

AMENDMENTS

TO

OREGON RULES OF CIVIL PROCEDURE

promulgated by

COUNCIL ON COURT PROCEDURES

December 13, 2008

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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 2009 Legislative Assembly. Pursuant to ORS 1.735, they will become effective January 1, 2010, unless the Legislative Assembly by statute modifies the action of the Council.

The amended rules are set out with both the current and amended language. New language is shown in boldface with underlining, and language to be deleted is italicized and bracketed.

The Council held the following public meetings during the 2007-2009 biennium:

- ▶ October 13, 2007, 9:30 a.m., Oregon State Bar
- ▶ November 10, 2007, 9:30 a.m., Oregon State Bar
- ▶ December 8, 2007, 9:30 a.m., Oregon State Bar
- ▶ January 12, 2008, 9:30 a.m., University of Oregon Law School
- ▶ February 9, 2008, 9:30 a.m., Oregon State Bar
- ▶ March 8, 2008, 9:30 a.m., Hood River County Library
- ▶ April 12, 2008, 9:30 a.m., Oregon State Bar
- ▶ May 3, 2008, 10:30 a.m., Phoenix Room, Phoenix Inn, Bend
- ▶ June 7, 2008, 9:30 a.m., Oregon State Bar
- ▶ September 13, 2008, 9:30 a.m., Oregon State Bar
- ▶ December 13, 2008, 9:30 a.m., Oregon State Bar

The Council expresses its appreciation to the bench and the bar for the comments and suggestions it has received.

**PROMULGATED AMENDMENTS TO
THE OREGON RULES OF CIVIL PROCEDURE**

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1 **SCOPE; CONSTRUCTION; APPLICATION; RULE; CITATION**

2 **RULE 1**

3 **A Scope.** These rules govern procedure and practice in all circuit courts of this state, except
4 in the small claims department of circuit courts, for all civil actions and special proceedings
5 whether cognizable as cases at law, in equity, or of statutory origin except where a different
6 procedure is specified by statute or rule. These rules shall also govern practice and procedure in
7 all civil actions and special proceedings, whether cognizable as cases at law, in equity, or of
8 statutory origin, for the small claims department of circuit courts and for all other courts of this
9 state to the extent they are made applicable to such courts by rule or statute. Reference in these
10 rules to actions shall include all civil actions and special proceedings whether cognizable as cases
11 at law, in equity or of statutory origin.

12 **B Construction.** These rules shall be construed to secure the just, speedy, and inexpensive
13 determination of every action.

14 **C Application.** These rules, and amendments thereto, shall apply to all actions pending at the
15 time of or filed after their effective date, except to the extent that in the opinion of the court their
16 application in a particular action pending when the rules take effect would not be feasible or
17 would work injustice, in which event the former procedure applies.

18 **D “Rule” defined and local rules.** References to “these rules” shall include Oregon Rules of
19 Civil Procedure numbered 1 through 85. General references to “rule” or “rules” shall mean only
20 rule or rules of pleading, practice, and procedure established by ORS 1.745, or promulgated
21 under ORS 1.006, 1.735, 2.130, and 305.425, unless otherwise defined or limited. These rules do
22 not preclude a court in which they apply from regulating pleading, practice, and procedure in any
23 manner not inconsistent with these rules.

24 **E Use of declaration under penalty of perjury in lieu of affidavit; “declaration” defined.**
25 A declaration under penalty of perjury may be used in lieu of any affidavit required or allowed by
26 these rules. A declaration under penalty of perjury may be made without notice to adverse

1 parties, must be signed by the declarant, and must include the following sentence in prominent
2 letters immediately above the signature of the declarant: “I hereby declare that the above
3 statement is true to the best of my knowledge and belief, and that I understand it is made for use
4 as evidence in court and is subject to penalty for perjury.” As used in these rules, “declaration”
5 means a declaration under penalty of perjury.

6 **F Electronic Filing. Any reference in these rules to any document, except a summons,**
7 **which is exchanged, served, entered, or filed during the course of civil litigation shall be**
8 **construed to include electronic images or other digital information in addition to printed**
9 **versions of such items, as may be permitted by rules of the court in which the action is**
10 **pending.**

11 **[F] G Citation.** These rules may be referred to as ORCP and may be cited, for example,
12 by citation of Rule 7, section D, subsection (3), paragraph (a), subparagraph [(i)] **(iv), part (A),**
13 as ORCP 7 D(3)(a)[(i)]**(iv)(A).**

1 (A) the plaintiff makes a diligent inquiry but cannot find the defendant; and

2 (B) the plaintiff, as soon as reasonably possible after delivery, causes a true copy of the
3 summons and the complaint to be mailed by first class mail to the defendant at the address at
4 which the mail agent receives mail for the defendant and to any other mailing address of the
5 defendant then known to the plaintiff, together with a statement of the date, time, and place at
6 which the plaintiff delivered the copy of the summons and the complaint.

7 Service shall be complete on the latest date resulting from the application of subparagraph
8 D(2)(d)(ii) of this rule to all mailings required by this subparagraph unless the defendant signs a
9 receipt for the mailing, in which case service is complete on the day the defendant signs the
10 receipt.

11 **D(3)(b) Corporations [*and limited partnerships*] including, but not limited to,**
12 **professional corporations and cooperatives.** Upon a domestic or foreign corporation [*or*
13 *limited partnership*]:

14 **D(3)(b)(i) Primary service method.** By personal service or office service upon a
15 registered agent, officer, **or** director[, *general partner, or managing agent*] of the corporation [*or*
16 *limited partnership*];**;** or by personal service upon any clerk on duty in the office of a registered
17 agent.

18 **D(3)(b)(ii) Alternatives.** If a registered agent, officer, **or** director[, *general partner, or*
19 *managing agent*] cannot be found in the county where the action is filed, true copies of the
20 summons and the complaint may be served:

21 **(A)** by substituted service upon such registered agent, officer, **or** director[, *general*
22 *partner, or managing agent*]; [*or*]

23 **(B)** by personal service on any clerk or agent of the corporation [*or limited partnership*]
24 who may be found in the county where the action is filed; [*or*]

25 **(C)** by mailing **in the manner specified in paragraph (2)(d) of this section** true copies
26 of the summons and the complaint to the office of the registered agent or to the last registered

1 office of the corporation [*or limited partnership*], if any, as shown by the records on file in the
2 office of the Secretary of State or, if the corporation [*or limited partnership*] is not authorized to
3 transact business in this state at the time of the transaction, event, or occurrence upon which the
4 action is based occurred, to the principal office or place of business of the corporation [*or limited*
5 *partnership*], and in any case to any address the use of which the plaintiff knows or[, *on the basis*
6 *of reasonable inquiry,*] has reason to believe is most likely to result in actual notice[.]; or

7 **(D) upon the Secretary of State in the manner provided in ORS 60.121 or ORS**
8 **60.731.**

9 **D(3)(c) Limited Liability Companies. Upon a limited liability company:**

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

14 **D(3)(c)(ii) Alternatives. If a registered agent, manager, or (for a member-managed**
15 **limited liability company) member of a limited liability company cannot be found in the**
16 **county where the action is filed, true copies of the summons and the complaint may be**
17 **served:**

18 **(A) by substituted service upon such registered agent, manager, or (for a member-**
19 **managed limited liability company) member of a limited liability company;**

20 **(B) by personal service on any clerk or agent of the limited liability company who**
21 **may be found in the county where the action is filed;**

22 **(C) by mailing in the manner specified in paragraph (2)(d) of this section true copies**
23 **of the summons and the complaint to the office of the registered agent or to the last**
24 **registered office of the limited liability company, as shown by the records on file in the**
25 **office of the Secretary of State or, if the limited liability company is not authorized to**
26 **transact business in this state at the time of the transaction, event, or occurrence upon**

1 which the action is based occurred, to the principal office or place of business of the limited
2 liability company, and in any case to any address the use of which the plaintiff knows or
3 has reason to believe is most likely to result in actual notice; or

4 (D) upon the Secretary of State in the manner provided in ORS 63.121.

5 D(3)(d) Limited Partnerships. Upon a domestic or foreign limited partnership:

6 D(3)(d)(i) Primary service method. By personal service or office service upon a
7 registered agent or a general partner of a limited partnership; or by personal service upon
8 any clerk on duty in the office of a registered agent.

9 D(3)(d)(ii) Alternatives. If a registered agent or a general partner of a limited
10 partnership cannot be found in the county where the action is filed, true copies of the
11 summons and the complaint may be served:

12 (A) by substituted service upon such registered agent or general partner of a limited
13 partnership;

14 (B) by personal service on any clerk or agent of the limited partnership who may be
15 found in the county where the action is filed;

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

24 (D) upon the Secretary of State in the manner provided in ORS 70.040 or ORS
25 70.045.

26 D(3)(e) General partnerships and limited liability partnerships. Upon any general

1 partnership **or limited liability partnership** by personal service upon a partner or any agent
2 authorized by appointment or law to receive service of summons for the partnership **or limited**
3 **liability partnership**.

4 **D(3)(f) Other unincorporated association subject to suit under a common name.**

5 Upon any other unincorporated association subject to suit under a common name by personal
6 service upon an officer, managing agent, or agent authorized by appointment or law to receive
7 service of summons for the unincorporated association.

8 **D(3)(c)(g) State.** Upon the state, by personal service upon the Attorney General or by
9 leaving a copy of the summons and complaint at the Attorney General's office with a deputy,
10 assistant, or clerk.

11 **D(3)(d)(h) Public bodies.** Upon any county, incorporated city, school district, or other
12 public corporation, commission, board or agency, by personal service or office service upon an
13 officer, director, managing agent, or attorney thereof.

14 **D(3)(g)(i) Vessel owners and charterers.** Upon any foreign steamship owner or
15 steamship charterer by personal service upon a vessel master in such owner's or charterer's
16 employment or any agent authorized by such owner or charterer to provide services to a vessel
17 calling at a port in the State of Oregon, or a port in the State of Washington on that portion of the
18 Columbia River forming a common boundary with Oregon.

19 * * * * *

1 **DISMISSAL OF ACTIONS; [COMPROMISE] OFFER TO ALLOW JUDGMENT**

2 **RULE 54**

3 * * * * *

4 **E [Compromise] Offer to allow judgment; effect of acceptance or rejection.**

5 E(1) Except as provided in ORS 17.065 through 17.085, the party against whom a claim
6 is asserted may, at any time up to 10 days prior to trial, serve upon the party asserting the claim
7 an offer to allow judgment to be given against the party making the offer for the sum, or the
8 property, or to the effect therein specified. **The offer shall not be filed with the court clerk or**
9 **provided to any assigned judge, except as set forth in subsections E(2) and E(3) below.**

10 E(2) If the party asserting the claim accepts the offer, the party asserting the claim or
11 such party's attorney shall endorse such acceptance thereon, and file the same with the clerk
12 before trial, and within three days from the time it was served upon such party asserting the
13 claim; and thereupon judgment shall be given accordingly, as a stipulated judgment. If the offer
14 does not state that it includes costs and disbursements or attorney fees, the party asserting the
15 claim shall submit any claim for costs and disbursements or attorney fees to the court as provided
16 in Rule 68.

17 E(3) If the offer is not accepted and filed within the time prescribed, it shall be deemed
18 withdrawn, and shall not be given in evidence [*on the*] **at trial and may be filed with the court**
19 **only after the case has been adjudicated on the merits**[;] and **only** if the party asserting the
20 claim fails to obtain a **judgment** more favorable **than the offer to allow** judgment[,]. **In such a**
21 **case**, the party asserting the claim shall not recover costs, prevailing party fees, disbursements, or
22 attorney fees incurred after the date of the offer, but the party against whom the claim was
23 asserted shall recover of the party asserting the claim costs and disbursements, not including
24 prevailing party fees, from the time of the service of the offer.

25 * * * * *

1 **or express** mail[,] **with** return receipt requested[, *or express mail*]; or that the identity of the
2 defendant's insurance carrier is unknown to the plaintiff.

3 **B Entry of [*default*] judgment by default.**

4 **B(1) By the court or the clerk.** The court or the clerk upon written application of the
5 party seeking judgment shall enter judgment when:

6 B(1)(a) The action arises upon contract;

7 B(1)(b) The claim of a party seeking judgment is for the recovery of a sum certain or for a
8 sum which can by computation be made certain;

9 B(1)(c) The party against whom judgment is sought has been defaulted for failure to
10 appear;

11 B(1)(d) The party seeking judgment submits an affidavit or a declaration stating that, to
12 the best knowledge and belief of the party seeking judgment, the party against whom judgment is
13 sought is not incapacitated as defined in ORS 125.005, a minor, a protected person as defined in
14 ORS 125.005, or a respondent as defined in ORS 125.005;

15 B(1)(e) The party seeking judgment submits an affidavit or a declaration of the amount
16 due;

17 B(1)(f) An affidavit or a declaration pursuant to subsection B[(3)] **(4)** of this rule has been
18 submitted; and

19 B(1)(g) Summons was personally served within the State of Oregon upon the party, or an
20 agent, officer, director, or partner of a party, against whom judgment is sought pursuant to Rule 7
21 D(3)(a)(i), 7 D(3)(b)(i), **7 D(3)(c)(i), 7 D(3)(d)(i)**, 7 D(3)(e), or 7 D(3)(f).

22 **B(2) By the court.** In cases other than those cases described in subsection (1) of this
23 section, the party seeking judgment must apply to the court for judgment by default. The party
24 seeking judgment must submit the affidavit or declaration required by subsection (1)(d) of this
25 section if, to the best knowledge and belief of the party seeking judgment, the party against
26 whom judgment is sought is not incapacitated as defined in ORS 125.005, a minor, a protected

1 person as defined in ORS 125.005, or a respondent as defined in ORS 125.005. If the party
2 seeking judgment cannot submit an affidavit or a declaration under this subsection, a default
3 judgment may be entered against the other party only if a guardian ad litem has been appointed or
4 the party is represented by another person as described in Rule 27. If, in order to enable the court
5 to enter judgment or to carry it into effect, it is necessary to take an account or to determine the
6 amount of damages or to establish the truth of any averment by evidence or to make an
7 investigation of any other matter, the court may conduct such hearing, or make an order of
8 reference, or order that issues be tried by a jury, as it deems necessary and proper. The court may
9 determine the truth of any matter upon affidavits or declarations.

10 **B(3) Amount of judgment.** The judgment entered shall be for the amount due as shown
11 by the affidavit or declaration, and may include costs and disbursements and attorney fees
12 entered pursuant to Rule 68.

13 **B(4) Non-military affidavit or declaration required.** No judgment by default shall be
14 entered until the filing of an affidavit or a declaration on behalf of the plaintiff, showing that the
15 defendant is or is not a person in the military service, or stating that plaintiff is unable to
16 determine whether or not the defendant is in the military service as required by Section 201(b)(1)
17 of the Servicemembers Civil Relief Act, 50 App. U.S.C.A. § 521, as amended, except upon order
18 of the court in accordance with that Act.

19 * * * * *