

Oregon Rules of Civil Procedure Legislative Amendments 1979-2023

ORCP 39

Compiled by Connor Grosshanten

Lewis & Clark Law School | Oregon Council on Court Procedures

Rule 39 – Depositions Upon Oral Examination

§	Latest Amendment
A	Unamended
B	Unamended
C	Unamended
D	Unamended
E	Unamended
F	Or. Laws 1979 c.284 § 25
G	Unamended
H	Unamended
I	Or. Laws 1989 c. 275 § 5

Or. Laws 1979 c.284 § 25

Amends Rule 39(F)

- A. [Unamended]
- B. [Unamended]
- C. [Unamended]
- D. [Unamended]
- E. [Unamended]
- F. **Submission to witness; changes; signing statement.** When the testimony is taken by stenographic means, or is recorded by other than stenographic means as provided in subsection C.(4) of this rule, and if the transcription or recording is to be used at any proceeding in the action or if any party requests that the transcription or recording thereof be filed with the court, such transcription or recording shall be submitted to the witness for examination, unless such examination is waived by the witness and by the parties. Any changes **in form or substance** which the witness desires to make shall be entered upon the transcription or stated in a writing to accompany the recording by the party taking the deposition, together with a statement of the reasons given by the witness for making them. Notice of such changes and reasons shall promptly be served upon all parties by the party taking the deposition. The witness shall then state in writing that the transcription or recording is correct subject to the changes, if any, made by the witness, unless the parties waive the statement or the witness is physically unable to make such statement or cannot be found. If the statement is not made by the witness within 30 days, or within a lesser time upon court order, after the deposition is submitted to the witness, the party taking the deposition shall state on the transcription or in a writing to accompany the recording the fact of waiver, or the physical incapacity or absence of the witness, or the fact of refusal of the witness to make the statement, together with the reasons, if any, given therefor; and the deposition may then be used as fully as though the statement had been made unless, on a motion to suppress under Rule 41 D., the court finds that the reasons given for the refusal to make the statement require rejection of the deposition in whole or in part
- G. [Unamended]
- H. [Unamended]

H.B. 3131

Or. Laws 1979 c.284 § 25

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 1987 c.275 § 2
Amends Rule 39(I)

- A. [Unamended]
- B. [Unamended]
- C. [Unamended]
- D. [Unamended]
- E. [Unamended]
- F. [Unamended]
- G. [Unamended]
- H. [Unamended]
- I. **Perpetuation of testimony after commencement of action.**
 - 1. [Unamended]
 - 2. The notice is subject to subsections C.(1) ~~-~~ **through** (7) of this rule and shall additionally state:
 - a. [Unamended]
 - b. [Unamended]
 - 3. Prior to the time set for the deposition, any other party may object to the perpetuation deposition. Such objection shall be governed by the standards of Rule 36 C. At any hearing on such an objection, the burden shall be on the party seeking perpetuation to show that: (a) the witness may be unavailable as defined in ORS ~~40.465 (1) for the trial or hearing, or that~~ **40.465 (1)(d) or (e) or ORS 45.250 (2)(a) through (d); or (b) it would be an undue hardship on the witness to appear at the trial or hearing; or (c) other good cause exists for allowing the perpetuation.** If no objection is filed, or if perpetuation is allowed, the testimony taken shall be admissible at any subsequent trial or hearing in the ~~case~~ action, subject to the Oregon ~~Rules of~~ Evidence **Code**.
 - 4. Any perpetuation deposition shall be taken not less than seven days before the trial or hearing on not less than ~~fourteen~~ **14** days' notice, unless ~~good cause is shown~~ **the court in which the action is pending allows a shorter period upon a showing of good cause.**
 - 5. To the extent that a discovery deposition is allowed by law, any party ~~other than the one giving notice~~ may conduct a discovery deposition of the witness prior to the perpetuation deposition.
 - 6. The perpetuation examination shall proceed as set forth in subsection D. ~~herein of this rule.~~ **herein of this rule.** All objections to any testimony or evidence taken at the deposition shall be made at the time and noted upon the ~~transcription or recording~~ **record**. The court before which the testimony is offered shall rule on any objections before the testimony is offered. Any objections not made at the deposition shall be deemed waived.

H.B. 2298

Or. Laws 1987 c.275 § 2

House Introduction

1/15/87

A-Engrossed Bill

3/26/87 – Passed with amendments in House (per Judiciary Committee recommendation)

5/25/87 – Passed unamended in Senate

Governor signed Enrolled Bill

6/10/87

Or. Laws 1989 c.980 § 5
Amends Rule 39(I)

- A. [Unamended]
- B. [Unamended]
- C. [Unamended]
- D. [Unamended]
- E. [Unamended]
- F. [Unamended]
- G. [Unamended]
- H. [Unamended]
- I. **Perpetuation of testimony after commencement of action.**
 - 1. [Unamended]
 - 2. [Unamended]
 - a. [Unamended]
 - b. [Unamended]
 - 3. Prior to the time set for the deposition, any other party may object to the perpetuation deposition. Such objection shall be governed by the standards of Rule 36 C. At any hearing on such an objection, the burden shall be on the party seeking perpetuation to show that: (a) the witness may be unavailable as defined in ORS 40.465 (1)(d) or (e) or 45.250 (2)(a) through ~~(d)~~ (c); or (b) it would be an undue hardship on the witness to appear at the trial or hearing; or (c) other good cause exists for allowing the perpetuation. If no objection is filed, or if perpetuation is allowed, the testimony taken shall be admissible at any subsequent trial or hearing in the action, subject to the Oregon Evidence Code.
 - 4. [Unamended]
 - 5. [Unamended]
 - 6. The perpetuation examination shall proceed as set forth in ~~subsection~~ **section** D. of this rule. All objections to any testimony or evidence taken at the deposition shall be made at the time and noted upon the record. The court before which the testimony is offered shall rule on any objections before the testimony is offered. Any objections not made at the deposition shall be deemed waived.

S.B. 273

Or. Laws 1989 c.980 § 5

Senate Introduction

1/17/89

A-Engrossed Bill

5/22/89 – Passed with amendments in Senate (per Judiciary Committee recommendation)

6/22/89 – Passed unamended in House

Governor signed Enrolled Bill

8/3/89