

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

ORCP 38

Compiled by Connor Grosshanten

Lewis & Clark Law School | Oregon Council on Court Procedures

Rule 38 – Persons Who May Administer Oaths for Depositions; Foreign Depositions

§	Latest Amendment
A	Unamended
B	Or. Laws 1979 c.284 § 42
C	Or. Laws 2013 c.1 § 2

Or. Laws 1979 c.284 § 24

Amends Rule 38(B) & (C)

- A. [Unamended]
- B. **Outside the state.** Within another state, or within a territory or insular possession subject to the dominion of the United States, or in a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person appointed or commissioned by the court **in which the action is pending**, and such a person shall have the power by virtue of such person's appointment or commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in (here name the state, territory, or country).1* 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.**
- [Unamended]
 - This **rule section** shall be so interpreted and construed as to effectuate its general purposes to make uniform the laws of those states which have similar rules or statute.

H.B. 3131

Or. Laws 1979 c.284 § 24

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 2013 c.1 § 2
Amends Rule 38(C)

- A. [Unamended]
 - B. [Unamended]
 - C. **Foreign depositions and subpoenas.**
 - 1. **Definitions.** For the purpose of this **rule section**: [Subsections (C)(1)(a) and (C)(1)(b) unamended]
 - 2. **Issuance of subpoena.**
 - a. To request issuance of a subpoena under this **rule section**, a party or attorney shall submit a foreign subpoena to a clerk of court in the county in which discovery is sought to be conducted in this state.
 - b. [Unamended]
 - c. A subpoena under this subsection shall:
 - i. ~~conform~~ **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 but may otherwise incorporate the terms used in the foreign subpoena as long as those terms conform to these rules; and
 - ii. ~~contain~~ **Contain** or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.
 - 3. **Service of subpoena.** A subpoena issued by a clerk of court under subsection (2) of this **rule section** shall be served in compliance with Rule 55.
 - 4. **Effects of request for subpoena.** A request for issuance of a subpoena under this **rule section** does not constitute an appearance in the court. A request does allow the court to impose sanctions for any action in connection with the subpoena that is a violation of applicable law.
 - 5. **Motions.** A motion to the court, or a response thereto, for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court pursuant to this **rule section** is an appearance before the court and shall comply with the rules and statutes of this state. The motion shall be submitted to the court in the county in which discovery is to be conducted.
- C(6) Uniformity of application and construction.
In applying and construing this [rule] section, consideration shall be given to the need to promote the uniformity of the law with respect to its subject matter among states that enact it.

H.B. 2148 [Passed Unamended]
Or. Laws 2013 c.1 § 2