

2008 AMENDMENTS  
TO THE  
OREGON RULES OF CIVIL PROCEDURE  
promulgated by the  
COUNCIL ON COURT PROCEDURES

*including additional amendments  
by the 75<sup>th</sup> Oregon Legislative Assembly*

all amendments effective January 1, 2010,  
except amendments to ORCP 32 effective June 25, 2009

## INTRODUCTION

The following amendments to the Oregon Rules of Civil Procedure include amendments which have been promulgated by the Council on Court Procedures for submission to the 75<sup>th</sup> Legislative Assembly. 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. Pursuant to ORS 1.735, these amendments will become effective January 1, 2010.

The 75<sup>th</sup> Legislative Assembly also made amendments to the Rules. The Legislative Assembly's new language is shown in boldface (without underlining) and language to be deleted is bracketed (without italicizing). The amendments to ORCP 32 were passed by the Legislative Assembly and include an emergency clause. The Legislative Assembly's amendments to ORCP 32 became effective on June 25, 2009. The Legislative Assembly's amendments to ORCP 7 and ORCP 55 will become effective on January 1, 2010.

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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 **SUMMONS**

2 **RULE 7**

3 \* \* \* \* \*

4 **D(3) Particular defendants.** Service may be made upon specified defendants as follows:

5 **D(3)(a) Individuals.**

6 **D(3)(a)(i) Generally.** Upon an individual defendant, by personal delivery of a true copy  
7 of the summons and the complaint to such defendant or other person authorized by appointment  
8 or law to receive service of summons on behalf of such defendant, by substituted service, or by  
9 office service. Service may also be made upon an individual defendant to whom neither  
10 subparagraph (ii) nor (iii) of this paragraph applies by a mailing made in accordance with  
11 paragraph (2)(d) of this section provided the defendant signs a receipt for the certified, registered,  
12 or express mailing, in which case service shall be complete on the date on which the defendant  
13 signs a receipt for the mailing.

14 **D(3)(a)(ii) Minors.** Upon a minor under the age of 14 years, by service in the manner  
15 specified in subparagraph (i) of this paragraph upon such minor[,] and, also, upon such minor's  
16 father, mother, conservator of the minor's estate, or guardian, or, if there be none, then upon any  
17 person having the care or control of the minor or with whom such minor resides, or in whose  
18 service such minor is employed, or upon a guardian ad litem appointed pursuant to Rule 27 A(2).

19 **D(3)(a)(iii) Incapacitated persons.** Upon a person who is incapacitated or financially  
20 incapable, as defined by ORS 125.005, by service in the manner specified in subparagraph (i) of  
21 this paragraph upon such person[,] and, also, upon the conservator of such person's estate or  
22 guardian, or, if there be none, upon a guardian ad litem appointed pursuant to Rule 27 B(2).

23 **D(3)(a)(iv) Tenant of a mail agent.** Upon an individual defendant who is a "tenant" of a  
24 "mail agent" within the meaning of [ORS 646.221] **646A.340** by delivering a true copy of the  
25 summons and the complaint to any person apparently in charge of the place where the mail agent  
26 receives mail for the tenant, provided that:

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 | **CLASS ACTIONS**

2 | **RULE 32**

3 | \* \* \* \* \*

4 | [K] Limitation on maintenance of class actions for recovery of certain statutory penalties.

5 | A class action may not be maintained for the recovery of statutory minimum penalties for any  
6 | class member as provided in ORS 646.638 or 15 U.S.C. 1640(a) or any other similar statute.]

7 | [L] **K** Coordination of pending class actions sharing common question of law or fact.

8 | [L(1)(a)] **K(1)(a)** When class actions sharing a common question of fact or law are  
9 | pending in different courts, the presiding judge of any such court, upon motion of any party or on  
10 | the court’s own initiative, may request the Supreme Court to assign a Circuit Court, Court of  
11 | Appeals, or Supreme Court judge to determine whether coordination of the actions is  
12 | appropriate, and a judge shall be so assigned to make that determination.

13 | [L(1)(b)] **K(1)(b)** Coordination of class actions sharing a common question of fact or law  
14 | is appropriate if one judge hearing all of the actions for all purposes in a selected site or sites will  
15 | promote the ends of justice taking into account whether the common question of fact or law is  
16 | predominating and significant to the litigation; the convenience of parties, witnesses, and  
17 | counsel; the relative development of the actions and the work product of counsel; the efficient  
18 | utilization of judicial facilities and personnel; the calendar of the courts; the disadvantages of  
19 | duplicative and inconsistent rulings, orders, or judgments; and the likelihood of settlement of the  
20 | actions without further litigation should coordination be denied.

21 | [L(2)] **K(2)** If the assigned judge determines that coordination is appropriate, such judge  
22 | shall order the actions coordinated, report that fact to the Chief Justice of the Supreme Court, and  
23 | the Chief Justice shall assign a judge to hear and determine the actions in the site or sites the  
24 | Chief Justice deems appropriate.

25 | [L(3)] **K(3)** The judge of any court in which there is pending an action sharing a common  
26 | question of fact or law with coordinated actions, upon motion of any party or on the court’s own

1 initiative, may request the judge assigned to hear the coordinated action for an order coordinating  
2 such actions. Coordination of the action pending before the judge so requesting shall be  
3 determined under the standards specified in subsection (1) of this section.

4 [L(4)] **K(4)** Pending any determination of whether coordination is appropriate, the judge  
5 assigned to make the determination may stay any action being considered for, or affecting any  
6 action being considered for, coordination.

7 [L(5)] **K(5)** Notwithstanding any other provision of law, the Supreme Court shall provide  
8 by rule the practice and procedure for coordination of class actions in convenient courts,  
9 including provision for giving notice and presenting evidence.

10 [M] **L** Form of judgment. The judgment in an action ordered maintained as a class action,  
11 whether or not favorable to the class, shall specify or describe those found to be members of the  
12 class or who, as a condition of exclusion, have agreed to be bound by the judgment. If a  
13 judgment that includes a money award is entered in favor of a class, the judgment must, when  
14 possible, identify by name each member of the class and the amount to be recovered thereby.

15 [N] **M** Attorney fees, costs, disbursements, and litigation expenses.

16 [N(1)(a)] **M(1)(a)** Attorney fees for representing a class are subject to control of the court.

17 [N(1)(b)] **M(1)(b)** If under an applicable provision of law a defendant or defendant class  
18 is entitled to attorney fees, costs, or disbursements from a plaintiff class, only representative  
19 parties and those members of the class who have appeared individually are liable for those  
20 amounts. If a plaintiff is entitled to attorney fees, costs, or disbursements from a defendant class,  
21 the court may apportion the fees, costs, or disbursements among the members of the class.

22 [N(1)(c)] **M(1)(c)** If the prevailing class recovers a judgment that can be divided for the  
23 purpose, the court may order reasonable attorney fees and litigation expenses of the class to be  
24 paid from the recovery.

25 [N(1)(d)] **M(1)(d)** The court may order the adverse party to pay to the prevailing class its  
26 reasonable attorney fees and litigation expenses if permitted by law in similar cases not involving

1 a class.

2 [N(1)(e)] **M(1)(e)** In determining the amount of attorney fees for a prevailing class the  
3 court shall consider the following factors:

4 [N(1)(e)(i)] **M(1)(e)(i)** The time and effort expended by the attorney in the litigation,  
5 including the nature, extent, and quality of the services rendered;

6 [N(1)(e)(ii)] **M(1)(e)(ii)** Results achieved and benefits conferred upon the class;

7 [N(1)(e)(iii)] **M(1)(e)(iii)** The magnitude, complexity, and uniqueness of the litigation;

8 [N(1)(e)(iv)] **M(1)(e)(iv)** The contingent nature of success; and

9 [N(1)(e)(v)] **M(1)(e)(v)** Appropriate criteria in Rule 1.5 of the Oregon Rules of  
10 Professional Conduct.

11 [N(2)] **M(2)** Before a hearing under section C of this rule or at any other time the court  
12 directs, the representative parties and the attorney for the representative parties shall file with the  
13 court, jointly or separately:

14 [N(2)(a)] **M(2)(a)** A statement showing any amount paid or promised them by any person  
15 for the services rendered or to be rendered in connection with the action or for the costs and  
16 expenses of the litigation and the source of all of the amounts;

17 [N(2)(b)] **M(2)(b)** A copy of any written agreement, or a summary of any oral agreement,  
18 between the representative parties and their attorney concerning financial arrangement or fees;  
19 and

20 [N(2)(c)] **M(2)(c)** A copy of any written agreement, or a summary of any oral agreement,  
21 by the representative parties or the attorney to share these amounts with any person other than a  
22 member, regular associate, or an attorney regularly of counsel with the law firm of the  
23 representative parties' attorney. This statement shall be supplemented promptly if additional  
24 arrangements are made.

25 [O] **N Statute of limitations.** The statute of limitations is tolled for all class members  
26 upon the commencement of an action asserting a class action. The statute of limitations resumes

1 | running against a member of a class:

2 |           [O(1)] **N(1)** Upon filing of an election of exclusion by such class member;

3 |           [O(2)] **N(2)** Upon entry of an order of certification, or of an amendment thereof,

4 | eliminating the class member from the class;

5 |           [O(3)] **N(3)** Except as to representative parties, upon entry of an order under section C of

6 | this rule refusing to certify the class as a class action; and

7 |           [O(4)] **N(4)** Upon dismissal of the action without an adjudication on the merits.

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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 **SUBPOENA**

2 **RULE 55**

3 \* \* \* \* \*

4 **D Service; service on law enforcement agency; service by mail; proof of service.**

5 **D(1) Service.** Except as provided in subsection (2) of this section, a subpoena may be served  
6 by the party or any other person 18 years of age or older. The service shall be made by delivering  
7 a copy to the witness personally and giving or offering to the witness at the same time the fees to  
8 which the witness is entitled for travel to and from the place designated and, whether or not  
9 personal attendance is required, one day's attendance fees. **If the witness is under 14 years of**  
10 **age, the subpoena may be served by delivering a copy to the witness or to the witness's**  
11 **parent, guardian or guardian ad litem.** The service must be made so as to allow the witness a  
12 reasonable time for preparation and travel to the place of attendance. A subpoena for taking of a  
13 deposition, served upon an organization as provided in Rule 39 C(6), shall be served in the same  
14 manner as provided for service of summons in Rule 7 D(3)(b)(i), **D(3)(c)(i)**, **D(3)(d)(i)**, D(3)(e),  
15 [*or*] D(3)(f), **D(3)(h)**. Copies of each subpoena commanding production of books, papers,  
16 documents or tangible things and inspection thereof before trial, not accompanied by command  
17 to appear at trial or hearing or at deposition, whether the subpoena is served personally or by  
18 mail, shall be served on each party at least seven days before the subpoena is served on the  
19 person required to produce and permit inspection, unless the court orders a shorter period. In  
20 addition, a subpoena shall not require production less than 14 days from the date of service upon  
21 the person required to produce and permit inspection, unless the court orders a shorter period.

22 **D(2) Service on law enforcement agency.**

23 **D(2)(a)** Every law enforcement agency shall designate individual or individuals upon  
24 whom service of subpoena may be made. At least one of the designated individuals shall be  
25 available during normal business hours. In the absence of the designated individuals, service of  
26 subpoena pursuant to paragraph (b) of this subsection may be made upon the officer in charge of



1 | the law enforcement agency.

2 |       **D(2)(b)** If a peace officer’s attendance at trial is required as a result of employment as a  
3 | peace officer, a subpoena may be served on such officer by delivering a copy personally to the  
4 | officer or to one of the individuals designated by the agency [which] **that** employs the officer  
5 | [not later than 10 days prior to the date attendance is sought]. A subpoena may be served [in this  
6 | manner] **by delivery to one of the individuals designated by the agency that employs the**  
7 | **officer** only if **the subpoena is delivered at least 10 days before the date the officer’s**  
8 | **attendance is required**, the officer is currently employed as a peace officer **by the agency**, and  
9 | **the officer** is present within the state at the time of service.

10 |       **D(2)(c)** When a subpoena has been served as provided in paragraph (b) of this subsection,  
11 | the law enforcement agency shall make a good faith effort to give actual notice to the officer  
12 | whose attendance is sought of the date, time, and location of the court appearance. If the officer  
13 | cannot be notified, the law enforcement agency shall promptly notify the court and a  
14 | postponement or continuance may be granted to allow the officer to be personally served.

15 |       **D(2)(d)** As used in this subsection, “law enforcement agency” means the Oregon State  
16 | Police, a county sheriff’s department, or a municipal police department.

17 |       **D(3) Service by mail.** Under the following circumstances, service of a subpoena to a  
18 | witness by mail shall be of the same legal force and effect as personal service otherwise  
19 | authorized by this section:

20 |       **D(3)(a)** The attorney certifies in connection with or upon the return of service that the  
21 | attorney, or the attorney’s agent, has had personal or telephone contact with the witness, and the  
22 | witness indicated a willingness to appear at trial if subpoenaed;

23 |       **D(3)(b)** The attorney, or the attorney’s agent, made arrangements for payment to the  
24 | witness of fees and mileage satisfactory to the witness; and

25 |       **D(3)(c)** The subpoena was mailed to the witness more than 10 days before trial by  
26 | certified mail or some other designation of mail that provides a receipt for the mail signed by the

1 recipient, and the attorney received a return receipt signed by the witness more than three days  
2 prior to trial.

3 **D(4)** Service by mail; exception. Service of subpoena by mail may be used for a subpoena  
4 commanding production of books, papers, documents, or tangible things, not accompanied by a  
5 command to appear at trial or hearing or at deposition.

6 **D(5)** Proof of service. Proof of service of a subpoena is made in the same manner as  
7 proof of service of a summons except that the server need not certify that the server is not a party  
8 in the action, an attorney for a party in the action or an officer, director or employee of a party in  
9 the action.

10 \* \* \* \* \*

1   **INSTRUCTIONS TO JURY AND DELIBERATION**

2   **RULE 59**

3   \* \* \* \* \*

4                 **B Charging the jury.** In charging the jury, the court shall state to *[them]* **the jury** all  
5 matters of law necessary for *[their]* **its** information in giving *[their]* **its** verdict. Whenever the  
6 knowledge of the court is by statute made evidence of a fact, the court shall declare such  
7 knowledge to the jury, *[who are]* **which is** bound to accept it as conclusive. The court shall  
8 reduce, or require a party to reduce, the *[charge]* **instructions** to writing. *[However, if the*  
9 *preparation of written instructions is not feasible, the court may record the instructions*  
10 *electronically during the charging of the jury.]* The jury shall take *[such]* **the court's** written  
11 instructions *[or recording]* with it while deliberating upon the verdict. *[and then return the*  
12 *written instructions or recording to the clerk immediately upon conclusion of its deliberations.]*  
13 The clerk shall file **a copy of** the written instructions **given to the jury** *[or recording]* in the  
14 court file of the case.

15   \* \* \* \* \*

1                                      **DEFAULT ORDERS AND JUDGMENTS**

2    **RULE 69**

3                      **A Entry of order of default.**

4                      **A(1) In general.** When a party against whom a judgment for affirmative relief is sought  
5 has been served with summons pursuant to Rule 7 or is otherwise subject to the jurisdiction of  
6 the court and has failed to plead or otherwise defend as provided in these rules, the party seeking  
7 affirmative relief may apply for an order of default. If the party against whom an order of default  
8 is sought has filed an appearance in the action, or has provided written notice of intent to file an  
9 appearance to the party seeking an order of default, [*then*] **notice, in the form prescribed by**  
10 **Uniform Trial Court Rule 2.010, of the intent to apply for an order of default must be filed**  
11 **and served upon** the party against whom an order of default is sought [*shall be served with*  
12 *written notice of the application for an order of default*] at least 10 days, unless shortened by the  
13 court, prior to entry of the order of default. These facts, along with the fact that the party against  
14 whom the order of default is sought has failed to plead or otherwise defend as provided in these  
15 rules, shall be made to appear by affidavit, declaration,<sup>2</sup> or otherwise[,] and,<sup>2</sup> upon such a showing,  
16 the clerk or the court shall enter the order of default.

17                      **A(2) Certain motor vehicle cases.** Notwithstanding subsection A(1) of this section, no  
18 default shall be entered against a defendant served with summons pursuant to [*subparagraph*]  
19 **Rule 7D(4)(a)(i)** [*of Rule 7*] unless the plaintiff submits an affidavit or a declaration showing:

20                      A(2)(a) that the plaintiff has complied with [*subparagraph*] **Rule 7D(4)(a)(i)** [*of Rule 7*];  
21 and

22                      A(2)(b) either, if the identity of the defendant’s insurance carrier is known to the plaintiff  
23 or could be determined from any records of the Department of Transportation accessible to the  
24 plaintiff, that the plaintiff not less than 30 days prior to the application for default mailed a copy  
25 of the summons and the complaint, together with notice of intent to apply for an order of default,  
26 to the insurance carrier by first class mail and by any of the following: certified,<sup>2</sup> [*or*] registered,<sup>2</sup>

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 \* \* \* \* \*