

AMENDMENTS

TO

OREGON RULES OF CIVIL PROCEDURE

promulgated by

COUNCIL ON COURT PROCEDURES

December 8, 1984

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## INTRODUCTION

The following amendments to the Oregon Rules of Civil Procedure have been promulgated by the Council on Court Procedures for submission to the 1985 Legislative Assembly. Pursuant to ORS 1.735, they will become effective January 1, 1986, unless the Legislative Assembly by statute modifies the action of the Council.

During the 1983-85 biennium, the Council has taken action to correct problems relating to rules promulgated during previous biennia. The comment which follows each rule was prepared by Council staff. Those comments represent staff interpretation of the rules and the intent of the Council, and are not officially adopted by the Council. Subdivisions of rules are called sections and are indicated by capital letters, e.g., A.; subdivisions of sections are called subsections and are indicated by Arabic numerals in parentheses, e.g., (1); subdivisions of subsections are called paragraphs and are indicated by lower case letters in parentheses, e.g., (a), and subdivisions of paragraphs are called subparagraphs and are indicated by lower case Roman numerals in parentheses, e.g., (iv).

The amended rules are set out with both the current and amended language. Underscoring denotes new language while bracketing indicates language to be deleted.

In addition to the amendments contained herein, the Council considered suggestions from the bench and bar which have not been promulgated at this time. The Council expresses its appreciation for the comments and suggestions it has received. Public testimony on rule changes was taken at Council meetings on April 14, 1984 in Portland; June 9, 1984 in Corvallis; August 11, 1984 in Newport; August 13, 1984 in Cottage Grove, and December 8, 1984 in Hood River.

Special thanks are due to Oregon State Bar Committees on Practice and Procedure and the Unauthorized Practice of Law for their helpful suggestions. Thanks are also due to the Legislature's Law Improvement Committee.

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## SUMMONS

### RULE 7

C.(2) Time for response. If the summons is served by any manner other than publication, the defendant shall appear and defend within 30 days from the date of service. If the summons is served by publication pursuant to subsection D.([5]6) of this rule, the defendant shall appear and defend within 30 days from [a] the date stated in the summons. The date so stated in the summons shall be the date of the first publication.

#### COMMENT

The amendment to subsection C.(2) changes an incorrect reference to subsection D.(5). It also changes "a" to "the" in the second to the last sentence as the definite article is more precise.

FORM OF PLEADINGS

RULE 16

B. Concise and direct statement; paragraphs; separate statement of claims or defenses. Every pleading shall consist of plain and concise statements in [consecutively numbered paragraphs] paragraphs consecutively numbered throughout the pleading with Arabic numerals, the contents of which shall be limited as far as practicable to a statement of a single set of circumstances, and a paragraph may be referred to by number in all succeeding pleadings. [Separate claims or defenses] Each separate claim or defense shall be separately stated [and numbered].

COMMENT

Section B. has been changed to require the numbering of paragraphs in Arabic numerals and to require that each separate claim or defense shall be separately stated, but that numbering of paragraphs shall continue consecutively throughout a pleading.

## SIGNATURE OF PLEADINGS

### RULE 17

A. Signature by party or attorney; certificate. Every pleading shall be signed by [the] each party or by [a resident attorney of the state, except that if there are several parties united in interest and pleading together, the pleading may be signed by at least one of such parties or one resident attorney] that party's attorney who is an active member of the Oregon State Bar. If a party is represented by an attorney, every pleading of that party shall be signed by at least one attorney of record in such attorney's individual name. Verification of pleadings shall not be required unless otherwise required by rule or statute. The signature constitutes a certificate by the person signing: that such person has read the pleading; that to the best of the person's knowledge, information, and belief, there is a good ground to support it; and that it is not interposed for harassment or delay.

#### COMMENT

The amendment to section A. of this rule makes it a requirement that all parties sign a pleading in the absence of the signature of their attorney.

DEFENSES AND OBJECTIONS;  
HOW PRESENTED; BY PLEADING OR MOTION;  
MOTION FOR JUDGMENT ON THE PLEADINGS

RULE 21

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 the trial on the merits.]

**COMMENT**

The amendment to Rule 21 E. deletes language allowing the court to go beyond the face of the pleading on a motion to strike. Under the amended rule, motions to strike will be determined on the face of the pleading. When it is necessary or desirable to go beyond the face of a pleading in a manner envisioned by the language being deleted by the amendment, reference should be made to Rule 47.



CLASS ACTIONS

RULE 32

H. Notice and demand required prior to commencement of action for damages.

H.(1) Thirty days or more prior to the commencement of an action for damages pursuant to the provisions of subsection (3) of section B. of this rule, the potential plaintiffs' class representative shall:

H.(1)(a) Notify the potential defendant of the particular alleged cause of action; and

H.(1)(b) Demand that such person correct or rectify the alleged wrong.

H.(2) Such notice shall be in writing and shall be sent by certified or registered mail, return receipt requested, to the place where the transaction occurred, such person's principal place of business within this state, or [if neither will effect actual notice, the office of the Secretary of State], in the case of a corporation or limited partnership not authorized to transact business in this state, to the principal office or place of business of the corporation or limited partnership, and to any address the use of which the class representative knows, or on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice.

COMMENT

The amendment to subsection H.(2) provides for an attempt at actual notice to a foreign corporation when that corporation is a potential defendant in a class action.

## SUMMARY JUDGMENT

### RULE 47

C. Motion and proceedings thereon. The motion and all supporting documents shall be served and filed at least [10] 45 days before the [time fixed] date set for [the hearing] trial. The adverse party[, prior to the day of the hearing, may serve opposing affidavits] shall have 20 days in which to serve and file opposing affidavits and supporting documents. The moving party shall have five days to reply. The court shall have discretion to modify these stated times. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

#### COMMENT

Rule 47 C. is amended to standardize time limitations applied to motions for summary judgment. Unless modified by the court, motions must be filed at least 45 days before trial. Twenty days from the date of filing the motion are allowed for response; five days are then allowed for reply. In cases where summary judgment may be appropriate, although it would be impossible to meet the established deadlines, the court may modify the times allowed.

DISMISSAL OF ACTIONS;  
COMPROMISE

RULE 54

A. Voluntary dismissal; effect thereof.

A.(1) By plaintiff; by stipulation. Subject to the provisions of Rule 32 D. and of any statute of this state, an action may be dismissed by the plaintiff without order of court (a) by filing a notice of dismissal with the court and serving such notice on the defendant not less than five days prior to the day of trial if no counterclaim has been pleaded, or (b) by filing a stipulation of dismissal signed by all adverse parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action against the same parties on or including the same claim unless the court directs that the dismissal shall be without prejudice. Upon notice of dismissal or stipulation under this subsection, the court shall enter a judgment of dismissal.

A.(2) By order of court. Except as provided in subsection (1) of this section, an action shall not be dismissed at the plaintiff's instance save upon judgment of dismissal ordered by the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the defendant may proceed with the counterclaim. Unless otherwise specified in the judgment of dismissal, a dismissal

under this subsection is without prejudice.

A.(3) Costs and disbursements. When an action is dismissed under this section, the judgment may include any costs and disbursements, including attorney fees, provided by rule or statute. Unless the circumstances indicate otherwise, the dismissed party shall be considered the prevailing party.

**COMMENT**

A new subsection (3) was added to section A. of this rule to provide for express language permitting an award of costs, disbursements, and attorney fees to a dismissed party.

JURORS

RULE 57

C. Examination of jurors. The full number of jurors having been called shall thereupon be examined as to their qualifications. The court may examine the prospective jurors to the extent it deems appropriate, and thereupon the court shall permit the parties to examine each juror, first by the plaintiff, and then by the defendant. The court shall regulate the examination in such a way as to avoid unnecessary delay.

COMMENT

The amendment to section C. of this rule by the addition of the last sentence makes explicit the power of the court to regulate the examination of potential jurors in order to avoid unnecessary delay.

ALLOWANCE AND TAXATION  
OF ATTORNEY FEES AND  
COSTS AND  
DISBURSEMENTS

RULE 68

A.(2) Costs and disbursements. "Costs and disbursements" are reasonable and necessary expenses incurred in the prosecution or defense of an action other than for legal services, and include the fees of officers and witnesses; [the necessary expenses of taking depositions;] the expense of publication of summonses or notices, and the postage where the same are served by mail; the compensation of referees; the necessary expense of copying of any public record, book, or document used as evidence on the trial; a reasonable sum paid a person for executing any bond, recognizance, undertaking, stipulation, or other obligation therein; and any other expense specifically allowed by agreement, by these rules, or by other rule or statute. The expense of taking depositions shall not be allowed, even though the depositions are used at trial, except as otherwise provided by rule or statute.

COMMENT

The amendment to 68 A.(2) deletes "the necessary expenses of taking depositions" and, with the addition of the last sentence, explicitly states that the expense of taking depositions shall not be allowed as costs. The amendment does not affect other provisions of rule or statute where such expenses are allowed.