

**Oregon Rules of Civil Procedure
Legislative Amendments 1979-2023**

ORCP 21

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Lewis & Clark Law School | Oregon Council on Court Procedures

Rule 21 – Defenses and Objections; How Presented; By Pleading or Motion; Motion for Judgment on the Pleadings

§	Latest Amendment
A	Or. Laws 2003 c.194 § 8
B	Unamended
C	Unamended
D	Unamended
E	Or. Laws 1983 c.763 § 58
F	Or. Laws 1979 c.284 § 15
G	Or. Laws 1995 c.658 § 118

Or. Laws 1979 c.284 § 15–16

§15 Amends Rule 21(F)

§16 Amends Rule 21(G)

- A. [Unamended]
- B. [Unamended]
- C. [Unamended]
- D. [Unamended]
- E. [Unamended]

F. **Consolidation of defenses in motion.** A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule, **except a motion to dismiss for lack of jurisdiction over the person or insufficiency of summons or process or insufficiency of service of summons or process**, but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subsection G.(2) of this rule on any of the grounds there stated. **A party may make one motion to dismiss for lack of jurisdiction over the person or insufficiency of summons or process or insufficiency of service of summons or process without consolidation of defenses required by this section.**

G. **Waiver or preservation of certain defenses.**

1. A defense of lack of jurisdiction over the person, ~~that a plaintiff has not legal capacity to sue~~, that there is another action pending between the same parties for the same cause, insufficiency of summons or process, insufficiency of service of summons or process, ~~or that the party asserting the claim is not the real party in interest~~, is waived **under either of the following circumstances:** (a) if **the defense is** omitted from a motion in the circumstances described in section F. of this rule, or (b) if **it the defense** is neither made by motion under this rule nor included in a responsive pleading. ~~or an amendment thereof permitted by Rule 23 A. to be made as a matter of course; provided, however, the defenses denominated (2) and (5) of section A. of this rule referred to in this subsection shall not be raised by amendment.~~
2. **A defense of failure to state ultimate facts constituting a claim, a defense that the action has not been commenced within the time limited by statute, a defense of failure to join a party indispensable under Rule 29, and an objection of failure to state a legal defense to a claim or insufficiency of new matter in a reply to avoid a defense, may be made in any pleading permitted or ordered under Rule 13 B. or by motion for judgment on the pleadings, or at the trial on the merits. The objection or defense, if made at trial, shall be disposed of as provided in Rule 23 B. in light of any evidence that may have been received.**
3. **[(2)] A defense of failure to state ultimate facts constituting a claim, a defense that the action has not been commenced within the time limited by statute,** a defense of failure to join a party indispensable under Rule 29, and an objection of failure to state a legal defense to a claim or insufficiency of new matter in a reply to avoid a defense, may be made in any pleading permitted or ordered under Rule 13 B. or by motion for judgment on the pleadings, or at the trial on the merits. The objection or defense, if made at trial, shall be disposed of as provided in Rule 23 B. in light of any evidence that may have been received.

4. [(3)] If it appears by motion of the parties or otherwise that the court lacks jurisdiction over the subject matter, the court shall dismiss the action.

H.B. 3131

Or. Laws 1979 c.284 §15-16

House Introduction

5/11/79

A-Engrossed Bill

5/25/79 – Passed unamended in House

6/6/79 – Passed with amendments in Senate (per Justice Committee recommendation)

6/8/79 – House concurred with Senate amendments and repassed bill

Governor signed Enrolled Bill

6/26/79

Or. Laws 1983 c.763 § 58
Amends Rule 21(E)

- A. [Unamended]
- B. [Unamended]
- C. [Unamended]
- D. [Unamended]
- E. **Motion to strike.** Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 10 days after the service of the pleading upon such party or upon the court's own initiative at any time, the court may order stricken: (1) any sham, frivolous, or irrelevant pleading or defense or any pleading containing more than one claim or defense not separately stated; (2) any insufficient defense or any sham, frivolous, irrelevant, or redundant matter inserted in a pleading. **If, on a motion under this section, the facts supporting the motion do not appear on the face of the pleading or defense and matters outside the pleading or defense, including affidavits and other evidence, are presented to the court, all parties shall be given a reasonable opportunity to present evidence and affidavits, and the court may determine the existence or nonexistence of the facts supporting such motion if such facts are not materially disputed or may defer such determination until further discovery or until trial on the merits.**
- F. [Unamended]
- G. [Unamended]

H.B. 2364

Or. Laws 1983 c. 763 § 58

House Introduction
1/18/83

A-Engrossed Bill

3/31/83 – Passed with amendments in House (per Judiciary Committee recommendation)
7/13/83 – Passed with amendments in Senate (per Judiciary Committee recommendation)

B-Engrossed Bill

7/15/83 – House refused to concur with Senate Amendments; Conference Committee created; Senate adopted and repassed Conference Committee bill; House adopted and repassed Conference Committee bill.

Governor signed Enrolled Bill

8/4/83

Or. Laws 1987 c.714 § 6
Amends Rule 21(G)

- A. [Unamended]
- B. [Unamended]
- C. [Unamended]
- D. [Unamended]
- E. [Unamended]
- F. [Unamended]
- G. **Waiver or preservation of certain defenses.**
 - 1. [Unamended]
 - 2. [Unamended]
 - 3. [Unamended]
 - 4. **Except as provided in sections 2 and 4 of this 1987 Act**, if it appears by motion of the parties or otherwise that the court lacks jurisdiction over the subject matter, the court shall dismiss the action.

H.B. 2293

Or. Laws 1987 c.714 § 6

House Introduction

1/15/87

A-Engrossed Bill

5/11/87 – Passed with amendments in House (per Judiciary Committee recommendation)

6/8/87 – Passed unamended in Senate

Governor signed Enrolled Bill

7/16/87

Or. Laws 1995 c.658 § 118
Amends Rule 21(G)

- A. [Unamended]
- B. [Unamended]
- C. [Unamended]
- D. [Unamended]
- E. [Unamended]
- F. [Unamended]
- G. **Waiver or preservation of certain defenses.**
 - 1. [Unamended]
 - 2. [Unamended]
 - 3. [Unamended]
 - 4. **Except as provided in ORS 3.227 and 46.064,** If it appears by motion of the parties or otherwise that the court lacks jurisdiction over the subject matter, the court shall dismiss the action.

H.B. 2625

Or. Laws 1995 c.658 § 118

House Introduction

2/10/95

A-Engrossed Bill

2/13/95 – Referred to Judiciary Committee

2/23/95 – Assigned to Civil Law and Judicial Administration Subcommittee

4/20/95 – Returned to Judiciary Committee

5/10/95 – Judiciary Committee recommended passing with amendments, printing engrossed (A-Eng.), and referring to Ways and Means Committee; Referred to Ways and Means Committee

5/30/95 – Assigned to Public Safety/Regulation Subcommittee

6/4/95 – Returned to Ways and Means Committee

6/5/95 – Ways and Means Committee recommended passing with amendments and printing engrossed (B-Eng.)

6/7/95 – Passed with amendments in House (per Judiciary Committee and Ways and Means Committee recommendations)

B-Engrossed Bill

6/7/95 – Referred to Senate Ways and Means Committee

6/8/95 – Senate Ways and Means Committee recommended passing with amendments

C-Engrossed Bill

6/9/95 – Passed with amendments in Senate (per Ways and Means Committee recommendation); House concurred with Senate amendments and repassed bill

Governor signed Enrolled Bill

7/18/95

Or. Laws 2003 c.194 § 8
Amends Rule 21(A)

- A. How presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a complaint, counterclaim, cross-claim or third party claim, shall be asserted in the responsive pleading thereto, except that the following defenses may at the option of the pleader be made by motion to dismiss: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) that there is another action pending between the same parties for the same cause, (4) that plaintiff has not the legal capacity to sue, (5) insufficiency of summons or process or insufficiency of service of summons or process, (6) that the party asserting the claim is not the real party in interest, (7) failure to join a party under Rule 29, (8) failure to state ultimate facts sufficient to constitute a claim, and (9) that the pleading shows that the action has not been commenced within the time limited by statute. A motion to dismiss making any of these defenses shall be made before pleading if a further pleading is permitted. The grounds upon which any of the enumerated defenses are based shall be stated specifically and with particularity in the responsive pleading or motion. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If, on a motion to dismiss asserting defenses (1) through (7), the facts constituting such defenses do not appear on the face of the pleading and matters outside the pleading, including affidavits, **declarations** and other evidence, are presented to the court, all parties shall be given a reasonable opportunity to present ~~evidence and~~ affidavits, **declarations and other evidence**, and the court may determine the existence or nonexistence of the facts supporting such defense or may defer such determination until further discovery or until trial on the merits. If the court grants a motion to dismiss, the court may enter judgment in favor of the moving party or grant leave to file an amended complaint. If the court grants the motion to dismiss on the basis of defense (3), the court may enter judgment in favor of the moving party, stay the proceeding, or defer entry of judgment pursuant to subsection B(3) of Rule 54.
- B.** [Unamended]
C. [Unamended]
D. [Unamended]
E. [Unamended]
F. [Unamended]
G. [Unamended]

H.B. 2064 [Passed Unamended]
Or. Laws 2003 c.194 § 8