attorney fees.** A summons to join a party pursuant to Rule 22 D(2) [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!]

NOTICE: 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”] **appear you must** file with the court a legal document called a "motion" or [reply.] **reply within 30 days of the date you receive this summons.** [The "motion" or "reply" 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 this 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.**

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

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

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

7 **courts.oregon.gov OR www.oregonlawhelp.org**

8
9 **D Manner of service.**

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

22 **D(2) Service methods.**

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

25 D(2)(b) **Substituted service.** Substituted service may be made by delivering true copies of
26 the summons and the complaint at the dwelling house or usual place of abode of the person to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 D(3)(b)(ii)(C) by mailing in the manner specified in paragraph D(2)(d) of this rule true
24 copies of the summons and the complaint to: the office of the registered agent or to the last
25 registered office of the corporation, if any, as shown by the records on file in the office of the
26 Secretary of State; or, if the corporation is not authorized to transact business in this state at

1 the time of the transaction, event, or occurrence on which the action is based occurred, to the
2 principal office or place of business of the corporation; and, in any case, to any address the use
3 of which the plaintiff knows or has reason to believe is most likely to result in actual notice; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 D(3)(i) **Vessel owners and charterers.** On any foreign steamship owner or steamship

1 charterer by personal service on a vessel master in the owner's or charterer's employment or
2 any agent authorized by the owner or charterer to provide services to a vessel calling at a port
3 in the State of Oregon, or a port in the State of Washington on that portion of the Columbia
4 River forming a common boundary with Oregon.

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

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

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

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

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

20 D(4)(a)(i)(C) any other address of that defendant known to the plaintiff at the time of
21 making the mailings required by parts D(4)(a)(i)(A) and D(4)(a)(i)(B) of this rule that reasonably
22 might result in actual notice to that defendant. Sufficient service pursuant to this subparagraph
23 may be shown if the proof of service includes a true copy of the envelope in which each of the
24 certified, registered, or express mailings required by parts D(4)(a)(i)(A), D(4)(a)(i)(B), and
25 D(4)(a)(i)(C) of this rule was made showing that it was returned to sender as undeliverable or
26 that the defendant did not sign the receipt. For the purpose of computing any period of time

1 prescribed or allowed by these rules or by statute, service under this subparagraph [*shall be*] **is**
2 complete on the latest date on which any of the mailings required by parts D(4)(a)(i)(A),
3 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
4 this rule is omitted because the plaintiff did not know of any address other than those
5 specified in parts D(4)(a)(i)(A) and D(4)(a)(i)(B) of this rule, the proof of service [*shall*] **must** so
6 certify.

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

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

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

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

23 D(6) **Court order for service by other method.** When it appears that service is not
24 possible under any method otherwise specified in these rules or other rule or statute, then a
25 motion supported by affidavit or declaration may be filed to request a discretionary court
26 order to allow alternative service by any method or combination of methods that, under the

1 | circumstances, is most reasonably calculated to apprise the defendant of the existence and
2 | pendency of the action. If the court orders alternative service and the plaintiff knows or with
3 | reasonable diligence can ascertain the defendant's current address, the plaintiff must mail true
4 | copies of the summons and the complaint to the defendant at that address by first class mail
5 | and any of the following: certified, registered, or express mail, return receipt requested. If the
6 | plaintiff does not know, and with reasonable diligence cannot ascertain, the current address of
7 | any defendant, the plaintiff must mail true copies of the summons and the complaint by the
8 | methods specified above to the defendant at the defendant's last known address. If the
9 | plaintiff does not know, and with reasonable diligence cannot ascertain, the defendant's
10 | current and last known addresses, a mailing of copies of the summons and the complaint is not
11 | required.

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

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

24 | D(6)(a)(i)(A) **Where published.** An order for publication must direct publication to be
25 | made in a newspaper of general circulation in the county where the action is commenced or, if
26 | there is no such newspaper, then in a newspaper to be designated as most likely to give notice

1 to the person to be served. The summons must be published four times in successive calendar
2 weeks. If the plaintiff knows of a specific location other than the county in which the action is
3 commenced where publication might reasonably result in actual notice to the defendant, the
4 plaintiff must so state in the affidavit or declaration required by paragraph D(6) of this rule,
5 and the court may order publication in a comparable manner at that location in addition to, or
6 in lieu of, publication in the county in which the action is commenced.

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

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

24 D(6)(b)(i) **Content of electronic transmissions.** If the court allows service by a specific
25 electronic method, the case name, case number, and name of the court in which the action is
26 pending must be prominently positioned where it is most likely to be read first. For e-mail

1 service, those details must appear in the subject line. For text message service, they must
2 appear in the first line of the first text. For facsimile service, they must appear at the top of the
3 first page. For posting to a social media account, they must appear in the top lines of the
4 posting.

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

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

21 D(6)(d) **Defending before or after judgment.** A defendant against whom service pursuant
22 to this subsection is ordered or that defendant's representatives, on application and sufficient
23 cause shown, at any time before judgment will be allowed to defend the action. A defendant
24 against whom service pursuant to this subsection is ordered or that defendant's
25 representatives may, on good cause shown and on any terms that may be proper, be allowed
26 to defend after judgment and within one year after entry of judgment. If the defense is

1 successful, and the judgment or any part thereof has been collected or otherwise enforced,
2 restitution may be ordered by the court, but the title to property sold on execution issued on
3 that judgment, to a purchaser in good faith, will not be affected thereby.

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

10 **E By whom served; compensation.** A summons may be served by any competent person
11 18 years of age or older who is a resident of the state where service is made or of this state and
12 is neither a party to the action, corporate or otherwise, nor any party's officer, director,
13 employee, or attorney, except as provided in ORS 180.260. However, service pursuant to
14 subparagraph D(2)(d)(i), as well as the mailings specified in paragraphs D(2)(b) and D(2)(c) and
15 part D(3)(a)(iv)(B) of this rule, may be made by an attorney for any party. Compensation to a
16 sheriff or a sheriff's deputy in this state who serves a summons *[shall be]* **is** prescribed by
17 statute or rule. If any other person serves the summons, a reasonable fee may be paid for
18 service. This compensation *[shall be]* **is** part of disbursements and *[shall be]* **is** recovered as
19 provided in Rule 68.

20 **F Return; proof of service.**

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

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

25 **F(2)(a) Service other than publication.** Service other than publication *[shall]* **must** be
26 proved by:

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

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

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

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

23 _____
24 **Affidavit of Publication**

25 State of Oregon)

26) 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).

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

4 _____
5 ____ day of ____, 2____
6 _____

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

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

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

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

22 G **Disregard of error; actual notice.** Failure to comply with provisions of this rule relating
23 to the form of a summons, issuance of a summons, or who may serve a summons [*shall*] **does**
24 not affect the validity of service of that summons or the existence of jurisdiction over the
25 person if the court determines that the defendant received actual notice of the substance and
26 pendency of the action. The court may allow amendment to a summons, affidavit, declaration,

1 or certificate of service of summons. The court [*shall*] **will** disregard any error in the content of
2 a summons that does not materially prejudice the substantive rights of the party against whom
3 the summons was issued. If service is made in any manner complying with subsection D(1) of
4 this rule, the court [*shall*] **will** also disregard any error in the service of a summons that does
5 not violate the due process rights of the party against whom the summons was issued.
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1 by electronic service.

2 C(5) **Proof of service on a party without a service address.** Service on a party who has

3 appeared without providing an appropriate address for service *[shall]* **must** be by affidavit or

4 by declaration of the person filing the document, or by certificate of an attorney, that service

5 by filing as provided in section B of this rule is appropriate.

6 **[D When filing not required.] D Documents not to be filed.** Notices of deposition,

7 requests made pursuant to Rule 43, and answers and responses thereto *[shall not be]* **are not**

8 **to be** filed with the court. This rule *[shall]* **does** not preclude their use as exhibits or as

9 evidence on a motion or at trial. Offers to allow judgment made pursuant to Rule 54 E *[shall*

10 *not be]* **are not to be** filed with the court except as provided in Rule 54 E(3).

11 **E Filing with the court defined.** The filing of pleadings and other documents with the

12 court as required by these rules *[shall]* **must** be made by filing them with the clerk of the court

13 or the person exercising the duties of that office. The clerk or the person exercising the duties

14 of that office *[shall]* **will** endorse on the pleading or document the time of day, the day of the

15 month, the month, and the year. The clerk or person exercising the duties of that office is not

16 required to receive for filing any document unless a caption that includes the name of the

17 court; the case number of the action, if one has been assigned; the title of the document; and

18 the names of the parties *[are]* **is** legibly displayed on the front of the document, nor unless the

19 contents of the document are legible. Further, the clerk is not required to receive for filing any

20 document that does not include the name, address, and telephone number of the **filing** party

21 or the attorney for the party, if the **filing** party is represented.

22 **F Service by facsimile communication.** Whenever under these rules service is required or

23 permitted to be made on a party, and that party is represented by an attorney, the service may

24 be made on the attorney by means of facsimile communication if the attorney has such

25 technology available and said technology is operating at the time service is made. Service in

26 this manner *[shall be]* **is** subject to Rule 10 B. Facsimile communication includes: a telephonic

1 by electronic service.

2 C(5) **Proof of service on a party without a service address.** Service on a party who has

3 appeared without providing an appropriate address for service *[shall]* **must** be by affidavit or

4 by declaration of the person filing the document, or by certificate of an attorney, that service

5 by filing as provided in section B of this rule is appropriate.

6 **[D When filing not required. Notices] D Documents not to be filed. The court will not**

7 **accept for filing notices** of deposition, requests made pursuant to Rule 43, and answers and

8 responses **thereto.** *[thereto shall not be filed with the court.]* This rule *[shall]* **does** not preclude

9 their use as exhibits or as evidence on a motion or at trial. Offers to allow judgment made

10 pursuant to Rule 54 E *[shall not be]* **must not be** filed with the court except as provided in Rule

11 54 E(3).

12 **E Filing with the court defined.** The filing of pleadings and other documents with the

13 court as required by these rules *[shall]* **must** be made by filing them with the clerk of the court

14 or the person exercising the duties of that office. The clerk or the person exercising the duties

15 of that office *[shall]* **will** endorse on the pleading or document the time of day, the day of the

16 month, the month, and the year. The clerk or person exercising the duties of that office is not

17 required to receive for filing any document unless **the document is legible and contains a**

18 **legibly displayed** caption **on the front** that *[includes]* **includes:** the name of the court; the case

19 number of the action, if one has been assigned; the title of the document; and the names of

20 the **parties.** *[parties are legibly displayed on the front of the document, nor unless the contents*

21 *of the document are legible.]* Further, the clerk is not required to receive for filing any

22 document that does not include the name, address, and telephone number of the **filing** party

23 or the attorney for *[the]* **that** party, if the **filing** party is represented.

24 **F Service by facsimile communication.** Whenever under these rules service is required or

25 permitted to be made on a party, and that party is represented by an attorney, the service may

26 be made on the attorney by means of facsimile communication if the attorney has such

1 **SERVICE AND FILING OF PLEADINGS**

2 **AND OTHER DOCUMENTS**

3 **RULE 9**

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

12 **B Service; how made.** Except as otherwise provided in Rule 7 or Rule 8, whenever under
13 these rules service is required or permitted to be made on a party, and that party is
14 represented by an attorney, the service [*shall*] **must** be made on the [*attorney*] **attorney,**
15 unless otherwise ordered by the court. Service on the attorney or on a party [*shall*] **must** be
16 made by delivering a copy to that attorney or party; by mailing [*it*] **the copy** to the attorney's or
17 party's last known address; by e-mail as provided in section G of this rule; by electronic service
18 as provided in section H of this rule; or, if the party is represented by an attorney, by facsimile
19 communication as provided in section F of this rule. Delivery of a copy within this rule means:
20 handing [*it*] **the copy** to the person to be served; or leaving [*it*] **the copy** at the person's office
21 with the person who is apparently in charge; or, if there is no one in charge, leaving the copy in
22 a conspicuous place therein; or, if the office is closed or the person to be served has no office,
23 leaving the copy at the person's dwelling house or usual place of abode with some person 14
24 years of age or older then residing therein. A party who has appeared without providing an
25 appropriate address for service may be served by filing the pleading or other document with
26 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

1 by electronic service.

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

6 **[D When filing not required. Notices] D Documents not to be filed. The court will not**
7 **accept for filing notices** of deposition, requests made pursuant to Rule 43, and answers and
8 responses **thereto**. [*thereto shall not be filed with the court.*] This rule [shall] **does** not preclude
9 their use as exhibits or as evidence on a motion or at trial. Offers to allow judgment made
10 pursuant to Rule 54 E [shall not be] **must not be** filed with the court except as provided in Rule
11 54 E(3).

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

24 **F Service by facsimile communication.** Whenever under these rules service is required or
25 permitted to be made on a party, and that party is represented by an attorney, the service may
26 be made on the attorney by means of facsimile communication if the attorney has such

1 technology available and said technology is operating at the time service is made. Service in
2 this manner [shall be] is subject to Rule 10 B. Facsimile communication includes: a telephonic
3 facsimile communication device; a facsimile server or other computerized system capable of
4 receiving and storing incoming facsimile communications electronically and then routing them
5 to users on paper or via e-mail; or an internet facsimile service that allows users to send and
6 receive facsimiles from their personal computers using an existing e-mail account.

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

16 **H Service by electronic service.** As used in these rules, "electronic service" means using
17 an electronic filing system provided by the Oregon Judicial Department and in the manner
18 prescribed in rules adopted by the Chief Justice of the Oregon Supreme Court.
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Shari Nilsson <nilsson@lclark.edu>

Proposed Language Addition for ORCP 17

Robert S. Raschio <Robert.S.Raschio@ojd.state.or.us>
To: "Mark A. Peterson" <Mark.A.Peterson@ojd.state.or.us>, Shari Nilsson <nilsson@lclark.edu>
Cc: "Meagan A. Flynn" <Meagan.A.Flynn@ojd.state.or.us>

Thu, May 28, 2026 at 12:23 AM

The attached language is included after a lengthy discussion with the Chief Justice and the Presiding Judges regarding the increasing use of generative artificial intelligence and the lack of proper controls used by litigants.

I hope this will be put on next year's agenda.

Thank you. The Chief has been cc'd on this email.

Robert S. Raschio

24th Judicial District (Grant/Harney)

Presiding Circuit Court Judge

(541)575-1438/(541)573-5207



ORCP 17.proposed revision.docx
14K

Proposed additional language for ORCP 17 for next year's council to consider in response to the current rule of the Oregon Court of Appeals "NOTICE REGARDING COURT IMPOSITION OF SANCTIONS FOR SUBMISSION OF FABRICATED AUTHORITY PRODUCED BY AI":

C(6) The party or attorney certifies that in all pleadings and other documents filed with the court that (1) all court cases cited exist; (2) all quotations attributed to existing court cases are contained therein and properly quoted enclosed in quotation marks if 49 words or less or in block quotations indented right and left if over 50 words, with the case citation and the page number of the quote, are accurately reported; and (3) all paraphrased propositions of law attributed to existing cases are objectively reasonable in light of the language of the case cited to the court.

ORCP Rule 22 — Third-Party Practice – Summary of COCP History

Subcommittee members:

Lara Johnson
Nadia Dahab
Eric Kekel
Mike Shin
Hon. Benjamin Bloom

Oregon Rule of Civil Procedure 22 governs counterclaims, cross-claims, and third-party practice. Subsection C specifically addresses when and how a defending party may bring an additional party into an action—the process known as impleader or “third-party practice.” The history of ORCP 22C reflects a persistent tension between two competing ideas: protecting plaintiffs and existing parties from prejudicial delay, on one hand, and ensuring that defendants have a fair opportunity to implead parties who may share liability, on the other. That tension has never been fully resolved, and the consent-of-parties requirement at the heart of the rule has ultimately survived several efforts to eliminate it.

Pre-1982: ORCP 22 Origins

ORCP 22 C and its predecessor statute, ORS 16.315, were modeled after Federal Rule of Civil Procedure 14(a). Third-party practice has been available in Oregon since 1975. Under the original rule, a defending party had ten (10) days after service of its original answer to file a third-party complaint as a matter of right, without obtaining leave of court. If that window closed, the defendant had to seek leave of court, with notice to all parties.

By the early 1980s, significant controversy had developed over whether third-party practice should be retained at all. Judges responding to a bar committee questionnaire were overwhelmingly in favor of abolishing it, citing delays, increased motion practice, discovery complications, and jury confusion. The practicing bar, by contrast, generally viewed it as an effective procedural device that facilitated settlement and avoided multiple trials. In 1981, the Council voted to abolish third-party practice entirely (a decision it later rescinded).

1982 Amendment

In May 1982, a deadlocked ORCP 22 C subcommittee referred the matter to the full Council, attaching a proposal from the OSB’s Procedure and Practice Committee. That proposal recommended amending ORCP 22 C to address judicial concerns while preserving the mechanism. The key proposed changes included: requiring the third-party plaintiff to demonstrate “due diligence” in seeking late impleader; authorizing the court to refuse leave if the filing would substantially prejudice existing parties or unreasonably delay the trial; and allowing the court to impose terms and conditions on any leave granted.

At the Council’s December 4, 1982 meeting, the Council adopted an amended version of Rule 22 C. Most significantly, the 10-day right-of-service window was replaced with a 90-day period running from service of the plaintiff’s summons and complaint on the defending party. After 90 days, the rule required both (1) agreement of the parties who have appeared, and (2) leave of court. The version passed unanimously. A contemporaneous comment to the rule provided that within the 90-day window, third parties may be brought in as a matter of right; after 90 days, they may only be added by agreement of parties who have appeared and leave of court. This consent-plus-leave structure became the defining feature of ORCP 22 C(1) going forward.

1992 Challenge to Consent Requirement

The Council considered changes to ORCP 22 C in the 1991–1993 biennium, including whether to strike the consent-of-parties language added in 1982. The proposal was rejected. This was the first of a series of unsuccessful efforts to remove the consent requirement from the rule.

1993–1995 Challenge to Consent Requirement

At the May 14, 1994 meeting, the Council took up a proposal by member Rudy Lachenmeier to amend ORCP 22 C(1). His motion would have retained the leave-of-court requirement for post-90-day impleader but deleted the additional requirement of obtaining “agreement of parties who have appeared.” A competing proposal discussed by the subcommittee would have eliminated both requirements and instead required only leave of court. After extensive debate, the Council voted on the motion to delete the agreement-of-parties requirement. The motion failed to carry.

The issue did not rest there within that biennium. Member John Hart later re-presented the same proposed amendment at the Council’s December 10, 1994 meeting, with Executive Director Maury Holland also pressing for the change. No vote appears to have been taken at that meeting, and the amendment did not advance.

2000 Subcommittee Review of Consent Requirement

In the 1999–2000 biennium, the Council assigned a subcommittee (Judge Richard Barron, (now Judge) Benjamin Bloom, and Bill Gaylord) to revisit ORCP 22 C(1). Three issues were before the subcommittee: (1) whether the 90-day period should be shortened; (2) whether the conjunctive agreement-of-parties-plus-leave-of-court requirement should be changed; and (3) whether the rule should be clarified to allow impleading a party liable to the plaintiff but not to the defendant.

The subcommittee did not recommend changing the 90-day period. On the consent issue, its consensus was that the requirement that a defendant obtain both agreement of the parties who have appeared and leave of court should not be changed—specifically, that the court should not be able to allow the filing of a third-party complaint if the plaintiff opposed it after the 90-day window had run. Bill Gaylord, in a written submission, argued for retaining the consent structure on the grounds that when all existing parties agree to a late joinder, there is no need to burden the court with a leave motion at all. The Council took no final action to change the rule at this time.

2018 Review – Published Amendment; Fails Supermajority

The 2017–2019 biennium saw the most sustained challenge to the consent requirement. At that time, the Council published a proposed amendment to ORCP 22 C(1) that would have eliminated the requirement that all parties who have appeared consent to a post-90-day third-party filing. Under the published amendment, a defendant would need only leave of court, not the agreement of existing parties, to bring in a third-party defendant after 90 days.

Proponents argued that the existing consent requirement gives the plaintiff a unilateral veto over a legitimate procedural motion—something that does not exist anywhere else in the ORCPs—and that it improperly restricts the trial court’s discretion. Defense-side members noted that, as a practical matter, it is often impossible to identify all relevant parties within 90 days, particularly in medical malpractice and complex multi-party cases. They further argued that changes to Oregon’s tort law (including the elimination of joint and several liability under ORS 31.600) had fundamentally altered the strategic context since 1982.

Opponents countered that the rule reflects a deliberate historical compromise between the plaintiffs' bar and the defense bar—the defense secured an extended 90-day window in exchange for the consent requirement thereafter. They emphasized that late joinder prejudices plaintiffs by diluting verdict forms, complicating discovery, and threatening case timelines. They also noted that two prior attempts to remove the consent requirement (in 1992 and 1999) had failed.

At the December 8, 2018 meeting, the Council voted on whether to promulgate the published amendment. The motion received 11 votes in favor and 9 votes opposed. Because the Council requires a supermajority of affirmative votes to promulgate, the motion failed. The consent-of-parties requirement was retained.

Oregon Rule of Civil Procedure 22C(1). Third-party practice.

1. No Change

Change: None. The rule is retained as currently written.

Impact: The 90-day as-of-right window is preserved, and after that period a third-party plaintiff must obtain both the agreement of all appearing parties and leave of court. Plaintiffs retain an absolute veto over late third-party complaints.

C(1) After commencement of the action, a defending party, as a third-party plaintiff, may cause a summons and complaint to be served on a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff as a matter of right not later than 90 days after service of the plaintiff's summons and complaint on the defending party. Otherwise the third-party plaintiff must obtain agreement of parties who have appeared and leave of court.

2. Consent with Judicial Override

Change: Retains the current conjunctive requirement of party agreement and court leave after the 90-day window, but adds an explicit judicial override. The court may grant leave over a party's objection only upon express findings on all three prongs: late discovery of the claim despite reasonable diligence, prompt filing after discovery, and no substantial prejudice to any appearing party or unreasonable delay to trial.

Impact: Preserves the plaintiff's practical ability to block late impleader in the ordinary case while eliminating the absolute veto that has been the central objection to the current rule. The narrow override addresses the concern — raised in the 2018 debate — that the 90-day window is insufficient in complex cases where the basis for third-party liability does not emerge until later in discovery. Because all three findings are required and must be express, circuit courts have a clear and reviewable standard, resolving the trial court split identified in current practice.

C(1) After commencement of the action, a defending party, as a third-party plaintiff, may cause a summons and complaint to be served on a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff as a matter of right not later than 90 days after service of the plaintiff's summons and

complaint on the defending party. Otherwise the third-party plaintiff must obtain agreement of parties who have appeared and leave of court. **If a party objects to such service, the court may nonetheless grant leave upon an express finding that: (a) the basis for the third-party claim could not have been discovered through reasonable diligence within the 90-day period; (b) the motion was filed promptly after the basis for the claim was or should have been discovered; and (c) granting leave will not prejudice any appearing party or unreasonably delay the trial.**

3. Eliminate “Agreement of the Parties”

Change: Removes the requirement to obtain party agreement after the 90-day window; court leave alone is sufficient for a late third-party complaint.

Impact: Eliminates the plaintiff’s unilateral veto over late impleader and gives courts sole discretion to permit or deny it. Aligns Oregon with the federal rule and most other states, which require only court leave after the initial as-of-right window.

C(1) After commencement of the action, a defending party, as a third-party plaintiff, may cause a summons and complaint to be served on a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff’s claim against the third-party plaintiff as a matter of right not later than 90 days after service of the plaintiff’s summons and complaint on the defending party. Otherwise the third-party plaintiff must obtain [*agreement of parties who have appeared and*] leave of court.

**COUNTERCLAIMS, CROSS-CLAIMS,
AND THIRD-PARTY CLAIMS**

RULE 22

A Counterclaims.

A(1) **Number.** Each defendant may set forth as many counterclaims, both legal and equitable, as that defendant may have against a plaintiff.

A(2) **Generally.** A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

B Cross-claim against codefendant.

B(1) **Generally.** In any action where two or more parties are joined as defendants, any defendant may in that defendant's answer allege a cross-claim against any other defendant. A cross-claim asserted against a codefendant must be one existing in favor of the defendant asserting the cross-claim and against another defendant, between whom a separate judgment might be had in the action, and must be one arising out of the occurrence or transaction set forth in the complaint or related to any property that is the subject matter of the action brought by plaintiff.

B(2) **Subject matter.** A cross-claim may include a claim that the defendant against whom [it] **the cross-claim** is asserted is liable, or may be liable, to the defendant asserting the cross-claim for all or part of the claim asserted by the plaintiff.

B(3) **On whom served.** An answer containing a cross-claim must be served on any party against whom relief is sought in the cross-claim and on all other parties who have appeared.

C Third-party practice.

C(1) **Generally.** After commencement of the action, a defending party, as a third-party plaintiff, may cause a summons and complaint to be served on a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim

1 against the third-party plaintiff as a matter of right not later than 90 days after service of the
2 plaintiff's summons and complaint on the defending party. Otherwise the third-party plaintiff
3 must obtain agreement of parties who have appeared and leave of court.

4 **C(2) Objection to the addition of a third party. If a party objects to service of a**
5 **summons and complaint on any person not a party to the action, the court may nonetheless**
6 **grant leave to serve such a summons and complaint on an express finding that:**

7 **C(2)(a) the basis for the third-party claim could not have been discovered through**
8 **reasonable diligence within the 90-day period;**

9 **C(2)(b) the motion was filed promptly after the basis for the claim was or should have**
10 **been discovered; and**

11 **C(2)(c) granting leave will not prejudice any appearing party or unreasonably delay the**
12 **trial.**

13 **C(3) Response by the third-party defendant.** The person served with the summons and
14 third-party complaint, hereinafter called the third-party defendant, must assert any defenses
15 to the third-party plaintiff's claim as provided in Rule 21 and may assert counterclaims against
16 the third-party plaintiff and cross-claims against other third-party defendants as provided in
17 this rule. The third-party defendant may assert against the plaintiff any defenses that the
18 third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any
19 claim against the plaintiff arising out of the transaction or occurrence that is the subject matter
20 of the plaintiff's claim against the third-party plaintiff. **[Any party]**

21 **C(4) Claims that may be asserted; responses; motions to strike or to sever. Any party**
22 may assert any claim against a third-party defendant arising out of the transaction or
23 occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff,
24 and the third-party defendant thereupon must assert the third-party defendant's defenses as
25 provided in Rule 21 and may assert the third-party defendant's counterclaims and cross-claims
26 as provided in this rule. Any party may move to strike the third-party claim, or for its severance

1 or separate trial. **[A third-party]**

2 **C(5) Third-party defendant claims against non-parties. A third-party** defendant may
3 proceed under this section against any person not a party to the action who is or may be liable
4 to the third-party defendant for all or part of the claim made in the action against the
5 third-party defendant.

6 **[C(2)] C(6) Plaintiffs' equivalent right regarding counterclaims.** A plaintiff against whom
7 a counterclaim has been asserted may cause a third-party defendant to be brought in under
8 circumstances that would entitle a defendant to do so under subsection C(1) of this section.

9 **D Joinder of additional parties.**

10 D(1) **Generally.** Persons other than those made parties to the original action may be
11 made parties to a counterclaim or cross-claim in accordance with the provisions of Rule 28 and
12 Rule 29.

13 D(2) **In contract actions.** A defendant may, in an action on a contract brought by an
14 assignee of rights under that contract, join as parties to that action all or any persons liable for
15 attorney fees under ORS 20.097. As used in this subsection "contract" includes any instrument
16 or document evidencing a debt.

17 D(3) **Service of summons and time to answer.** In any action against a party joined under
18 this section of this rule, the party joined will be treated as a defendant for purposes of service
19 of summons and time to answer under Rule 7.

20 **E Separate trial.** On the motion of any party or on the court's own initiative, the court
21 may order a separate trial of any counterclaim, cross-claim, or third-party claim so alleged if to
22 do so would be more convenient, avoid prejudice, or be more economical and expedite the
23 matter.

**COUNTERCLAIMS, CROSS-CLAIMS,
AND THIRD-PARTY CLAIMS**

RULE 22

A Counterclaims.

A(1) **Number.** Each defendant may set forth as many counterclaims, both legal and equitable, as that defendant may have against a plaintiff.

A(2) **Generally.** A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

B Cross-claim against codefendant.

B(1) **Generally.** In any action where two or more parties are joined as defendants, any defendant may in that defendant's answer allege a cross-claim against any other defendant. A cross-claim asserted against a codefendant must be one existing in favor of the defendant asserting the cross-claim and against another defendant, between whom a separate judgment might be had in the action, and must be one arising out of the occurrence or transaction set forth in the complaint or related to any property that is the subject matter of the action brought by plaintiff.

B(2) **Subject matter.** A cross-claim may include a claim that the defendant against whom [it] **the cross-claim** is asserted is liable, or may be liable, to the defendant asserting the cross-claim for all or part of the claim asserted by the plaintiff.

B(3) **On whom served.** An answer containing a cross-claim must be served on any party against whom relief is sought in the cross-claim and on all other parties who have appeared.

C Third-party practice.

C(1) **Generally.** After commencement of the action, a defending party, as a third-party plaintiff, may cause a summons and complaint to be served on a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim

1 against the third-party plaintiff as a matter of right not later than 90 days after service of the
2 plaintiff's summons and complaint on the defending party. Otherwise the third-party plaintiff
3 must obtain *[agreement of parties who have appeared and]* leave of court.

4 **C(2) Response by the third-party defendant.** The person served with the summons and
5 third-party complaint, hereinafter called the third-party defendant, must assert any defenses
6 to the third-party plaintiff's claim as provided in Rule 21 and may assert counterclaims against
7 the third-party plaintiff and cross-claims against other third-party defendants as provided in
8 this rule. The third-party defendant may assert against the plaintiff any defenses that the
9 third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any
10 claim against the plaintiff arising out of the transaction or occurrence that is the subject matter
11 of the plaintiff's claim against the third-party plaintiff. *[Any party]*

12 **C(3) Claims that may be asserted; responses; motions to strike or to sever. Any party**
13 may assert any claim against a third-party defendant arising out of the transaction or
14 occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff,
15 and the third-party defendant thereupon must assert the third-party defendant's defenses as
16 provided in Rule 21 and may assert the third-party defendant's counterclaims and cross-claims
17 as provided in this rule. Any party may move to strike the third-party claim, or for its severance
18 or separate trial. *[A third-party]*

19 **C(4) Third-party defendant claims against non-parties. A third-party** defendant may
20 proceed under this section against any person not a party to the action who is or may be liable
21 to the third-party defendant for all or part of the claim made in the action against the
22 third-party defendant.

23 **[C(2)] C(5) Plaintiffs' equivalent right regarding counterclaims.** A plaintiff against whom
24 a counterclaim has been asserted may cause a third-party defendant to be brought in under
25 circumstances that would entitle a defendant to do so under subsection C(1) of this section.

26 **D Joinder of additional parties.**

1 D(1) **Generally.** Persons other than those made parties to the original action may be
2 made parties to a counterclaim or cross-claim in accordance with the provisions of Rule 28 and
3 Rule 29.

4 D(2) **In contract actions.** A defendant may, in an action on a contract brought by an
5 assignee of rights under that contract, join as parties to that action all or any persons liable for
6 attorney fees under ORS 20.097. As used in this subsection "contract" includes any instrument
7 or document evidencing a debt.

8 D(3) **Service of summons and time to answer.** In any action against a party joined under
9 this section of this rule, the party joined will be treated as a defendant for purposes of service
10 of summons and time to answer under Rule 7.

11 **E Separate trial.** On the motion of any party or on the court's own initiative, the court
12 may order a separate trial of any counterclaim, cross-claim, or third-party claim so alleged if to
13 do so would be more convenient, avoid prejudice, or be more economical and expedite the
14 matter.